02.04 CLOSING INSTRUCTIONS — DEFINITION OF PREPONDERANCE OF THE EVIDENCE

Many [Some] of the instructions that follow ask you to decide whether something is more likely true than not true. Something is more likely true than not true if you believe that the chance that it is true is even the slightest bit greater than the chance that it is not true. In more familiar language, something is more likely true than not true if you believe that there is a greater than 50 percent chance that it is true. Fifty-one percent probability is enough; no more is required for you to decide that something is more likely true than not true.

If you believe that the chance that something is true is 50/50 or less, you must decide that it is not true.

Use Note

The burden of persuasion on various issues is written into the instructions on substantive law. Ordinarily, the burden in a civil case is the preponderance of the evidence standard. This introductory instruction should be given in all cases. It should help the jury understand the meaning of the standard.

Comment

The language "more likely true than not true" is used throughout the instructions on the substantive law. Because of its importance, a definition at the outset should make the jury more comfortable in applying the concept.

Usually, definitions of terms is taken care of by the substantive law instructions, but this particular term is used so often that a definition early in the instructions seems appropriate.