### IDJI 7.03 – Burden of proof

INSTRUCTION NO. \_\_\_

 In this case, the defendants have the burden of proving that the just compensation for the taking of their property exceeds the sum of $\_\_\_\_\_\_\_\_\_\_, which is the amount for just compensation presented in this trial by the state [name of condemning authority]. Since the condemning authority has conceded this value, your verdict should not be for an amount less than the amount of $\_\_\_\_\_\_\_\_\_\_.

Comments:

State ex rel Moore v. Bastain*,* 87 Idaho 444 (1976); State v. McGill, 79 Idaho 467 (1958); State v. Dunclick, 77 Idaho 45 (1955) and Village of Lapwai v. Alligier, 69 Idaho 397(1949), hold that the condemnee (defendant) has the burden of proof. There should be no distinction between a direct condemnation and an indirect or inverse condemnation case, as in both cases the question of whether there has been a "taking" is an issue for the court, not the jury, thus in both cases the sole issue for the jury is that of just compensation. Further, in any issue tried in a court, legal principle requires that someone have the "burden of proof." In a condemnation action, the burden of proof should be on the defendant to prove that the just compensation is an amount greater than that offered or conceded by the state.

 In an inverse condemnation case, the standard burden of proof instruction is appropriate, as there may be no concession of value by the condemning authority.