IN THE CIRCUIT COURT OF [*county*] COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

v. [*case number*]

Hon. [*name*]

[*name-all caps*],

 Defendant.

DEFENDANT’S INSTRUCTION NO. \_\_\_\_

 Your duty as jurors is to find the facts. Under our system of justice you are the sole judge of the facts. If at any time I should make any comment regarding the facts, or you think I am making some comment on a piece of evidence, you are at liberty to disregard it totally. It is especially important that you perform your duty diligently and conscientiously, for ordinarily there is no way to correct a jury’s erroneous determination of the facts.

 On the other hand, and with equal emphasis, I instruct you that the law as given by the Court in these and other instructions constitute the only law for your guidance. It is your duty to accept and to follow the law as I give it to you even though you may disagree with it.

 You are to determine the facts solely from the evidence admitted in the case. This evidence consists of the testimony of witnesses and exhibits received. Questions asked by the lawyers are not evidence: the evidence consists of the witnesses’ answers to the questions, not the questions themselves. As I said earlier, statements and arguments of counsel are not evidence. [Insert if applicable: Counsel, however, may enter into agreements or stipulations of facts which are not in dispute in this case, and when they do so, you may accept those facts as established] [insert if applicable: I may also tell you that I am taking judicial notice of certain facts, and you then may accept those facts as true.] It is always up to you, however, to decide what facts the evidence established and what inferences are to be drawn from the evidence.

 The parties may sometimes present objections to some of the testimony or exhibits. An objection is the only proper method of requesting a ruling from the Court concerning evidence. It is a lawyer’s duty to object to evidence which the lawyer thinks may not properly be received or admitted. You should not be prejudiced in any way against a lawyer who makes objections or against the party the lawyer represents. At times I may sustain objections or direct that you disregard certain testimony or exhibits. You must not consider any evidence to which an objection has been sustained or which I have instructed you to disregard.

GIVEN:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

REFUSED:\_\_\_\_\_\_\_\_\_\_\_\_\_

MODIFIED:\_\_\_\_\_\_\_\_\_\_\_\_

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 JUDGE