

In your consideration of this evidence, you are not limited to the bald statements of the witnesses. In other words, you are not limited to what you see and hear as the witnesses testify. You are allowed to make reasonable inferences from the evidence. Let me give you an example of an inference. If your mailbox was empty when you left home this morning, and you find mail in it when you go home tonight, you may infer that the letter carrier delivered the mail. Now, obviously, you didn't see the letter carrier deliver the mail, but from the fact that it was empty this morning and is filled tonight, you can properly infer that the letter carrier came in the interim and delivered the mail. That is all that we mean by an inference. You are permitted to draw reasonable inferences that seem justified in light of your experience, and from facts that you find have been proven.

Inferences are deductions or conclusions that reason and common sense lead you to draw from facts that have been established by the evidence in this case. Inferences, however, may not be based on speculation or conjecture.

**G. OPINION EVIDENCE - EXPERT WITNESS**

While the rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions, an exception exists as to those persons whom we refer to as expert witnesses. These are witnesses who, by education and experience, have become experts in some art, science, profession, or calling, and thus may state their opinions as to relevant and material matters in which they profess to be experts, and may also state their reasons for the opinion.

If testimony from an expert witness is to have any evidentiary value, it must speak in terms of "probabilities" rather than mere "possibilities." Although absolute certainty is not required, the conclusions of an expert must be reached to a reasonable degree of certainty – that

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