



Another Win in a Sidewalk Trip & Fall Case: Open & Obvious

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Defects between sidewalk squares, particularly in this climate, are unavoidable, but when that defect could have been seen by a claimant who becomes injured as a result of that defect, it is considered an “open and obvious” hazard for which no legal duty exists. In the matter of Batelli v. Village of Addison, Judge Bryan Chapman held that because there was no dispute regarding the size of the sidewalk defect at issue, in this case a less than 2” height differential between sidewalk slabs, that the defect should have been seen by Ms. Batelli. Deposition testimony from Mrs. Batelli’s friend who witnessed the accident, supported that finding. To the extent that Ms. Batelli was looking for oncoming traffic as she approached the corner, such did not amount to a distraction that the Village of Addison created or could control. The Court held that even if the defect was not open and obvious, the Village of Addison, which has 220,000 sidewalk squares for which it responsible, did not have actual or constructive notice of the existence of this sidewalk defect in such time to repair it. The Village’s Sidewalk Repair Policy considers a 1/2” displacement to be subject to immediate repair, so the decision was made not to argue that the condition was so small that no duty can exist as a matter of law. The Court agreed that another IRMA matter of Foy v. Village of La Grange, 2020 IL App (1st) 191340 was instructive and entered judgment in favor of the Village of Addison. Michael R. Hartigan of Hartigan & O’Connor, P.C. defended and argued the motion on behalf of the member. All IRMA members should consult our [model policy](#) for sidewalk inspections and repairs to assure that all possible defenses are available when such a lawsuit is filed. In addition, here is a link to trainings IRMA has previously provided on this topic.

PWSC Training:

- Handout: [https://irmarisk.org/Training/Video-Library-\(1\)/IRMA-Productions/PowerPoints/Hartigan-Presentation.aspx](https://irmarisk.org/Training/Video-Library-(1)/IRMA-Productions/PowerPoints/Hartigan-Presentation.aspx)
- Video Part 1: <https://www.youtube.com/watch?v=1QCq3-jDQPE&feature=youtu.be>
- Video Part 2: <https://www.youtube.com/watch?v=1CVjkHgS4E4&feature=youtu.be>