SALES—A WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE IS BASED UPON A SPECIAL RELIANCE BY THE BUYER ON THE SELLER TO PROVIDE GOODS THAT WILL PERFORM A SPECIFIC USE ENVISAGED AND COMMUNICATED BY THE BUYER—*Van Wyk v. Norden Laboratories, Inc.* (Iowa 1984).

In the fall of 1978, three groups of the plaintiffs'[1] cattle were treated with a live-virus vaccine, called Resbo-3, which was manufactured by the defendant, Norden Laboratories, Inc.[2] The cattle were a mixture of stock that the plaintiffs had raised and others that had been shipped in.[3] Accordingly, some were treated on the farm and others in a sale barn.[4] At the time the vaccine was administered the cattle were given various other treatments such as worming, castration, and dehorning as needed.[5]

One of the illnesses which the vaccine is designed to prevent is bovine viral diarrhea (BVD).[6] After the injections, BVD appeared to a large extent in all three herds.[7] Within a week most of the cattle were sick and ultimately fifty out of 750 died.[8] This suit against Norden Laboratories, Inc., the manufacturer, followed.[9]

At the conclusion of the trial, the court submitted only one of the several theories of liability asserted by the plaintiffs to the jury.[10] Judgment was rendered for the plaintiffs on a theory of implied warranty of fitness for a particular purpose.[11] The defendant appealed arguing that it was error to submit that theory on the facts of the case.[12] Plaintiffs cross-appealed alleging error in the refusal of the court to submit their alternative theories of strict liability and implied warranty of merchantability.[13] Plaintiffs also argued that the court had erred in refusing to admit certain expert evidence.[14] The Supreme Court of Iowa *held*, reversed and remanded. A warranty of fitness for a particular purpose is based upon a special reliance by the buyer

---

1. The plaintiffs were listed as Vernon Van Wyk and Kenneth Smith, partners; Hauser Farms, Inc.; and Porter Farms, Inc. Van Wyk v. Norden Laboratories, Inc., 345 N.W.2d 81, 81 (Iowa 1984).
2. Van Wyk v. Norden Laboratories, Inc., 345 N.W.2d at 83.
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.*
11. *Id.* at 81. The relevant statutory provision for an implied warranty for a particular purpose is section 554.2315 of the Iowa Code. *See also* U.C.C. § 2-315 (1972).
12. Van Wyk v. Norden Laboratories, Inc., 345 N.W.2d at 83.
13. *Id.*
14. *Id.*

on the seller to provide goods that will perform a specific use envisaged and communicated by the buyer. *Van Wyk v. Norden Laboratories, Inc.*, 345 N.W.2d 81 (Iowa 1984).

The court began its discussion with an analysis of the two asserted theories of implied warranties. The first theory discussed was the implied warranty of fitness for a particular purpose governed by section 554.2315 of the Iowa Code.[15] The section provides that when a seller knows that a buyer is purchasing a particular product for a particular purpose, and in so doing is relying on the seller's skill or judgment in the purchase, the goods are warranted to be fit for that purpose.[16] The second theory, implied warranty of merchantability, "is based on a purchaser's reasonable expectation that goods purchased from a 'merchant with respect to goods of that kind' will be free of significant defects and will perform in the way goods of that kind should perform."[17]

"The warranties of merchantability and of fitness for a particular purpose are distinct."[18] The court noted that they are perhaps better understood when viewed together.[19] It is probably more accurate to say that they

---

15. *Id.* at 83-84.

16. Section 554.2315 of the Iowa Code incorporates the language of section 2-315 of the U.C.C. Section 554.2315 provides:

> Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

IOWA CODE § 554.2315 (1983).

17. Van Wyk v. Norden Laboratories, Inc., 345 N.W.2d at 84. Section 554.2314 states:

> (1) Unless excluded or modified (section 554.2316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. . . .
>
> (2) Goods to be merchantable must be at least such as
>
> (a) pass without objection in the trade under the contract description; and
>
> (b) in the case of fungible goods, are of fair average quality within the description; and
>
> (c) are fit for the ordinary purposes for which such goods are used; and
>
> (d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and
>
> (e) are adequately contained, packaged, and labeled as the agreement may require; and
>
> (f) conform to the promises or affirmation of fact made on container or label if any.
>
> (3) Unless excluded or modified (section 554.2316) other implied warranties may arise from course of dealing or usage of trade.

IOWA CODE § 554.2314 (1983).

18. 3 R. ANDERSON, ANDERSON ON THE UNIFORM COMMERCIAL CODE § 2-315:20 (3d ed. 1983).

19. Van Wyk v. Norden Laboratories, Inc., 345 N.W.2d at 83-84.

are best understood when contrasted.[20] The Uniform Commercial Code provides the following distinction:

> A 'particular purpose' differs from the ordinary purpose for which the goods are used in that it envisages a specific use by the buyer which is peculiar to the nature of his business whereas the ordinary purposes for which goods are used are those envisaged in the concept of merchantability and go to uses which are customarily made of the goods in question. For example, shoes are generally used for the purpose of walking upon ordinary ground, but a seller may know that a particular pair was selected to be used for climbing mountains.[21]

"Sections 2-314 and 2-315 make plain that the warranty of fitness for a particular purpose is narrower, more specific, and more precise."[22] There are conditions that are required for the application of an implied warranty of fitness for a particular purpose but not for an implied warranty of merchantability. They are:

> (1) The seller must have reason to know the buyer's particular purpose.
> (2) The seller must have reason to know that the buyer is relying on the seller's skill or judgment to furnish appropriate goods.
> (3) The buyer must, in fact, rely upon the seller's skill or judgment.[23]

Thus, the warranty of fitness for a particular purpose is predicated on a "special reliance by the buyer on the seller to provide goods that will perform a specific use envisaged and communicated by the buyer."[24] By contrast, an implied warranty of merchantability "presupposes no special relationship of trust or reliance between the seller and buyer."[25]

Though the two theories differ, they may both arise in some cases.[26] A buyer's particular purpose in purchasing a product could be the same as the ordinary purpose for which a product is intended.[27] Thus, "[w]hen the single use product is sold by a merchant who knows of the buyer's needs and the buyer relies on the seller's skill and judgment, it is held that the merchantability warranty and the particular purpose warranty both arise."[28] In determining whether both theories could apply, one must look to the " 'bargain-related' facts as to what the seller had reason to know about the buyer's purpose for the goods and about his reliance on the seller's skill or

---

20. *See supra* note 18, § 2-315:3; *see also* Jacobson v. Benson Motors, Inc., 216 N.W.2d 396, 404 (Iowa 1974).
21. U.C.C. § 2-315 comment 2.
22. J. White & R. Summers, Handbook of the Law Under the Uniform Commercial Code 358 (1980).
23. *Id.*
24. Van Wyk v. Norden Laboratories, Inc., 345 N.W.2d at 84.
25. *Id.*
26. *Id.* at 85.
27. *Id.*
28. *See supra* note 18 and accompanying text.

judgment in selecting them."[29] In *Van Wyk*, the plaintiffs "had no direct dealing with regard to the vaccine."[30] Thus, there were no "bargain-related" facts as to any dealings between the plaintiffs and the defendant, and the defendant had no reason to know of the plaintiffs' particular purpose in buying the vaccine.[31]

The plaintiffs argued "that if the buyer's particular purpose is the same as its general use, a warranty of fitness arises, especially when the product has a specific and limited use."[32] The plaintiffs' sole authority for this proposition was *Tennessee Carolina Transportation, Inc. v. Strick Corp.*,[33] a case involving the sale of defective truck trailers.[34] In that case, the North Carolina Supreme Court held that "if the buyer's use of the goods is the ordinary use of those goods . . . the buyer's particular purpose coincides with the ordinary use of the goods, and *either section 2-314 or section 2-315* will give the buyer the protection he needs."[35] Thus, both of the implied warranties "exist where the seller is a merchant with respect to goods of that kind, the buyer is buying the goods for the ordinary purpose," and the statutory requirements are met.[36] *Tennessee Carolina* rejected the general rule that a "particular" use is not a normal use, but rather one that is not generally expected to be made of the goods.[37] Iowa follows the general rule, however, and, therefore, the Iowa Supreme Court refused to apply the holding in *Tennessee Carolina*.[38] The court also noted that such cases "have been criticized as enlarging the fitness warranty beyond the intent of the drafters of the Uniform Commercial Code."[39]

At this point, the opinion of the court becomes somewhat confusing if not contradictory. The court stated that "[o]bviously, in some cases a buyer's particular purpose will be the same as the ordinary purpose for

---

29. Van Wyk v. Norden Laboratories, Inc., 345 N.W.2d at 84 (citing Jacobson v. Benson Motors, Inc., 216 N.W.2d 396, 404 (Iowa 1974)).

30. *Id.* at 84-85.

31. *Id.* at 85.

32. *Id.*

33. 283 N.C. 423, 196 S.E.2d 711 (1973).

34. *Id.* at __, 196 S.E.2d at 713-14.

35. *Id.* at __, 196 S.E.2d at 717 (citing Nordstrom Sales § 78 (1970)) (emphasis in original).

36. *Id.* at __, 196 S.E.2d at 717.

37. Van Wyk v. Norden Laboratories, Inc., 345 N.W.2d at 85.

38. *Id.* (citing Madison Silos v. Wassom, 215 N.W.2d 494, 499-500 (Iowa 1974); Peters v. Lyons, 168 N.W.2d 759, 763 (Iowa 1969)).

39. *Id.* (citing J. White & R. Summers, Handbook of the Law Under the Uniform Commercial Code § 9-9 at 357, n.122 (1980)). It should be noted that in *Tennessee Carolina* the plaintiff relied solely on the implied warranty of fitness and so "stipulated away" his warranty of merchantability. Tennessee Carolina Transp. Inc. v. Strick Corp., 283 N.C. at __, 196 S.E.2d at 717. If the court had not held as it did, the defendant would have been entitled to a directed verdict. *Id. Tennessee Carolina* was decided by the North Carolina Supreme Court which applied Pennsylvania law. *Id.* The holding was based on the North Carolina Supreme Court's interpretation of sections 2-314 and 2-315 of the Pennsylvania Code without the benefit of any Pennsylvania case expressly adopting or rejecting the asserted construction. *Id.*

which a product is furnished. In that case, both types of implied warranty may arise."[40] This statement seems to be at odds with the general rule that "a 'particular' use must be a use not normally expected to be made of the goods."[41] An examination of the authorities cited by the court provides clarification.[42]

*Jacobson v. Benson Motors, Inc.*[43] was an action brought by the buyer of an automobile against the manufacturer and dealer, alleging breach of warranties by both defendants and negligence by the dealer.[44] In 1968 Robert Jacobson placed an order with a GM dealer for a 1968 Chevelle Super Sport 396 which he intended to drag race.[45] Jacobson apparently did not inform the dealer of his intentions at that time.[46] Throughout the year following the purchase, Jacobson experienced various mechanical problems with the car which he and the dealer were unable to remedy.[47] These problems and the dealer's failure to properly remedy them culminated in a lawsuit and an entry of judgment for Jacobson.[48] The dealer and the manufacturer appealed, contending, *inter alia*, that the trial court erred in holding that "the evidence created an issue as to an implied warranty of fitness for a particular purpose."[49] The Iowa Supreme Court agreed and reversed and remanded for a new trial.[50]

The *Jacobson* decision reinforces the proposition that, when warranties are questioned, the courts look to the bargain-related facts.[51] The *Jacobson* court stated:

> Jacobson purchased a Chevelle Super Sport 396..This is an automobile, albeit a sports car, ordinarily used for transportation on the public highways. And even though it be assumed Jacobson, at time of purchase, intended to use the Chevelle for occasional drag racing there is nothing in the record disclosing GM or Benson were aware thereof prior to or at time of the original sale. Moreover, there is no showing upon which to even speculatively assume Jacobson ever had or timely manifested any other particular purpose. Stated otherwise, if Jacobson had other than an ordinary purpose in mind at any time material hereto it was not the basis

---

40. Van Wyk v. Norden Laboratories, Inc., 345 N.W.2d at 85.
41. *Id.* (citing Jacobson v. Benson Motors, Inc., 216 N.W.2d 396, 404 (Iowa 1974); Madison Silos v. Wassom, 215 N.W.2d 494, 499-500 (Iowa 1974); 1 R. Anderson, Anderson on the Uniform Commercial Code, § 2-314:60 (1970); Iowa Code § 554.2315 (1983)).
42. *See id.*
43. 216 N.W.2d 396 (Iowa 1974).
44. *Id.* at 398.
45. *Id.*
46. *Id.* at 404.
47. *Id.* at 398-99.
48. *Id.*
49. *Id.* at 403.
50. *Id.* at 406.
51. *See* Van Wyk v. Norden Laboratories, Inc., 345 N.W.2d at 84.

of the bargain, either in whole or in material part.[52]

Of primary importance is "what the seller has reason to know."[53] A seller cannot warrant a product suitable for a particular purpose without knowing that it might be used for such a purpose.[54] Consequently, a seller could not know that a buyer is relying on the seller's skill or judgment to select or furnish suitable goods for a particular purpose if he is not aware of the particular purpose.[55] By contrast, when one sells an automobile he may expect that the buyer will probably use it for transportation, and it should be fit for such use to be merchantable.[56] Thus, the dealer and manufacturer warrant an automobile to be merchantable, and if the dealer knows that the buyer wants a car to race, and the dealer provides one knowing that the buyer is relying on his skill or judgment in selecting the car, he may be warranting that the car is fit for that particular purpose.[57]

Further demonstration of the concept is found in the second case cited by the *Van Wyk* court, *Madison Silos v. Wassom.*[58] *Wassom* involved a suit brought by a builder against a farmer to recover the balance due on the purchase price of a silo that was built for the farmer, but that had collapsed in a windstorm.[59] Wassom, the farmer, cross-petitioned for "damages based on breach of implied warranty for a particular purpose; breach of implied warranty of merchantability; and negligent construction."[60] The cross-petition alleged, *inter alia,* that "Madison so negligently constructed the silo that it was defective and would not withstand ordinary winds,"[61] and [that] "Madison breached an implied warranty of fitness for a particular purpose."[62] Wassom clearly felt that if the silo could not withstand ordinary winds it was not of merchantable quality.[63] As to the warranty of fitness for a particular purpose, Wassom testified at the trial:

> When I purchased this silo from the Madison Silo Company of Martin Marietta, I did discuss with the salesman that I signed the contract with the need for silos that would hold or contain wet grain. When I bought the silo, I relied upon these people in furnishing a silo that would be reasonably suitable for the purpose to be used.[64]

52. Jacobson v. Benson Motors, Inc., 216 N.W.2d at 404.
53. *Id.*
54. *Id.*
55. *Id.*
56. *Id.*
57. *Id.*
58. 215 N.W.2d 494 (Iowa 1974).
59. *Id.* at 496.
60. *Id.*
61. *Id.* at 497-98. Whether or not the winds were normal was disputed. *Id.* The court described it as a "severe windstorm." *Id.*
62. *Id.* at 498.
63. *Id.*
64. *Id.* at 500.

Thus, a fact issue was generated as to an implied warranty of fitness for the particular purpose of storing wet grain and a subsequent breach of that warranty.[65]

Both *Jacobson* and *Madison* show how both warranties may arise. A car is ordinarily used for commuting[66] just as a silo is ordinarily used for storing grain.[67] One may, however, use the sports car particularly for drag racing,[68] and the silo particularly for storing wet grain.[69]

Another source of confusion is found in the *Van Wyk* court's discussion of the plaintiffs' assertion that due to the identity of purpose, the general use of cattle vaccine, and the plaintiffs' particular use on their cattle, the elements of an implied warranty for a particular purpose may be presumed.[70] The court refused to assume "that the seller had reason to know of the buyers' particular purpose and their reliance on the skill and judgment of the seller merely because cattle vaccine is only usable for one purpose."[71] The court noted that "the vaccine may still be used in different ways, some anticipated by the seller and some not."[72] This would seem to indicate a possibility that in some cases, where the identity of purpose is stronger, the court would impute knowledge of purpose and reliance.[73] This would be inconsistent with the previous statement that "a 'particular' use must be a use not normally expected to be made of the goods."[74]

The court could have avoided any confusion associated with the application of the warranty. The decision alludes to the conclusion, suggested by the elements of the warranty, that in order to establish knowledge on the part of the seller there must be some form of direct dealing or communication.[75] More directly, one writer has said, "[t]here is no particular purpose when the buyer buys for resale."[76] As the rule stands now, it appears that

---

65. *Id.*

66. Jacobson v. Benson Motors, Inc., 216 N.W.2d at 404.

67. Madison Silos v. Wassom, 215 N.W.2d at 500.

68. Jacobson v. Benson Motors, Inc., 216 N.W.2d at 404.

69. Madison Silos v. Wassom, 215 N.W.2d at 500.

70. Van Wyk v. Norden Laboratories, Inc., 345 N.W.2d at 85.

71. *Id.* at 85-86.

72. *Id.* at 86.

73. It seems quite logical that one should be able to show a practice is common in a given trade, and that the seller has reason to know of it. *See supra* note 26, § 1-201:13. In the past it has been common practice among veterinarians to administer Resbo-3 along with other treatments such as dehorning, castration, and worming. Telephone interview with Dr. L. M. Scmall, veterinarian at the Iowa Agricultural Dept., Animal Husbandry (Aug. 20, 1984); telephone interview with Dr. J. M. Brennan, Indianola Veterinary Clinic (Aug. 20, 1984). At least one veterinary clinic staff has limited or discontinued use of this particular vaccine because of similar problems. Telephone interview with Dr. J. M. Brennan, Indianola Veterinary Clinic (Aug. 20, 1984).

74. Van Wyk v. Norden Laboratories, Inc., 345 N.W.2d at 85.

75. *See supra* note 18, § 2-315:35.

76. *See supra* note 18, § 2-315:40.

one may attempt to show liability for breach of an implied warranty of fitness for a particular purpose without privity between the manufacturer and the ultimate user; but it is difficult to conceptualize the viability of such a claim in light of the court's decision.

The third theory of liability asserted by plaintiffs in *Van Wyk* was that of strict liability.[77] The defendant responded asserting that strict liability was inapplicable because plaintiffs' claim was for a "commercial and economic" loss which is not recoverable under a theory of strict liability in Iowa.[78] Defendant cited three federal district court cases that applied Iowa law in support of this proposition.[79] The earliest was *Iowa Electric Light & Power Co. v. Allis-Chalmers Manufacturing Co.*[80] This case involved a malfunctioning transformer that was manufactured by the defendant and sold to the plaintiff.[81] Strict liability was one of the theories of recovery asserted by the plaintiff.[82] In discussing that theory on a defense motion for summary judgment, the court noted that the loss that the plaintiff was seeking to recover, the cost of repairs, was a commercial loss.[83] The court explained:

> The plaintiff is a large corporation, fully cognizant of commercial law. The doctrine of strict liability in tort, designed to aid the consumer in an unequal bargaining position who is physically injured, loses all meaning when a large public utility or other large company is the plaintiff and is suing solely for commercial loss.[84]

The next case, chronologically, was *Midland Forge, Inc. v. Letts Industries, Inc.*,[85] an action by an Iowa corporation which contracted with a Mich-

---

77. Van Wyk v. Norden Laboratories, Inc., 345 N.W.2d at 87. Iowa adopted the principle of strict liability in Hawkeye-Security Ins. Co. v. Ford Motor Co., 174 N.W.2d 672, 684 (Iowa 1970). Iowa adopted the principle as stated in the Restatement (Second) of Torts which provides in pertinent part:

> (1) One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if
>
> (a) the seller is engaged in the business of selling such a product, and
>
> (b) it is expected to and does reach the user without substantial change in the condition in which it is sold.

RESTATEMENT (SECOND) OF TORTS § 402A (1965).

78. Van Wyk v. Norden Laboratories, Inc., 345 N.W.2d at 88.

79. The cases were in federal courts with jurisdiction based on diversity of citizenship pursuant to section 1332 of title 28 of the United States Code. Sioux City Community School Dist. v. International Tel. & Tel. Corp., 461 F. Supp. 662, 663 (N.D. Iowa 1978); Midland Forge, Inc., v. Letts Indus., Inc., 395 F. Supp. 506, 509 (N.D. Iowa 1975); Iowa Elec. Light & Power Co. v. Allis-Chalmers Mfg. Co., 360 F. Supp. 25, 26 (S.D. Iowa 1973).

80. 360 F. Supp. 25 (S.D. Iowa 1973).

81. *Id.* at 26-27.

82. *Id.*

83. *Id.* at 32.

84. *Id.*

85. 395 F. Supp. 506 (N.D. Iowa 1975).

igan corporation to purchase three hydraulic drop forging hammers.[86] "[The] suit developed when the hammers repeatedly failed to perform as planned."[87] Plaintiff sought "to recover the value of the machines, plus installation expenses, repair costs, and additional damages exceeding $200,000 for the loss of business profits and goodwill."[88] The court held "that the law of strict liability in Iowa would not create any remedy for economic losses in the . . . case of an industrial machine malfunctioning in its commercial use, especially where neither party appears to have been in an unequal bargaining position."[89] The case was dismissed.[90]

*Sioux City Community School District v. International Telephone & Telegraph Corp.*[91] was an action by an Iowa school corporation against IT&T[92] for damages resulting from defective rooftop heating units.[93] Defendant moved to dismiss the strict liability claim for failure to state a claim because "nowhere in the complaint [did] plaintiff allege any actual injury to persons or damage to plaintiff's property other than to the heating units—the products themselves."[94] The court agreed, noting that the Iowa Supreme Court has stated "that an essential element of that theory is that the defect in the product was the proximate cause *of personal injuries or property damage* suffered by the user or consumer."[95] Though it has not yet been held in Iowa that such damages are recoverable, the courts and communities elsewhere have delineated two other categories of harm for which one can recover.[96] They are "physical damage to the product itself," and "commercial or economic losses which involve no physical harm but which are occasioned by the unfitness of the product."[97]

The court in *Van Wyk* distinguished the above cases stating that "[e]ven those cases . . . recognize that direct damage to property is recoverable under strict liability."[98] The plaintiffs in *Van Wyk* were attempting to recover for damage to their property, the cattle, not for the cost of the vaccine or some other amorphous "economic loss."[99] Thus, the court held that "it was error to refuse submission of strict liability."[100]

---

86. *Id.* at 510.
87. *Id.*
88. *Id.* at 515.
89. *Id.*
90. *Id.*
91. 461 F. Supp. 662 (N.D. Iowa 1978).
92. The manufacturers were divisions of IT&T. *Id.* at 663.
93. *Id.*
94. *Id.*
95. *Id.* at 664 (citing Kleve v. General Motor Corp., 210 N.W.2d 568, 571 (Iowa 1973)) (emphasis in original).
96. *Id.* at 664.
97. *Id.*
98. Van Wyk v. Norden Laboratories, Inc., 345 N.W.2d at 88.
99. *Id.*
100. *Id.* at 87.

A fourth issue raised by plaintiffs' cross-appeal dealt with "the trial court's refusal to admit the testimony of a veterinarian called by the plaintiffs."[101] The plaintiffs intended to show by the testimony "the possibility of ways in which contamination could occur through defendant's vaccine production methods."[102] The supreme court set forth the general principles governing opinion testimony:

> Iowa is committed to a liberal rule which allows opinion testimony if it is of a nature which will aid the jury and is based on special training, experience, or knowledge with respect to the issue in question. The receipt of such evidence rests largely in the discretion of the trial court and its ruling will not be disturbed absent manifest abuse of that discretion. The court's discretion is not unlimited. The facts upon which the expert bases his opinions must be sufficient to enable the witness to express an opinion which is more than mere conjecture. Irrespective of the manner in which the opinion question is phrased, the opinion remains such and the trier of fact is at liberty to reject it.[103]

The defendant argued, unsuccessfully, "that an expert's opinion must have general acceptance in the scientific community."[104] "General scientific acceptance" is not "a prerequisite to the admission of evidence," but merely one way of establishing the reliability of the evidence.[105] The court felt that the witness's qualifications and experience established his expertise.[106] As to those qualifications, the court stated:

> Dr. Howlett is a licensed and practicing doctor of veterinary medicine. He has been a speaker at the American Bovine Practitioner's seminar on the subject of post-vaccinal disease . . . . His interest in the field has prompted extensive reading, tours of vaccine production facilities, and consultations with the people in the industry and at diagnostic laboratories.[107]

In view of Iowa's recognition of the value of devotion of " 'substantial time and effort to the study of' [a] subject, Dr. Howlett's background was more than adequate."[108] Thus, it was held that the trial court erred in refusing to allow the opinion evidence.[109]

An analysis of *Van Wyk* and the cases cited therein provides a basis for understanding the law in Iowa with regard to implied warranties and leaves

---

101. *Id.* at 86.
102. *Id.*
103. *Id.* (quoting Haumersen v. Ford Motor Co., 257 N.W.2d 7, 11 (Iowa 1977)).
104. *Id.* at 86-87. The defendant cited Henkel v. Heri, 274 N.W.2d 317 (Iowa 1979) for this proposition. *Id.* at 87.
105. *Id.*
106. *Id.*
107. *Id.* at 86.
108. *Id.* (citing Schmitt v. Clayton County, 284 N.W.2d 186, 188 (Iowa 1979)).
109. *Id.* at 87.

some question as to what the future will bring for Iowa's position on strict liability. *Van Wyk* makes it clear that an application of an implied warranty of fitness for a particular purpose requires a special reliance by the buyer on the seller that the goods provided will perform a specific use or function that has been communicated to the buyer. By contrast, the implied warranty of merchantability requires only that the goods be free from significant defect and perform in the way goods of that kind should so perform.

It is unclear whether or not recovery will be allowed for physical damage to the product itself and for commercial or economic loss. There has been ample opportunity to adopt such a position. Various hints in the above-discussed federal cases indicate that the guidance would be appreciated, but it appears that the Iowa Supreme Court does not intend to extend the liability. Perhaps as other jurisdictions work with the theories, and the problems and benefits become known, Iowa will take a stance on these issues.

The court's resolution of the evidentiary question in *Van Wyk* was not surprising. It reflects the general desire to admit enough relevant information to allow the fact finder to reach a just conclusion.

*Randy G. Sargent*