IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

YVONNE M. POZECK, Plaintiff, vs. MENARDS, INC., Defendant.	No. 20-CV-77-CJW-MAR **JURY INSTRUCTIONS**

These instructions are to help you better understand the trial and your role in it. I may give you additional instructions during trial, and I will give you additional instructions at the end of the trial, before you begin your deliberations. Consider these instructions, together with any oral or written instructions I give you during the trial, or at the end of the trial, and apply them as a whole to the facts of this case. You must follow all instructions I give you. You must not single out some instructions and ignore others, because *all* are important. The written instructions I give you now and at the end of the trial will be available to you in the jury room. I emphasize, however, that written instructions are not more important than oral ones. Again, *all* instructions, whenever given and whether in writing or not, must be followed.

In considering these instructions, the order in which they are given is not important.

INSTRUCTION NO. 1

As I explained during jury selection, this is a civil case brought by the Plaintiff Yvonne Pozeck against the Defendant Menards, Inc., doing business as Menards.

On December 16, 2018, Ms. Pozeck was shopping inside the Menards store in Cedar Rapids, Iowa. While shopping at Menards, a box fell on her foot. Ms. Pozeck then claims that this fall caused injuries to her foot. Ms. Pozeck claims that the box's fall was the result of Menards' negligence. Menards denies that it was negligent in stacking boxes. Ms. Pozeck seeks recovery for personal injuries sustained by her in the above-described incident.

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

INSTRUCTION NO. 2

It will be your duty to decide from the evidence what the facts are. You, and you alone, are the judges of the facts. You are allowed to consider the evidence in the light of your observations and experiences. You will hear the evidence, decide what the facts are, and then apply those facts to the law that I will give you in these instructions, any instruction given during the trial, and in the final instructions at the conclusion of the case. You will then deliberate and reach your verdict. You are the sole judges of the facts, but you must follow the law as stated in my instructions, whether you agree with it or not. You have taken an oath to follow the law that I give you in my instructions.

This case must be considered and decided by you 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 are equal before the law. The fact that one party is represented by a lawyer and one party is not should not affect your decision. Represented and unrepresented parties are entitled to the same fair and conscientious consideration by you. Corporations and partnerships are entitled to the same fair and conscientious consideration by you as any other person.

You should not take anything I may say or do during the trial as indicating what I think of the evidence or what I think your verdict should be.

INSTRUCTION NO. 3

The trial will proceed in the following manner:

First, the Plaintiff, who is representing herself, may make an opening statement. Next, the Defendant's lawyer may make an opening statement. An opening statement is not evidence, but it is a summary of the evidence the parties expect you will see and hear during the trial. The fact that the Plaintiff is representing herself does not make what she says in opening statement evidence, and you should not prejudge any element of the claims based on the fact that the Plaintiff is representing herself.

After opening statements, the Plaintiff will then present evidence. The Plaintiff may question herself as a witness. The Plaintiff may question other witnesses. The Defendant's lawyer will have a chance to cross-examine the Plaintiff's witnesses. After the Plaintiff has finished presenting her case, the Defendant may present evidence, and the Plaintiff will have a chance to cross-examine the Defendant's witnesses.

After you have seen and heard all of the evidence from both sides, the Plaintiff and the Defendant's lawyer will make closing arguments that summarize and interpret the evidence. Just as with opening statements, closing arguments are not evidence. After the closing arguments, I will instruct you further on the law. After the closing arguments and after the court's instructions you will go to the jury room to deliberate and decide on your verdict.

INSTRUCTION NO. 4

Your verdict will depend upon whether or not you find certain facts have been proved. The obligation to prove a fact, or "the burden of proof," is upon the party whose claim depends upon that fact. The party with the burden of proving a fact must prove the fact by "the greater weight of the evidence," which is proof that the fact is more likely true than not true. This is also called "the preponderance of the evidence."

You may have heard of the term "proof beyond a reasonable doubt." That is a stricter standard which applies in criminal cases. It does not apply in civil cases such as this one.

To determine whether a fact has been proved by the greater weight of the evidence, you must consider the evidence in the case, decide which evidence is more believable, and then determine whether the fact is more likely true than not true. If you find a fact is more likely true than not true, then the fact has been proved by the greater weight of the evidence. If you find a fact is more likely not true than true, or you find the evidence on the fact is equally balanced, then the fact has not been proved by the greater weight of the evidence. The greater weight of the evidence is not determined by the number of witnesses or exhibits a party presents, but by your judgment as to the weight of all of the evidence.

INSTRUCTION NO. 5

You shall base your verdict only upon the evidence, these instructions, and other instructions that I may give you during trial.

Evidence is:

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

Evidence may be direct or circumstantial. The law makes no distinction between the weight to be given to direct and circumstantial evidence. The weight to be given any evidence is for you to decide. 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.

Sometimes during a trial, references are made to pre-trial statements and reports, interrogatories, 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. Opening statements, closing arguments, and questions are not evidence.
2. Objections and rulings on objections are not evidence.
3. Testimony that I strike from the record, or tell you to disregard is not evidence and must not be considered.
4. Demonstrative summaries not received as evidence. Certain charts and summaries may be shown to you in order to help explain the facts or other

underlying evidence in the case. These are used for convenience. They are not themselves evidence or proof of any facts.

5. Anything you see or hear about this case outside the courtroom is not evidence.

Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other purpose. I will tell you when that occurs, and instruct you on the purposes for which the item can and cannot be used.

INSTRUCTION NO. 6

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness says, or only part of it, or none of it.

In deciding what testimony to believe, consider the witnesses' intelligence, their opportunity to have seen or heard the things they testify about, their memories, any motives they may have for testifying a certain way, their manner while testifying, whether they said something different at an earlier time, the general reasonableness of their testimony, and the extent to which their testimony is consistent with other evidence that you believe. Do not let sympathy, or your own likes or dislikes, influence you. The law requires you to come to a just verdict based only on the evidence, your common sense, and the law that I give you in my instructions, and nothing else.

A witness may be discredited or "impeached" by contradictory evidence, or by evidence that at some time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony. If you believe any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you may think it deserves. In deciding whether to believe a witness, remember that people sometimes hear or see things differently and sometimes forget things. You will have to decide whether a contradiction is an innocent misrecollection, or a lapse of memory, or an intentional falsehood; that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NO. 7

You may hear testimony from witnesses described as experts. "Experts" are persons who may be knowledgeable in a field because of their education, experience, or both. They are permitted to give their opinions on matters in that field and the reasons for their opinions.

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

An expert witness may be asked to assume certain facts are true, and to give an opinion based on that assumption. This is called a hypothetical question. When deciding the weight, if any, to give to an expert witness' testimony, if you conclude a fact assumed in a hypothetical question has not been proved by the evidence, you should consider the extent to which the falsely assumed fact affects the value of the opinion.

INSTRUCTION NO. 8

Testimony will be presented to you in the form of a deposition. A deposition is the recorded answers a witness made under oath to questions asked by lawyers before trial. The deposition testimony to be offered was recorded in writing and by video and may be read or shown to you. You should consider the deposition testimony, and judge its credibility, as you would that of any witness who testifies here in person. If the deposition testimony is read to you, do not place any significance on the manner or tone of voice used to read the witness's answers to you.

INSTRUCTION NO. 9

During the trial, the parties may make objections. You should not hold it against the parties when they do this. A party may object when the other party offers testimony or other evidence the party believes is not admissible. If I sustain an objection to a question, you should not pay any attention to the question itself. Also, when I rule or comment on an objection or motion, you should not think I have any opinions about the case, favoring one side or the other.

INSTRUCTION NO. 10

During the trial, it may be necessary for me to talk with the attorneys out of your hearing, either by having a bench conference here, while you are present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence and to avoid wasting your time. We will do what we can to keep the number and length of these conferences to a minimum.

INSTRUCTION NO. 11

You may take notes during the trial if you wish. After the parties' opening statements, you will be given notepads and pens for this purpose.

If you choose to take notes, be sure it does not interfere with your ability to listen to the evidence. It is the responsibility of all jurors to listen carefully to the evidence. You cannot give this responsibility to another juror who may be taking notes. We depend on *all* members of the jury to remember and consider the evidence. Do not discuss your notes with anyone until you begin your deliberations.

A juror's notes are not evidence. They are no more reliable than the memory of a juror who chooses to listen carefully to the evidence without taking notes.

Do not take your notes with you when you leave the courtroom. Leave them on your chair in the courtroom, with only your name on the front page, and the Court Security Officer will safeguard them for you. Your notes will remain confidential throughout the trial and will be destroyed when the trial is over.

You will notice that we have an official court reporter making a record of the trial. However, we will not have a typewritten transcript of the record available for your use in reaching your decision.

INSTRUCTION NO. 12

During the trial, you may hear the word "interrogatory." An interrogatory is a written question one party can send to the other which the other party then must answer under oath and in writing. Consider interrogatories and the answers to them as if they were, respectively, questions asked and answered under oath here in court.

INSTRUCTION NO. 13

A corporation acts only through its agents or employees and any agent or employee of a corporation may bind the corporation by acts and statements made while acting within the scope of his or her duties as an employee of the corporation.

The fact that the 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. 14

For the Plaintiff to prove her claim against the Defendant, the Plaintiff must prove all of the following elements by a preponderance of the evidence:

1. The Defendant knew or in the exercise of reasonable care should have known of a condition on its premises that involved an unreasonable risk of injury to a person in the Plaintiff's position.
2. The Defendant 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 herself from the condition.
3. The Defendant was negligent by stacking boxes improperly.
4. That negligence was a cause of injury to the Plaintiff's foot.
5. The nature and extent of damages.

If you find that the Plaintiff failed to prove any of these elements, the Plaintiff is not entitled to any damages. If you find that the Plaintiff proved all of these elements, then you will consider the Defendant's affirmative defense of comparative fault. In general, that means you will have to decide whether the Plaintiff herself was negligent and whether her negligence was a cause of injuries to her foot.

"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. The mere fact that an accident occurred or that a party was injured does not mean a party was negligent.

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 the Defendant 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

The owner of the premises is presumed to know all conditions on the premises that are caused or created by the owner or by the owner's employees.

If you find that the owner had no knowledge of the condition that harmed the plaintiff, and if you find that the condition did not exist for a long enough time that the owner should have known about it while exercising reasonable care, the owner is not responsible for the injury suffered by the plaintiff.

INSTRUCTION NO. 17

If you find that the condition was known or obvious to a person in plaintiff's position, then the owner is not liable for harm from that condition unless the owner should have anticipated the harm despite such knowledge or obviousness.

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. 18

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

INSTRUCTION NO. 19

In these instructions I use the term "fault." Fault means one or more acts or omissions toward the person or property of the actor or of another which constitutes negligence.

INSTRUCTION NO. 20

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 Defendant and Plaintiff and the extent of the causal relation between their conduct and the damages claimed. You should then determine what percentage, if any, each person's fault contributed to the damages.

INSTRUCTION NO. 21

To show that the Plaintiff was at fault, the Defendant must prove both of the following elements:

1. The Plaintiff was at fault by failing to keep a proper lookout. A "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..
2. The Plaintiff's fault was a cause of her injuries and damages to her foot.

If you do not find by a greater weight of the evidence that the Plaintiff was at fault or that the Plaintiff's fault was a cause of her injuries to her foot, then the Defendant has not proved this defense.

If you find by a greater weight of the evidence that the Plaintiff was at fault, and that the Plaintiff's fault was a cause of her injuries and damages, then you will assign a percentage of fault against the Plaintiff and include her fault in the total percentage of fault found by you in answering the special verdicts.

INSTRUCTION NO. 22

After you have compared the conduct of all parties, if you find that the Plaintiff was at fault and that the Plaintiff's fault was more than 50% of the total fault, the Plaintiff cannot recover damages.

But, if you find that the Plaintiff's fault was 50% or less of the total fault, then I will reduce the total damages of the Plaintiff by the percentage of the Plaintiff's fault. For example only, if you find that the Plaintiff is 10% at fault, I will reduce the total damages of the Plaintiff from 100% to 90%.

INSTRUCTION NO. 23

If you find that the Plaintiff is entitled to recover damages, then you must consider whether plaintiff may recover for the following categories of damages:

1. Past medical expenses of the Plaintiff;
2. Future medical expenses of the Plaintiff;
3. Past lost earnings of the Plaintiff from date of injury to present time;
4. Loss of future earning capacity of the Plaintiff;
5. Past loss of function of the body of the Plaintiff from the date of injury to the present time;
6. Future loss of function of the body of the Plaintiff;
7. Past physical and mental pain, suffering, and loss of enjoyment of life of the Plaintiff from the date of the injury to present time; and
8. Future and physical and mental pain, suffering and loss of enjoyment of life of the Plaintiff.

The amount you assess for physical and mental pain and suffering in the past and future, future earning capacity, and loss of function of the mind and body in the past and future 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 a party 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

Past Medical Expenses

Past medical expenses are the reasonable cost of necessary hospital charges, doctor charges, prescriptions, and other medical services from the date of injury to the present time.

The Plaintiff has the burden to prove the reasonable value of the services rendered. The Plaintiff can show the reasonable value of the services rendered by evidence of the amount that the Plaintiff paid for such services or through the testimony of a qualified expert witness.

The amount billed for the service, standing alone, is not evidence of the reasonable and fair value of the services rendered. Instead, you may look only to the amount paid or to the reasonable value of services has shown through the testimony of a qualified expert witness. You are not bound by the testimony of an expert with respect to the reasonable value of medical services. Instead, you may use and be guided by your own judgment in such matters.

Future Medical Expenses

Future medical expenses are the present value of reasonable and necessary hospital charges, doctor charges, prescriptions, and other medical services which will be incurred in the future.

To earn future medical expenses, the Plaintiff must provide substantial proof of the necessity for future treatment, and substantial proof of the cost of that future treatment. If you do not find that Plaintiff showed substantial proof of the necessity for future treatment or of the cost of that future treatment, then Plaintiff is not entitled to future medical expenses.

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INSTRUCTION NO. 24 (Continued)

Loss of Future Earning Capacity

Loss of future earning capacity is the reduction in the ability to work and earn money generally, rather than in a particular job.

Loss of Body

Loss of body is the inability of a particular part of the body to function in a normal manner.

Physical Pain and Suffering

Physical pain and suffering may include, but is not limited to, bodily suffering or discomfort. Mental pain and suffering may include, but is not limited to, mental anguish or loss of enjoyment of life.

INSTRUCTION NO. 25

Future damages must be reduced to present value. "Present value" is a sum of money paid now in advance which, together with interest earned at a reasonable rate of return, will compensate the Plaintiff for future losses.

INSTRUCTION NO. 26

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as the Plaintiff. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about the Plaintiff's health, habits, occupation, and lifestyle, when deciding issues of future damages.

INSTRUCTION NO. 27

In arriving at an item of damage or any percentage of fault you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage or a percentage of fault, and agreeing in advance that the average of those estimates shall be your item of damage or percentage of fault.

INSTRUCTION NO. 28

You must decide this case solely on the evidence and your own observations, experiences, reason, common sense and the law in these instructions. 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 PDA, a computer, the Internet, any

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Internet service, any text or instant messaging service, any Internet chat room, any blog or any website such as Facebook, YouTube or Twitter, 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, on social media, 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 on 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,

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stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these instructions. 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, who will give it to me. I want you to be comfortable, so please do not hesitate to tell us about any problem.

DATED this 31 day of January, 2022.

C.J. Williams
United States District Judge
Northern District of Iowa