



Be a Good Sport

Football, hockey and auto racing are more fun to watch from new or renovated stadiums which provide great site lines, and short lines for refreshments. Last year Stein, Ray & Harris worked on three stadium projects.

Of most note, Stein, Ray & Harris represents the design team for the new Bears stadium. Lengthy negotiations with the Bears led finally to the inking of the contract in July, 2001. Stein, Ray & Harris partner Robert Harris was principally in charge. Stein, Ray & Harris continues to play a role as counsel to the design team as the project is well into the construction phase.



The design-builder of the Chicagoland Speedway also asked SRH to intervene when its subcontractor failed to adequately design and construct the new grandstand. Fortunately, all the errors were identified before completion and remedial efforts made without incident, but at a cost of nearly \$8 million. SRH partner

Stephen Ray perfected a bond claim and settled the case by obtaining compensation from the insurance carriers of the responsible parties. SRH also assisted the clients in navigating through the Florida bankruptcy court, which acquired jurisdiction when the subcontractor declared bankruptcy.



SRH partners, Steven Stein and Jeffrey Charkow have been wrestling with issues involving the renovation of a Midwestern stadium for several years. In representing the designers of the stadium, SRH has had to come to grips with allegations involving structural and construction administration issues. Other issues surrounding the installation of expansion joints and handrails also have contributed to the dispute which currently involves almost twenty million dollars and twenty defendants. Mediation or trial is expected next year.

Prototypes and Promoters

Everyone has a great idea for an invention which will make them rich. Only a few pursue their ideas, and even a smaller group actually get to the point of engineering and producing a prototype. But those that do, see the dream of millions around the corner.

One of SRH's long standing EPC clients ended up in a dispute with just such an individual. Under contract with the Department of Energy, SRH's client engineered and built a prototype hazardous waste facility designed to handle mixed organic/radioactive waste products prevalent at DOE sights throughout the United States. Working from only laboratory bench data, SRH's client was able to produce a working prototype in a timely and cost-effective manner - but that's when the problem arose. Unfortunately, the prototype did not prove the process to be economically viable and the disappointed inventor sued SRH's client for \$40 million of anticipated lost profits accusing it of administering the project in such a fashion that caused DOE to cancel it.

SRH partners Steven Stein and Joel Rhiner slowly went to work whittling away at the inventor's claims through proceedings venued in Albuquerque, New Mexico. Each narrowing of the case led to a smaller set of facts and theories upon which the inventor could prevail, until there was not enough room to maneuver for recovery. A mediated settlement resulted in a nuisance value payment being made by SRH's client and the closing of the book on this promising, but ultimately flawed, technology.

Power Driven

A substantial part of last year's efforts at Stein, Ray & Harris were devoted to the resolution of claims arising from power plant construction. Three cases in particular were active, with \$150 million at issue in the aggregate

A combined cycle facility consisting of twin gas fired turbine generators coupled with heat recovery steam generators (HRSG's) powering a steam turbine failed to operate as originally contemplated as a result of introduction of improper feed water into the HRSG's by the owner. Stein, Ray & Harris represents the EPC contractor who constructed the plant which seeks recovery of its contract balance and costs associated with remediation measures necessitated by the improper feed water. The case is very interesting because it involves complex notions of HRSG operations and their sensitivity to water chemistry. It also involves investigation into the plants failure mode - caustic stress corrosion cracking resulting from sodium hydroxide carryover into the downstream high pressure steam piping.

In a case involving similar technology, Stein, Ray & Harris' power plant expertise is also being put to use in connection with the representation of a different EPC contractor who built a 537-megawatt combined-cycle power generation facility. As counsel for the plaintiff in that case, Stein, Ray & Harris is seeking approximately \$40 million in damages from the Owner for delays, failure to grant time extensions for winter weather, acceleration costs, and inefficiencies resulting from the construction and installation of two triple-pressure/reheat HRSG's, two combustion turbine generators, and one steam turbine generator and associated piping. The owner is attempting to impose liquidated damages for the same delays. Arbitration is scheduled to go forward this spring with Joel Rhiner as SRH's primary partner in charge.

Similarly, an ENR Top 25 Contractor tapped Stein, Ray & Harris' power plant expertise to recover approximately \$2 million owed on a subcontract for the construction of three HRSG's in Wilmington, Delaware. Our mission was to recover final payment while avoiding protracted litigation over liquidated damages for delays claimed by the owner.

SRH Pitches Shut Out

Stein, Ray & Harris achieved a complete victory for one of its design professional clients in July after a five-day bench trial. The Court found in favor of Stein, Ray & Harris' client on its claim for fees and against a recalcitrant owner on its counterclaim for design defects. The lawsuit arose out of engineering services for the conversion of a factory into condominiums. Stein, Ray & Harris senior associate, Scott Fradin, represented the Firm's client in the lawsuit.

Award Winning Development Team Assisted

SRH served as counsel to a joint venture of developers and a local university in their ambitious and highly successful effort to develop the southern end of the downtown Chicago area. The development will ultimately include a significant number of residential units along with two dormitory units to house university students. The project is a highly acclaimed success and was awarded the 2001 City Development of the Year by the Chicago Sun-Times. Partners Steven Stein and Jeffrey Winick represented the client in its negotiations with the numerous entities performing design and construction services for the project.

Eli W. Cohen, P.E., S.E.

Recipient of the 2002 Award for Contributions to the Built Environment

In April 2002, Eli W. Cohen, P.E., S.E., received Stein, Ray & Harris' and Hobbs Group/AVA Insurance's Excellence in Architecture Award through the IIT School of Architecture. The award, given annually, is made in connection with an \$8,000 scholarship sponsored by Stein, Ray & Harris and Hobbs Group/AVA.

The Award ceremony was held at the Arts Club with opening remarks from Richard Tomasetti, P.E., President and Principal of Thornton-Tomasetti Group, Inc.

Eli W. Cohen's contributions to Chicago have been vast and innumerable. With over 70 high-rise buildings and more than 350 major projects overall, it is practically impossible to walk down any Chicago street without seeing a building engineered by Mr. Cohen.

Previous years' winners include Helmut Jahn, Harold Schiff, Carter Manny, Bruce Graham, Franz Schulze, Matthew and Daniel Walsh, and Walter Netsch.

Twelfth Annual Symposium for Design Professionals

Last year's Symposium was attended by over 300 guests.

Stein, Ray & Harris' Twelfth Annual Symposium for Design Professionals will be held Thursday, February 27, 2003, at the Chicago Hilton & Towers. The Symposium, a half-day event, will begin with a continental breakfast during registration. The Symposium will feature the following topics:

- *"Reading Between the Lines: Standard Form Design-Build Contracts for Design Professionals"*
- *"Design-Build Gone Wrong: Common Design-Build Disputes Involving A/E's"*
- *"The Man is Bringing Me Down: Legislative Environment for participation by A/E's in Design-Build"*
- *"Cover Your A\$sets: The Sequel"*
- *"Who's on First?: Acting as a Subcontractor for Design"*

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

Destination: South Beach

Ah, sunny, exciting South Beach! SRH assisted a national developer client in obtaining a favorable settlement of a complicated delay claim brought by its general contractor arising out of environmental contamination at the project site in Miami Beach, Florida. The claims sought several million dollars allegedly resulting from delays caused by the leakage of ammonia and other substances into the bay during site dewatering. SRH was able to rely upon certain language in the construction contract to significantly reduce the claims in settlement. Partner Robert Harris represented the developer in resolving the claims and continues to represent the client in the on-going \$150 million project.

Medicine For Scope Growth

EPC and design-build contractors have for many years been a primary focus of SRH's practice. Over time, certain fact patterns reoccur, with a frequency which requires special attention. When the Design-Build Institute of America made a call for papers last year, Steven Stein responded with a suggested presentation entitled "Medicine For Scope Growth." He made his presentation at DBIA's National Conference in Denver, Colorado on October 2-4, 2002.

Steven Stein focused on resolving friction between owners and design-builders resulting from "scope growth." Although owners and design-builders often feel comfortable pricing projects from preliminary drawings, inevitably owner participation in the finalization of the design leads to questions about whether the completed documents represent mere maturation from the original intent, or includes changes for which the design-builder is entitled to additional compensation. In one case currently being handled by SRH, this issue has resulted in over \$50 million of claims by SRH's client who was subjected to owner preference changes during the finalization of a water treatment plant design.

Supreme Court Upholds Right of General Contractor to Insurance Coverage

A Chicago general contractor, with an unblemished record of avoiding litigation with its clients, retained SRH and partners Steven Stein and Jeffrey Winick to defend it in connection with allegations of defective construction. The claim was tendered to the general liability carrier for the excavation subcontractor on the basis of additional insured coverage as well as to the contractor's general liability carrier.

The insurance carriers denied coverage, forcing the contractor to finance the defense effort itself. Adopting SRH's argument, the Court ordered the excavation subcontractor's carrier to finance a proportionate share of the contractor's defense costs on the grounds that one of the claims resulted from the subcontractor's excavation work. The Court also ordered the contractor's own general liability carrier to assume responsibility for the balance of the defense costs.

The Illinois Supreme Court refused to review the decision of the Court of Appeals upholding the trial court order. The contractor was therefore ultimately able to secure substantial reimbursement of its legal costs and an important legal principle was reaffirmed.

SRH Assists in Code Development

As an active member of the construction community both locally and nationwide, SRH has helped to facilitate the development of local and national codes. Partner Jeffrey Winick was integrally involved in the development of the revisions to the Maintenance of Exterior Walls and Enclosures Ordinance (the "Facade" ordinance) as well as the associated rules and regulations in both 2001 and the past year. More recently, he assisted the ASTM in the creation of a national standard regarding facade inspections. Mr. Winick also advised the City of Chicago in the development of the structural engineering standards pertinent to the construction of technology centers and is presently working with the City to develop a program to substitute peer review of the structural engineering design for review by the City of Chicago Department of Buildings.

Pizza For All

Stein, Ray & Harris prevailed in its defense of a national pizza chain from claims that it had discriminated against certain customers by denying them service at a local restaurant. The federal district court, after hearing argument from SRH, threw the lawsuit out in its entirety and vindicated SRH's client's treatment of its customers. Although not a construction case, SRH's typical "hard hat" approach to litigation paid off. Partners Robert Harris and Jeffrey Winick, and associate Cully Wahtola, represented SRH's client in the lawsuit.

New Associates

In April 2002, Stein, Ray & Harris added Michael J. Kelly to the firm. Mr. Kelly received his Juris Doctor from Harvard Law School in 1995. He received his undergraduate degree from Williams College where he graduated with honors in 1987 and his Masters in in Criminal Justice from the John Jay College of Criminal Justice in 1996.

Stein, Ray & Harris also added Livia McCammon Kiser to the firm. Ms. Kiser attended the University of Illinois, where she graduated in 1986 Phi Beta Kappa with a Bachelor of Arts degree. She received her Juris Doctor in May 2001 from the Northwestern University School of Law in Chicago, Illinois, where she graduated Cum Laude and Order of the Coif.

Speeches and Presentations

"Job Site Safety"

Clark-Dietz - Chicago, Illinois
February 8, 2002, Steven G.M. Stein

"Legal Issues in the Construction Process"

Kellogg Graduate School of Business - Chicago, Illinois
May 2002, Robert J. Harris

"Risks and Rewards"

DBIA Financial Management Conference - Chicago, Illinois
June 13, 2002, Steven G.M. Stein

"Medicine For Scope Growth"

DBIA National Conference - Denver, Colorado
October 2-4, 2002, Steven G.M. Stein

"Recent Cases and Potential CM Liabilities"

Construction Manager Association - Chicago, Illinois
October 2002, Robert J. Harris

"Striking a Balance Between Owners and Public Safety"

ASTM Seminar on Building Enclosures - Norfolk, Virginia
October 13, 2002, Jeffrey H. Winick

"Surety and Insurance Beyond"

ICPAS Construction Conference - Oakbrook, Illinois
October 31, 2002, Joel J Rhiner



Steven G.M. Stein has been elected again to serve as President of the Great Lakes Chapter of the Design-Build Institute of America. Mr. Stein has been very involved with the local chapter's development and has served previously as both Treasurer and President of the organization.



Visit Stein Ray & Harris'
New Website:

www.steinrayharris.com