



Scottish Professor Presents New Ways of Proving Delay and Disruption

In September, Stein, Ray & Harris hosted a presentation by Professor Colin Eden, of the University of Strathclyde, Scotland, of a newly developed method of proving delay and disruption. Professor Eden has pioneered the modeling of complex systems with computer technology which makes it possible to identify cause-and-effect relationships contributing to delay and disruption. Professor Eden began his work in this area when, as a Professor of Management, he was asked to model complex interactions resulting in substantial lost overruns on the Channel Tunnel Project. Since working on that matter, he has several times been utilized as a consultant for major delay and disruption cases.

In order to fully understand Professor Eden's work, Stein, Ray & Harris flew Professor Eden to Chicago to meet with the firm and several members of Jacobs Engineering Group's in-house legal team.

Professor Eden's technique differs from classic CPM scheduling analysis in two important ways. First, although it recognizes time-related delays and disruptions, it focuses on qualitative impacts as well as quantitative (time) impacts. Second, because it is a model, it is less subject to attack as a scheduling manipulation on an after-the-fact basis.

Stein's Construction Law, Established As Leading Authority

In 1986 Steven Stein published, as Editor-in-Chief, Matthew Bender & Company's "Construction Law," a four-volume treatise on American construction law. By far the largest and most comprehensive treatise at the time, it remains so today. In addition to the annual supplements and revisions, the treatise now includes the American Institute of Architects' Legal Citator, a research tool designed to allow lawyers to identify all cases which have interpreted the AIA standard documents or language of other contracts similar to the standard forms. The service has now grown to include the Construction Law Digest, the subject of another article in this Annual Report on page 2. Construction Law has been recognized as authority by the courts more than thirty times since its publication in 1986.

SRH Pitches Shutout

Stein, Ray & Harris achieved a major victory for one of its general contractor clients in May when an arbitrator found in favor of Stein, Ray & Harris' client on a million-dollar-plus construction claim. The owner alleged that the client had delayed the project and otherwise failed to perform its work in compliance with the contract documents. Instead, the arbitrator found that the owner had delayed the project and dismissed all of the owner's claims. Stein, Ray & Harris partner Joel Rhiner represented the Firm's client in the lawsuit.

International Arbitration Presents Special Problems

When Stein, Ray & Harris partners Steven Stein and Carl Popovsky undertook to represent one of America's largest EPC firms in a claim against Lloyd's of London arising out of a major grain-to-alcohol distillery project in Canada, they anticipated a number of problems which always arise from international representations. For example, since the matter was in arbitration, they believed they would overcome any objection to their representation of the EPC firm in Canada. Further, they were confident that they could learn the intricacies of Canadian procedure as might be necessary to present the case. But you can't predict everything. In reaching Toronto for a preliminary hearing, Steven Stein was detained by immigration. It seems that upon entry into Canada he answered an immigration official's question about whether his legal services were "like those of a consultant" in the affirmative. This automatically shunted him to further immigration officials who attempted to determine whether his work as a "consultant" required a work permit in Canada. Although he ultimately gained entrance on that occasion, work permits were obtained to ensure later ease of entry into Canada.

International arbitration is a necessary and important part of a major construction law practice. Many Stein, Ray & Harris clients now work in nearby Canada, and also in Europe and Asia, resulting in SRH's need to be familiar with international contracts and dispute resolution procedures. Next time, SRH will also take a look at the need for work permits as a first priority.

Construction Industry Forum Publishes Two SRH Articles

In April 2000, *The Construction Lawyer*, a juried publication of the American Bar Association's Forum Committee on the Construction Industry, published two articles authored by Stein, Ray & Harris partners. One of them, "Enforcing Letters of Intent and Handshake Agreements," authored by Steven Stein and Joel Rhiner, addressed common problems arising from informal arrangements that architects, engineers or contractors utilize. The other article, "Differing Site Conditions," authored by Steven Stein and Carl Popovsky, dealt with a narrow issue confronting engineers involved in underground projects.

Enforcing Letters of Intent focused on the different and sometimes conflicting ways the courts have enforced or refused to enforce oral agreements, unsigned contracts and letters of intent. The old joke that "oral agreements are not worth the paper they are printed on" certainly defined the issues addressed. The article discussed current cases and explained how unsigned contracts can be enforceable, depending on the conduct of the parties, and how letters of intent can be enforceable agreements, agreements to keep bargaining in the future or correspondence simply indicating that the parties are optimistic about entering into a binding contract someday.

In the Differing Site Conditions article, Steven Stein and Carl Popovsky drew upon the legal issues with which they were confronted in the Milwaukee Deep Tunnel Project. In that case, the owner had adopted risk allocation, permitting the contractor an equitable adjustment for differing site conditions. Of course, the reason for adopting risk allocation was to save the owner money by allowing contractors to bid realistically without padding to cover risks that might, but might not, be encountered. The geotechnical information provided by the design team and its design of the underground structures could not be too conservative or the value of the approach would be lost. After all, if the engineer assumed the worst case scenario, risk allocation would be no more efficient in obtaining lower bids than the traditional system. Stein and Popovsky recommended that a flexible professional standard of care needed to be recognized in such circumstances.

Construction Law Digest Now Published

How many cases affecting the construction process are decided by appellate courts in the United States each year? Second question: Can anyone read the digests of all of those cases and still maintain a practice of law? The answer to the first question is unknown, but the *Construction Law Digest*, a new publication of Matthew Bender & Co., Inc. (LEXIS Publishing), attempts to identify and summarize all of those cases. This publication, edited by Steven Stein, includes commentary drafted by him about important cases and "viewpoints" authored by him and others about important issues which current cases suggest.

Although adding editorship of the *Construction Law Digest* to his existing duties as Editor of *Construction Law* and the *AIA Legal Citator* at first appeared to be an overwhelming task, Steven was pleasantly surprised to find that the tasks overlapped to a substantial degree. Better yet, Steve has the opportunity to review all of the current cases to identify new precedent which might impact current or future matters.

The *Construction Law Digest* appears monthly and may be subscribed to by contacting LEXIS Publishing (phone 1-800-533-1637, website: www.lexis.com/bookstore).

Daniel and Matthew Walsh Win Award

In April 2000, Matthew and Daniel Walsh received Stein, Ray & Harris' AVA Award for Contribution to the Built Environment through the IIT School of Architecture. The Award, given annually, is sponsored by \$4,000 contributions each from AVA Insurance and Stein, Ray & Harris, the proceeds of which establish a scholarship for a selected IIT School of Architecture student.

The Award ceremony was held at the Arts Club and was attended by a large crowd to witness the honor Matthew and Daniel Walsh received. Walsh Construction's tremendous growth and influence in Chicago, and nationally, were the subject of Dean Donna Robertson's remarks in making the Award to the Walsh brothers.

Prior Award winners include Helmut Jahn, Harold Schiff, Canter Manney, Bruce Graham and Franz Schultz.

Visit the Stein Ray & Harris Website:

www.steinrayharris.com

Tenth Annual Symposium for Design Professionals

Stein, Ray & Harris' Tenth Annual Symposium for Design Professionals was held Thursday, February 1, 2001, at the Sheraton Chicago Hotel & Towers, located in Chicago, Illinois. The Symposium was a half-day event, starting with a continental breakfast during registration. The Symposium highlighted the following topics:

- Avoiding Sexual Harassment Claims
- How AIA Standard Form Contracts Fail to Reflect Current Practices
- Tips for a Successful Negotiation
- Recent Developments in Case Law
- Forming Project Specific Entities

Stein, Ray & Harris is committed to developing quality learning activities in accordance with AIA/CES criteria. As this program met AIA/CES criteria, participants will receive four designated Learning Units, of which all four met the qualifications for Health, Safety & Welfare. For more information on next year's Symposium, please contact Eric Harstad at 312-641-3700.

Stein, Ray & Harris'
Tenth Annual Symposium
was attended by
nearly 400
guests.

Stein, Ray & Harris' Community Commitment

Partner Bob Harris was elected this year to the Board of Directors of the Chicago Child Care Society, one of Illinois' oldest and most respected family service and child care charities. Bob was named again by Mayor Daley to be one of the area business leaders to act as "Principal for a Day" in the Chicago Public School System. Mr. Harris served as Principal at the Elihu Yale Elementary School in the Englewood area, where he has also mentored students for the past several years.

Working From the Inside: ACEC Legal Counsel Forum

The American Consulting Engineers Council sponsors, in connection with its bi-annual meetings, a legal counsel's forum intended for the exchange of ideas among lawyers representing consulting engineering firms. Most of the lawyers who attend are in-house counsel. Issues discussed range from employment practice problems to federal acquisition procurement issues. In an effort to keep the pulse on the concerns of its consulting engineering clients and other design professionals, Stein, Ray & Harris has dedicated itself to attending these meetings whenever possible, chiefly through its partner Stephen E. Ray. While there is a substantial time-and-monetary commitment in doing so, this effort is yet another that SRH makes to stay abreast of issues confronting its clients. This past year Stephen Ray and Steven Stein attended meetings in Buffalo, and Stephen Ray attended another meeting in San Diego. In order to provide further service, SRH will distribute its findings from the meetings to the consulting engineering community in an annual memorandum.

Condo Battles

During the past several years, the Firm has been engaged by owners and developers to defend a variety of construction-related lawsuits brought by large condominium and town home associations. Partners Bob Harris and Jeff Winick are presently representing owners and developers in cases alleging millions of dollars of damage based upon allegations, among others, of faulty roof construction, mold infestation, defective products, structural problems, and defective design of mechanical systems. These actions typically involve state law claims of breach of express and implied warranty, consumer fraud, and attempts to pierce the owner/developer entity to recover from the shareholders of the company.

Jeffrey Charkow Becomes Partner; Mary K. Hartigan Joins Firm

Jeffrey Charkow, part of the firm since February 97, will become an income partner in January 2001. Jeff graduated Order of the Coif in 1993 from Washington University School of Law in St. Louis. Jeff has a special love for sports and SRH has accommodated him with a variety of cases, one involving Notre Dame Stadium and another involving a famous sports star's home. Since Stein, Ray & Harris is working on a variety of sports-related construction projects, Jeff should remain both busy and happy.

In June 2000, Mary Hartigan, formerly with Jones, Day, Reavis & Pogue's Los Angeles office, joined Stein, Ray & Harris as a partner. Mary, a 1991 graduate of Notre Dame Law School, has strong family roots in Chicago, where her father has practiced law for many years. Mary gained considerable national experience in complex litigation and insurance-related disputes, which translates nicely into the commercial- and-construction related disputes common to Stein, Ray & Harris.

New Associates

In 2000, Stein, Ray & Harris brought aboard three new associates. Justin Weisberg, who first trained as a civil engineer with a degree from the University of Illinois and who practiced engineering with Stein, Ray & Harris client H.W. Lochner, Inc., joined in May. His training as an engineer and his eight years of experience as a lawyer provide Justin the ideal mix of experience to serve Stein, Ray & Harris' clients.

Charles ("Cully") Wahtola joined the firm in September. A 1997 graduate of Loyola University School of Law, Cully attended the University of Wisconsin-Madison as an undergraduate, where he won the National Collegiate Heavyweight Wrestling Championship in 1993. (Note that 30 years ago, Steven Stein wrestled at the same school in the 177 pound class — a factor which had nothing to do with Cully's hiring.) Cully comes to the firm with significant experience in representing design professionals and a family background in the design and construction industry.

Jeff Osterkamp joined the firm in December. Jeff is a 1998 graduate from Northwestern University School of Law, and received his undergraduate degree from Northwestern as well. Before becoming an attorney, Jeff worked as a newspaper reporter in Florida and North Carolina.

Speeches and Presentations

Loss Prevention Seminar

A. Epstein & Son - Chicago, Illinois
January 19, 2000, Steven G.M. Stein

Use of Electronically Generated Documents

OWP&P - Chicago, Illinois
February 17, 2000, Steven G.M. Stein

Oral Agreements, Letters of Intent and Proposals

2000 Architecture Seminar and Trade Show
Oakbrook Terrace, Illinois
March 13, 2000, Steven G.M. Stein

Negotiating the Architect's Agreement

American College of Real Estate Lawyers
Palm Desert, California
March 30, 2000, Steven G.M. Stein

Working with Panel Counsel

DPIC Agents Meeting - Chicago, Illinois
April 7, 2000, Steven G.M. Stein

Legal Issues

TSP Group, Inc. - Chicago, Illinois
April 16, 2000, Steven G.M. Stein

A201 Warranty Clause

Annual ABA Forum on Construction Industry
Washington, D.C.
May 5, 2000, Steven G.M. Stein

The Impact of Information Technology on the Practice of Architecture

American Institute of Architects
Philadelphia, Pennsylvania
May 5, 2000, Steven G.M. Stein

Construction Contract Changes

Lecture at Northwestern School of Business - Chicago, Illinois
May 22, 2000, Jeffrey Winick

Perfecting and Preserving Mechanics Liens Rights

Leopardo Companies
June 6, 2000, Stephen E. Ray, Joel J. Rhiner, and Jeffrey B. Charkow

Loss Prevention

Aumiller Youngquist - Mt. Prospect, Illinois
June 8, 2000, Steven G.M. Stein

Reduction of Exposure to Worker Injury Suits

Hansen Engineering - Springfield, Illinois
July 11, 2000, Steven G.M. Stein

DPRCG Claims Expose

DPRCG Conference - San Francisco, California
October 26-28, 2000, Steven G.M. Stein

Risks Associated with Site Observations

Presentation to Urban Design Group - Chicago, Illinois
July 18, 2000, Jeffrey Winick

Negotiating A/E Contracts for School Construction Projects

Presentation to Illinois Association of School Building Officials Annual Tri-Conference - Peoria, Illinois
November 18, 2000, Jeffrey Winick