

Products Liability

WHO WET MY PANTS?



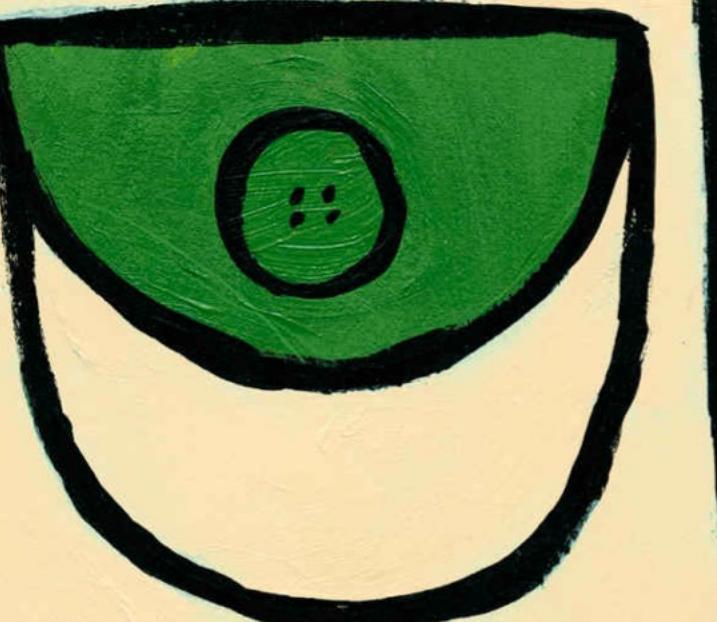
WRITTEN BY BOB SHEA // ILLUSTRATED BY ZACHARIAH OHORA

Come and get 'em!
I got all your favorites.

Chocolate frosted for Jared
and Julia, pink for Oskar,
rainbow sprinkles for Linzie,
gross maple-bacon for Tim
and Teddy, Boston cream
for Kelly...

and blueberry crunch in a
separate bag for Bigfoot,
who thinks it's weird when
donuts touch.





Ahem.





WHO WET MY PANTS?





Somebody better come clean
about my wet pants.

Oh, sure, it's all chipper,
cheery Chattytown when
I bring donuts, but when
someone wets my pants,
everybody clams up.



Hey, Tim. Bet you picked up some pretty great
tricks before you ran away from the circus.
What was the Big Top Showstopper? Was it...



WETTING MY PANTS?



Tim didn't wet your pants, Reuben. It was probably just an accident.



You seem to know an awful lot about
who-wet-what-when vis-à-vis my pants.
Well, Mr. All-the-Answers, here's one
simple question....

DID YOU WET MY PANTS?



Gosh, I used to wet
my pants all the time.
We all understand.

You know something, Bigfoot?
I'm not even sure I believe in you.
If I did, I'd have one thing to say.

**DID YOU
WET MY
PANTS?**



Don't worry about it, Reuben. It could happen to anyone.

But it didn't happen to anyone! It happened to me! All I want is JUSTICE! Justice and dry pants.



You know what's worse than the damp, uncomfortable feeling? My so-called friends trying to cover it up.

Well, guess what? I blame all of you. That's right....



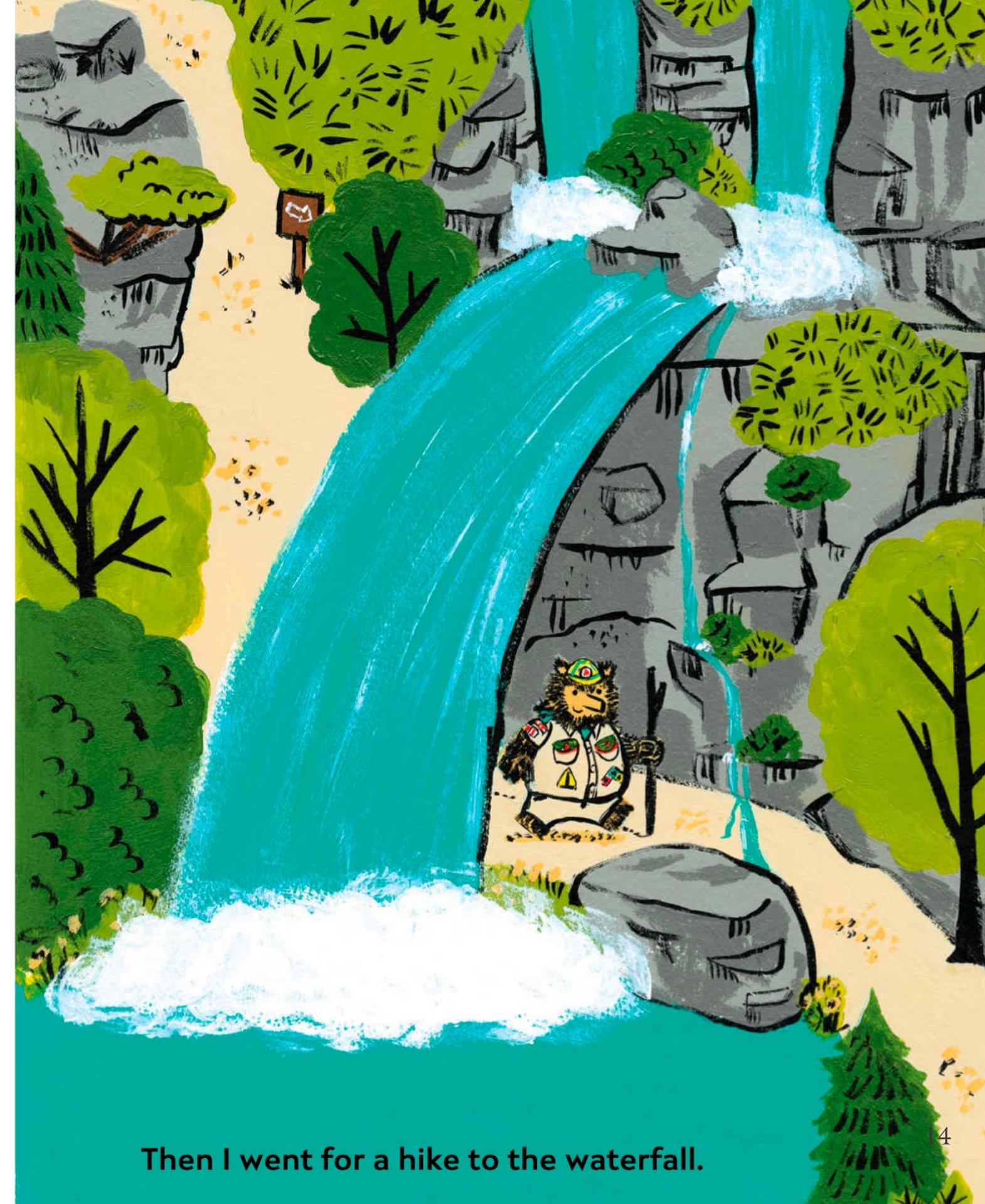
YOU ALL WET MY PANTS!



Look, here's all I know.



This morning I helped out at the lemonade stand.



Then I went for a hike to the waterfall.



Later I fell asleep playing with my tropical fish.



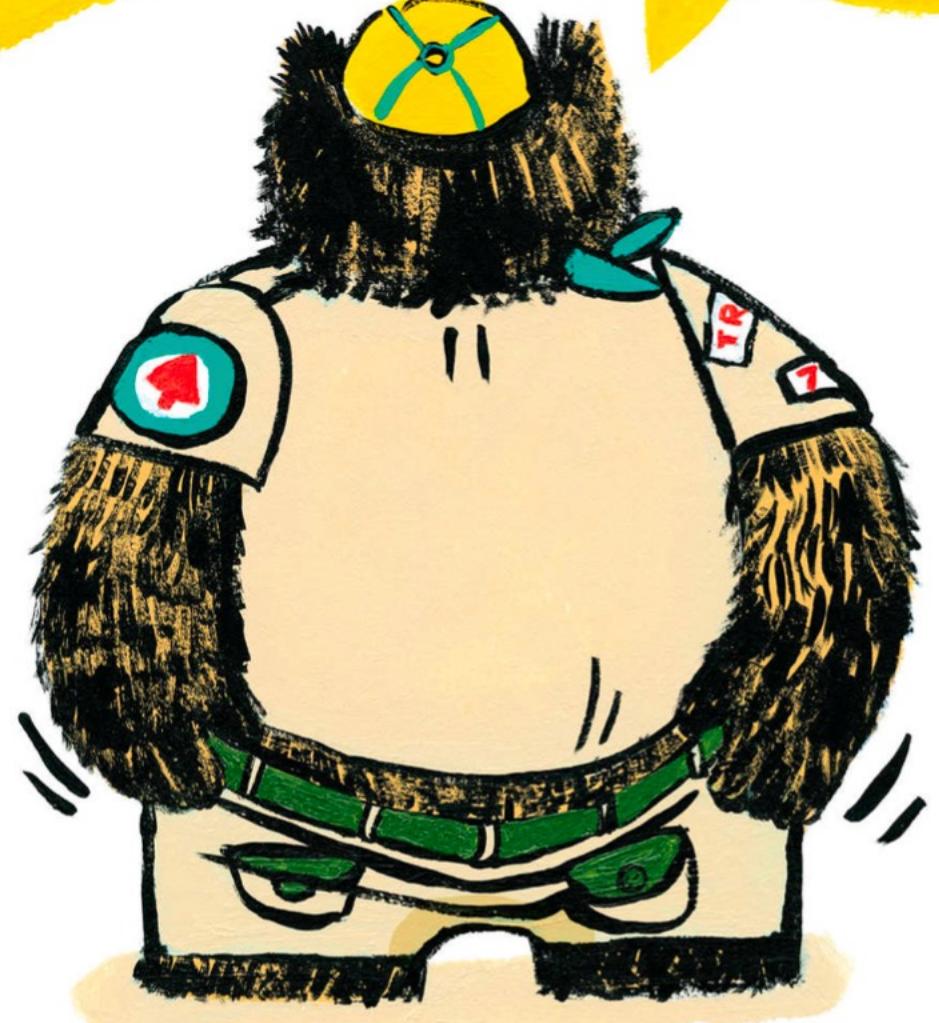
When I woke up, I got donuts and came straight here.



Then...POOF!
My dry pants are wet.
Pants that have never
been out of my sight...
pants I have been wearing
the WHOLE TIME.



THESE PANTS ARE
BROKEN!



They sprung a leak.



Ugh! Thanks for nothing, leaky
broken pants! Making me blame
all my super great friends.



BUT if one of
you guys DID
wet my pants...





What products liability claims might Reuben the bear try to assert against the manufacturer of his pants?

We all know that Reuben should lose his case,
but on what legal grounds?

Warnings and Instructions

Hood v. Ryobi American Corp.

“Removing Bladeguards from an Electric Saw, What Could Go Wrong?”

Couple nuances

“Heeding Presumption”

Warnings can't overcome design defects

Jones v. Ryobi, Ltd.

“The Modified Printing Press”

Anderson v. Nissei ASB Machine Co.

“The Bottle-Making Machine that Amputated an Arm”

General Rule: Manufacturer can only be held liable for defects that existed when the product was sold.

Missouri: When a third party's modification makes a safe product unsafe, the manufacturer is relieved of liability even if the modification is foreseeable.

Arizona (and CA): Only an unforeseeable modification of a product bars recovery from the manufacturer.

How can you defend against a strict liability or products liability claim?

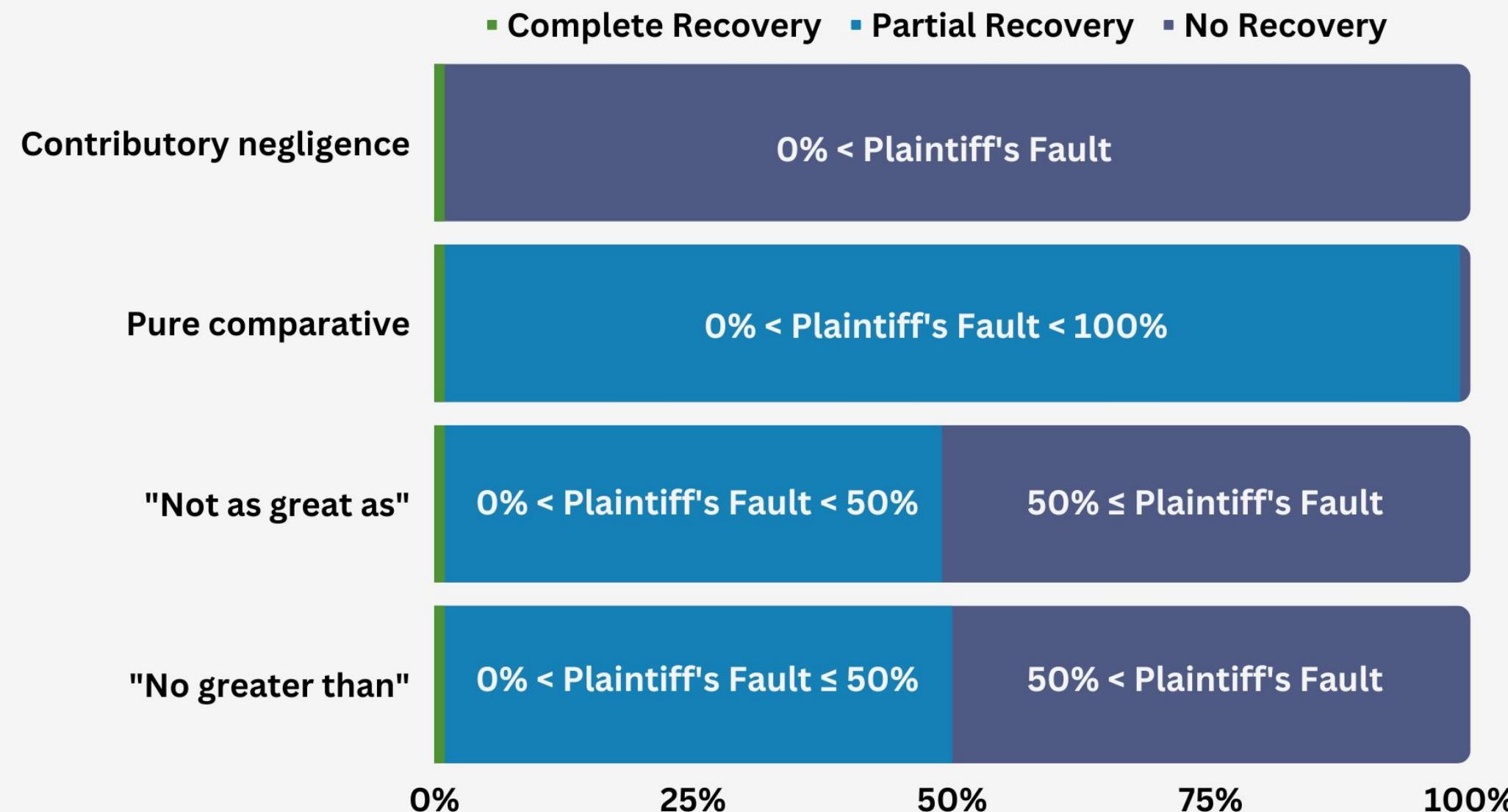
Strict Liability Defenses

~~NOT Contributory Negligence~~

Comparative Negligence

Assumption of Risk

Jurisdictional Rules - Plaintiff's Negligence



Jurisdictional Rules - Contribution

Joint and several liability

or

Several liability

Jurisdictional Rules - Apportionment

Evenly split

or

Comparative fault

Comparative Responsibility is
Hard

Can a plaintiff be negligent for failing to discover a defect?

Restatement (Second) of Torts

Contributory negligence of the plaintiff is not a defense when such negligence consists merely in a failure to discover the defect in the product, or to guard against the possibility of its existence.

Restatement Third

[W]hen the defendant claims that the plaintiff failed to discover a defect, there must be evidence that the plaintiff's conduct in failing to discover a defect did, in fact, fail to meet a standard of reasonable care. In general, a plaintiff has no reason to expect that a new product contains a defect and would have little reason to be on guard to discover it.

Assumption of Risk

Assumption of Risk

~~Express (Disclaimers and waivers)~~

Implied (Knowingly encounter a danger)

You are a junior associate at a plaintiff-side firm. The potential plaintiff, a nine-year-old boy named Augustus Gloop, choked on a hot dog during lunch in his elementary school cafeteria. The child survived but suffered serious injuries. His family is now interested in suing Oscar Meyer Weiner, the company that produced this hot dog. Oscar Meyer Weiner does not have any warning labels on its packaging.

A partner at your firm would like you to sketch out arguments supporting a failure to warn claim, a design defect claim, and a manufacturing defect claim. For each claim, provide an example of a piece of evidence that would help our client win. And let her know which claims have the best and worst chances of success.