Court of Appeal Holds That a One and One-Quarter Inch Sidewalk Slab Rise Is A Trivial Defect

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ATTORNEYS

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The City of Temecula prevailed in a sidewalk trip and fall lawsuit based on the "trivial defect" defense. RWG lawyers **Bob Ceccon** and **Stephanie Cao** represented the City.

Many lawyers and risk-management professionals believe that the trivial defect defense is only available if a sidewalk rise is three-quarters of an inch or less. However, this recent decision indicates that a court can find that rises of nearly double that height are trivial defects.

Plaintiff in the case alleged that he tripped on a sidewalk slab rise that measured approximately one and one-quarter inches. He further alleged that, as a result of the fall, he sustained a brain injury, that he was unable to speak without slurring his speech, and that he was totally disabled.

The City argued that the one and one-quarter inch rise was a trivial defect and that the City was not liable for Plaintiff's injuries. Plaintiff argued that the rise exceeded three-quarters of an inch and that a jury should decide whether a dangerous condition existed.

The Court of Appeal ruled in favor of the City. The Court found that "[i]n determining whether a given walkway defect is trivial as a matter of law, the court should *not* rely solely upon the size of the defect … although the defect's size 'may be one of the most relevant factors' to the court's decision." (Emphasis in original.) The Court further found that "[s]idewalk elevations ranging from three-quarters of an inch to one and one-half inches have generally been held trivial as a matter of law."

Although the appellate court decision is not published, it does show that courts may be willing to expand the scope of the "trivial defect" defense. The case is *Huckey v. City of Temecula* (2019) WL 2724328. To read the full decision, see the link below.

For more information about public agency liability issues, please contact **Bob Ceccon**.