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).

The Minnesota Supreme Court held that a comprehensive general liability policy coverd the clean up costs associated with agreements with the state to remedy pollution law violations. Several Manufacturers complied with clean up orders and were released from statutory and common law liability by the state environmental agency. The manufacturers then sought to recover the clean up costs from their insurers under general liability policies. The insurers defended that the clean up costs were not "damages" within the meaning of the policies. They argued that the policies applied to the claims of third parties rather that the costs imposed by compliance with state injunctive actions. The state supreme court disagreed.

According to the court, "damages" does not have an unambiguous techinical meaning. Its plain meaning would include remedies other than those assiciated with legal actions. It could also include any sum expended as required by law.

Because of the ambiguity, the court chose to interpret the term in a way that protects the insureds' expectations. First, the term itself was broad and not limited by any particular definition in the policies. Second, clean up costs could be viewed as the consequential damages flowing from enviromental injuries which were within the coverage of the policies. Third, the insurers could expect to be responsible for pullution costs since the state law had long recognized damage claims for clean up costs in private litigation and under several state statutes.