VI. APPENDIX – RESTATEMENT (THIRD) OF TORTS[1]

Case Name	Rest. Section	Rest. Section Language	Adopted?	Rule/ Holding:
Restatement (Third) of Torts: Liability for Physical and Emotional Harm				
Section 7				
Foss v. Kincade, 746 N.W.2d 912, 915 n.3 (Minn. Ct. App. 2008).	§ 7 Duty	(a) An actor ordinarily has a duty to exercise reasonable care when the actor's conduct creates a risk of physical harm. (b) In exceptional cases, when an articulated countervailing principle or policy warrants denying or limiting liability in a particular class of cases, a court may decide that the defendant has no duty or that the ordinary duty of reasonable care requires modification.	Cited in FN. 3, not applied by the court because MNSC had not adopted the section.	**Rule:** The proposed Restatement (Third) of Torts takes the position that foreseeability should not play a role in duty determinations, arguing that the reasons for a no-duty determination should be "articulated directly without obscuring references to foreseeability." Restatement (Third) of Torts § 7 cmt. j (Proposed Final Draft No. 1). This portion of the Third Restatement has neither been published by the American Law Institute nor adopted by our supreme court, and, thus, we do not apply it here . . . . **Holding:** Child's injury was not foreseeable, and thus defendants owed no duty, as a matter of law, to protect child from the danger posed by the bookcase. The court pointed out that child was visiting defendants' home in the company of and under the supervision of his mother, who conceded that a three-year-old had to be watched constantly, and that the object that caused the injury was a common household item that one might expect to find in any home.

[1] Compiled by Michael Steenson and Ryan Wahlund.

Section 43				
Bjerke v. Johnson, 742 N.W.2d 660, 673 n.1 (Minn. 2007).	§ 43 Duty to Third Persons Based on Undertaking to Another, cmt. h (Proposed Final Draft No. 1, 2005).	The duty imposed by this section is independent of any contractual obligations.	Cited in FN. 1 in support in Justice Hanson CONCURRING OPINION.	**Rule:** The proposed final draft of the Restatement (Third) of Torts: Liability for Physical Harm, § 43 cmt. h (Proposed Final Draft No. 1, 2005), specifies that, "The duty imposed by this section is independent of any contractual obligations." **Holding:** (1) special relationship existed between homeowner and child invitee, as required to impose duty on homeowner to protect child from sexual abuse; (2) fact issue remained whether sexual abuse was foreseeable; and (3) as matter of first impression, primary assumption of risk was not available defense to homeowner's negligence for sexual abuse of teenaged child invitee by other adult resident.
Bjerke v. Johnson, 742 N.W.2d 660, 674 n.2 (Minn. 2007).	§ 43 Duty to Third Persons Based on Undertaking to Another, cmt. g, illus. 2 (Proposed Final Draft No. 1, 2005).	The actor who engages in an undertaking need not completely displace the person originally owing the duty.	Cited in FN. 2 in support in Justice Hanson CONCURRING OPINION.	**Rule:** The proposed final draft of Restatement (Third) of Torts: Liability for Physical Harm, § 43 cmt. g, illus. 2 (Proposed Final Draft No. 1, 2005), indicates that, "The actor who engages in an undertaking need not completely displace the person originally owing the duty."
Restatement (Third) of Torts: Apportionment of Liability				
Section 26				
Morlock v. St. Paul Guardian	§ 26 Apportionment	(a) When damages for an injury can be divided by causation, the	No. Quoted in Justice Anderson	For well over 30 years our pattern jury instruction on items of damage for any aggravation of a pre-

Ins. Co., 650 N.W.2d 154, 163 (Minn. 2002).	of Liability When Damages Can Be Divided By Causation, cmt. f.	factfinder first divides them into their indivisible component parts and separately apportions liability for each indivisible component part under Topics 1 through 4. (b) Damages can be divided by causation when the evidence provides a reasonable basis for the factfinder to determine: (1) that any legally culpable conduct of a party or other relevant person to whom the factfinder assigns a percentage of responsibility was a legal cause of less than the entire damages for which the plaintiff seeks recovery and (2) the amount of damages separately caused by that conduct. Otherwise, the damages are indivisible and thus the injury is indivisible. Liability for an indivisible injury is apportioned under Topics 1 through 4. Cmt F: Divisible damages may occur when a part of the damages was caused by one set of persons in an initial accident and was then later enhanced by a different set of persons. The passage of time may affect whether evidence is available to determine the	DISSENTING OPNION.	existing condition has reflected the limitation on the measure of damages to the additional injury caused by the aggravation. Four Minnesota District Judges Association, Minnesota Practice, Jury Instruction Guides-Civil, JIG 163 (3d ed.1986). Our rules have been consistent with the Restatement of Torts rules for allocating between harm resulting from a pre-existing condition for which the defendant is in no way responsible and the further harm which his tortious conduct caused. Restatement (Second) of Torts § 433A (1)(b) cmt. e (1965); see also Restatement (Third) of Torts: Apportionment of Liability § 26 cmt. f (2000) ("As long as any person caused only a part of damages, the damages are divisible, irrespective of the timing."). **Majority Holding:** An instruction on damages for aggravation of a pre-existing condition was improper in suit to recover underinsured motorist (UIM) benefits; the insureds claimed that all damages resulted from the automobile accident, the insurer alleged that all damages after the surgery and recovery period were solely the result of his pre-existing conditions or disabilities, and, thus, no party's theory of the case called for the instruction.

		magnitude of each indivisible part. As long as any person caused only a part of damages, however, the damages are divisible, irrespective of the timing.		
Morlock v. St. Paul Guardian Ins. Co., 650 N.W.2d 154, 165 (Minn. 2002).	§26 Apportionment of Liability When Damages Can Be Divided By Causation, cmts. d, h.	Burden of proof and sufficiency of evidence to permit damages to be divided by causation. Support for per capita division of damages is sparse. This Section does not expressly endorse it.	No. Quoted in Justice Anderson DISSENTING OPINION.	The Restatement (Third) of Torts, generally considered a repudiation of joint and several liability, provides for apportionment among two or more persons who caused divisible damages. Restatement (Third) of Torts: Apportionment of Liability § 26 cmt. h (2000). That part of the proposed draft of Restatement (Third) addressing the burden of proof takes no position as to who should bear the burden in apportioning harm between tortious conduct and a pre-existing condition, noting that courts are split on the burden-shifting issue but also recommending that no matter how the burden is allocated, "[s]o long as there is some modicum of evidence that would permit the factfinder to make a causal apportionment, that course is preferable to making whichever party bears the burden of proof to bear the entirety of the loss." Restatement (Third) of Torts: Liability for Physical Harm § 28 cmt. d (Tentative Draft No. 2, 2002).
Restatement (Third) of Torts: Products Liability				
Section 1				
Harrison ex rel. Harrison v. Harrison, 733	§1 Liability Of Commercial Seller Or	One engaged in the business of selling or otherwise distributing products who sells or distributes a	Adopted, also cited in Fn. 1 in support.	**Rule:** "[A] commercial seller who sells a product in a defective condition unreasonably dangerous to the user is liable for physical harm to the user

N.W.2d 451, 454–55 & n.1 (Minn. 2007).	Distributor For Harm Caused By Defective Products, cmt. c.	defective product is subject to liability for harm to persons or property caused by the defect. Cmt c: One engaged in the business of selling or otherwise distributing. The rule stated in this Section applies only to manufacturers and other commercial sellers and distributors who are engaged in the business of selling or otherwise distributing the type of product that harmed the plaintiff. The rule does not apply to a noncommercial seller or distributor of such products. Thus, it does not apply to one who sells foodstuffs to a neighbor, nor does it apply to the private owner of an automobile who sells it to another. It is not necessary that a commercial seller or distributor be engaged exclusively or even primarily in selling or otherwise distributing the type of product that injured the plaintiff, so long as the sale of the product is other than occasional or casual. Thus, the rule applies to a motion-picture theater's routine sales of popcorn or ice cream, either for consumption on the premises or		caused by the defective condition, even though the seller was not negligent and even though he was not in privity with the user." *Hudson v. Snyder Body, Inc.*, 326 N.W.2d 149, 156 (Minn. 1982); *see also* Restatement (Third) of Torts: Products Liability § 1 cmt. c (1998) (stating that products liability actions may only be brought against "manufacturers and other commercial sellers and distributors who are engaged in the business of selling or otherwise distributing the type of product that harmed the plaintiff"). **Holding:** The plain language of Minn. Stat. § 169.685, subd. 4(b), permits an action to be made against a child's parents for negligent installation and maintenance of a child passenger restraint system and evidence pertaining to the use of the child passenger restraint system in such an action is not prohibited.

		in packages to be taken home. Similarly, a service station that does mechanical repair work on cars may also sell tires and automobile equipment as part of its regular business. Such sales are subject to the rule in this Section. However, the rule does not cover occasional sales (frequently referred to as "casual sales") outside the regular course of the seller's business. Thus, an occasional sale of surplus equipment by a business does not fall within the ambit of this rule. Whether a defendant is a commercial seller or distributor within the meaning of this Section is usually a question of law to be determined by the court.		
Harrison ex rel. Harrison v. Harrison, 733 N.W.2d 451, 457 (Minn. 2007).	§ 1 Liability of Commercial Seller Or Distributor For Harm Caused By Defective Products.	See above.	Cited in DISSENT by Justice Paul Anderson.	Products-liability actions require proof of a product's defective condition; thus, the basis for a products-liability action brought under section 169.685 is inseparable from the term "defectively," as that term is used in subdivision 4(b). Restatement (Third) of Torts: Products Liability § 1 (1998) ("One engaged in the business of selling or otherwise distributing products who sells or distributes a defective product is subject to liability for harm to person or property caused by the defect." (Emphasis added.)); *cf. Bilotta v. Kelley Co.*, 346 N.W.2d 616, 623 n. 3 (Minn. 1984). Subdivision 4(b)

				specifically applies to two products-seat belts and child passenger restraint systems-further linking that subdivision to products-liability actions. Moreover, defective design and defective manufacture are two specific varieties of products-liability claims. See Restatement (Third) of Torts: Products Liability § 2 (1998).
Duxbury v. Spex Feeds, Inc., 681 N.W.2d 380, 387 (Minn. Ct. App. 2004).	§1 Liability Of Commercial Seller Or Distributor For Harm Caused By Defective Products.	See above.	Adopted.	**Rule:** For a products liability claim, the plaintiff must demonstrate that a product was defective at the time it left the defendant's control and that the defect caused injury to the plaintiff. *Bilotta v. Kelley Co. Inc.*, 346 N.W.2d 616, 623 n. 3 (Minn. 1984). The policy underlying products liability is "to protect consumers from harm caused by defective products and to impose the costs of defective products upon the maker, who presumably profits from the product." *In re Shigellosis Litigation*, 647 N.W.2d 1, 6 (Minn. Ct. App.2002), *review denied* (Minn. Aug. 20, 2002). Since its publication, we have relied on Restatement (Third) of Torts when considering the law of products liability. *See Marcon v. Kmart Corp.*, 573 N.W.2d 728, 731 (Minn. Ct. App.1998), review denied (Minn. Apr. 14, 1998); *State Farm Mut. Auto. Ins. Co. v. Ford Motor Co.*, 572 N.W.2d 321, 324 (Minn. Ct. App.1997). Restatement (Third) of Torts § 1 (1998) takes a broad approach, imposing liability on any party who is "engaged in the business of selling or otherwise distributing products[.]" **Holding:** The legal effect of the grain bank statutes does not expressly or necessarily preclude

				a products liability action.
Marcon v. Kmart Corp., 573 N.W.2d 728, 731 (Minn. Ct. App. 1998).	§1 Liability Of Commercial Seller Or Distributor For Harm Caused By Defective Products, cmt. a.	Please see Restatement (Third) §1 cmt. a.	Adopted.	**Rule:** Such is the case here. Paris Manufacturing declared bankruptcy before this suit was brought. Because the manufacturer is unable to satisfy the judgment, Kmart cannot be absolved of its strict liability for injuries caused by its sale of a defective product. The application of strict liability to a seller in a failure to warn case is also consistent with the Restatement (Third) of Torts: [T]he liability of nonmanufacturing sellers in the distributive chain is strict. It is no defense that they acted reasonably and did not discover a defect in the product, be it manufacturing, design, or failure to warn. Restatement (Third) of Torts: Products Liability, § 1 cmt. a (Proposed Final Draft 1997). Thus, strict liability may be imposed on Kmart as the nonmanufacturing seller of a product that was defective in its failure to warn, regardless of whether Kmart was negligent. **Holding:** (1) seller may be held strictly liable for injuries caused by product that is defective due to failure to warn, even if seller was not negligent; (2) jury's finding that seller was not negligent was not inconsistent with its finding that product was defective because of failure to warn and trial court's determination that seller was strictly liable; (3) statutory subdivision providing that person whose fault is 15 percent or less is liable for percentage of whole award no greater than four times percentage of fault did not apply; and (4) failure-to-warn claim was properly submitted

				to jury.
Grudnoske v. Determan Welding & Tank Serv., Inc., No. C3-99-359, 1999 WL 690194, at *2 (Minn. Ct. App. Sept. 7, 1999).	§ 1, Liability of Commercial Seller Or Distributor For Harm Caused By Defective Products, cmts. a, c.	Please see Restatement (Third) §1 cmts. a, c.	UNPUBLISHED OPINION.	**Rule:** Determan also argues that if DeLaria is not a manufacturer of the PTO assembly and pump, it is a seller and is therefore strictly liable. Nonmanufacturing sellers and distributors are subject to strict liability for selling products that are defective. *Marcon*, 573 N.W.2d at 731; *see also* Restatement (Third) of Torts: Product Liability § 1 cmt. a (1998). But the rule does not apply in the case of occasional or casual sales outside the regular course of the seller's business. *Id.* cmt. c. Here, DeLaria's sale of the semi-tanker to which the assembly was attached was an occasional or casual sale outside the regular course of DeLaria's business of hauling industrial liquids. And the sale of the PTO shaft assembly and pump was incidental to the sale of the semi-tanker. We conclude, therefore, that DeLaria is not a nonmanufacturing seller of PTO shaft assemblies or pumps and is not subject to strict liability for Grudnoske's injuries. And, again, even if DeLaria were a nonmanufacturing seller, nothing it sold harmed Grudnoske. **Holding:** Appellant Determan Welding and Tank Service, Inc., appeals from the district court's grant of summary judgment to respondent DeLaria Transport, Inc., arguing that DeLaria is a manufacturer, nonmanufacturing seller, or designer of machinery that injured Gerald Grudnoske, and, therefore, DeLaria should be liable for contribution to Determan's settlement

				costs with Grudnoske. We affirm.
Section 2				
Harrison ex rel. Harrison v. Harrison, 733 N.W.2d 451, 454 n.2 (Minn. 2007).	§2(a) Categories Of Product Defect.	A product is defective when, at the time of sale or distribution, it contains a manufacturing defect, is defective in design, or is defective because of inadequate instructions or warnings. A product: (a) contains a manufacturing defect when the product departs from its intended design even though all possible care was exercised in the preparation and marketing of the product; (b) is defective in design when the foreseeable risks of harm posed by the product could have been reduced or avoided by the adoption of a reasonable alternative design by the seller or other distributor, or a predecessor in the commercial chain of distribution, and the omission of the alternative design renders the product not reasonably safe; (c) is defective because of inadequate instructions or warnings when the foreseeable risks of harm posed by the product could have been reduced or avoided by the provision of reasonable instructions or	Adopted.	**Rule:** The Harrisons appear to rely on the association of the term "defectively" with products liability actions rather than the word's meaning in the products liability context. A manufacturing defect in the products liability context means "the product departs from its intended design." Restatement (Third) of Torts: Products Liability § 2(a) (1998). This is a meaning substantially similar to the common meaning of "defect." *See Harrison*, 713 N.W.2d at 78 (quoting The American Heritage Dictionary of the English Language 475 (4th ed.2000)) (indicating "defective" means "faulty"). Moreover, the negligent installation of the car seat by the Harrisons arguably meets the products liability definition (provided the definition is modified to apply to defective installation).

		warnings by the seller or other distributor, or a predecessor in the commercial chain of distribution, and the omission of the instructions or warnings renders the product not reasonably safe.		
Harrison ex rel. Harrison v. Harrison, 733 N.W.2d 451, 457 (Minn. 2007).	§ 2 Categories Of Product Defect.	See above.	Cited in DISSENT by Justice Paul Anderson.	Products-liability actions require proof of a product's defective condition; thus, the basis for a products-liability action brought under section 169.685 is inseparable from the term "defectively," as that term is used in subdivision 4(b). Restatement (Third) of Torts: Products Liability § 1 (1998) ("One engaged in the business of selling or otherwise distributing products who sells or distributes a defective product is subject to liability for harm to person or property caused by the defect." (Emphasis added.)); *cf. Bilotta v. Kelley Co.*, 346 N.W.2d 616, 623 n. 3 (Minn. 1984). Subdivision 4(b) specifically applies to two products-seat belts and child passenger restraint systems-further linking that subdivision to products-liability actions. Moreover, defective design and defective manufacture are two specific varieties of products-liability claims. *See* Restatement (Third) of Torts: Products Liability § 2 (1998).
Nelson v. Stanley Works, No. A03-1790, 2004 WL 2094374, at *3 (Minn. Ct. App.	§2 Categories Of Product Defect.	See above.	UNPUBLISHED OPINION	**Rule:** In order for a plaintiff to recover on a theory of strict liability, it must be proven: (1) that the defendant's product was in a defective condition unreasonably dangerous for its intended use, (2) that the defect existed when the product left the defendant's control, and (3)

Sept. 21, 2004).				that the defect was the proximate cause of the injury sustained. *Marcon v. Kmart Corp.*, 573 N.W.2d 728, 731 (Minn. Ct. App.1998) (quotation omitted), review denied (Minn. April 14, 1998). Proof of a manufacturing defect is one method by which a plaintiff can demonstrate the manufacturer's product is defective. *See* Restatement (Third) of Torts, Products Liability § 2 (1998) (stating product can be defective because of defect in manufacture, design, or warning) . . . . **Holding:** The Stanley Works appeals from the district court's denial of its motion for judgment notwithstanding the verdict (JNOV) or, in the alternative, for a new trial. Stanley argues it was entitled to JNOV because the jury's finding of a manufacturing defect is not supported by the evidence and further argues it was entitled to a new trial because it was prejudiced by evidentiary errors. We affirm.

Hatfield v. Qual-Craft Indus., No. C2-99-1454, 2000 WL 758403, at *2 (Minn. Ct. App. June 7, 2000).	§ 2 Categories Of Product Defect.	See above.	UNPUBLISHED OPINION.	**Rule:** *See generally* Restatement (Third) of Torts § 2 (1998) (providing that product is defective because of inadequate warnings when foreseeable risks of harm could have been reduced by warnings and omission of warnings renders product not reasonably safe). Thus, whether a manufacturer has a duty to warn is dependent on the foreseeability of the alleged danger and the resulting injury. *Westbrock*, 473 N.W.2d at 358. **Holding:** Appellant Charles Hatfield challenges the district court's grant of judgment notwithstanding the verdict to respondent Qual-Craft Industries after a jury found that Qual-Craft had negligently failed to provide adequate warnings or instructions for the safe use of Qual-Craft's pump jacks and that this failure was a direct cause of injuries suffered by Hatfield. We reverse.
Section 3				
Schafer v. JLC Food Sys., Inc., 695 N.W.2d 570, 576–77 & n.3 (Minn. 2005).	§3 Circumstantial Evidence Supporting Inference Of Product Defect.	It may be inferred that the harm sustained by the plaintiff was caused by a product defect existing at the time of sale or distribution, without proof of a specific defect, when the incident that harmed the plaintiff: (a) was of a kind that ordinarily occurs as a result of product defect; and (b) was not, in the particular case, solely the result of causes other than product defect existing at the	Adopted.	**Rule:** We agree with the parties that when the specific harm-causing object is not known circumstantial evidence should be available, if such evidence is sufficient and other causes are adequately eliminated, for purposes of submitting the issue of liability to the jury in defective food products cases. Permitting the use of circumstantial evidence in such cases is consistent with our jurisprudence on the use of circumstantial evidence to infer negligence in other contexts. For example, in a case involving an exploding soft drink bottle, we observed that circumstantial evidence was sufficient to take the

		time of sale or distribution.		case to the jury even though the plaintiff was not able to establish a specific defect in the bottle. *Holkestad v. Coca-Cola Bottling Co.*, 288 Minn. 249, 257, 180 N.W.2d 860, 865-66 (1970); *see also Lee v. Crookston Coca-Cola Bottling Co.*, 290 Minn. 321, 330-31, 188 N.W.2d 426, 433 (1971) (holding that circumstantial evidence supported the inference of defect when the soft drink bottle exploded in the plaintiff's hand absent the plaintiff's own want of care or misuses of the bottle)...It is also consistent with the approach taken by the Restatement. *See* Restatement (Third) of Torts: Products Liability § 3 (1998). **Holding:** (1) reasonable expectation test is applied in food defect cases; (2) circumstantial evidence can establish prima facie case that food was defective, even if the injury-causing object cannot be identified, abrogating *Kneibel v. RRM Enterprises*, 506 N.W.2d 664; and (3) summary judgment evidence established prima facie case of negligence.
Section 5				
Gray v. Badger Min. Corp., 676 N.W.2d 268, 280–81 (Minn. 2004).	§5 Liability Of Commercial Seller Or Distributor Of Product Components For Harm Caused By Products Into	One engaged in the business of selling or otherwise distributing product components who sells or distributes a component is subject to liability for harm to persons or property caused by a product into which the component is integrated if: (a) the component is defective in	Adopted.	**Rule:** The Restatement (Third) of Torts: Products Liability § 5 (1998) identifies an additional defense to suppliers of inherently safe raw materials that are used as a component in a final product. According to the Restatement (Third), a supplier of a raw material should not be held liable when its product is integrated as a component into a finished product if the

	Which Components Are Integrated.	itself, as defined in this Chapter, and the defect causes the harm; or (b) (1) the seller or distributor of the component substantially participates in the integration of the component into the design of the product; and (b) (2) the integration of the component causes the product to be defective, as defined in this Chapter; and (b) (3) the defect in the product causes the harm.		component itself is not dangerous . . . . **Holding:** Genuine issues of material fact existed as to whether the worker was a sophisticated end user, whether his employer was a sophisticated intermediary, and whether the bulk supplier's warning to the employer was adequate.
Gray v. Badger Min. Corp., 676 N.W.2d 268, 281 (Minn. 2004).	§5 Liability Of Commercial Seller Or Distributor Of Product Components For Harm Caused By Products Into Which Components Are Integrated, cmt. b.	Cmt. b [W]hen a sophisticated buyer integrates a component into another product, the component seller owes no duty to warn either the immediate buyer or the ultimate consumers of dangers arising because the component is unsuited for the special purpose to which the buyer puts it.	Adopted, also cited in FN. 8.	**Rule:** [W]hen a sophisticated buyer integrates a component into another product, the component seller owes no duty to warn either the immediate buyer or the ultimate consumers of dangers arising because the component is unsuited for the special purpose to which the buyer puts it. Restatement (Third) of Torts: Products Liability § 5 cmt. b (emphasis added) . . . . Even where this defense is applicable, the supplier must still provide an adequate warning to the intermediate purchaser. The Restatement (Third) notes that: Courts have not yet confronted the question of whether, in combination, factors such as the component purchaser's lack of expertise and ignorance of the risks of integrating the component into the purchaser's product, and the component supplier's knowledge of both the relevant risks and the purchaser's ignorance thereof, give rise to a duty on the part of the component supplier

				to warn of risks attending integration of the component into the purchaser's product. Restatement (Third) of Torts: Products Liability § 5, cmt.b.
Section 7				
Larson v. Wasemiller, 738 N.W.2d 300, 306 (Minn. 2007).	§ 7 Liability Of Commercial Seller Or Distributor For Harm Caused By Defective Food Products.	One engaged in the business of selling or otherwise distributing food products who sells or distributes a food product that is defective under § 2, § 3, or § 4 is subject to liability for harm to persons or property caused by the defect. Under § 2(a), a harm-causing ingredient of the food product constitutes a defect if a reasonable consumer would not expect the food product to contain that ingredient.	Cited in support, reference to adoption in Schafer v. JLC Food Sys., Inc., 695 N.W.2d 570 (Minn. 2005).	**Rule:** Although we have not specifically adopted this tort, we have frequently relied on the Restatement of Torts to guide our development of tort law in areas that we have not previously had an opportunity to address. *See, e.g., Schafer v. JLC Food Sys., Inc.*, 695 N.W.2d 570, 575 (Minn. 2005) (adopting section 7 of the Proposed Final Draft No. 1, Restatement (Third) of Torts: Products Liability (1998), which recognizes reasonable consumer expectations in food products liability cases). . . . **Holding:** A common law claim of negligent credentialing exists, and is not precluded by peer review statute.
Schafer v. JLC Food Sys., Inc., 695 N.W.2d 570, 575 (Minn. 2005).	§ 7 Liability Of Commercial Seller Or Distributor For Harm Caused By Defective Food Products.	See above.	Adopted.	**Rule:** Comparatively, the reasonable expectation test focuses on what is reasonably expected by the consumer in the food product as served, not what might be foreign or natural to the ingredients of that product before preparation. *See Betehia*, 103 N.W.2d at 69. As applied to common-law negligence, the reasonable expectation test is related to the foreseeability of harm on the part of the defendant; that is, the defendant has the duty of ordinary care to eliminate or remove in the preparation of the food served such harmful substance as the consumer of the food, as served,

				would not ordinarily anticipate and guard against. Id. The majority of jurisdictions that have dealt with the defective food products issue have adopted some formulation of the reasonable expectation test. *See* Restatement (Third) of Torts: Products Liability § 7 rep. n. 1 to cmt. b (1998). Recognizing the majority view, the Restatement's approach to food products liability cases considers reasonable consumer expectations. The Restatement provides: One engaged in the business of selling or otherwise distributing food products who sells or distributes a food product that is defective * * * is subject to liability for harm to persons or property caused by the defect. * * * [A] harm-causing ingredient of the food product constitutes a defect if a reasonable consumer would not expect the food product to contain that ingredient. *Id.* § 7. Under the Restatement approach, consumer expectations are based on culturally defined, widely shared standards allowing a seller's liability to be resolved by judges and triers of fact based on their assessment of what consumers have a right to expect from preparation of the food in question. *Id.* cmt. b. The Reporters to the Restatement note that the majority view is unanimously favored by law review commentators. *Id.* rep. n. 1 to cmt. b. Having considered the two tests and the approach taken by the Restatement, we conclude that the reasonable expectation test is the more

				appropriate test to follow. Instead of drawing arbitrary distinctions between foreign and natural substances that caused harm, relying on consumers' reasonable expectations is likely to yield a more equitable result. After all, an unexpected natural object or substance contained in a food product, such as a chicken bone in chicken soup, can cause as much harm as a foreign object or substance, such as a piece of glass in the same soup. Therefore, we agree with the majority view and expressly adopt the reasonable expectation test as the standard for determining defective food products liability claims in Minnesota. Accordingly, when a person suffers injury from consuming a food product, the manufacturer, seller, or distributor of the food product is liable to the extent that the injury-causing object or substance in the food product would not be reasonably expected by an ordinary consumer. Whether the injury—causing object or substance in the food product is reasonably expected by an ordinary consumer presents a jury question in most cases. *See Betehia*, 103 N.W.2d at 69.
Schafer v. JLC Food Sys., Inc., No. A03-779, 2004 WL 78022, at *2 (Minn. Ct. App. Jan. 20, 2004.	§ 7 Liability Of Commercial Seller Or Distributor For Harm Caused By Defective Food Products, cmt. a, b.	See above.	Cited in DISSENTING OPINION. UNPUBLISHED OPINION.	**Rule:** This dissent is in accord with strict liability developments that recognize reasonable consumer expectations. *See* Restatement (Third) of Torts: Product Liability § 7 cmts. a, b (1998) (stating that "a plaintiff [may] reach the trier of fact when, unable to identify the specific defect, the plaintiff becomes violently ill immediately after consuming the defendant's food product and other causes are sufficiently eliminated," and

				that "[t]he majority view is that ... the issue of whether a food product containing a dangerous but arguably natural component is defective . . . is to be determined by reference to reasonable consumer expectations within the relevant context of consumption"); Mike Steenson, *A Comparative Analysis of Minnesota Products Liability Law and the Restatement (Third) of Torts: Products Liability*, 24 Wm. Mitchell L. Rev. 1, 50-51 (1998) (observing that proof of specific defect is not required by the Restatement and that the Kneibel claim might have been decided differently under the Restatement). **Holding:** Appellant challenges the district court's grant of summary judgment in favor of respondents Perkins Restaurant and The Restaurant Company in her negligence action involving an allegedly defective food product. Because the district court correctly concluded that appellant could not make out a prima facie case of negligence because she could not identify the object that injured her, we affirm.
Section 14				
In re Shigellosis Litig., 647 N.W.2d 1, 12 (Minn. Ct. App. 2002).	§ 14 Selling Or Distributing As One's Own A Product Manufactured By Another.	One engaged in the business of selling or otherwise distributing products who sells or distributes as its own a product manufactured by another is subject to the same liability as though the seller or distributor were the product's	Adopted.	**Rule:** Horse & Hunt did not request a jury instruction defining the criteria for determining who manufactured the parsley. *See* Restatement (Third) of Torts, Products Liability § 14 (1998) (stating that one engaged in the business of selling who sells, as its own, a product manufactured by another is subject to the same liability as if it were the manufacturer). Indeed, the record reflects that, after deliberations had

		manufacturer.		begun, the jury asked the district court for further guidance in identifying the manufacturer. The district court properly refused to use the procedural device of JNOV to remedy any failure to request an appropriate instruction. **Holding:** (1) trial court was not entitled to dismiss the strict-liability claim against food distributor; (2) court's failure to instruct the jury on negligence of a seller and to submit a special-verdict question was harmless error; and (3) restaurant was not entitled to judgment notwithstanding the verdict (JNOV).
Section 20				
Duxbury v. Spex Feeds, Inc., 681 N.W.2d 380, 387 (Minn. Ct. App. 2004).	§ 20(a) Definition Of "One Who Sells Or Otherwise Distributes."	For the purposes of this Restatement: (a) One sells a product when, in a commercial context, one transfers ownership thereto either for use or consumption or for resale leading to ultimate use or consumption. Commercial product sellers include, but are not limited to, manufacturers, wholesalers, and retailers.	Adopted.	**Rule:** "One sells a product when, in a commercial context, one transfers ownership thereto either for use or consumption or for resale leading to ultimate use or consumption." Restatement (Third) of Torts § 20(a) (1998).
Section 21				
State Farm Mut. Auto. Ins. Co. v. Ford Motor Co., 572 N.W.2d	§21(c) Definition Of "Harm To Persons Or	For purposes of this Restatement, harm to persons or property includes economic loss if caused	Cited in support.	**Rule:** The economic loss doctrine preserves the boundary between tort and contract law. *See* Restatement (Third) of Torts § 21(c) (Proposed Final Draft 1997) (precluding tort recovery for

321, 324 (Minn. Ct. App. 1997).	Property": Recovery For Economic Loss.	by harm to: . . . (c) the plaintiff's property other than the defective product itself.		damage to defective product itself); *see also* Roger J. Traynor, *The Ways and Meanings of Defective Products and Strict Liability*, 32 Tenn. L.Rev. 363, 364-70 (1965) (analyzing reasons to compensate consumer for damage caused by product defect). **Holding:** In an action involving insurance proceeds, the subrogated insurer seeks to hold an automobile manufacturer liable for fire damage to a minivan. The trial court concluded the economic loss doctrine barred all of the insurer's claims and granted summary judgment in favor of the manufacturer. On appeal, the insurer argues: (1) the economic loss doctrine does not govern damage to defective products purchased by consumers; (2) the statute of limitations was tolled by the manufacturer's alleged fraudulent concealment of the product defect; (3) Minn.Stat. § 336.2-725 (1996) is unconstitutional when it functions to bar a claim prior to its discovery; and (4) part of the manufacturer's brief contains information not submitted to the trial court and should be stricken.