### IDJI 2.08 – Ultra hazardous activities

INSTRUCTION NO. \_\_\_

 You are instructed that \_\_\_\_\_\_\_\_\_\_\_ (nature of the activity) is considered in the law to be an ultra hazardous activity. A person who carries on an ultra hazardous activity is liable to an injured plaintiff for all damages proximately caused by that activity, regardless of the degree of care or negligence on the part of the defendant, unless the exception explained below applies.

 The exception to the rule of strict liability for damages resulting from ultra hazardous activities exists where the injured person knew of the dangers involved, and either voluntarily participated in the activity or heedlessly exposed himself/herself to the dangers. In such event, any liability of the defendant to the plaintiff must be based upon a finding by the jury that the defendant was negligent, as explained elsewhere in these instructions.

Comment:

 There is no Idaho case on point. Cases from other jurisdictions indicate that the determination of what is an ultra hazardous activity is a question of law for the court. (*See*, e.g., Green v. Ensign-Bickford, 595 A.2d 1383 (Conn.1991). If such be the law in Idaho, this instruction would be given only where there was an issue of fact whether the injured party was a knowing or voluntary participant, etc. If there is no issue on this point, and the activity is determined by the court to be an ultra hazardous activity, a binding instruction on liability would be given.