

\$2,150,000 Gross Verdict Reduced by 10% Comparative Negligence

Christopher L. Musmanno, Esq., Chair of the Personal Injury department and Certified Civil Trial Attorney with the law firm of Einhorn, Barbarito, Frost & Botwinick, PC, Denville, NJ, announces a \$2,150,000 verdict in a failure to maintain parking lot accident. On Labor Day in 2006, the plaintiff in this case, a Pennsylvania woman in her mid-30's, along with her husband, was visiting her sister-in-law's Passaic County, New Jersey home for a Labor Day barbecue. She and her sister-in-law were visiting the defendant's tavern for a "ladies night out" when she stepped in a hole in the parking lot and fell. The hole was approximately two-feet wide and four inches deep, situated close to the building. The plaintiff maintained that the hole was not readily visible because the parking lot lights were not pointed in the direction of the portion of the parking lot where the hole was located. The plaintiff stepped into the hole with her left foot, twisted her left knee and fell, landing on her right knee. As a result of the fall, the plaintiff suffered trauma and lateral femoral syndrome to both knees in which the tracking system of each patella was disrupted, necessitating bilateral lateral release surgery. As a result of surgery, the plaintiff has a moderate and permanent varus deformity in which the knees point inward. This will permanently cause pain and restriction and some difficulties in walking. The fall also caused severe radiating lower back pain and S-1 nerve root irritation that prompted a surgical procedure known as a lumbar fusion. The plaintiff underwent initial surgery from an anterior approach in which hardware was inserted. This surgery was insufficient, and the plaintiff underwent additional surgery several months later in which additional hardware was inserted from the posterior approach. The physician contended that the plaintiff will permanently suffer severe pain and limitations despite the surgery. For several years following the surgeries, the plaintiff slept in a hospital bed that was kept on the ground floor of her home. She can now sleep in her own room, but she must nonetheless use a hospital bed and she can no longer sleep in the same bed as her husband. The defendant, owner of the tavern, did not dispute the plaintiff's description of the condition of the lot, but he disputed if the accident occurred on his premises and denied that the condition of the lot caused the plaintiff's extensive injuries. The defendant pointed out that the plaintiff told her doctor several days later that she was injured while using a wheelbarrow. To explain this, the plaintiff testified that she resided in a small town in Pa, and that her family physician also saw her children, and she was concerned that people in this small town would get the wrong impression of her if it became known that she was

injured in a bar parking lot. She did not think this was relevant to the mechanics of the injury, so she saw no need to divulge it to the doctor. The plaintiff's counsel presented evidence of the plaintiff's good character, which also supported her contentions about her reputation. As further evidence that the fall had taken place in the parking lot, the plaintiff explained that she was in the tavern for a few hours after falling and that she had advised the bartender of the fall, and was given ice. She also argued that the jury should consider that the defendant did not produce any testimony from employees or other patrons, to rebut the plaintiff's contentions. The tavern owner himself testified that he previously shoveled dirt into the hole on three occasions, only to see the dirt wash away and that he did not have the holes paved, notwithstanding that it would cost only approximately \$500. Prior to the trial, in an effort to settle the case, the defendant offered \$2,500, which was rejected. The jury found the defendant 90% negligent, the plaintiff 10% comparatively negligent and rendered a gross award of \$2,150,000. *Curley v. Lakeview Pub & Liquors*. Docket no. Judge Ralph DeLuccia, 1-09. Attorney for plaintiff: Christopher Musmanno of Einhorn, Barbarito, Frost & Botwinick, Denville