

Burden of Proof - Fair Preponderance

I have just told you that the burden of proof in this case is on the party making the claim in question, and in a few minutes I am going to describe in detail just what the Plaintiff must prove in order to prevail on his claim.

The Plaintiff must prove his claim by what the law refers to as "a fair preponderance of the evidence" which is another way of saying that the party must prove them by "the greater weight of the evidence."

To put it another way, you must be satisfied that the evidence shows that what the party making a claim is claiming is "more probably true than not."

Do not confuse the burden of proving something by a fair preponderance of the evidence with the burden of proving something beyond a reasonable doubt. As most of you probably know or have heard, in a criminal case the prosecution must prove the Defendant is guilty beyond a reasonable doubt. That is a very stringent standard of proof. However, this is not a criminal case. Therefore, in order to prevail, the Plaintiff need not prove his claim beyond a reasonable doubt; he need only prove it by a fair preponderance of the evidence.

Perhaps the best way to explain what is meant by a fair preponderance of the evidence is to ask you to visualize an old

fashioned scale with two counter balancing arms and use it to mentally weigh the evidence with respect to the claim being made by the Plaintiff.

If, after you have heard all the evidence relevant to the claim, you determine that the scale tips in favor of the Plaintiff, no matter how slightly it may tip, then the Plaintiff has sustained his burden of proving that particular claim to you by a fair preponderance of the evidence because he has made the scale tip in his favor.

If, on the other hand, you determine that the scale tips in favor of the Defendants, or that the scale is so evenly balanced that you cannot say whether it tips one way or the other, then the Plaintiff has failed to prove his claim by a fair preponderance of the evidence because he has not made the scale tip in his favor.