The Demise of the Foreign-Natural Test in North Carolina - Goodman v. Wenco Foods

Leigh A. Aughenbaugh

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THE DEMISE OF THE FOREIGN-NATURAL TEST IN NORTH CAROLINA — *Goodman v. Wenco Foods*

**INTRODUCTION**

[At Packingtown]... there would come all the way back from Europe old sausage that had been rejected, and that was mouldy and white - it would be dosed with borax and glycerine, and... stored in great piles in rooms; it was too dark in those storage places to see well, but a man could run his hand over these piles of meat and sweep off handfuls of the dried dung of rats. These rats were nuisances, and the packers would put poisoned bread out for them, they would die, and then rats, bread, and meat would go into the hoppers together... and sent out to the public's breakfast. This is no fairy tale and no joke.¹

In some of the most harrowing scenes of modern American literature, Upton Sinclair, in *The Jungle*, depicts the life of Jurgis Rudkus, a Lithuanian immigrant, in the Chicago stockyards in the first years of the twentieth century.² Published in 1906, Sinclair's novel focused public attention on the conditions of the meat-packing industry in America and on the gruesome practices perpetrated on the consumer.³ Public outrage over such practices forced a government investigation which led to the passage of the pure food laws.⁴ It was not until this time that the courts and the legislature turned their attention from the developing industries and toward the consumer and began the long process toward creating the modern law of products liability in the area of food sales.⁵

While the consumer has won significant battles in the area of food products liability in the twentieth century, he continues to find troublesome obstacles imposed by law when he succumbs to

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2. See Downs, supra note 1, at 346-47.
3. Id. at 344-45.
4. Id. at 348.
5. See generally WILLIAM KIMBLE, FEDERAL CONSUMER PRODUCT SAFETY ACT 17-21 (1975).
injury from deleterious food products bought in the marketplace. One such obstacle, and its recent demise in North Carolina, is the subject with which this Note is concerned.

An introduction to one of the more controversial legal problems consumers face in the area of food products liability and the one to which this Note is addressed can best be provided through illustration. Assume for example that an unlucky consumer is seriously injured when he swallows fragments of metal contained in a pork sandwich. Because the injurious substance in the sandwich is manifestly foreign to the food product, the vast majority of American jurisdictions today would allow the consumer to recover damages against the food processor. Consider next, that instead of fragments of metal, the sandwich contained sharp pieces of pork bone, and again the consumer is seriously injured when he swallows the bone. Can he recover in this second scenario? In this instance, unlike the first, the answer is not as clear. Common sense seems to dictate that because our hypothetical consumer was injured as severely by swallowing the bone as with the fragment of metal, he would be allowed to recover in the latter example just as in the former. However, depending upon the jurisdiction in which our consumer finds himself, he could encounter a problem when attempting to recover in this second scenario, and that problem lies in the nature of the injurious substance. Stated simply, the consumer's recovery could be barred unless he could prove that the pork bone was foreign to the ingredients of the sandwich.

In the past several decades and continuing today in several jurisdictions, the test which imposes such an obstacle, known as the foreign/natural test, has existed as the controlling standard.


7. E.g., Goetten v. Owl Drug Co., 59 P.2d 142 (Cal. 1936) (glass found in dish of chicken chow mein); Musso v. Picadilly Cafeterias, Inc., 178 So. 2d 421 (La. Ct. App. 1st Cir. 1965) (stating rule), appeal denied, 248 La. 469, 179 So. 2d 641 (1965). See also Janas, supra note 6. For a comprehensive list of cases and jurisdictions following the rule, see Annotation, Liability of Manufacturer or Seller For Injury Caused by Food or Food Product Sold, 77 A.L.R. 2d 27, 87-102 (1975).

8. See Jane M. Draper, Annotation, Liability for Injury or Death Allegedly Caused by Food Product Containing Object Related To, But Not Intended To Be Present In, Product, 2 A.L.R 5th 201 (1992).
for determining liability whenever a consumer is injured by a substance which is not clearly foreign to the food's ingredients. Essentially, this test requires that liability be denied as a matter of law whenever the injurious substance in a food product is determined to be "natural" to the ingredients in the food. Because of its harsh effects, the foreign/natural distinction for determining liability for natural defects in food products has been abandoned by many jurisdictions in favor of a test based on the reasonable expectations of the consumer. This test would allow our hypothetical consumer to recover against the food processor if it was determined by a jury that the injurious substance, notwithstanding its naturalness to the food's ingredients, was one that he would not have ordinarily expected to find in the particular food product consumed.

North Carolina has recently joined the national trend in the current demise of the foreign/natural test. The North Carolina Supreme Court, in Goodman v. Wenco Foods, Inc., ruled that both a restaurant and its meat supplier may be sued by a consumer who was injured by a bone fragment in a hamburger purchased from the restaurant. The court rejected the foreign/natural test in favor of the reasonable expectations test as the applicable standard for determining liability for natural defects in food. In doing so, the court overruled thirty years of case law established by Adams v. Great Atlantic & Pacific Tea Co., which first entrenched the foreign/natural test as the controlling standard in North Carolina for determining liability for natural defects in food products cases.

9. Id. at 201-12 (discussing origin and development of the foreign/natural distinction as the controlling standard for determining liability for natural defects in food products and listing California, Delaware, Georgia, Iowa, and Louisiana as those jurisdictions which continue to adhere to the test).
10. Id. at 201-03.
11. Id. at 213-17 (listing Alabama, District of Columbia, Florida, Massachusetts, Ohio, Oklahoma, Pennsylvania, Rhode Island, Texas, Washington, and Wisconsin as states having adopted the reasonable expectations test).
12. Id. at 213.
14. Id.
15. Id. at 15-6, 1423 S.E.2d at 450-51.
17. Id. at 572-73, 112 S.E.2d at 98.
ramifications to food products liability in North Carolina are discussed at a later point in this Note.

This Note has several objectives. First, it will describe the origins, development, and rationale of both the foreign/natural and reasonable expectations test in other jurisdictions, as well as trace the growth of the former test in North Carolina and its eventual demise. In addition, it will analyze the court's decision, and examine the reasons given for it by comparing the decision to that of the recent national trend. Finally, this Note will explore the consequences of the court's decision and determine whether the course chosen was the proper one.

THE CASE

In Goodman, the plaintiff, Fred Goodman, brought an action against defendant Wenco Foods, Inc. (hereinafter Wendy's) and defendant Greensboro Meat Supply Company, Inc. (hereinafter GMSC) for damages he sustained when he bit down on a bone fragment contained in a hamburger sandwich he had purchased from Wendy's, the meat allegedly having been supplied to Wendy's by GMSC.18 Goodman, while eating a hamburger at the Hillsborough Wendy's Restaurant, bit down on a triangular object, being one-sixteenth to one-quarter-inch thick, one-half-inch long and tapering from one-quarter inch at its base to a point.19 After biting into the object, Goodman experienced an intense pain in his lower jaw caused by the shattering of two of his teeth and the damaging of a third.20 The object, which Goodman believed to be a fragment of cow bone, was about the size of a fingernail.21 Goodman underwent extensive dental surgery, including a root canal and the placement of both temporary and permanent crowns.22 As of the date of the trial, Goodman still had no sensation in a portion of his left lip and in the inside of his mouth.23

19. Id.
21. Goodman v. Wenco Foods, Inc., 333 N.C. 1, 8, 1423 S.E.2d 444, 446 (1992). Goodman also stated that the bite of the sandwich containing the bone was mostly meat and that the bone, in all probability, had come from the meat, but he admitted that it was possible that the bone could have been in either the bun or condiments served on the sandwich. Id.
23. Id.
Goodman's complaint alleged both a breach of the implied warranty of merchantability and negligence on the part of both defendants. The trial judge, adhering to the foreign/natural test as established in Adams, granted summary judgment on both claims in favor of GMSC, and a directed verdict in favor of Wendy's, also on both claims. The court of appeals, applying a test derived from the foreign/natural distinction, reversed as to the implied warranty claims and affirmed as to the negligence claims. The North Carolina Supreme Court, adopting the reasonable expectations test, affirmed the court of appeal's decision to reverse the directed verdict for Wendy's and summary judgment for GMSC on the implied warranty of merchantability claim. As to the negligence claims, the court also affirmed the directed verdict for Wendy's, finding no evidence in the record from which a jury could determine that Wendy's was negligent in its inspection of the hamburger served to the plaintiff. However, the court reversed the court of appeal's decision affirming summary judgment for GMSC on the negligence claim, the rationale being that since the defendant had not supplied any evidence of the care it exercised in preparing the hamburger meat, the plaintiff was not required to produce evidence of their lack of due care. Ultimately, the court remanded the case for trial on plaintiff's breach of implied warranty claims against both defendants and on plaintiff's negligence claim against GMSC.

BACKGROUND

A. Development in Other Jurisdictions

1. The Origin and Development of the Foreign/Natural Test

The first notable discussion of the "natural defect" problem was presented in Mix v. Ingersoll Candy Co. In this case of first impression, the California Supreme Court embarked on a course of action which was to have astounding impact in the area of food

26. See infra notes 61-69 and accompanying text.
27. Id. at 112, 394 S.E.2d at 836.
29. Id. at 20, 1423 S.E.2d at 453.
30. Id. at 28, 1423 S.E.2d at 458.
31. Id.
32. 59 P.2d 144 (Cal. 1936).
products liability by introducing into the judicial arena the foreign/natural distinction. In Mix, the court, being left without guiding precedent, held that a chicken bone in a chicken pie which had injured the plaintiff did not render that food product unfit for human consumption under the Uniform Sales Act. The plaintiff had purchased the chicken pie from a restaurant owned by the defendant corporation. He brought an action for damages for personal injuries and based his recovery upon two theories: breach of an implied warranty of fitness and common law negligence. The supreme court subsequently affirmed the trial court's grant of the defendant's demurrer, yet not without considerable discussion as to the rationale behind its belief that the chicken pie in this case was not made unfit by the presence of the chicken bone.

The court began by explaining that while it had examined all of the relevant case law on the subject, it could find no authority for allowing it to hold a restaurant operator liable under an implied warranty theory for the presence of bones which were natural to the particular item of food served.

The court went on to state:

We have examined a great many cases dealing with the question of liability of restaurant keepers which arose out of the serving of food which was held to be unfit for human consumption, and we have failed to find a single case . . . in which a court has extended the liability based upon an implied warranty of a restaurant keeper to cover the presence in food of bones which are natural to the type of meat served.

Thus, it was the view of the court that the liability of the restaurant operator should be denied as a matter of law when the harmful substance in the food product was natural to that product's

33. Id.
34. Id. at 148.
35. Id.
36. Id. at 145.
37. Id. See generally infra notes 38-45 and accompanying text.
38. Mix, 59 P.2d at 148.
39. Id. The court went on to state:

All of the cases [found] are instances in which the food was found not to be reasonably fit for human consumption, either by reason of the presence of a foreign substance, or an impure and noxious condition of the food itself, such as for example, glass, stones, wires, or nails in the food served, or tainted, decayed, diseased, or infected meat and vegetables.

Id.
ingredients. Stated in another way, the presence of such a natural substance did not render the food product unreasonably fit for human consumption.

The court in Mix went on to explain that the rationale underlying its decision was twofold. First, since it was a matter of common knowledge that chicken pies occasionally contain chicken bones, the consumer should anticipate and take precautions against their presence. The court stated:

Although it may frequently be a question for a jury as the trier of fact to determine whether or not the particular defect alleged rendered the food not reasonably fit for human consumption, yet certain cases present facts from which the court itself may say as a matter of law that the alleged defect does not fall within the terms of the statute. We are of the opinion that despite the fact that a chicken bone may occasionally be encountered in a chicken pie, such chicken pie, in absence of some further defect, is reasonably fit for human consumption. Bones which are natural to the type of meat served cannot legitimately be called a foreign substance, and a consumer who eats meat dishes ought to anticipate and be on his guard against the presence of such bones.

Second, the court also believed that restaurant operators have no obligation to furnish a perfect food product to their patrons. The court asked whether the owners of restaurants are to be absolute insurers of their food, and it answered the question in the negative. The court indicated that the presence of substances such as chicken bones in chicken pies are those types of hazards against which restaurant owners are unable to guard against and to require them to do so would impose too heavy a burden upon them.

To underscore its rationale in Mix, the California Supreme Court, in the same day it ruled on Mix, decided the case Goetten v. Owl Drug Co. In Goetten, a restaurant patron was injured when he swallowed particles of glass contained in a dish of chicken chow mein sold and served to him by the defendant restaurant. The court allowed the plaintiff to recover because the injurious sub-

40. Id.
41. Id.
42. Id.
43. Id. at 147.
44. Id.
45. Id. at 148.
46. 59 P.2d 142 (Cal. 1936).
47. Id. at 143.
stance was clearly foreign to the ingredients of the food and was that type of substance against which the restaurant was able to guard. From these two cases, the foreign/natural distinction was born. This new standard for determining liability for natural defects in food products was to be widely utilized in subsequent court decisions, yet not without certain interpretive and practical difficulties in its application.

While the Mix decision has been cited for the general proposition that liability must be denied whenever a substance causing injury is natural to the food itself because every consumer should expect and be on guard against the presence of such substance, commentators have argued that while such an interpretation is not wholly incorrect, it oversimplifies the basis of the court's opinion. One commentator raised a particularly perplexing question regarding the Mix opinion: whether the court in Mix had denied recovery because the chicken bone was a natural ingredient to the chicken pie or had it denied recovery because the consumer could expect to find the bone in the pie? Upon closer examination, the Mix decision itself is unclear on exactly what grounds the court denied the defendant's liability. This ambiguity in the Mix opinion is described with aptness by one commentator:

The court stated that a deviation from perfection in the quality of a food product does not necessarily render the food unfit for human consumption, "particularly if it is of such a nature as in common knowledge could be reasonably anticipated and guarded against by the consumer." This language suggests that liability

48. Id.
50. See Janas, supra note 6, at 637-38.
52. See Janas, supra note 6, at 637. For further comment on the interpretation of the Mix opinion, see Evart v. Suli, 259 Cal. Rptr. 535, 539 (Cal. Ct. App. 1989). Here the court disagreed with the interpretation of the Mix decision offered by the respondents. The court stated that Mix does not mandate a finding of fitness any time the object causing injury is natural to the food being consumed, but instead "requires that the substance causing injury must not only be natural to the type of food, but must also be one which, in common knowledge, should be 'reasonably anticipated' by the consumer." Id. Thus, the court interpreted Mix as establishing a two-prong test to determine liability in the case of natural defects in food products. See also infra notes 61-69 and accompanying text.
53. See Janas, supra note 6, at 637.
may be found when the natural defect is one not reasonably anticipated by the consumer. Another part of the opinion, however, implied that liability should be denied in all cases involving natural defects . . . Thus the court appears to have based its decision upon both the element of naturalness and the expectations of the consumer. 54

The court's rationale in Mix not only posed problems for commentators, but also provided a confusing basis for judicial decision, which resulted in subsequent courts arriving at different interpretations of the case. 55 For example, two years after Mix, in Silva v. F.W. Woolworth Co., 56 a California court reversed a judgment for the plaintiff who had swallowed a bone concealed in a serving of roast turkey and dressing. 57 While the court cited Mix as controlling authority, it took a narrow interpretation of that decision. 58 The court explained that liability was to be determined solely by whether the object in the food was foreign to its ingredients, and since there was no substance within the roast turkey which was foreign to it, liability must be denied in this instance. 59 The court, in taking the Mix doctrine to its logical extreme, adopted a standard which would bar a plaintiff's recovery any time the harmful substance is natural to any item of food on the plate. 60

In an attack upon such an extreme interpretation, a later California court refused to adhere to the argument that the Mix decision warranted a finding of non-liability whenever an injurious substance was natural to the food being eaten. 61 In Evart v. Suli, 62 the court enunciated yet another interpretation of the Mix

54. Id.
57. Id.
58. Id.
59. Id. at 77.
60. Id. The Silva rationale was taken one step further in Shapiro v. Hotel Statler Corp., 132 F. Supp. 891 (S.D. Cal. 1955). In Shapiro, the plaintiff, while attending a banquet where the food was prearranged, began eating a food dish of which he knew nothing about. The dish turned out to be "Hot Barquette of Seafood Mornay," and the plaintiff was injured when he swallowed a fishbone. Recovery was denied even though the plaintiff had no advance warning that bones might be present in the food. Id.
doctrine. The court in *Evart* reversed the grant of summary judgement for a restaurant operator in an action by a patron who sought damages for the injuries he sustained as a result of biting into a beef bone in a hamburger. The court explained that the *Mix* decision involved a two part test. The first prong of the test asked the question of whether the injurious substance in the food was foreign to its ingredients. The second prong questioned whether it could be said as a matter of law that a consumer might be expected to anticipate and be on guard against the presence of such a substance in the particular food product. Under this test, the court essentially was allowing for consumer recovery in two instances. An injured patron could recover if the substance was foreign to the food served, or, if the substance was natural to the item, the patron could also recover if it was determined as a matter of law that it was not a matter of common knowledge that the substance would be present in the food.

Thus, the ambiguities in the *Mix* doctrine fostered the continued development of the foreign/natural test as courts competed for the more appropriate interpretation. The result of such competition was to cause some courts to attempt to alleviate the harsh effects of the more strict *Mix* formulation. In such attempts, courts began to recognize the viability of consumer expectations as an integral element in the formula for determining liability for natural defects in food products.

2. The Emergence of the Reasonable Expectations Test

The foreign/natural test was not so widely embraced that it did not escape criticism. Most of the early critics pointed to one glaring problem with the standard. The problem, they explained, was the artificial application of the test to the initial stage of food processing without taking into consideration the reasonable

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63. *Id.*
64. *Id.* at 541.
65. *Id.* at 536-37.
66. *Id.* at 539.
67. *Id.*
68. *Id.*
69. *Id.*
70. See generally Draper, *supra* note 8.
71. See, e.g., Ezer, *supra* note 49, at 305 (recognizing that the *Mix* decision failed to take cognizance of the distinction between natural and prepared foods); Janas, *supra* note 6, at 639-40 (also recognizing problem).
expectations of the consumer in the final product served. 72 These critics argued that the foreign/natural test made the fallacious assumption that all substances which are natural to a food item in one stage of preparation are in fact anticipated by average consumers in the final product served. 73

An examination of the case law in the period after the Mix decision reveals that the courts also detected the problematic nature of the foreign/natural test. 74 In the solutions derived to deal with such problems, several courts went beyond the common understanding of Mix and approached, if not yet embraced, the reasonable expectations test for determining liability for natural defects in food products. 75 These courts, while continuing to adhere to the foreign/natural terminology, adopted the reasoning behind the distinction between natural and processed foods. They explained that even while a substance may be natural to a food product in its natural state, it may be considered foreign to the food as served. 76 For example, in Wood v. Waldorf Sys., Inc., 77 the plaintiff was injured when he swallowed a chicken bone contained in a bowl of chicken soup. 78 The court began its analysis by asking whether the consumer could anticipate the presence of the bone in the food as served. It then answered by explaining that while it is one thing to say that a chicken bone is natural to a chicken product served in its natural state, such as roast chicken, it is quite

72. See, e.g., Ezer, supra note 49, at 305; Janas, supra note 6, at 639-40.
73. See, e.g., Ezer, supra note 49, at 305; Janas, supra note 6, at 639-640.
Concerning this problem Ezer stated:
The court [in Mix] clearly failed to take cognizance of the difference between natural and prepared foods ... Certain foods - such as steaks and chops, fish and fowl - are often served in their natural form, the chef's art being limited to broiling, baking or the like. A diner, from the nature of the food, is fairly forewarned of bones, and so is neither likely to ingest them nor recover damages if he does. But when the dish is prepared - such as the chicken pie in Mix, [or the] chow mein in Goetten ... the presence of any harmful object is unnatural, and if such object is the source of injury the patron should be afforded a chance to recover.

Ezer, supra note 49, at 305.
75. See, e.g., Bryer, 156 A.2d 442; Lore, 172 N.Y.S.2d 829; Wood, 83 A.2d 90.
For further discussion on the evolution of the reasonable expectation test, see Janas, supra note 6, at 639-41.
76. See, e.g., Bryer, 156 A.2d 442; Lore, 172 N.Y.S.2d 829; Wood, 83 A.2d 90.
77. 83 A.2d 90 (R.I. 1951).
78. Id.
another to say that the same bone is natural to chicken soup.\textsuperscript{79} The court allowed the plaintiff to recover in this instance.\textsuperscript{80}

Another case emphasizing the importance of the distinction between natural and processed foods was \textit{Bryer v. Rath Packing Co.}\textsuperscript{81} There, the plaintiff sued the defendant for negligence in packing cans of "Ready to Serve Boned Chicken."\textsuperscript{82} The chicken was used by a school cafeteria to prepare chicken chow mein, and a young student was injured when she swallowed a small chicken bone.\textsuperscript{83} The court, while stressing the advertising on the container as boned chicken, stated that the case involved a question of what the plaintiff had a right to reasonably expect under the circumstances.\textsuperscript{84} Adopting similar reasoning as that utilized in \textit{Wood}, the court asked the question in the following terms:

\begin{quote}
[W]hether bones which are natural to the type of food eaten but which are generally not found in the style of the food as prepared are to be deemed the equivalent of a foreign substance in determining whether the food in which they are in is reasonably fit and safe for human consumption.\textsuperscript{85}
\end{quote}

The court explained that food processors must exercise that amount of care in preparing their food products which would prevent injury to the consumer while eating such items.\textsuperscript{86} The court stated that the "amount of care that is required is commensurate with the danger to the life and health of the consumer that may foreseeably result from such lack of care."\textsuperscript{87} The court left the question of whether the food was reasonably fit for human consumption to be decided by the jury.\textsuperscript{88}

As these cases illustrate, some courts, in the period after the \textit{Mix} decision, began to look past the rigid confines of the foreign/natural test and its requirement that courts look solely to the ingredients of the product in determining liability for natural defects in food.\textsuperscript{89} With the central inquiry now focused upon the state of the food as served, these courts were finding more oppor-

\begin{itemize}
\item \textsuperscript{79} \textit{Id.} at 93.
\item \textsuperscript{80} \textit{Id.}
\item \textsuperscript{81} 156 A.2d 442 (Md. 1959).
\item \textsuperscript{82} \textit{Id.} at 443-44.
\item \textsuperscript{83} \textit{Id.}
\item \textsuperscript{84} \textit{Id.} at 446-47.
\item \textsuperscript{85} \textit{Id.} at 444.
\item \textsuperscript{86} \textit{Id.} at 446.
\item \textsuperscript{87} \textit{Id.}
\item \textsuperscript{88} \textit{Id.}
\item \textsuperscript{89} See, e.g., \textit{Bryer}, 156 A.2d 442; \textit{Lore}, 172 N.Y.S.2d 829; \textit{Wood}, 83 A.2d 90.
\end{itemize}
tunity to review the expectations of the consumer. As one commentator noted:

These courts were in effect distinguishing between raw or unprocessed foods, in which bones . . . might still properly be considered natural flaws, and processed foods in which bones . . . would ordinarily be considered foreign to the finished product. Such a distinction must be one of degree, and inevitably must take into consideration the ordinary expectations of the consumer.

The promulgation of such distinctions demonstrates the desire on the part of these courts to attempt to alleviate the problems presented by the Mix formulation. In adapting their own answers, these courts began to employ language which closely resembled that utilized in the reasonable expectations test. It would only be a matter of time before many of these courts would completely abandon the foreign/natural terminology in favor of a pure reasonable expectations test.

3. Rise of the Reasonable Expectations Test

While many courts in this early period after the Mix decision found more opportunities to consider consumer expectations, there persisted a stubborn hesitancy to abandon altogether the naturalness test. However, one court in particular showed no qualms with separating itself from the then majority rule and articulating what it believed to be the better standard. In Bonenberger v. Pittsburgh Mercantile Co., the Supreme Court of Pennsylvania decided whether a sharp oyster shell found in a can of oyster soup rendered the food product unreasonably fit for human consumption. The defendant argued that since the shell was natural to oysters and therefore anticipated by the consumer, there should be no liability imposed in this instance. The court, unconvinced by this argument, expressly refused to hold as a matter of law that the oyster soup was reasonably fit for human con-

90. See, e.g., Bryer, 156 A.2d 442; Lore, 172 N.Y.S.2d 829; Wood, 83 A.2d 90.
91. Janas, supra note 6, at 640.
92. See, e.g., Bryer, 156 A.2d 442; Lore, 172 N.Y.S.2d 829; Wood, 83 A.2d 90.
93. See, e.g., Bryer, 156 A.2d 442; Lore, 172 N.Y.S.2d 829; Wood, 83 A.2d 90.
96. Id.
97. Id. at 915.
98. Id.
Instead the court held that it was to be a question for the jury as to whether the oysters were fit for human consumption. While the Bonenberger decision was not free from criticism, it did gain instant notoriety as one of the first cases in the country to reject the foreign/natural distinction, and as such, it worked to open the judicial floodgates as other courts also began to reexamine the Mix formulation.

Two of the most widely cited cases to reject the foreign/natural distinction after the Bonenberger decision were Betehia v. Cape Cod Corp., and Zabner v. Howard Johnson's, Inc. In Betehia, the Supreme Court of Wisconsin, in a case of first impression, decided whether the presence of a chicken bone in a chicken sandwich constituted a breach of an implied warranty by the restauranteur that the sandwich was reasonably fit for human consumption. The court, in expressly rejecting the foreign/natural test as neither desirable nor logical, stated that the better test was what could reasonably be anticipated by the consumer in the food as served. The rationale used by the court was that while it is true that one can anticipate a "T-bone in a T-bone steak, chicken bones in roast chicken, a pork bone in a pork chop,... and fish bones in... fried fish," such expectations arise not from the naturalness of the substance to the particular food but instead from the type of dish served. Employing reasoning similar to that used in Bonenberger, the court stated:

There is a distinction between what a consumer expects to find in a fish stick and in a baked or fried fish, or in a chicken sandwich...

99. Id.
100. Id.
101. Id. Justice Patterson, in his dissent in Bonenberger, argued that:
   The majority would concede that no liability attaches in the case of a cherry stone in a can of cherries, or where there was a splinter of bone in a t-bone steak, and [there is] no sound reason for arriving at a different conclusion in the case of an oyster shell in a can of shucked oysters. In each instance the potentially harmful substance is natural to the product sold.
Id. at 916.
103. 103 N.W.2d 64 (Wis. 1960).
105. Betehia, 103 N.W.2d at 65.
106. Id. at 68-9.
107. Id. at 68.
made from sliced white meat and in roast chicken. The test should be what is reasonably expected by the consumer in the food as served, not what might be natural to the ingredients of that food prior to preparation.  

In Zabner, a Florida appellate court used essentially the same rationale in reversing the trial court’s grant of summary judgement for the defendant, who had been sued by a patron for injuries sustained when he bit down on a walnut shell in maple walnut ice cream provided to him by the defendant. The court, also rejecting the foreign/natural test, explained that the test’s assumptions concerning injurious substances in food were fallacious. The court found the foreign/natural test illogical because it “assumes that all substances which are natural to the food in one stage or another of preparation are, in fact, anticipated by the average consumer in the final product served.” The court concluded by stressing the fact that the naturalness of an injurious substance to any ingredient in the food served is important only in determining whether the consumer might reasonably expect to find such a substance in that food.

These early cases marked the beginning of the eventual demise of the foreign-natural test in many jurisdictions, as one state after another began to reject the foreign/natural distinction and to establish the reasonable expectations test as the new controlling standard for determining liability for natural defects in food products. While some states have continued to adhere to the foreign/natural test, others have not clearly chosen one way or the other. However, the current national trend among the states has been toward acceptance of the test based on consumer expectations.

108. Id. at 68-9.
109. Zabner, 201 So.2d at 828.
110. Id. at 825.
111. Id. at 826.
112. Id.
113. Id. at 827.
114. For a survey of those jurisdictions which continue to adhere to the foreign/natural test, see Draper, supra note 8 and accompanying text.
115. See Draper, supra note 8, at 216-17 (explaining that courts in New York and in Illinois have taken disparate views as to the proper test for determining liability for natural defects in food products within their respective states).
116. For a survey of those jurisdictions which have adopted the reasonable expectations test, see Draper, supra note 8 and accompanying text.
B. Development in North Carolina

The foreign/natural test made its first appearance in North Carolina case law in the decision Adams v. Great Atlantic & Pacific Tea Co. In Adams, a consumer was injured when he bit down on a particle of corn contained in a box of Kellogg's Corn Flakes and brought an action for breach of implied warranty of fitness for human consumption. The North Carolina Supreme Court sustained the lower court's judgement of nonsuit. Relying heavily upon the Mix opinion, the court contended that the plaintiff's claim for breach of the implied warranty must fail because the injurious substance in the food was natural to its ingredients, and therefore, the consumer was expected to anticipate its presence. The court went on to state that the Bonenberger case, relied upon by the plaintiff to support his argument that the particle of corn was a deleterious substance in the food, was "not . . . in line with the better reasoned cases on the subject of all other courts, who have decided the exact question and have a contrary view." The Adams court clearly expressed its intention to join the then majority ranks in holding the Mix standard as controlling in North Carolina. In fact, Adams became generally recognized among other courts as exemplifying the foreign/natural distinction in the case of natural defects in food products. While the supreme court in Adams clearly adopted the foreign/natural test, the decision, much like that in Mix, would also be subject to differing interpretations among lower courts in North Carolina.

The next case to arise in North Carolina dealing with the issue of natural defects in food products was Coffer v. Standard Brands. In Coffer, the plaintiff brought an action for breach of an implied warranty when he was injured from biting into a filbert shell contained in a jar of mixed nuts. In passing on the issue of liability, the court of appeals cited to Adams as controlling

118. Id.
119. Id.
120. Id. at 572, 112 S.E.2d at 98.
121. Id.
122. Id.
125. Id.
and held that since "the impurity complained of in this case was a natural incident of the goods in question . . . there was no breach of the implied warranty of merchantability." However, the court, while adhering to Adams, seemed hesitant to read that case as precluding recovery in every instance in which the injurious substance is natural to the food product. Instead, the court, by implication, used reasoning analogous to that found in the reasonable expectations doctrine. The court's reliance on Section § 106-129 of the North Carolina General Statutes, dealing with adulterated foods, supports this proposition. The statute explains in pertinent part that a deleterious substance contained in food, if it is not an added substance, shall not render such food adulterated if the "quantity of such substance in such food does not ordinarily render it injurious to health." The North Carolina Supreme Court stated concerning the Coffer decision:

The court's reliance on this statute suggests the court's belief that recovery for injury caused by a substance natural to the food may depend in part upon the quantity, or size, of the substance.

Thus, in determining liability for the presence of a natural substance in a food product, the court found as instructive the size or quantity of the substance and was hesitant to consider solely the naturalness of the substance to the food product.

The reluctance of the court in Coffer to preclude recovery simply because the substance in the food was natural to it is a recurring theme in Goodman v. Wenco Management. In Goodman, the court of appeals expressed a similar hesitancy, and went one step further. The court read the Adams language as establish-

126. Id. at 142, 226 S.E.2d at 539.
127. See id. at 140-42, 226 S.E.2d at 538-39. See also Goodman v. Wenco Foods, Inc., 333 N.C. 1, 14, 1423 S.E.2d 444, 450 (1992) (explaining that the court of appeals in Coffer demonstrated a reluctance in reading Adams as to preclude recovery whenever the substance causing the injury was natural to the food product).
128. See Coffer, 30 N.C. App. at 140-41, 226 S.E.2d at 538. See also Goodman v. Wenco Foods, Inc., 333 N.C. 1, 14, 1423 S.E.2d 444, 450 (1992) (stating that the Coffer court "buttressed [its] conclusion with reasoning that seems by implication to be grounded in part on the 'reasonable expectation' doctrine").
131. Coffer, 30 N.C. App. at 140-41, 226 S.E.2d at 538.
133. Id. at 111, 394 S.E.2d at 835.
ing a two-prong test, like that articulated in Evart, in which the plaintiff could recover under either prong.134 With such an articulation, the court came even closer to adopting the reasoning underlying the consumer expectations test. Even if the substance was determined to be a natural one to the food under the first prong of the test, it remained a jury question as to whether the consumer could have reasonably anticipated finding the substance in the food under the second prong.135 However, the North Carolina Supreme Court would have the last word on both the interpretative inconsistencies of Adams and its continuing viability in North Carolina.136

ANALYSIS

Goodman v. Wenco Foods, Inc. presented the North Carolina Supreme Court with the opportunity both to clarify the prior case law concerning natural defects in food products and to reexamine that law. The court, in Goodman, found the foreign/natural test archaic, rejected it, and substituted the reasonable expectations test as the controlling standard for determining liability for natural defects in food items.137 In doing so, the court joined the national trend as yet another jurisdiction supporting the consumer expectations test as the better and more modern rule.138 The court’s decision in Goodman reflected important policy considerations, and by examining the potential ramifications of the decision, it is clear that the court’s decision to implement the reasonable expectations test was the correct one.

A. The Court’s Decision

The North Carolina Supreme Court’s decision in Goodman proved to have a double impact upon North Carolina law. In one sweeping opinion, the court first clarified the prior case law dealing with natural defects in food products liability cases in North Carolina and then changed that law.139 In the first part of its opinion, the court concluded that the prior reading of Adams by the court of appeals was erroneous.140 The court stated that

134. Id.
135. Id. at 112, 394 S.E.2d at 836.
137. Goodman, 333 N.C. at 1, 1423 S.E.2d at 444.
138. See Draper, supra note 8 and accompanying text.
139. Goodman, 333 N.C. at 1, 1423 S.E.2d at 444.
140. Id. at 11, 423 S.E.2d at 448.
instead of reading the *Adams* language as creating a two prong test under which the plaintiff could recover under either prong, the appropriate interpretation was that the language conveyed a more stringent view of non-liability.\textsuperscript{141} As the court explained, the approach in *Adams* was to adopt the rule that whenever an injurious substance is natural to the food itself there can be no liability because every consumer should expect and guard against the presence of such substance.\textsuperscript{142}

While disagreeing with the court of appeals reading of *Adams*, the court nonetheless agreed with its reasoning.\textsuperscript{143} Recognizing that the test used by the court of appeals utilized essentially the same analysis as that used when applying the test of consumer expectations, the court seized the opportunity to reexamine the holding in *Adams*.\textsuperscript{144} In doing so, the court concluded that *Adams* should no longer be considered authoritative in its holding that recovery under an implied warranty theory is always precluded when the injurious substance within the food item is natural to its ingredients.\textsuperscript{145} The court stated:

> We think the modern and better view is that there may be recovery, notwithstanding the injury causing substance's naturalness to the food, if because of the way in which the food was processed or by the nature, size, or quantity of the substance, or both, a consumer should not reasonably have anticipated the substance's presence.\textsuperscript{146}

The court, therefore, held that it will no longer be a bar to the consumer's recovery if the injurious substance in the food is natural to it, provided that the substance is of such a size, quality, or quantity, or the food has been so processed, that the presence of the substance could not have reasonably been anticipated by the consumer.\textsuperscript{147} In so holding, the court refused to adhere any longer to the foreign/natural distinction and instead substituted in its place the reasonable expectations test.\textsuperscript{148}

\textsuperscript{141.} *Id.*
\textsuperscript{142.} *Id.*
\textsuperscript{143.} *Id.* at 15, 423 S.E.2d at 450.
\textsuperscript{144.} *Id.*
\textsuperscript{145.} *Id.*
\textsuperscript{146.} *Id.* at 15, 423 S.E.2d at 450-51.
\textsuperscript{147.} *Id.* at 15-16, 423 S.E.2d at 451.
\textsuperscript{148.} *Id.*
B. Comparison to the National Trend

The North Carolina Supreme Court's adoption of the reasonable expectations test is clearly in step with the national trend.\textsuperscript{149} The court's opinion reflected many of the same policy considerations which concerned other courts in adopting the test as the controlling standard for determining liability for natural defects in food products cases. A survey of those decisions shows that these courts repeatedly utilized similar reasoning in arriving at their decision to abandon the foreign/natural standard.\textsuperscript{150} These reasons can essentially be broken down into two primary areas: the concern for greater consumer protection and the desire to more efficiently allocate the risks inherent in marketing food products.

The foremost reason many courts have decided to abandon the foreign/natural test is their recognition of the need for greater consumer protection in the area of food sales.\textsuperscript{151} Recognizing the dominant role consumerism plays in our modern era, these courts have chosen to align themselves with the theory that "the seller, by marketing his product for use and consumption, has undertaken and assumed a special responsibility toward any member of the consuming public who may be injured by it."\textsuperscript{152} Such a view has led the courts to focus on the unfair burden which a strict foreign/natural test places on the consumer.\textsuperscript{153} As the North Carolina Supreme Court stated:

It is difficult to conceive of how a consumer might guard against the type of injury present here, short of removing the hamburger from the bun, breaking it apart and inspecting its small components . . . We doubt that any hamburger manufacturer seriously expects consumers to go to such lengths, especially since a hamburger sandwich is meant to be eaten out of hand, without cutting, slicing, or even the use of a fork or knife.\textsuperscript{154}

\textsuperscript{149} See Draper, supra note 8 and accompanying text.
\textsuperscript{152} Restatement (Second) of Torts § 402A, cmt. c (1965).
The supreme court drew attention to the fact that the foreign/natural test has clearly outlived its usefulness as a standard for determining consumer recovery in our modern society. Both in North Carolina and in other jurisdictions, courts recognize that society is continually undergoing rapid transformation. With such quickening changes in the manner in which most modern Americans live, there is an increasing demand for the production of processed foods. Because of such changes, it is of vital importance that the laws protecting the consumer in the area of food sales develop along the same lines. Amidst this “modern landscape dotted with hamburger chains,” the foreign/natural test has simply proved to be an anachronism. The more suitable

Similarly, one court stated: “If one ‘reasonably expects’ to find an item in his or her food then he guards against being injured by watching for that item. When one eats a hamburger he does not nibble his way along hunting for bones because he is not ‘reasonably expecting’ one in his food.” O’Dell v. DeJean’s Packing Co., 585 P.2d 399, 402 (Okla. Ct. App. 1978)).

155. See Goodman, 333 N.C. at 16, 1423 S.E.2d at 454. See also Michael Dayton, Restaurant Patron May Sue for Bone Chip in Hamburger, N.C. LAWYERS WEEKLY, Dec. 28, 1992, at 1,3 (explaining that the supreme court in Goodman recognized that the Adams test was an archaic standard for determining liability in food products liability cases).

156. See, e.g., Morrow v. Caloric Appliance Corp., 372 S.W.2d 41, 55 (Mo. 1963); Goodman, 333 N.C. at 16, 1423 S.E.2d at 454; O’Dell, 585 P.2d at 401-02.

157. See, e.g., Morrow, 372 S.W.2d at 55; Goodman, 333 N.C. at 16, 1423 S.E.2d at 454; O’Dell, 585 P.2d at 401-02.

158. See O’Dell, 585 P.2d at 401-02. See also Morrow, 372 S.W.2d at 55 (arguing for the imposition of strict liability in food products cases because it would “afford justice to the vast majority of the consumer citizenry [who] . . . are dependent in great degree upon processed food . . . , the . . . safe use of which the ordinary consumer can know little or nothing other than the fact that the processor . . . holds them out to the public as fit and reasonably safe for use by the consumer.”).

159. Dayton, supra note 155.

160. Janas, supra note 6, at 652. He explained:

With the prevalence of processed foods on the market today and the development of technology in the food industry, consumers increasingly rely upon food processors to inspect and purify the foods they consume. Many products today are even packaged in such a manner that inspection by the consumer is difficult if not impossible. One might imagine a consumer in a jurisdiction that applies the foreign/natural test tearing away the crust from a beef pot pie to search for tiny bones, or picking-apart a cherry-nut ice cream cone to remove stray shells or pits.

Id. at 651-52.
standard is that which focuses upon whether the substance's presence should reasonably have been anticipated by the consumer.

In addition, commentators point out that the abandonment of the foreign/natural distinction would better distribute the risks that are inherent in food products. The rationale goes as follows: because the foreign/natural test works to arbitrarily shield food processors from liability, the injured plaintiff is forced to bear the costs of recovery, and in many instances, this burden is likely to seriously hinder the plaintiff financially. Such individualized costs can be alleviated through the use of liability insurance as a cost spreading mechanism. Commentators argue that the burden of liability should rest upon the manufacturers and other food processors because they are in a better position to obtain such insurance and can thus spread the losses on to members of the public by raising their prices. Consumers, however, are clearly not in a position to take advantage of such a cost spreading device. As one commentator stated:

As between the restaurateur and his patron, the former is a better risk distributor. He can pay the insurance premiums needed to protect his consumers from chance encounters with harmful objects and spread the cost as a legitimate expense of doing business.

161. See Ezer, supra note 49, at 304-05. See also Reed Dickerson, Products Liability and the Food Consumer 135 (1951).

162. See Janas, supra note 6, at 651.


164. Id. See, e.g., Dickerson, supra note 161, at 135; Henderson, supra note 163.

165. See Ezer, supra note 49, at 304-05. See also Dickerson, supra note 161, at 135 (arguing for the imposition of strict liability in food products liability cases because “such a liability provides a kind of consumer insurance whereby the aggregate of people consuming the particular product, by paying slightly higher prices, share the financial burdens caused by defective food products”).

166. Ezer, supra note 49, at 304-05. See also Restatement (Second) of Torts, § 402A, cmt. c (1965). Comment c states the following concerning this issue:

Public policy demands that the burden of accidental injuries caused by products intended for consumption be placed upon those who market them, and be treated as a cost of production against which liability insurance can be obtained; and the consumer of such products is entitled to the maximum of protection at the hands of someone, and the proper persons to afford it are those who market the products.

Id.
The reasonable expectations standard, unlike the foreign/natural test, refuses to categorically immunize food processors from liability for natural defects in food products. Through an increase in the likelihood of consumer recovery, this standard provides more opportunity for the utilization of liability insurance and hence more effectively promotes the spreading of losses among the public at large.

C. Ramifications of the Decision

A general examination of the consequences of the adoption of the reasonable expectations test proves that it is the more desirable of the two competing standards for determining liability for natural defects in food products. Specifically, the test based upon consumer expectations encourages investment in product safety, promotes general notions of fairness, and provides a more flexible and rational basis for judicial decision.

One of the principal consequences of the adoption of the reasonable expectations test is that it would encourage investment in product safety by no longer shielding food processors from liability for the inclusion of injurious substances in their food. Because the foreign/natural test tends to arbitrarily protect food processors from liability for any natural defect in the food, the test discourages those processors from attempting to prevent possible risks to the consumer, even where there may be technology available to do so. Thus, the foreign/natural test has the potential to lower the duty of care required by food processors to their customers. As one commentator explained:

It seems illogical to say that a processor should take precautions to protect the public from deleterious foreign objects in its products, but that it need not be as concerned about removing bone or shell fragments even when it is practicable to do so. To apply a strict foreign/natural test of liability has precisely that effect, significantly lowering the standard of ordinary care owed to the consumer.


168. See, e.g., Evart v. Suli, 259 Cal. Rptr. 535, 540 (Cal. Ct. App. 1989); Zabner, 201 So.2d at 827. See also Janas, supra note 6, at 649, 652.

169. See Janas, supra note 6, at 652.

170. Id. at 649.
The reasonable expectations test, on the other hand, leaves food processors less likely to avoid liability because it refuses to arbitrarily protect those processors in any case involving injurious natural defects in food products. Therefore, the reasonable expectations test works to enhance the processors' incentive to exercise the proper standard of care in attempting to reduce the risk of consumer injury from natural defects in their food products. As one court stated:

[While] the defendant is not an [absolute] insurer [he] has the duty of ordinary care to eliminate or remove in the preparation of the food he serves such harmful substances as the consumer of the food, as served, would not ordinarily anticipate and guard against.

Thus, the consumer expectations test requires that food sellers conform their products to those standards of product safety that consumers reasonably have a right to expect from the food industry.

The consumer expectations test, in addition to providing incentive for investment in product safety, also advances important notions of fairness as between the customer and the food processor. The foreign/natural distinction and its result of categorically denying a consumer recovery in cases of natural defects in food products which they neither anticipated nor were able to guard against seems fundamentally unjust. As one commentator explained:

172. See, e.g., Evart, 259 Cal. Rptr. at 540; Zabner, 201 So.2d at 827.
173. Zabner, 201 So.2d at 827. The court went on to state that a patron relies upon the seller's skill and judgement in the preparation of food, and that the food must conform to that particular purpose. Id. See also Evart, 259 Cal. Rptr. at 540 (discussing the responsibility of food purveyors to serve food which is fit for its intended purpose).
174. See Janas, supra note 6, at 652.
175. See, e.g., Zabner, 201 So.2d at 826; Betehia v. Cape Cod Corp., 103 N.W.2d 64,66 (Wis. 1960). See generally Janas, supra note 6, at 649.
176. See, e.g., Evart, 259 Cal. Rptr. at 541; Lore v. DeSimone Bros., 172 N.Y.S.2d 829 (N.Y. Sup. Ct. 1958); O'Dell v. DeJean's Packaging Co., 585 P.2d 399, 401 (Okla. Ct. App. 1978). See also Janas, supra note 6, at 650. He states: for a plaintiff to be denied compensatory damages for injuries received from . . . natural but unanticipated defects, simply because of an arbitrary foreign/natural distinction is now being recognized by several courts as a harsh and unjust result.

Id.
Surely if a customer is killed or maimed because of ingesting deleterious matter in a meal, his ability to recover should hardly depend upon whether the offending substance was or was not alien to the repast.\textsuperscript{177} The abundance of processed foods on the market, coupled with new methods of promotional advertising and the growth of technology in the food industry, all leads the consumer to both rely on and expect that the food served will not cause bodily injury.\textsuperscript{178} The consumer's reasonable expectations regarding safety are only heightened when he pays value for the product.\textsuperscript{179} Therefore, it does not seem appropriate or desirable to require that the consumer bear the costs when his interests are disappointed. It does, however, seem more appropriate for the food processor, who is in a better position to protect his interests through loss spreading, to bear the burden when such accidents occur.\textsuperscript{180} In an era where consumer protection is becoming increasingly important, the reasonable expectations test has become the preferred standard because it tends to more fairly protect the consumer's interests.\textsuperscript{181} In addition, the test works to promote a more just distribution of losses occasioned by injuries resulting from natural defects in food products.\textsuperscript{182} Finally, the reasonable expectations test also produces a more rational and consistent basis for judicial decision.\textsuperscript{183} The test avoids many of the pitfalls associated with the foreign/natural test, proving to be the more logical and less arbitrary standard for determining liability for natural defects in food products. The standard based on the reasonable expectations of the consumer avoids entirely the fallacious reasoning which plagues the foreign/natural test.

\textsuperscript{177} Ezer, \textit{supra} note 49, at 305.
\textsuperscript{178} See generally Henderson, \textit{supra} note 163, at 931-34.
\textsuperscript{179} Id. See also Zabner, 201 So.2d at 827 (discussing the sales theory applicable when a "patron orders and pays for a meal or food at a public restaurant" and which holds that a patron, relying on the skill and judgement of a seller in preparing food, may reasonably expect the food to be fit for the particular purpose for which it is required).
\textsuperscript{180} See generally Ezer, \textit{supra} note 49.
\textsuperscript{182} See Ezer \textit{supra} note 49, at 304-05.
\textsuperscript{183} Ernst J. Schag, Jr., \textit{Consumer Expectation-The Test of a Substance Natural to a Food as a Legal Defect}, 15 \textit{FOOD DRUG COSM. L.J.} 311, 319 (1960).
natural test.\textsuperscript{184} Courts have repeatedly urged that the foreign/natural test as applied is the less desirable of the two competing standards because it erroneously assumes that all substances which are natural to the food in one stage of production are expected by the average consumer in the final product served.\textsuperscript{185} The reasonable expectations standard avoids this problem altogether by focusing upon the pivotal issue of what is expected by the consumer in the food product as served and not on the naturalness of any particular substance to that food at a preliminary stage of production.\textsuperscript{186} As one court stated:

The only way of avoiding the misapplication of the foreign/natural theory is to focus on what the consumer might reasonably expect to find in the final [food] product [served]. This being the case it would make even more sense to discard the foreign/natural distinction and go directly to the reasonable expectations issue. The use of these labels does not advance the inquiry and unnecessarily increases the probability of confusion on the ultimate issue.\textsuperscript{187}

Therefore, the reasonable expectations test prevents courts from “descend[ing] into this quagmire”\textsuperscript{188} by providing a more logical and straightforward standard from which to determine liability for any injurious substance in a food product.

The reasonable expectations test also proves to be the more rational of the two standards because it further avoids the arbitrariness often associated with the foreign/natural test. As one commentator explained:

Few courts today would justify a rule shielding a food processor from liability . . . when the product involved contains a sharp piece


\textsuperscript{185} See, e.g., Matthews, 380 F. Supp. at 1065; Zabner, 201 So. 2d at 828. See also infra notes 71-92 and accompanying text.

\textsuperscript{186} See, e.g., Matthews, 380 F. Supp. at 1065; Zabner, 201 So. 2d at 828.

\textsuperscript{187} Matthews, 380 F.Supp. at 1065. On similar lines, one commentator noted the following:

While different jurisdictions may vary as to what the expectation may be in a particular situation, the increased utilization of [the reasonable expectations] approach will, by eliminating preoccupation with “natural” as a test in itself, help formulate a more rational and consistent basis for judicial decision.

Schag, supra note 183, at 319.

\textsuperscript{188} Matthews, 380 F. Supp. at 1066. See also Loyacano v. Continental Ins. Co., 283 So.2d 302 (La. Ct. App. 1973) (providing further discussion on the confusion which adherence to the foreign/natural distinction can create).
of wire, glass, or other foreign object causing serious injury to the customer. Yet the case law embodying the foreign/natural test categorically immunizes the same processor from liability when the injury is caused by a sharp bone fragment, a hard fruit pit, or a piece of nut shell, simply because the defect is a natural element of an ingredient in the product. Certainly teeth can be broken and internal tissues lacerated as easily by bone fragments... as they can by ground glass.\textsuperscript{189}

The reasonable expectations test prevents such unjustifiable results by refusing to systematically bar a consumer's recovery simply because the injurious substance might be natural to the food product consumed.\textsuperscript{190} Instead, this standard allows the consumer to go forth with his claim and ultimately await a jury verdict to determine whether a reasonable consumer would expect to find such a defect in the product.\textsuperscript{191}

**Conclusion**

Upon the modern landscape of today's society, the foreign/natural test for determining liability for natural defects in food products liability cases proves inadequate. The test based on consumer expectations better serves the needs and demands of modern society because, in addition to encouraging product safety, it promotes fairness as between the consumer and the food processor and serves as a more flexible and rational basis for judicial decision. The test also imposes no great burden upon these processors and sellers because it simply requires that they produce food products which conform to the reasonable safety standards which

\textsuperscript{189} Janas, supra note 6, at 648. See also O'Dell v. DeJean's Packing Co., 585 P.2d 399, 402 (Okla. Ct. App. 1978). The court noted that:

- oftentimes extensive damage and even death is caused by a substance in the prepared food that is "natural" to the food item in its original state.
- Thus, there seems little logic in the "foreign/natural" test. It appears that the weakness in this test leads to ridiculous results. Where is the line drawn?... One... wonders what the courts in [those] jurisdictions would decide in the chicken soup case if it were a chicken beak or claw that caused the damage rather than a chicken bone, because all three parts are "natural" to the product.

\textit{Id.}


consumers have come to expect from the food industry. In adopting the reasonable expectations test, the North Carolina Supreme Court joined the recent national trend and laid to rest an antiquated rule which had clearly outlived its usefulness in food products liability cases.

Leigh A. Aughenbaugh

192. See Janas, supra note 6, at 652.