

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

SCOTT HONOMICHL,

Plaintiff,

vs.

MENARD, INC.,

Defendant.

No. C 16-4008-MWB

**INSTRUCTIONS
TO THE JURY**

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INSTRUCTIONS

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VERDICT FORM

No. 1 — INTRODUCTION

Congratulations on your selection as a juror!

These Instructions are to help you better understand the trial and your role in it.

This is a civil case brought by plaintiff Scott Honomichl against defendant Menard, Inc. Mr. Honomichl seeks damages as a result of an incident at a Menard's store on June 3, 2013. Menard, Inc., has admitted liability for the incident.

You have been chosen and sworn as jurors to try the issues of fact related to Mr. Honomichl's claim. In making your decisions, you are the sole judges of the facts. You must not decide this case based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, these Instructions, and any additional oral or written instructions that I may give you. Do not take anything that I have said or done or that I may say or do as indicating what I think of the evidence or what I think the amount of your verdict should be.

You should consider and decide this case as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. All persons and business entities, including the plaintiff and the defendant, stand equal before the law, and each is entitled to the same fair consideration.

Also, please remember that this case is important to the parties and to the fair administration of justice. Therefore, please be patient, consider all of the

evidence, and do not be in a hurry to reach a verdict just to be finished with the case.

In these Instructions, I will explain how you are to determine whether or not Mr. Honomichl has proved his claim for damages. First, however, I will explain some preliminary matters.

No. 2 — BURDEN OF PROOF

Your verdict depends on what facts have been proved. Facts must be proved “by the greater weight of the evidence.” This burden of proof is sometimes called “the preponderance of the evidence.”

“Proof by the greater weight of the evidence” is proof that a fact is more likely true than not true.

- It does not depend on which side presented the greater number of witnesses or exhibits
- It requires you to consider all of the evidence and decide which evidence is more convincing or believable
 - For example, you may choose to believe the testimony of one witness, if you find that witness to be convincing, even if a number of other witnesses contradict that witness’s testimony
 - You are free to disbelieve any testimony or other evidence that you do not find convincing or believable
- If, on any issue in the case, you find that the evidence is equally balanced, then you cannot find that the issue has been proved

You may have heard that criminal charges require “proof beyond a reasonable doubt.” That is a stricter standard that does not apply in a civil case, such as this one.

No. 3 — DEFINITION OF EVIDENCE

Evidence is

- Testimony, which may be either “live” or “by deposition”
 - A “deposition” is testimony taken under oath, before the trial, and preserved in writing or on video
 - It must be considered as if it had been given in court
- Answers to interrogatories, which are written answers, under oath, to written questions
 - The question and answer must be considered as if they had been stated in court
- Exhibits admitted into evidence, but exhibits are not necessarily more important than any other evidence
- Stipulations, which are agreements between the parties that certain facts are true
 - You must treat stipulated facts as having been proved

Evidence is *not*

- testimony that I tell you to disregard
- exhibits that are not admitted into evidence
- statements, arguments, questions, and comments by the lawyers
- objections and rulings on objections
- anything that you see or hear about this case outside the courtroom

You may have heard of “direct” or “circumstantial” evidence.

- “Direct” evidence is direct proof of a fact
 - An example is testimony by a witness about what that witness personally saw or heard or did
- “Circumstantial” evidence is proof of one or more facts from which you could find another fact
 - An example is testimony that a witness personally saw a broken window and a brick on the floor from which you could find that the brick broke the window
- You should consider both kinds of evidence, because the law makes no distinction between their weight

Some evidence may be admitted only for a limited purpose.

- I will tell you if that happens
- I will instruct you on the purposes for which the evidence can and cannot be used

The weight to be given any evidence—whether that evidence is “direct” or “circumstantial,” or in the form of testimony, an exhibit, or a stipulation—is for you to decide.

No. 4 — TESTIMONY OF WITNESSES

You may believe all of what any witness says, only part of it, or none of it.

In evaluating a witness's testimony, consider the witness's

- Opportunity to have seen and heard what happened
- Motives for testifying
- Interest in the outcome of the case
- Drug or alcohol use or addiction, if any
- The reasonableness of the witness's testimony
- Memory. Memory is not an exact recording of past events and witnesses may misremember events and conversations. Scientific research has established
 - that human memory is not at all like video recordings that a witness can simply replay to remember precisely what happened
 - that when a witness has been exposed to statements, conversations, questions, writings, documents, photographs, media reports, and opinions of others, the accuracy of their memory may be affected and distorted
 - that a witness's memory, even if testified to in good faith and with a high degree of confidence, may be inaccurate, unreliable, and falsely remembered; thus, human memory can be distorted, contaminated, or changed, and events and conversations can even be falsely imagined

- that distortion, contamination, and falsely imagined memories may happen at the acquisition of the memory (perception of events); the storage of the memory (period of time between acquisition and retrieval); and/or the retrieval of the memory (recalling stored information).
- Demeanor. Scientific research has established
 - that there is not necessarily a relationship between how confident witnesses are about their testimony and the accuracy of their testimony; thus, less confident witnesses may be more accurate than confident witnesses
 - that common cultural cues, like shifty eyes, shifty body language, the failure to look one in the eye, grimaces, stammering speech, and other mannerisms, are not necessarily correlated to witness deception or false or inaccurate testimony

In evaluating a witness's testimony, also consider the following:

- Any differences between what the witness says now and said earlier
- Any inconsistencies between the witness's testimony and any other evidence that you believe
- Whether any inconsistencies are the result of seeing or hearing things differently, actually forgetting things, or innocent mistakes or are, instead, the result of lies or phony memory lapses, and
- Any other factors that you find bear on believability or credibility

You should not give any more or less weight to a witness's testimony just because the witness is an expert.

- An expert witness may be asked a “hypothetical question,” in which the expert is asked to assume certain facts are true and to give an opinion based on that assumption
- If a “hypothetical question” assumes a fact that is not proved by the evidence, you should decide if the fact not proved affects the weight that you should give to the expert's answer

You may give any witness's opinion whatever weight you think it deserves, but you should consider

- the reasons and perceptions on which the opinion is based
- any reason that the witness may be biased, and
- all of the other evidence in the case

It is your exclusive right to give any witness's testimony whatever weight you think it deserves.

No. 5 — RECOVERY OF DAMAGES

Mr. Honomichl seeks damages as a result of an incident at a Menard's store on June 3, 2013. Menard, Inc., has admitted liability for the incident. You will decide whether Menard's conduct caused damage to Mr. Honomichl and, if so, the extent of those damages.

To prove that he is entitled to recover damages, Mr. Honomichl must prove the following elements:

One, Menard's conduct was a cause of Mr. Honomichl's damages.

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

Two, the amount of damages.

If Mr. Honomichl has proved both of these elements, then he is entitled to damages in the amount he proves, as damages are explained in the following instructions.

No. 6 — DAMAGES IN GENERAL

If you find that Mr. Honomichl has proved that he is entitled to recover damages, then you must determine the amount of damages. I will now explain some general rules for awarding damages.

- Decide what damages, if any, have been proved, based upon the evidence
- You must not engage in any speculation, guess, or conjecture, or base any damages award on sympathy, and you must not award damages as punishment
- You must enter separate amounts for each item of damages in the verdict form and must not include the same items in more than one category
- Do not decide the amount of damages by taking down the estimate of each juror and agreeing in advance that the average of those estimates will be your award of damages. Instead, use your sound judgment based upon an impartial consideration of the evidence
- Any award of future damages
 - must be reduced to “present value,” which is a sum of money paid now, in advance, that, together with interest earned at a reasonable rate of return, will compensate the plaintiff for future damages
 - may be determined in light of Mr. Honomichl’s age (45), health, habits, occupation, and lifestyle, and normal life

expectancy of 38.8 years (although this statistic is not conclusive)

No. 7 — ACTUAL DAMAGES

I will now explain how you are to determine specific damages. Mr. Honomichl seeks two kinds of “actual damages,” which I will call “pain and suffering” and “loss of function.” The amount you assess for pain and suffering, or loss of function, cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence.

“Pain and Suffering”

- Damages for “pain and suffering” are the amount of damages that will reasonably compensate the plaintiff for
 - physical pain and suffering, which may include, but is not limited to, bodily suffering or discomfort
 - mental pain and suffering, which may include, but is not limited to, mental anguish and loss of enjoyment of life
- Damages for “past pain and suffering” are for pain and suffering, if any, from the date of the incident (June 3, 2013) until the time of your verdict
- Damages for “future pain and suffering” are for pain and suffering, if any, caused by the incident that is reasonably certain to continue in the future

“Loss of Function”

- Damages for “loss of function” are the amount of damages that will reasonably compensate the plaintiff for loss of full function of the mind and body, which is the inability of a particular part of the mind or body to function in a normal manner
- Damages for “past loss of function” are for loss of function of the mind or body, if any, from the date of the incident (June 3, 2013) until the time of your verdict
- Damages for “future loss of function” are for loss of function of the mind or body, if any, caused by the incident that is reasonably certain to continue in the future

“Aggravation of Pre-Existing Condition”

- *If* you find that Mr. Honomichl had a mental or physical condition before the incident on June 3, 2013, and that this condition was aggravated or made active by this incident causing further suffering or loss of function, *then*
 - he is entitled to recover damages caused by the aggravation
 - he is not entitled to recover for any mental or physical condition that existed before this incident or for any injuries or damages which he now has that were not caused by the defendant’s conduct

The fact that I have instructed you on the proper measure of damages should not be considered as an indication that I have any view as to which party is entitled to your verdict in this case. Instructions as to the measure of damages are given only for your guidance.

No. 8 — OUTLINE OF THE TRIAL

I will now explain how the trial will proceed.

After I have read all but the last Instruction,

- The lawyers may make opening statements
 - An opening statement is not evidence
 - It is simply a summary of what the lawyer expects the evidence to be
- The plaintiff will present evidence and call witnesses and the lawyer for the defendant may cross-examine them
- The defendant may present evidence and call witnesses, and the lawyer for plaintiff may cross-examine those witnesses
- The parties will make their closing arguments
 - Closing arguments summarize and interpret the evidence for you
 - Like opening statements, closing arguments are not evidence
- I will give you the last Instruction, on “deliberations”
- You will retire to deliberate on your verdict
- You will indicate your verdict on the plaintiff’s claims in a Verdict Form, a copy of which is attached to these Instructions
 - A Verdict Form is simply a written notice of your decision

- When you have reached a unanimous verdict, your foreperson will complete one copy of the Verdict Form by marking the appropriate blank or blanks for each question
- You will all sign that copy to indicate that you agree with the verdict and that it is unanimous
- Your foreperson will then bring the signed Verdict Form to the courtroom when it is time to announce your verdict

No. 9 — OBJECTIONS

The lawyers may make objections and motions during the trial that I must rule upon.

- If I sustain an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself
- Do not hold it against a lawyer or a party that a lawyer has made an objection, because lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible

No. 10 — BENCH CONFERENCES

During the trial, it may be necessary for me to talk with the lawyers out of your hearing.

- I may hold a bench conference while you are in the courtroom or call a recess
- Please be patient, because these conferences are
 - to decide how certain evidence is to be treated
 - to avoid confusion and error, and
 - to save your valuable time
- We will do our best to keep such conferences short and infrequent

No. 11 — NOTE-TAKING

You are allowed to take notes during the trial if you want to.

- Be sure that your note-taking does not interfere with listening to and considering all the evidence
- Your notes are not necessarily more reliable than your memory or another juror's notes or memory
- Do not discuss your notes with anyone before you begin your deliberations
- Leave your notes on your chair during recesses and at the end of the day
- At the end of trial, you may take your notes with you or leave them to be destroyed
- No one else will ever be allowed to read your notes, unless you let them
- If you choose not to take notes, remember that it is your own individual responsibility to listen carefully to the evidence.
- An official court reporter is making a record of the trial, but her transcripts will not be available for your use during your deliberations.

No. 12 — QUESTIONS BY JURORS

When the attorneys have finished questioning a witness, you may propose questions in order to clarify the testimony.

- Do not express any opinion about the testimony or argue with a witness in your questions
- Submit your questions in writing by passing them to the Court Security Officer (CSO)
- Do not sign your questions

I will review each question with the attorneys. You may not receive an answer to your question:

- I may decide that the question is not proper under the rules of evidence
- Even if the question is proper, you may not get an immediate answer, because a witness or an exhibit you will see later in the trial may answer your question

Do not feel slighted or disappointed if your question is not asked. Remember, you are not advocates for either side, but impartial judges of the facts.

No. 13 — CONDUCT OF JURORS DURING TRIAL

You must decide this case *solely* on the evidence and the law in these Instructions and any additional written or oral instructions that I may give. You must also keep to yourself any information that you learn in court until it is time to discuss this case with your fellow jurors during deliberations.

To ensure fairness, you must obey the following rules:

- Do not talk among yourselves about this case, or about anyone involved with it, until you go to the jury room to decide on your verdict.
- Do not talk with anyone else about this case, or about anyone involved with it, until the trial is over.
- When you are outside the courtroom, do not let anyone ask you about or tell you anything about this case, anyone involved with it, any news story, rumor, or gossip about it, until the trial is over. If someone should try to talk to you about this case during the trial, please report it to me.
- During the trial, you should not talk to any of the parties, lawyers, or witnesses—even to pass the time of day—so that there is no reason to be suspicious about your fairness. The lawyers, parties, and witnesses are not supposed to talk to you, either.
- You may need to tell your family, friends, teachers, co-workers, or employer about your participation in this trial, so that you can tell them when you must be in court and warn them not to ask you or talk

to you about the case. However, do not provide any information to anyone by any means about this case until after I have accepted your verdict. That means do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, a computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, any blog, or any website such as Facebook, MySpace, YouTube, Twitter, or Instagram, to communicate to anyone any information about this case until I accept your verdict.

- Do not do any research—on the Internet, in libraries, in the newspapers, in dictionaries or other reference books, or in any other way—or make any investigation about this case, the law, or the people involved on your own.
- Do not visit or view any place discussed in this case and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony.
- Do not read any news stories or articles, in print, on the Internet, or in any “blog,” about this case, or about anyone involved with it, or listen to any radio or television reports about it or about anyone involved with it, or let anyone tell you anything about any such news reports. I assure you that when you have heard all the evidence, you will know more about this case than anyone will learn through the news media—and it will be more accurate.

- Do not make up your mind during the trial about what the verdict should be. Keep an open mind until you have had a chance to discuss the evidence with other jurors during deliberations.
- Do not decide the case based on biases. Because you are making very important decisions in this case, I strongly encourage you to evaluate the evidence carefully and to resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence and the instructions that I give you. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases.
- If, at any time during the trial, you have a problem that you would like to bring to my attention, or if you feel ill or need to go to the restroom, please send a note to the Court Security Officer (CSO), who will give it to me. I want you to be comfortable, so please do not hesitate to tell us about any problem.

I will read the remaining Instruction after closing arguments.

No. 14 — DELIBERATIONS

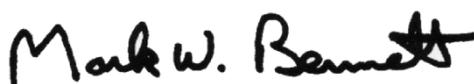
In conducting your deliberations and returning your verdict, there are certain rules that you must follow.

- When you go to the jury room, select one of your members as your foreperson to preside over your discussions and to speak for you here in court
- Discuss this case with one another in the jury room to try to reach agreement on the verdict, if you can do so consistent with individual judgment
 - Nevertheless, each of you must make your own conscientious decision, after considering all the evidence, discussing it fully with your fellow jurors, and listening to the views of your fellow jurors
- Do not be afraid to change your opinions if the discussion with other jurors persuades you that you should, but do not come to a decision simply because other jurors think it is right, or simply to reach a verdict
- Remember that you are not advocates, but judges—judges of the facts
 - Your sole interest is to seek the truth from the evidence in the case
- If you need to communicate with me during your deliberations, you may send me a note, signed by one or more jurors, through the CSO

- I will respond as soon as possible, either in writing or orally in open court
- Remember that you should not tell anyone—including me—how your votes stand numerically
- Base your verdict solely on the evidence and on the law as I have given it to you in my Instructions
 - Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide
- Your verdict on each question submitted must be unanimous
- Complete and sign one copy of the Verdict Form
 - The foreperson must bring the signed Verdict Form to the courtroom when it is time to announce your verdict
- When you have reached a verdict, the foreperson will advise the CSO that you are ready to return to the courtroom.

Good luck with your deliberations.

DATED this 12th day of December, 2016.



MARK W. BENNETT
U.S. DISTRICT COURT JUDGE
NORTHERN DISTRICT OF IOWA

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

SCOTT HONOMICHL,

Plaintiff,

vs.

MENARD, INC.,

Defendant.

No. C 16-4008-MWB

VERDICT FORM

On plaintiff Scott Honomichl's claim for damages, we, the Jury, find as follows:

| CLAIM FOR DAMAGES | |
|--|---|
| Step 1: Cause of Damages | Do you find that Menard's conduct was a cause of Mr. Honomichl's damages, as explained in Instruction No. 5? |
| | _____ Yes or _____ No |
| Step 2: Amount of Damages | If you answered "yes" to the question in Step 1 , what damages, if any, do you award for the following items? (<i>Please see Instructions Nos. 6 and 7.</i>) |
| | \$ _____ for past pain and suffering |
| | \$ _____ for future pain and suffering |
| | \$ _____ for past loss of function of the mind or body |
| | \$ _____ for future loss of function of the mind or body |

Date

Foreperson

Juror

Juror

Juror

Juror

Juror

Juror

Juror