

is, to a probability. In order for an expert's opinion to be considered by you, it must have substantial probative value and not be based on speculation, conjecture, or surmise.

You should give an expert opinion such weight as you may think it deserves, whether it was based on personal observations or on hypothetical questions. If you conclude that the reasons given in support of the expert's opinion are not sound, or if you feel that it is outweighed by other evidence, you may disregard the opinion entirely.

#### **H. BURDEN OF PROOF: PREPONDERANCE OF THE EVIDENCE**

The burden is on the plaintiff in a civil action, such as this, to prove every essential element of its claims by a preponderance of the evidence. If the proof should fail to establish any essential element of the plaintiff's claim by a preponderance of the evidence in this case, then you should find for the defendant. The defendant does not have any obligation to disprove that which the plaintiff asserts or claims.

To establish by "a preponderance of the evidence" means to prove that something is more probably true than not true. In other words, if you were looking at opposite ends of a scale, the plaintiff's evidence would have to make one end of the scale tip somewhat to its side.

When I say in these instructions that a party has the burden of proof on any proposition, or use the expression "if you find," I mean you must be persuaded, considering all the evidence in the case, that the proposition is more probably true than not true. This rule does not, of course, require proof to an absolute certainty or even a near certainty.

### **II. CASE-SPECIFIC INSTRUCTIONS**

#### **A. NATURE OF THE PLAINTIFF'S CLAIMS**

This is a civil case brought by Theresa Sepe against Red Robin Gourmet Burgers, Inc. She alleges that she injured her knees, back, hip, buttocks, and coccyx bone when she slipped