

## Careful Pleading Potentially Saves Case from Dismissal

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On July 28, 2010, the Indiana Court of Appeals affirmed a trial court's decision denying a motion to dismiss under Rule 12(B)(6) based on what appears to have been a very carefully pled complaint in *Putnam County Sheriff v. Price*, Case No. 60A01-0911-CV-551.

A water line was leaking near a road in Putnam County, causing water to run across a road and freeze. A Putnam County deputy sheriff was called to the scene of an accident at the location of the leak, notified the Highway Department of the icy condition of the road, and left. The deputy did not take steps to alleviate the icy condition or warn the traveling public of the icy condition. After the deputy left, Price encountered the icy condition, lost control of her vehicle, and was injured in an automobile accident. She sued the Sheriff and others, claiming negligence. The Sheriff moved to dismiss, alleging that he owed no duty to alleviate or warn motorists of the condition of the road and that he was immune from suit. The trial court denied that motion and the Sheriff appealed.

On appeal, the Sheriff argued that he was immune because the danger was a temporary condition caused by the weather. The Court disagreed, noting that the complaint alleged that the condition of the road was caused primarily by a leak in a water line owned by the water company and, therefore, was not caused by the weather. The Court then went on to hold that the Sheriff had a duty to warn of the dangerous condition.

The key to this case was, therefore, the way in which it was pled. The Court based its decision, in large part, upon the fact that the complaint did not plead that the water line broke because of the weather. Instead, the complaint contained no allegation concerning the cause of the leak. It would be interesting to see how the case evolves. For instance, if the weather actually caused the leak, how would this fact affect the Court's analysis? However, these questions could all be avoided at this stage in the proceeding because notice pleading does not require that a plaintiff plead these kinds of facts.

### Lessons:

1. Do not over plead the allegations in your complaint. If the existence of a fact is possible, but unessential to your claim, consider omitting it from the allegations.