

# PENNSYLVANIA

# SUMMARY JUDGMENT



**B**en Novak's Motion for Summary Judgment was granted in a case in which the plaintiff tripped and fell due to a significant hole in the sidewalk. The Motion argued that Plaintiff's case had to be dismissed because the hole was an open and obvious condition. Plaintiff, who lived two blocks away from the defect, testified that he had walked over the defect plenty of times before and that he was aware of it. However, leading up to the accident, he was thinking about other things, and forgot about the hole. Opposing counsel argued that the open and obvious condition doctrine did not apply because Plaintiff was not thinking about the hole at the time of the accident, and therefore, he did not subjectively appreciate the risk. The Court rejected this argument and accepted FHMS' position that, because Plaintiff previously knew about the hole, it was an obvious danger, in connection with which the client owned no duty.



**BENJAMIN NOVAK**

717.696.0551  
[bnovak@fhmslaw.com](mailto:bnovak@fhmslaw.com)