Loyola University Chicago Law Journal

Volume 4
Issue 2 *Summer 1973*

Article 16

1973

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PRODUCTS LIABILITY—Manufacturer Held Not Responsible For Dealer Created Defects.

Mayrath Company was a manufacturer of certain component parts which could be assembled into a conveyor-like grain elevator system meeting the needs of virtually any farmer. In that the requirements of different farmers in regard to the final configuration and power source for their particular elevator systems could differ materially, Mayrath did not assemble the elevator system itself. It sold the component parts to independent farm supply dealers who, in dealing directly with farmers, could more easily satisfy their customers' needs by assembling the elevator systems according to the specifications of the purchasing farmers.

One of the independent dealers with which Mayrath did business was Elmer Kehrer. Kehrer sold an elevator system composed exclusively of Mayrath parts to a farmer named Lawrence Jansen. The system which Kehrer assembled for Jansen did not have an internal motor as its power source, but rather relied on the power system of a farm tractor. When an elevator system was powered by an internal motor, there were no exposed moving parts. When a tractor was used as the power source for an elevator system, the tractor's power take off device was attached to the system by means of a drive shaft connected to a universal joint and held in place by a cotter pin. While Mayrath offered a safety shield in its line of component parts, it was possible to operate the elevator system without using the safety shield. If a dealer assembled a tractor powered elevator system without attaching the safety shield, then the drive shaft and cotter pin would both be exposed. Kehrer did not attach a safety shield to the system sold to Jansen.

Two years after Jansen purchased the elevator system from Kehrer, Donald Willeford, a twelve year old boy working for Jansen, was operating the tractor being used to generate power for the elevator system. Willeford had been warned several times by Jansen and his fellow employees to stay away from the exposed drive shaft. However, he somehow became entangled in the exposed drive shaft and suffered the loss of his leg. Subsequently he brought suit against Mayrath with counts sounding in strict liability in tort and negligence in design. Willeford alleged that Mayrath had marketed an unreasonably dangerous elevator system in that it could be made operational

without requiring that the safety shield be attached so as to negate the dangers presented by the exposed drive shaft and cotter pin. He also alleged that Mayrath was negligent in failing to attach a warning of the dangers of a system which relied on a tractor as its power source.

The Circuit Court of Coles County gave judgment for the plaintiff in the amount of over $100,000.[1] The defendant appealed and the Illinois Appellate Court for the Fourth District reversed. The court, with each Justice writing an opinion, found that no defective condition existed in the elevator system when it left Mayrath's control; for the elevator system, as a product, did not come into existence until it was assembled by the independent dealer.[2] Citing prior Illinois law in the area of strict liability, the court found that the plaintiff held the burden of proof to show that the product was unreasonably dangerous when it left Mayrath's control and that he had failed to make this showing.

STRICT LIABILITY IN ILLINOIS

Products liability has evolved to the point where there is no longer any need to prove a contractual relationship between the injured party and the manufacturer, or any fault on the part of the manufacturer. The landmark case establishing this "strict liability in tort" was *Greenman v. Yuba Power Products, Inc.*,[3] where Mr. Justice Traynor clearly stated that "(t)he liability is not one governed by the law of contract warranties but by the law of strict liability in tort."[4] § 402A of the *Restatement of Torts* (Second) and the accompanying comments concur in this view.[5]

Illinois adopted strict liability in tort in 1965 when the Supreme

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1. The appeal was from a judgment for $107,875.59 on a verdict in favor of the plaintiff as damages for his personal injuries, the set amount being the amount of the verdict less credit given the defendant for the amount plaintiff received on a covenant not to sue another person.
2. Willeford v. Mayrath Co., 7 Ill. App. 3d 357, 287 N.E.2d 502 (1972).
3. 59 Cal. 2d 57, 377 P.2d 897 (1962).
4. *Id.* at 63, 377 P.2d at 901.
5. § 402A. Special Liability of Seller [includes "manufacturer" per comment *f* (1965)] of Product for Physical Harm to User or Consumer
   (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 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 or consumer without substantial change in the condition in which it was sold.
   (2) The rule stated in Subsection (1) applies although
      (a) the seller has exercised all possible care in the preparation and sale of his product, and
      (b) the user or consumer has not bought the product from or entered into any contractual relation with the seller.

Court handed down its decision in *Suvada v. White Motor Co.*[6] Suvada had purchased a used truck from White Motor Company, which contained a braking system manufactured by Bendix-Westinghouse Air Brake Company. This braking system failed and the truck collided with a bus, causing injuries to both the bus and its passengers. The court, in holding Bendix liable, based its decision to allow recovery by way of strict liability in tort squarely on public policy considerations. In reaching its decision to extend the doctrine as it existed for food[7] to other products, the court stated:

> [I]t seems obvious that public interest in human life and health, the invitations and solicitations to purchase the product and the justice of imposing the loss on the one creating the risk and reaping the profit are present and as compelling in cases involving motor vehicles and other products, where the defective condition makes them unreasonably dangerous to the user, as they are in food cases.[8]

This holding did not make a manufacturer an absolute insurer.[9] The court held that plaintiffs still must prove that their injury or damages resulted from a condition of the product, that the condition was an unreasonably dangerous one, and that the condition existed at the time the product left the manufacturer's control.[10]

Illinois courts have also had occasion to consider whether or not any positive defenses were to be available to manufacturers sued under the strict liability doctrine set forth in *Suvada.* These defenses were set down by the Illinois Supreme Court in *Williams v. Brown Manufacturing Co.*[11] In *Williams* the operator of a trenching machine was injured when the machine bucked and unexpectedly jumped back, knocking the operator down and running over him. The manufacturer argued that the accident was caused by an improper adjustment of the drive belt and the court agreed. In remanding the case, the court held that recovery would be barred to plaintiffs "who 'misuse' a product—use it for a purpose neither intended nor 'forseeable' (objectively reasonable) by the defendant."[12] The court further stated:

> We emphasize that 'assumption of risk' is an affirmative defense

6. 32 Ill.2d 612, 210 N.E.2d 182 (1965).
7. Boyd v. Coca-Cola Bottling Works, 132 Tenn. 23, 177 S.W. 80 (1915); Patargias v. Coca-Cola Bottling Co., 332 Ill. App. 117, 74 N.E.2d 162 (1947); PROSSER, THE LAW OF TORTS § 97 (4th ed. 1971).
8. 32 Ill.2d at 619, 210 N.E.2d at 186.
9. Warner v. Kewanee Machinery & Conveyor Co., 411 F.2d 1060 (6th Cir. 1969); Van Dorpe v. Koyker Farm Imp. Co., 427 F.2d 91 (7th Cir. 1970); Neusus v. Sponholtz, 369 F.2d 259 (7th Cir. 1966).
10. 32 Ill.2d at 623, 210 N.E.2d at 188.
11. 45 Ill.2d 418, 261 N.E.2d 305 (1970).
12. *Id.* at 425, 261 N.E.2d at 309.

> . . . which may be asserted in a strict liability action notwithstanding the absence of any contractual relationship between the parties.[13]

It was also found that the test to be used in determining whether the user assumed the risk would be a subjective one based upon *the user's* knowledge, experience, and appreciation of the danger rather than that of the reasonably prudent man.[14]

The same Fourth District of the Illinois Appellate Court that decided *Willeford* had earlier held in favor of a defendant manufacturer on the basis of the fact that a plaintiff's actions, rather than an alleged defective condition of the product, was the proximate cause of the accident. In *Brandenburg v. Weaver Manufacturing Co.*,[15] a mechanic was injured when a car fell off of the jack that was supporting it. The jack was an experimental model and the mechanic had failed to use safety stands, although it was determined that he had knowledge of their necessity. The court held that the proximate cause of this accident was the mechanic's failure to use safety stands and that the product was not defective.[16] Thus the *Brandenburg* court had applied the defense of assumption of risk under the proximate cause label.

As indicated in the discussion of *Williams,* Illiniois has also adopted the defense of misuse of the product in strict liability cases. In *Lewis v. Stran-Steel Corp.*,[17] the Appellate Court for the First District examined this defense. A bundle of steel flooring sheets, bound together with steel straps, fell apart when a fork lift truck drove over a large hole in the floor of a warehouse. The sheets slid off the pile, and injured the plaintiff. Mr. Justice Smith held that it was not forseeable to the manufacturer that a forklift truck would be driven over holes and thus the manufacturer could not be held liable for injuries. He found that such an operation of the truck constituted a mishandling of the product. Mr. Justice Trapp, who also sat on the *Willeford* court, held that there was no unreasonably dangerous condition in the product that was unknown to its operator and thus there could be no liability in the manufacturer. In his concurring opinion,[18] he put special emphasis on the point that the unreasonably dangerous condition must be latent and unknown to the user.

The *Lewis* decision made a further contribution to the present state of the law of products liability in Illinois in that the plaintiff had been an

13. *Id.* at 430, 261 N.E.2d at 312.
14. *Id.*
15. 77 Ill. App. 2d 374, 222 N.E.2d 348 (1966).
16. *Id.* at 379, 222 N.E.2d at 350.
17. 6 Ill. App. 3d 142, 285 N.E.2d 631 (1972).
18. *Id.* at 153, 285 N.E.2d at 638.

innocent bystander. It had been held that an innocent bystander could recover from a manufacturer in *White v. Jeffrey-Galion, Inc.*[19] However, subsequent to *White,* there remained uncertainty as to whether a manufacturer could assert a positive defense relating to the actions of the user in defeating recovery by the bystander.[20] Both of the bases for the *Lewis* decision allow the manufacturer to assert a positive defense against a bystander based on the actions and knowledge of the user. The mishandling, which provided the basis for the finding of Mr. Justice Smith, was perpetrated by the forklift driver who was not injured. The fact that the hazard was patent, which provided the basis of the concurring opinion of Mr. Justice Trapp, may also be said to relate to the knowledge of the user. Knowledge of the dangerous condition of the bundle of steel cannot be imputed to the bystander since he did not see the bundle prior to the time it fell on him. Still the court denied the bystander a recovery. The two opinions in *Lewis* then stand as authority for the proposition that the actions by a product user can serve to cut off the liability of the manufacturer to innocent third parties if the user had assumed some risk or had mishandled the product.

THE *Willeford* DECISION

After setting forth the plaintiff's theories and the facts, Mr. Justice Richards, writing for the court, entered a discussion concerning the testimony at trial. He stated that the expert testimony offered by the plaintiff had failed to show that a tractor powered elevator system equipped with a safety shield would not have protected Willeford from the injury he ultimately suffered. Indeed, in his opinion, the testimony showed that the Mayrath safety shield would have prevented the injury.

When this fact had been established, he stated that the cornerstone of the plaintiff's case, in either strict tort liability or negligence in design, hinged on the resolution of the question of whether the Mayrath products were in defective or unreasonably dangerous condition when they left Mayrath's control. But, before this question could be answered, he felt that a preliminary inquiry was necessary in order to determine exactly what the Mayrath product was. The plaintiff had alleged that Mayrath was the manufacturer of the elevator system and thus bore the responsibility for any unreasonably dangerous conditions inhering in its manufacturer. Mr. Justice Richards, however, did not adopt the plaintiff's view.

He found that Mayrath manufactured only the component parts of

19. 326 F. Supp. 751 (E.D. Ill. 1971).
20. *See* Comment, 3 LOY. (CHI.) U.L.J. 421 (1972).

the product and could not be said to have manufactured the elevator system. It was his view that the plaintiff had failed to meet his burden of proof in showing that the Mayrath products were unreasonably dangerous when they left its control. He stated that the elevator system did not come into existence until it was assembled by Kehrer according to the specifications submitted by Jansen. He found further that Kehrer did know of the importance of attaching the safety shield and that Mayrath had no control over Kehrer. Thus he held that the plaintiff's strict liability action had to fail as a matter of law. In reaching this conclusion, he stated:

> As to plaintiff's allegation that the defendant manufactured the elevator with no guard over the universal joint, in view of the facts above recited, as the elevator was assembled from the stock of parts kept on hand by Kehrer which included a guard, it would seem just as reasonable to contend that the defendant manufactured the elevator with a guard over the universal joint as not.[21]

With the strict liability issue resolved in favor of the defendant, Mr. Justice Richards then focused on the plaintiff's negligence claims. The plaintiff had argued that Mayrath was negligent in its design in failing to make the safety shield an integral part of the tractor powered elevator system. Mr. Justice Richards found this argument unconvincing for, even if such a design was held to be one in violation of a duty owed by Mayrath to Willeford, Willeford had failed to show that this breach of duty was the proximate cause of his injuries. The plaintiff further argued that the design was unsafe in that it was possible to operate the elevator without the shield. Mr. Justice Richards considered this theory to be inadequate in that it was tantamount to arguing that manufacturers have a duty to design accident-proof products. He cited several authorities in stating the basic products liability premise that manufacturers will not be found to have a duty to design accident proof machines.[22]

Mr. Justice Richards also dismissed the plaintiff's argument that the defendant had been negligent in failing to attach a written warning to the parts used in a tractor powered elevator system whereby its users would realize the importance of the safety shield and the inherent danger of the system lacking such a shield. This argument was held to fail due to the testimony brought forth at the trial whereby it was established that the plaintiff had been warned on several occasions to avoid any contact with the exposed moving parts of the elevator system.[23]

21. Willeford v. Mayrath Co., 7 Ill. App.3d 357, 361, 287 N.E.2d 502, 505 (1972).
22. Neusus v. Sponholtz, 369 F.2d 259 (7th Cir. 1966).
23. Willeford v. Mayrath Co., 7 Ill. App.3d 357, 363, 287 N.E.2d 502, 506 (1972).

Thus Mr. Justice Richards had effectively held against the plaintiff on the appeal and had reversed the verdict reached at the trial court. However, he did not end his opinion at this point. He continued his discussion in order to show that persons injured by products that were marketed in a manner similar to that utilized by Mayrath would not necessarily be left without a remedy. Even if these persons were unable to prove that the unassembled component parts were unreasonably dangerous when they left the manufacturer's control, Mr. Justice Richards argued that they could still receive compensation if they were able to show that a part further down the marketing chain was responsible for creating the defect which ultimately caused their injuries. He based this argument in large part upon the rationale used by the New Jersey Supreme Court in *Schipper v. Levitt & Sons, Inc.*,[24] wherein that court absolved a manufacturer from liability after finding the defective condition was not in existence at the time the product left the manufacturer's control but rather had been created by the party who installed the manufacturer's product in a home without taking the appropriate safety measures which were known to it. By noting in his opinion that Kehrer had knowledge of the dangers presented as a result of his failure to attach a safety shield to the elevator system, Mr. Justice Richards left a strong implication that he felt Kehrer bore the legal responsibility for Willeford's injuries.[25]

Mr. Justice Trapp, while concurring in Mr. Justice Richards' opinion wrote a special concurring opinion,[26] wherein he noted that the facts of the case caused him to view the *Willeford* case in the same manner as he viewed the case of *Lewis v. Stran-Steel Corp.* It was his feeling that the fact that Jansen had operated the elevator system for two years prior to the accident made it clear that he could not have been unaware of the hazards inherent in the operation of the elevator system. In that Jansen had this knowledge, it was Mr. Justice Trapp's contention that the case did not fit within limits of a products liability action under § 402A of the *Restatement of Torts* (Second).

Mr. Justice Craven dissented.[27] He argued that a manufacturer could not escape liability by shipping component parts. Such a holding, in his opinion, would work to circumvent the policy that underlies the law of products liability. In attacking the holding of the majority, Mr. Justice Craven's main argument was that their holding, in reversing

24. 44 N.J. 70, 207 A.2d 314 (1965).
25. Willeford v. Mayrath Co., 7 Ill. App. 3d 357, 362, 287 N.E.2d 502, 505 (1972).
26. *Id.* at 364, 287 N.E.2d at 508.
27. *Id.* at 365, 287 N.E.2d at 508.

the trial court's verdict, worked to invade the province of the jury. It was his position that the proximate cause issue had been submitted to the jury and that they had ruled in the plaintiff's favor on that issue. He put no emphasis on the fact that Mayrath marketed a safety shield as a standard part of its tractor powered elevator system, noting that the evidence adduced at the trial had clearly established the fact that the incorporation of a shield as an integral part of the system would have eliminated any danger from the exposed moving parts. It was his contention, then, that the Mayrath parts were unreasonably dangerous in that an improper assembly could render the entire grain elevator system unreasonably dangerous.

Having laid this foundation, he cited the opinion of the Illinois Appellate Court for the First District in *Rivera v. Rockford Machine & Tool Co.*,[28] wherein the court stated that the jury bears the responsibility for determining whether a product was unreasonably dangerous when it left a manufacturer's control and that its finding in this matter would be determinate of the liability issue. It was his contention that the majority's decision concerning the safety of the Mayrath parts and the proximate cause of the accident negated the role of the jury as the trier of fact.

Further, he viewed the majority opinion as holding that the plaintiff was guilty of contributory negligence as a matter of law. Mr. Justice Craven found such a holding to be an impossibility under established Illinois case law in that case law affirmately holds that such negligence cannot be found to exist in persons under fourteen years of age.[29] In that Willeford was only twelve at the time of the accident, it was Mr. Justice Craven's opinion that the majority decision had disregarded the existing Illinois law in the area of a minor's capacity for contributory negligence.

CONCLUSION

The basis for the dismissal of the strict liability count in *Willeford* was the finding that the elevator did not come into existence until assembled by the farm supply dealer. Since this assembly was beyond the control of Mayrath, the court found that it would not be held re-

28. Rivera v. Rockford Machine & Tool Co., 1 Ill. App.3d 641, 274 N.E.2d 828 (1971).

29. Maskaliunas v. Chicago & Western Indiana Railroad Co., 318 Ill. 142, 149 N.E. 23 (1925), quoted with approval in Dickeson v. Baltimore & Ohio Chicago Terminal RR. Co., 42 Ill.2d 103, 245 N.E.2d 762 (1969).

sponsible. This holding creates a limit to the manufacturer's duty to insure that no unreasonably dangerous products are marketed to the consumer. The foundation for the *Willeford* decision then lies in interpreting public policy because the basis of the doctrine of strict liability in tort is public policy.[30]

Public interest in human life and health requires all the protection that the law can give against the sale of unreasonably dangerous products.[31] Use of strict liability accomplishes this desirable goal in two manners. First, the potential liability can serve to discourage a manufacturer from marketing unreasonably dangerous products.[32] Second, the imposition of this liability serves to spread the risk of non-negligent defects to all users of the product.[33]

This second result is accomplished through the economic realities of the modern business environment. When it is impossible for a manufacturer to prevent a small portion of his products from reaching the market place in a defective condition, the manufacturer must compensate the injured parties for the damages caused by the defects. The costs of the damage settlements or possibly insurance purchased to cover such damage settlements, become a cost of doing business.[34] These costs, as well as all other costs of doing business, become part of the cost of the product and each purchaser, in his purchase price, contributes an amount to cover the injuries caused by defective products. Thus, all users of the product bear a portion of the cost of compensating injuries.

The use of this public policy basis leads to a conclusion somewhat different from the one reached by the court in *Willeford*. A plaintiff bringing suit in strict liability must prove that the product which caused his injury was defective at the time it left its manufacturer's control.[35] However, "control" in this context does not connote "power".

30. Patargias v. Coca-Cola Bottling Co., 332 Ill. App. 117, 74 N.E.2d 162 (1947); Suvada v. White Motor Co., 32 Ill.2d 612, 210 N.E.2d 182 (1965); Jacob E. Decker & Sons, Inc. v. Capps, 139 Tex. 609, 164 S.W.2d 828 (1942); La Hue v. Coca-Cola Bottling, Inc., 50 Wash.2d 645, 314 P.2d 421 (1957); Graham v. Bottenfield's Inc., 176 Kan. 68, 269 P.2d 413 (1954).

31. Suvada v. White Motor Co., 32 Ill.2d 612, 210 N.E.2d 182 (1965).

32. Annot., 33 A.L.R.3d 417 (1970), *But see* Plant, *Strict Liability of Manufacturers for Injuries Caused by Defects in Products—An Opposing View*, 24 TENN. L. REV. 938, 945 (1957).

33. Those who suffer injury from defective products are unprepared to meet its consequences. The cost of an injury and the loss of time or health may be an overwhelming misfortune to the person injured, and a needless one, for the risk of injury can be insured by the manufacturer and distributed among the public as a cost of doing business. Traynor, J., concurring in Escola v. Coca-Cola Bottling Co., 24 Cal.2d 453, 462, 150 P.2d 436, 441 (1944).

34. McKean, *Products Liability: Trends and Implications*, 38 U. CHI. L. REV. 3 (1970).

35. Suvada v. White Motor Co., 32 Ill.2d 612, 210 N.E.2d 182 (1965); Williams

While a manufacturer may be in physical or constructive control of some items it may not have the ability, due to the state of the manufacturing art, to insure that its product is not defective when marketed to the public. While the manufacturer may be powerless to halt the sale of these defective products, the strict liability doctrines do impose responsibility on it for these defects. With this in mind, the *Willeford* decision can be read to hold that even though liability for injuries caused by a defective product can be imposed in situations beyond the ability of a manufacturer to control, the safety of the public does not require that a manufacturer be held responsible for the actions of independent, knowledgable dealers.

In *Vandermark v. Ford Motor Co.*[36] the decision of the California Supreme Court was that a manufacturer was responsible for the actions of its dealers. While the *Willeford* court found many distinguishing factors, similarities do exist. The dealers in *Vandermark* routinely added and removed optional equipment at will. While the product, an automobile, remained primarily in the form it had had when it left the factory, the final configuration was not fixed until the automobile was prepared by the dealer for delivery to a customer. The elevator in *Willeford,* while shipped in component form, was always intended to be an elevator. The dealers in *Willeford* had the same broad ability as did the car dealers to choose the final configuration of the product. Without considering when each of the respective products came into existence, as the court did, the major distinguishing feature between the cases was that the *Vandermark* dealer failed to discover an existing defect during his inspection, while the *Willeford* dealer created the defect by omitting the safety shield.

An examination of the relationship between the *Vandermark* and *Willeford* decisions in public policy terms results in several conclusions. The *Vandermark* court held that public policy does not allow a manufacturer to delegate the duty to provide a reasonably safe product. The *Willeford* decision modified this holding to the extent that a manufacturer, while still unable to delegate its duty to discover and correct defects to its independent dealers, is not responsible if the dealer creates a defect. By holding that the defective product did not come into existence until assembled, the *Willeford* decision held, in effect, that the dealer created the defect.

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v. Brown Mfg. Co., 45 Ill.2d 418, 261 N.E.2d 305 (1970); Spotz v. Up-Right Inc., 3 Ill. App.3d 1065, 280 N.E.2d 23 (1972); Vlahovich v. Betts Machine Co., 101 Ill. App.2d 123, 242 N.E.2d 17 (1968).

36. 61 Cal.2d 256, 391 P.2d 168 (1964).

This statement of a rule of law does not completely state the decision of the *Willeford* court. The court's extensive reliance on *Schipper v. Levitt & Sons*[37] indicates that the control factor is of measurable importance. In discussing the possible methods the *Schipper* defendant, York, could have used to influence the assembling dealer, Levitt, to use a necessary safety valve device, the court stated:

> Conceivably it might have refused to sell its heating units unless Levitt also purchased the valves but then Levitt could readily have purchased comparable heating units without valves from other manufacturers. And even if Levitt had purchased the valves from York, there was nothing York could do to compel their attachment or to prevent Levitt from pursuing its own chosen design and mode of installation.[38]

The "control" that is envisioned here is the ability to influence rather than the physical or constructive "control" of a prima facie case of strict liability[39] which may or may not include the ability to take affirmative action to correct defects. Restating the rule of law in *Willeford,* as it modified the holding in *Vandermark* and as limited by *Schipper,* it could be stated: While a manufacturer cannot delegate its duty to discover and correct defects to its independent dealers, it is not responsible for a dealer created defect unless it has knowldge of the defect and has the ability to influence its dealer to correct the defect.

If this is to be the final statement of the responsibility of a manufacturer of component parts under the law of products liability, it is essential to discuss what will constitute the necessary ability to influence a dealer. The *Schipper* court rejected the possibility of refusing to sell as a means of controlling a dealer.[40] With a strong public policy in favor of protecting the consumer, imposing liability on a manufacturer which sells its products to dealers who do not use available safety devices could be an alternative well worth consideration. The problem with this approach is that imposing liability on a manufacturer on the basis of the fact that he could control a dealer by means of refusing to sell is, in effect, a penalty on the manufacturer for failure to police his dealers. The manufacturer would probably not know of the omission of required safety devices until an injury occured, unless it had physically inspected its dealers. If a duty of physical inspection were imposed, the cost of doing business could force many manufacturer's to cease their operations. Thus it is evident that the public policy of consumer pro-

37. 44 N.J. 70, 207 A.2d 314 (1965).
38. *Id.* at 99, 207 A.2d at 329.
39. Cases cited note 35 *supra.*
40. 44 N.J. at 99, 207 A.2d at 329.

tection runs on a collision course with another public policy, the promotion and development of the national economy.[41]

The conflict between these two public policies requires courts to engage in a process of balancing between the needs of public safety and the needs of the economy.

A final summary statement of the result in Willeford, in public policy terms, is that public safety does not require that the manufacturer of component parts, which are assembled into finished products by independent dealers, be held liable for the omissions of these dealers when such omissions create dangerous defects. Liability will not lie even though a manufacturer made all parts used in the construction of the completed product. Before this result of holding the manufacturer free from liability is obtained, however, it is required that great latitude be left to the dealers in deciding the final configuration of the product and that the manufacturer not have the ability to force the dealers to use required safety equipment by some economically feasable means. It was the thinking of the *Willeford* majority that the public is adequately protected in these situations by its ability to hold the assembling dealer liable. The writer concurs in that view.

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41. *See* Plant, *supra* note 32, at 947; Prosser, *Strict Liability to the Consumer*, 69 YALE L.J. 1099 (1960); Dorfman, *The Economics of Products Liability*, 28 U. CHI. L. REV. 92 (1970).