

## A. FOX V. WOLFE

### Synopsis and Witness List

Leslie Fox is a resident of the garden apartment complex owned and operated by Marshall Wolfe. As she was walking up the steps on the property that leads to her building, Fox fell and severely injured the area around her shoulder. She alleges that the fall was the direct result of the fact that the incline on which she fell begins with a ramp that leads to steps. She claims this is a dangerous condition that violates the state building code. She fell as she was stepping up from the ramp to the step. Furthermore, she alleges that her fall might have been prevented had the handrail next to the incline extended to where she could reach it at the time that she slipped.

Wolfe responds that Fox fell because she did not exercise due care in going up the incline. Additionally, he maintains that the proximate cause of her fall was that one of her shoes fell off immediately before she fell, causing her to lose her balance. He denies any negligence.\*

There are two witnesses to the fall, one of whom will testify for each side. Additionally, each side will call an engineer to testify about conditions on the property.

#### WITNESSES

For the Plaintiff:

1. Leslie Fox
2. Jeff Leonard
3. Floyd Johnson
4. Dr. Michaels\*\*

For the Defendant:

1. Marshall Wolfe
2. Ira Boren
3. Netta Wister

\* This case can be tried with the State of Confusion being either a contributory or comparative negligence jurisdiction.

\*\*This case is intended to be tried on this issue of liability alone. Each side has stipulated that were Dr. Michaels to be called to the witness stand and were his testimony found to be relevant, in part or in full, he would testify consistently with that which appears in his letter.

There is a stipulation between the parties that when the Defendant purchased the property, the stairway to Building A was of the same construction it was on the day of Plaintiff's fall. Additionally, it is agreed that when Defendant purchased the premises, it passed inspection after some minor repairs were made.

**A. FOX V. WOLFE**

COUNTY OF YORK

\_\_\_\_\_  
LESLIE FOX

Plaintiff,

-against-

MARSHALL WOLFE

Defendant.  
\_\_\_\_\_

Index No.: 4187/06

Date Filed: 9/14/06

Plaintiff's address:

Basis of Venue:

Defendant's address

To the above named defendant(s)

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of Confusion) and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

Dated: York, Confusion

9/30/06

ADAMS, WHITE & RYNSDORF  
Attorneys for Plaintiff

*Notice:* The nature of this action is

The relief sought is

Upon your failure to appear, judgment will be taken against you by default for the sum of \$ \_\_\_\_\_ with interest from \_\_\_\_\_ and the costs of this action.

**A. FOX V. WOLFE**

CIRCUIT COURT OF THE STATE OF CONFUSION  
COUNTY OF YORK

\_\_\_\_\_  
LESLIE FOX

X

Index No.:

Plaintiff(s),

VERIFIED COMPLAINT

-against-

MARSHALL WOLFE

Defendant(s).

\_\_\_\_\_  
X

Plaintiff, by her attorney, CARLTON ADAMS, ESQ., as and for her Verified Complaint,  
alleges as follows:

FIRST: That at all times hereinafter mentioned, the defendant,  
MARSHALL WOLFE, was the owner of the premises 19 Helmsley Lane, York, Confusion.

SECOND: That at all times hereinafter mentioned, the defendant,  
MARSHALL WOLFE, was the owner of said premises.

THIRD: That at all times hereinafter mentioned, the defendant  
operated the premises at the aforesaid address.

FOURTH: That at all times hereinafter mentioned, the defendant,  
controlled the premises at the aforesaid address.

FIFTH: That on February 16, 2006, the plaintiff, LESLIE FOX,  
resided in Apartment 1A of the premises 19 Helmsley Lane, York, Confusion.

SIXTH: That on February 16, 2006, the plaintiff was lawfully on  
the aforesaid premises.

SEVENTH: That on February 16, 2006, the plaintiff fell on the ramp and steps  
of the aforesaid premises.

EIGHTH: That the aforesaid occurrence was caused solely by the negligence

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of the defendant, his agents, servants and/or employees, without any negligence on the part of the plaintiff contributing thereto.

NINTH: That the aforesaid occurrence resulted from the negligence of the defendant, his agents, servants and/or employees, in maintaining said area in a dangerous and defective condition; in maintaining said area in a broken condition; in maintaining a trap thereon; in suffering, permitting and allowing said dangerous and defective condition to remain and exist at the aforesaid location; in failing to maintain the aforesaid area in a reasonably safe condition; in failing to inspect said area; in improperly and inadequately inspecting said area; in failing to repair said area; in improperly and inadequately repairing said area; in failing to provide the plaintiff with a safe place to walk; in failing to warn the plaintiff and other members of the general public of a dangerous and defective condition existing thereat; in failing to place appropriate barriers at the aforesaid location; in failing to provide adequate illumination at the aforesaid location; in failing to take the necessary steps and precautions so as to avoid the occurrence in question.

TENTH: That by reason of the negligence of the defendant, the plaintiff, LESLIE FOX, was rendered sick, sore, lame and disabled, and was caused to suffer and still suffers great bodily pain and mental anguish, and was caused to expend various sums of money for medical care and treatment, and upon information and belief, her injuries are of a permanent nature, and she has been prevented from attending her usual duties and vocation, all to her damage in the sum of ONE MILLION AND 00/00 (\$1,000,000.00) dollars.

WHEREFORE, plaintiff demands judgment against the defendant in the sum of

**A. FOX V. WOLFE**

ONE MILLION AND 00/100 (\$1,000,000.00) dollars TOGETHER WITH THE COSTS AND  
DISBURSEMENTS HEREOF.

Dated: September 30, 2006

CARLTON ADAMS  
ATTORNEY FOR PLAINTIFF

**A. FOX V. WOLFE**

CIRCUIT COURT OF THE STATE OF CONFUSION  
COUNTY OF YORK

~~~~~ x

LESLIE FOX,

Index No.

4187/06

Plaintiff,

– against

**VERIFIED  
ANSWER**

MARSHALL WOLFE,

Defendant.

~~~~~ x

Defendant, MARSHALL WOLFE, by his attorney, AMOS BURRELL, Esq., answering the verified complaint:

1. Denies each and every allegation contained in paragraphs 1, 2, 3, 4, 7, 8, 9, and 10.

AS AND FOR A FIRST SEPARATE AFFIRMATIVE DEFENSE

2. Any damage, injury or loss of any nature allegedly sustained by the plaintiff was caused solely and exclusively, or in the alternative, partially, by the negligence, carelessness, recklessness, or otherwise improper or wrongful conduct or assumption of the risk of plaintiff or her agents or employees, and was not caused by reason of, or in the alternative, was not caused by the sole reason of any negligent, wrongful or improper conduct of the defendant herein.

AS AND FOR A SECOND SEPARATE AFFIRMATIVE DEFENSE

3. The defendant herein received no prior notice, written or otherwise, of the allegedly defective condition.

AS AND FOR A THIRD SEPARATE AFFIRMATIVE DEFENSE

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4. The within action should be dismissed on the grounds the condition alleged was merely a trivial defect.

WHEREFORE, MARSHALL WOLFE demands judgment against LESLIE FOX, dismissing the verified complaint together with all costs and disbursements of the action.

Dated: October 14, 2006

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Amos Burrell  
Attorney-at-Law

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DEPOSITION OF LESLIE FOX

LESLIE FOX,

having been first duly sworn was examined and testified as follows:

EXAMINATION BY MR. BURRELL ON OCTOBER 17, 2007

MR. BURRELL:

Q What is your name?

A Leslie R. Fox.

Q What is your address?

A 19 Helmsley Lane, York, Confusion.

Q Good morning. My name is Aaron Burrell. I'm an attorney representing Marshall Wolfe. I'm going to ask you some questions today about an accident you were involved in on or about February 16th, 2006. If you don't understand any of my questions or you wish me to repeat any of my questions, by all means, tell me. Is that all right, ma'am?

A Yes.

Q Are you married?

A I am a widow

Q What do you do for a living?

A I am an administrative assistant to Rex Lewis, a CPA.

Q How much time did you miss from work after the accident?

A 24 days.

Q What is your salary with Mr. Lewis?

A I gross \$610 a week.

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Q By the way, ma'am, are you right-handed or left-handed?

A Right handed.

Q And what part or parts of your body are you claiming were injured in this accident?

A The humerus.

Q Is that your right humerus, ma'am?

A Yes.

Q Are you claiming injuries to any other parts of your body?

A No.

Q Are you claiming any mental or psychological injury as a result of this accident?

A No.

Q Prior to February 16th, 2006, had you ever injured your right arm?

A No.

Q Prior to the date of the accident, had you ever had any diagnostic tests, meaning x-rays, MRIs or CAT scans, performed of your right shoulder or arm?

A No.

Q After this accident, did you ever re-injure your right humerus?

A No.

Q Now, getting back to your residence at 19 Helmsley Lane, do you know who your landlord was?

A Marshall Wolfe.

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Q When you first moved in to 19 Helmsley Lane, how many ways were there to get in and out of the building in which your unit was located?

A There's only one way to get into my building.

Q Is that adjacent to a street?

A There's a driveway and then a sidewalk leading to the steps.

Q Is that a public sidewalk, if you know?

A Private.

Q When you first went to that apartment, what was the stairway that led into the building comprised of?

A The first step looks like a half a ramp, and then there were two more steps, regular steps.

Q And you said two more steps?

A Yes.

Q Was there one step and a landing?

A There was the ramp and then a step and then the landing, I guess.

Q During the time that you lived there was the configuration of the steps and the ramp that you told me about changed or altered in any way?

A Up to the accident?

Q Yes.

A No.

Q Do you know who put that ramp —

A I don't know.

Q — or those stairs?

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A I don't know.

Q Was there a hand railing located on that stairway?

A Not on the first part where the ramp is, but on the next step.

Q That would be the first step up from the ramp, ma'am?

A Yes.

Q Was it on the side or both sides?

A Both sides.

Q Now, prior to the date of this accident, did you ever make any complaints to your landlord about the configuration of those steps and/or the ramp?

A No.

Q Just so we're clear, the steps and ramp, is that where you're claiming your accident happened?

A Yes.

Q Do you know if anyone ever made any complaints to the landlord concerning the steps and ramp?

A A tenant, his name is Jeff Leonard, I believe slipped on the steps.

Q My question, ma'am, is, did anyone make any complaints to the landlord about the ramp and/or steps?

A I don't know. I don't know.

Q Getting back to Leonard, you said he had slipped?

A I believe he did, yes.

Q Any why do you believe he slipped?

A Because he told my daughter-in-law.

## A. FOX V. WOLFE

Q Who is your daughter-in-law?

A Carrie Fox.

Q When did you first learn that Leonard had told your daughter-in-law that she had slipped?

A After I broke my arm.

Q Do you know when he allegedly slipped?

A No, I don't.

Q Do you know if Leonard slipped before or after you slipped?

A Before.

Q Did you speak with Leonard about his slip?

A Yes.

Q When was that?

A After the — after my accident.

Q And was that a face-to-face conversation or was it over the phone?

A Face-to-face.

Q And what did Leonard tell you about his slip?

A Just that he slipped on the — on the stairs — the ramp.

Q Did he say the stairs or the ramp, ma'am?

A I don't remember. I think it was the ramp.

Q Did he tell you what, if anything, caused his slip?

A I believe he said it was icy.

Q Do you know if he was injured?

A I don't know.

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Q Did you ever slip on the steps and/or ramp leading to your apartment building prior to the accident?

A No.

Q Do you know what the weather was like on February 16, 2006?

A It was very cold and dry.

Q Do you know when the last time any precipitation had fallen?

A No, I don't.

Q Was there any snow covering any portion of the ground, whether it be the grass, the walkway, the ramp, the steps or anything else?

A I don't remember.

Q What time did your accident happen?

A Around 5:00 p.m., I believe.

Q Had you worked that day?

A No. I was off that day.

Q And what had you done on that day prior to your accident?

A Just shopping.

Q Had you gone grocery shopping?

A Yes.

Q Where had you gone grocery shopping?

A Safeway

Q Did you have a car at that time, ma'am?

A Yes.

Q Did you drive to Safeway or did you walk?

## A. FOX V. WOLFE

A I drove.

Q Did you notice any snow or ice in the parking lot at the Safeway that day?

A I don't remember.

Q Did you have anything of an alcoholic nature to drink that day prior to the accident occurring?

A No.

Q Had you anything of an alcoholic nature to drink for a 24-hour prior to the accident?

A Probably wine in the evening.

Q What kind of wine?

A White wine.

Q And was that at your home or somewhere else?

A At home.

Q And how much white wine did you have the evening before?

A I don't remember.

Q Was it a glass, two glasses, half a bottle, a bottle or something else?

A Two glasses.

Q Were those water glasses or two wine glasses or something else?

A Two wine glasses.

Q Was anyone else with you when you had the wine?

A No.

Q Were you taking any medication on February 16th, 2006, whether prescription or otherwise?

## A. FOX V. WOLFE

A No.

Q Prior to this accident, ma'am, had you ever suffered any injuries to your legs?

A No.

Q Prior to this accident, had you ever experienced any lightheadedness or dizziness?

A No.

Q Prior to this accident, did you have any problem with your balance?

A No.

Q What time did you leave your apartment that day for the first time? This is February 16th of 2006.

A I believe it was around 2:00 p.m.

Q And as there's only one way to leave your building, you came down the steps and the ramp?

A Yes.

Q Did you have any difficulty using the steps and/or the ramp when you left?

A No.

Q Did you see any snow or ice or debris on the steps and/or ramp when you left?

A No.

Q You're wearing glasses today?

A Yes.

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Q Were you wearing glasses — did you need to wear glasses at the time of the accident?

A Yes.

Q What do you wear glasses for, ma'am?

A To read and for driving.

Q Did you need glasses to see things far away?

A Yes.

Q Do you wear the glasses when you go out shopping?

A Yes.

Q Did you wear the glasses when you went out shopping that morning?

A Yes.

Q The same glasses you're wearing today?

A Yes.

Q Same frame, same prescription?

A Yes

Q Did you have any difficulty walking that day?

A No.

Q What type of footwear did you have on?

A Flats.

Q What were the soles of the flats made of?

A I think leather.

Q Do you still have those flats?

A Yes, I do.

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Q Did those flats have a back?

A Yes.

Q And when you returned home, where did you park your vehicle?

A Behind the building.

Q When you parked behind the building, ma'am, was there a particular walkway you would use to get to your unit?

A Yes. You go up the driveway and then you take the private walk.

Q Is that the same sidewalk you used that morning to get to your car?

A Yes.

Q When you walked back up that sidewalk, did you notice any change in the sidewalk itself?

A No.

Q Had any precipitation fallen since the time that you left your home at about 2:00 p.m.?

A No.

Q And did you have anything in your hands when you left your vehicle?

A Yes, packages.

Q How many packages?

A Two.

Q Did you also have a pocketbook with you?

A Probably, yes.

Q Where was your pocketbook?

A Probably around my shoulder.

## A. FOX V. WOLFE

- Q Your right shoulder or your left shoulder?
- A I kind of drape it.
- Q Around your neck?
- A Yes.
- Q Were you still wearing the same flats?
- A Yes.
- Q What were you wearing – were you wearing a jacket?
- A A coat.
- Q And did you have any gloves on?
- A No.
- Q How far is it from where you parked your vehicle to the steps, the steps/ramp, where the accident happened?
- A About 50 feet. I'm guessing.
- Q During the time that you walked from your car back to the stairs/ramp, did you see anyone else using that walkway?
- A No.
- Q And you said you had two packages. Do you remember what you had purchased?
- A I had groceries and a box of wine.
- Q When you say a box of wine, is that like a paper – a cardboard box with a bladder --
- A Yes.
- Q – that keeps the wine in it?

## A. FOX V. WOLFE

A Yes.

Q How much wine is in that box of wine?

A Five liters. I'm guessing.

Q And were you holding the box of wine by a handle on the box or did you have the box cupped in your arm or somewhere else?

A By handle.

Q Which hand did you have the box in?

A Right hand.

Q And what was in that bag of groceries?

A I have no idea.

Q And how were you holding the bag of groceries?

A In my left hand.

Q Did you have a plastic bag?

A Yes.

Q So you were holding both down at your side as you were walking, both the box of wine and the bag of groceries?

A I believe I put the box of wine down to go up the steps.

Q My question is, as you were walking, is that how you were carrying them?

A Yes.

Q Did you also have your keys out?

A Yes.

Q Did you need a key to get in the entrance door of the building that you lived in?

## A. FOX V. WOLFE

- A Yes.
- Q And you mentioned something before about putting the box of wine down?
- A Yes.
- Q Why did you put the box of wine down?
- A To approach the apartment, and then I would open the door.
- Q Where did you put the box of wine?
- A On the sidewalk.
- Q Did you continue to have the bag of groceries?
- A Yes.
- Q And was that in your left hand or your right hand as you began to ascend?
- A My left.
- Q Was it your intention to enter into the building?
- A Yes.
- Q And then to come back out and get the box of wine?
- A Yes.
- Q Was there anything on the ramp and/or steps when – after you put the wine down and before you started to go up?
- A No.
- Q How long is the ramp?
- A About a foot and a half.
- Q After you put the box of wine down, did you begin to go up the ramp?
- A Yes.

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Q Did the accident happen when you were taking your first step or on some other step?

A The second step.

Q The second step you were making with your feet?

A Yes.

Q And which foot did you begin to go up the ramp and/or stairs?

A I believe my right foot.

Q Where did you put your right foot?

A On the ramp.

Q Where on the ramp in terms of the foot and a half that you told me about?

A In the middle.

Q Did your foot slip or slide – this is your right foot we’re referring to – when you put it in the middle of the ramp?

A I don’t remember. I remember trying to go up the steps.

Q Ma’am, earlier you had given me a foot and a half measurement. Was that from the bottom of the ramp, where it meets on the sidewalk, up towards the step, or was that a different measurement?

A From the bottom to where it meets the step.

Q And did your accident happen – strike that,. After you put your right foot in the middle of the ramp, what did you do next?

A I went up to the next step.

Q When you say you went up to the next step, what are you referring to?

A The first real step.

## A. FOX V. WOLFE

Q And what foot went on the first real step?

A I believe my left.

Q And after you put your left foot on the first step, what did you do next?

A I put my right foot on the top step.

Q Did your fall occur as you were going into the building or coming out?

A Going in.

Q Did your fall occur on the first occasion that you were going in after leaving the box of wine, or did it happen --

A There was only one occasion.

Q So you had your right foot on the top step and the left foot on the first step above the ramp; correct?

A Yes.

Q Did you attempt to move your left foot at that point?

A At that point, I felt myself starting to fall and I put my right arm out.

Q What caused you to begin to fall?

A I don't know.

### PAUSE FOR CONFERENCE WITH MR. ADAMS

Q After conferencing with your attorney, would you like to change or modify your answers to as to where your feet were located immediately prior to your fall?

A Yes. I took a step on the ramp, okay?

Q Yes.

## A. FOX V. WOLFE

- A And then I put my other foot on the first step and I felt myself losing balance; and I put my arm out to grab the railing; and there's no railing on the ramp/ and then I braced my fall with y right arm.
- Q My question was, after conferencing with your attorney, did you wish to change your answer regarding the location of your feet?
- A Yes.
- Q I will then --
- Q So what your testifying to, ma'am, now is that your left foot was on the first step?
- A Yes.
- Q And your right foot was on the ramp?
- A Yes.
- Q Now, first of all, where did you leave the box of wine in reference to the ramp?
- A On the sidewalk.
- Q Was it immediately in front of the ramp? Was it off to either side of the ramp?
- A On the side.
- Q Now, you stated when your left foot was on the first step and your right foot was on the ramp, you began to lose your balance?
- A Right.
- Q Do you know what caused you to lose your balance?
- A No.

## A. FOX V. WOLFE

Q Did you slip or slide?

A I don't think so.

Q Did your right foot slip or slide or turn or bend, which caused you to lose your balance? And the right foot is the one that was on the ramp.

A Not that I remember.

Q The handrail which is located on either side of the stairway, does that begin at the first step?

A Yes.

Q And your left foot, according to your testimony now, was on the first step?

A Yes.

Q And when you began to lose your balance, where was your right hand?

A Reaching for a railing.

Q How wide is that first step?

A How wide?

Q Yes, from side to side.

A 3 feet, maybe. I don't know.

Q Is your answer 3 feet or you don't know?

A I'm guessing 3 feet.

Q Is that your best approximation?

A Yes.

Q And as you were going up the steps at that time, the steps and the ramp, were you in the middle of the step or were you to the right or to the left?

A I would say in the middle.

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Q And did you begin to reach for the handrail before, during or after you lost your balance?

A During.

Q Had you ever lost your balance while walking prior to the time of this accident?

A No.

Q Had you ever lost your balance while using the ramp and steps leading into your apartment building prior to the date of the accident?

A No.

Q Did you actually come into contact with the hand railing to the right when you began to lose your balance?

A No.

Q Did you actually reach for it?

A Yes.

Q You stated that you fell. Did you fall to the right, to the left, forward, backwards or somewhere else?

A To the right and then back.

Q What part of your body came into contact with the ground, the ramp, the trees or anything else in that area, first after you lost your balance?

A My right hand scraped on the ramp and then I fell on my back.

Q When you say scraped on the ramp, what do you mean?

A When I put my hand out to break the fall, my right hand scraped on the sidewalk – on the ramp.

## A. FOX V. WOLFE

- Q You said you fell onto your back?
- A Yes.
- Q And where did your back land?
- A Probably on the sidewalk.
- Q Did anyone witness this accident?
- A No, but my neighbors came out. They heard me fall, apparently.
- Q Who came out to help you?
- A My neighbor, Jeff Leonard, and his son. I think his name is Eric.
- Q And where did they live?
- A In that apartment --
- Q Did you have any complaints while you were still on the ground and Jeff and his son came out, physical complaints?
- A No. I just remember being scared.
- Q So you had no physical complaints at that time?
- A I don't think so, no.
- Q Did anyone help you back to your feet?
- A Yes.
- Q That's Jeff and his son?
- A Yes.
- Q Where was your shoe?
- A On the sidewalk.
- Q Do you know how the shoe came off?
- A It was knocked off when I fell.

## A. FOX V. WOLFE

Q Which shoe was that?

A The right, I believe, the right shoe.

Q And that was the shoe which was on – the right shoe was on the ramp at the time of this; correct?

A Yes, I think so.

Q Do you know if your shoe came off at any point in time prior to your losing your balance?

A No. It did not.

Q When was the first time you had any physical complaints relative – which you claim are relative to this fall?

A As the day progressed, I tried to rest, because I was in pain.

Q My question, ma'am, is, when did you first have a physical complaint?

A When I tried to reach up to unlock my door, when Jeff and his son was helping me, I couldn't get my right arm to the key, so I used my left hand to unlock the door.

Q Did you say anything to Jeff or Eric about any problem with your right arm or hand?

A No. They asked me if I wanted – no.

Q Did you take any medication during the time that you were at your home from when you first went in, up until the time when you called 911?

A No.

Q Did you have anymore wine?

A Yes, I did.

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Q How much wine did you have?

A I don't know.

Q And did you drink some wine after the fall and before you called 911?

A Yes, I did.

Q And do you recall how much?

A No, I don't.

Q Did you have anything else, other than wine, of an alcoholic nature after your fall and before you contacted 911?

A I had wine, 'cause I thought it would help the pain.

Q Ma'am, I'm going to show you what's been marked as Defendant's Exhibit A for identification. First, I'm going to show your counsel, and ask you if you recognize what's depicted in that photograph?

THE WITNESS: Yes.

Q And what do you recognize that be, ma'am?

A The approach to the apartment.

Q And the apartment you're referring to is the building where you reside?

A Yes.

Q And does this depict at least a portion of the area which was involved your accident?

A Yes.

Q And the area that you're referring to, is that in the bottom of the photograph – at the bottom of the photograph?

A It's not there.

## A. FOX V. WOLFE

Q But I'm just saying. Are a portion of the steps shown on the bottom of the photograph, which is marked as Defendant's Exhibit A?

A Yes.

Q And is one of the steps that one of your feet was on shown in that photograph?

A Yes.

Q Okay. Can you just tell me which step you're referring to?

A The one on the bottom of the picture.

Q Is that the first step that you've been testifying about, the first step up from the ramp?

A Yes.

Q Which one of your feet was on this step at that time?

A That step?

Q Do you remember, ma'am?

A I believe – no, I don't.

Q Ma'am, I'm going to show you what what's been marked as Defendant's Exhibit B for identification. First, I'll show your counsel. And I'm going to ask you if you recognize what's depicted in that photograph?

A Yes.

Q What do you recognize that to be?

A The approach to the apartment.

Q Is there also a walkway shown in that photograph, to the left-hand side of the photograph?

## A. FOX V. WOLFE

A Yes.

Q And is that the walkway which was present on the day of the accident?

A Yes.

Q And is this generally how the accident location looked at or about the time of your accident?

A Approximately, yes.

Q Do you know when these photographs were taken?

A Probably after my accident

Q Did you take these photographs?

A No, I did not.

Q Were they taken by somebody at your request?

A My son took them. Yes.

Q Was there snow present on the day of the accident?

A I don't think so. No.

Q Is the ramp, which we've been speaking about, shown in this photograph?

A Yes.

Q Where is it located?

A Next to the sidewalk.

Q Is it by the steps, which are depicted in that photograph?

A Yes.

Q Ma'am, I'm going to show you what's been marked as Defendant's Exhibit C for identification, after, of course, I show it to your counsel, and ask you if you recognize what's depicted in that photograph?

## A. FOX V. WOLFE

A Yes.

Q What does that show, ma'am?

A The approach to the apartment.

Q Does that show the way that the approach to the apartment appeared at the time of your accident?

A Yes.

Q And is the ramp, which we've been discussing, shown in that photograph?

A Yes.

Q Is that shown at – adjacent to the sidewalk and between a landing and a step?

A Yes.

Q You stated that you called 911 about 3:30 a.m.?

A Yes.

Q From the time that you went into your apartment somewhere around 5:30 p.m., until the ambulance came, did you ever leave your apartment again?

A No.

Q Did an ambulance come?

A Yes.

Q What did the ambulance personnel do for you?

A. They helped me into the ambulance and they brought me to the emergency room.

Q Were you put on a backboard?

## A. FOX V. WOLFE

A I was put on a portable bed. I was unable to climb into the ambulance, so they put me on a bed and put the bed in.

Q Why were you unable to climb onto the portable bed?

A They asked me to walk up the steps to the ambulance, and I was unable to do that. I was in terrible pain.

Q What part of your body did you have pain in?

A My right shoulder and my right arm.

Q How long did you remain at York County Hospital?

A I think five days.

Q During those five days, do you know if any x-rays, MRIs or CAT scans were conducted of any portion or portions of your body?

A A lot.

Q And what did you have done to the various portions of your body?

A X-rays, a lot of x-rays.

Q Of what part or parts of your body?

A My shoulder and my right arm.

Q Your right shoulder?

A Yes.

Q Did anyone ever discuss the results of the x-rays of your right shoulder with you?

A Yes.

Q Who was that?

A Dr. Michaels

## A. FOX V. WOLFE

Q Did you have surgery? When was that done?

A Sometime the next day.

Q Did anyone tell you what the surgery would entail?

A They just told me it was a – I believe a multiple fracture of the humerus and that they would have to operate to repair it.

Q Following the surgery, did they tell you what they did?

A Yes.

Q What did they tell you?

A They told me that they operated and they had to put eight surgical screws in my arm; three in my shoulder, I think, and four or five along the humerus.

Q Did they say that they replaced any of the bone with anything else?

A No. They repaired it.

Q Do you have any type of scarring on your shoulder or arm from that surgery?

A I have a minor hairline scar.

Q Could you describe that minor hairline scar to me?

A It's about 4-inches long, along the top of my arm.

Q What color is it?

A Pink.

Q Is it on the inside of your arm or the --

A Right here (indicating).

Q Indicating where your arm – where your shoulder is; basically, where your upper arm meets your shoulder blade?

## A. FOX V. WOLFE

A Yes.

Q What did they do for you in the hospital following the surgery?

A Some very minor therapy. Mostly, I was on medication for pain.

Q Do you know what type of medication you were taking in the hospital?

A I think morphine, I think.

Q Was that a drip or something?

A Yes, it was. It told them I didn't want anything, but when I woke up, I was in excruciating pain, and they had already set up the drip.

Q After the surgery, did you have any braces, immobilizers or casts on any parts of your body?

A I had an immobilizer.

Q Did you have that immobilizer on for the five days that you were in the hospital?

A Yes.

Q Did you wear that immobilizer for any period of time following your release from the hospital?

A I would say at least for a month.

Q After that one month, did you have any other braces, appliances or anything else on your right shoulder and arm?

A I don't think so. No.

Q When you left the hospital, were you released to home or did you have to go to physical therapy?

A I went to rehab.

## A. FOX V. WOLFE

Q What therapy did they do for you?

A Some very slight therapy.

Q What did is that slight therapy consist of?

A Watching me walk; being able to navigate from the bed to the bathroom.

Q Did you stop the morphine after leaving the hospital.

A Yes. That was stopped, yes.

Q How long did you go for physical therapy?

A For several months.

Q How many days a week?

A In the beginning, three days a week.

Q Did the three days a week change at some point in time during the nine months that you went there?

A Yes. It lessened to twice a week.

Q Did you have any type of electric stimulation to your shoulder or arm?

A Heat – yes, I did.

Q What did you have? Was it electric stimulation, something else?

A Yes. It was, I believe, electric stimulation and heat.

Q In your opinion, did your complaints relative to your arm change in any way as a result of the therapy?

A It improved greatly.

Q When did you last go to physical therapy?

A At least – it's been at least a year.

## A. FOX V. WOLFE

Q Have you seen any other doctors or health care providers, other than the ones we've discussed, relative to the injuries sustained in this accident?

A No.

Q After leaving therapy, did you take any type of medication?

A Yes.

Q What did you take?

A I was on pain medication. I don't remember the name of it.

Q How long did you take that pain medication for?

A I think for about maybe a month.

Q Did you take any other medications after leaving the hospital and the rehabilitation facility, other than the pain medication which was prescribed by Dr.

Michaels?

A Yes, Atenolol.

Q What was that for?

A Hypertension.

Q Is that related to this accident.

A I sure think so.

Q Do you have any present physical complaints relative to the injuries sustained in this accident? By present, I don't mean as you sit here now; I mean the past week or so?

A Sometimes, if I reach for something, I forget that I had been injured, but my body reminds me, and I'll have to use my left arm rather than my right arm.

Q How does your body remind you?

## A. FOX V. WOLFE

A Pain.

Q How often do you have pain in your right arm?

A Just when I do something I shouldn't be doing.

Q Are there any activities you cannot do at all as a result of the injuries sustained in this accident?

A I can't lift heavy objects or play tennis.

Q Are there any activities that you can't do as well as you had before the accident as a result of the injuries sustained in this accident?

A Simple things, like vacuuming; I don't shovel snow anymore.

Q Has any doctor told you not to shovel snow?

A No. It's just that it hurts.

Q Anything else, ma'am?

A No.

SIGNED-Leslie Fox

## A. FOX V. WOLFE

### STATEMENT OF LEONARD

My name is Jeff Leonard. I live at the Helmsley Lane apartment complex and am 39 years old. I am divorced and am a free lance plumber. On the day in question, I was coming home from playing golf with my son Eric, when I saw Mrs. Fox walking up the steps towards her house at about 5:00 p.m. Suddenly I saw a package fall from her hands and watched her fall hard to the ground. During the fall she lost her shoe. I didn't see her lose her shoe exactly but I would have noticed if she'd lost it before the fall, and I did see it on the ground afterwards. When Mrs. Fox fell, Eric and I were about 20 feet from her just getting out of my car.

I asked Mrs. Fox if she was okay. She said she was fine, but I could tell she was in pain from the look on her face and the gingerly way she moved her right arm.

About a year ago, I fell in the same spot. I fell because that first step isn't really a step but a ramp. The rest of the entrance there is steps and it fools you if you're not careful. When I fell I twisted my ankle but was okay. I called the landlord and told him about it. He said he'd fix it, but never did. I'm not surprised someone finally got hurt there.

This is not the only problem I have had with the landlord. I have asked him repeatedly to replace the worn out carpet in my apartment. He always says he will but never gets to it.

I have read this statement and it is correct.

Signed-Jeff Leonard

Witnessed by Roger Witt  
Investigator for Defendant's counsel  
December 17, 2006

\*this statement was turned over to the plaintiff's counsel during discovery

## A. FOX V. WOLFE

### RESUME/CURRICULUM VITAE

FLOYD JOHNSON  
14 Hughes Lane  
York, Confusion 82314  
(707) 611-4800

#### EDUCATION

Ph.D. - Mechanical Engineering, University of Illinois, 1982  
M.S. - Engineering Sciences, York University 1979  
B.S. - York University 1976

#### REGISTRATION

Registered Professional Engineer, State of York

#### EMPLOYMENT

Johnson and Marks, Civil and Mechanical Engineering Inc. 1994-Present  
City of Oswego, Confusion, City Engineer 1989-1994  
City of Oswego, Confusion , Deputy City Engineer 1982-1989

#### SIGNIFICANT ACCOMPLISHMENTS

Participated in the development of the Bridge to Nowhere  
Developed the Non-Falling Stairway

#### HONORS

Member, Tau Beta Pi, Honorary Engineering Society  
Member, Pi Tau Sigma, Honorary Mechanical Engineering Society  
Fellow, International Society of Slip and Fall Engineers

Listed in:  
Who's Who in America  
Who's Who in Technology Today

#### PROFESSIONAL ASSOCIATIONS

American Society of Mechanical Engineers  
National Society of Professional Engineers  
National Safety Council

**A. FOX V. WOLFE**

National Association of Professional Accident Reconstruction Specialists

## A. FOX V. WOLFE

FLOYD JOHNSON, Ph.D.  
Registered Professional Engineer

October 21, 2006

Reference: L. Fox

Dear Mr. Smith:

In response to the request of Carlton Adams, Esq., I investigated the accident in which Leslie Fox was injured.

### DESCRIPTION OF ACCIDENT

On October 6, 2006, I visited Leslie Fox at her apartment, which is apartment 1A at 19 Helmsley Lane. During my visit, Mrs. Fox told me that her accident occurred at about 5:30 p.m. on February 16, 2006, while she was approaching the front entrance to her apartment house from the outside. The weather was light and sunny, and the pavements were dry. She was carrying two grocery bags and was wearing low-heeled shoes (see Photos #1 through 5). After she had cleared the slope leading up to the first step (see Photos #6, 7, and 8), one of her packages started to slip, and she started to fall to the right.

She is not sure if she stepped backwards before she fell or if she reached for the railing for support, but, as she fell down the steps, she dropped at least one of her packages. When she tried to break her fall with her hands, she injured her right shoulder.

### INSPECTION

On October 6, 2006, I inspected the location where Mrs. Fox's accident occurred.

Photos #1 through 5 are photographs of the shoes that Mrs. Fox was wearing at the time of her fall. Photo #1 is of the tops of these shoes. Photo #2 shows the sides, bottoms, and heels. Photos #3, 4, and 5 are close-ups of the soles. They are made of flat composition leather with a shallow texture. The heels are flat, about one-half inch high, and show a slight amount of wear. There was no defect in the uppers.

Photo #6 is a general view of the front entrance. Note the landing that extends out from the front door, the railing on both sides of the landing, and the steps leading down to the sidewalk.

## A. FOX V. WOLFE

Photo #7 is a side view of these steps. Note the concrete slab leading from the sidewalk to the two steps. Photo #8 is a close-up of that slab. Photo #9 is a close-up of those two steps. They are  $62\frac{3}{4}$  inches wide.

Photo #10 shows that the concrete slab extends to about 11 inches in vertical height. Photo #11 shows that the horizontal run of this slab is about 27 inches. From trigonometry, this slab is at a slope of about 41% (1:2.45) or at an angle of about 22.2 degrees.

Photo #12 shows that the vertical riser between the top of the slab and the first step is about  $6\frac{3}{4}$  inches.<sup>1</sup>

Photo #13 shows that the vertical riser between the first and second steps is about 8 inches. Photo #14 shows that the tread of the first step is 12 inches wide.

Photo #15 shows that the top of the railing is about  $30\frac{3}{4}$  inches about the nose of the landing. Photo #14 also shows that the railing support is located about  $5\frac{1}{2}$  inches from the nose of the first step. Photo #16 shows that the railing ends about  $4\frac{1}{4}$  inches beyond the railing support. Thus, the railing ends about  $1\frac{1}{4}$  inches short of the nose of the first step.

### APPLICABLE STANDARDS

#### The Building Code of the State of Confusion

The Building Code of the State of Confusion defines “**Accessible Means of Access**” as “the continuous and unobstructed way of egress from any point in a building or facility that provides an accessible route to an area of refuge, a horizontal exit or a public way.” Thus, the steps in front of this apartment house are part of its Accessible Means of Egress.

Section 1003.3.3 of this Building Code covers stairways that are used as a component of the Accessible Means of Egress. This section dictates:

“1003.3.3.3 **Stair treads and risers.** Stair riser heights shall be 7 inches (178 mm) maximum and 4 inches (102 mm) minimum. Stair tread depths shall be 11 inches (279 mm) minimum. The riser height shall be measured vertically between the leading edges of adjacent treads. The tread depth shall be measured horizontally between the vertical planes of the foremost projection of adjacent treads and at right angle to the tread’s leading edge.”

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<sup>1</sup> The black patch below the 11-inch mark is one-half inch long.

## A. FOX V. WOLFE

“1003.3.3.3.1 **Dimensional uniformity.** Stair treads and risers shall be of uniform size and shape. The tolerance between the largest and smallest riser or between the largest and smallest tread shall not exceed 0.375 inch (9.5 mm) in any flight of stairs.”

“1003.3.3.4 **Stairway landings.** There shall be a floor or landing at the top and bottom of each stairway. . . . Every landing shall have a minimum dimension measured in the direction of travel equal to the width of the stairway.”

“1003.3.11.1 **Handrail height.** Handrail height, measured above the stair tread nosings, . . . shall be uniform, not less than 34 inches (762 mm) and not more than 38 inches (965 mm).”

“1003.3.3.11.5 **Handrail extensions.** Handrails shall . . . extend horizontally at least 12 inches (305 mm) beyond the top riser and continue to slope for the depth of one tread beyond the bottom riser.”

As indicated in Photo #7, there is a slanted slab of concrete between the sidewalk and the riser to the first step. This slanted slab forms a ramp from the sidewalk to the first riser. As such, this slab is part of what the Building Code considers to be the “Accessible Means of Egress” from the interior of the Fox apartment to the sidewalk in front.

Section 1003.3.4 of this Building Code covers ramps that are used as a component of the Accessible Means of Egress. This section dictates:

1003.3.4.1 **Slope.** “Ramps used as part of a means of egress shall have a running slope not steeper than one unit vertical in 12 units horizontal (8-percent slope).

1003.3.4.7 **Handrails.** Ramps with a rise greater than 6 inches (152 mm) shall have handrails on both sides complying with section 1003.3.3.11.

## DISCUSSION

### Code Violations

It is clear, from my study of the Building Code of the State of Confusion and from my inspection of the stairway in front of 19 Helmsley Lane that the stairway at which Leslie Fox fell violated this Building Code in the following manners:

1. **Dimensional uniformity of stair treads and risers:** As indicated in Photos #12 and 13, the riser below the first step is about 6¾ inches; whereas the riser between the first and second steps is about 8 inches. Thus, the risers for these steps are

## A. FOX V. WOLFE

not uniform in height and this Accessible Means of Egress does not conform with Sections 12003.3.3 and 1003.3.3.1 of this Building Code.

2. **Stairway landing.** Photo #7 shows that there is no horizontal landing immediately below the first step. Thus this Accessible Means of Egress does not conform with Section 1003.3.3.4 of this Building Code.

3. **Handrail height.** As indicated in Photo #15, the top of the handrails bordering these steps is 30¾ inches above the nose of the landing. Thus, this Accessible Means of Egress does not conform with Section 1003.3.3.11.1 of this Building Code, which requires the handrail to be at least 34 inches above the stair tread nosing.

4. **Handrail extensions.** As indicated in Photo #6, the handrail does not extend at least 12 inches horizontally beyond the top riser. Also, as indicated in Photos #14 and 16, the handrail does not extend the required one tread length beyond the bottom riser. Thus, this Accessible Means of Egress does not conform with Section 1003.3.3.11.5 of this Building Code.

5. **Ramp slope.** As indicated in Photos #10 and 11, the slope of the concrete slab that forms a ramp leading to the first step is sloped at an angle of 41% (1:2.45). Thus, its slope is significantly greater than the maximum permissible slope of 8% (1:12), and this Accessible Means of Egress does not conform with Section 1003.3.4.1 of this Building Code.

6. **Ramp handrails.** As indicated in Photos #6, 7 and 10, the ramp leading to the first step has a rise greater than 6 inches, yet has no handrail on either side. Thus this Accessible Means of Egress does not conform with Section 1003.3.4.7 of this Building Code.

### Cause of Fall

It is clear that the steps in Front of Mrs. Fox's apartment house contained a number of violations to the Building code of the State of the Confusion. These violations were directly related to her fall in the following fashions:

1. The non-uniformity of the risers of the steps would have made the climbing of these stairs difficult and prone to causing her to trip, especially when carrying packages that would have restricted her view of the steps.

2. The absence of a landing at the bottom of the steps also contributed to her difficulty in mounting these stairs.

3. The steep ramp leading to the first step would have caused her to either step on the ramp or take a large step to avoid the ramp. In either case, such a step would have degraded her balance and have made it easier for her to fall.

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4. The improper height of the handrail on the landing and the absence of handrails on the ramp would have made it harder for her to grab something in order to regain her balance, as she was falling.

5. The failure of the handrail to have proper extensions at the top and bottom steps also made it more difficult for her to grab in order to regain her balance, as she was falling. She did have time to extend her hand to break her fall; therefore, if the handrail extensions were present, she probably could have been able to grab one of them so steady herself.

### The Shoes

As indicated in Photos #1 through 5, the shoes that Mrs. Fox was wearing were sturdy, had low heels, and had non-slip leather soles. Therefore, they did not cause or contribute to her accident.

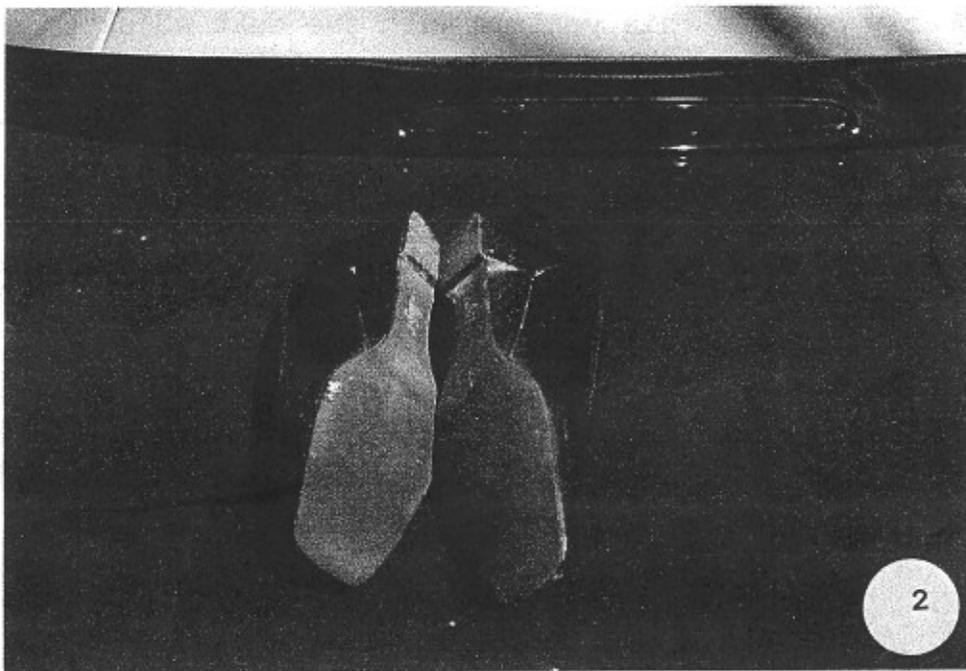
### CONCLUSIONS

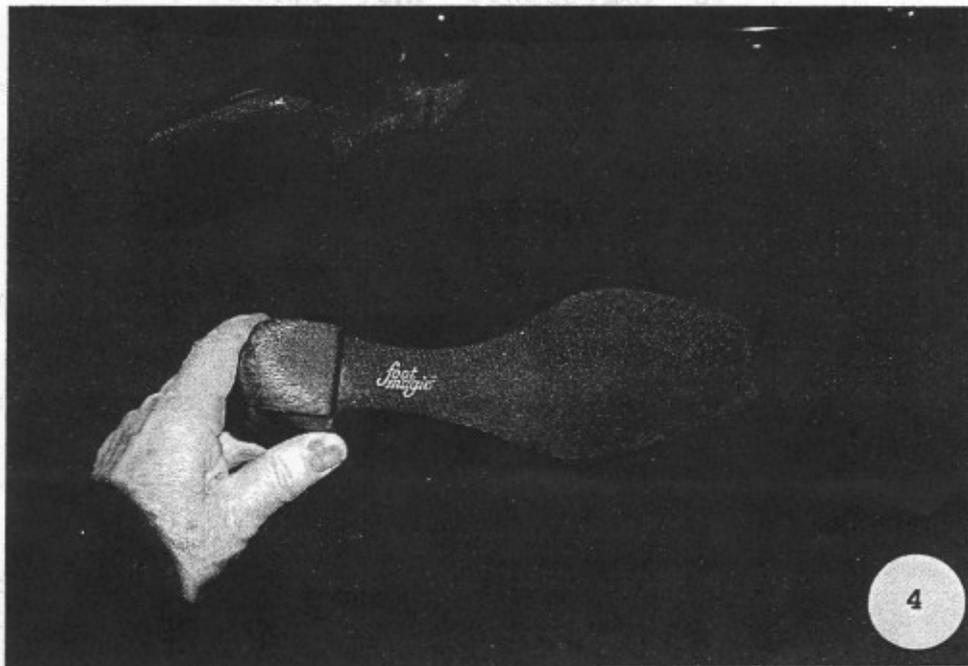
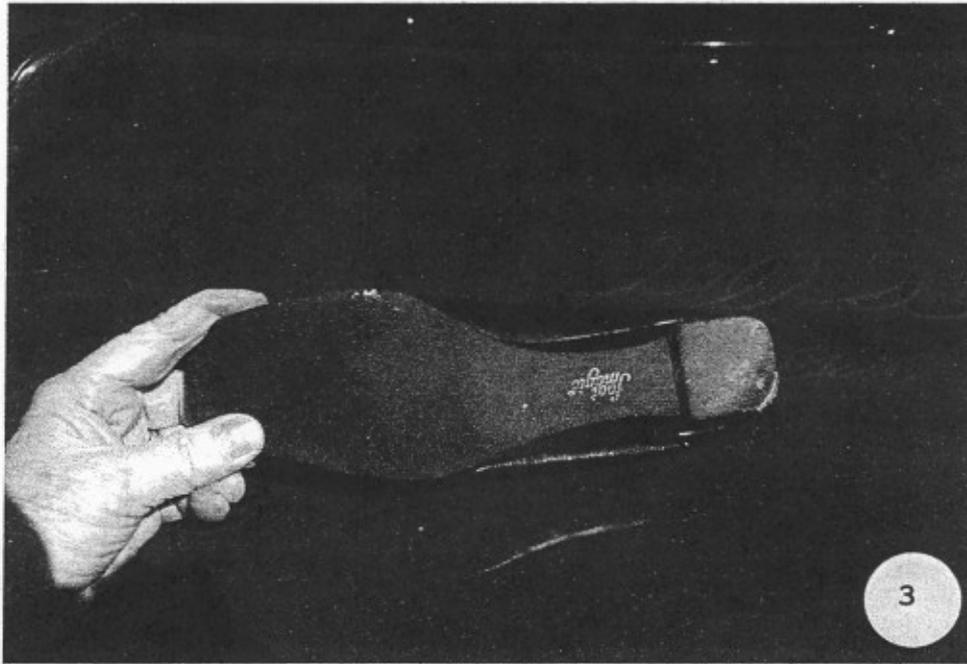
As a result of my investigation, I have concluded, to a reasonable degree of engineering certainty, that:

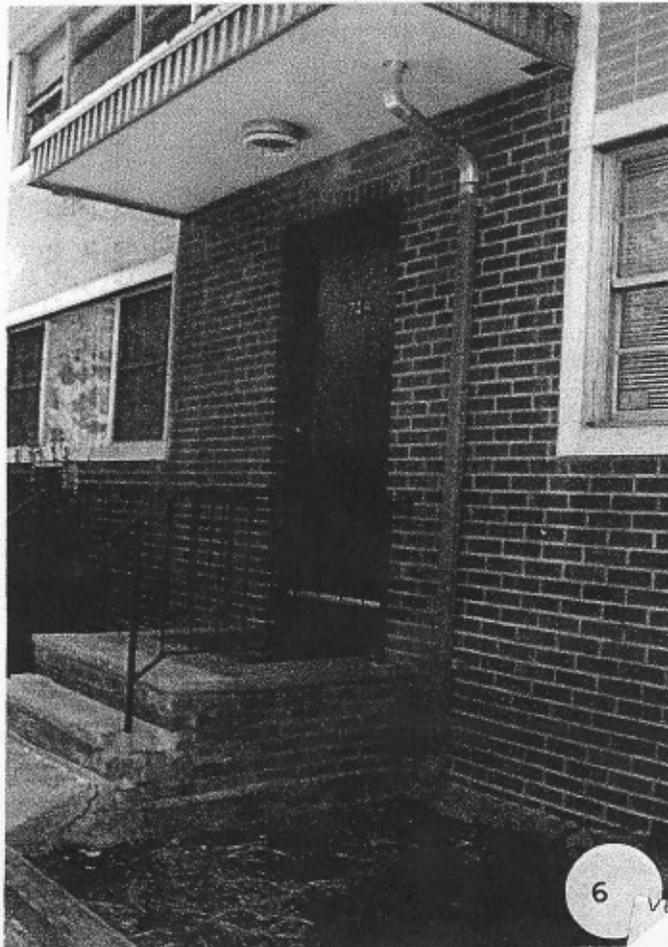
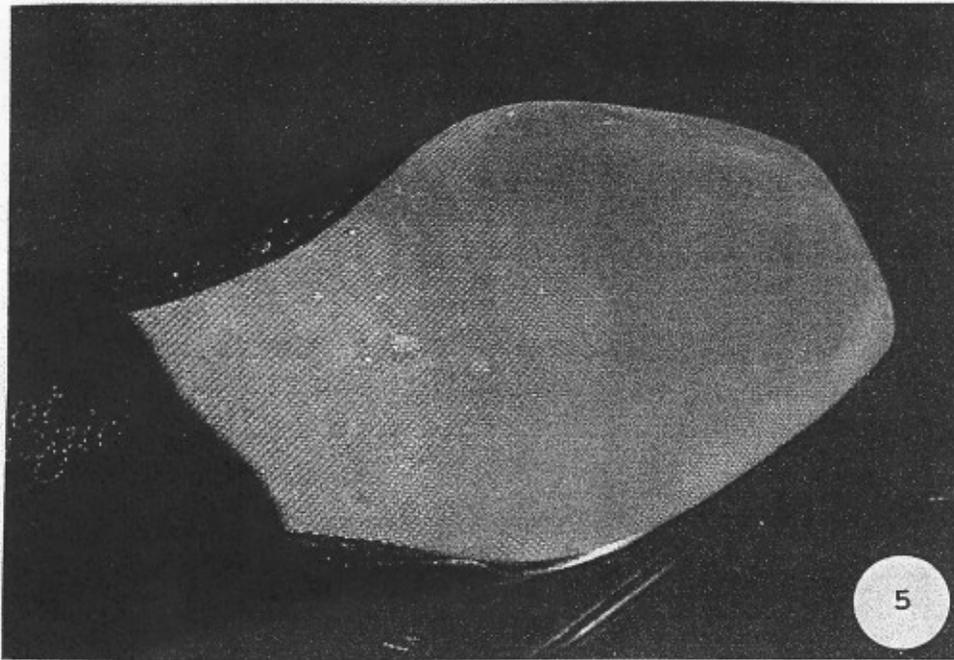
1. The stairway at which Mrs. Fox fell was defectively designed and constructed and in flagrant violation of the Building Code.
2. These numerous violations of the Building Code are directly related to her fall and subsequent injuries.
3. Her shoes did not contribute to her falling.

Very truly yours,

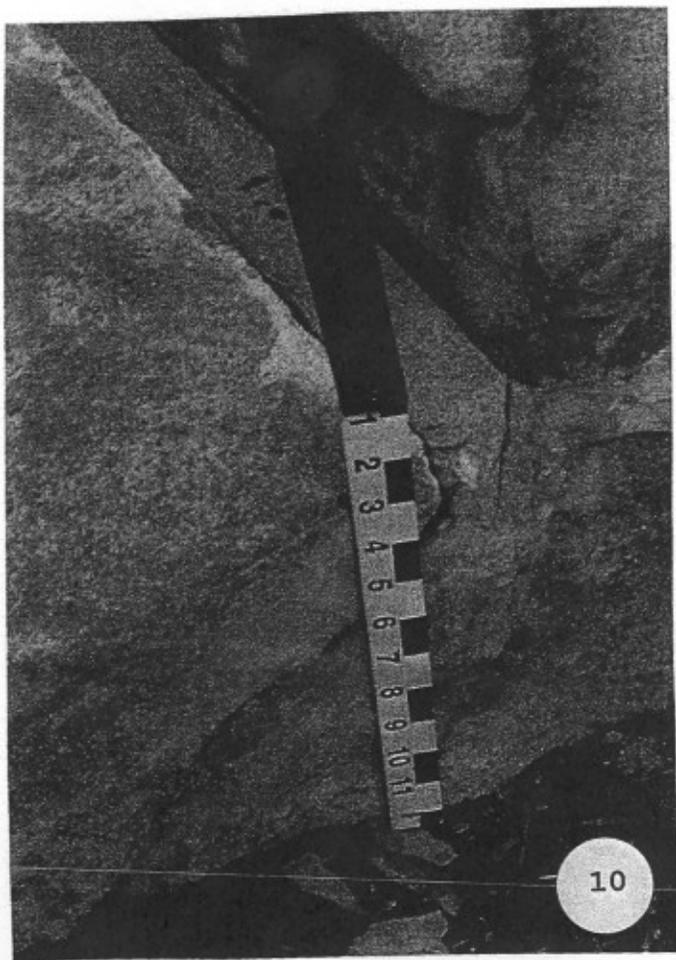
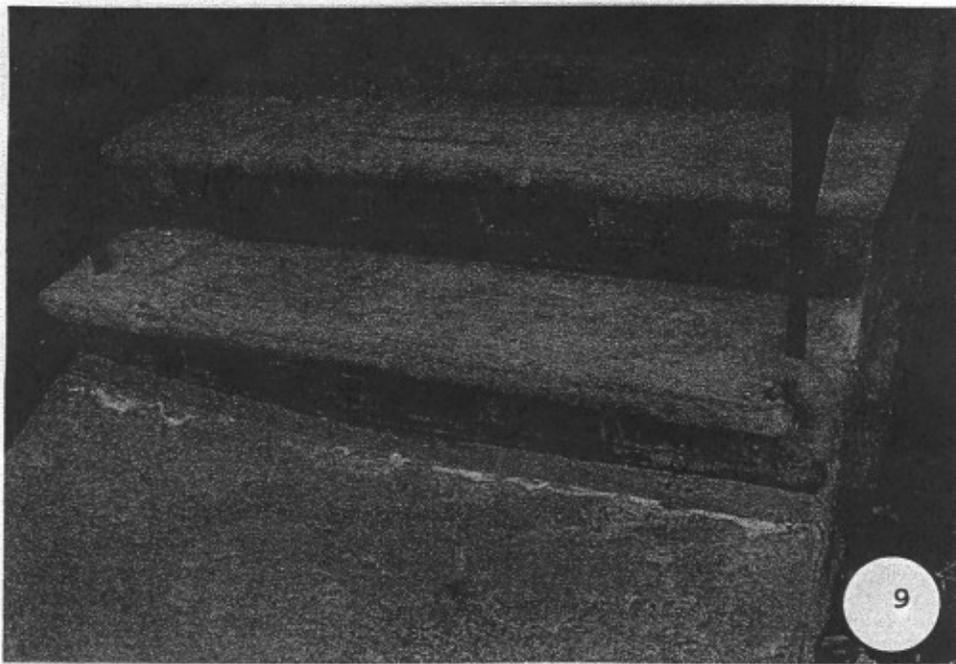
Signed- Floyd Johnson

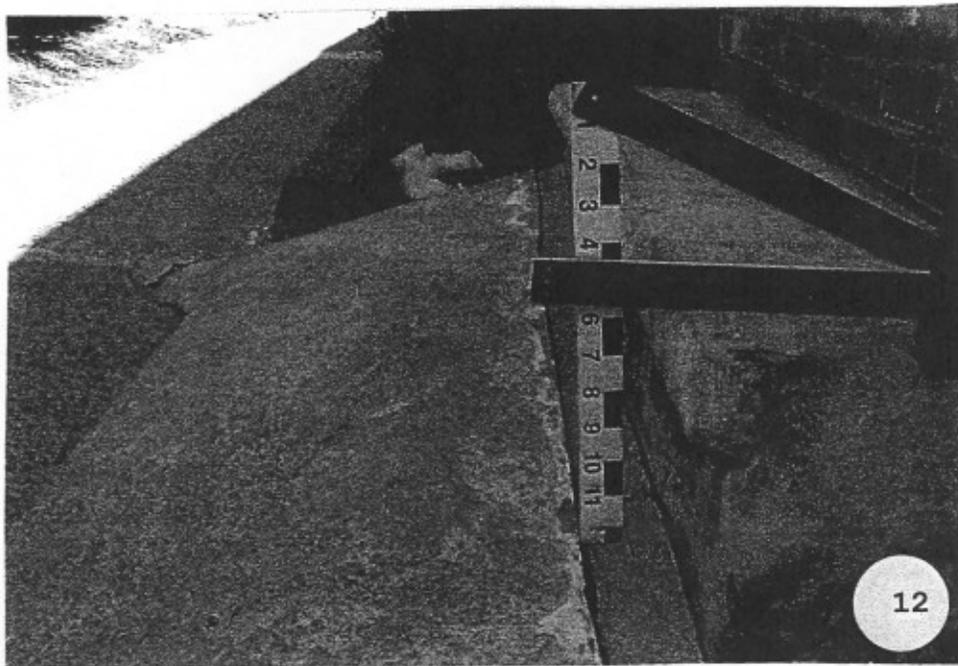


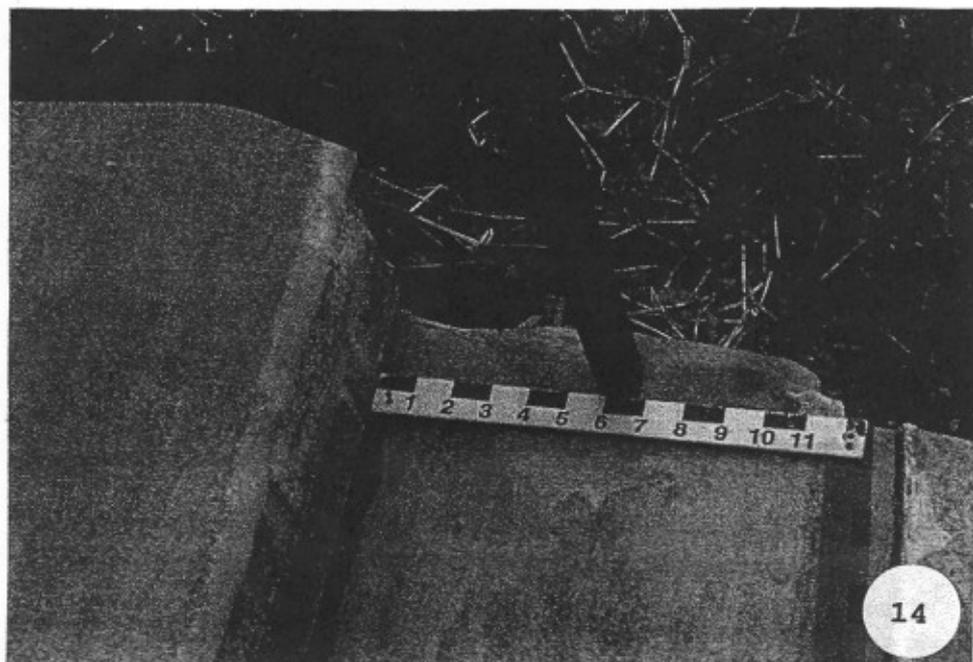
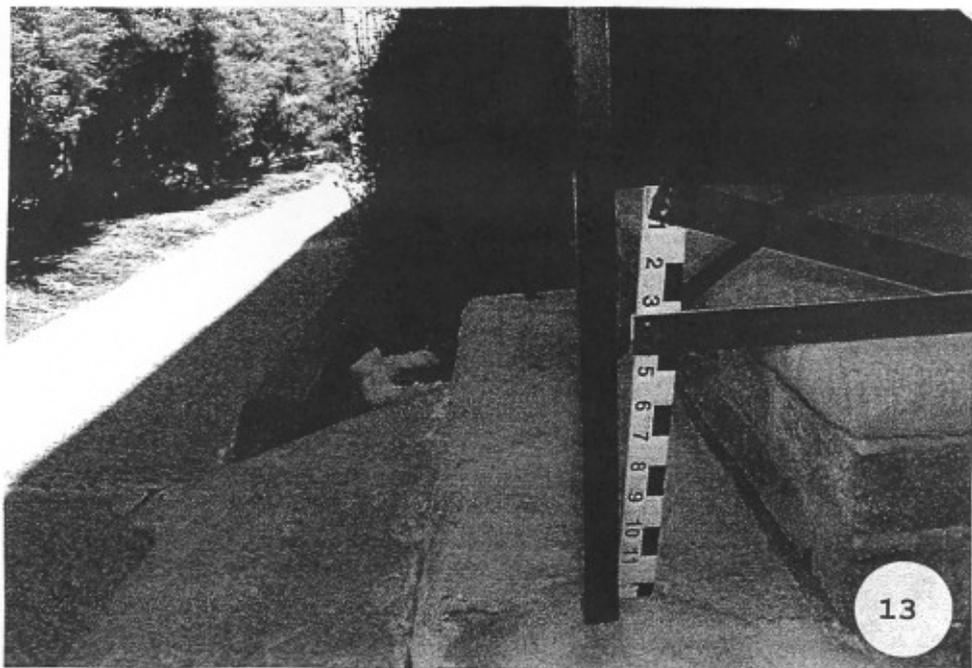




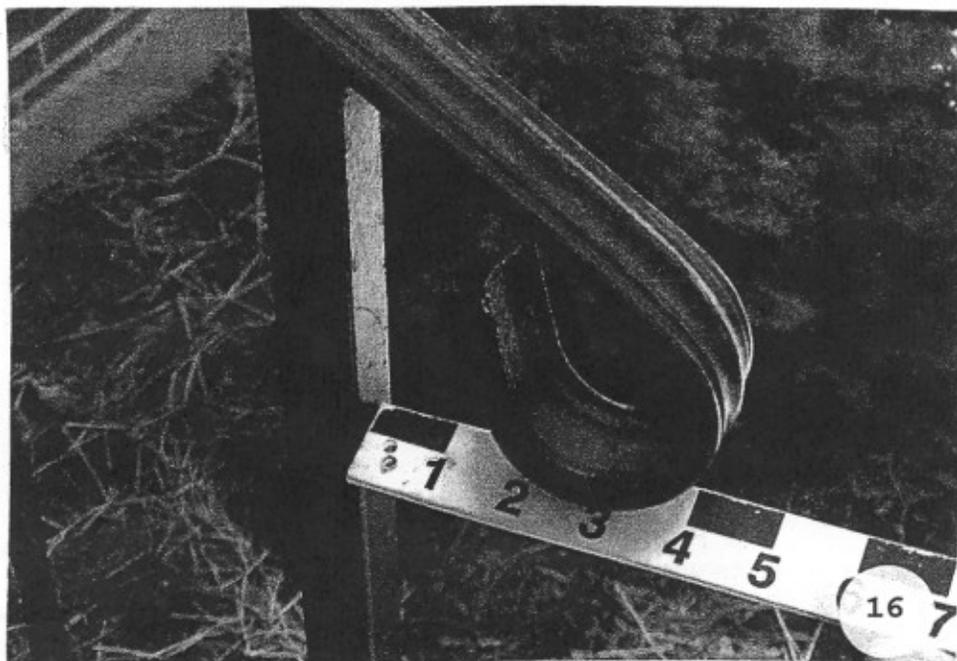
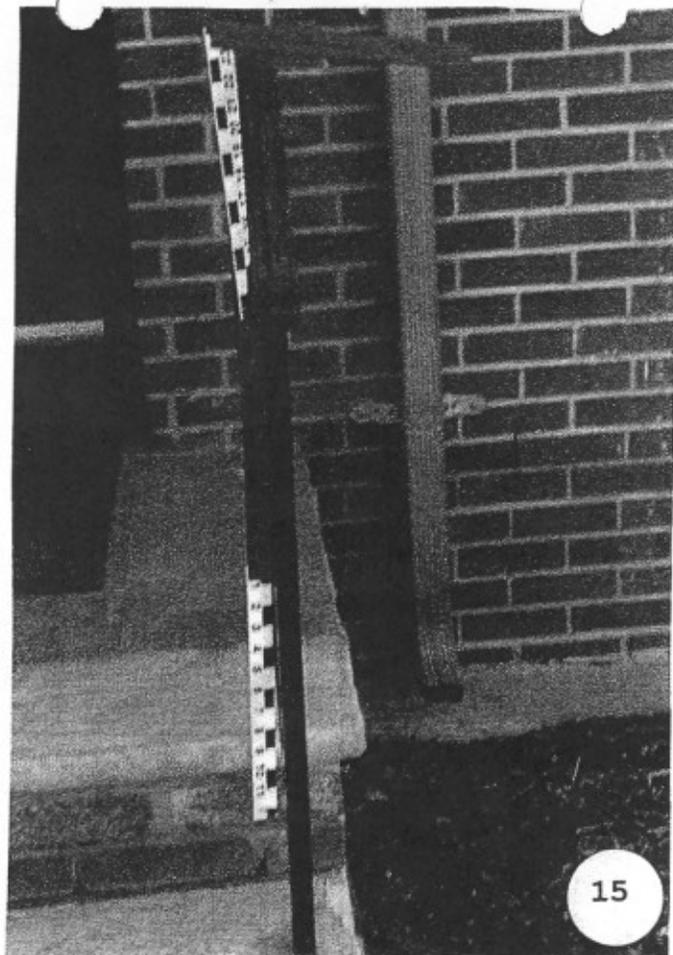




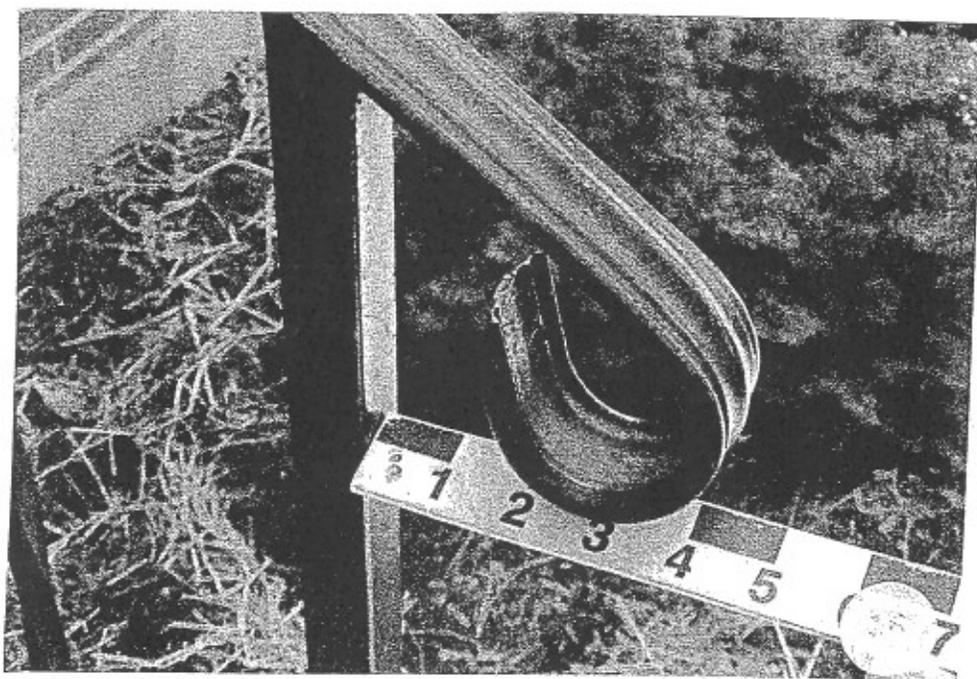
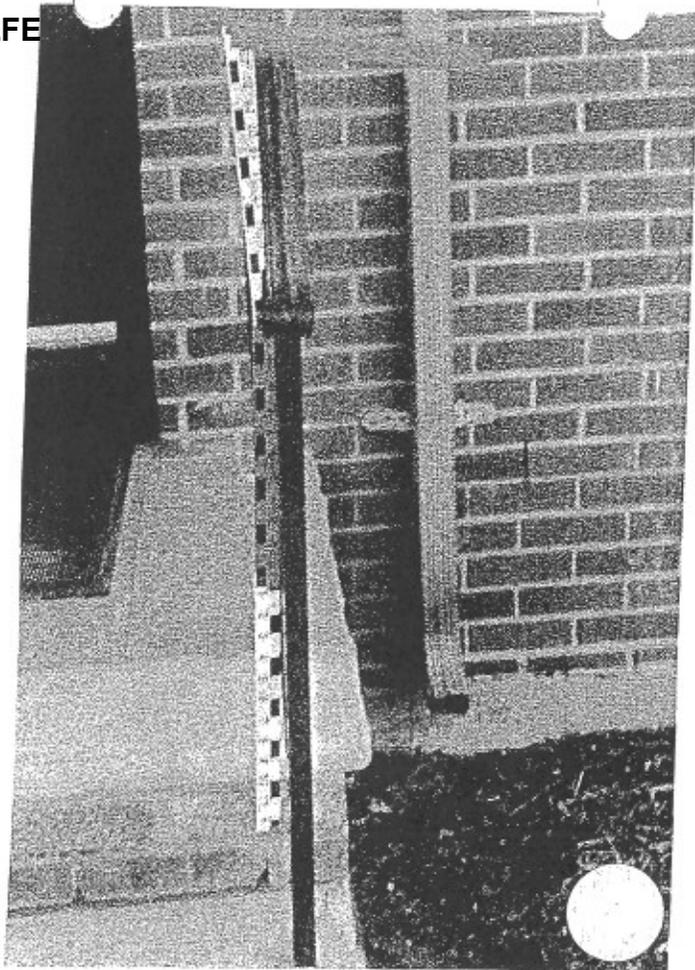


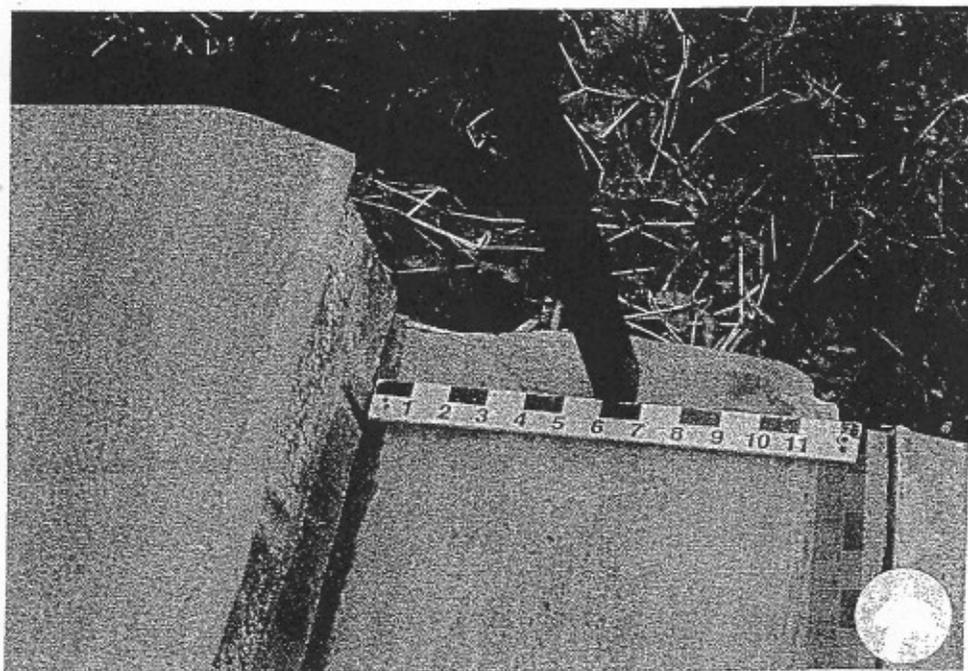
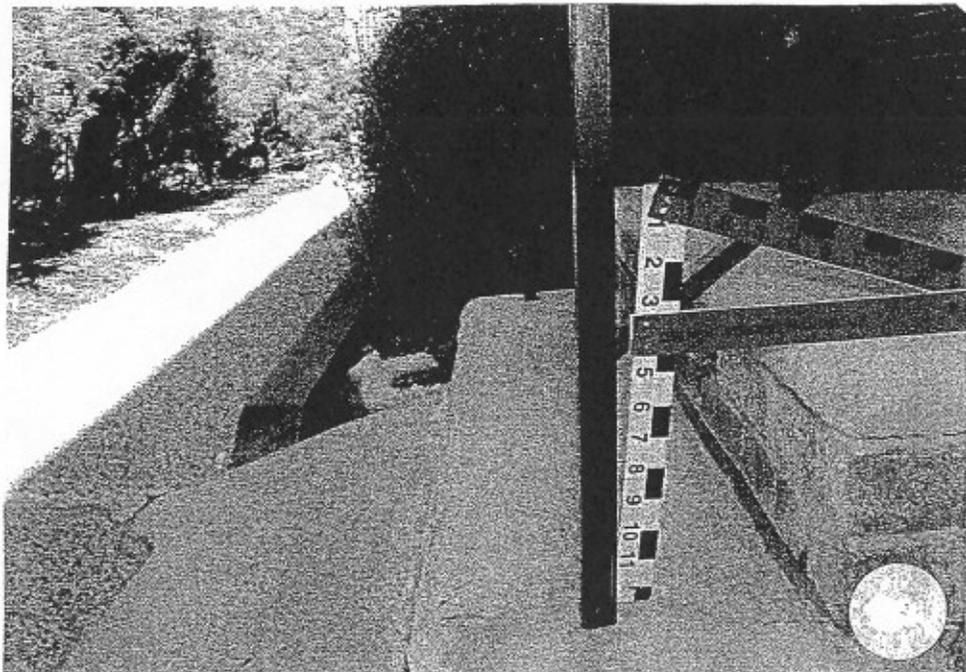


A. FOX V. WOLFE

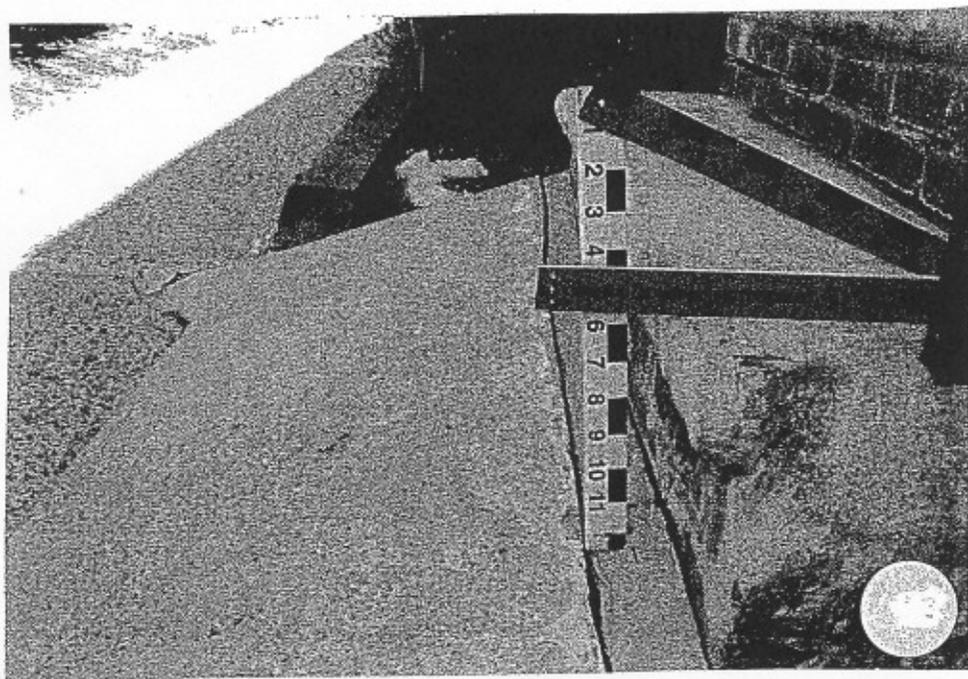
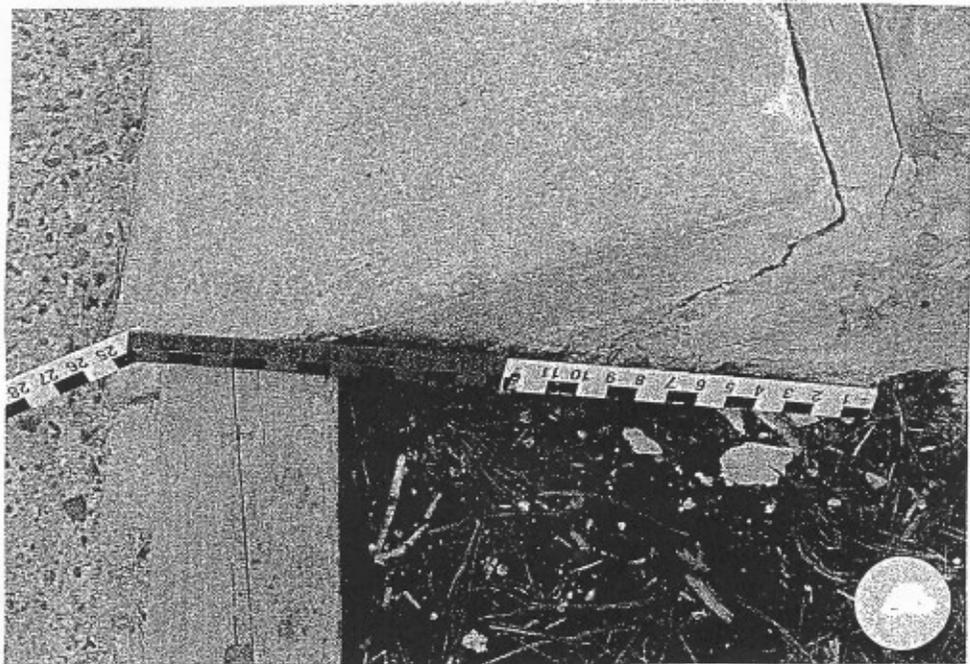


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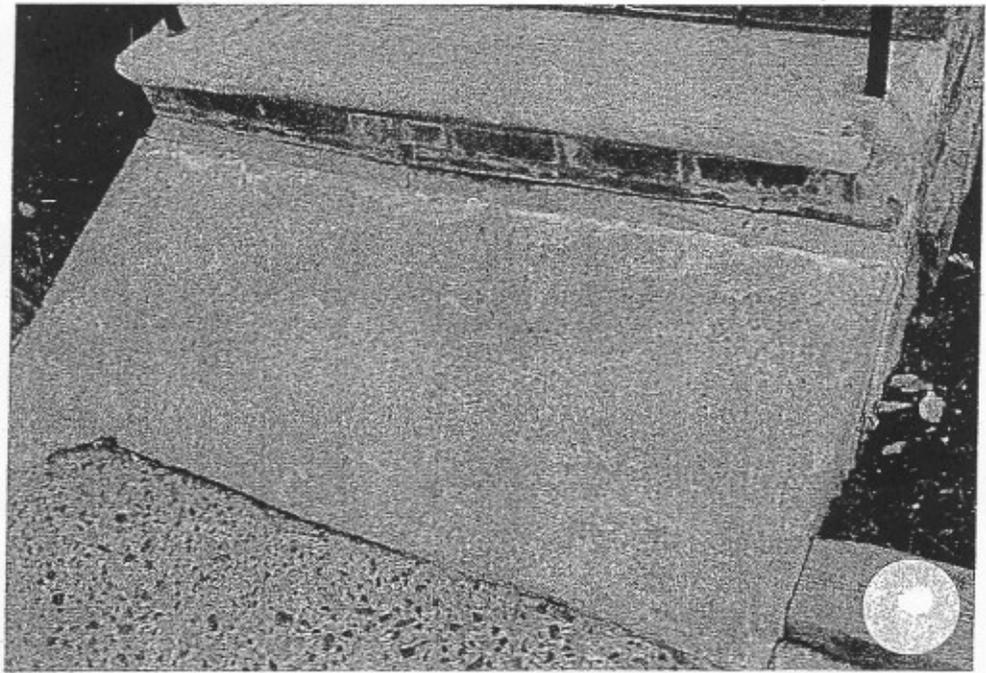
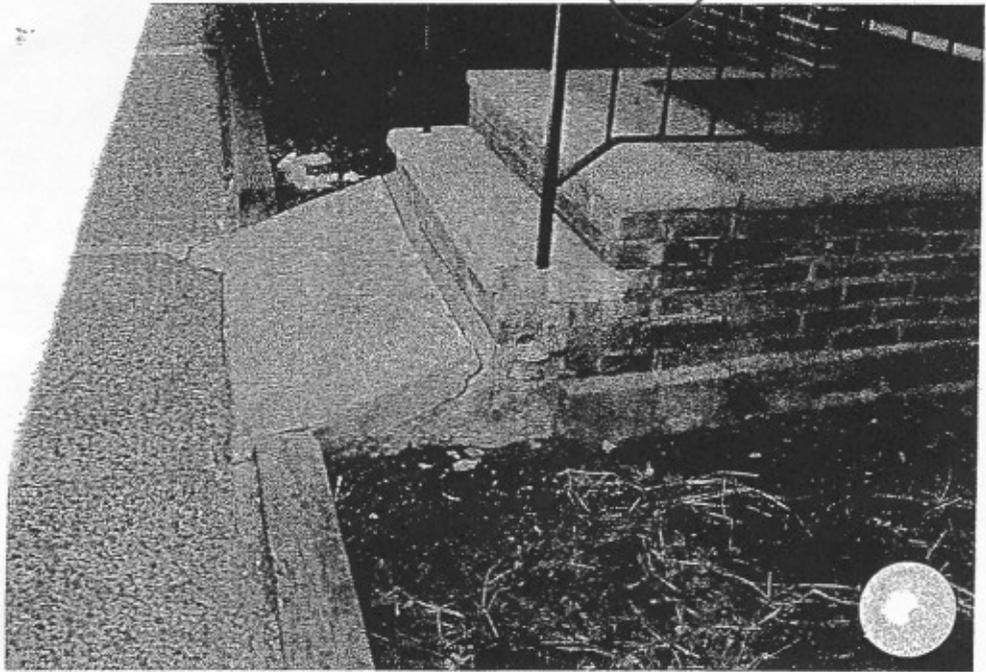




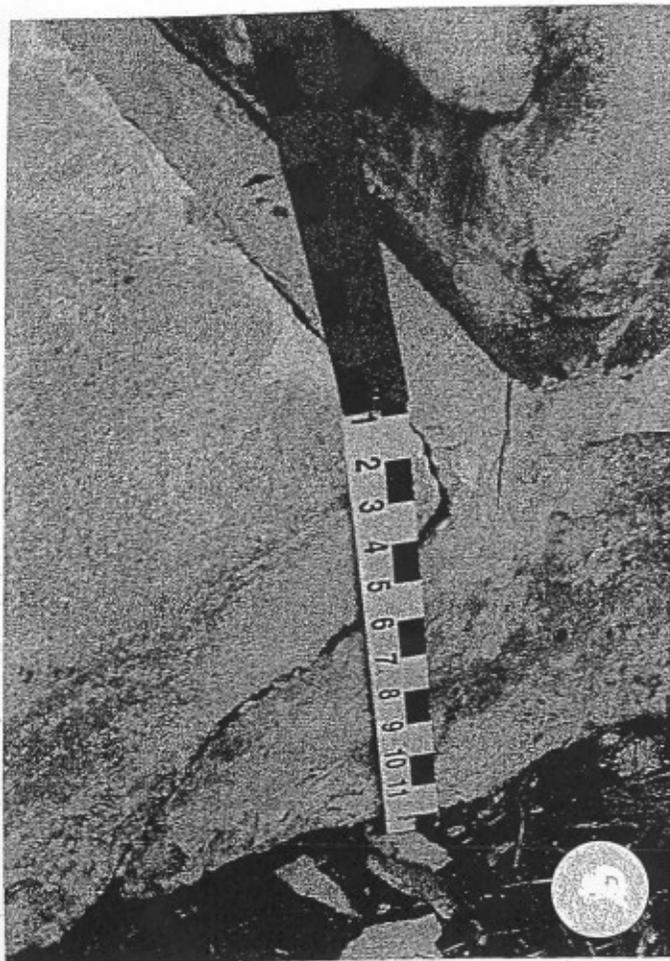
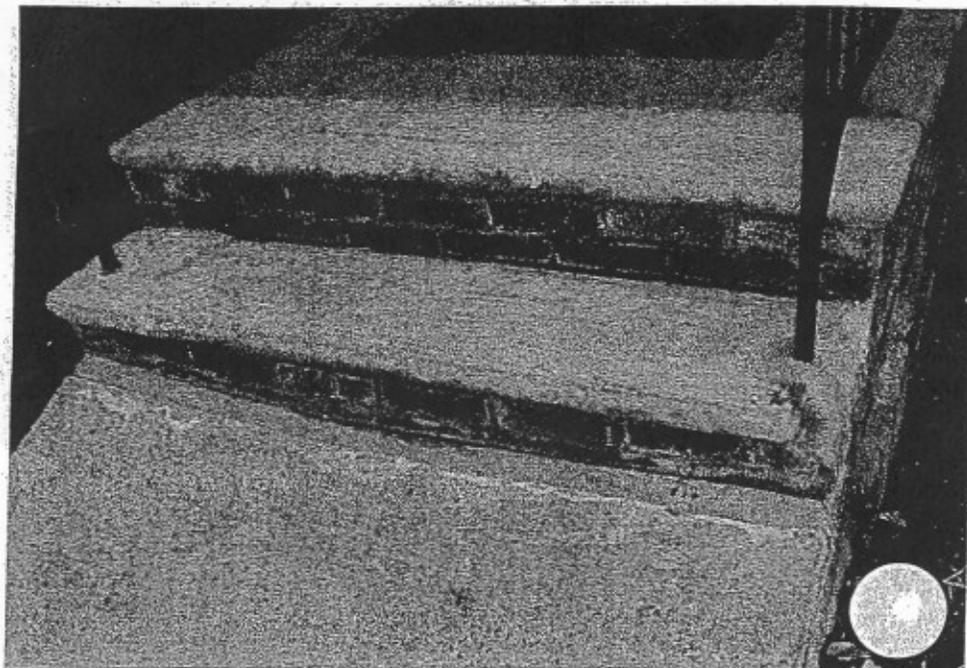
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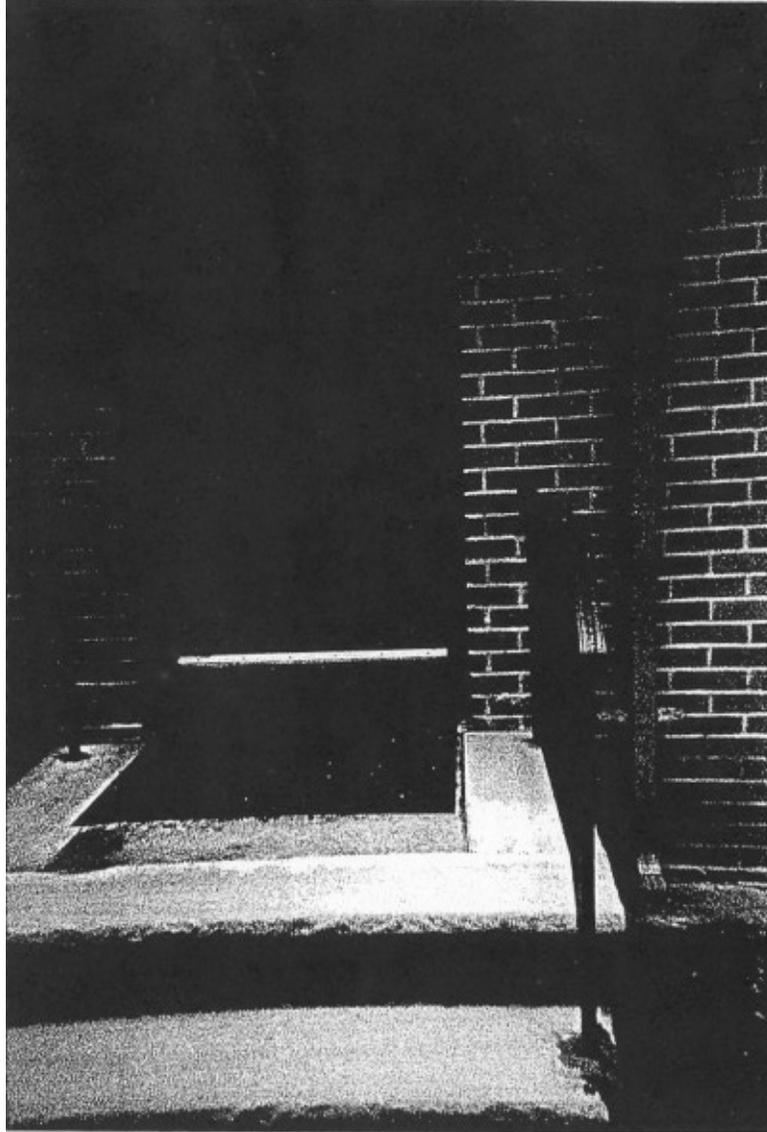
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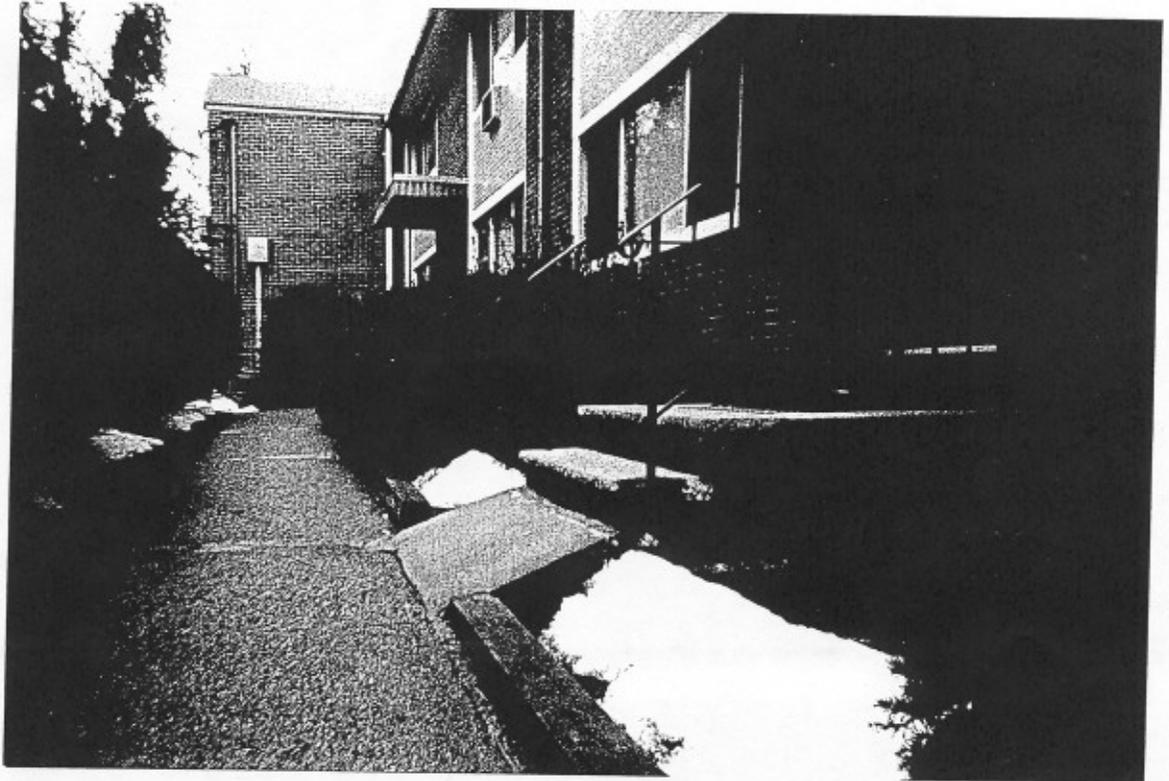


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## A. FOX V. WOLFE

GREGORY MICHAELS. M.D.

To Whom It May Concern:

I first evaluated Leslie Fox on February 17, 2006. At that time she was a 57-year-old female, who said she slipped and fell on a slippery step because she couldn't reach the handrail. In doing so, she injured her right shoulder. She had difficulty moving and came into the emergency at York County Hospital at 4:00 in the morning. I was called, so I saw the patient while she was in the hospital. She had bruising in the upper part of her right arm. She was tender and could not move the right arm. She had a fracture of the proximal humerus, which was basically a two-part fracture and the head of the humerus was completely displaced. Initial treatment included an operation, which was performed on February 17, 2006. Surgical reconstruction was performed in the form of a titanium plate and screws, and Leslie was kept at the hospital until February 20, 2006 for the injuries. Leslie received home care for further treatment and came back to my office on March 3, 2004 for a scheduled postoperative visit. Postoperative wound care and physiotherapy was managed by me. X-rays on March 24, 2006 confirmed that the repair appeared to be holding its position. Postoperative care continued on March 21, March 28, and June 2, 2006. By June 21, 2006, she was able to forward flex to 140 degrees compared to a normal forward flexion of 170 degrees, and she can abduct 90 degrees compared to normal abduction, which would be expected to be 160 degrees. Ms Fox was advised to begin physical therapy. She still has some abnormalities of her humerus compared to her pre-injury status including abnormal position of the bone in varus and loss of function of the shoulder compared to her pre-injury status; but from an orthopedic point of view, she was healing well, and she was asked to follow up again on an as needed basis.

Causally related injuries: It could be said with high degree of medical certainty that Leslie Fox fell and fractured her right humerus on February 16, 2006. Her injuries included a fracture to the head/neck and shaft of the right humerus. As a secondary consequence of her injury, she has a residual loss of range of motion effectively as a contracture of the shoulder limiting her shoulder to 90 degree of active abduction compared to an expected 160 degrees of active abduction and 140 degrees of forward flexion compared to an expected 170 degrees of forward flexion.

Future treatments: No future treatments other than physical therapy are anticipated for this patient as she has improved to a functional level.

Permanence: The problem with her shoulder is that she has a loss of motion of the shoulder and she will have some limitations and function, and power because of this. It cannot be determined at this time whether this loss of motion will be permanent. For example, overhead activities or

**A. FOX V. WOLFE**

reaching overhead to the side of her body would be difficult for her to do, and she exhibited a lack of overhead activity on her last visit. Her injuries are considered static and permanent at this point and not likely to improve at all in the future.

Sincerely,

Gregory Michaels, M.D.  
October 19, 2006

**A. FOX V. WOLFE**

DEPOSITION OF MARSHALL WOLFE

MARSHALL WOLFE, having been duly sworn was examined and testified as follows:

EXAMINATION ON OCTOBER 18, 2007, BY CARLTON ADAMS:

Q On February 16, 2006, do you know who the owner of 19 Helmsley Lane in York, Confusion was?

A I was.

Q Now, could you describe the property? Is it a housing development or —

A The property is a two-story brick building and contains a total of ten units.

Q Is it only one building?

A Yes.

Q And in February of 2006, were those rental units?

A Yes

Q Was there ever a time where you personally lived at these premises?

A No.

Q Is there anyone who is hired and paid directly by you to do maintenance work at that property?

A No.

Q Back in the winter of 2005 going into 2006, did you ever visit these premises?

A Yes.

Q How often would you visit the premises at that time?

A Two or three times a week.

Q What was your purpose in visiting the premises?

## A. FOX V. WOLFE

A Mostly to keep the outside clean, as far as debris goes. The wind seems to have blown quite a bit of debris onto the property. So I would mostly clean the halls and pickup debris that was scattered around.

Q Is that something that you did personally?

A I did it personally.

Q Did you do it by yourself or with anybody else?

A No. I did it by myself.

Q When you made these visits, did you also examine the premises to see if anything needed to be repaired or replaced?

A Yes.

Q If, in fact, it did need repair, something needed repair or replacement, who would do that?

A Small repairs, I did.

Q Who would do larger repairs?

A I had an electrician, a plumber and an individual that would — I would call to do repairs.

Q An individual, meaning, like, a handyman type of a person?

A Yes.

Q I'm going to show you a photograph that's been previously marked as Exhibit C. Do you know what's shown in that photograph?

A Yes.

Q What is it?

A It's the entrance to section A of the building.

## A. FOX V. WOLFE

Q Now, in February of 2006, did Leslie Fox reside in these premises?

A Yes.

Q Where did she reside?

A In apartment 1A.

Q Do you need a key to get into that building?

A No.

Q Now, in this photograph, there's a ramp that leads from a walkway up to a step and a platform; is that correct?

A Yes.

Q Was that ramp in basically the same condition — strike that. Is this photograph a fair and accurate representation of the way the ramp looked in February of 2006?

A Yes.

Q When you first purchased the premises was that ramp in place?

A Yes.

Q From the time you first purchased the premises up until February 16th of 2006, do you know if any repairs, alterations or modifications or renovations were made concerning this ramp?

A No modifications.

Q What about repairs?

A I don't think so.

Q When did you purchase the premises?

## A. FOX V. WOLFE

A I bought it in May of 1998.

Q Did you have the premises inspected before you bought them

A Of course.

Q Did that inspection note the presence of any code violations?

A There were a few minor ones, some of which the owner repaired and the rest I took care of when I took control.

Q From the time that you first purchased the premises up until February 16th, 2006, did you ever receive any complaints with regard to the ramp in front of — what did you say it was, Building A?

A No. I don't think so.

Q During that same time period, up until February 16th, 2006, do you know if anybody had an accident on this particular ramp leading into section A?

A No one had an accident that I can recall?

Q The entrance to sections B and C, are they similar to the entrance to section A?

A No. Section C has no outside stairs at all.

Q Okay. So how do you get into section C, then?

A It has a side door, but it doesn't have stairs. The stairs are inside the building.

Q Okay. So you just walk from street level, open up a door and you're inside.

A And then you have stairs going out to the parking —

Q What about section B?

## A. FOX V. WOLFE

- A Section B has three stairs.
- Q Okay. Does it have a ramp similar to the ramp that's shown by section A?
- A No, it does not.
- Q Do you know who put in this ramp by section A?
- A The previous owner.
- Q Do you know the reason that this ramp was put in?
- A No, I don't.
- Q Do you know the name Jeff Leonard.
- A Yes.
- Q How do you know that name?
- A He was a tenant in the apartment.
- Q Was that the same apartment building that Leslie Fox lived in?
- A Yes.
- Q Did Mr. Leonard ever complain to you with regard to the ramp in front of the door leading to his building?
- A Not that I recall.
- Q Did any of the tenants in that building at any time ever complain to you about that ramp?
- A No, they did not.
- Q Do you know if Mr. Leonard ever had an accident or an incident where he fell on that ramp?

## A. FOX V. WOLFE

A I don't really remember. He called me several times to complain about his carpets needing to be replaced. If he mentioned a fall, he must have said it in passing, because I have no memory of it.

Q Is the ramp that's shown in this photograph still at the premises?

A No.

Q When was the ramp removed?

Objection. You may answer. I'm going to object to any and all questions to any work done after the date of this accident. It can be answered over my objection.

A I had the sidewalk replaced.

Q And the sidewalk that you're talking about is the walkway adjacent to that ramp; is that correct?

A Yes.

Q And when was that?

A In December of 2006.

Q When they replaced the walkway, what, if anything, did they do with regard to the ramp?

A Since it touched the sidewalk, when they broke up the sidewalk, they broke up the ramp, completely.

Q And what, if anything, is there that takes the place of the ramp?

A They replaced it with a stair.

Q So there's an extra step there at this point?

A Yes.

**A. FOX V. WOLFE**

\_\_\_\_\_  
Signed-

MARSHALL WOLFE

Subscribed and sworn to before me

This \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Notary Public

## A. FOX V. WOLFE

### OFFICE OF THE COUNTY ENGINEER YORK COUNTY, CONFUSION

My name is Ira Boren. I am the Deputy County Engineer for York County, State of Confusion. In my official capacity as County Engineer, I review serious accidents caused by alleged violations of county ordinances by landlords. I have the authority to issue citations to those who commit serious violations of county safety ordinances. I issued no citation in this case.

I have reviewed the report of Floyd Johnson the engineer hired by the Plaintiff (hereafter Johnson Report). In addition, I visited the scene of the accident on November 15, 2006 and spoke with Ms. Fox, Mr. Wolfe, Ms. Netta Wister, Mr. Jeff Leonard and several other tenants of the apt. complex. Additionally I was shown the shoes that Ms. Fox was wearing at the time of the accident.

I agree with the findings of the engineer for Plaintiff that there were several violations of state law in how the ramps and steps were originally constructed. I do not regard these violations as especially serious, and overall the property was maintained in a safe manner and condition. Notwithstanding those violations, there are a number of things that raise questions about whether these violations were the primary cause or even a contributing cause to Ms. Fox's fall.

1. The applicable Code does not require a horizontal landing, so the statement in the Johnson Report faulting the steps in that regard is mistaken.
2. The ramp is not so high that a person exercising due care should have any trouble negotiating it safely. Ms. Fox has apparently walked up these steps many times in the past without any difficulty.
3. While the shoes themselves may not be particularly dangerous, there is no indication that they were a proper fit for Ms. Fox or that she was wearing them correctly at the time of her fall. These are particularly important matters to be determined because a witness claims to have seen one of the shoes come off of Ms. Fox's foot immediately before the accident. Additionally, the soles being leather and not rubber, would not grip the surface as well.
4. There is no indication of the physical condition of Ms. Fox at the time of the fall. Was she feeling ill? Had she consumed any alcohol or medicine that could affect her equilibrium?
5. Additionally, it is not clear whether the fact that Ms. Fox was carrying several packages as well as her pocketbook at the time of the fall was a contributing factor to the accident?

SIGNED

## **A. FOX V. WOLFE**

Ira Borden, Deputy County Engineer

November 29<sup>th</sup>, 2006

### **RESUME OF IRA BOREN**

#### **Education**

B.S. in Civil Engineering from University of Idaho, 2001

Certificate of Successful Completion of Course for Public Engineers given by the American Society of Civil Engineers

#### **Experience**

2001-04 private practice with Colby and Sons Engineering, Inc.-specialized in construction and inspection of bridges and tunnels.

2004-present Deputy County Engineer, York County, State of Confusion

#### **Publication**

“Civil Engineering Made Simple for the Public”, York County Times, April 18, 2005

## A. FOX V. WOLFE

### STATEMENT OF WISTER

My name is Netta Wister. I am 64 years old and am a retired sales clerk. I live at the same apt. complex as Leslie Fox. I have lived there for 15 years. On the day Leslie fell, I was standing on my terrace having a cigarette. I don't smoke in my apartment even on cold days. You can see my terrace on the photographs I was shown, B and C. In C, it's the one next to Leslie's, near the other building. In B, it's the only deck shown.

I saw Leslie walking up the steps. Her hands were full of packages. I saw her slip on the step as she tried to grab the railing. The packages went flying all over the place. The only reason I didn't go out to help was because I saw a father and son who live in the complex were already there helping, and I didn't want to seem like a busybody.

I guess I was looking towards the west when I saw Leslie fall. It was about 5:00 p.m. and the sun was about to set.

I'm not sure but I thought I saw her shoe come off her foot before she fell. I thought it odd so I noticed that. I couldn't get a real good look because it was the shoe on the foot farthest away from me, and her body was between the shoe and me.

Yes I like Leslie although whenever she has people over her house, they wake the dead with their noise. I have asked her in the past to keep the noise level down late at night.

The landlord occasionally pays me when there are workmen coming to the apt. complex to be there when they come and monitor what they are doing.

I have read this statement before signing it to make sure it was correct.

Signed-Netta Wister

Witnessed by Shane Oliver.  
December 9, 2006

\*Shane Oliver is an investigator working for Plaintiff's counsel