UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SHAMBRIA NECOLE SMITH	CIVIL ACTION NO. 2:16-CV-16597
VERSUS	JUDGE ENGELHARDT
KANSA TECHNOLOGY, LLC, ET AL	MAGISTRATE JUDGE ROBY

PLAINTIFF'S OBJECTIONS TO KANSA'S PROPOSED JURY VERDICT FORM

NOW INTO COURT, through undersigned counsel, comes Plaintiff, SHAMBRIA NECOLE SMITH and for the reasons set forth objections to KANSA's proposed Jury Verdict Form pursuant to FRCP 51.

I. FACTUAL BACKGROUND

The Plaintiff, Shambria Smith, an employee of Hammond Daily Star, suffered a traumatic amputation of her left fifth digit as a result of the machinery manufactured, designed, maintained, and monitored by Kansa Technology, LLC. The Defendant argues that the Kansas Inserter and/or the paper system was not somehow involved but this is factually without basis and contradicts the direct testimony of Shambria Smith, the only individual or person who was near and/or operating the machinery at the time of the incident with only other witnesses who came upon the scene of the incident after the matter and all other individuals have no basis in fact to support their

positions. The inserter was negligently designed, manufactured, and was without adequate warnings and proper guarding which would have prevented the injury made subject of this litigation.

On May 31, 2017, Hammond Daily Star Publishing Company, Inc. filed a Motion for Summary Judgment (*Doc #12)*. On July 17, 2017, the court granted Hammond Daily Star Publishing Company's Motion for Summary Judgment. *Doc #13*. Plaintiff's claims against Hammond Daily Star were dismissed with prejudice.

Of note, the Plaintiff's Workers Compensation case is yet pending with the Workers Compensation court.

II. SPECIFIC OBJECTIONS

A. DEFENDANT'S PROPOSED JURY VERDICT FORM NUMBERS 1-3 LACKS PERTINENT LPLA ELEMENTS CAUSING A TECHNICAL IMPERFECTION

The Plaintiff within proposed jury interrogatories and form have detailed each of the elements under LPLA. The jury should be privy to the entire statute and each element it comprises. *Igloo Products Corporation v. Brantex, Inc.*, 202 F. 3d 814, 816 (5th Cir. 2000) found the court must instruct the jurors fully and correctly on the law.

The Plaintiff does not want the jury to be misled based upon the Defendant's oversimplification of the

statute omitting pertinent sections of the statute as the jury balances this action.

B. DEFENDANT'S PROPOSED JURY VERDICT FORM NUMBERS 4, 5 and 8 HAMMOND DAILY STAR PUBLISHING COMPANY, INC SHOULD NOT BE INCLUDED ON THE JURY VERDICT FORM AND NO ALLEGATION OF POTENTIAL FAULT ASSESSED BY THE JURY

Hammond Daily Star filed a Motion for Summary Judgment pursuant to FRCP 56 (c) which allows Summary Judgment when there is no genuine issue of material fact. As a matter of the law the court found Hammond Daily Star was entitled to a Judgment as a matter of law.

The Supreme Court held in *Dumas v. State Department of Culture, Recreation and Tourism*, 2002-CC-0563 (La. 10/15/02); 828 So. 2d 530, 537 a provision that makes each non-intentional tortfeasor liable for only his share of fault, which must be quantified pursuant to Article 2323. However, revisions to the code in 1996 overruled the Louisiana Supreme Court's interpretation regarding fault holding a court could, but was not required to, compare fault of negligent and intentional tortfeasors.

Presently, the court on "case-by-case analysis" is utilized to determine whether the fault of intentional and non-intentional tortfeasors would be compared.

The Defendants appear to be asserting allegations found within *Kelley v. Circle K Stores, Inc.* 10-4381 citing *Veazey v. Elmwood Plantation Associates Ltd.* 93-2818 (La. 11/30/94); 650 So. 2d 712), as applicable law requiring the court to compare the fault of negligent parties and intentional tortfeasors. The court in *Kelley* rejected the argument citing the mover in the cases did not provide any precedent supporting *Veazey's* continued validity under current versions of Louisiana Civil Code Articles 2323 and 2324.

Hammond Daily Star was not simply dismissed from this action. The court after reviewing the Motion for Summary Judgment found grounds dismissing Hammond Daily Start with prejudice. To place Hammond Daily Star Publishing, Inc on the Jury Verdict Form would be unduly prejudicial and confusing to the jury in light of the court's granting of Hammond Daily Star's Summary Judgment essentially absolving any fault from the Defendant.

The Plaintiff further alleges Hammond Daily Star should not be placed on verdict form as per Louisiana Code of Evidence, Art. 414, which provides:

> Evidence of the nature and extent of a worker's compensation claim or of past or future worker's compensation benefits shall not be admissible to a jury, directly or indirectly, in any civil proceeding with respect to a claim for damages relative to the same injury for which the worker's compensation benefits are claimed or paid. Such evidence shall be admissible and presented to the judge only.

In the present case, Ms. Smith has an open Worker's Compensation claim pursuant to her employment with Hammond Daily Star Publishing thus any inference of Hammond Daily Star is not admissible to a jury.

Pursuant to principles set forth in R.S. 23:1104, any fault assessed against the Plaintiff under *Respondeat Superior* under C.C. Article 2320 is essentially fault assessed against the employer hence duplicative. Therefore, the jury would be misled should the employer be placed on the jury verdict form to the detriment of the Plaintiff with this reasoning as the Plaintiff would incur the fault of the non-party employer also in keeping with the reasoning of C.C. Article 2324 and *Cavalier v. Cain's Hydrostatic Testing, Inc.* 649 So.2d 1114 (La. App. 1st Cir. 1994).

C. DEFENDANT'S PROPOSED JURY VERDICT FORM EXCLUDES RELEVANT PREFACE TO LA. RS 2800.56

The Plaintiff asserted claims under Louisiana Products Liability Act (LPLA) for the following reasons and claims to be supported by evidence at trial:

1. Unreasonably Dangerous in Construction or Composition;
2. Unreasonably Dangerous in Design; and
3. Unreasonably Dangerous Because of Inadequate Warning.

Given same, the Plaintiff is entitled to instruct the jury accordingly before making a determination about causation.

The Defendant attempts to abbreviate and over-simplify the liability issues to be presented to the jury under the entirety of the claims that are set forth in the Petition for Damages, Discovery to date and the Pretrial Order.

CONCLUSION

Based on the foregoing analysis, the Plaintiff requests that the Defendants' proposed Jury Verdict Form and Interrogatories be supplanted by the Plaintiff's version as it more sufficient encompasses the claims made under the Louisiana Product Liability Act. If the jury is restricted as the Defendant attempts to do, substantial prejudice may result and justice may not be served in an attempt to artificially truncate the scope of the claims made available to the Claimant in these proceedings.

RESPECTFULLY SUBMITTED:

THE JOHNSON LAW GROUP
(A PROFESSIONAL
LAW CORPORATION)
BY: /s/ Willie G. Johnson, Jr
WILLIE G. JOHNSON, JR. (#28628)
JENNIFER O. ROBINSON (#27864)
SOPHIA RILEY (#32286)

DEREK E. ELSEY (#36844)
Post Office Box 84509
Baton Rouge, LA 70884
4980 Bluebonnet Blvd., Suite B
Baton Rouge, LA 70809
Telephone: (225) 717-7070
Facsimile: (225) 930-8573

CERTIFICATE OF SERVICE

I do hereby certify that I have served a copy of the above and foregoing pleading on all council of record via electronic filing, facsimile transmission, hand delivery, or by mailing same by United Sates mail, properly addressed and first class postage prepaid, on the 24th day of April, 2018.

/s/ Willie G. Johnson, Jr.
WILLE G. JOHNSON, JR. (28628)

MINUTE ENTRY
ENGELHARDT, J.
MAY 2, 2018
JS-10: 2:00

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SHAMBERIA NECOLE SMITH	CIVIL ACTION
VERSUS	NUMBER: 16-16597
KANSA TECHNOLOGY, LLC, ET AL	SECTION: N

JUDGE KURT D. ENGELHARDT PRESIDING

WEDNESDAY, MAY 2, 2018 AT 8:30 A.M.

COURTROOM DEPUTY: Cherie Stouder
COURT REPORTER: Toni Tusa
LAW CLERK: Sheri Corales

APPEARANCES: Willie G. Johnson, Jr., Jennifer Robinson and Derek Elsey, Counsel for Plaintiff

Guyton Valdin, Jr. and Jade Wandell, Counsel for Defendant

JURY TRIAL: (held and continued from May 1, 2018)

All present and ready 8:30 a.m.; Jury returned to courtroom.

Closing arguments made by all counsel.

Jury Charged and Instructed by the Court.

Jury retires for deliberations at 10:15 a.m.
Jury returns from deliberations at 11:06 a.m.
It was brought to the Court's attention that the correct spelling of Plaintiff's name is Shamberia Necole Smith. Most previously filed pleadings/documents contained the incorrect spelling "Shambria Necole Smith."
Questions of the jury to the Court are attached.
VERDICT: See verdict form attached.
The Court orders that the verdict be entered into the record and be made judgment of the Court.
Jury polled; all answer in affirmative.
The Jury is thanked and excused.
Court adjourned at 11:21 a.m.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SHAMBRIA NECOLE SMITH	CIVIL ACTION NUMBER: 16-16597
VERSUS	SECTION: "N" (4)
KANSA TECHNOLOGY, LLC, ET AL	

QUESTIONS OF THE JURY DURING DELIBERATION

QUESTION 1: Does Shamberia Smith have any pending lawsuits against Hammond Daily Star?

Signature [Redacted in original] Date 5/2/18 Time 1016

ANSWER FROM THE COURT:

No. See page 21-22 of the jury instructions

/s/ J. Kurt Engelhardt

10:35 AM

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SHAMEBRIA NECOLE SMITH	CIVIL ACTION
VERSUS	NO. 16-16597
KANSA TECHNOLOGY, LLC	SECTION: N

POST-TRIAL JURY INSTRUCTIONS

MEMBERS OF THE JURY:

YOU HAVE NOW HEARD ALL OF THE EVIDENCE IN THE CASE AS WELL AS THE CLOSING ARGUMENTS BY THE PARTIES' ATTORNEYS. IT IS NOW MY DUTY AND RESPONSIBILITY TO INSTRUCT YOU ON THE RULES OF LAW THAT YOU MUST FOLLOW AND APPLY IN ARRIVING AT YOUR DECISION IN THE CASE. IT IS YOUR DUTY TO FOLLOW WHAT I INSTRUCT YOU THE LAW IS, REGARDLESS OF ANY OPINION THAT YOU MIGHT HAVE AS TO WHAT THE LAW OUGHT TO BE.

IF I HAVE GIVEN YOU THE IMPRESSION DURING THE TRIAL THAT I FAVOR EITHER PARTY, YOU MUST DISREGARD THAT IMPRESSION. IF I HAVE GIVEN YOU THE IMPRESSION DURING THE TRIAL THAT I HAVE AN OPINION ABOUT THE FACTS OF THIS CASE, YOU MUST DISREGARD THAT IMPRESSION. YOU ARE THE SOLE JUDGES OF THE FACTS OF THIS CASE.

OTHER THAN MY INSTRUCTIONS TO YOU ON THE LAW, YOU SHOULD DISREGARD ANYTHING I MAY HAVE SAID OR DONE DURING THE TRIAL IN ARRIVING AT YOUR VERDICT.

YOU SHOULD CONSIDER ALL OF THE INSTRUCTIONS ABOUT THE LAW AS A WHOLE AND REGARD EACH INSTRUCTION IN LIGHT OF THE OTHERS, WITHOUT ISOLATING A PARTICULAR STATEMENT OR PARAGRAPH.

THE TESTIMONY OF THE WITNESSES AND OTHER EXHIBITS INTRODUCED BY THE PARTIES CONSTITUTE THE EVIDENCE. THE STATEMENTS OF COUNSEL ARE NOT EVIDENCE; THEY ARE ONLY ARGUMENTS. IT IS IMPORTANT FOR YOU TO DISTINGUISH BETWEEN THE ARGUMENTS OF COUNSEL AND THE EVIDENCE ON WHICH THOSE ARGUMENTS REST. WHAT THE LAWYERS SAY OR DO IS NOT EVIDENCE. YOU MAY, HOWEVER, CONSIDER THEIR ARGUMENTS IN LIGHT OF THE EVIDENCE THAT HAS BEEN ADMITTED AND DETERMINE WHETHER THE EVIDENCE ADMITTED IN THIS TRIAL SUPPORTS THE ARGUMENTS. YOU MUST DETERMINE THE FACTS FROM ALL THE TESTIMONY THAT YOU HAVE HEARD AND THE OTHER EVIDENCE SUBMITTED. YOU ARE THE JUDGES OF THE FACTS, BUT IN FINDING THOSE FACTS, YOU MUST APPLY THE LAW AS I INSTRUCT YOU.

YOU ARE REQUIRED BY LAW TO DECIDE THE CASE IN A FAIR, IMPARTIAL, AND UNBIASED

MANNER, BASED ENTIRELY ON THE LAW AND ON THE EVIDENCE PRESENTED TO YOU IN THE COURTROOM. YOU MAY NOT BE INFLUENCED BY PASSION, PREJUDICE, OR SYMPATHY YOU MIGHT HAVE FOR THE PLAINTIFF OR THE DEFENDANT IN ARRIVING AT YOUR VERDICT.

DO NOT LET BIAS, PREJUDICE OR SYMPATHY PLAY ANY PART IN YOUR DELIBERATIONS. A CORPORATION AND ALL OTHER PERSONS ARE EQUAL BEFORE THE LAW AND MUST BE TREATED AS EQUALS IN A COURT OF JUSTICE.

FIRST, I WILL GIVE YOU SOME GENERAL INSTRUCTIONS WHICH APPLY IN EVERY CASE, FOR EXAMPLE, INSTRUCTIONS ABOUT BURDEN OF PROOF AND HOW TO JUDGE THE BELIEVABILITY OF WITNESSES. THEN I WILL GIVE YOU SOME SPECIFIC RULES OF LAW ABOUT THIS PARTICULAR CASE, AND FINALLY I WILL EXPLAIN TO YOU THE PROCEDURES YOU SHOULD FOLLOW IN YOUR DELIBERATIONS.

DUTY TO FOLLOW INSTRUCTIONS

YOU, AS JURORS, ARE THE JUDGES OF THE FACTS. BUT IN DETERMINING WHAT ACTUALLY HAPPENED—THAT IS, IN REACHING YOUR DECISION AS TO THE FACTS – IT IS YOUR SWORN DUTY TO FOLLOW ALL OF THE RULES OF LAW AS I EXPLAIN THEM TO YOU.

YOU HAVE NO RIGHT TO DISREGARD OR GIVE SPECIAL ATTENTION TO ANY ONE INSTRUCTION, OR TO QUESTION THE WISDOM OR CORRECTNESS OF ANY RULE I MAY STATE TO YOU. YOU MUST NOT SUBSTITUTE OR FOLLOW YOUR OWN NOTION OR OPINION AS TO WHAT THE LAW IS OR OUGHT TO BE. IT IS YOUR DUTY TO APPLY THE LAW AS I EXPLAIN IT TO YOU, REGARDLESS OF THE CONSEQUENCES.

IT IS ALSO YOUR DUTY TO BASE YOUR VERDICT SOLELY UPON THE EVIDENCE, WITHOUT PREJUDICE OR SYMPATHY. THAT WAS THE PROMISE YOU MADE AND THE OATH YOU TOOK BEFORE BEING ACCEPTED BY THE PARTIES AS JURORS, AND THEY HAVE THE RIGHT TO EXPECT NOTHING LESS.

BURDEN OF PROOF: PREPONDERANCE OF THE EVIDENCE

THE PLAINTIFF IN THIS CIVIL ACTION IS SHAMBERIA NECOLE SMITH. THE PLAINTIFF HAS THE BURDEN OF PROVING HER CASE BY A PREPONDERANCE OF THE EVIDENCE. TO ESTABLISH BY A PREPONDERANCE OF THE EVIDENCE MEANS TO PROVE SOMETHING IS MORE LIKELY SO THAN NOT SO. IF YOU FIND THAT PLAINTIFF SHAMBERIA NECOLE SMITH HAS FAILED TO PROVE ANY ELEMENT OF HER CLAIM BY A PREPONDERANCE OF THE EVIDENCE, THEN SHE MAY NOT RECOVER ON THAT CLAIM.

CONSIDERATION OF THE EVIDENCE

IN DETERMINING WHETHER A FACT HAS BEEN PROVEN BY A PREPONDERANCE OF THE EVIDENCE, THE EVIDENCE YOU ARE TO CONSIDER CONSISTS OF THE TESTIMONY OF THE WITNESSES, THE DOCUMENTS AND OTHER EXHIBITS ADMITTED INTO EVIDENCE, AND ANY FAIR INFERENCES AND REASONABLE CONCLUSIONS YOU CAN DRAW FROM THE FACTS AND CIRCUMSTANCES THAT HAVE BEEN PROVEN.

GENERALLY SPEAKING, THERE ARE TWO TYPES OF EVIDENCE. ONE IS DIRECT EVIDENCE, SUCH AS TESTIMONY OF AN EYEWITNESS. THE OTHER IS INDIRECT OR CIRCUMSTANTIAL EVIDENCE. CIRCUMSTANTIAL EVIDENCE IS EVIDENCE THAT PROVES A FACT FROM WHICH YOU CAN LOGICALLY CONCLUDE ANOTHER FACT EXISTS. AS A GENERAL RULE, THE LAW MAKES NO DISTINCTION BETWEEN DIRECT AND CIRCUMSTANTIAL EVIDENCE, BUT SIMPLY REQUIRES THAT YOU FIND THE FACTS FROM A PREPONDERANCE OF ALL THE EVIDENCE, BOTH DIRECT AND CIRCUMSTANTIAL.

DEMONSTRATIVE EVIDENCE

SOME EXHIBITS WERE USED AS ILLUSTRATIONS. IT IS A PARTY'S DESCRIPTION, PICTURE, AND/OR MODEL USED TO DESCRIBE SOMETHING INVOLVED IN THIS TRIAL. IF YOUR RECOLLECTION OF THE EVIDENCE DIFFERS FROM THE EXHIBIT, RELY ON YOUR RECOLLECTION.

WITNESS TESTIMONY

YOU ALONE ARE TO DETERMINE THE QUESTIONS OF CREDIBILITY OR TRUTHFULNESS OF THE WITNESSES. IN WEIGHING THE TESTIMONY OF THE WITNESSES, YOU MAY CONSIDER THE WITNESS'S MANNER AND DEMEANOR ON THE WITNESS STAND, ANY FEELINGS OR INTEREST IN THE CASE, OR ANY PREJUDICE OR BIAS ABOUT THE CASE, THAT HE OR SHE MAY HAVE, AND THE CONSISTENCY OR INCONSISTENCY OF HIS OR HER TESTIMONY CONSIDERED IN THE LIGHT OF THE CIRCUMSTANCES. HAS THE WITNESS BEEN CONTRADICTED BY OTHER CREDIBLE EVIDENCE? HAS HE OR SHE MADE STATEMENTS AT OTHER TIMES AND PLACES CONTRARY TO THOSE MADE HERE ON THE WITNESS STAND? YOU MUST GIVE THE TESTIMONY OF EACH WITNESS THE CREDIBILITY THAT YOU THINK IT DESERVES.

EVEN THOUGH A WITNESS MAY BE A PARTY TO THE ACTION AND THEREFORE INTERESTED IN ITS OUTCOME, THE TESTIMONY MAY BE

ACCEPTED IF IT IS NOT CONTRADICTED BY DIRECT EVIDENCE OR BY ANY INFERENCE THAT MAY BE DRAWN FROM THE EVIDENCE, IF YOU BELIEVE THE TESTIMONY.

YOU ARE NOT TO DECIDE THIS CASE BY COUNTING THE NUMBER OF WITNESSES WHO HAVE TESTIFIED ON THE OPPOSING SIDES. WITNESS TESTIMONY IS WEIGHED; WITNESSES ARE NOT COUNTED. THE TEST IS NOT THE RELATIVE NUMBER OF WITNESSES, BUT THE RELATIVE CONVINCING FORCE OF THE EVIDENCE. THE TESTIMONY OF A SINGLE WITNESS IS SUFFICIENT TO PROVE ANY FACT, EVEN IF A GREATER NUMBER OF WITNESSES TESTIFIED TO THE CONTRARY, IF AFTER CONSIDERING ALL OF THE OTHER EVIDENCE, YOU BELIEVE THAT WITNESS.

EXPERT WITNESS TESTIMONY

WHEN KNOWLEDGE OF TECHNICAL SUBJECT MATTER MAY BE HELPFUL TO THE JURY, A PERSON WHO HAS SPECIAL TRAINING OR EXPERIENCE IN THAT TECHNICAL FIELD IS PERMITTED TO STATE HIS OR HER OPINION ON THOSE TECHNICAL MATTERS. HOWEVER, YOU ARE NOT REQUIRED TO ACCEPT THAT OPINION. AS WITH ANY OTHER WITNESS, IT IS UP TO YOU TO DECIDE WHETHER TO RELY ON IT.

IMPEACHMENT BY WITNESS'S INCONSISTENT STATEMENTS

IN DETERMINING THE WEIGHT TO GIVE TO THE TESTIMONY OF A WITNESS, CONSIDER WHETHER THERE WAS EVIDENCE THAT AT SOME OTHER TIME THE WITNESS SAID OR DID SOMETHING, OR FAILED TO SAY OR DO SOMETHING THAT WAS DIFFERENT FROM THE TESTIMONY GIVEN AT THE TRIAL.

A SIMPLE MISTAKE BY A WITNESS DOES NOT NECESSARILY MEAN THAT THE WITNESS DID NOT TELL THE TRUTH AS HE OR SHE REMEMBERS IT. PEOPLE MAY FORGET SOME THINGS OR REMEMBER OTHER THINGS INACCURATELY. IF A WITNESS MADE A MISSTATEMENT, CONSIDER WHETHER THAT MISSTATEMENT WAS AN INTENTIONAL FALSEHOOD OR SIMPLY AN INNOCENT MISTAKE. THE SIGNIFICANCE OF THAT MAY DEPEND ON WHETHER IT HAS TO DO WITH AN IMPORTANT FACT OR WITH ONLY AN UNIMPORTANT DETAIL.

NO INFERENCE FROM FILING SUIT

THE FACT THAT A PERSON BROUGHT A LAWSUIT AND IS IN COURT SEEKING DAMAGES CREATES NO INFERENCE THAT THE PERSON IS ENTITLED TO A JUDGMENT. ANYONE MAY MAKE A CLAIM AND FILE A LAWSUIT. THE ACT OF MAKING A CLAIM IN A LAWSUIT, BY ITSELF, DOES

NOT IN ANY WAY TEND TO ESTABLISH THAT CLAIM AND IS NOT EVIDENCE.

OBJECTIONS TO THE EVIDENCE

DURING THE COURSE OF TRIAL, YOU WILL HAVE HEARD OBJECTIONS TO EVIDENCE. SOMETIMES THESE HAVE BEEN ARGUED OUT OF THE HEARING OF THE JURY.

IT IS THE DUTY OF THE ATTORNEY ON EACH SIDE OF A CASE TO OBJECT WHEN THE OTHER SIDE OFFERS TESTIMONY OR OTHER EVIDENCE WHICH THE ATTORNEY BELIEVES IS NOT PROPERLY ADMISSIBLE. YOU SHOULD NOT DRAW ANY INFERENCE AGAINST OR SHOW ANY PREJUDICE AGAINST A LAWYER OR HIS OR HER CLIENT BECAUSE OF THE MAKING OF AN OBJECTION.

UPON ALLOWING TESTIMONY OR OTHER EVIDENCE TO BE INTRODUCED OVER THE OBJECTIONS OF AN ATTORNEY, THE COURT DOES NOT, UNLESS EXPRESSLY STATED, INDICATE ANY OPINION AS TO THE WEIGHT OR EFFECT OF SUCH EVIDENCE. AS STATED BEFORE, YOU THE JURY ARE THE SOLE JUDGES OF THE CREDIBILITY OF ALL WITNESSES AND THE WEIGHT AND EFFECT OF ALL EVIDENCE.

WHEN THE COURT HAS SUSTAINED AN OBJECTION TO A QUESTION ADDRESSED TO A WITNESS, THE JURY MUST DISREGARD THE

QUESTION ENTIRELY, AND MAY DRAW NO INFERENCE FROM THE WORDING OF IT, OR SPECULATE AS TO WHAT THE WITNESS WOULD HAVE SAID IF PERMITTED TO ANSWER. SIMILARLY, WHEN THE COURT STRIKES SOMETHING FROM THE RECORD, THE JURY MUST DISREGARD IT ENTIRELY.

STIPULATIONS

AS YOU ALREADY HAVE BEEN TOLD, PLAINTIFF AND DEFENDANT HAVE STIPULATED TO CERTAIN FACTS IN THIS MATTER. A STIPULATION IS SOMETHING THAT THE ATTORNEYS AGREES IS ACCURATE. WHEN THERE IS NO DISPUTE ABOUT CERTAIN FACTS OR TESTIMONY, THE ATTORNEYS MAY AGREE OR "STIPULATE" TO THOSE FACTS AND/OR TESTIMONY. YOU MUST ACCEPT A STIPULATED FACT AS EVIDENCE AND TREAT THAT FACT AS HAVING BEEN PROVEN HERE IN COURT. STIPULATED TESTIMONY MUST BE CONSIDERED IN THE SAME WAY AS IF THAT TESTIMONY HAD BEEN RECEIVED HERE IN COURT.

THE PARTIES HAVE STIPULATED AS TO THE FOLLOWING FACTS:

1. THE SUBJECT INCIDENT OCCURRED ON OCTOBER 13, 2015.

2. AT THE TIME OF THE SUBJECT INCIDENT, PLAINTIFF WAS EMPLOYED BY, AND WAS IN THE COURSE AND SCOPE

OF HER EMPLOYMENT WITH, HAMMOND DAILY STAR PUBLISHING COMPANY, INC.

3. KANSA TECHNOLOGY, L.L.C. IS THE MANUFACTURER OF THE KANSA 480 NEWSPAPER INSERTER AT ISSUE.

4. HAMMOND DAILY STAR PUBLISHING COMPANY, INC. WAS THE OWNER OF THE KANSA 480 NEWSPAPER INSERTER AT THE TIME OF THE SUBJECT INCIDENT.

5. PLAINTIFF SHAMBERIA NECOLE SMITH SUSTAINED AN INJURY TO HER LEFT, FIFTH ("PINKY") FINGER AS A RESULT OF THE SUBJECT INCIDENT.

6. KANSA TECHNOLOGY, L.L.C. SOLD THE SUBJECT KANSA 480 NEWSPAPER INSERTER IN A NEW CONDITION TO NEWS DISPATCH IN MICHIGAN CITY, INDIANA, IN 1999. IN 2003, NEWS DISPATCH TRANSFERRED THE MACHINE TO A SISTER COMPANY, THE HAMMOND DAILY STAR IN HAMMOND, LA.

SUBSTANTIVE LAW

THIS PRODUCT LIABILITY LAWSUIT ARISES OUT OF AN INJURY MS. SMITH SUSTAINED ON OCTOBER 13, 2015, WHILE SHE WAS WORKING IN THE MAIL ROOM AT THE HAMMOND DAILY STAR NEWSPAPER COMPANY. AS A RESULT OF THE ACCIDENT, MS. SMITH LOST A PORTION OF HER LEFT FINGER. KANSA IS THE MANUFACTURER

OF A KANSA 480 NEWSPAPER INSERTER THAT WAS PRESENT AT THE HAMMOND DAILY STAR NEWSPAPER COMPANY. THE PARTIES DO NOT AGREE HOW THE ACCIDENT HAPPENED OR AS TO WHAT EQUIPMENT WAS INVOLVED IN THE ACCIDENT

PLAINTIFF SHAMBERIA NECOLE SMITH IS SEEKING TO RECOVER MONETARY DAMAGES FROM DEFENDANT KANSA TECHNOLOGY, LLC ("KANSA") FOR HER INJURIES, INCLUDING THE AMPUTATION OF THE LAST DIGIT OF HER LEFT FINGER, THAT SHE CLAIMS TO HAVE SUFFERED ON OCTOBER 13, 2015, WHEN ALLEGEDLY OPERATING THE KANSA 480 NEWSPAPER INSERTER. MS. SMITH CLAIMS THAT THE KANSA 480 NEWSPAPER INSERTER WAS UNREASONABLY DANGEROUS IN DESIGN AND DUE TO INADEQUATE WARNING; AND THAT THE KANSA 480 NEWSPAPER INSERTER'S UNREASONABLY DANGEROUS CHARACTERISTIC CAUSED HER INJURIES.

AS YOU HAVE HEARD, DEFENDANT KANSA TECHNOLOGY, LLC DENIES LIABILITY. DEFENDANT KANSA TECHNOLOGY, LLC DISPUTES THAT THE INJURY TO PLAINTIFF WAS CAUSED BY THE KANSA 480 NEWSPAPER INSERTER. FURTHER, DEFENDANT KANSA TECHNOLOGY, LLC CLAIMS THAT SHAMBERIA NECOLE SMITH'S NEGLIGENCE, AS WELL AS THE NEGLIGENCE OF HER EMPLOYER, WAS THE CAUSE OF HER INJURY.

I WILL NOW EXPLAIN THE PRINCIPLES OF SUBSTANTIVE LAW APPLICABLE TO THE PRODUCTS LIABILITY CLAIM(S) ASSERTED IN THIS ACTION.

LOUISIANA PRODUCTS LIABILITY ACT ("LPLA")

PLAINTIFF, MS. SMITH, HAS ASSERTED A PRODUCTS LIABILITY CLAIM AGAINST DEFENDANT KANSA TECHNOLOGY, LLC. THE LOUISIANA PRODUCTS LIABILITY ACT ESTABLISHES THE EXCLUSIVE THEORIES OF LIABILITY FOR MANUFACTURERS FOR DAMAGES CAUSED BY THEIR PRODUCTS. A CLAIMANT MAY NOT RECOVER FROM A MANUFACTURER FOR DAMAGE CAUSED BY A PRODUCT ON THE BASIS OF ANY THEORY OF LIABILITY THAT IS NOT SET FORTH IN THE LOUISIANA PRODUCTS LIABILITY ACT ("LPLA").

THE MANUFACTURER OF A PRODUCT SHALL BE LIABLE TO A CLAIMANT FOR DAMAGE PROXIMATELY CAUSED BY A CHARACTERISTIC OF THE PRODUCT THAT RENDERS THE PRODUCT UNREASONABLY DANGEROUS WHEN SUCH DAMAGE AROSE FROM A REASONABLY ANTICIPATED USE OF THE PRODUCT BY THE CLAIMANT OR ANOTHER PERSON OR ENTITY.

THE PARTIES HAVE STIPULATED THAT KANSA TECHNOLOGY, LLC IS THE MANUFACTURER OF THE KANSA 480 NEWSPAPER INSERTER AT

ISSUE. THE TERM "REASONABLY ANTICIPATED USE" MEANS A USE OR HANDLING OF A PRODUCT THAT THE PRODUCT'S MANUFACTURER SHOULD REASONABLY EXPECT OF AN ORDINARY PERSON IN THE SAME OR SIMILAR CIRCUMSTANCES.

AS IT PERTAINS TO THIS CASE, THE KANSA 480 NEWSPAPER INSERTER IS UNREASONABLY DANGEROUS IF AND ONLY IF: (A) THE PRODUCT IS UNREASONABLY DANGEROUS IN DESIGN; OR (B) THE PRODUCT IS UNREASONABLY DANGEROUS BECAUSE OF INADEQUATE WARNING.

A. UNREASONABLY DANGEROUS IN DESIGN

MS. SMITH CLAIMS THAT THE KANSA 480 NEWSPAPER INSERTER, WHICH WAS MANUFACTURED BY THE DEFENDANT KANSA TECHNOLOGY, LLC, WAS UNREASONABLY DANGEROUS IN ITS DESIGN. TO SUCCEED ON THIS CLAIM, PLAINTIFF SHAMBERIA NECOLE SMITH MUST PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT AT THE TIME THE PRODUCT LEFT ITS MANUFACTURER'S CONTROL: (1) THERE EXISTED AN ALTERNATIVE DESIGN FOR THE PRODUCT THAT WAS CAPABLE OF PREVENTING THE CLAIMANT'S DAMAGE. TO PROVE THIS, PLAINTIFF MUST PRESENT EVIDENCE OF THE EXISTENCE OF A NEWSPAPER INSERTER WITH AN ALTERNATIVE DESIGN THAT WAS CAPABLE OF PREVENTING PLAINTIFF'S INJURIES.

IN ADDITION TO THE ALTERNATIVE DESIGN REQUIREMENT, PLAINTIFF MUST ALSO PROVE THAT (2) THE LIKELIHOOD THAT THE PRODUCT'S DESIGN WOULD CAUSE THE CLAIMANT'S DAMAGE AND THE GRAVITY OF THAT DAMAGE OUTWEIGHED THE BURDEN ON THE MANUFACTURER OF ADOPTING SUCH ALTERNATIVE DESIGN AND THE ADVERSE EFFECT, IF ANY, OF SUCH ALTERNATIVE DESIGN ON THE UTILITY OF THE PRODUCT. IF YOU FIND THAT KANSA TECHNOLOGY, LLC HAS USED REASONABLE CARE TO PROVIDE AN ADEOUATE WARNING (WHICH I WILL DEFINE MOMENTARILY) TO USERS AND HANDLERS OF THE PRODUCT, THEN YOU MUST CONSIDER THE ADEQUATE WARNING IN EVALUATING THE LIKELIHOOD OF DAMAGE.

IN OTHER WORDS, PLAINTIFF MUST SHOW THAT THE RISK AVOIDED BY USING THE ALTERNATIVE DESIGN WOULD HAVE EXCEEDED THE BURDEN OF SWITCHING TO THAT ALTERNATIVE DESIGN. IN EVALUATING THE RISK AVOIDED BY THE ALTERNATIVE DESIGN AS COMPARED WITH THE BURDEN OF SWITCHING TO THE ALTERNATIVE DESIGN, YOU MAY CONSIDER A VARIETY OF FACTORS INCLUDING (a) THE EXTENT OF THE RISK THAT THE ALTERNATIVE DESIGN WOULD HAVE AVOIDED (SUCH AS EVIDENCE CONCERNING THE FREQUENCY, CAUSE, AND SEVERITY OF SIMILAR INCIDENTS, THE ECONOMIC COSTS ENTAILED BY THOSE

INCIDENTS, OR THE EXTENT OF THE REDUCTION AND FREQUENCY OF THOSE INCIDENTS THAT WOULD HAVE RESULTED IN THE USE OF PLAINTIFF'S PROPOSED ALTERNATIVE DESIGN), (b) EVIDENCE CONCERNING THE BURDEN THAT WOULD HAVE BEEN IMPOSED ON THE MANUFACTURER IN SWITCHING TO THE PROPOSED ALTERNATIVE DESIGN, AND (c) EVIDENCE RELATED TO THE LOSS OF PRODUCT UTILITY THAT THE USE OF THE ALTERNATIVE DESIGN WOULD HAVE OCCASIONED.

THE TERM "ADEQUATE WARNING" MEANS A WARNING OR INSTRUCTION THAT WOULD LEAD AN ORDINARY REASONABLE USER OR HANDLER OF A PRODUCT TO CONTEMPLATE THE DANGER IN USING OR HANDLING THE PRODUCT AND EITHER TO DECLINE TO USE OR HANDLE THE PRODUCT OR, IF POSSIBLE, TO USE OR HANDLE THE PRODUCT IN SUCH A MANNER AS TO AVOID THE DAMAGE FOR WHICH THE CLAIM IS MADE.

FINALLY, THE PLAINTIFF MUST PROVE THAT (4) THE INJURY WHICH SHE SUFFERED WAS PROXIMATELY CAUSED BY THE UNREASONABLY DANGEROUS DESIGN AND EXISTED AT THE TIME THE PRODUCT LEFT THE MANUFACTURER'S CONTROL OR RESULTED FROM A REASONABLY ANTICIPATED ALTERATION OF MODIFICATION OF THE PRODUCT; AND (5) THAT THERE WAS ACTUAL DAMAGE TO THE PLAINTIFF'S PERSON OR HER PROPERTY.

AGAIN, THE TERM "REASONABLY ANTICIPATED USE" MEANS A USE OR HANDLING OF A PRODUCT THAT THE PRODUCT'S MANUFACTURER (KANSA TECHNOLOGY, LLC) SHOULD REASONABLY EXPECT OF AN ORDINARY PERSON IN THE SAME OR SIMILAR CIRCUMSTANCES. "REASONABLY ANTICIPATED ALTERATION OR MODIFICATION" MEANS A CHANGE IN A PRODUCT THAT THE PRODUCT'S MANUFACTURER SHOULD REASONABLY EXPECT TO BE MADE BY AN ORDINARY PERSON IN THE SAME OR SIMILAR CIRCUMSTANCES, AND ALSO MEANS A CHANGE ARISING FROM ORDINARY WEAR AND TEAR.

"REASONABLY ANTICIPATED ALTERATION OR MODIFICATION" DOES NOT MEAN THE FOLLOWING:

a) ALTERATION, MODIFICATION OR REMOVAL OF AN OTHERWISE ADEQUATE WARNING PROVIDED ABOUT A PRODUCT; OR

b) THE FAILURE OF A PERSON OR ENTITY, OTHER THAN THE MANUFACTURER OF A PRODUCT, REASONABLY TO PROVIDE TO THE PRODUCT USER OR HANDLER AN ADEQUATE WARNING THAT THE MANUFACTURER PROVIDED ABOUT THE PRODUCT, WHEN THE MANUFACTURER HAS SATISFIED HIS OBLIGATION TO USE REASONABLE CARE TO PROVIDE THE ADEQUATE WARNING BY PROVIDING IT TO SUCH PERSON OR ENTITY

RATHER THAN TO THE PRODUCT USER OR HANDLER; OR

c) CHANGES TO OR IN A PRODUCT OR ITS OPERATION BECAUSE THE PRODUCT DOES NOT RECEIVE REASONABLE CARE AND MAINTENANCE.

THESE ARE NOT REASONABLY ANTICIPATED ALTERATIONS FOR WHICH THE DEFENDANT MAY BE HELD RESPONSIBLE.

STATE OF THE ART DEFENSE - UNREASONABLY DANGEROUS IN DESIGN CLAIM

DEFENDANT KANSA TECHNOLOGY, LLC IS NOT LIABLE FOR THE DAMAGE PROXIMATELY CAUSED BY A CHARACTERISTIC OF THE DESIGN OF THE 480 NEWSPAPER INSERTER IF DEFENDANT KANSA PROVES THAT, AT THE TIME THE PRODUCT LEFT ITS CONTROL:

(1) KANSA DID NOT KNOW AND, IN LIGHT OF THE REASONABLY AVAILABLE SCIENTIFIC AND TECHNICAL KNOWLEDGE THEN EXISTING, COULD NOT HAVE KNOWN OF THE DANGEROUS DESIGN CHARACTERISTIC THAT CAUSED THE INJURY, OR THE ALTERNATIVE DESIGN IDENTIFIED BY THE PLAINTIFF; OR

(2) THE ALTERNATIVE DESIGN IDENTIFIED BY THE PLAINTIFF WAS NOT FEASIBLE, IN LIGHT OF THE REASONABLY AVAILABLE SCIENTIFIC AND TECHNICAL

KNOWLEDGE, OR THE ECONOMIC PRACTICALITY, THEN EXISTING.

UNREASONABLY DANGEROUS
BECAUSE OF INADEQUATE WARNING

MS. SMITH ALSO CLAIMS THAT THE KANSA 480 NEWSPAPER INSERTER, WHICH WAS MANUFACTURED BY THE DEFENDANT KANSA TECHNOLOGY, LLC, WAS UNREASONABLY DANGEROUS BECAUSE OF INADEQUATE WARNING.

TO SUCCEED ON THIS CLAIM, PLAINTIFF SHAMBERIA NECOLE SMITH MUST PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT: (1) AT THE TIME THE PRODUCT LEFT THE MANUFACTURER'S CONTROL OR RESULTING FROM A REASONABLY ANTICIPATED ALTERATION OR MODIFICATION OF THE PRODUCT; (2) THE PRODUCT POSSESSED A CHARACTERISTIC THAT MAY CAUSE DAMAGE AND THE MANUFACTURER FAILED TO USE REASONABLE CARE TO PROVIDE AN ADEQUATE WARNING OF SUCH CHARACTERISTIC AND ITS DANGER TO USERS AND HANDLERS OF THE PRODUCT.

"REASONABLY ANTICIPATED ALTERATION OR MODIFICATION" MEANS A CHANGE IN A PRODUCT THAT THE PRODUCT'S MANUFACTURER SHOULD REASONABLY EXPECT TO BE MADE BY AN ORDINARY PERSON IN THE SAME OR SIMILAR CIRCUMSTANCES, AND ALSO

MEANS A CHANGE ARISING FROM ORDINARY WEAR AND TEAR.

"REASONABLY ANTICIPATED ALTERATION OR MODIFICATION" DOES NOT MEAN THE FOLLOWING:

a) ALTERATION, MODIFICATION OR REMOVAL OF AN OTHERWISE ADEQUATE WARNING PROVIDED ABOUT A PRODUCT; OR

b) THE FAILURE OF A PERSON OR ENTITY, OTHER THAN THE MANUFACTURER OF A PRODUCT, REASONABLY TO PROVIDE TO THE PRODUCT USER OR HANDLER AN ADEQUATE WARNING THAT THE MANUFACTURER PROVIDED ABOUT THE PRODUCT, WHEN THE MANUFACTURER HAS SATISFIED HIS OBLIGATION TO USE REASONABLE CARE TO PROVIDE THE ADEQUATE WARNING BY PROVIDING IT TO SUCH PERSON OR ENTITY RATHER THAN TO THE PRODUCT USER OR HANDLER; OR

c) CHANGES TO OR IN A PRODUCT OR ITS OPERATION BECAUSE THE PRODUCT DOES NOT RECEIVE REASONABLE CARE AND MAINTENANCE.

THESE ARE NOT REASONABLY ANTICIPATED ALTERATIONS FOR WHICH THE DEFENDANT MAY BE HELD RESPONSIBLE.

AS PREVIOUSLY DEFINED, "ADEQUATE WARNING" MEANS A WARNING OR INSTRUCTION THAT WOULD LEAD AN ORDINARY REASONABLE USER OR HANDLER OF A PRODUCT TO CONTEMPLATE THE DANGER IN USING OR HANDLING THE PRODUCT AND EITHER TO DECLINE TO USE OR HANDLE THE PRODUCT OR, IF POSSIBLE, TO USE OR HANDLE THE PRODUCT IN SUCH A MANNER AS TO AVOID THE DAMAGE FOR WHICH THE CLAIM IS MADE.

HOWEVER, A MANUFACTURER IS NOT REQUIRED TO PROVIDE AN ADEQUATE WARNING ABOUT HIS PRODUCT WHEN: (a) THE PRODUCT IS NOT DANGEROUS TO AN EXTENT BEYOND THAT WHICH WOULD BE CONTEMPLATED BY THE ORDINARY USER OR HANDLER OF THE PRODUCT, WITH THE ORDINARY KNOWLEDGE COMMON TO THE COMMUNITY AS TO THE PRODUCT'S CHARACTERISTICS; OR (b) THE USER OR HANDLER OF THE PRODUCT ALREADY KNOWS OR REASONABLY SHOULD BE EXPECTED TO KNOW OF THE CHARACTERISTIC OF THE PRODUCT THAT MAY CAUSE DAMAGE AND THE DANGER OF SUCH CHARACTERISTIC.

THE MANUFACTURER'S DUTY TO WARN IS A CONTINUING ONE. A MANUFACTURER OF A PRODUCT WHO, AFTER THE PRODUCT HAS LEFT HIS CONTROL, KNOWS OF A CHARACTERISTIC OF THE PRODUCT THAT MAY CAUSE DAMAGE AND THE DANGER OF SUCH CHARACTERISTIC, OR WHO WOULD HAVE KNOWN HAD HE ACTED

AS A REASONABLY PRUDENT MANUFACTURER, IS LIABLE FOR DAMAGE CAUSED BY HIS SUBSEQUENT FAILURE TO USE REASONABLE CARE TO PROVIDE AN ADEQUATE WARNING OF SUCH CHARACTERISTIC AND ITS DANGER TO USERS AND HANDLERS OF THE PRODUCT.

IN ADDITION TO PROVING THAT THE KANSA 480 NEWSPAPER INSERTER WAS UNREASONABLY DANGEROUS BECAUSE OF INADEQUATE WARNING, MS. SMITH MUST ALSO PROVE THAT (3) THE INJURY WHICH PLAINTIFF SUFFERED WAS PROXIMATELY CAUSED BY THE CHARACTERISTIC THAT RENDERS IT UNREASONABLY DANGEROUS (INADEQUATE WARNING); (4) THE INJURY WHICH PLAINTIFF SUFFERED AROSE FROM A REASONABLY ANTICIPATED USE OF THE PRODUCT BY THE PLAINTIFF OR OTHER PERSON; AND (5) THERE WAS ACTUAL DAMAGE TO THE PLAINTIFF'S PERSON OR HER PROPERTY.

PLAINTIFF IS NOT REQUIRED TO PROVE BOTH THEORIES OF LIABILITY: UNREASONABLY DANGEROUS IN DESIGN; UNREASONABLY DANGEROUS BECAUSE OF INADEQUATE WARNING. RATHER, SHE MAY RECOVER IF SHE PROVES EITHER OF THEM. HOWEVER, SHE MAY RECOVER ONLY THOSE DAMAGES OR BENEFIT THE LAW PROVIDES FOR THE CLAIMS THAT SHE PROVES, AND SHE MAY NOT RECOVER THE SAME DAMAGES OR BENEFITS MORE THAN ONCE.

COMPARATIVE FAULT

IN ANY ACTION FOR DAMAGES WHERE A PERSON SUFFERS INJURY, DEATH, OR LOSS, THE DEGREE OR PERCENTAGE OF FAULT OF ALL PERSONS CAUSING OR CONTRIBUTING TO THE INJURY, DEATH, OR LOSS SHALL BE DETERMINED, REGARDLESS OF WHETHER THE PERSON IS A PARTY TO THE ACTION OR A NON-PARTY. IF A PERSON SUFFERS INJURY, DEATH, OR LOSS AS THE RESULT PARTLY OF HIS OR HER OWN NEGLIGENCE AND PARTLY AS A RESULT OF THE FAULT OF ANOTHER PERSON OR PERSONS, THE AMOUNT OF DAMAGES SHALL BE REDUCED IN PROPORTION TO THE DEGREE OR PERCENTAGE OF NEGLIGENCE ATTRIBUTABLE TO THE PERSON SUFFERING THE INJURY, DEATH, OR LOSS.

IF YOU DECIDE THAT THE PLAINTIFF HAS PROVED HER PRODUCT LIABILITY CLAIM AGAINST DEFENDANT KANSA TECHNOLOGY, LLC, THEN YOU MUST DECIDE WHETHER THE DEFENDANT HAS PROVED THAT PLAINTIFF SHAMBERIA NECOLE SMITH WAS NEGLIGENT AND THAT HER NEGLIGENCE CONTRIBUTED TO HER INJURY. THE STANDARD APPLICABLE TO THE PLAINTIFF'S CONDUCT IS THAT SHE EXERCISE THE DEGREE OF CARE WHICH YOU MIGHT REASONABLY EXPECT A PERSON TO EXERCISE FOR HIS OR HER OWN SAFETY AND PROTECTION. THE DEFENDANT KANSA TECHNOLOGY, LLC HAS THE BURDEN OF ESTABLISHING, BY A

PREPONDERANCE OF THE EVIDENCE, THAT THE PLAINTIFF FAILED TO CONFORM TO THAT STANDARD AND BY THAT FAILURE CONTRIBUTED TO HER OWN INJURY.

THE CONTRIBUTING FAULT OF THE PLAINTIFF, IF ANY, MAY TAKE THE FORM OF MISUSE OF THE PRODUCT. MISUSE MEANS MISHANDLING THE PRODUCT, OR USING IT IN A WAY WHICH THE MANUFACTURER COULD NOT HAVE REASONABLY FORESEEN OR EXPECTED IN THE NORMAL AND INTENDED USE OF THE PRODUCT.

IF YOU DECIDE THAT THE PLAINTIFF, MS. SMITH, HAS PROVED HER PRODUCT LIABILITY CLAIM AGAINST DEFENDANT KANSA TECHNOLOGY, LLC, THEN YOU MUST ALSO DECIDE WHETHER THE DEFENDANT HAS PROVED THAT PLAINTIFF'S EMPLOYER, THE HAMMOND DAILY STAR PUBLISHING COMPANY, INC., WAS NEGLIGENT AND THAT ITS NEGLIGENCE CONTRIBUTED TO PLAINTIFF'S INJURY. THE STANDARD APPLICABLE TO THE CONDUCT OF THE HAMMOND DAILY STAR PUBLISHING COMPANY, INC. IS THAT IT EXERCISE THE DEGREE OF CARE WHICH YOU MIGHT REASONABLY EXPECT A PERSON OR ENTITY TO EXERCISE FOR HIS OR HER OWN EMPLOYEE'S SAFETY AND PROTECTION. THE DEFENDANT KANSA TECHNOLOGY, LLC HAS THE BURDEN OF ESTABLISHING, BY A PREPONDERANCE OF THE EVIDENCE, THAT PLAINTIFF'S EMPLOYER, THE HAMMOND DAILY STAR PUBLISHING COMPANY, INC., FAILED TO

CONFORM TO THAT STANDARD AND BY THAT FAILURE CONTRIBUTED TO PLAINTIFF'S INJURY.

YOU CAN ASSIGN ANY PERCENTAGE OF FAULT TO PLAINTIFF MS. SMITH, TO DEFENDANT KANSA TECHNOLOGY LLC, OR TO PLAINTIFF'S EMPLOYER, THE HAMMOND DAILY STAR PUBLISHING COMPANY, INC., THAT YOU WANT, BUT THE TOTAL OF ALL OF THE PERCENTAGES MUST BE 100%. IF YOU'RE PERSUADED BY THE DEFENDANT'S EVIDENCE THAT THE ONLY REASON THE PLAINTIFF WAS INJURED WAS BECAUSE OF THE PLAINTIFF'S OWN SUB-STANDARD CONDUCT, YOU MAY RETURN A VERDICT FOR THE DEFENDANT IN RESPONSE TO THE QUESTIONS ON THE VERDICT FORM BY ASSIGNING 100% FAULT TO THE PLAINTIFF. IF THE DEFENDANT DOES NOT PERSUADE YOU THAT THE PLAINTIFF WAS AT FAULT AND THE PLAINTIFF HAS OTHERWISE PROVED HER CASE AS I HAVE DESCRIBED TO YOU, THEN YOU SHOULD RETURN A VERDICT FOR THE PLAINTIFF WITHOUT ASSIGNING ANY PERCENTAGE OF FAULT TO THE PLAINTIFF.

CALCULATION OF DAMAGES

CONSIDER DAMAGES ONLY IF NECESSARY

IF PLAINTIFF SHAMBERIA NECOLE SMITH HAS PROVED HER CLAIM AGAINST DEFENDANT BY A PREPONDERANCE OF THE EVIDENCE, YOU

MUST DETERMINE THE DAMAGES TO WHICH PLAINTIFF SHAMBERIA NECOLE SMITH IS ENTITLED. YOU SHOULD NOT INTERPRET THE FACT THAT I AM GIVING INSTRUCTIONS ABOUT PLAINTIFF SHAMBERIA NECOLE SMITH'S DAMAGES AS AN INDICATION IN ANY WAY THAT I BELIEVE THAT PLAINTIFF SHOULD, OR SHOULD NOT, WIN THIS CASE. IT IS YOUR TASK FIRST TO DECIDE WHETHER DEFENDANT KANSA TECHNOLOGY, LLC IS LIABLE. I AM INSTRUCTING YOU ON DAMAGES ONLY SO THAT YOU WILL HAVE GUIDANCE IN THE EVENT YOU DECIDE THAT DEFENDANT IS LIABLE AND THAT PLAINTIFF SHAMBERIA NECOLE SMITH IS ENTITLED TO RECOVER MONEY FROM DEFENDANT KANSA TECHNOLOGY, LLC.

COMPENSATORY DAMAGES

IF YOU FIND THAT DEFENDANT KANSA TECHNOLOGY, LLC IS LIABLE TO PLAINTIFF SHAMBERIA NECOLE SMITH, THEN YOU MUST DETERMINE AN AMOUNT YOU FIND BY A PREPONDERANCE OF THE EVIDENCE THAT IS FAIR COMPENSATION FOR ALL OF PLAINTIFF'S DAMAGES. THESE DAMAGES ARE CALLED COMPENSATORY DAMAGES. THE PURPOSE OF COMPENSATORY DAMAGES IS TO MAKE PLAINTIFF SHAMBERIA NECOLE SMITH WHOLE-THAT IS, TO COMPENSATE PLAINTIFF FOR THE DAMAGE THAT SHE HAS SUFFERED. COMPENSATORY DAMAGES ARE NOT LIMITED TO EXPENSES

THAT PLAINTIFF MAY HAVE INCURRED BECAUSE OF HER INJURY. IF PLAINTIFF WINS, SHE IS ENTITLED TO COMPENSATORY DAMAGES FOR THE PHYSICAL INJURY, PAIN AND SUFFERING, AND MENTAL ANGUISH THAT SHE HAS SUFFERED BECAUSE OF DEFENDANT'S WRONGFUL CONDUCT.

YOU MAY AWARD COMPENSATORY DAMAGES ONLY FOR INJURIES THAT PLAINTIFF SHAMBERIA NECOLE SMITH PROVES WERE PROXIMATELY CAUSED BY DEFENDANT KANSA TECHNOLOGY, LLC'S ALLEGEDLY WRONGFUL CONDUCT. THE DAMAGES THAT YOU AWARD MUST BE FAIR COMPENSATION FOR ALL OF PLAINTIFF'S DAMAGES, NO MORE AND NO LESS. DAMAGES ARE NOT ALLOWED AS PUNISHMENT AND CANNOT BE IMPOSED OR INCREASED TO PENALIZE DEFENDANT KANSA TECHNOLOGY, LLC. YOU SHOULD NOT AWARD COMPENSATORY DAMAGES FOR SPECULATIVE INJURIES, BUT ONLY FOR THOSE INJURIES THAT PLAINTIFF HAS ACTUALLY SUFFERED OR THAT PLAINTIFF IS REASONABLY LIKELY TO SUFFER IN THE FUTURE.

IF YOU DECIDE TO AWARD COMPENSATORY DAMAGES, YOU SHOULD BE GUIDED BY DISPASSIONATE COMMON SENSE. COMPUTING DAMAGES MAY BE DIFFICULT, BUT YOU MUST NOT LET THAT DIFFICULTY LEAD YOU TO ENGAGE IN ARBITRARY GUESSWORK. ON THE OTHER HAND, THE LAW DOES NOT REQUIRE THAT

PLAINTIFF PROVE THE AMOUNT OF HER LOSSES WITH MATHEMATICAL PRECISION, BUT ONLY WITH AS MUCH DEFINITENESS AND ACCURACY AS THE CIRCUMSTANCES PERMIT.

YOU MUST USE SOUND DISCRETION IN FIXING AN AWARD OF DAMAGES, DRAWING REASONABLE INFERENCES WHERE YOU FIND THEM APPROPRIATE FROM THE FACTS AND CIRCUMSTANCES IN EVIDENCE. HOWEVER, SOME OF THESE DAMAGES, SUCH AS MENTAL OR PHYSICAL PAIN AND SUFFERING, ARE INTANGIBLE THINGS ABOUT WHICH NO EVIDENCE OF VALUE IS REQUIRED. IN AWARDING THESE DAMAGES, YOU ARE NOT DETERMINING VALUE, INSTEAD YOU ARE DETERMINING WHAT AMOUNT WILL FAIRLY COMPENSATE PLAINTIFF FOR HER INJURIES.

YOU SHOULD CONSIDER THE FOLLOWING ELEMENTS OF DAMAGE, TO THE EXTENT YOU FIND THEM PROVED BY A PREPONDERANCE OF THE EVIDENCE.

INJURY/PAIN/DISABILITY/DISFIGUREMENT/ LOSS OF CAPACITY FOR ENJOYMENT OF LIFE/MENTAL ANGUISH

YOU MAY AWARD DAMAGES FOR ANY BODILY INJURY THAT PLAINTIFF SHAMBERIA NECOLE SMITH SUSTAINED AND ANY PAIN AND SUFFERING, MENTAL ANGUISH, AND LOSS OF CAPACITY FOR ENJOYMENT OF LIFE THAT

PLAINTIFF SHAMBERIA NECOLE SMITH EXPERIENCED IN THE PAST OR WILL EXPERIENCE IN THE FUTURE AS A RESULT OF THE BODILY INJURY. NO EVIDENCE OF THE VALUE OF INTANGIBLE THINGS, SUCH AS MENTAL OR PHYSICAL PAIN AND SUFFERING, HAS BEEN OR NEED BE INTRODUCED. YOU ARE NOT TRYING TO DETERMINE VALUE, BUT AN AMOUNT THAT WILL FAIRLY COMPENSATE PLAINTIFF SHAMBERIA NECOLE SMITH FOR THE DAMAGES SHE HAS SUFFERED. THERE IS NO EXACT STANDARD FOR FIXING THE COMPENSATION TO BE AWARDED FOR THESE ELEMENTS OF DAMAGE. ANY AWARD THAT YOU MAKE MUST BE FAIR IN THE LIGHT OF THE EVIDENCE.

COURTS HAVE RECOGNIZED THAT LOSS OF ENJOYMENT OF LIFE IS SEPARATE AND INDEPENDENT FROM PHYSICAL PAIN AND SUFFERING. PLAINTIFF SHAMBERIA NECOLE SMITH IS ENTITLED TO DAMAGES FOR LOSS OF ENJOYMENT OF LIFE IF SHE PROVES THAT HER LIFESTYLE WAS DETRIMENTALLY ALTERED OR IF SHE WAS FORCED TO GIVE UP ACTIVITIES BECAUSE OF HER INJURY. LOSS OF SOCIAL AND RECREATIONAL ACTIVITIES MAY PROPERLY BE CONSIDERED AS ONE OF THE COMPONENTS OF AN AWARD OF GENERAL DAMAGES.

MEDICAL EXPENSES

MEDICAL EXPENSES ARE THE REASONABLE EXPENSE OF HOSPITALIZATION AND MEDICAL CARE AND TREATMENT THAT THE PLAINTIFF REQUIRED OR WILL REQUIRE BECAUSE OF HER INJURIES WHICH WERE CAUSED BY THE DEFENDANT'S WRONGFUL CONDUCT. FUTURE MEDICAL EXPENSES ARE A LEGITIMATE FORM OF RECOVERY, EVEN THOUGH THEY ARE NOT SUSCEPTIBLE OF PRECISE MATHEMATICAL CALCULATIONS. FUTURE MEDICAL EXPENSE AWARDS WILL NOT BE MADE IN THE ABSENCE OF MEDICAL TESTIMONY THAT THEY ARE INDICATED AND SETTING OUT THEIR PROBABLE COST, HOWEVER, WHEN THE NEED FOR FUTURE MEDICAL CARE HAS BEEN DEMONSTRATED BUT COST IS NOT SUSCEPTIBLE OF DETERMINATION, THE COURT MAY MAKE A REASONABLE AWARD.

MITIGATION OF DAMAGES

A PERSON WHO CLAIMS DAMAGES RESULTING FROM THE WRONGFUL ACT OF ANOTHER HAS A DUTY UNDER THE LAW TO USE REASONABLE DILIGENCE TO MITIGATE IDS OR HER DAMAGES, THAT IS, TO AVOID OR TO MINIMIZE THOSE DAMAGES.

IF YOU FIND THE DEFENDANT IS LIABLE AND THE PLAINTIFF HAS SUFFERED DAMAGES, THE PLAINTIFF MAY NOT RECOVER FOR ANY

ITEM OF DAMAGE WHICH SHE COULD HAVE AVOIDED THROUGH REASONABLE EFFORT. IF YOU FIND THAT THE DEFENDANT PROVED BY A PREPONDERANCE OF THE EVIDENCE THE PLAINTIFF UNREASONABLY FAILED TO TAKE ADVANTAGE OF AN OPPORTUNITY TO LESSEN HER DAMAGES, YOU SHOULD DENY HER RECOVERY FOR THOSE DAMAGES THAT SHE WOULD HAVE AVOIDED HAD SHE TAKEN ADVANTAGE OF THE OPPORTUNITY.

YOU ARE THE SOLE JUDGE OF WHETHER THE PLAINTIFF ACTED REASONABLY IN AVOIDING OR MINIMIZING HER DAMAGES. AN INJURED PLAINTIFF MAY NOT SIT IDLY BY WHEN PRESENTED WITH AN OPPORTUNITY TO REDUCE HER DAMAGES. HOWEVER, SHE IS NOT REQUIRED TO EXERCISE UNREASONABLE EFFORTS OR INCUR UNREASONABLE EXPENSES IN MITIGATING THE DAMAGES. THE DEFENDANT HAS THE BURDEN OF PROVING THE DAMAGES THAT THE PLAINTIFF COULD HAVE MITIGATED. IN DECIDING WHETHER TO REDUCE THE PLAINTIFF'S DAMAGES BECAUSE OF HER FAILURE TO MITIGATE, YOU MUST WEIGH ALL THE EVIDENCE IN LIGHT OF THE PARTICULAR CIRCUMSTANCES OF THE CASE, USING SOUND DISCRETION IN DECIDING WHETHER THE DEFENDANT HAS SATISFIED ITS BURDEN OF PROVING THAT THE PLAINTIFF'S CONDUCT WAS NOT REASONABLE.

ATTORNEY'S FEES NOT RECOVERABLE UNDER LPLA

IN DECIDING THE DAMAGES TO WHICH THE PLAINTIFF MAY BE ENTITLED IF SHE HAS OTHERWISE PROVEN HER CLAIM BY A PREPONDERANCE OF THE EVIDENCE, YOU MAY NOT CONSIDER OR AWARD ANY ATTORNEY'S FEES WHICH THE PLAINTIFF MAY BE REQUIRED TO PAY AS A RESULT OF THIS PROCEEDING.

CLOSING INSTRUCTIONS

IT IS NOW YOUR DUTY TO DELIBERATE AND TO CONSULT WITH ONE ANOTHER IN AN EFFORT TO REACH A VERDICT. EACH OF YOU MUST DECIDE THE CASE FOR YOURSELF, BUT ONLY AFTER AN IMPARTIAL CONSIDERATION OF THE EVIDENCE WITH YOUR FELLOW JURORS. DURING YOUR DELIBERATIONS, DO NOT HESITATE TO RE EXAMINE YOUR OWN OPINIONS AND CHANGE YOUR MIND IF YOU ARE CONVINCED THAT YOU WERE WRONG. BUT DO NOT GIVE UP ON YOUR HONEST BELIEFS BECAUSE THE OTHER JURORS THINK DIFFERENTLY, OR JUST TO FINISH THE CASE.

REMEMBER AT ALL TIMES, YOU ARE THE JUDGES OF THE FACTS. YOU HAVE BEEN ALLOWED TO TAKE NOTES DURING THIS TRIAL. ANY NOTES THAT YOU TOOK DURING THIS TRIAL ARE ONLY AIDS TO MEMORY. IF YOUR MEMORY DIFFERS FROM YOUR NOTES, YOU

SHOULD RELY ON YOUR MEMORY AND NOT ON THE NOTES. THE NOTES ARE NOT EVIDENCE. IF YOU DID NOT TAKE NOTES, RELY ON YOUR INDEPENDENT RECOLLECTION OF THE EVIDENCE AND DO NOT BE UNDULY INFLUENCED BY THE NOTES OF OTHER JURORS. NOTES ARE NOT ENTITLED TO GREATER WEIGHT THAN THE RECOLLECTION OR IMPRESSION OF EACH JUROR ABOUT THE TESTIMONY.

I HAVE PREPARED A SPECIAL VERDICT FORM FOR YOUR CONVENIENCE AND TO AID YOU IN REACHING A UNANIMOUS DECISION. YOU WILL TAKE THE FORM WITH YOU TO THE JURY ROOM. THE VERDICT MUST REPRESENT THE CONSIDERED JUDGMENT OF EACH JUROR. YOUR VERDICT MUST BE UNANIMOUS ON EACH AND EVERY QUESTION THAT YOU ARE CALLED ON TO DECIDE.

[READ JURY VERDICT FORM]

WHEN YOU GO INTO THE JURY ROOM TO DELIBERATE, YOU MAY TAKE WITH YOU A COPY OF THE INSTRUCTIONS I AM READING TO YOU NOW, THE EXHIBITS THAT I HAVE ADMITTED INTO EVIDENCE, AND YOUR NOTES. YOU MUST SELECT A JURY FOREPERSON TO GUIDE YOU IN YOUR DELIBERATIONS AND TO SPEAK FOR YOU HERE IN THE COURTROOM.

DURING THOSE DELIBERATIONS, YOU MUST NOT COMMUNICATE WITH OR PROVIDE

ANY INFORMATION TO ANYONE BY ANY MEANS ABOUT THIS CASE. YOU MAY NOT USE ANY ELECTRONIC DEVICE OR MEDIA, SUCH AS A TELEPHONE, CELL PHONE, SMART PHONE, !PHONE, BLACKBERRY OR COMPUTER; THE INTERNET, ANY INTERNET SERVICE, OR ANY TEXT OR INSTANT MESSAGING SERVICE; OR ANY INTERNET CHAT ROOM, BLOG, OR WEBSITE SUCH AS FACEBOOK, MY SPACE, LINKEDIN, YOUTUBE OR TWITTER, TO COMMUNICATE TO ANYONE ANY INFORMATION ABOUT THIS CASE OR TO CONDUCT ANY RESEARCH ABOUT THIS CASE UNTIL I ACCEPT YOUR VERDICT. AND, IF YOU RECESS DURING YOUR DELIBERATIONS, FOLLOW ALL OF THE INSTRUCTIONS THAT THE COURT HAS GIVEN YOU ABOUT YOUR CONDUCT DURING THE TRIAL.

IF YOU NEED TO COMMUNICATE WITH ME DURING YOUR DELIBERATIONS, THE JURY FOREPERSON SHOULD WRITE THE INQUIRY AND GIVE IT TO THE COURT SECURITY OFFICER. AFTER CONSULTING WITH THE ATTORNEYS, I WILL RESPOND EITHER IN WRITING OR BY MEETING WITH YOU IN THE COURTROOM. KEEP IN MIND, HOWEVER, THAT YOU MUST NEVER DISCLOSE TO ANYONE, NOT EVEN TO ME, YOUR NUMERICAL DIVISION ON ANY QUESTION.

YOUR VERDICT MUST BE UNANIMOUS. AFTER YOU HAVE REACHED A UNANIMOUS VERDICT, YOUR JURY FOREPERSON MUST FILL OUT

THE ANSWERS TO THE WRITTEN QUESTIONS ON THE VERDICT FORM AND SIGN AND DATE IT. YOU WILL THEN RETURN TO THE COURTROOM.

AFTER YOU HAVE CONCLUDED YOUR SERVICE AND I HAVE DISCHARGED THE JURY, YOU ARE NOT REQUIRED TO TALK WITH ANYONE ABOUT THE CASE.

YOU MAY NOW PROCEED TO THE JURY ROOM TO BEGIN YOUR DELIBERATIONS.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SHAMBERIA NECOLE SMITH	**CIVIL DOCKET NO. 2:16-cv-16597**
	SECTION "N" (4)
VERSUS	**JUDGE: KURT D. ENGELHARDT**
KANSA TECHNOLOGY, LLC	**MAG: KAREN WELLS ROBY**

JURY INTERROGATORIES

1. Do you find by a preponderance of the evidence that the Kansa 480 Newspaper Inserter was unreasonably dangerous in its design?

YES: _____NO: _____✓_____

[PROCEED TO QUESTION 2]

2. Do you find by a preponderance of the evidence that the Kansa 480 Newspaper Inserter was unreasonably dangerous because of inadequate warning?

YES: _____NO: _____✓_____

[IF YOUR ANSWERS TO QUESTIONS 1 AND 2 ARE "NO," **THEN DO NOT ANSWER ANY MORE QUESTIONS,** SIGN AND DATE THIS FORM ON THE LAST PAGE, AND ADVISE THE COURT SECURITY OFFICER THAT YOU HAVE REACHED A VERDICT. IF YOUR ANSWER IS "YES," TO QUESTION 1 OR 2, THEN PROCEED TO QUESTION 3]

3. Do you find by a preponderance of the evidence that the characteristic that rendered the Kansa 480 Newspaper Inserter unreasonably dangerous existed at the time it left the control of Kansa Technology, L.L.C., or resulted from a reasonably anticipated alteration or modification of the product?

YES: _____NO: _____

[IF YOUR ANSWER TO QUESTION 3 IS "YES,, PROCEED TO QUESTION 4. IF YOUR ANSWER TO QUESTION 3 IS "NO," **THEN DO NOT ANSWER ANY MORE QUESTIONS,** SIGN AND DATE THIS FORM ON THE LAST PAGE, AND ADVISE THE COURT SECURITY OFFICER THAT YOU HAVE REACHED A VERDICT.]

4. Do you find by a preponderance of the evidence that the characteristic that rendered the Kansa 480 Newspaper Inserter unreasonably dangerous was a proximate cause of Shamberia Smith's injury?

YES: _____NO: _____

[IF YOUR ANSWER TO QUESTION 4 IS "NO," **THEN DO NOT ANSWER ANY MORE QUESTIONS,** SIGN AND DATE THIS FORM ON THE LAST PAGE, AND ADVISE THE COURT SECURITY OFFICER THAT YOU HAVE REACHED A VERDICT. IF YOUR ANSWER TO QUESTION 4 IS "YES," THEN PROCEED TO QUESTION 5]

5. Do you find by a preponderance of the evidence that Plaintiffs employer (Hammond Daily Star Publishing Company, Inc.) was negligent and

that its negligence contributed to Plaintiffs injury, in whole or in part?

YES: _____NO: _____

[PROCEED TO QUESTION 6]

6. Do you find by a preponderance of the evidence that Plaintiff Shamberia Smith was negligent and that her own negligence contributed to her injury, in whole or in part?

YES: _____NO: _____

[PROCEED TO QUESTION 7]

7. Please allocate on a percentage basis the degree of fault, if any, which you attribute to each of the following persons or entities. All numerical percentages you enter in this question must add up to a total of 100%:

a. Kansa Technology, L.L.C. ____%

b. Plaintiffs employer Hammond Daily Star Publishing Company, Inc. *If you answered "NO" to Question 5, you **must** put a zero in this blank ____%

c. Shamberia Smith *If you answered "NO" to Question 6, you **must** put a zero in this blank ____%

Total 100%

[PROCEED TO QUESTION 8]

8. What amount of damages, if any, do you believe would reasonably and adequately compensate Plaintiff Shamberia Smith with respect to each of the following claims:

   a. Past and Future Medical Expenses $_____

   b. Past and Future Physical Pain and Suffering $_____

   c. Past and Future Mental Anguish $_____

   d. Loss of Enjoyment of Life $_____

   e. Permanent Disfigurement (scarring) $_____

NEW ORLEANS, Louisiana, this 2 day of May, 2018.

[Redacted in original]
JURY FOREPERSON SIGNATURE

[Redacted in original]
JURY FOREPERSON NAME (Printed)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SHAMBRIA NECOLE SMITH	**CIVIL DOCKET NO. 2:16-cv-16597**
VERSUS	**SECTION "N" (4)**
KANSA TECHNOLOGY, LLC AND HAMMOND DAILY STAR PUBLISHING COMPANY, INC.	**JUDGE: KURT D. ENGELHARDT**
	MAG: KAREN WELLS ROBY

MOTION FOR NEW TRIAL

MAY IT PLEASE TO THE COURT:

Plaintiff, SHAMBRIA SMITH, respectfully moves the Court pursuant to the provisions of Federal Rules of Civil Procedure 59 (a) and 51 (d) (2) to grant a new trial. Plaintiff's requested relief is appropriate because the Court's Jury Instructions[1] and Jury Verdict Form,[2] despite Plaintiff's objection[3] when viewed as a whole, created juror confusion when rendering the Verdict at the close of trial on April 30, 2018.

The Plaintiff in R. Doc. #66 objected to the inclusion of any mention regarding Hammond Daily Star relating to her Workers' Compensation.

---

[1] R.Doc. 82, Jury Instruction Read to Jury.

[2] R. Doc. 85, Jury Verdict, May 20, 2018.

[3] R. Doc. 66, Plaintiff's objections to KANSA's Proposed Jury Verdict Form.

On April 30, 2018, all parties conducted a Pre Trial meeting in chambers with the court to discuss any outstanding Pre Trial issues which included the Plaintiff's objection to the Defendants use of Exhibit 7 which was the Workers' Compensation 1008 form. Argument was made by Plaintiff's counsel that under the applicable rules of evidence, the 1008 form was prejudicial, served no relevant purpose particularly since the parties agreed to use Exhibits 5 and 6 which were the incident reports to provide the jury with incident details. Plaintiff's counsel further argued that any agreements regarding Exhibit 7 were oversights and therefore Plaintiff's counsel re-urged exclusion of any such reference to Workers' Compensation and specifically any reference to Exhibit 7.[4] In reply, Defense counsel, argued that procedural convenience would permit the exhibit to be used since counsel did not previously object to the use of Exhibit 7 and that both parties included said exhibit in the Pre Trial order served as a basis of Exhibit 7's use at trial. Despite this argument Plaintiff's counsel vigorously urged that Exhibit 7 despite its oversights should not be admitted and that said document would be critically prejudicial to the Plaintiff's cause of action.

As a result, the court ordered that Workers' Compensation was not to be referenced in the trial except that Defense counsel would be permitted to use Exhibit 7 with redactions during his opening argument and case in chief.

---

[4] R. Doc. 83-1, The Deliberation Exhibit List

Interestingly, Defense counsel did not adequately and properly redact said document when using in his opening statement and following the close of the case, defense counsel could not locate the specific exhibit which was used in his opening statement nonetheless Exhibit 7 is attached herewith which reveals the content of the exhibit presented to the jury.

The Court, against the Plaintiff's objection allowed the Worker's Compensation 1008 form to be utilized during the opening statements of the Defendants. Further, the court allowed Hammond Daily Star Publishing to be placed on the Jury Verdict form.

As a consequence of this prejudicial Exhibit 7, the jury had one question prior to their verdict, "***Does Shambria Smith have any pending lawsuits against the Hammond Daily Star?*** "[5] , the composition and wording of the Verdict Form and Jury Instructions as a whole likely led to juror confusion. The Charge and Verdict Form instructed the jury to determine whether the product was unreasonably dangerous under the Louisiana Product Liability Act without an allocation of fault and placed non-parties on the Jury Verdict form. The inclusion of the Workers' Compensation party (Hammond Daily Star Publishing) caused confusion as evidenced by the jury question prior to verdict must have caused juror confusion.

In essence, the Charge and Verdict Form misled the jury to render a verdict in favor of the defense as it

---

[5] R. Doc. 81-1, Questions of the Jury during Deliberations

is assumed the jury believed the Plaintiff had previously recovered and/or had a pending suit against Workers' Compensation.

Given the immunity of these entities/statutory employers under Louisiana Workers Compensation laws, any consideration regarding recovery under Workers' Compensation should never be weighed in a tort action. The use of Exhibit 7 over the objection of Plaintiff's counsel and despite instructions by the court did not prevent Defense counsel from using said exhibit in the presence of the jury in opening statement at minimum which resulted in prejudice to the Plaintiff's case and caused the jury to raise a question having nothing to do with the Product's Liability cause of action and the evidence presented to the jury. The placing of Hammond Daily Star on the verdict form taints the verdict form and jury charge as a whole. Therefore, a New Trial is warranted.

Additionally, a New Trial should be granted on the grounds the jury rendered a verdict contrary to the facts established at trial with respect to an inadequate warning contained on the KANSA 480 Inserter as there was no evidence of any warning labels on the subject portions of the equipment whatsoever thus, no reasonable jury could find "inadequate warning" as there cannot be any finding on adequacy by a preponderance of the evidence when there was absolutely no evidence adduced at trial of any warning. In this regard a New Trial should be granted on this issue as well. Therefore, as fully discussed in the accompanying Memorandum in Support, Plaintiff respectfully

requests that her New Trial be granted and all other equitable relief under federal rules.

RESPECTFULLY SUBMITTED:

THE JOHNSON LAW GROUP
(A PROFESSIONAL LAW CORPORATION)
BY: /s/ Willie G. Johnson, Jr
WILLIE G. JOHNSON, JR. (#28628)
JENNIFER O. ROBINSON (#27864)
SOPHIA RILEY (#32286)
DEREK E. ELSEY (#36844)
Post Office Box 84509
Baton Rouge, LA 70884
4980 Bluebonnet Blvd., Suite B
Baton Rouge, LA 70809
Telephone: (225) 717-7070
Facsimile: (225) 930-8573

CERTIFICATE

I hereby certify that a copy of the above and foregoing has been forwarded via electronic means and/or this date placed in the United States Mail, properly addressed, and postage prepaid, to all counsel of record.

Baton Rouge, Louisiana, this 11th day of May, 2018.

/s/ Willie G. Johnson, Jr.
WILLIE G. JOHNSON, JR.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SHAMBERIA[1] NECOLE SMITH **VERSUS** **KANSA TECHNOLOGY, LLC**	**CIVIL ACTION** **NO. 16-16597** **SECTION "N" (4)**

ORDER AND REASONS

Presently before the Court is Plaintiff Shamberia Necole Smith's Motion for New Trial (Rec. Doc. 89). Having carefully considered the motion, the applicable law, and the record of this matter, the Court **DENIES** the motion as stated herein.

Plaintiff's Motion for New Trial is filed pursuant to Rule 59(a) of the Federal Rules of Civil Procedure. *See* Rec. Doc. 89. Rule 59(a) allows a Court to grant a new trial following a trial by jury for "any reason for which a new trial has heretofore been granted in an action at law in federal court." *See* Fed. R. Civ. P. 59(a). "A new trial may be granted, for example, if the district court finds the verdict is against the weight of the evidence, the damages awarded are excessive, the trial was unfair, or prejudicial error was committed in its course." *Smith v. Transworld Drilling Co.*, 773 F.2d 610, 613 (5th Cir. 1985) (internal citations omitted). In

[1] The Court notes that the correct spelling of Plaintiff's name is Shamberia Smith, which is consistently misspelled as "Shambria" in Plaintiff's filings. (*See* Rec. Doc. 81).

considering a Rule 59(a) motion based on evidentiary grounds, a court may weigh all the evidence in the record, "but need not view it in the light most favorable to the nonmoving party." *Id.* The decision to grant or deny a motion for new trial falls within the sound discretion of the district court. *Seibert v. Jackson Cnty.*, 851 F.3d 430, 438 (5th Cir. 2017) (citing *Treadaway v. Societe Anonyme Louis–Dreyfus*, 894 F.2d 161, 164 (5th Cir. 1990)). Applying these standards to Plaintiff's motion, the Court finds her request for a new trial on the asserted grounds to be unfounded.

In this motion, Plaintiff contends that the inclusion of any mention of Plaintiff's employer, Hammond Daily Star, "relating to her Workers' Compensation" was improper and created juror confusion. (Rec. Doc. 89-1 at p. 2). Specifically, Plaintiff complains that Defense counsel's use of Exhibit 7[2] (Workers' Compensation 1008 Form) in his opening statement, and the inclusion of the Hammond Daily Star in the jury instructions and jury verdict form was prejudicial error. (*Id.*). Plaintiff cites the jury's question asking whether Ms. Smith had any pending lawsuits against Hammond Daily Star as evidence that the jury was "misguided." (Rec. Doc. 89 at p. 2).

Plaintiff did not file a written objection to the now disputed Exhibit 7, nor does Plaintiff point to an objection made during trial regarding the use of Exhibit 7.

---

[2] Plaintiff failed to attach Exhibit 7 at issue. The Court also notes that Plaintiff has not provided a trial transcript in connection with her motion.

(Rec. Doc. 83-1 at p. 1). Rather, this exhibit was listed in the Joint Pre-Trial Order under Defendant's list of exhibits "to be admitted *without objection*." (Rec. Doc. 61 at p. 15) (emphasis added).[3] Despite Plaintiff's oversight, Plaintiff concedes that the Court ordered that Workers' Compensation was not to be referenced at trial. (Rec. Doc. 89 at p. 2). Further, pursuant to the Court's oral ruling, Exhibit 7 was permitted for use as an accident report, provided Workers' Compensation references were redacted. At trial, Exhibit 7 was admitted without objection (Rec. Doc. 78, minute entry). Moreover, Plaintiff admits that "the amount of the Louisiana Workers compensation benefits was never mentioned to the jury." (Rec. Doc. 89-1 at p. 8). Accordingly, the Court finds that this challenge was not preserved, is without merit, and thus is not grounds warranting a new trial.

The Court is equally unpersuaded by Plaintiff's argument for a new trial based on the inclusion of Hammond Daily Star Publishing, Inc. in the jury instructions and jury verdict form. On Monday, April 30, 2018, the Court held a conference regarding jury instructions and the jury verdict form. The Court made revisions in accordance with the parties' mutual agreement and provided the revised documents to parties' counsel for review. Neither party made any objection or request for further revisions. At the close of evidence, but prior to jury deliberation, the Court inquired as to whether either party had objections to the

[3] Importantly, counsel had several opportunities to submit the "final" joint pre-trial order to the Court.

jury instructions or the jury verdict form. Plaintiff made no objections,[4] as required by Federal Rule of Civil Procedure 51. Furthermore, Plaintiff participated in consideration of the jury's question and made no objection regarding the answer provided to the jury, which referred the jury back to the comparative fault instruction. (Rec. Doc. 81-1).

Plaintiff was given multiple opportunities to timely object to the proposed instructions and the jury verdict form; however, the record is devoid of any indication that Plaintiff objected to either with respect to the issues she now cites as grounds for a new trial. Notably, Plaintiff never filed objections to the jury instructions in accordance with the Court's April 19, 2018 Order. (See Rec. Doc. 53). In an effort to preserve her challenge, Plaintiff cites to Rec. Doc. 66, "Objections to *Kansa's* Proposed Jury Verdict Form," which Plaintiff filed on April 24, 2018. The Court finds the filing date significant as Plaintiff's only objection on record was filed prior to the jury charge conference, as well as prior to the Court's inquiry regarding objections to the final jury instructions and final jury verdict form. Additionally, in Rec. Doc. 66, Plaintiff cites a Louisiana Supreme Court case recognizing that the 1996 revisions to Article 2323 *require* the Court to consider and quantify the fault of each non-intentional tortfeasor. (Rec. Doc. 66 at p. 2).

---

[4] The only objection Plaintiff made pertained to a disfigurement damages instruction. However, the objection was subsequently withdrawn by the Plaintiff.

A party must object at trial to a jury instruction or jury verdict form otherwise the right to challenge is waived. See *Tex. Beef Grp. v. Winfrey*, 201 F.3d 680, 689 (5th Cir. 2000). A motion for a new trial "cannot be used to raise arguments which could, and should, have been made before the judgment issued." *Garriott v. NCsoft Corp.*, 661 F.3d 243, 248 (5th Cir. 2011). Thus, Plaintiff waived her right to challenge the exhibit, jury instructions, and jury verdict form when she failed to timely object at trial, despite the numerous opportunities the Court provided to raise such objections. See *Moyer v. Siemens Vai Services, LLC*, No. 11-3185, 2013 WL 5839336 (E.D. La. Oct. 29, 2013).

Moreover, assuming, *arguendo*, if it were improper to ask the jury to attribute a percentage to Hammond Daily Star Publishing Company's fault,[5] any such

---

[5] Because Plaintiff waived her right to assert the instant challenges, the Court does not address the substantive arguments contained in her motion. However, the Court notes the quantification of Plaintiff 's employer's fault is mandated by the plain language of the comparative fault statute, La. Civ. Code. Art. 2323 (amended in April 1996), as well as binding precedent. *See e.g.*, *Fontenot v. Dual Drilling Co.*, 179 F.3d 969, 972 (5th Cir. 1999) (Art. 2323(A) requires the fact finder to apportion fault among all negligent parties regardless of whether the plaintiff can recover from a [ ] party or not. Therefore, fault must be attributed to a negligent employer even though the employer is immune from suit under the Louisiana Workers' Compensation Statute."); see also *Keith v. U.S. Fidelity & Guar. Co.*, 694 So. 2d 180 (La. 1997) (The amendments of article 2323(A) make it "mandatory for the determination of the percentage of fault of all persons contributing to an injury, whether those persons are unidentified nonparties, statutorily immune employers, or others."). The Court

error would be harmless. *See, e.g., Rouillier v. Illinois Cent. Gulf R.R.*, No. 87-0677, 1988 WL 98282 (E.D. La. Sept. 15, 1988). At most, the error would affect the amount of total damages the jury would find plaintiff to have suffered. However, the jury never had to reach the interrogatories relative to Hammond Daily Star Publishing, Inc. In accordance with the instructions on the jury verdict form, the jury stopped answering the interrogatories once it decided that the Kansa 480 Newspaper Inserter was not unreasonably dangerous in design or due to inadequate warning.[6] (Rec. Doc. 85).

Finally, the Court rejects Plaintiff's argument that the jury's finding with respect to inadequate warning warrants a new trial.[7] The Court cannot find that the jury's verdict was contrary to the weight of the evidence. Upon evaluating the evidence for itself, the Court finds sufficient evidence to support the jury's verdict.

Given the foregoing, the Court finds that Plaintiff has demonstrated nothing more than that she is disappointed with the jury's verdict. She certainly has not shown entitlement to the extraordinary relief of a new

---

notes that the most recent case relied on by the Plaintiff in her motion was decided in 1992 (pre-amendment).

[6] The Court declines to address Plaintiff's unsubstantiated and wholly speculative statements that the jury's verdict infers that they believed Hammond Daily Star Publishing was at fault and that the jury thought that awarding in favor of Ms. Smith would add an additional monetary award.

[7] Plaintiff concedes that "this Court accurately stated the law on the Louisiana Product Liability Act." (Rec. Doc. 89-1 at p. 8).

trial. Accordingly, **IT IS ORDERED** that Plaintiff's Motion for New Trial (Rec. Doc. 89) is **DENIED**.

New Orleans, Louisiana, this 15th day of May 2018.

/s/ J. Kurt Engelhardt
KURT D. ENGELHARDT
UNITED STATES DISTRICT JUDGE