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Jonathan Cox, a partner of the law firm of Nash Connors, P.C., recently obtained a defense verdict following a trial in Buffalo, N.Y. Jon represented an owner of a group of homes in Tonawanda, N.Y. that allegedly failed to properly clear its sidewalks of snow and ice, thereby resulting in an accident involving two sisters. Plaintiffs claimed that the sidewalks in question were “impassable” due to the buildup of snow and thick, chunky and layered ice on them, which in turn forced them to walk in the street where they were hit by a car on a quiet residential street at 11 p.m. Plaintiffs stated that they had slipped and fallen on the sidewalk prior to deciding to walk down a driveway to the street where they stopped, looked both ways and then started across the street on a diagonal. The plaintiffs took several steps into the street before they were struck by a car coming up behind them and admitted that they never saw the car despite it being dark out (the driver of the car and an independent witness stated the car’s headlights were on at the time). The trial was bifurcated and only the issue of liability was tried. While the property owner denied the sidewalks were in an unreasonably dangerous condition at the time (there were scene photos taken by the police which showed about two inches of snow on the ground), the primary focus of the defense was on the proximate cause issue.

The defense inquired how the accident could have occurred in the manner that plaintiffs described it, especially in light of the testimony that the girls looked both ways while at the curb, yet failed to see an approaching vehicle with its lights on. The defense further questioned the evolution of plaintiffs’ claims regarding the condition of the sidewalks which at first claimed that there was two feet of snow on the sidewalks, making them impassable, and then morphed into the allegations of thick and layered ice (thereby implying that the ice had been there so long that the land owner had constructive notice of its existence). Upon cross examination of plaintiffs’ expert meteorologist, Jon was able to obtain testimony regarding the weather conditions during the two weeks preceding the accident date which the expert ultimately had to concede were not capable of producing the thick, layered ice the sisters testified about.

The six-person jury deliberated for three hours and delivered a unanimous verdict that the land owner did not proximately cause the accident between plaintiffs and the car. As an aside, the jury also decided that the driver of the car was not negligent, apparently agreeing with Jon’s theory that due to the time of night and weather conditions, the sisters were in a hurry to get back home and cut across the street while talking and assuming that no one was on the road at that time.