### IDJI 1.30 – Presumptions

No evidence on presumed facts

Basic facts undisputed

 -- GIVE 1.30.1 (Binding instruction)

No evidence on presumed fact

Disputed evidence on basic fact

 -- GIVE 1.30.2

Some evidence on existence of presumed fact

Disputed evidence on existence of basic facts

 -- GIVE 1.30.3

Any substantial evidence on non-existence of presumed fact;

presumption is rebutted and evaporates.

 -- NO instructions in 1.30 area

Instruction 1.30.1

The following facts are undisputed and are to be taken as true: [insert facts established by presumption.]

Instruction 1.30.2

[Name of party] claims [basic facts]. This party has the burden of proof on those facts. If you find that these facts have been proved, then you must find [the presumed fact.] If you find that the claimed facts have not been proved, then [the presumed fact] has not been proved.

Instruction 1.30.3

[Name of party] claims [basic facts]. This party has the burden of proof on those facts. If you find that these facts have been proved, then you must find [the presumed fact.]. If you find that the claimed facts have not been proved, then you must determine [the presumed fact] based upon the other evidence in the case.

Comment:

 Rule 301 of the Idaho Rules of Evidence treats presumptions as shifting only the burden of producing evidence on the issue to the party opposing a presumption, unless a statute expressly provides for a different effect. Neither this instruction nor Instruction 125B purports to cover instances in which a statute is controlled.

 Where a presumption governed by IRE 301 is involved, the court should instruct as follows:

 1. Instruction 1.30.1 should be given when the basic facts which give rise to a presumption have been proved beyond reasonable dispute and no substantial evidence has been offered to disprove the fact established by the presumption, or when the fact to be proved by a presumption has otherwise been proved beyond reasonable dispute.

 2. Instruction 1.30.2 should be given when the basic facts giving rise to the presumption are in dispute and no substantial evidence has been offered by the party opposing the presumption to disprove the fact established by the presumption.

 Instruction 1.30.1 should be used when no substantial evidence has been introduced by either party concerning the existence of the presumed fact.

 Instruction 1.30.2 should be used when the party who claims the benefit of the presumption has introduced evidence apart from the presumption, the presumption has been rebutted and disappears, the jury will decide the issue based on the evidence, and no instruction should be given.

 3. Where substantial evidence of the nonexistence of the presumed fact has been presented by the party opposing the presumption, the presumption has been rebutted and disappears, the jury will decide the issue based on the evidence, and no instruction should be given.

 4. Where insufficient evidence has been presented to permit the jury to find that the basic facts have been proved, the presumption does not arise.