04.05A WRONGFUL DEATH ACTION – IDENTIFICATION OF OTHER DEPENDENTS

In this case, [uncontested statutory beneficiar(y)(ies)] [is][are] eligible to claim damages for the death of [decedent]. [Putative dependent] is also eligible to claim damages if you decide that [he][she] was a dependent of [decedent] at the time of death.

For [putative dependent] to qualify as a dependent, you must find that it is more likely true than not true:

(1) [putative dependent] was a close relative of [decedent] or, at the time of [decedent]’s death, [putative dependent] had a relationship with [decedent] similar to that of a close relative; and

(2) [decedent] made significant contributions of support upon which [putative dependent] was actually dependent at the time of [decedent]’s death; and

(3) these contributions would have continued if [decedent] had lived. In deciding whether the contributions would have continued, you may consider, among other things, the length of time [decedent] made the contributions of support.

If you find that [putative dependent] qualifies as a dependent, you should include [him][her] when considering damages that may be awarded in this case. If you find that [putative dependent] does not qualify as a dependent, then you should not include [him][her] when considering damages.

[If you find that [putative dependent] does not qualify as a dependent, the plaintiff may still maintain this lawsuit for the benefit of [decedent]'s estate. Then, if you find that the estate is entitled to recover damages, in calculating the amount of compensation you should refer only to Instruction No. \_\_\_\_\_ and not to Instruction No. \_\_\_\_\_.]

# **Use Note**

This instruction includes three numbered subparagraphs setting forth the requirements that must be met for someone to qualify as an "other dependent" under AS 09.55.580. Subparagraphs (2) and (3) should be used in all cases. Subparagraph (1) must be modified to reflect the particular close familial relationship claimed in the individual case. Examples:

* "At the time of death, the claimant's relationship to the deceased was similar to that of a (husband) (wife)."
* "At the time of death, the claimant's relationship to the deceased was similar to that of a child."
* "The claimant was the (father) (mother) of the deceased."

Where the court finds as a matter of law that the claimant has a close familial relationship to the decedent, subparagraph (1) should be omitted from the instruction.

Where the status of all claimants is disputed and the jury could find that there are no statutory beneficiaries, include the final bracketed paragraph of the instruction.

**Comment**

AS 09.55.580 provides that, when the decedent is survived by a spouse or children, or "other dependents," the amount recovered in a wrongful death action shall be exclusively for their benefit. Instruction 04.05A sets forth three requirements which must be met for a claimant to qualify as an "other dependent." The instruction is based on *Greer Tank & Welding, Inc. v. Boettger*, 609 P.2d 548 (Alaska 1980).

Enumerated paragraph (1) of the instruction addresses the requirement that the claimant have a close familial relationship to the decedent in order to be considered an “other dependent.” In *Greer Tank & Welding*, the decedent had divorced his former wife and had never adopted his former stepchild, but they could nevertheless assert a wrongful death claim as “other dependents” where the deceased had maintained a close relationship in the nature of father and husband. 609 P.2d at 550-51. *See North Slope Borough v. Brower*, 215 P.3d 308 (Alaska 2009)(affirming award of wrongful death damages to mother of decedent as an “other dependent”).

Enumerated paragraph (2) sets forth the requirement that the claimant was actually dependent on financial support from the decedent at the time of death. *Greer Tank & Welding*, 609 P.2d at 550-51 (“other dependents” embraces those “who were actually dependent upon the decedent for support at the time of his death”). *See North Slope Borough*, 215 P.3d at 311, 313 (subsistence and other non-market support qualified the deceased’s mother as “other dependent”). It is not sufficient to show that the claimant would have become dependent on the deceased in the future had the deceased survived. *In re Estate of Pushruk*, 562 P.2d 329, 331-32 (Alaska 1977).

Enumerated paragraph (3) addresses the requirement that the contributions to the claimant’s support would have continued had the deceased lived. *Greer Tank & Welding*, 609 P.2d at 551 (“A showing must be made of actual dependency for significant contributions of support over a sufficient period of time to justify the assumption that such contributions would have continued.”).

“Other dependents" may recover even if the deceased is survived by a spouse or natural child. In *Greer Tank & Welding*, the former wife and former stepchild were allowed to assert a wrongful death claim as “other dependents” even though the decedent was survived by a biological child. *Id.* at 549.

This instruction applies when there are persons claiming to be “other dependents” of the deceased. It is an open question whether the “other dependent” class includes an adult natural child of the decedent. One federal court, finding AS 09.55.580(a) to be ambiguous, concluded that a spouse and minor children are conclusively presumed to be dependent on the decedent, but an adult child is treated as an “other dependent” and must “demonstrate actual dependency on the decedent.” *Millo v. Delius*, 872 F.Supp.2d 867, 876 (D. Alaska 2012). *But see Order on Motion to Determine Law of the Case,* *Gilila v. Cooke Roosa*, Case No. 3AN-11-12583CI (May 31, 2012) (non-dependent adult children are statutory beneficiaries).