810.48C WRONGFUL DEATH DAMAGES - FUNERAL EXPENSES - NO STIPULATION, NO REBUTTAL EVIDENCE.

(Use for claims arising on or after 1 October 2011[1] when the plaintiff has offered evidence of the amount paid or necessary to be paid, and the defendant has not offered rebuttal evidence. For claims arising before 1 October 2011, use N.C.P.I.-Civil 810.48.)

Damages for (*name deceased*)'s death also include all funeral (and burial)[2] expenses reasonably paid or incurred by (*name deceased*)'s estate.

To be reasonably incurred, funeral (and burial) expenses must have been: (1) incurred as a [proximate result of the defendant's negligence] [result of the defendant's wrongful conduct] and (2) reasonable in amount.

To show that the amount of claimed funeral (and burial) expenses is reasonable,[3] the plaintiff must prove by the greater weight of the evidence the amount actually paid by (*name deceased*)'s estate for funeral (and burial) services (and the amount necessary to satisfy funeral (and burial) expenses that have not yet been paid). If you find that the plaintiff has proved [this amount] [these amounts], then the law presumes that [this amount is] [these amounts are] reasonable. I charge you that this presumption is binding on you. This means that if you find by the greater weight of the evidence the amount actually paid by (*name deceased*)'s estate for funeral (and burial) expenses (and the amount necessary to satisfy funeral (and burial) expenses that have not yet been paid), then you also must find that the funeral (and burial) expenses were reasonable in amount.

Additionally, the plaintiff must prove by the greater weight of the evidence that the funeral (and burial) expenses shown on the bills were

incurred by (*name deceased*)'s estate as a [proximate result of the defendant's negligence] [result of the defendant's wrongful conduct]. [I already have instructed you on the definition of proximate cause, and that definition applies equally here.][4]

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1. *See* 2011 N.C. Sess. Laws 317 § 1.1 (modifying 2011 N.C. Sess. Laws 283 § 4.2).

2. There is no right of recovery for burial expenses separate and apart from the right to recover for wrongful death. Burial expenses are to be recovered out of the amount to be recovered in the action. *Davenport v. Patrick*, 227 N.C. 686, 691, 44 S.E.2d 203, 206–07 (1947).

3. N.C. Gen. Stat. § 8-58.1(b) (2011) establishes a "rebuttable presumption of the reasonableness" of the "amount paid or required to be paid in full satisfaction" of funeral charges. The plaintiff, guardian, administrator or executor is "competent" to give evidence of these amounts if records or copies "showing the amount paid or required to be paid in full satisfaction of such charges accompany such testimony." *Id*. N.C. Gen. Stat. § 8-58.1(a). If the provider testifies that a charge was "satisfied by payment of an amount less than the amount charged, or can be satisfied by payment of any amount less than the amount charged, then with respect to the provider's charge only, the presumption of reasonableness of the amount charged is rebutted and a rebuttable presumption is established that the lesser satisfaction amount is the reasonable amount." *Id*. N.C. Gen. Stat. § 8-58.1(b).

A "presumed fact" is "deemed proved" and the jury must be instructed "accordingly" unless the opposing party "go[es] forward with evidence to rebut or meet the presumption[.]" N.C. Gen. Stat. § 8C-1, Rule 301 (2009). *See also McCurry v. Painter*, 146 N.C. App. 547, 552, 553 S.E.2d 698, 702 (2001) (holding that where "[d]efendants presented no evidence" nor "rebut[ted] the reasonableness of the amount of [plaintiff's] medical charges on cross-examination," the reasonableness of the amount of those charges was "conclusively established"); *cf. Osetek v. Jeremiah*, 174 N.C. App. 438, 440, 621 S.E.2d 202, 204–06 (2005) (finding no error in refusal to instruct jury to accept "as conclusive and binding" that the medical charges testified to by plaintiff were "reasonable in amount" where defendant challenged the "legitimacy" of plaintiff's treatment and whether the charges were caused by the collision at issue), *aff'd per curiam*, 360 N.C. 471, 628 S.E. 2d 760 (2006); *Griffis v. Lazarovich*, 161 N.C. App. 434, 442, 588 S.E.2d 918, 924 (2003) (holding that an instruction on reasonableness presumption "would have been redundant and confusing to the jury" where the parties stipulated to the amount and to the reasonableness of plaintiff's medical expenses).

4. Do not give this sentence in intentional tort cases.