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1 No. 197 SSM 29
Filip Di Sanza,
 Appellant,
 v.
The City of New York, et al.,
 Defendants,
Consolidated Edison Company of
New York,
 Respondent.

Submitted by Susan R. Nudelman, for appellant.
Submitted by Helman R. Brook, for respondent.

MEMORANDUM:

The order of the Appellate Division should be affirmed with costs. We agree with the majority at the Appellate Division that, under the particular circumstances of this case, defendant Consolidated Edison Company of New York's evidentiary submissions were sufficient to establish its prima facie entitlement to

judgment as a matter of law on the ground that it neither created nor had actual or constructive notice of the one-inch bulge in the sidewalk grating. We further conclude that plaintiff's introduction of the post-accident photographs, which were not probative of the duration of the bulge, and the conclusory affidavit from his expert were insufficient to raise a triable issue of fact (see Batton v Elghanayan, 43 NY2d 898, 900 [1978] [photographs are not always sufficient to prove constructive notice]; see also Diaz v New York Downtown Hosp., 99 NY2d 542, 544-545 [2002]; Romano v Stanley, 90 NY2d 444, 451-452 [1991] [conclusory expert affidavit, devoid of evidentiary foundation, insufficient to defeat summary judgment]).

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On review of submissions pursuant to section 500.11 of the Rules, order affirmed, with costs, in a memorandum. Chief Judge Kaye and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided September 11, 2008