### IDJI 1.41.4.3 – Companion instruction – Non-party negligence – defendant’s burden

INSTRUCTION NO. \_\_\_\_\_

 In this case, the defendant has alleged that some other individual or entity, not a party to this lawsuit, was negligent. On this defense, the defendant has the burden of proof on each of the following propositions:

1. Another individual or entity was negligent.
2. The negligence of the other individual or entity was a proximate cause of the plaintiff’s injuries.

You will be asked the following question on the jury verdict form:

Was another individual or entity, not a party to this lawsuit, negligent, and if so was the other individual or entity’s negligence a proximate cause of the plaintiff’s injuries?

If you find from your consideration of all the evidence that each of these propositions has been proved, you should answer the question “Yes.” However, if you find that any of these propositions has not been proved, then the defendant has not met the burden of proof required and you should answer this question “No.”

Comment:

These instructions are intended to be used together to frame the issues for the jury where comparative negligence is at issue. It is necessary that these instructions be used in conjunction with a special verdict on interrogatories to the jury, and that the questions in the instructions be identical to the questions included in the special interrogatories. Parts one and two will be used in all cases involving defendant’s contention of comparative negligence of the plaintiff. Part three will be used where the defendant alleges that a non-party is negligent.