### IDJI 9.02 – Aggravation of pre-existing condition

INSTRUCTION NO. \_\_\_

 A person who has a pre-existing condition or disability is entitled to recover damages for the aggravation of such preexisting condition, if any, that is proximately caused by the occurrence. The person is not entitled to recover damages for the pre-existing condition or disability itself.

 If you find that before the occurrence causing the injuries in this case the plaintiff had a preexisting bodily condition or disability, and further find that because of the new occurrence in this case the pre-existing condition or disability was aggravated, then you should consider the aggravation of the condition or disability in fixing the damages in this case. You should not consider any condition or disability that existed prior to the occurrence, or any aggravation of such condition that was not caused or contributed to by reason of this occurrence.

 You are to apportion, if possible, between the condition or disability prior to this occurrence and the condition or disability caused by this occurrence, and assess liability accordingly. If no apportionment can reasonably be made by you, then the defendant is liable for the entire damage.

Comment:

*See,* Blaine v. Byers, 91 Idaho 665, 429 P.2d 405 (1967); Bushong v. Kamiah Grain Growers, 96 Idaho 659, 534 P.2d 1099 (1975).