UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

JAMES LASLEY,	*	CIV 13-4090
Plaintiff,	*	
-vs-	*	JURY INSTRUCTIONS
RUNNING SUPPLY, INC.,	*	
Defendant.	*	

Lawrence L. Piersol
Judge

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. This is true even though some of those I gave you at the beginning of trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

Each of you must faithfully perform your duties as jurors. You must carefully and honestly consider this case with due regard for the rights and interests of the parties. Neither sympathy nor prejudice should influence you. Your verdict must be based on the evidence and not upon speculation, guess, or conjecture.

INSTRUCTION NO. 2

I have not intended to suggest what I think your verdict should be by any of my rulings or comments during the trial.

INSTRUCTION NO. 3

As I stated earlier, it is your duty to determine the facts, and in so doing you must consider only the evidence I have admitted in this case. When I use the word "evidence," I mean the testimony of witnesses; documents and other things I receive as exhibits; facts that I tell you the parties have agreed are true; and any other facts that I tell you to accept as true.

Some things are not evidence. I will tell you now what is not evidence:

1. Lawyers' statements, arguments, questions, and comments are not evidence.

2. Documents or other things that might be in court or talked about, but that I do not receive as exhibits, are not evidence.

3. Objections are not evidence. Lawyers have a right – and sometimes a duty – to object when they believe something should not be a part of the trial. Do not be influenced one way or the other by objections. If I sustain a lawyer's objection to a question or an exhibit, that means the law does not allow you to consider that information. When that happens, you have to ignore the question or the exhibit, and you must not try to guess what the information might have been.

4 . Testimony and exhibits that I strike from the record, or tell you to disregard, are not evidence, and you must not consider them.

5. Anything you see or hear about this case outside the courtroom is not evidence, and you must not consider it.

Also, I might tell you that you can consider a piece of evidence for one purpose only, and not for any other purpose. If that happens, I will tell you what purpose you can consider the evidence for and what you are not allowed to consider it for.

INSTRUCTION NO. 3, continued

Finally, some of you may have heard the terms "direct evidence" and "circumstantial evidence." You should not be concerned with those terms, since the law makes no distinction between the weight to be given to direct and circumstantial evidence.

INSTRUCTION NO. 4

If any reference by the Court or by counsel to matters of testimony or exhibits does not coincide with your own recollection of that evidence, it is your recollection which should control during your deliberations and not the statements of the Court or of counsel.

You are the sole judges of the evidence received in this case.

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.

INSTRUCTION NO. 5

If you took notes during the trial, your notes should be used only as memory aids. You should not give your notes precedence over your independent recollection of the evidence. If you did not take notes, you should rely on your own independent recollection of the proceedings and you should not be influenced by the notes of other jurors. I emphasize that notes are not entitled to any greater weight than the recollection or impression of each juror as to what the testimony may have been.

INSTRUCTION NO. 6

During the trial, certain evidence was presented to you by deposition. The witness testified under oath at the deposition, just as if the witness were in court, and you should consider this testimony together with all other evidence received.

INSTRUCTION NO. 7

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

You may consider a witness's intelligence; the opportunity the witness had to see or hear the things testified about; a witness's memory, knowledge, education, and experience; any reasons a witness might have for testifying a certain way; how a witness acted while testifying; whether a witness said something different at another time; whether a witness's testimony sounded reasonable; and whether or to what extent a witness's testimony is consistent with other evidence you believe.

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. 8

A witness may be discredited or impeached by contradictory evidence or by evidence that at some other 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, you may give the testimony of that witness such credibility, if any, you think it deserves.

If a witness is shown knowingly to have testified falsely about any material matter, you have a right to distrust such witness's other testimony and you may reject all the testimony of that witness or give it such credibility as you may think it deserves.

An act or omission is "knowingly" done, if voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

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 in a particular science, profession, or occupation. In deciding the weight to give to the opinion, you should consider the expert's qualifications and credibility and the reasons for the opinion. You should consider each expert opinion received in evidence in this case, and give it such weight as you think it deserves. You are not bound by the opinion; therefore, if you should decide that the opinion of an expert witness is not based on sufficient education and experience, or if you should conclude that the reasons for the opinion are unsound, or that other evidence outweighs the opinion, you may disregard the opinion entirely.

INSTRUCTION NO. 10

The fact that one of the parties to this action is a corporation is immaterial. Under the laws of this state, a corporation is an individual party to the lawsuit, and all parties are entitled to the same impartial treatment.

INSTRUCTION NO. 11

The Defendant is a corporation and can act only through its employees. Any act or omission of an employee within the scope of his employment is the act or omission of the corporation for which he was then acting.

INSTRUCTION NO. 12

As explained in my prior instructions, this is a civil case, brought by the Plaintiff, James Lasley, against the Defendant, Running Supply, Inc.

Plaintiff claims to have been injured and sustained damages as a legal result of the negligence of Defendant in one or more of the following respects: failing to provide an adequate number of employees to unload the shipment, failing to supervise the unloading of the shipment, and failing to properly instruct concerning the unloading.

The Plaintiff seeks compensatory damages for the injuries and losses he sustained.

Defendant denies that it was negligent or caused the Plaintiff's injuries and further alleges that Plaintiff himself was contributorily negligent more than slight, and that Plaintiff assumed the risk of the injury and damages he has claimed.

INSTRUCTION NO. 13

In civil actions, the party who asserts the affirmative of an issue must prove that issue by 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.

2. That Defendant's negligence was a legal cause of Plaintiff's injuries; and

3. The amount of damages, if any, Plaintiff sustained as a legal result of Defendant's negligence.

Defendant has burden of proving the following issues:

1. That Plaintiff was contributorily negligent;

2. That Plaintiff's contributory negligence was a legal cause of his injuries or damages; and

3. That Plaintiff assumed the risk of his injuries as elsewhere defined in these instructions.

In determining whether or not an issue has been proved by greater convincing force of the evidence, you should consider all of the evidence bearing upon that issue, regardless of who produced it.

INSTRUCTION NO. 14

The term "legal cause" means an immediate cause which, in the natural or probable sequence, produces the injury complained of. For legal cause to exist, the harm suffered must be a foreseeable consequence of the act complained of. Liability cannot be based on mere speculative possibilities or circumstances and conditions remotely connected to the events leading up to an injury. The 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.

INSTRUCTION NO. 15

The legal cause need not be the only cause, nor the last or nearest cause. It is sufficient if it concurs with some other cause acting at the same time, which in combination with it 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 harm.

INSTRUCTION NO. 16

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.

INSTRUCTION NO. 17

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 the bringing about of the injury to the plaintiff.

INSTRUCTION NO. 18

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 determine the answer to two questions:

1. Whether both the plaintiff and the defendant were negligent; and

2. If both were negligent, whether the plaintiff's negligence is

    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.

INSTRUCTION NO. 19

If a person assumes the risk of injury or damage, the person is not entitled to any recovery. To establish an assumption of the risk defense, the defendant must show:

1. That the plaintiff had actual or constructive knowledge of the existence of the specific risk involved; and

2. That the plaintiff appreciated the risk's character; and

3. That the plaintiff voluntarily accepted the risk, having had the time, knowledge, and experience to make an intelligent choice.

INSTRUCTION NO. 20

While the same conduct on the part of the plaintiff may amount to both assumption of the risk and contributory negligence, the two defenses are distinct. Assumption of the risk involves a voluntary or deliberate decision to encounter a known danger whereas contributory negligence frequently involves the inadvertent failure to notice danger. In addition, contributory negligence must be a legal cause of the injury to be a defense, while assumption of the risk need not cause the injury to bar recovery.

INSTRUCTION NO. 21

If you decide for Plaintiff on the question of liability you must then fix the amount of money which will reasonably and fairly compensate him for any of the following elements of loss or harm suffered in person 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 disability and disfigurement suffered by Plaintiff.

2. The pain and suffering, mental anguish and loss of capacity of the enjoyment of life experienced in the past and reasonably certain to be experienced in the future as a result of the injuries sustained by Plaintiff.

3. The reasonable value of necessary medical care, treatment, and services received by Plaintiff.

Whether any of these elements or damages have been proved by the evidence is for you to determine. Your verdict must be based on the evidence and not upon speculation, guesswork, or conjecture, and you must not award any damages under this Instruction by way of punishment or through sympathy.

INSTRUCTION NO. 22

Plaintiff is not seeking any recovery for lost wages or loss of earning capacity. You may not consider or award any damages for any lost wages or loss of earning capacity, if you find for Plaintiff on liability.

INSTRUCTION NO. 23

The fact that I have instructed you as to the proper measure of damages should not be considered as intimating any view of mine as to which party is entitled to your verdict in this case. Instructions as to the measure of damages are given for your guidance, in the event you should find in favor of the Plaintiff from the greater weight of the evidence in accordance with the other instructions.

INSTRUCTION NO. 24

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

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 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 the 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.

INSTRUCTION NO. 24, continued

Finally, 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 that you are ready to return to the courtroom.