



## **EVIDENCE NOT SUFFICIENT TO DEMONSTRATE SIDEWALK DEFECT WAS TRIVIAL, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT IN THIS SLIP AND FALL CASE PROPERLY DENIED (SECOND DEPT).**

The Second Department determined the owners of property abutting the sidewalk where plaintiff fell did not present sufficient evidence to warrant summary judgment in this slip and fall case. The defendant-owners (Millers) argued the defect was trivial:

“A defendant seeking dismissal of a complaint on the basis that the alleged defect is trivial must make a prima facie showing that the defect is, under the circumstances, physically insignificant and that the characteristics of the defect or the surrounding circumstances do not increase the risks it poses” ... . In determining whether a defect is trivial, the court must examine all of the facts presented, including the “width, depth, elevation, irregularity and appearance of the defect along with the time, place, and circumstance of the injury” ... .

The Millers failed to establish their prima facie entitlement to judgment as a matter of law on the ground that the alleged defective condition was trivial as a matter of law ... . In support of their motion, the Millers submitted conflicting evidence as to the dimensions of the alleged defective condition, including the plaintiff's testimony at a hearing pursuant to General Municipal Law § 50-h and measurements taken by the Millers' investigator. Further, “it is impossible to ascertain from the photographs submitted in support of the motion whether the alleged defective condition was trivial as a matter of law” ... . [Coriat v Miller, 2018 NY Slip Op 05998, Second Dept 9-12-18](#)

NEGLIGENCE (EVIDENCE NOT SUFFICIENT TO DEMONSTRATE SIDEWALK DEFECT WAS TRIVIAL, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT IN THIS SLIP AND FALL CASE PROPERLY DENIED (SECOND DEPT))/SLIP AND FALL (EVIDENCE NOT SUFFICIENT TO DEMONSTRATE SIDEWALK DEFECT WAS TRIVIAL, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT IN THIS SLIP AND FALL CASE PROPERLY DENIED (SECOND DEPT))/SIDEWALKS (SLIP AND FALL, EVIDENCE NOT SUFFICIENT TO DEMONSTRATE SIDEWALK DEFECT WAS TRIVIAL, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT IN THIS SLIP AND FALL CASE PROPERLY DENIED (SECOND DEPT))