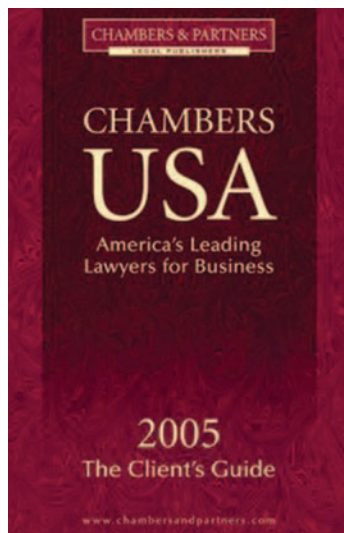




SRH Ranks First in Construction Law

According to Chambers USA (2005), Stein, Ray & Harris has a "wealth of resources" and a commitment to "fight to the finish for its clients."

The Chambers Guide to Leading Lawyers named Stein, Ray & Harris as first ranked among construction law firms in Illinois for 2005. This respected peer-review publication was told by Stein, Ray & Harris' clients that the firm was "impressive in the handling of complex and technical legal issues" among other accolades. Steve Stein, Steve Ray, and Bob Harris were all named leading practitioners by the publication.



\$80 Million Delay Claim Defeated

A remote Guatemalan village, a country in need of electrical power, a brand new technology... the perfect recipe for Stein, Ray & Harris' utility client to develop a diesel engine power plant fueled by Orimulsion®, a bitumen and water fuel. But things went awry early with unanticipated soil conditions, late deliveries of equipment and failed performance testing. In the first of two arbitrations arising from the construction of the plant, Stein, Ray & Harris' client was forced to defend claims for millions of dollars in delay damages and to preserve its rights to liquidated damages against a contractor who was over a year behind schedule. With liquidated damages of \$20 million, the contractor's claim of \$60 million in damages, and with tens of millions in defective work at issue, the parties stood far apart. In mid July, a panel of arbitrators constituted by the International Chamber of Commerce determined that of the more than one-year of Project delay, through Phase III, the contractor was excused from only 51 days of delay and entitled to recover less than \$50,000 in damages thereby upholding Stein, Ray & Harris' utility client's entitlement to nearly all of the liquidated damages assessed and fully denying all the contractors' other claims.

Another round of the arbitration was completed in August dealing with the remaining phase of the Project and a variety of counterclaims.

Partners Steven Stein and Carl Popovsky, together with Michael Kelly, were the core of a larger Stein, Ray & Harris team which arbitrated this case in Houston, Texas.

Cover Me

Stein, Ray & Harris is increasingly handling insurance coverage claims brought by policy holders against their insurance carriers. Two significant victories were obtained:

In a case with significant implications for the ability of the client to recoup millions of dollars of losses sustained, the Illinois Circuit Court found that a client's advertising losses were covered under the terms of its CGL Policies. The client, one of the nation's leading restaurant chains, was held liable in a jury verdict for over \$30,000,000 in damages when represented by another firm. After the verdict, the client called on Stein, Ray & Harris to recoup the losses by filing suit against the client's various CGL carriers for coverage. As a result of Stein, Ray & Harris' aggressive prosecution of the claim, the trial court entered partial summary judgement in favor of SRH's client, and several of the CGL carriers have entered into multi-million dollar settlements on terms highly favorable to the client. Bob Harris and Jeff Charkow are currently successfully representing the client in recovering its losses.

In another victory with significant implications for the rights of property and casualty policyholders, an Illinois Circuit Court held that Stein, Ray & Harris' client was entitled to rebuild its school at a location of its choosing and recover the full amount of its replacement costs. The client, an Illinois school district, sustained devastating losses when a powerful tornado severely damaged one of its schools. From the date of the initial loss, the insurance company took the position that, unless the school was rebuilt on the original footprint, the School District was limited to recovering millions less than what it would cost the School District to rebuild. As a result of Stein, Ray & Harris' efforts, through Bob Harris and Carrie Berger, the School District now has the flexibility to rebuild the school at a suitable location within the district and recover its full replacement costs.

“Seven” Rolled in 1.7mm Jury Verdict

SRH’s client gambled big in taking a case to trial and a Cook County jury rewarded SRH and its client for their efforts by entering a multi-million dollar jury verdict. SRH’s client, a commercial financing broker, sued to recover its fee for arranging financing for a well known Chicago real estate developer in connection with the development of the new Bank One Center in downtown Chicago. The developer denied that it owed the fee and also contended that his initials on a document related to a release were forged. At trial, Stein, Ray & Harris, partners Bob Harris and Joel Rhiner convinced the jury that the employee was due the fee and that no forgery had taken place, resulting in the multi-million dollar verdict.

SRH Pioneers New Jersey Lien Law

Stein, Ray & Harris successfully obtained on behalf of an international EPC firm a ruling on an issue of first impression under the amended New Jersey Construction Lien Law. The



dispute involved lower-tier subcontractors of a terminated bankrupt subcontractor who asserted more than \$10 million of liens. The terminated subcontractor had received millions of dollars of payments from the EPC firm for the lower-tier subcontractors’ work on the project, only a small fraction of which the subcontractor paid downstream to its lower-tier subcontractors. The lower-tier subcontractors contended that the lower-tier subcontractors were entitled to payment in full for the work they claimed to have performed. The Court rejected the lower-tier subcontractors’ contentions and instead adopted SRH’s position that the risk of loss for amounts allegedly due to lower-tier subcontractors by a defunct subcontractor falls on the lower-tier subcontractors. SRH partner Stephen Ray and associate Liz Muniz represented the EPC contractor.

Visit the Stein, Ray & Harris Website:
www.steinrayharris.com

2005 Patron of the Year Winners

The Chicago Architecture Foundation continued its “Patron of the Year Award” with a juried selection of Patrons who have contributed to Chicago’s built environment. The awards are sponsored by Stein, Ray & Harris. This year the Patron of the Year Awards went to:

Crate & Barrel for New Corporate Headquarters in Northbrook, IL; Chicago Bears Football Club, Inc.

CHICAGO
ARCHITECTURE
FOUNDATION
PATRON
OF THE YEAR
TWO THOUSAND FIVE

SPONSORED BY
STEIN, RAY & HARRIS LLP

and City of Chicago Park District for Soldier Field and North Burnham Park Redevelopment; Hyde Park Bank & Trust Co. for their Lobby Renovation; Perspective Charter School and their Board of Directors for Perspective Charter School; The University of Chicago for New Projects and Master Plan.

Friends Chosen Well in Power Plant Disputes

Sometimes in life it is better to be judged by one’s enemies than by one’s friends, and this can hold true in construction disputes. Stein, Ray & Harris recent experiences involving an outbreak of power plant construction disputes underscores the notion that often the best overall result is achieved by choosing one’s friends early in a dispute, often before the project is complete, and then cooperating in litigation against the remainder. As an example, SRH represented an EPC contractor faced, through no fault of its own, with project completion issues with the owner, an insolvent subcontractor responsible for major components of the plant, and mechanic’s liens filed by sub-subcontractors. Through careful strategic planning and a series of intricate agreements, SRH’s client was able to successfully negotiate a mutually beneficial project close-out with the owner, work with the insolvent subcontractor in bankruptcy proceedings, and with the cooperation of these project participants defend against the substantial sub-subcontractor claims, both in arbitration and in court. The sub-subcontractor claims eventually were favorably settled as the result of mediation. SRH partners Steve Stein and Carl Popovsky in particular were involved in both the negotiation of agreements and the arbitration/litigation.

Big Award in Alamo Shoot Out

Where water conservation is essential, zero liquid discharge systems capturing and recycling nearly all of a power plant's effluent is a great technology. A Stein, Ray & Harris client contracted with an EPC contractor to provide such a system, and raw water treatment, for a new Arizona power plant. At the conclusion of the Project, the EPC contractor withheld payment of over \$1 million and demanded damages in excess of \$6 million for alleged defects in the system, delay, and increased costs of operation. The parties squared off in San Antonio, Texas for a two-week arbitration in April, 2005. Representing Stein, Ray & Harris' client were Steven Stein and Joel Rhiner.



In the arbitrator's decision rendered in June, Stein, Ray & Harris' client was overwhelmingly successful and obtained its full contract balance, plus interest, and defeated virtually every claim made by the EPC contractor. Stein, Ray & Harris proved that although the system failed to perform as anticipated, that failure arose from the EPC contractor's and owner's failure to provide water within appropriate specifications, primarily with undue amounts of organic growth and excessive levels of nitrates.

The Best Defense is a Good Offense

Bob Harris and Carrie Berger successfully represented a Chicago-based real estate development firm in a hotly contested lawsuit, which resulted in a highly favorable settlement. The client was sued by its real estate investors who sought over \$20 million in damages. The investors, all of whom had invested in a successful condominium development project with the client, accused the client of failing to disclose an opportunity to develop a neighboring piece of property. From the beginning of the case to its conclusion, Stein, Ray & Harris adhered to the motto that "the best defense is a good offense" which led to favorable results for the client. The investors attempted to restrain the client from selling the condominium units, which would have ground the development to a standstill. Stein, Ray & Harris' aggressive advocacy allowed the client to continue to develop its property without interference from the lawsuit. Stein, Ray & Harris also went on "offense" against the investors and successfully prosecuted separate lawsuits against many of the individual investors. Stein, Ray & Harris' aggressive posture ultimately led the investors to settle the case on exceptionally favorable terms to the client.

Dana Bay, China

Sixty miles upstream from Hong Kong in China's Guangdong Province, CNOOC/Shell is building a multi-billion dollar refinery. Stein, Ray & Harris' client had the contract for the installation of all raw water treatment and effluent treatment for the plant, a contract worth \$50 million. When the Project was delayed, SRH's client was impacted by that delay chiefly through modifications of Project documentation and interferences with commissioning and start-up. Stein, Ray & Harris is assisting its clients in preparation of a claim, which, if not resolved, will be arbitrated in London under ICC Rules and the law of England and Wales. Partner Steve Stein is currently working on the claim presentation.

Fifteenth Annual Symposium for Design and Construction Professionals

Stein, Ray & Harris LLP's Fifteenth Annual Design and Construction Symposium will be held on Tuesday, April 25, 2006 at the Chicago Hilton & Towers. Topics for this year will be:

- *What, Me Worry: Assessing and Managing Risk in Designer Led Design/Build*
- *Cosmic or Cosmetic: A Review of the New AIA Design/Build Documents*
- *Read The Fine Print: The New AIA Design/Build Documents -- An Owner's Perspective*
- *Big Brother is Watching: Design/Build Rules, Regulations and Pending Legislation*
- *It's Not Easy Being Green: Current Developments in LEED*

Stein, Ray & Harris is committed to developing quality learning activities in accordance with AIA / CES criteria. As this program meets that criteria, participants will receive 4 designated learning units. For more information, contact Scott Fradin at 312.641.3700.

New Partners

Peter J. Bedard, a member of the firm since January 2004, will become a Partner in January 2006. Peter received his Juris Doctor from the University of Miami School of Law in 1993, where he graduated cum laude and was a member of the University of Miami Entertainment and Sports Law Review. He received his undergraduate degree from Villanova University in 1991.

Carrie L. Berger, who began working with the firm in January of 2001, will become a Partner in January, 2006. Carrie received her Juris Doctor from Northwestern University Law School in 1997 and her B.A. from Northwestern University in 1994 where she graduated with honors.

Michael J. Kelly, who began working with the firm in April 2002, will become a partner in January 2006. Michael received his Juris Doctor from Harvard Law School in 1995 and his B.A. from Williams College in 1987 where he graduated with honors. He also received a masters degree in criminal justice from the City University of New York in 1996

John-Paul Lujan, who began his legal career with the firm in 1997, will become a Partner in January 2006. John-Paul received his Juris Doctor from DePaul University Law School in 1997 and received both his Bachelor of Science in Architectural Studies and Master of Architecture degrees from the University of Illinois at Urban-Champaign in 1991 and 1993, respectively. Prior to practicing law, John-Paul practiced architecture with one of the largest architectural/engineering firms in the country. John-Paul completed his second IRONMAN triathlon event this past Summer.

Charles H. Wahtola, will become a Partner in January 2006. Charles (known as "Cully" by friends and colleagues) joined Stein, Ray & Harris in September 2000. Cully was awarded his Juris Doctor degree, cum laude, from Loyola University School of Law in Chicago, in 1997. He received his Bachelor of Arts degree in 1993 from the University of Wisconsin-Madison, where he was a national collegiate heavyweight wrestling champion and a two time academic All-American.

New Associates

Alexander M. Kipnis graduated from the University of Chicago Law School in 2005. He received his undergraduate degree in Legal Studies and Political Science from the University of California, Berkeley, where he was President of the Mock Trial Team and Student Advocate.

Speeches, Presentations and Publications

- "Risk Exposures for Roofing Consultants"*
Annual Meeting – Midwest Region –
Roofing Consultant's Institute
Oak Brook, Illinois
January 19, 2005, Jeffrey H. Winick
- "Construction Hot Topics"*
National Electrical Contractors Association, Inc.
Northeastern Illinois Chapter
Oak Brook, Illinois
January 24, 2005, Peter J. Bedard
- "AIA Contracts in Illinois"*
Lorman Education Services
Oak Brook, Illinois
January 25, 2005, Peter J. Bedard
- "Case Study: Burr Ridge Hotel Project"*
American Institute of Architects
Chicago, Illinois
April 13, 2005, Steven G.M. Stein
- "International Arbitration Issues"*
Canadian College of Construction Lawyers
Niagra on the Lake
Ontario, Canada
May 27, 2005, Steven G.M. Stein
- "Thinking Ahead: Practices to Minimize Claims Exposure"*
Environmental Systems Design, Inc.
Chicago, Illinois
September 8, 2005, Steven G.M. Stein
- "Facilitating the Pay Application Process"*
Mesirow Stein
Chicago, Illinois
October 3, 2005, Jeffrey H. Winick
- "Legal Aspects of Architectural and Engineering Practice"*
Graduate School of Architecture
University of Illinois
Urbana-Champaign, Illinois
November 11 & 18, 2005, Jeffrey H. Winick
- "Protecting Your Assets: Legal Risks and How to Minimize Them"*
Roof Consultants Institute
Indianapolis, Indiana
November 18, 2005, John-Paul Lujan
- "Overview of New AIA Standard Form Design-Build Documents"*
Lorman Education Services
Hoffman Estates, Illinois
November 22, 2005, Stephen E. Ray and Scott R. Fradin
- "Current Issues in Risk Management for Structural Engineers"*
Zweig White Conference
Chicago, Illinois
December 1, 2005, Jeffrey H. Winick
- "Changes and Extras: Proof and Practice"*
Chicago Bar Association
Chicago, Illinois
December 7, 2005, Peter J. Bedard
- "Building Codes in Illinois"*
Lorman Education Services
Downers Grove, Illinois
December 8, 2005, Peter J. Bedard
- "LEED Green Building Rating System and Related Legislation in Illinois"*
Lorman Education Services
Chicago, Illinois
December 8, 2005, Ryan A. Hiss