

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

CENTRAL DIVISION

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JAMES BOWERS,

Plaintiff,

vs.

MENARD, INC.,

Defendant.

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3:23-CV-03020-ECS

FINAL JURY INSTRUCTIONS

FINAL INSTRUCTION NO. 1

Members of the jury, the instructions I gave at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions. You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important.

FINAL INSTRUCTION NO. 2

Neither in these instructions nor in any ruling, action, or remark that I have made during this trial have I intended to give any opinion or suggestion as to what your verdict should be.

FINAL INSTRUCTION NO. 3

I have mentioned the word “evidence.” “Evidence” includes the testimony of witnesses, documents and other things received as exhibits, and any facts that have been stipulated—that is, formally agreed to by the parties.

Certain things are not evidence. I shall list those things for you now:

1. Statements, arguments, questions, and comments by lawyers representing the parties in the case are not evidence.
2. Exhibits that are identified by a party but not offered or received in evidence are not evidence.
3. Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
4. Testimony and exhibits that I strike from the record, or told you to disregard, are not evidence and must not be considered.
5. Anything you see or hear about this case outside the courtroom is not evidence, unless I have specifically told you otherwise during the trial.

Some of you may have heard the terms “direct evidence” and “circumstantial evidence.” You are instructed that you should not be concerned with those terms. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

FINAL INSTRUCTION NO. 4

A particular item of evidence is sometimes received for a limited purpose only. That is, you can use it only for one particular purpose, and not for any other purpose. As I instructed during trial, you have heard evidence about a photograph depicting a yellow caution sign. You may consider that testimony to explain why the defendant's agent denied the plaintiff's claim. But there has been no evidence presented regarding who took the photograph, when the photograph was taken, or where the photograph was taken. As such, you may not consider this photograph as evidence that a caution sign was posted outside of the restroom at the time of the alleged incident.

FINAL INSTRUCTION NO. 5

In weighing the evidence in this case, you have a right to consider the common knowledge possessed by all of you, together with the ordinary experiences and observations in your daily affairs of life.

FINAL 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 said, only part of it, or none of it.

In deciding what testimony to believe, you may consider a witness's intelligence, the opportunity a witness had to see or hear the things testified about, a witness's memory, any motives a witness may have for testifying a certain way, the manner of a witness while testifying, whether a witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

FINAL INSTRUCTION NO. 7

If you believe that any witness testifying in this case has knowingly sworn falsely to any material matter in this case, then you may reject all the testimony of the witness.



FINAL INSTRUCTION NO. 8

The credibility of a witness may be attacked by introducing evidence that on some former occasion the witness made a statement or acted in a manner inconsistent with the witness's testimony in this case on a matter material to the issue. You may consider evidence of this kind in connection with all the other facts and circumstances in evidence in deciding the weight to give to the testimony of that witness.

FINAL INSTRUCTION NO. 9

A witness may qualify as an expert and give an opinion on a matter at issue if the witness has special knowledge, skill, experience, training, or education concerning the matter on which the expert testifies. In deciding the weight to give to the opinion, you should consider the expert's qualifications, credibility, and reasons for the opinion. You are not bound by the opinion. If you decide that the reasons for the expert's opinion are unsound, or that other evidence outweighs the opinion, you may disregard the opinion entirely.

FINAL INSTRUCTION NO. 10

This is a civil case, brought by the plaintiff, James Bowers, against the defendant, Menard, Inc. The plaintiff claims damages for personal injuries he alleges to have suffered as a result of the defendant's negligence. The plaintiff's claims arise from an accident that occurred on or about August 26, 2020, when the plaintiff slipped and fell at one of the defendant's business locations and sustained bodily injury. The defendant denies any negligence that legally caused the plaintiff's injuries, denies the nature and extent of the plaintiff's damages, and alleges that the plaintiff was contributorily negligent.

You were previously instructed that the defendant had alleged that the plaintiff had assumed the risk of harm. The Court has determined as a matter of law that the plaintiff has not assumed the risk of harm, so you are instructed to disregard my prior references to the defense of assumption of the risk.

FINAL INSTRUCTION NO. 11

The issues to be determined by you in this case are these:

First, was the defendant negligent?

If you find the defendant was not negligent, you must return a verdict for the defendant. If you find the defendant was negligent, you have a second issue to determine, namely:

Was that negligence a legal cause of any injury to the plaintiff?

If you find the defendant's negligence was not a legal cause of the plaintiff's injury, the plaintiff is not entitled to recover damages, and you must return a verdict for the defendant.

If you find the defendant's negligence was a legal cause of the plaintiff's injury, you then must determine a third issue, namely:

Was the plaintiff also negligent?

If you find that the plaintiff was not negligent, you then must determine the amount of the plaintiff's damages and return a verdict for the plaintiff.

If you find that the plaintiff was also negligent, you then must determine a fourth issue, namely:

Was the plaintiff's own negligence also a legal cause of his injury?

If you find that the plaintiff's own negligence was not a legal cause of his injury, you then must determine the amount of the plaintiff's damages and return a verdict for the plaintiff.

If you find that the plaintiff's own negligence contributed as a legal cause of his injury, you have a fifth issue to determine. The plaintiff may still recover if you find that such contributory negligence of the plaintiff was slight or less than slight, when compared to the negligence of the defendant; but the damages the plaintiff may recover must be reduced in proportion to the amount of the plaintiff's contributory negligence. If you find that the contributory negligence of the plaintiff is more than slight in comparison with the negligence of the defendant, the plaintiff cannot recover, and you must return a verdict for the defendant.

As indicated in this instruction, you must first determine the questions of liability before you undertake to determine an amount that would compensate for damages, if any, found to have been suffered.

## FINAL INSTRUCTION NO. 12

In civil actions, the party who has the burden of proving an issue must prove that issue by the greater convincing force of the evidence.

Greater convincing force means that after weighing the evidence on both sides there is enough evidence to convince you that something is more likely true than not true. In the event that the evidence is evenly balanced so that you are unable to say that the evidence on either side of an issue has the greater convincing force, then your finding upon the issue must be against the party who has the burden of proving it.

**In this action, the plaintiff has the burden of proving the following issues:**

1. That the defendant was negligent;

The term “negligence” is defined in Instruction No. 13.

2. That the defendant’s negligence was a legal cause of any alleged damages and injuries sustained by the plaintiff; and

The term “legal cause” is defined in Instruction No. 19.

3. The nature and extent of the injuries and damages alleged to have been sustained by the plaintiff.

**The defendant has the burden of proving this issue:**

1. That if the jury finds that the defendant was negligent, that the plaintiff was contributorily negligent more than slight as defined in other instructions.

The term “contributory negligence” is defined in Instruction No. 21.

In determining whether an issue has been proved by the greater convincing force of the evidence, you should consider all the evidence bearing upon that issue, regardless of who produced it.

FINAL INSTRUCTION NO. 13

Negligence is the failure to use reasonable care. It is the doing of something which a reasonable person would not do, or the failure to do something which a reasonable person would do, under facts similar to those shown by the evidence. The law does not say how a reasonable person would act under facts similar to those shown by the evidence. That is for you to decide. The existence of the legal duties of the parties is defined later in these instructions.

The term “reasonable person” refers to a person exercising those qualities of attention, knowledge, intelligence, and judgment that society requires of its members for the protection of their own interests and the interests of others.

FINAL INSTRUCTION NO. 14

You may have heard of the term “proof beyond a reasonable doubt.” This is a stricter standard that applies only in criminal cases. It does not apply to civil cases such as this.

FINAL INSTRUCTION NO. 15

The plaintiff claims to have been injured and sustained damages as a legal result of the defendant failing to warn the plaintiff of concealed, dangerous conditions known to the defendant.

The defendant has denied breaching any legal duties and has denied that the plaintiff was injured or sustained damage to the extent claimed.



FINAL INSTRUCTION NO. 16

A person who is exercising ordinary care has a right to assume that others will perform their duty and obey the law. Unless there is reasonable cause for thinking otherwise, people can assume that they are not exposed to danger from another person's violation of the law or duty of care.

FINAL INSTRUCTION NO. 17

An invitee is either a public invitee or a business visitor. A public invitee is a member of the public who is invited to enter or remain on land for a purpose for which land is held open to the public. A business visitor is a person who is invited to enter or remain on land for a purpose directly or indirectly connected with the business of the possessor of land. The parties have agreed that the plaintiff was an invitee because he was business visitor.

FINAL INSTRUCTION NO. 18

The possessor of land owes an invitee the duty of exercising reasonable or ordinary care for the invitee's safety.

In general, a possessor of land is not liable to an invitee for physical harm caused to the invitee by an activity or condition on the land whose danger is known or obvious to the invitee. However, if the possessor of land has reason to believe that the condition will harm the invitee despite its obviousness, the possessor has a duty to warn the invitee regarding the condition or to take other reasonable steps to protect the invitee.

The word "known" means that the invitee both knew of the existence of the dangerous condition, and appreciated the probability and gravity of the danger posed by that condition. The word "obvious" means that the condition and the risk would be recognized by a reasonable person in the invitee's position, regardless of whether the invitee subjectively recognized the danger.

FINAL INSTRUCTION NO. 19

The term “legal cause” means an immediate cause which, in the natural or probable sequence, produces the injury complained of.

The legal cause need not be the only cause, nor the last or nearest cause. It is sufficient if it combines with some other cause acting at the same time, which in combination causes the injury. However, for legal cause to exist, you must find that the conduct complained of was a substantial factor in bringing about the injury.

Liability cannot be based on mere speculative possibilities or circumstances and conditions remotely connected to the events leading up to the harm. A defendant’s conduct must have such an effect in producing the harm as to lead reasonable people to regard it as a cause of the plaintiff’s injury.

FINAL INSTRUCTION NO. 20

In considering whether conduct is a substantial factor in producing harm to another, the following considerations are important:

1. The number of other factors which contributed to producing the harm;
2. The extent to which any other factors produced the harm;
3. Whether the defendant's conduct created a force or series of forces which were in continuous and active operation up to the time of the harm, or instead created a harmless situation which became harmful only after the operation of other forces for which the defendant is not responsible; and
4. Lapse of time.

FINAL INSTRUCTION NO. 21

Contributory negligence is negligence on the part of a plaintiff which, when combined with the negligence of a defendant, contributes as a legal cause in bringing about the injury to the plaintiff.

A plaintiff who is contributorily negligent may still recover damages if that contributory negligence is slight, or less than slight, when compared with the negligence of the defendant. The term “slight” means small when compared with the negligence of the defendant.

In determining this issue, you must decide two questions:

1. Whether both the plaintiff and the defendant were negligent; and
2. If both were negligent, whether the plaintiff’s negligence was
  - a. “slight” or less than “slight,” or
  - b. More than “slight” in comparison with the defendant’s negligence.

In answering the second question you must make a direct comparison between the conduct of the plaintiff and the defendant.

If you find the plaintiff’s contributory negligence is more than slight when compared with the negligence of the defendant, then the plaintiff is not entitled to recover any damages.

If you find the plaintiff’s contributory negligence is slight, or less than slight, when compared with the negligence of the defendant, then the plaintiff is entitled to recover damages. However, the plaintiff’s damages must be reduced in proportion with the amount of the plaintiff’s contributory negligence.

FINAL INSTRUCTION NO. 22

If you decide for the plaintiff on the question of liability you must then fix the amount of money which will reasonably and fairly compensate the plaintiff for any of the following elements of loss or harm suffered in person or property proved by the evidence to have been legally caused by the defendant's conduct, taking into consideration the nature, extent, and duration of the injury, whether such loss or harm could have been anticipated or not, namely:

- (1) The nature, extent, and duration of the injury;
- (2) Plaintiff's permanent impairment, disability, and disfigurement;
- (3) Plaintiff's past pain and suffering;
- (4) Plaintiff's pain and suffering reasonably certain to occur in the future;
- (5) Plaintiff's past mental anguish;
- (6) Plaintiff's mental anguish reasonably certain to occur in the future;
- (7) Plaintiff's past emotional distress and loss of capacity of the enjoyment of life;
- (8) Plaintiff's emotional distress reasonably certain to occur in the future;
- (9) The reasonable expense of necessary medical care, treatment, and services received;  
and
- (10) The value of the reasonable expense of medical care, treatment, and services reasonably certain to be received in the future.

Whether any of these elements of damages have been proved by the evidence is for you to determine. Your verdict must be based on evidence that has been presented at trial and not upon speculation, guesswork, or conjecture. Damages are considered speculative only when the existence of the damage is uncertain, not when the amount is uncertain. Once the existence of damages has been established, uncertainty as to the measure or extent of the damages does not bar recovery.

FINAL INSTRUCTION NO. 23

The law allows damages for detriment reasonably certain to result in the future. By their nature, all future happenings are somewhat uncertain. The fact and cause of the loss must be established with reasonable certainty. Once future detriment is established, the law does not require certainty as to the amount of such damages. Thus, once the existence of such damages is established, recovery is not barred by uncertainty as to the measure or extent of damages, or the fact that they cannot be measured with exactness. On the other hand, an award of future damages cannot be based on conjecture, speculation, or mere possibility.



FINAL INSTRUCTION NO. 24

If you find that the plaintiff had an injury or condition prior to the conduct of the defendant at issue in this case, you may not award damages for any previous or subsequent injuries or conditions unrelated to the defendant's conduct.

However, if you find that the defendant's conduct caused an aggravation of the plaintiff's pre-existing injury or condition, you may award damages for that aggravation. Before awarding these damages, the plaintiff must prove that the defendant's conduct was a substantial factor in bringing about the harm alleged.

An aggravation of a pre-existing injury is a worsening of that pre-existing injury, and an aggravation of a pre-existing condition makes that pre-existing condition more difficult to treat.

The term "substantial factor" was defined in Instruction No. 20.

FINAL INSTRUCTION NO. 25

If you should find that the plaintiff is entitled to a verdict, and further find that the evidence in the case establishes a reasonable likelihood of future medical expense, then it becomes your duty to ascertain the present value in dollars of such future damages, since the award of future damages necessarily requires that payment be made now for a loss that will not actually be sustained until some future date.

Under these circumstances, the result is that the plaintiff will in effect be reimbursed in advance of the loss, and so will have the use of money which the plaintiff would not have received until some future date, but for the verdict.

In order to make a reasonable adjustment for the present use of money representing a lump-sum payment of anticipated future loss, the law requires that you discount, or reduce to its present value, the amount of the anticipated future loss, by taking (1) the interest rate or return which such plaintiff could reasonably be expected to receive on a risk-free investment of the lump-sum payment together with (2) the period of time over which the future loss is reasonably certain to be sustained; and then reduce, or in effect deduct from, the total amount of future loss that amount which would be reasonably certain to earn a return, if invested at such rate of interest over such period of time; and include in the verdict an award for only the present worth—the reduced amount—on anticipated future loss.

This computation is made by using the so-called “present-value” table which is attached to this instruction for your use.

Keep in mind that your duty to discount to present value applies only to loss of future medical expenses. Damages for future pain and suffering, future mental anguish, disability, and disfigurement are not subject to any reduction for the present use of such money.

Finally, in determining the present value of future damages, you may also take into consideration the effect of inflation or deflation on the future damages.

#### FINAL INSTRUCTION NO. 26

The attached table may be used to calculate the present value of future expenses. This calculation requires that you make three determinations.

First, determine the annual amount of the future expenses to be incurred, without considering inflation.

Second, determine the number of years those future expenses will be incurred and find that number in the “n” column of the attached table.

Third, determine the net discount rate. That net discount rate is the interest rate you believe the plaintiff is reasonably certain to receive on a risk-free investment of the lump-sum payment, minus the expected inflation rate.

Find the factor located where the number of years (n value) and the net discount rate intersect on the table and multiply the annual amount of the future expenses by that factor to calculate the present value of those future expenses.

The following example illustrates the use of the present value tables:  
Assuming annual expenses of \$100 per year for a period of seven years at a net discount rate of 2 percent, the present value of those future expenses is \$100 times 6.4720, or \$647.20.

PRESENT VALUE TABLE

n	1%	2%	3%	4%	5%	6%	7%	8%
1	0.9901	0.9804	0.9709	0.9615	0.9524	0.9434	0.9346	0.9259
2	1.9704	1.9416	1.9135	1.8861	1.8594	1.8334	1.8080	1.7833
3	2.9410	2.8839	2.8286	2.7751	2.7232	2.6730	2.6243	2.5771
4	3.9020	3.8077	3.7171	3.6299	3.5460	3.4651	3.3872	3.3121
5	4.8534	4.7135	4.5797	4.4518	4.3295	4.2124	4.1002	3.9927
6	5.7955	5.6014	5.4172	5.2421	5.0757	4.9173	4.7665	4.6229
7	6.7282	6.4720	6.2303	6.0021	5.7864	5.5824	5.3893	5.2064
8	7.6517	7.3255	7.0197	6.7327	6.4632	6.2098	5.9713	5.7466
9	8.5660	8.1622	7.7861	7.4353	7.1078	6.8017	6.5152	6.2469
10	9.4713	8.9826	8.5302	8.1109	7.7217	7.3601	7.0236	6.7101
11	10.3676	9.7868	9.2526	8.7605	8.3064	7.8869	7.4987	7.1390
12	11.2551	10.5753	9.9540	9.3851	8.8633	8.3838	7.9427	7.5361
13	12.1337	11.3484	10.6350	9.9856	9.3936	8.8527	8.3577	7.9038
14	13.0037	12.1062	11.2961	10.5631	9.8986	9.2950	8.7455	8.2442
15	13.8651	12.8493	11.9379	11.1184	10.3797	9.7122	9.1079	8.5595
16	14.7179	13.5777	12.5611	11.6523	10.8378	10.1059	9.4466	8.8514
17	15.5623	14.2919	13.1661	12.1657	11.2741	10.4773	9.7632	9.1216
18	16.3983	14.9920	13.7535	12.6593	11.6896	10.8276	10.0591	9.3719
19	17.2260	15.6785	14.3238	13.1339	12.0853	11.1581	10.3356	9.6036
20	18.0456	16.3514	14.8775	13.5903	12.4622	11.4699	10.5940	9.8181
21	18.8570	17.0112	15.4150	14.0292	12.8212	11.7641	10.8355	10.0168
22	19.6604	17.6580	15.9369	14.4511	13.1630	12.0416	11.0612	10.2007
23	20.4558	18.2922	16.4436	14.8568	13.4886	12.3034	11.2722	10.3711
24	21.2434	18.9139	16.9355	15.2470	13.7986	12.5504	11.4693	10.5288
25	22.0232	19.5235	17.4131	15.6221	14.0939	12.7834	11.6536	10.6748
26	22.7952	20.1210	17.8768	15.9828	14.3752	13.0032	11.8258	10.8100
27	23.5596	20.7069	18.3270	16.3296	14.6430	13.2105	11.9867	10.9352
28	24.3164	21.2813	18.7641	16.6631	14.8981	13.4062	12.1371	11.0511
29	25.0658	21.8444	19.1885	16.9837	15.1411	13.5907	12.2777	11.1584
30	25.8077	22.3965	19.6004	17.2920	15.3725	13.7648	12.4090	11.2578
31	26.5423	22.9377	20.0004	17.5885	15.5928	13.9291	12.5318	11.3498
32	27.2696	23.4683	20.3888	17.8736	15.8027	14.0840	12.6466	11.4350
33	27.9897	23.9886	20.7658	18.1476	16.0025	14.2302	12.7538	11.5139
34	28.7027	24.4986	21.1318	18.4112	16.1929	14.3681	12.8540	11.5869
35	29.4086	24.9986	21.4872	18.6646	16.3742	14.4982	12.9477	11.6546
36	30.1075	25.4888	21.8323	18.9083	16.5469	14.6210	13.0352	11.7172

37	30.7995	25.9695	22.1672	19.1426	16.7113	14.7368	13.1170	11.7752
38	31.4847	26.4406	22.4925	19.3679	16.8679	14.8460	13.1935	11.8289
39	32.1630	26.9026	22.8082	19.5845	17.0170	14.9491	13.2649	11.8786
40	32.8347	27.3555	23.1148	19.7928	17.1591	15.0463	13.3317	11.9246
41	33.4997	27.7995	23.4124	19.9931	17.2944	15.1380	13.3941	11.9672
42	34.1581	28.2348	23.7014	20.1856	17.4232	15.2245	13.4524	12.0067
43	34.8100	28.6616	23.9819	20.3708	17.5459	15.3062	13.5070	12.0432
44	35.4555	29.0800	24.2543	20.5488	17.6628	15.3832	13.5579	12.0771
45	36.0945	29.4902	24.5187	20.7200	17.7741	15.4558	13.6055	12.1084
46	36.7272	29.8923	24.7754	20.8847	17.8801	15.5244	13.6500	12.1374
47	37.3537	30.2866	25.0247	21.0429	17.9810	15.5890	13.6916	12.1643
48	37.9740	30.6731	25.2667	21.1951	18.0772	15.6500	13.7305	12.1891
49	38.5881	31.0521	25.5017	21.3415	18.1687	15.7076	13.7668	12.2122
50	39.1961	31.4236	25.7298	21.4822	18.2559	15.7619	13.8007	12.2335

FINAL INSTRUCTION NO. 27

Any person who is entitled to recover damages is entitled to recover interest thereon from the day that the loss or damage occurred except:

1. During a period of time, the person liable for the damages was prevented by law, or an act of the person entitled to recover the damages from paying the damages, or

2. Interest is not recoverable on damages which will occur in the future, punitive damages, or intangible damages such as pain and suffering, emotional distress, loss of consortium, injury to credit, reputation or financial standing, loss of enjoyment of life, or loss of society and companionship.

You must decide:

1. the amount of damages (if any),
2. the amount of damages which are subject to prejudgment interest (if any), and
3. the date or dates on which the loss or damage occurred.

If you return a verdict for the plaintiff, you must indicate on the verdict form whether you find the plaintiff is entitled to prejudgment interest, and if so, the amount of damages upon which interest is granted and the beginning date or dates of such interest. Based upon your findings, the Court will calculate the amount of interest the plaintiff is entitled to recover.

FINAL INSTRUCTION NO. 28

The attorneys for the respective parties will present their arguments of the case for your assistance in coming to a decision. The order of their appearance and the length of the time of their arguments are regulated by the court. While the final argument of counsel is intended to help you in understanding the evidence and applying the law as set forth in these instructions, final argument is not evidence. You should disregard any argument, statement, or remark of counsel which has no basis in the evidence.

FINAL INSTRUCTION NO. 29

To ensure fairness, you as jurors must obey the following rules in conducting your deliberations and returning your verdict:

*First*, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

*Second*, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to your individual judgment, because a verdict must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion 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 at all times that you are not partisans. You are judges—judges of the facts. Your sole interest is to seek the truth from the evidence in this case.

*Third*, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or bailiff, signed by one or more jurors. 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.

*Fourth*, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

The verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when each of you has agreed on the verdict, your foreperson will fill in the form, sign and date it, and advise the marshal or bailiff that you are ready to return to the courtroom.



UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION

JAMES BOWERS,  Plaintiff,  vs.  MENARD, INC.,  Defendant.	3:23-CV-03020-ECS   VERDICT FORM
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We, the jury, duly impaneled in the above-entitled action and sworn to try the issues herein, do hereby answer the Verdict Form as follows:

**Question 1:** Did the plaintiff, James Bowers, prove by the greater convincing force of the evidence that the defendant, Menard, Inc., was negligent?

Yes \_\_\_\_\_ No \_\_\_\_\_

If you answered yes, please proceed to Question 2. If you answered no, go no further. Please have the foreperson sign and date the verdict form.

**Question 2:** Did the plaintiff, James Bowers, prove by the greater convincing force of the evidence that the defendant's negligence caused any injury to him?

Yes \_\_\_\_\_ No \_\_\_\_\_

If you answered yes, please proceed to Question 3. If you answered no, go no further. Please have the foreperson sign and date the verdict form.

**Question 3:** Did the defendant, Menard, Inc., prove by the greater convincing force of the evidence that the plaintiff, James Bowers, was contributorily negligent and that his own negligence more than slightly caused his injury?

Yes \_\_\_\_\_ No \_\_\_\_\_

If you answered yes, go no further. The foreperson must sign and date the verdict form. If you answered no, please proceed to Question 4 and then have the foreperson sign and date the verdict form.

**Question 4:** What amount of damages, if any, is the plaintiff, James Bowers, entitled to recover for his injuries caused by the defendant's negligence?

Past reasonable value of necessary medical care, treatment, and services received:

\$ \_\_\_\_\_.

For any damages awarded for the value of past medical care, treatment, and services, please identify the amount of damages subject to prejudgment interest and the date or dates on which those damages were incurred.

Amount: \$ \_\_\_\_\_.

Date(s): \_\_\_\_\_.

Future reasonable value of necessary medical care, treatment, and services to be received:

\$ \_\_\_\_\_.

Pain, suffering, mental anguish, and loss of capacity to the enjoyment of life experienced because of the injury:

\$ \_\_\_\_\_.

Dated July \_\_\_\_, 2025.

\_\_\_\_\_  
Foreperson