

**U.S. District Court
District of Nebraska (8 Omaha)
CIVIL DOCKET FOR CASE #: 8:19-cv-00009-JMG-SMB**

Navratil v. Menard, Inc.
Assigned to: Chief Judge John M. Gerrard
Referred to: Magistrate Judge Susan M. Bazis
Case in other court: Lancaster County District Court, 18-04112
Cause: 28:1332 Diversity-Personal Injury

Date Filed: 01/09/2019
Jury Demand: Both
Nature of Suit: 360 P.I.: Other
Jurisdiction: Diversity

Plaintiff

Seth L. Navratil

represented by **Erik W. Fern**
BERRY LAW FIRM - LINCOLN
6940 O Street
Suite 400
Lincoln, NE 68510
(402) 466-8444
Email: erikf@jsberrylaw.com
ATTORNEY TO BE NOTICED

V.

Defendant

Menard, Inc.

represented by **Daniel J. Gutman**
FRASER, STRYKER LAW FIRM
409 South 17th Street
Suite 500, Energy Plaza
Omaha, NE 68102
(402) 978-5339
Email: dgutman@fraserstryker.com
ATTORNEY TO BE NOTICED

Robert W. Futhey
FRASER, STRYKER LAW FIRM
409 South 17th Street
Suite 500, Energy Plaza
Omaha, NE 68102
(402) 341-6000
Fax: (402) 341-8290
Email: rfuthey@fraserstryker.com
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
01/09/2019	<u>1</u>	NOTICE OF REMOVAL with jury demand against Seth L Navratil from Lancaster County District Court, Case number 18-4112 (Filing fee \$ 400, receipt number ANEDC-3838458) with attached state court pleadings, by Attorney Robert W. Futhey on behalf of Menard, Inc. (Attachments: # <u>1</u> Exhibit A)(Futhey, Robert) (Entered: 01/09/2019)
01/09/2019	<u>2</u>	TEXT NOTICE OF JUDGES ASSIGNED: Chief Judge John M. Gerrard and Magistrate Judge Susan M. Bazis assigned. In accordance with 28 U.S.C. 636(c)(2), the parties are notified that, if all parties consent, a magistrate judge may conduct a civil action or proceeding, including a jury or nonjury trial, subject to the courts rules and policies governing the assignment of judges in civil cases. See Fed. R. Civ. P. 73; NEGenR 1.4. (LKO) (Entered: 01/09/2019)
01/11/2019	<u>3</u>	TEXT NOTICE REGARDING CORPORATE DISCLOSURE STATEMENT by Deputy Clerk as to Defendant Menard, Inc. Pursuant to Fed. R. Civ. P. 7.1, non-governmental corporate parties are required to file Corporate Disclosure Statements (Statements). The parties shall use the form Corporate Disclosure Statement, available on the Web site of the court at http://www.ned.uscourts.gov/forms/ . If you have not filed your Statement, you must do so within 15 days of the date of this notice. If you have already filed your Statement in this case, you are reminded to file a Supplemental Statement within a reasonable time of any change in the information that the statement requires. (KMM) (Entered: 01/11/2019)
01/14/2019	<u>4</u>	CORPORATE DISCLOSURE STATEMENT pursuant to Fed. R. Civ. P. 7.1 by Attorney Robert W. Futhey on behalf of Defendant Menard, Inc..(Futhey, Robert) (Entered: 01/14/2019)
01/16/2019	<u>5</u>	<i>Defendant's</i> ANSWER to Complaint with with jury demand and <i>Affirmative Defenses</i> by Menard, Inc. (Futhey, Robert) (Entered: 01/16/2019)
01/17/2019	<u>6</u>	SCHEDULING ORDER - Rule 26 Meeting Report Deadline set for 2/19/2019. Ordered by Magistrate Judge Susan M. Bazis. (KLF) (Entered: 01/17/2019)
02/12/2019	<u>7</u>	NOTICE of <i>F.R. CIV. P. 26(f) Memorandum and Scheduling Order</i> by Attorney Erik W. Fern on behalf of Plaintiff Seth L. Navratil (Fern, Erik) (Entered: 02/12/2019)
02/13/2019	<u>8</u>	RESTRICTED CASE CONFERENCE INSTRUCTIONS. ACCESS TO THE PDF DOCUMENT IS RESTRICTED TO CASE PARTICIPANTS AND THE COURT PURSUANT TO THE E-GOVERNMENT ACT AND FEDERAL RULE OF CIVIL PROCEDURE 5.2(a). Ordered by Magistrate Judge Susan M. Bazis. (KLF) (Entered: 02/13/2019)
02/13/2019	<u>9</u>	FINAL PROGRESSION ORDER - The deposition deadline is November 1, 2019 for experts, 30 days before trial for any witness needed to lay foundation for documents and records, and August 1, 2019 for all other witnesses. A telephonic conference to discuss the status of case progression and the parties' interest in settlement will be held with the undersigned magistrate judge on June 18, 2019 at 3:00 p.m. by telephone. Counsel shall use the conferencing instructions assigned to this case to participate in the conference. The Pretrial Conference is scheduled to be held before the undersigned magistrate judge on February 13, 2020 at 11:00 a.m., and will be conducted by internet/telephonic conferencing. Counsel shall use the conferencing instructions assigned to this case to participate in the conference. The jury trial of this case is set to commence before John M. Gerrard, Chief United States District Judge, in the Special Proceedings Courtroom, Roman L. Hruska Federal Courthouse, 111 South 18th Plaza, Omaha, Nebraska, at 9:00 a.m. on March 9, 2020, or as soon thereafter as the case may be called, for a duration of four (4) trial days. Ordered by Magistrate Judge Susan M. Bazis. (KLF) (Entered: 02/13/2019)
02/28/2019	<u>10</u>	NOTICE of <i>Serving Defendant's Rule 26(a)(1) Initial Disclosures</i> by Attorney Robert W. Futhey on behalf of Defendant Menard, Inc. (Futhey, Robert) (Entered: 02/28/2019)
03/05/2019	<u>11</u>	NOTICE of <i>Service of Initial Disclosures</i> by Attorney Erik W. Fern on behalf of Plaintiff Seth L. Navratil (Fern, Erik) (Entered: 03/05/2019)

03/05/2019	<u>12</u>	NOTICE of <i>Service of Discovery Requests</i> by Attorney Erik W. Fern on behalf of Plaintiff Seth L. Navratil (Fern, Erik) (Entered: 03/05/2019)
03/06/2019	<u>13</u>	NOTICE of <i>Serving Defendant's Discovery Requests</i> by Attorney Robert W. Futhey on behalf of Defendant Menard, Inc. (Futhey, Robert) (Entered: 03/06/2019)
04/12/2019	<u>14</u>	NOTICE of <i>Serving Defendant's Discovery Responses</i> by Attorney Daniel J. Gutman on behalf of Defendant Menard, Inc. (Gutman, Daniel) (Entered: 04/12/2019)

PACER Service Center			
Transaction Receipt			
04/17/2019 09:25:21			
PACER Login:	tcn22015	Client Code:	
Description:	Docket Report	Search Criteria:	8:19-cv-00009-JMG-SMB
Billable Pages:	2	Cost:	0.20

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

SETH L. NAVRATIL,

Plaintiff,

vs.

MENARD, INC.

Defendant.

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CASE NO. _____

NOTICE OF REMOVAL

COMES NOW Defendant Menard, Inc. ("Menards") and, pursuant to 28 U.S.C. §§ 1441 & 1446, removes this action from the District Court of Lancaster County, Nebraska, to the United States District Court for the District of Nebraska. Removal is proper on the following grounds:

1. On December 11, 2018, Plaintiff Seth L. Navratil commenced this action in the District Court of Lancaster County, Nebraska, Case No. CI 18-4112. Plaintiff is a citizen of Lancaster County, Nebraska. Said action is still pending. A copy of Plaintiff's complaint filed with the Lancaster County District Court is attached hereto as Exhibit A.

2. Menards is a corporation organized under the laws of the State of Wisconsin, with its principal place of business in Eau Claire, Wisconsin. Menards is a citizen of the State of Wisconsin.

3. Menards was served with process through its registered agent in the State of Nebraska, on December 14, 2018.

4. Pursuant to 28 U.S.C. § 1332(a)(1), this Court has original diversity jurisdiction over this matter. Under that section, this Court has original diversity jurisdiction over any action

in which (1) the amount in controversy exceeds \$75,000.00, exclusive of interests and costs; and (2) is between citizens of different states.

5. There is diversity of citizenship between Plaintiff, who is a Nebraska citizen, and Menards, which is a citizen of the State of Wisconsin for the purposes of diversity jurisdiction.

6. Plaintiff's complaint seeks damages for personal injuries, including past special damages totaling \$15,800.00, general damages, future damages for permanent injury, pain and suffering, loss of use of the body, and other damages. The allegations in the Complaint support a finding that the amount in controversy exceeds the jurisdictional minimum. Kearney Area Ag Producers Alliance v. Delta-T Corp., No. 8:02CV56, 2003 U.S. Dist. LEXIS 2634, at *5 (D. Neb. Feb. 24, 2003) (“[A] removing defendant can also establish the jurisdictional minimum by setting forth the facts in controversy ... that support a finding of the requisite amount.”) (internal quotation marks omitted). So long as a fact finder *could* conclude the total damages the plaintiff claims exceed \$75,000.00, this is sufficient to confer diversity jurisdiction with this Court. Kopp v. Kopp, 280 F.3d 883, 885 (8th Cir. 2002). Only if it is a “legal certainty” that the jurisdictional minimum cannot be met will remand to the state court be appropriate. Id. at 884; see also Bell v. Hershey Co., 557 F.3d 953, 956 (8th Cir. 2009) (“[R]emand is only appropriate if the plaintiff can establish to a legal certainty that the claim is for less than the requisite amount.”).

7. Pursuant to 28 U.S.C. § 1441(a), Menards has removed this action "to the district court of the United States for the district and division embracing the place where [the State court] action is pending."

8. Removal is proper under 28 U.S.C. § 1446 because this notice has been filed within thirty (30) days after receipt of the initial pleadings by Menards on December 14, 2018,

and all Defendants who have been properly joined and served with Plaintiff's initial pleadings (i.e., Menards) consent to this removal. See 28 U.S.C. § 1446(b)(1)-(2).

9. A notice of the filing of this Notice of Removal has been filed contemporaneously herewith in the District Court of Lancaster County, Nebraska.

10. There are no matters pending in the District Court of Lancaster County, Nebraska, that will currently require resolution by this Court.

DATED this 9th day of January, 2019.

MENARD, INC., Defendant

By: /s/ Robert W. Futhey
Robert W. Futhey, #24620
Daniel J. Gutman, #26039
FRASER STRYKER PC LLO
500 Energy Plaza
409 South 17 Street
Omaha, NE 68102-2663
(402) 341-6000
ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

On the 9th day of January, 2019, I mailed the above document via United States Postal Service postage-prepaid to:

Erik W. Fern, #23733
Berry Law Firm
6940 O Street, Suite 400
Lincoln, NE 68510

/s/ Robert W. Futhey

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

SETH L. NAVRATIL,)	Case No. _____
)	
Plaintiff,)	
)	
vs.)	COMPLAINT, DEMAND FOR
)	JURY TRIAL, AND PRAECIPE
MENARD, INC.,)	
)	
Defendant.)	

COMES NOW, the Plaintiff, Seth L. Navratil, and in support of his
 Complaint, Demand for Jury Trial, and Praecipe states the following:

GENERAL ALLEGATIONS

1. The Plaintiff, Seth L. Navratil, is an adult who resides at 9230
 Whispering Wind Road, Lincoln, Nebraska 68512.
2. The Defendant, Menard, Inc. is a foreign corporation organized under
 the laws of the State of Wisconsin and principally located at 5101
 Menard Drive, Eau Claire, Wisconsin 54703; Menard, Inc. has a
 registered agent in the State of Nebraska designated at The Prentice-
 Hall Corporation System, Inc., Suite 1900, 233 South 13th Street,
 Lincoln, NE 68508.
3. Menard, Inc., doing business as "Menards", owns and operates a
 home improvement retail store and the real estate located at 3500 N.

27th Street, Lincoln, Nebraska 68521 (hereinafter “Menards”).

4. This lawsuit is based on premises liability as a result of the dangerous condition of Menards’ premises, whereby the Plaintiff was physically injured resulting in damages in the form of personal injury, loss of use of the body, pain and suffering, medical bills, lost wages, and other damages to be proven at trial.
5. The amount in controversy exceeds the jurisdictional requirements of the Nebraska District Court.
6. The Court has jurisdiction over the parties and the subject matter of the lawsuit.
7. The Plaintiff demands trial by jury on all matters that may be tried to a jury pursuant to Nebraska law.

COUNT I - NEGLIGENCE

8. The Plaintiff re-alleges Paragraph One (1) through Paragraph Seven (7) of the Complaint as if set forth fully herein.
9. On the morning of January 15, 2018, the Plaintiff was a patron of the “Menards” retail store lawfully on the premises, and for the benefit of the Defendant, when the Plaintiff slipped on a foreign substance(s) on the floor and fell to the floor breaking his tibia and fibula.

10. That the foreign substance(s) is alleged to be in a main walkway for patrons and other individuals lawfully on the “Menards” premises, and the substance was on the floor without being cleaned up or otherwise remediated for an unreasonable time believed to be over several hours, or longer.
11. As a result of the fall on January 15, 2018, the Plaintiff was taken to the Bryan West Hospital emergency room for treatment; the Plaintiff later underwent surgery to repair his broke tibia and fibula.
12. Following surgery, the Plaintiff underwent a lengthy rehabilitation where he was off work for several weeks and performed physical rehabilitation over several months.
13. At all points relevant to the Complaint, the condition of the floor at “Menards” was unreasonably dangerous and was covered with a foreign substance that was slippery, undetectable through reasonable care, and existed for more than a reasonable amount of time to allow the Defendant to both detect the condition and take remedial action to prevent the unsafe condition from causing harm to patrons, the Plaintiff, and other individuals lawfully within the “Menards” premises.
14. At all times relevant to this Complaint, the Defendant had a legal duty

to use reasonable care to ensure the premises were safe and not unreasonably dangerous to the Plaintiff, patrons, and other individuals lawfully at the “Menards” premises.

15. The Defendant created the unreasonably safe condition of the floor, and knew, reasonably should have known, or through reasonable care should have discovered the unsafe condition of the floor that caused the injury to the Plaintiff.
16. That the Defendant should have known the condition of the floor was unreasonably dangerous to patrons and other individuals on the premises, the condition was not open and obvious, and the injury to the Plaintiff was reasonably foreseeable given the condition of the floor, and the Defendant should have known that the Plaintiff and other individuals lawfully on the premises would not discover or realize the danger so as to protect against injury.
17. The Defendant breached its duty of care in one or more of the following manners, including but not limited to:
 - a. Failing to exercise reasonable care to prevent injury;
 - b. Failure to exercise reasonable care to keep the premises in a reasonably safe condition;

- c. Failure to exercise reasonable care to inspect the premises for dangerous conditions;
 - d. Failure to warn the Plaintiff of a dangerous condition on the floor;
 - e. Failure to remedy the dangerous condition that existed for enough time that permitted the Defendant to both discover and take necessary action to guard against injury; and
 - f. Any and all other breaches as may be discerned in the discovery of this matter.
18. The Plaintiff has been damaged by the Defendant's breaches of duty.
19. The Defendant's breaches of duty were the actual and proximate causes of the Plaintiff's special damages that resulted in the form of lost wages in the approximate amount of \$10,800.00, medical bills, medication, and rehabilitation costs in an amount no less than \$5,000.00, and other damages to be discerned through discovery in this matter for total special damages in an amount no less than \$15,800.00.
20. The Defendant's breaches of duty were the actual and proximate causes of the Plaintiff's general damages that resulted in the form of

bodily injury, permanent injury, pain and suffering, and loss of use of the body in an amount to be determined at trial.

21. By way of further pleading, the Plaintiff preserves all causes of actions and theories of recovery, both at law and equity, that the facts of the case as may be discovered during discovery and investigation in this case, and the pleading herein shall not be construed as a waiver of any cause of action and theory of recovery that the Plaintiff may assert at trial.
22. The Court should enter judgment in favor of the Plaintiff against Menard, Inc. for all special and general damages suffered by the Plaintiff, court costs, and award the Plaintiff such further relief as the Court deems just and equitable.

WHEREFORE, the Plaintiff demands judgment against the Defendant, Menard, Inc., for all damages suffered including special damages no less than \$15,800.00, and general damages in a fair and equitable amount as may be found at trial, court costs, and all other damages the Court finds just and equitable.

Dated this 11th day of December 2018.

Respectfully submitted,
Seth L. Navratil, Plaintiff

BY: *Erik W. Fern*

Erik W. Fern, #23733
BERRY LAW FIRM
2650 North 48th Street
Lincoln, NE 68504
Phone: (402) 817-6550
Fax: (402) 466-1793
Email: erikf@jsberrylaw.com
Lawyers for Plaintiff

PRAECIPE

To the Clerk of the Court:

Please issue summons, and deliver the same to the undersigned via email for service via certified mail upon the Defendant, who may be served via certified mail at:

Menard, Inc.
c/o Registered Agent
The Prentice-Hall Corporation System, Inc.
Suite 1900
233 South 13th Street
Lincoln, NE 68508.

Erik W. Fern

Erik W. Fern, #23733