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## And The Defense Wins

**Mark Yagerman**, a DRI member and equity owner of **Smith Mazure Director Wilkins Young & Yagerman, P.C.** in New York City, recently obtained a defense verdict in Kings County on behalf of the New York City Transit Authority. The subject accident occurred on Nostrand Avenue, stairway S4 on October 19, 2004. The accident was reported to the police and the ambulance came to the scene. No reports were made by the New York City Transit Authority.



Mark Yagerman

The plaintiff testified that it was raining hard at the time of the accident. The plaintiff was going to Manhattan on business. She left her office and was proceeding to use stairway S4 to get to the Manhattan bound A train. She was descending the stairway, holding onto the handrail when she slipped, allegedly due to worn and defective edging on the second step. As a result of the accident, the plaintiff sustained a tri-malleolar fracture to her right ankle requiring open reduction surgery and removal of hardware. She had early development of arthritis in the ankle joint.

Stanley Fein, the plaintiff's expert engineer, performed an engineering analysis of the stairway, took photographs and testified that, in his opinion, the second step was defective in that it caused a slipping hazard. According to him, the area was re-surfaced in a negligent way, since the edge of the step was beveled to 45 degree chamfer. The bevel took away from the riser about an inch, and the riser was lower than the previous riser. According to plaintiff's expert, this creates a slipping hazard when the ball of the foot meets the chamfer, and it also takes away the uniformity of stride.

Testifying for the defense, the station supervisor stated that the area in the photographs identified by the plaintiff would not be classified as defective and he would not report it as such. NYCTA maintenance records did not disclose any reported defect on that stair for one year prior to the accident. A NYCTA record clerk search showed no prior similar accidents reported on subject stairway for one year prior to the date of the accident.

A Kings County jury deliberated one hour and unanimously found that the NYCTA was not negligent. The post trial motion by the plaintiff to set aside the verdict was denied by Justice Martin.