ILLINOIS COURT CASES INVOLVING HIGHWAY ENGINEERS

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INTRODUCTION

- I am not a lawyer; just someone interested in court cases
- 5 cases to cover
- Publication after they get to appellate level
- I will present:
  - Facts
  - What each side says
  - Other pertinent issues
  - We will discuss the facts
  - Court rulings (may not be the same ruling as trial court)
- The appellate court will affirm, reverse or remand (or a combination of the above).

DEFINITIONS

- Summary judgment - *A procedural device used during civil litigation to promptly and expeditiously dispose of a case without a trial. It is used when there is no dispute as to the material facts of the case and a party is entitled to judgment as a matter of law.*
- Spoliation of evidence - *happens when a document or information that is required for discovery is destroyed or altered significantly. If a person negligently or intentionally withholds or destroys relevant information that will be required in an action he is liable for spoliation of evidence.*

DEFINITIONS

- A directed verdict - *A procedural device whereby the decision in a case is taken out of the hands of the jury by the judge.*
- Tort - *A negligent or intentional civil wrong not arising out of a contract or statute. These include "intentional torts" such as battery or defamation, and torts for negligence.*

INTRODUCTION

- What to take away from this seminar
  - Putnam v. Village of Bensenville – Liability for sidewalk defect.
  - Illinois Bell v. Plote – Moorman Doctrine and economic losses in tort (compensation for construction delays by utility)
  - Martin v. Keeley – Spoliation of Evidence and proper documentation
  - Perfetti v. Marion Co. – Tort Immunity Act
  - People v. Einoder – Criminal Disposal of Construction Debris

PUTNAM V. VILLAGE OF BENSENVILLE

337 ILL APP (3D) 197 2003

PUTNAM V. VILLAGE OF BENSENVILLE

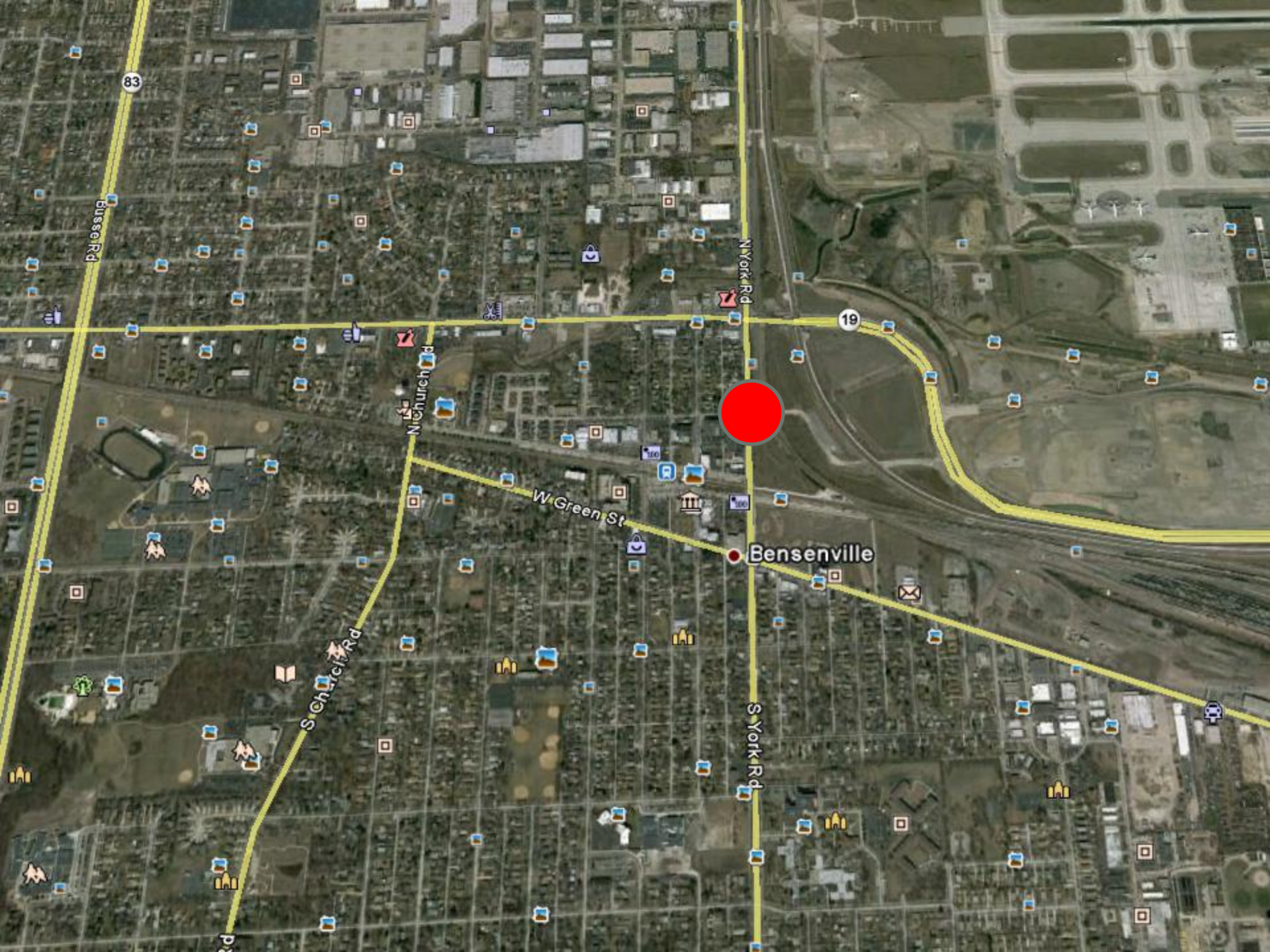
- Plaintiffs-Appellants:
  - Albert P. Putman and Ardelle J. Putman
- Defendants-Appellees:
  - Village of Bensenville
  - Eagle Concrete Contractors, Inc.
  - James J. Benes and Associates, Inc.

PUTNAM V. VILLAGE OF BENSENVILLE

- Facts of Case:
  - Plaintiffs, Albert P. Putman and Ardelle J. Putman instituted an action in the circuit court of Du Page County following a fall that rendered Albert a quadriplegic.
  - Plaintiffs named as Defendants, among others, the Village of Bensenville, Eagle Concrete Contractors, Inc. and James J. Benes & Assoc., Inc.
  - Eagle was a subcontractor hired on a road improvement project in Bensenville, and Benes was the engineering firm hired by the Village for the project.
  - A number of other defendants settled or were granted summary judgment and are not parties to this appeal.

PUTNAM V. VILLAGE OF BENSENVILLE

- Facts of Case:
  - Defendants moved for summary judgment.
  - Trial court granted defendants' motions, and plaintiffs now appeal.


83
Busse Rd
N York Rd
19
N Church Rd
W Green St
Bensenville
S Church Rd
S York Rd


N Addison St
W Roosevelt Ave
E Roosevelt Ave
N Center St
S Addison St
Main St
N York


Parking Lot
VFW Building
W Roosevelt Ave
E Roosevelt Ave
N Addison St
N Center St
S Addison St
Main St
Aerial Photo 1993


York Road at Roosevelt Ave.
Bensenville, IL


WALK

PUTNAM V. VILLAGE OF BENSENVILLE

- Facts of Case:
  - On November 9, 1995, Albert was to attend a meeting at the VFW building in Bensenville.
  - The meeting was to commence at 8:00p
  - He arrived about 7:30p and parked in a lot across the street.
  - As he approached the intersection to cross the street, he noted that the pedestrian crosswalk and traffic signals were working, but the overhead lighting at the intersection was not.
  - Albert stated that the intersection was dark and shadowy.
  - Albert pressed the pedestrian signal button and waited until the walk signal came on before crossing the intersection.

PUTNAM V. VILLAGE OF BENSENVILLE

- Facts of Case:
  - When he was about halfway across the intersection, the signal changed to "*don't walk*."
  - Albert related that he increased his pace "*a trifle*," *but* "*didn't hurry that much*."
  - Albert acknowledged that he was familiar with the intersection due to the number of times he had previously traversed it, which he estimated at approximately 30.
  - Albert stated that the signal appeared to be quicker than usual on the night of the accident.
  - In fact, the signal had been damaged about three weeks earlier, and a temporary controller had been installed.

PUTNAM V. VILLAGE OF BENSENVILLE

- Facts of Case:
  - This controller would give a pedestrian the walk signal for between 3 and 8 seconds and then allow an additional 15 seconds to cross the intersection.
  - On the VFW side of the intersection, Bensenville had installed a ramp to make the sidewalk handicapped accessible.
  - The ramp consisted of a sloped portion of the sidewalk that came down to meet the road.
  - There was a gutter at the base of the ramp.
  - As Albert was leaving the roadway, he tripped on the front edge of the ramp where it adjoined the gutter.

PUTNAM V. VILLAGE OF BENSENVILLE

- Facts of Case:
  - He fell forward and struck his head on a concrete parking block.
  - As a result, he was paralyzed from the neck down.
  - The record in this case is voluminous and additional facts will be discussed as they pertain to the issues raised by plaintiffs.

PUTNAM V. VILLAGE OF BENSENVILLE

- Facts of Case:
  - The trial court granted summary judgment in favor of all three defendants.
  - Summary judgment is appropriate only where no genuine issues of material fact exist and the movant is entitled to judgment as a matter of law.
  - As the issues pertaining to the separated defendants are discrete, we will address them separately.
    - Bensenville (Village)
    - Eagle (Contractor)
    - Benes (Engineer)

PUTNAM V. VILLAGE OF BENSENVILLE

- Bensenville:
  - The evidence, viewed in the light most favorable to plaintiffs, shows that there was a one-inch lip between the ramp and the gutter.
  - Plaintiffs' expert, Paul Box, produced a diagram showing this change in elevation.
  - The upper half of the inch reflected the distance where the ramp sloped downward, and only the lower half was perpendicular to the gutter.
  - Defendants produced testimony indicating that the lip was smaller; however, as this appeal involves a summary judgment, we must accept the testimony of plaintiffs' expert.

PUTNAM V. VILLAGE OF BENSENVILLE

- Bensenville:
  - We also note that Albert estimated the distance from the lowest point in the gutter to the ramp at two to three inches.
  - This measurement is not relevant, as Albert asserts that he tripped on the front edge of the ramp.
  - Moreover, it is not surprising that, to allow for drainage, the lowest point of the gutter was somewhat lower than the ramp.

PUTNAM V. VILLAGE OF BENSENVILLE

- Bensenville:
  - Thus, for the purpose of resolving this issue, we will assume that a one-inch lip existed at the front edge of the ramp. Numerous cases have held that such defects fall within the de-minimis rule.
    - *"Turning to the facts in the case before us, we believe that the city's evidence, a 1 1/8 inch maximum height variation, would indicate that, in view of the surrounding circumstances, no cause of action would lie due to the minimal nature of the defect." (Warner v City of Chicago, 72 Ill 2d 100)*
    - *"The point at which liability attaches in such cases is when the defect approaches two inches." (Birck, 241 Ill App 3d 122)*
  - In this case, a one inch defect lies within the ambit of the de-minimis rule and is not actionable.

PUTNAM V. VILLAGE OF BENSENVILLE

- Bensenville:
  - Plaintiffs do not seriously attempt to argue that the one-inch defect would not fall within the de-minimis rule. Instead, they attempt to argue that the rule has no application to the case at bar. To this end, they advance two arguments.
    - First, they argue that the ramp was a special statutorily mandated handicapped ramp
    - Second, they contend that certain regulation that state how such ramps should be constructed should control this action and trump the de-minimis rule.
  - We find both arguments unpersuasive.

PUTNAM V. VILLAGE OF BENSENVILLE

- Bensenville:
  - First, we attach significance to the fact that Albert tripped on the ramp rather than on some other portion of the sidewalk.
  - Plaintiffs attempt to distinguish the ramp from the balance of the sidewalk by pointing out that the design of such ramps is set forth in detail in certain administrative regulations.
  - However, other portions of sidewalk are also governed by exacting standards.
  - Thus, the fact that the ramps are heavily regulated provides no basis for distinguishing them from the rest of the sidewalk.

PUTNAM V. VILLAGE OF BENSENVILLE

- Bensenville:
  - More fundamentally, adopting the position advocated by plaintiffs would lead to an absurdity. A sidewalk ramp is, obviously, intended to provide access to a sidewalk.
  - Thus, the same individuals who traverse the ramp also use the sidewalk.
  - If we were to exclude ramps from the de-minimis rule, an individual who tripped on a defect in the ramp would have a cause of action while one who tripped on a defect in the very next slab would not.
  - The ramp is, in fact, part of the sidewalk.
  - Accordingly, we reject plaintiffs' contention that the mere fact that the accident occurred on a ramp makes the de-minimis rule inapplicable.

PUTNAM V. VILLAGE OF BENSENVILLE

- Bensenville:
  - Plaintiffs point out that, in addition to the defect in the ramp, overhead lighting at the intersection was not functioning and the pedestrian crossing signal was, as Albert described, "faster" than usual on the night of the accident.
  - Regarding the lighting, there is no duty to illuminate a defect that is not otherwise actionable. (Swett v. Village of Algonguin 169 Ill. App. 3d 78).
  - A contrary rule would require a municipality to install lighting over every nonactionable defect in a sidewalk, substantially undercutting the purpose of the de-minimis rule.

PUTNAM V. VILLAGE OF BENSENVILLE

- Bensenville:
  - We question whether the quicker walk signal was causally related to Albert's injury, as plaintiffs point to nothing to suggest that a properly operating signal would allow a pedestrian to clear the intersection completely before it switched back to "don't walk."
  - Accordingly, we hold that, in accordance with the de-minimis rule, Bensenville had no duty to remedy the minor defect in the ramp. We affirm the decision of the trial court granting summary judgment to the Village.

PUTNAM V. VILLAGE OF BENSENVILLE

- Eagle:
  - Plaintiffs next contend that the trial court erred in granting summary judgment in favor of Eagle. Plaintiffs contend that an issue of fact exists as to whether Eagle constructed the ramp in accordance with applicable plans and specifications.
  - Eagle makes two responses.
    - First, it asserts that there is no evidence in the record to establish that the defect in the ramp existed at the time it completed the ramp.
    - Second, it argues that it, like the Village, is entitled to the benefit of the de-minimis rule.
  - We disagree with both contentions, thus, we reverse the order of the trial court granting summary judgment to Eagle.

PUTNAM V. VILLAGE OF BENSENVILLE

- Eagle:
  - Eagle contends that no issue of material fact exists as to whether it complied with the plans. In support of this position, Eagle points to the testimony of several witnesses who inspected the ramp around the time Eagle completed its work.
  - Contrary evidence exists in the record. Robert Tarosky, an engineer retained by plaintiffs as an expert witness, averred that the ramp had a lip in excess of one-quarter of an inch and that this defect violated the applicable standard.
  - Hence, we are presented with a conflict in the evidence, making summary judgment inappropriate.
  - Therefore, we reverse the decision of the circuit court granting Eagle's motion of summary judgment.

PUTNAM V. VILLAGE OF BENSENVILLE

- Benes:
  - Regarding Benes, the trial court granted summary judgment on the basis of the following provision in the contract under which Benes agreed to provide inspection services for the project:
    - *"Notwithstanding anything to the contrary which may be contained in this Agreement or any other material incorporated herein by reference, or in any agreement between PUBLIC AGENCY and any other party concerning this project, the ENGINEER shall not have control or be in charge of and shall not be responsible for the means, methods, techniques, sequences or procedures or construction nor shall the ENGINEER be responsible for the acts or omissions of PUBLIC AGENCY provided that the ENGINEER has properly executed his duties."*

PUTNAM V. VILLAGE OF BENSENVILLE

- Benes:
  - *ENGINEER shall not be responsible for the failure of the PUBLIC AGENCY, any architect, engineer, consultant, contractor or subcontractor to carry out their respective responsibilities in accordance with the project documents or any other agreement concerning the project.*
  - The trial court found that the duty of Benes regarding the project was set forth in the contract, and, thus the above-cited provision limited Benes's liability.

PUTNAM V. VILLAGE OF BENSENVILLE

- Benes:
  - Plaintiffs attempt to avoid the effect of this disclaimer by distinguishing between the acts of Benes and those of Eagle. Plaintiffs assert that their action against Benes is not based on Eagle's failure to comply with the plans for the ramp. Instead, they claim that their action is based on Benes's own failure to properly inspect the ramp.
  - Virtually every error in construction could be recast and advanced against Benes as a failure to supervise or inspect the project.
  - We cannot find that the parties intended such a result.
  - Accordingly, we hold that the disclaimer set forth above is effective to relieve Benes of liability on the present issue.

PUTNAM V. VILLAGE OF BENSENVILLE

- Benes:
  - The trial court properly granted summary judgment in favor of Benes.

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PUTNAM V. VILLAGE OF BENSENVILLE

- Final Ruling:
  - In light of the foregoing, we affirm the decision of the circuit court of Du Page County granting summary judgment to Bensenville and Benes.
  - We reverse the grant of summary judgment to Eagle and remand this portion of the cause for further proceedings.

ILLINOIS BELL V. PLOTE, INC.

DOCKET 1-00-3743 2002

ILLINOIS BELL V. PLOTE, INC.

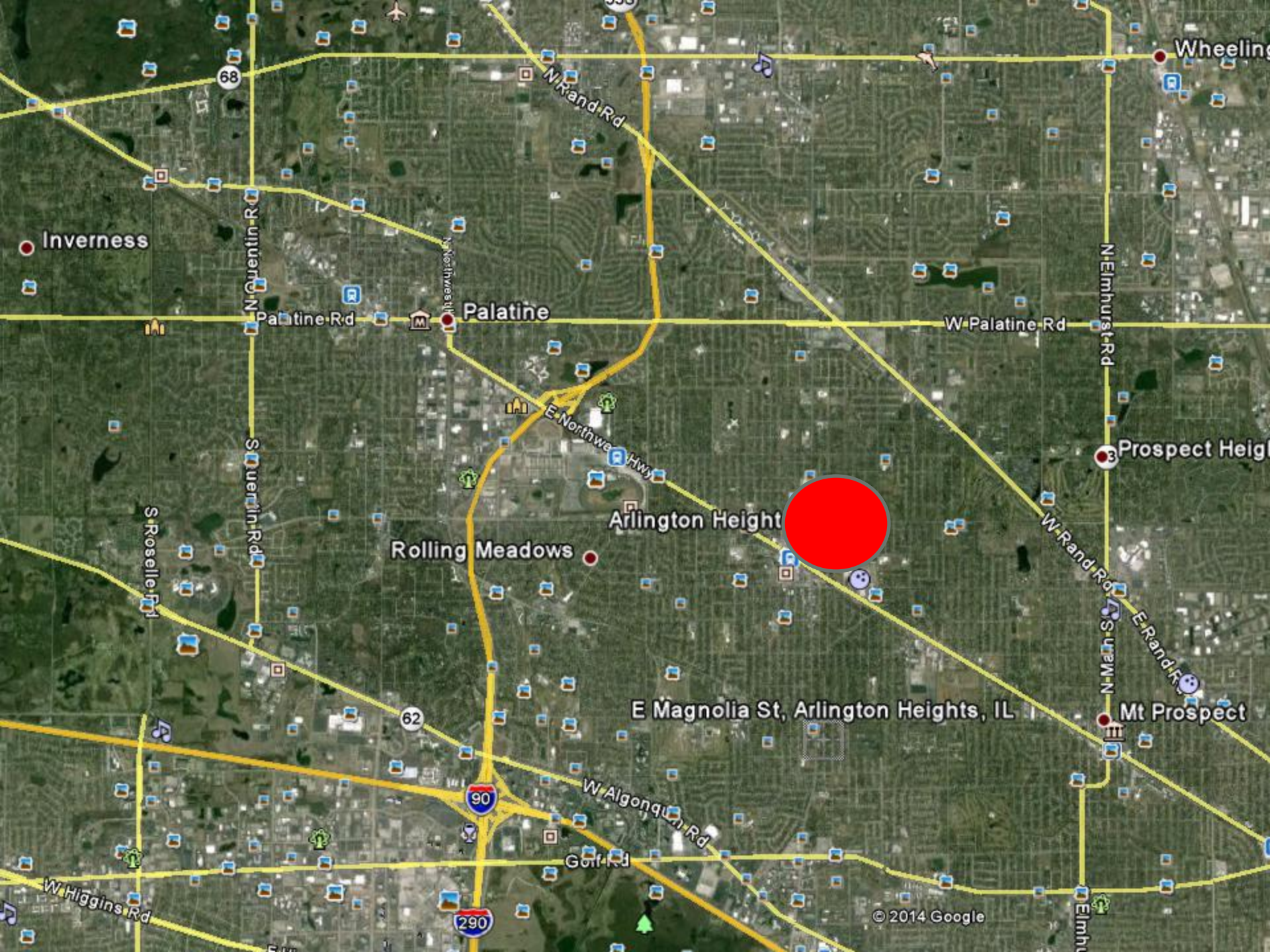
- Illinois Bell Telephone, Plaintiff and Counterdefendant-Appellee
- Plote, Inc., Defendant
- Plote, Inc., Allied Asphalt Paving Co., Milburn Brothers, Inc., Counterplaintiffs-Appellants
- Appeal from Circuit Court of Cook County
- Circuit Court granted a motion in favor of Illinois Bell dismissing counts II, III, IV and V of Plote's lawsuit.

ILLINOIS BELL V. PLOTE, INC.

- Facts of the case:
  - Plote entered into a contract with IDOT to make improvements to Arlington Heights Road in the City of Arlington Heights, IL.
  - Prior to accepting bids, IDOT submitted the proposed plans to Bell so that Bell could locate conflicts.
  - Bell did not respond to request.
  - At 8/8/95 Pre-con a representative of Bell was informed of the date construction was expected to start.
  - Beginning on 12/13/95, a series of utility meetings was held at which various conflicts were identified.
  - As a result of Bell's failure to identify the location of its facilities, the construction project was delayed.

ILLINOIS BELL V. PLOTE, INC.

- Facts of the case:
  - Plote was to complete the project by 10/31/96. However, due to the delays, it was not completed until 5/31/97.
  - Plote sustained increased expenses as a result of these delays.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N Rand Rd
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Inverness
N Quentin Rd
N Northwest Hwy
Palatine
Palatine Rd
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Prospect Heigl
Arlington Height
Rolling Meadows
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E Magnolia St, Arlington Heights, IL
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Golf Rd
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Arlington Heights Road
S-Pine-Ave
S-Belmont-Ave
Arlington Heights Rd, Arlington Heights, IL
E-Magnolia-St
© 2014 Google
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ILLINOIS BELL V. PLOTE, INC.

- Claims of the case:
  - Count I: A violation of the Illinois Public Utilities Act – **Not at issue in this appeal.**
  - Count II: A violation by Bell of the Illinois Underground Utility Facilities Damage Prevention Act (IUUFDPA)
  - Count III: Common law negligence.
  - Count IV: A violation of the Illinois Highway Code
  - Count V: Tortious interference with contract
  - Count VI: Breach of Contract. **Not at issue in this appeal.**
  - Count VII: Breach of a highway permit. **Not at issue in this appeal.**

ILLINOIS BELL V. PLOTE, INC.

- **Count V: Tortious interference with contract**
  - Plote argues that the trial court erred in dismissing count V of its complaint
  - Plote contends that count V properly states a cause of action for intentional interference with a contract
  - "*A necessary prerequisite to the maintenance of an action for tortious interference with contract is a defendant's intentional and unjustified inducement of a breach of contract.*" Strosberg, 295 Ill.App.3d at 33, 229 Ill.Dec. 361, 691 N.E.2d at 845
  - In the case at bar, Plote has not pled that Bell intentionally caused Plote to breach its contract with IDOT or that Bell intended to cause Plote harm.
  - The trial court's dismissal of count V was thus correct

ILLINOIS BELL V. PLOTE, INC.

- **Count IV: A violation of the Illinois Highway Code**
  - Plote argues that the trial court erred in dismissing count IV of its complaint because it has adequately stated a cause of action under the Illinois Highway Code.
  - *"Any ditches, drains, track, rails, poles, wires, pipe line or other equipment located, placed or constructed upon, under or along a State highway with the consent of the State highway authority under this Section shall, upon written notice by the State highway authority be subject to removal, relocation or modification at no expense to the State highway authority when and as deemed necessary by the State highway authority for highway or highway safety purposes."* 605 ILCS 5/9-113(f)(West 2000).

ILLINOIS BELL V. PLOTE, INC.

- **Count IV: A violation of the Illinois Highway Code**
  - This statute establishes that the highway authority may move facilities that infringe on its easement.
  - This statute does not purport to impose any duty upon a utility to provide information to anyone, and in no event does it impose a duty to supply information to private contractors.
  - Nothing in this statute indicates that its purpose is to protect Plote or other contractors from economic losses.
  - Rather, this statute gives the state highway authority the power to subject objects on its highways to removal upon its written notice.
  - We thus find that Plote has no private cause of action based on section 9-113 of the Highway Code.

ILLINOIS BELL V. PLOTE, INC.

- **Count III: Common law negligence.**
  - Plote contends that the trial court erred in dismissing count III, which purported to state a claim against Bell based on common law negligence.
  - Plote, however, has not argued or cited any authority for the proposition that Bell has a common law duty to mark the location of its facilities in order to avoid causing Plote economic losses.
  - Furthermore, our research has indicated that no such common law duty exists.

ILLINOIS BELL V. PLOTE, INC.

- **Count III: Common law negligence.**
  - The Illinois case of Diaz v. Krob, 264 Ill.App.3d 97, 100, 201 Ill.Dec. 799, 636 N.E.2d 1231, 1233 (1994), is helpful.
  - There the court held that where the plaintiff was hit by a car while crossing the street after being waved across the street by a school bus driver, the bus driver had no duty to provide accurate information.
  - We note that in this case, unlike Diaz, plaintiff has not alleged that Bell made any false statements, or for that matter any affirmative statements at all.
  - Thus, …the complaint fails to establish any duty on the part of Bell at common law to supply the information required under the statute.

ILLINOIS BELL V. PLOTE, INC.

- **Count II: A violation by Bell of the Illinois Underground Utility Facilities Damage Prevention Act (IUUFDPA)**
  - Plote argues that the trial court erred in dismissing count II of the complaint, which purports to state a claim for a violation by Bell of the Illinois Underground Utility Facilities Damage Prevention Act (IUUFDPA).
  - Plote contends that it is not barred by **Moorman Doctrine** from recovering economic losses for Bell's alleged failure to properly mark the location of its underground facilities, which delayed Plote's construction project.

ILLINOIS BELL V. PLOTE, INC.

- **Moorman doctrine**:
  - Promulgated by Supreme Court in Moorman Manufacturing Co. v National Tank Co.
  - Established the rule known as the economic loss doctrine as the law in Illinois.
  - *"A plaintiff cannot recover solely economic losses in tort."*
  - Several exceptions to Moorman doctrine
    - *"Information provider" which allows recovery in tort for economic losses "where the plaintiff's damages are a proximate result of a negligent misrepresentation by a defendant in the business of supplying information for the guidance of others in their business transactions."*

ILLINOIS BELL V. PLOTE, INC.

- **Moorman doctrine**:
  - Plote argues that the information provider exception applies to Bell in this case because all Bell was required to do in this situation was provide information about the location of its facilities.
  - Plote contends that the determination of whether Bell is an information provider is made by looking to the context of the specific transaction involved and not on the basis of Bell's general business.
  - Bell contends that it does not fall within the information provider exception because its primary business is to supply telephone service and not information, even though its function under the UFA is solely to provide information.

ILLINOIS BELL V. PLOTE, INC.

- **Section 10 of the UFA**:
  - *"Upon notice by the person engaged in excavation or demolition, the person owning or operating underground utility facilities…shall mark, within 48 hours…of receipt of notice, the approximate locations of such facilities so as to enable the person excavating or demolishing to establish the location of the underground utility facilities or CATS facilities."* 220 ILCS 50/10 (West 1996).

ILLINOIS BELL V. PLOTE, INC.

- **Followell ruling:**
  - Although cited only by defendant, the decision of the 5th District in Followell v. Central Illinois Public Service Co., 663 NE 2d 1122 is squarely on point. The facts in that case are virtually identical to the facts in the case at bar.
  - In Followell, the plaintiff contractor was hired by the City of West Frankfort, IL to replace several water mains.
  - The plaintiff contacted the defendant natural gas utility and asked that the defendant mark the locations of its lines.
  - The plaintiff alleged that the defendant negligently marked the location of its lines, and the plaintiff allegedly broke one of the defendant's gas lines.
  - The plaintiff had to stop work until the defendant repaired the gas line, thus incurring economic losses.

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ILLINOIS BELL V. PLOTE, INC.

- **Count II: A violation by Bell of the Illinois Underground Utility Facilities Damage Prevention Act (IUUFDPA)**
  - Accordingly, as in Followell, the factual situation in the case at bar falls within the information-provider exception to the Moorman doctrine.
  - In this particular case, Bell has the same duty that the utility company had in Followell to provide information to Plote, which originates in Sec. 10 of the UFA.
  - We thus find that the trial court erred in dismissing count II of Plote's complaint.

ILLINOIS BELL V. PLOTE, INC.

- **Summary**:
  - For the reasons discussed above, the judgment of the circuit court of Cook County is affirmed in part and reversed in part and this cause is remanded to the circuit court for further proceeding not inconsistent with this opinion.
  - Count I – Dismissed by trial court; Not appealed
  - **Count II – Dismissed by trial court; Reversed by appellate**
  - Count III - Dismissed by trial court; Affirmed by appellate
  - Count IV - Dismissed by trial court; Affirmed by appellate
  - Count V - Dismissed by trial court; Affirmed by appellate
  - Count VII – Dismissed by trial court; Not appealed
  - Count VIII – Dismissed by trial court; Not appealed

MARTIN V. KEELEY & SONS, INC.

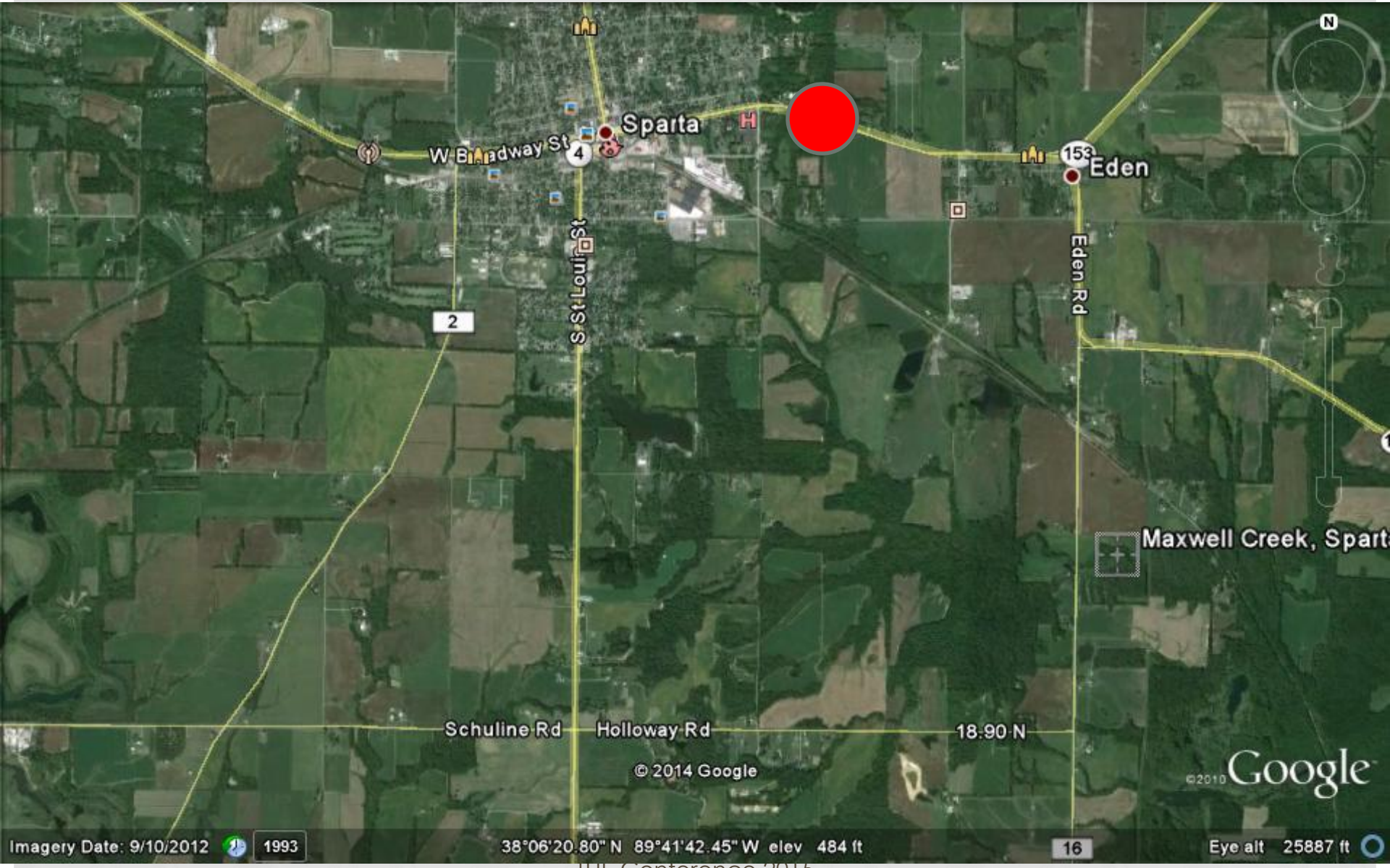
DOCKET 5-10-0117 2011

MARTIN V. KEELEY & SONS, INC.

- Terry Martin, Ardith Wynn and Rickey Vanover, Plaintiffs-Appellants
- Keeley & Sons, Inc. Defendant-Appellee and Egyptian Concrete Co. and Allen Henderson & Assoc., Inc. Defendants-Appellants
- Filed September 30, 2011
- Appealed from Circuit Court of St. Clair County

MARTIN V. KEELEY & SONS, INC.

- Facts of the case
  - Circuit Court of St. Clair County entered summary judgment in favor of the appellee Keeley.
  - On May 29, 2001, while installing a handrail on a bridge that Defendant Keeley was reconstructing pursuant to a contract with IDOT, the plaintiffs, Martin, Wynn and Vanover were injured when they fell from scaffolding supported by an I-beam that collapsed and fell into Maxwell Creek near Sparta.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Bridge Site


E Main St
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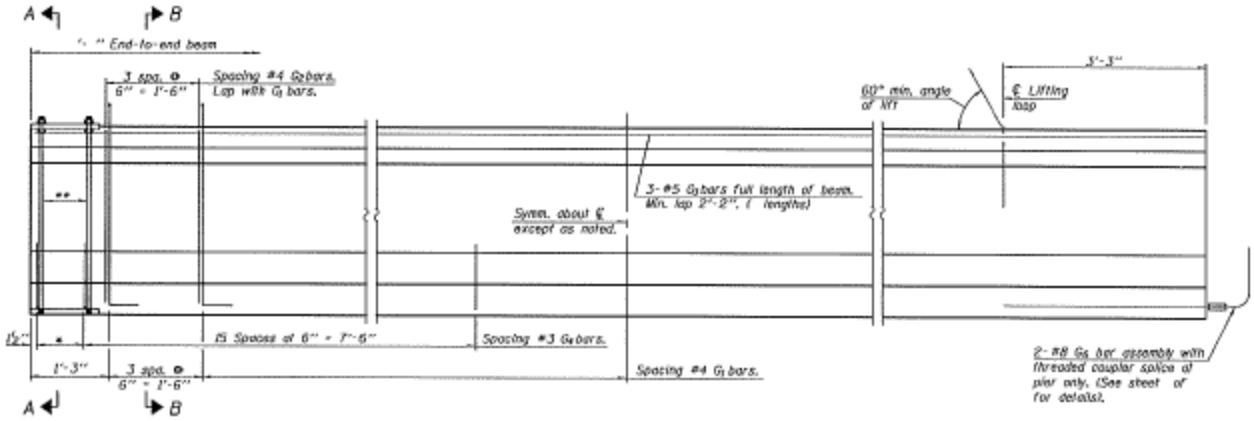
Bridge Site


154

MARTIN V. KEELEY & SONS, INC.

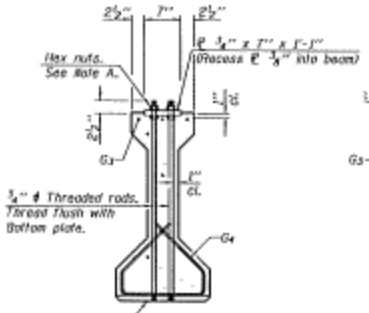
- Facts of the case
  - The I-beam was manufactured by defendant Egyptian Concrete Company and was supported by a bearing assembly designed by defendant Allen Henderson & Assoc.
  - On May 30, 2001, after the accident was investigated by both IDOT and OSHA, Keeley broke the concrete portion of the I-beam into riprap and retrieved the steel plates to manufacture a replacement.



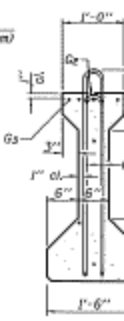
* 3 spaces at 3" = 9".
** 4-¾" ϕ threaded dowel rods at 3" ctrs., Each Face

ELEVATION OF BEAM
(Showing reinforcement & dimensions)

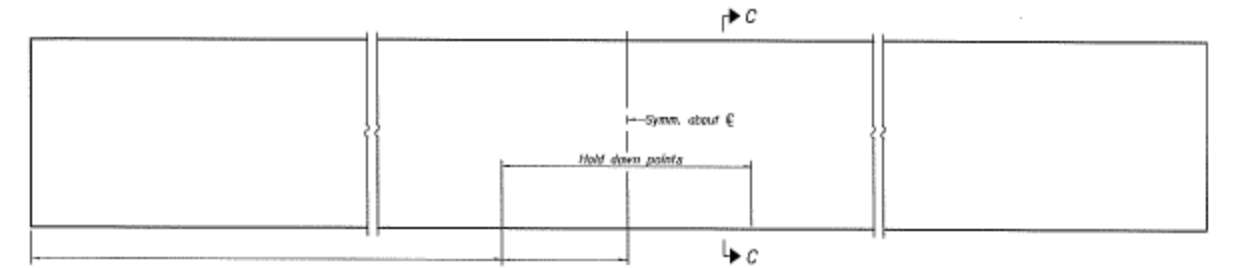
Note A:
Hex nuts (top and bottom) with lock washers (top). Only tighten sufficiently to compress lock washers.



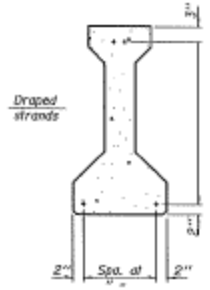
SECTION A-A



SECTION



ELEVATION OF BEAM
(Showing prestressing steel)



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MARTIN V. KEELEY & SONS, INC.

- Plaintiffs' Pleadings
  - Egyptian negligently manufactured the I-beam
  - Henderson had negligently designed the bearing assembly
  - Keeley had breached its duty to preserve the beam by destroying it.
  - Egyptian and Henderson later filed a counterclaim against Keeley also alleging that it had breached its duty to preserve the I-beam

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- Plaintiff Wynn testified:
  - That when he fell from the bridge, he was installing a **safety** handrail on a decked part of the bridge that was supported by three precast beams.
  - The decking and handrail were made of wood and the beam that collapsed was "*on the North side of the highway*."
  - Before falling from the bridge, he heard a "*crack or a pop sound*."

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- Plaintiff Wynn testified:
  - Lying injured near the creek, Wynn observed the beam "*lying on its side*" and "*broken in the center*."
  - He had no idea what caused the beam "*to break or roll*," and he did not know "*which happened first*."
  - He acknowledged that he had not "*heard of any criticisms of the beam*."

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- Plaintiff Vanover, also a carpenter testified:
  - He was standing on the decked overhang of the bridge helping install the handrail when he "*heard something pop.*"
  - He stood up and felt himself falling.
  - He had no "*idea what happened,*" but he "*landed in the creek in the riprap*."

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- Plaintiff Martin, a general laborer testified:
  - He was helping install the handrail when "*all of a sudden, there was a loud pop, and the bridge just collapsed*."
  - He had to be dug out from underneath a pile of broken decking.
  - He assumed that the I-beam had broken, because when he woke up in the creek, the beam was "*raised*" and "*busted right dead in the middle*."

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- Defendant Keeley's president Eugene Keeley testified that:
  - He had been with the company for 24 years
  - Keeley was the general contractor at the Maxwell Creek bridge site
  - Shawn Neuf was the construction superintendent at the site.
  - Rich Lehmann was the engineer.
  - Neuf had called him and told him that the beam had "*failed*."
  - When he and Lehmann inspected the I-beam an hour later, they concluded that the collapse was "*clearly a roll-over situation*."

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- Defendant Keeley's president Eugene Keeley testified that:
  - The beam had "*failed right in the middle*." probably when "*it got parallel*."
  - He indicated that if the beam had actually broken, it would have fallen "*straight down in a 'V' formation*."
  - He and Lehmann had concluded that the beam had rolled under undue stress resulting from the use of elastomeric bearing assembly on the east abutment of the bridge.
  - The elastomeric bearing assembly had "*diminished the capacity of the overhang and was the cause of the beam rotating off the abutment under a normal operation*".

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- Defendant Keeley's president Eugene Keeley testified that:
  - Elastomeric bearing assemblies are "*typically used with steel girders*," and he "*had not seen them with concrete prestressed I-beams*" before.
  - The I-beam would not have rolled had it been supported with a "*tie-back system*" or weighted down with "*dead load*."
  - The replacement beam later obtained from Egyptian was properly tied back and "*went up just fine*."

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- Defendant Keeley's president Eugene Keeley testified that:
  - On May 30 2001, after meeting an OSHA official, Keeley broke the beam up, removed the beam's steel ends, and left the remaining pieces as riprap.
  - Three factors influenced the decision to destroy the beam
    - By using the steel ends, the replacement beam would be available sooner
    - If left in the creek, the beam might cause bridge scour
    - Since neither IDOT nor OSHA had expressed "*any criticisms of the beam*," and because the cause of the accident had been identified, disposing of the beam was just "*a matter of cleaning up the mess*."

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- Defendant Keeley's president Eugene Keeley testified that:
  - He believed that Keeley had "*satisfied all of its obligations to IDOT and OSHA*"
  - He had not thought about potential lawsuits
  - No one had a "*different theory*" as to its cause.
  - He acknowledged that Keeley could have brought in equipment to move the I-beam "*to the side*" and that Keeley could have removed the beam's steel end with a concrete saw.

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- Rich Lehmann testified that:
  - He was a licensed engineer and had worked as a civil engineer for over 25 years.
  - There "*was no question*" regarding the "*integrity*" of the collapsed I-beam
  - he had not carefully inspected the beam before its destruction because he did not suspect that it had caused the accident.
  - Based on his calculations, the beam had simply rolled over when too many workers were standing on it.
  - The collapse could have been avoided if the beam had been tied down.

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- Rich Lehmann testified that:
  - The elastomeric bearing pad used to support one of the beam's ends had "*reduced the area of bearing*" on that end.
  - The bearing pad had caused a loss of stability that had resulted in the beam's "*tipping*."
  - The beam was 50 feet long and 3 feet "*deep*."
  - Keeley had never had "*any stability problems in the past*."
  - No one had ever suggested that the I-beam had broken.
  - He acknowledged, however, that improper handling of a concrete beam can significantly weaken the beam and even cause it to "*explode*" under stress.

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- Shawn Neuf testified that:
  - Steve Gard, the carpenter foreman told him of the accident immediately after it had happened.
  - When Neuf subsequently saw the I-beam lying in the creek, the beam was broken. But there was nothing else "*unusual*" about it.
  - When Neuf surveyed what had happened, he concluded that the I-beam had "*rolled over*" because there was "*too much weight on the edge*" of the overhang on top of it.
  - The cause of the accident was "*kind of obvious*."

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- Jay Schmitt, Egyptian's plant manager testified that:
  - Egyptian had been manufacturing I-beams for 25 years and had manufactured the prestressed concrete beam that had collapsed.
  - The beam had been built and tested in accordance with IDOT's specifications.
  - Ray Toland, the State inspector, had personally witnessed the tests that had been performed on the test cylinders of the beam's concrete.
  - The I-beam had been stamped by the State and "*wouldn't have left the plant*" had there been "*any problems in the testing*."

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- Jay Schmitt, Egyptian's plant manager testified that:
  - The metal plates that were removed from the old I-beam took "*about six weeks to get*," but since Egyptian was able to reuse them, the new beam was manufactured in a matter of days.
  - If the old beam had broken due to "*honeycombing*" it would have been "*very obvious*."
  - If the old beam that collapsed had voids, the beam "*should have failed long before it got there*."
  - He had no concerns "*whatsoever*" that the beam might have failed due to "*bad concrete*."

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- OSHA documents submitted as exhibits indicate that:
  - Keeley paid a $2,500 fine for failing to ensure that the overhang scaffold supported by the I-beam was properly designed and erected.
  - The scaffold "*was not designed by a qualified person*."
  - The I-beam had not been properly "*secured*."
  - The scaffold "*was not designed for the loads imposed on it*."
  - As for the cause of the accident: "*the I-beam and the entire scaffold became overloaded and rolled into the creek below while five employees were in the scaffold installing guardrails.*"

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- OSHA documents submitted as exhibits indicate that:
  - "*After the beam rolled on its side, it then failed at mid-beam*."

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- In a diary report, Ronald Lindenberg, IDOT's resident engineer concluded that:
  - The I-beam had "*rolled over and threw 5 workers onto the riprap and into the creek*."
  - "*The I-beam was extensively damaged and will need replacing*."

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- An internal IDOT memorandum stated that:
  - The I-beam had "*rolled outward off the abutment and into the creek*."
  - "*The beam was sitting on an elastomeric bearing assembly which the contractor believes may have contributed to the accident*."

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- In November 2009, the circuit court entered an order granting **summary judgment** in favor of Keeley on the appellants' spoliation-of-evidence claims.
- This case is an appeal from that ruling.

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- Rulings:
  - Keeley, which undisputedly owned and controlled the I-beam, preserved it until IDOT and OSHA had completed their work-site inspections. As Eugene Keeley indicated, Keeley kept the beam until he felt that Keeley had "*satisfied all of its obligations*" to IDOT and OSHA. Keeley employees also had the opportunity to inspect the beam.
  - By preserving the I-beam for its own purposes, Keeley voluntarily undertook a duty to preserve the beam for other potential litigants, including the appellants.

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- Rulings:
  - We conclude that on the record before us, whether a reasonable person in Eugene Keeley's position should have foreseen that the I-beam was material to a potential civil action presents a genuine issue of material fact not suitable for summary judgment.
  - For the foregoing reasons, we reverse the circuit court's judgment granting summary judgment in favor of the appellee and remand this cause for further proceedings.

MARTIN V. KEELEY & SONS, INC.

- Dissenting Opinion – Justice Spomer writes:
  - The general rule in Illinois is that there is no duty to preserve evidence in anticipation of litigation.
  - In this case, Keeley & Sons did nothing more than allow government agencies to inspect its property in accordance with law. To extend the voluntary undertaking exception to the owner of the property in question under these circumstances is tantamount to a finding that there is a general duty to preserve evidence in Illinois.

MARTIN V. KEELEY & SONS, INC.

- Supreme Court Ruling - Martin v. Keeley & Sons, Inc., 2012 IL 113270:
  - This court allowed Keeley's petition for leave to appeal pursuant to Supreme Court Rule 315. We granted leave to the Illinois Association of Defense Trial Counsel to file a brief amicus curiae in support of Keeley.
  - The circuit court of St. Clair County entered an order granting summary judgment for Keeley, finding that Keeley had no duty to preserve the I-beam. The appellate court reversed. 2011 IL App (5th) 100117. We now reverse the appellate court and affirm the circuit court.

PERFETTI V. MARION COUNTY, IL

NO 5-11-0489 2013

PERFETTI V. MARION COUNTY, IL

- Roy Perfetti, Plaintiff-Appellant
- Marion County, IL, Marion County Highway Department and Kinmundy Township, Defendants-Appellees
- Filed January 28, 2013
- Appealed from Circuit Court of Marion County

PERFETTI V. MARION COUNTY, IL

- Facts of the case
  - The Plaintiff, Roy Perfetti, filed an action in the circuit court of Marion County against the defendants, Marion County, IL, Marion County Highway Department and Kinmundy Township, alleging that the defendants' negligence and willful and wanton misconduct with regard to an unsafe roadway caused a one-vehicle collision that resulted in his injury.
  - The circuit court dismissed the plaintiff's cause against Kinmundy Township, and the plaintiff elected to proceed solely against Marion County
  - Circuit court granted Marion County's motion for a directed verdict.

PERFETTI V. MARION COUNTY, IL

- Facts of the case
  - On appeal, the plaintiff argues that the circuit court's directed verdict was not based on the evidence, that Marion County did not plead an affirmative defense for which a directed verdict could be granted and that it was not immune pursuant to **Tort Immunity Act**.

PERFETTI V. MARION COUNTY, IL

- From Tort Immunity Act

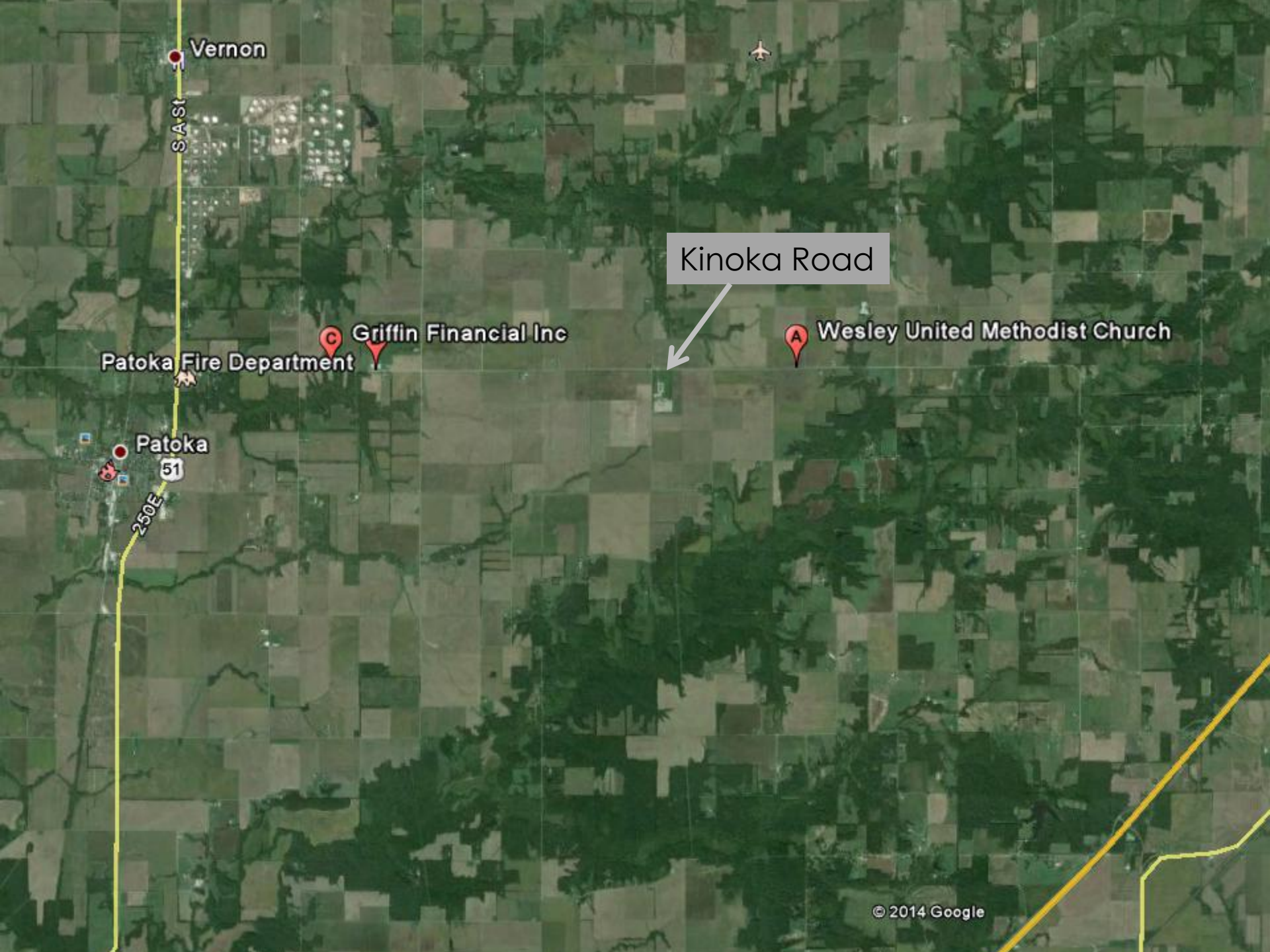
(745 ILCS 10/2-201) (from Ch. 85, par. 2-201)
Sec. 2-201. Except as otherwise provided by Statute, a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion even though abused.
(Source: Laws 1965, p. 2983.)

PERFETTI V. MARION COUNTY, IL

- Plaintiff's Pleading:
  - On June 30, 2006, the plaintiff filed a complaint alleging that despite its actual or constructive knowledge of the unsafe roadway construction of Kinoka Road, Marion County negligently and willfully and wantonly constructed, designed, failed to maintain, and failed to repair the allegedly defective roadway.
  - The plaintiff further alleged that Marion County negligently allowed the roadway to remain in a defective condition, failed to warn of the defective condition of the roadway, failed to protect the plaintiff from the hazardous condition in the roadway and improperly permitted the plaintiff and other users to use the roadway.

PERFETTI V. MARION COUNTY, IL

- Plaintiff's Pleading:
  - The plaintiff alleged that the unsafe construction, maintenance, and condition of Kinoka Road caused him to lose control of his vehicle and suffer extensive injuries.
  - The plaintiff alleged that as a direct and proximate result of Marion County's acts or omissions, he suffered injuries to his neck, shoulder, and back.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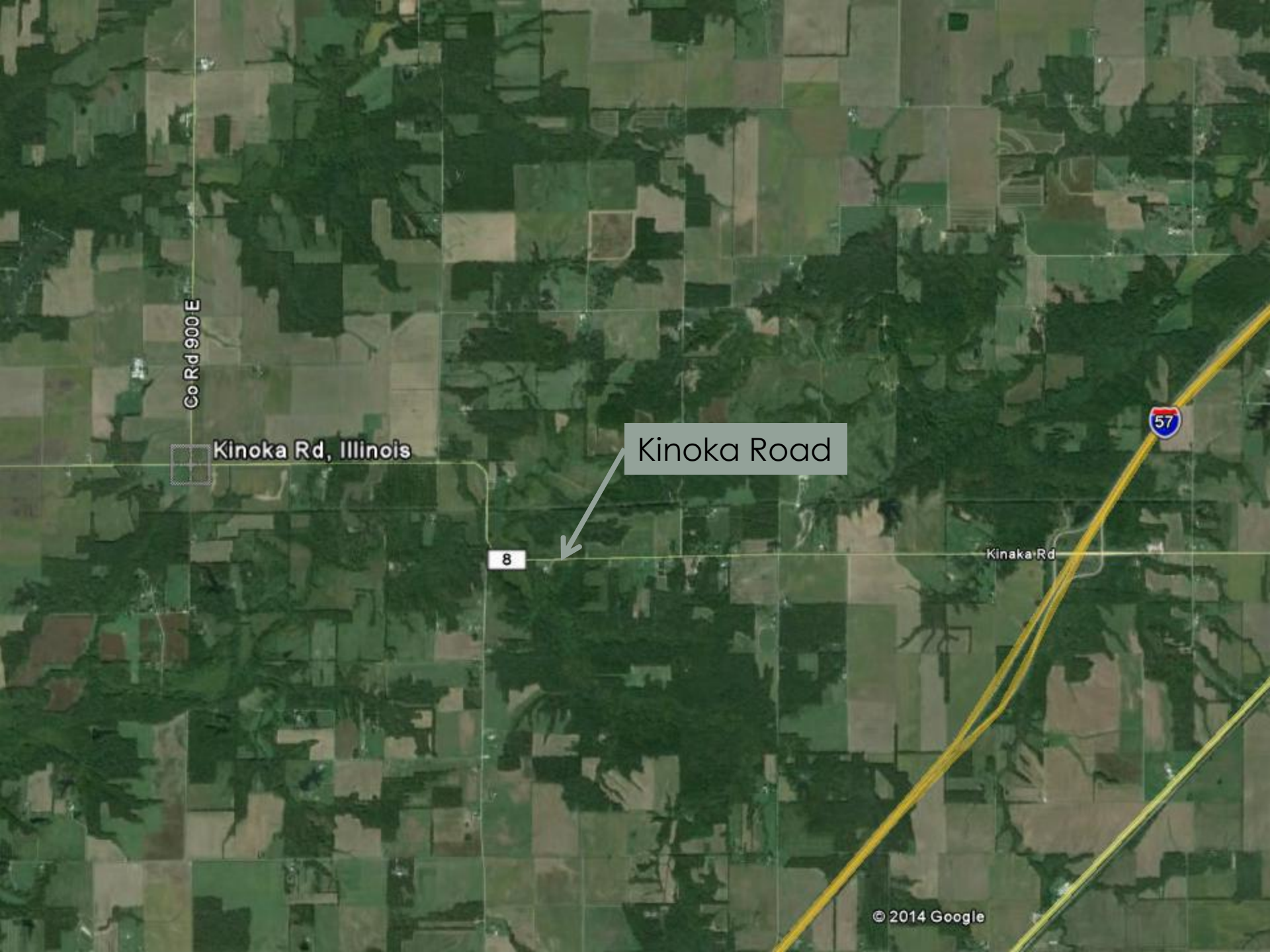
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PERFETTI V. MARION COUNTY, IL

- Plaintiff's Pleading:
  - On September 7, 2005, the plaintiff was driving eastbound on Kinoka Road in Marion County, IL.
  - As he descended a hill, his truck abruptly shook, flipped, and rolled into a ditch.
  - The plaintiff suffered injuries and was transported by ambulance to the hospital
  - On the day of the accident, the plaintiff returned to the accident scene with his son Donald.
  - The plaintiff witnessed what he described as "*nothing but bubbles*" in the road.
  - The plaintiff further described the road as "*all ripples and spongy*."

PERFETTI V. MARION COUNTY, IL

- Plaintiff's Pleading:
  - The plaintiff testified that when he stood on the road and moved his feet, the road moved three feet in front "*like standing on a bowl of Jello*."
  - The plaintiff testified that the ripples were evident completely across the road and 50 to 75 feet downhill.
  - On cross-examination, the plaintiff acknowledged that he had to exit his vehicle to view the road's condition.
  - Donald also described the road as "*wavy, spongy, and mushy*." Donald testified that when he stood on the roadway, it sank.

PERFETTI V. MARION COUNTY, IL

- Plaintiff's Pleading:
  - The plaintiff returned the following day with his son Paul and took additional photographs.
  - Paul described the road as a "*washboard with a ripple effect in the road*."
  - Paul testified that the road moved when stepped upon and that the defect in the roadway covered a 70-acre area.

PERFETTI V. MARION COUNTY, IL

- Defendant's Response:
  - Marion County asserted as affirmative defenses contributory negligence immunity under section 3-102 and 2-201of the Tort Immunity Act.
  - Marion County argued that it had neither actual nor constructive notice of the existence of the allegedly unsafe condition at a reasonably adequate time prior to the plaintiff's accident to take measures to remedy or protect against such conditions.
  - Marion County asserted that it was not liable for injuries resulting from the Marion County highway engineer's act or omission in determining policy and exercising his discretion.

PERFETTI V. MARION COUNTY, IL

- Defendant's Response:
  - Jerry Cunningham, the Marion County Engineer, testified that he was not aware of the plaintiff's accident until the following year.
  - Jerry testified that Marion County was responsible for the condition of Kinoka Road, which experienced heavy semitruck traffic at the time of the plaintiff's accident.
  - Jerry testified that he last inspected the area of the accident two days before the accident and did not observe anything unsafe.
  - Jerry acknowledged that there were sections of the highway at issue that Marion County had been monitoring for "***bleeding***."

PERFETTI V. MARION COUNTY, IL

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PERFETTI V. MARION COUNTY, IL

- Rulings:
  - Plaintiff failed to present evidence that Marion County had actual or constructive notice that the roadway was not in a reasonably safe condition prior to the Plaintiff's injury
  - Plaintiff failed to present evidence that Marion County had actual notice of the defective condition of the roadway or that the defective condition of the roadway was apparent for such a length of time or was so conspicuous that Marion County should have known of its existence by exercising reasonable care and diligence.
  - We hereby conclude that the circuit court properly entered a directed verdict.

PEOPLE V. EINODER

95942, 95943, 95944 2004

PEOPLE V. EINODER

- Defendants, John T. Einoder, Tri-State Industries, Inc., and J. T. Einoder, Inc., were charged, in three separate indictments, for criminal disposal of waste under the IL Environmental Protection Act (415 ILCS 5/44(p)(1)(A)).
- The circuit court of Cook Co. granted defendants' motion to dismiss each of the indictments, finding that 5/44(p)(1)(A) is unconstitutionally vague.

PEOPLE V. EINODER

- Facts of the case:
  - The indictments alleged that defendants committed criminal disposal of waste by knowingly conducting a waste-disposal operation and accepting for disposal more than 250 cubic feet of concrete containing protruding rebar, construction debris, demolition debris, and general refuse, without a permit as required
  - The state further alleged that the defendant has allowed "*clean construction or demolition debris*" to be deposited on the site, above grade, and otherwise not managed in accordance with the provisions of the Act without a permit.

PEOPLE V. EINODER

- Facts of the case:
  - Defendants filed a motion to dismiss the indictments arguing, inter alia, that the statute is unconstitutionally vague because the term "*grade*" is not defined in the Act.
  - Defendants also argued that the term "*waste*" fails to define the criminal offense with sufficient definiteness that ordinary people can understand what is prohibited conduct.

PEOPLE V. EINODER

- Facts of the case:
  - The trial court granted defendants' motion to dismiss, holding that the statute is unconstitutionally vague on its face. The trial court reasoned: "*As the Defendants correctly note in their motion to dismiss, the term 'grade' is not defined in the Act*". 'Grade' in its ordinary meaning has multiple meanings and can mean
    - (1) the degree of rise or descent of a sloping surface
    - (2) the ground level around a building
    - (3) to make (ground) level or slope evenly for a roadway, etc.
    - (4) to change gradually
  - (*See Webster's New World Dictionary, Second College Ed.*)

PEOPLE V. EINODER

- Facts of the case:
  - Thus, the trial court determined that "*because the statute fails to provide any reference points to assist in interpreting how grade should be measured, this court interprets the term grade as an ambiguous or vague term*."
  - The trial court further reasoned that "*the term 'waste' also fails to define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement*".
  - Therefore, the statute fails to define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited.

PEOPLE V. EINODER

- Facts of the case:
  - The trial court concluded that "*Defendants have shown the statute to be vague in the sense that no standard of conduct is specified at all, based on the terms 'waste' and 'grade.' Further, this court concludes that because Sec 5/44(p)(1)(A) is a penal statute, it fails to adequately define the criminal offense in such a manner that does not encourage arbitrary and discriminatory enforcement*."
  - "*Therefore, based on these findings, this court grants the Defendants' motion to dismiss and finds the section of the Act is unconstitutionally vague*."

PEOPLE V. EINODER

- Facts of the case:
  - The relevant statute at issue, sec 44(p)(1)(A) of the Act, states:
  - Criminal Disposal of Waste.
    - A person commits the offense of Criminal Disposal of Waste when he or she:
    - If required to have a permit under subsection d of Sec 21, knowingly conducts a waste-storage, waste-treatment, or waste-disposal operation in a quantity that exceeds 250 cubic feet of waste without a permit.
    - The term 'waste' is defined in sec 3.53 as:
    - "*any garbage, sludge from a waste treatment plant, …. or other discarded material from industrial, commercial operations.*"

PEOPLE V. EINODER

- Facts of the case:
  - Sec 21 (d) provides that no person shall: conduct any waste-storage, waste-treatment, or waste-disposal operation:
    - Without a permit granted by the Agency or in violation of any conditions imposed by such permit.

PEOPLE V. EINODER

- Facts of the case:
  - The term "*general construction or demolition debris*" is defined in sec 3.78 of the Act as:
    - "*non-hazardous, uncontaminated materials resulting from the construction remodeling, repair and demolition of utilities, structures, and roads…*
    - *General construction or demolition debris does not include uncontaminated soil generated during construction, remodeling, repair and demolition of utilities, structures, and roads provided the uncontaminated soil is not commingled with any general construction or demolitions debris or other waste*".

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PEOPLE V. EINODER

- Rulings:
  - The defendants have not contended that the statute is incapable of any valid application. Rather, defendants contend that the statute is unconstitutionally vague "*as applied*" in this case.
  - Despite defendants' as-applied challenge, they presented no evidence demonstrating how the disputed statutory sections are vague as applied to their conduct.
  - Accordingly, without a factual basis to assess the as-applied effect of the disputed statute, the trial court could not rule on the validity of the statute.

PEOPLE V. EINODER

- Rulings:
  - We hold that the trial court improperly dismissed the indictments against defendants based on the holding that section 44(p)(1)(A) of the Illinois Environmental Protection Act, and its related sections, are unconstitutionally vague on its face. Accordingly, the judgment of the circuit court of Cook County is reversed, and the cause is remanded for further proceedings consistent with this opinion.