



# Alert

## Commercial Litigation

To: Our Clients and Friends

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### Sidewalk Ramps Required by Title III of ADA

A recent federal court decision in Manhattan could have a significant impact on whether retail stores need to install permanent sidewalk ramps. It is the first case to specifically address the obligations under Title III of the Americans with Disabilities Act (“ADA”) of a retail store in Manhattan to install a permanent ramp for wheelchair access, and is one of the few cases to address the damages that may be awarded under the New York State Human Rights Law (the “State Law”) and New York City Human Rights Law (“the City Law”) to a disabled person who is unable to enter a retail store because of an architectural barrier (here, an eight inch step at the store’s entrance).

In *Kreisler v. Second Avenue Diner Corp.*, (S.D.N.Y. Sept. 10, 2012), the court ruled after a bench trial that the owner of a diner located at the corner of Second Avenue and 56th Street in Manhattan, and the landlord that owned the property, had violated the ADA, the City Law and the State Law by failing to install a permanent sidewalk ramp for wheelchair access, and failing to make non-compliant restrooms more accessible to disabled persons. The Court also awarded the plaintiff \$1,000 in damages for being subject to discrimination and attorneys’ fees, based on his testimony that he lived in the neighborhood; passed by the diner in his wheelchair and wanted to eat there; saw the step making entry impossible for him; and did not see any sign indicating that assistance (a portable ramp) was available.

Experts for both parties testified at trial. The estimates they provided for the cost of installing a permanent ramp ranged from \$5,000 to \$12,000. While the defendants’ expert testified that the ramp proposed by plaintiff’s expert would be in violation of City ordinances and therefore approvals of various New York City agencies would be required to build a sidewalk ramp, the Court held that this was not a viable defense in light of defendants’ failure to even attempt to obtain City approvals. The Court held that installing a ramp was “readily achievable,” even though the diner’s profits for 2010 were \$24,000, because much of the cost of installing the ramp could be offset by federal tax credits.

At the same time, the Court ruled in favor of the defendants on most of plaintiff’s requests to make changes to the interior of the diner to comply with ADA access requirements. The Court first held that the diner had not undergone “alterations” since 1992, but only “modifications,” when it installed a

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drop ceiling, purchasing air conditioning equipment and reupholstered seats. (ADA compliance obligations are more stringent for alterations.) The Court then held that specific requests to rebuild the vestibule, widen the aisles and enlarge the bathrooms were not “readily achievable” because they would have required the removal of seating, resulting in a significant annual loss of revenue for a small diner with low profits. The Court did require inexpensive improvements to the bathrooms to make them more accessible.

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