must approve an application increasing a rate if he finds that benefits provided are not unreasonable in relation to the premium charged. The statute then defines benefits as not unreasonable to mean that the rates were calculated in accordance with sound actuarial principles. In rejecting the superintendent's argument that the definition was meant as an elaboration of the reasonableness standard, the court stated that the legislature expressed a narrower intent to define the term as co-extensive with the meaning of reasonableness. The court reinforced its argument by noting that the legislature had recently amended the statute to prohibit the superintendent form considering the good faith efforts of the insurer to control costs. Thus, the court concluded that the legislature evinced its intention to restrict the reasonableness standard and narrow the scope of the superintendent's discretion.

A dissenting opinion noted that the majority reasoning led to an apparent contradiction. In addition to the requirement for actuarial soundness, another section of the Ohio statutes provided for review of specific additional requirements for supplemental insurance in order to comply with federal requirements and to establish appropriate loss ratios. Since there was more than one standard that had to be met, it was impossible to determine that the rate was reasonable solely on the basis that it was actuarially sound. The dissenting opinion, therefore, suggested that the appropriate standard was to read the statutes together so as to make each provision operative.

Duty to Investigate

Foremost Guaranty Corp. v. Meritor Savings Bank, 1990 U.S. App. Lexis 13414 (4th Cir. 1990).

The fourth Circuit Court of Appeals held that insurers are not permitted to rescind mortgage insurance policies when they possessed documents that were inconsistent with the oral representations on which they relied. Foremost and several other insurers issued mortgage insurance to EPIC to cover loans originated by EPIC and sold to third parties. EPIC was a general partner of several limited partnerships that purchased houses from builders. EPIC would provide the loan and secure it with a mortgage on the property. The mortgage then was repaid through rents from the property, capital contributions from the limited partners, and a builder's rebate on the sale price. After about five years, EPIC would sell the property, pay off the mortgage, pay back capital contributions, and divide any remaining profits among itself and the limited partners.

In 1985, problems began to mount as real estate prices failed. EPIC was forced to resyndicate some of the limited partnerships because buyers were not willing to pay an amount to pay off the projects. EPIC allegedly started to hide losses through the resyndications. It sought out appraisals that were inflated and commingled funds from the various projects. Likewise, the projects suffered from additional financing problems because the resyndications did not have any builder's rebate to assist in paying off the refinanced mortgage. Finally, EPIC stated in its oral representations that each of its many partnerships was financially independent of the others.

On the other hand, an audit report stated some of the existing financial problems with the projects, and the standard offering memorandum clearly stated that the general partner could commingle funds among the projects.

In rejecting a right of recision, the court of appeals began form the premise that recision was permitted if the policies were procured by fraud. Fraud is founded on a right to rely on the representations. In this case, the court found that none of the factors that justified reliance assisted the insurers. First, the insurers were sophisticated parties. Second, there was no long term or fiduciary relationship between the parties that allowed a lower level of care on the part of the insurers. Third, the insurers had access to the relevant information, there was no concealment, and there was ample oppotunity to detect the inconsistency between the oral representations and the offering documents. The court broadly concluded that "one may not reasonably rely upon an oral statement when he has in his possession a contrary statement in writing."

Damages in Commercial Transactions

Hapka v. Paguin Farms, 1990 Minn. Lexis 225 (Minn. Sup. Ct. 1990).

The Minnesota supreme court refused to permit a jury to consider tort theories for products liability if the underlying claim was limited to the recovery of commercial damages. In this case, Hapka purchased and planted diseased seed potatoes from P&H Farms. As a result, the product could not be sold as originally planned. Some of the crop was sold at lower prices, another portion had to be destroyed, and Hapka had to disinfect and clean his farm machinery and warehouses to eliminate the disease. He sued under theories of express and implied warrantly and strict liability. The trial court refused to allow the strict liability claims to go to the jury, and the supreme court agreed.

In a prior case, the Minnesota supreme court held that damages were not recoverable in tort unless personal injury or damage to property other than the defective item were pleaded. The court stated that the purpose of the limitation was to allow strict liablity only in those instances in which a consumer was involved. In this case, the court further refined the standard by suggesting that the limitation encouraged negotiated agreements concerning the scope of liability. It premised the rule on the belief that strict liability was necessary only because of the limited skill and bargaining power of consumers. In contrast, the law expected commercial parties to be knowledgeable and to have relatively equal trial court correctly refused to give the jury the strict liability claim to decide.

Coverage of Enviromental Compliance

Minnesota Mining and Manufacturing Co. v. Travelers Indemnity Co., 457 N.W.2d 175 (Minn. Sup. Ct. 1990).