

BURDEN OF PROOF – PREPONDERANCE OF EVIDENCE

In this civil case, the [Plaintiff/Defendant] has the burden of proving each essential element of his/her [claim/counterclaim] by a “preponderance of the evidence.” The party who has the burden must present the more convincing evidence. To prove an element by a preponderance of the evidence simply means to prove that something is more likely than not. In other words, in light of the evidence and the law, do you believe that each element of his/her [claim/counterclaim] is more likely true than not? If so, you should decide in favor of [Plaintiff/Defendant]. If not, or if the evidence is equally balanced, then [Plaintiff/Defendant] has not carried his or her burden of proof on that element. Stated another way, a preponderance of the evidence means the greater weight of the evidence. It refers to the quality and persuasiveness of the evidence, not to the number of witnesses or documents. In determining whether a fact, claim or defense has been proven by a preponderance of the evidence, you may consider the relevant testimony of all witnesses, regardless of who may have called them, all the relevant exhibits received in evidence, regardless of who may have produces them, and any stipulations the parties may have entered into.

See e.g., Clarendon and Pittsford, et. al., v. Richardson, Docket No. S 0710-09 CnC (Vt. Super. Ct., Chittenden Unit, Jan. 18, 2013) (Crawford, J.); *Grenier v. Jonas*, Case No. 1:09-cv-121 (D. Vt. June 28, 2012) (Murtha, J.); *Arroyo v. Milton Academy*, Case No. 5:10-cv-117 (D. Vt. Feb. 1, 2012) (Reiss, J.); *Taylor v. Stratton Corp.*, Case No. 2:09-cv-297 (D. Vt. Jan. 13, 2012) (Sessions, J.); *see also Vermont Jury Instructions*, § 5.33 (1993).