

IN THE IOWA DISTRICT COURT IN AND FOR LINN COUNTY

DOUGLAS UTHOFF,

Plaintiff,

vs.

MENARDS, INC.,

Defendant.

NO. LACV088462

STATEMENT OF THE CASE AND
INSTRUCTIONS OF THE COURT

FILED
CLERK OF DISTRICT COURT
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LINN COUNTY, IOWA

MEMBERS OF THE JURY:

Plaintiff, Douglas Uthoff, claims that on March 9, 2016, he tripped and fell over a pallet of mats on an end cap at the Menard store on Wiley Blvd. S.W. in Cedar Rapids injuring himself. Plaintiff claims Menard was negligent in failing to maintain the store premises in a safe condition for customers and/or failing to timely recognize and remove a dangerous condition on the store premises. Menard denies all claims. Menard claims plaintiff was negligent in failing to maintain a proper lookout.

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law which I will now give you.

YOU ARE INSTRUCTED AS FOLLOWS:

INSTRUCTION NO. 1.

My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all the instructions together because no one instruction includes all of the applicable law.

The order in which I give these instructions is not important.

Your duty is to decide all fact questions.

As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudices or emotions. Because you are making very important decisions in this case, you are to evaluate the evidence carefully and avoid decisions based on generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your reason and common sense, and these instructions. As jurors, your sole duty is to find the truth and do justice.

the jury.

INSTRUCTION NO. 2.

Whenever a party must prove something they must do so by the preponderance of the evidence.

Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

INSTRUCTION NO. 3.

You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the court.
3. Stipulations which are agreements between the attorneys.
4. Any other matter admitted into evidence.

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide.

Sometimes during a trial references are made to pre-trial statements and reports, witnesses' depositions or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to which were not offered and received into evidence are not available to you.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

INSTRUCTION NO. 4.

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witnesses' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witnesses' appearance, conduct, age, intelligence, memory and knowledge of the facts; and,
3. The witnesses' interest in the trial, their motive, candor, bias and prejudice.

INSTRUCTION NO. 5.

During this trial, you have heard the word "interrogatory." An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

INSTRUCTION NO. 6.

Certain testimony has been read into evidence from a deposition or shown by videotape. A deposition is testimony taken under oath before the trial and preserved in writing. Consider that testimony as if it had been given in court.

INSURANCE NO. 7.

The existence or nonexistence of insurance in this matter is not relevant to any issue you have to decide in this case.

INSTRUCTION NO. 8.

You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

INSTRUCTION NO. 9.

The fact that a plaintiff or defendant is a corporation should not affect your decision. All persons are equal before the law, and corporations, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

INSTRUCTION NO. 10.

In these instructions, I will be using the term "fault." Fault means one or more acts or omissions towards another person which constitutes negligence.

INSTRUCTION NO. 11.

"Negligence" means failure to use ordinary care. Ordinary care is the care which a reasonably careful person would use under similar circumstances. "Negligence" is doing something a reasonably careful person would not do under similar circumstances, or failing to do something a reasonably careful person would do under similar circumstances.

INSTRUCTION NO. 12.

The conduct of a party is a cause of damage when the damage would not have happened except for the conduct.

INSTRUCTION NO. 13.

The mere fact an accident occurred or plaintiff was injured does not mean defendant was at fault.

INSTRUCTION NO. 14.

The plaintiff must prove all of the following propositions:

1. Menard knew or in the exercise of reasonable care should have known of a condition on the premises and that it involved an unreasonable risk of injury to a person in the plaintiff's position.
2. Menard knew or in the exercise of reasonable care should have known:
 - a. The plaintiff would not discover the condition, or
 - b. The plaintiff would not realize the condition presented an unreasonable risk of injury, or
 - c. The plaintiff would not protect himself from the condition.
3. Menard was negligent in failing to maintain the store premises in a safe condition for customers and/or failing to timely recognize and remove a dangerous condition on the store premises.
4. The negligence was a cause of the plaintiff's damage.
5. The nature and extent of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, then you will consider the defense of comparative fault as explained in Instruction No. 20.

INSTRUCTION NO. 15.

Owners and occupiers owe a duty to exercise reasonable care in the maintenance of their premises for the protection of lawful visitors. You may consider the following factors in evaluating whether Menard has exercised reasonable care for the protection of lawful visitors:

1. The foreseeability or possibility of harm;
2. The purpose for which the visitor entered the premises;
3. The time, manner, and circumstances under which the visitor entered the premises;
4. The use to which the premises are put or are expected to be put;
5. The reasonableness of the inspection, repair, or warning;
6. The opportunity and ease of repair or correction or giving of the warning; and
7. The burden on the land occupier and/or community in terms of inconvenience or cost in providing adequate protection.
8. Any other factor shown by the evidence bearing on this question.

INSTRUCTION NO. 16.

Damages may be the fault of more than one person. In comparing fault, you should consider all of the surrounding circumstances as shown by the evidence, together with the conduct of the plaintiff, Douglas Uthoff, and the extent of the causal relation between his conduct and damages claimed. You should then determine what percentage, if any, each person's fault contributed to the damages.

INSTRUCTION NO. 17.

Menard is presumed to know all conditions on the premises that are caused or created by it or its employees. Menard is not responsible for an injury suffered by a person on the premises which resulted from a condition of which it had no knowledge, unless the condition existed for a long enough time that in the exercise of reasonable care Menard should have known about it.

INSTRUCTION NO. 18.

Menard is not liable for injuries or damages caused by a condition that is known or obvious to a person in Douglas Uthoff's position unless Menard should anticipate the harm despite such knowledge or obviousness.

INSTRUCTION NO. 19.

A condition is "known" if one is aware or conscious of its existence and of the risk of harm it presents.

A condition is "obvious" when both the condition and risk of harm are apparent to and would be recognized by a reasonable person, in the position of a visitor, exercising ordinary perception, intelligence, and judgment.

INSTRUCTION NO. 20.

Menard claims the plaintiff was at fault in one or more of the following particular(s):

1. Failing to keep a proper lookout.

These grounds of fault are explained to you in other instructions.

Menard must prove both of the following propositions:

1. The plaintiff was at fault. In order to prove fault, Menard must prove plaintiff failed to keep a proper lookout.
2. The plaintiff's fault was a cause of the plaintiff's damage.

If Menard has failed to prove either of these propositions, Menard has not proved its defense. If Menard has proved both of these propositions, then you will assign a percentage of fault against the plaintiff and include the plaintiff's fault in the total percentage of fault found by you answering the special verdicts.

INSTRUCTION NO. 21.

"Proper lookout" is the lookout a reasonable person would keep in the same or similar situation. It means more than looking and seeing. It includes being aware of one's movements in relation to things seen or that could have been seen in the exercise of ordinary care.

INSTRUCTION NO. 22.

After you have compared the conduct of all parties, if you find the plaintiff, Douglas Uthoff, was at fault and his fault was more than 50% of the total fault, the plaintiff, Douglas Uthoff, cannot recover damages.

However, if you find the plaintiff's fault was 50% or less of the total fault, then I will reduce the total damages by the percentage of plaintiff's fault.

INSTRUCTION NO. 23.

If you find plaintiff is entitled to recover damages, you shall consider the following items:

1. The reasonable cost of necessary hospital charges, doctor charges, prescriptions, or other medical services from the date of injury to the present time.
2. The present value of reasonable and necessary healthcare expenses which will be incurred in the future.
3. Loss of function of the body from the date of injury to the present time. Loss of body is the inability of a particular part of the body to function in a normal manner;
4. The present value of future loss of function of the body.
5. Physical pain and suffering from the date of injury to the present time. Physical pain and suffering may include, but is not limited to, bodily suffering or discomfort.
6. The present value of future physical and mental pain and suffering.

The amount you assess for physical pain and suffering and for loss of function of the body cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties. The amount you assess for any item of damage must not exceed the amount caused by the defendant as proved by the evidence.

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage. The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

INSTRUCTION NO. 24.

Upon retiring you shall select a presiding juror. He or she shall see that discussion is carried on in an orderly fashion, the issues are fully and freely discussed, and each juror is given an opportunity to express their views.

Your attitude at the beginning of deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do, individual pride may become involved and you may later hesitate to change an announced position even if shown it may be incorrect. Remember, you are not partisans or advocates, but are judges -- judges of the facts. Your sole interest is to find the truth and do justice for all the parties.

INSTRUCTION NO. 25.

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone, smart phone, iPhone, Blackberry or computer; the internet, any internet service, or any text or instant messaging service; or any internet chat room, blog, or website such as Facebook, My Space, LinkedIn, YouTube or Twitter, to communicate to anyone information about this case or to conduct any research about this case until I accept your verdict.

INSTRUCTION NO. 26.

The way you conduct your deliberations is entirely up to you. I am sure each jury uses techniques which are a little different from every other jury. I have had two jurors in the past tell me they would have liked some guidelines for deliberations since they were new to the process and not familiar with the other people on the jury.

The following suggestions are the result of talking with many jurors over the years. Feel free to use some or all of them. Likewise, feel free to ignore them and choose your own style of deliberations.

1. You may simply want to go around the table and introduce yourselves to each other much like you did at the start of the jury selection process.
2. Choose a presiding juror. This person will preside over deliberations and speak for the jury when necessary.
3. Jurors examine and evaluate the evidence. They also consider the legal instructions. If you would like any items to help you in this process, please ask. For instance, a blackboard, flip chart, colored markers, tape, yellow pads, etc.
4. If you need additional copies of the instructions, let the bailiff know how many, and we will get them for you.
5. Try free and open discussion. However, if everyone is not getting a fair share of time to talk, consider making a list of those who want to say something. Then go through the list one at a time letting each person state his or her opinion.
6. Use any voting method you like. Votes can be by voice, show of hands, written ballot (secret or signed).
7. Respect each other's views. We all perceive things differently at times. Differences of opinion can often bring matters into focus. When deliberations are over, every juror should go home thinking he or she has had a full opportunity to express his or her views on the case.
8. If you need to call anyone to let them know you will be at the courthouse for awhile, just tell the bailiff, and we will make a phone available to you.
9. If you need to stretch your legs and take a break from the jury room, just let the bailiff know and arrangements will be made. Wait until you are all together, however, before you resume discussing the case.

INSTRUCTION NO. 27.

During the trial, you have been allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember, these are notes and not evidence. Generally, they reflect the recollection or impressions of the evidence as viewed by the person taking them, and may be inaccurate or incomplete.

Upon reaching a verdict, leave the notes in the jury room, and they will be destroyed.

INSTRUCTION NO. 28.

The Court has not by its instructions or by any ruling made, or by any act done, or by anything said during the trial, or by any facial expression, gesture or tone of voice, intended or attempted to give any intimation or opinion as to what the facts are or what are not the facts, what the proof is or what it is not, nor what your verdict should be.

During the trial, the Court has ruled upon objections to evidence which have been made by counsel. Such rulings are the responsibility of the Court, and in your consideration of the case, you will give no significance or weight whatever to such rulings and you will consider only such evidence which has been received before you as part of the record in this case.

INSTRUCTION NO. 29.

Occasionally, after a jury retires to the jury room, the members have questions. Usually questions about instructions can be answered by carefully re-reading them. If, however, any of you feels it necessary to ask a question, you must do so in writing and deliver the question to the court attendant. I cannot communicate with you without first discussing your question and potential answer with the parties and lawyers. This process naturally takes considerable time before I can reply. Keep the written question and response and return it to the Court with the verdict.

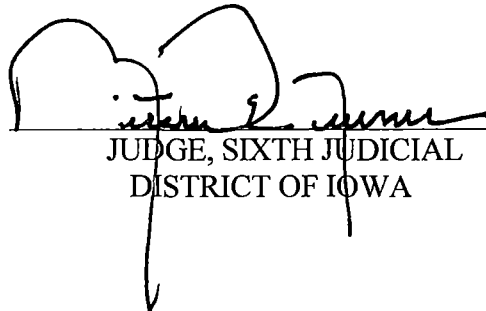
INSTRUCTION NO. 30.

I am giving you one verdict form containing several questions. If you all agree to the answers to the questions, the verdict will be signed by the person you select as presiding juror.

After deliberating for three hours after _____ o'clock ____ .m. on this date, excluding meals or recesses outside your jury room, then it is necessary that all but one of you agree upon the verdict. In that case the verdict must be signed by all five jurors who are in agreement.

When you have agreed upon a verdict and appropriately signed it, inform the Court Attendant.

Dated at Cedar Rapids, Iowa, this 6th day of June, 2018.



JUDGE, SIXTH JUDICIAL
DISTRICT OF IOWA