



## \$22 Million Recovered in Insurance Coverage Dispute

In May 2007, Stein, Ray & Harris partners Robert Harris and Jeffrey Charkow, obtained a judgment of more than \$14 million on behalf of its client, an S&P 500 company. SRH's client had purchased excess commercial general liability insurance from several insurance carriers that provided coverage for "misappropriation of advertising ideas." Prior to SRH's involvement, its client had suffered a 40 million dollar adverse verdict in a case where the plaintiff claimed that its character had been used in SRH's client's nationally recognized advertising campaign.

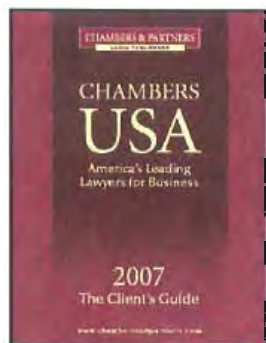
In 2003, SRH sued nine of the client's insurers, seeking indemnification for the judgment in the underlying case. The first hurdle was to convince the court that there had been a "misappropriation of advertising ideas." Although the only decision addressing these circumstances found there was no coverage, SRH convinced the Court that the case was wrongly decided and should not be followed.

For the next two years, SRH negotiated settlements of almost \$10 million dollars with carriers other than the primary excess carrier. But that carrier wanted, and got, a trial jury.

At the end of the trial, the Court found that that SRH's client was entitled to coverage, and awarded SRH's client an additional \$14 million. The Court also determined that the carrier's actions were vexatious and unreasonable, and awarded the client an additional \$1.4 million in attorneys' fees as a sanction under the Illinois Insurance Code.

## Chambers Lauds SRH

In 2007, Chambers Partners once again selected SRH as a first tier construction law firm in Illinois, describing it as "an excellent firm engaged in sophisticated work" with "accomplished, all-around construction lawyers well able to approach their client's needs holistically."



Partners Steven Stein, Stephen Ray and Robert Harris were also accorded special recognition by Chambers as among the most respected of all Illinois construction law practitioners.

## Legal 500 Names Stein, Ray & Harris One of Five Best Construction Law Firms in U.S.

"Legal 500", one of the most respected international evaluators of law firms named SRH as one of only 5 national construction law firms deserving of being ranked and commented upon in 2007. It commented, among other favorable statements:

"Based in Chicago, the firm has a particularly strong footprint in the Midwest, but is also becoming more active across the US...the firm is increasingly achieving a national reputation."

## South Carolina Swamp

When homeowner associations bring claims for construction defects, contractors and construction managers face great difficulties both refuting the claims and at the same time flowing liability to the appropriate subcontractors and their sureties. One strategy is to convert a "two front war" to a single front by settling with the association, a strategy followed by SRH's client in a case arising in South Carolina. Unfortunately, the culpable trade contractors refused to participate. Consequently, SRH's client filed claims against numerous trade contractors and sureties to recover its repair costs and related damages, which were well in excess of \$10 million. Unshackled from the need to be concerned about the association, SRH partners Stephen Ray and Peter Bedard fought hard to uncover the serious construction defects yielding, a settlement that favorably resolved the claims in SRH's client's favor.

## SRH Finds Exit Sign on Transit Project

St. Louis Metro's seven mile light rail extension project through the west suburbs of St. Louis suffered substantial delays and cost overruns resulting in a dispute between the joint venture design builder/construction manager and the owner of the system which led to the termination of the joint venture and a lawsuit by the owner against the joint venture for \$120 million. SRH's client, a multi-national engineering firm, was a subcontractor for certain design services and was made a third-party defendant in the suit. The owner also made a claim directly against SRH's client as the third-party beneficiary of its contract. Unlike many cases of this type, the owner chose not to utilize a critical path method to allocate delays to the respective parties, and established its damages utilizing a "modified total cost" method, which is extraordinarily uncommon for an owner to utilize. SRH's defense first caused the owner to dismiss its claim, without compensation, and subsequently, just before trial, the joint venture also dismissed its claim for a sum less than the costs anticipated for the upcoming trial. The trial itself concluded at the end of November with a defense verdict. Partners Steven Stein, Joel Rhiner and Michael Kelly all were involved with this case.

## Pending Appellate Arguments

In 2007 SRH participated in the appeals process in many addressing important construction law issues. All the cases involved certain fundamental issues of law important to the construction industry:

In Wartsila v. Duke Energy International, SRH represented DEI in an arbitration which resulted in an award in Duke's favor. As a result of the award, the remaining contract balance due Wartsila was reduced from approximately \$36 million to approximately \$11 million. Wartsila and Duke both sought to confirm the award which the U.S. District Court for the Southern District of Texas ordered. However, Duke requested that the enforcement of the order be stayed pending resolution of another arbitration between the parties involving the same project. At issue before the 5th Circuit Court of Appeals is whether the District Court should have granted the stay of enforcement. Oral argument was presented by Steven Stein on November 7, 2007.

In AMEC v. First Midwest Bank, SRH represented construction manager AMEC with respect to a condominium project in Chicago. In the trial court below AMEC obtained a determination that as a construction manager it was entitled to a lien. The lenders in the case appealed on the grounds that construction managers do not have lien rights under the Illinois Mechanic Lien Act. This appeal was argued on December 12, 2007 by Peter Bedard.

In Affiliated FM Insurance Co. v. LTK Consulting Services, SRH's client, LTK, obtained a summary judgment on the grounds that Washington State's economic loss doctrine barred recovery by a concessionaire of damages caused to rail cars in a fire. At issue before the 9th Circuit Court of Appeals, to be argued in 2008, by Steven Stein, is the issue whether a concessionaire enjoys property rights the damage to which makes the economic loss rule inappropriate.



## REIT Secures 6.5 MM in Arizona

SRH's client, a national REIT, suffered significant financial loss due to water infiltration and other damages associated with substandard construction of its multi-unit apartment complex in Arizona. But, from the date of the initial loss, the general contractor as well as the individual subcontractors adamantly refused to acknowledge their respective responsibilities. In a somewhat novel legal strategy, SRH successfully sued each subcontractor despite the lack of a contract between the parties. The leverage generated by having direct access to each of the subcontractors led to an exceptionally favorable resolution for the client guided by partners Robert Harris and Jeff Winick.

## Landmark Conversion Yields Condo Clash

When the owner of a landmark office tower condominium conversion suffered substantial delays, it turned to SRH for representation against the general contractor. Stein, Ray & Harris contends for its client that the delays were caused as the result of mismanagement by the contractor and not, as the contractor contended, late provision of design information. In many respects, although the case is a large one involving as much as \$60 million, typical issues abound. However, there is at least one interesting aspect. It is the owner's contention that the contractor owed certain fiduciary duties as a result of its execution of the standard form American Institute of Architects A111 cost plus GMP contract. Although this issue is not completely novel, Steve Stein having commented on it years before in his treatise, it is an issue that is not common to many of these cases.

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ARCHITECTURE  
FOUNDATION  
PATRON  
OF THE YEAR  
TWO THOUSAND SEVEN  
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## 2007 Patron of the Year Winners

The Chicago Architecture Foundation's fifth "Patron of the Year Awards" sponsored by Stein, Ray & Harris were given on November 15th at the University Club of Chicago. The jury selected the Hines Interests for their One South Dearborn building; Garmin International, Inc. for the Garmin International, Inc. Store; City of Chicago Department of Transportation for the Millennium Park Bike Station; Morton Arboretum for the The Morton Arboretum Visitor Center; and The Illinois Institute of Technology for the S.R. Crown Hall Exterior Restoration.

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### "Double Crossed" Owner Strikes Back

"One for all and all for one" said D'Artagnan. And, at the start of the condominium defect case the owner and contractor acted like the three musketeers. The contractor agreed to lead the defense against the claims made by homeowner's associations and the owner went happily along. But, just when the statute of limitations for suit between the owner and contractor lapsed, the contractor reversed field, disclaimed any responsibility for the construction defects and abandoned the owner. When the owner attempted to make a third party claim against the contractor to flow through the damages which it suffered resulting from construction defects, the contractor argued that the statute of limitations had passed.

Stein, Ray & Harris was able to demonstrate to the trial court that the contractor could not rely on the passage of time when it had pursued a joint defense with the owner lulling the owner into foregoing its legal rights. As a result of the ruling, the contractor has now taken the laboring oar in the defense of the condominium homeowner's association claims and will bear its appropriate responsibility.

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## Delay to Hotel Projects Embroils Contractor

In late 2007, SRH was retained by a contractor embroiled in suits with two different hotel owners, one in the Northeast and another in the Southwest. In the Southwest, the dispute centers upon delays resulting from the owner's failure to provide design information on a timely basis which has plagued the project from commencement. Although the contractor is soldiering through the work, increasingly the costs of completion are falling on its shoulders. Attempts to get temporary relief have been as of yet unavailing.

For the hotel resort in the Northeast, the contractor has suffered delays as a result of design deficiencies affecting both concrete and structural steel. Unlike the project in the Southwest, delays for a project in this local area are magnified because of the difficulty in performing winter work. For both cases, Stein, Ray & Harris is providing resources to understand and present claims even before the projects have been completed with the hope of obtaining equitable relief and settlement without the need for arbitration or litigation.



## New Associates

*Kenneth Kubes* Mr. Kubes received his J.D., magna cum laude, from the Indiana University School of Law – Bloomington in 2002 where he graduated Order of the Coif. He received a B.A. in Economics from Northwestern University in 1999.

*Brandon Hummel* Mr. Hummel received his J.D. from Northwestern University in 2004. Mr. Hummel received a B.A. in History, with honors, from The Johns Hopkins University in 2000.

*Diana Zhitnitsky* Ms. Zhitnitsky received her J.D. from Chicago-Kent College of Law in 2005. Ms. Zhitnitsky received a B.A., with honors, in Political Science from DePaul University in 2002. Ms. Zhitnitsky recently completed a Masters of Law degree in Real Estate from The John Marshall School of Law.

*Melissa Currivan* Ms. Currivan received her J.D. from the University of Chicago in 2007. She received her B.A. in Philosophy and Mathematics from the University of Chicago in 2004.

## Speeches, Presentations & Publications

*"The Wrong Words Can Cost You"*

"The Builder"

The Builder's Association of Chicago

Joel J. Rhiner

*"Advanced Analysis of Contract Risk-Shifting Provisions: Is Indemnity Still Relevant?"*

The Construction Lawyer

Fall 2007

Steven G.M. Stein and Shorge K. Sato

*"Agreement Between Owner and Contractor – The Contractor's Perspective"*

Strong Construction Contracts: Your Foundation

For Payment

February 26, 2007

Peter J. Bedard

*"Key Points in the Negotiation of Design Services and Construction Contracts - AIMCO"*

January 25, 2007

Jeffrey H. Winick

*"Condominium: Opportunities & Pitfalls"*

February 15, 2007

John-Paul Lujan

*"Construction Risk Management Seminar"*

Krusinski Construction

January 31, 2007

Jeffrey H. Winick

*"Pleadings, Motions, and Orders"*

Class Actions

Illinois Institute for Continuing Legal Education

Brandon Hummel

## VISIT THE SRH WEBSITE:

[www.steinrayharris.com](http://www.steinrayharris.com)

to read more about:

- ▷ The firm's national and international construction litigation practice and experience
- ▷ individual attorneys
- ▷ past annual reports
- ▷ additional SRH news and publications

## Stein Makes All-Star Team

This year partner Steven Stein was nominated to The 2008 BTI Client Services All-Star Team for Law Firms for the third consecutive year, which is an honor shared by only 2 other attorneys. Only 148 attorneys are chosen for the All-Star team worldwide.

The BTI Consulting Group is a professional market research firm based in Boston. The nominations are based on annual individual interviews with more than 250 General Counsel at Fortune 1000 organizations and large professional service firms. It was noted by one of our clients that Steven Stein exhibited "unsurpassed excellence in client service", a vote of confidence which in itself is one of the highest honors an attorney can receive.