### IDJI 2.28 – Binding instruction on “presumption” of due care

INSTRUCTION NO. \_\_\_

 You are to accept as a fact that \_\_\_\_\_\_\_\_\_\_ was exercising ordinary care at the time of and immediately before the accident.

Comment:

 Use this instruction where there is no evidence on the issue of due care. If there is sufficient evidence on the issue, the presumption evaporates and no special instruction should be given at all. Idaho Rule of Evidence 301; see also, IDJI2d 130 and comment.