Qued In

A Monthly Legal Newsletter from

Querrey & Harrow

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Indiana Law Update: Indiana Casinos May Not Exclude Card Counters

By: John Halstead - Merrillville, Indiana Office

On October 30, 2009, the Indiana Court of Appeals, in *Donovan v. Grand Victoria Casino & Resort, L.P.*, 2009 WL 3517633 (Ind. Ct. App. 2009), held that a casino could not exclude a patron from playing blackjack on the basis of card counting. In *Donovan*, the Plaintiff filed a complaint seeking declaratory judgment. The trial court granted summary judgment to the casino. The court of appeals reversed.

Grand Victoria operates a riverboat casino located in Rising Sun, Indiana, on the border of Ohio, near Cincinnati. The casino offered blackjack among other games. The plaintiff was a self-taught card counter, who supplemented his income by playing blackjack. Card counters keep track of the cards as they are dealt and adjust their bets accordingly. Card counting is not illegal under Indiana law. The plaintiff played blackjack at the defendant's casino for several months and then was barred from playing blackjack. When the plaintiff refused to play any other games, the casino barred him from the premises.

Grand Victoria moved for summary judgment arguing that the casino, as a privately-owned for-profit business entity, may exclude a patron from its premises for any reason or none at all, so long as civil rights are not violated. The plaintiff argued that the casino was obligated to offer him the game of blackjack according to the rules promulgated by the Indiana Gaming Commission.

Indiana recognizes the existence of a common law right of exclusion. *Wilhoite v. Melvin Simon & Associates, Inc.*, 640 N.E.2d 382, 385 (Ind. Ct. App. 1994) (individual had no property or liberty interest in access to a mall and may be excluded for any reason or for no reason whatsoever). The plaintiff argued that his case was distinguishable, since the casino was heavily regulated, unlike the mall in *Wilhoite*. Riverboat gambling was formerly prohibited until the legislature chose to legalize it in 1993, subject to regulations promulgated by the Indiana Gaming Commission pursuant to Ind. Code 4-33.

State Representative Lou Lang Joins Querrey & Harrow

Querrey & Harrow is proud to welcome **Illinois State Representative Lou Lang**, the Deputy Majority Leader of the Illinois House of Representatives, to the firm as "Of Counsel." Representative Lang has been active in the State Legislature for more than 20 years, and is a well-known leader in Illinois. He represents businesses and not-for-profit organizations in commercial litigation and also handles municipal liability and planning matters.

Querrey & Harrow attorneys regularly represent governmental bodies, including the State of Illinois, counties, municipalities, townships, school districts, and park districts, in litigation involving Section 1983 civil rights, reapportionment, employment, eminent domain, and premises liability claims. Moreover, as general counsel for several municipalities, Querrey & Harrow's attorneys regularly deal with government financial incentives, zoning requests, and agreements of all types, including the negotiations required to proceed with development plans. We have also negotiated employment contracts, real estate leasing contracts, and collective bargaining agreements.

The plaintiff analogized his case to *Uston v. Resorts Int'l Hotel, Inc.*, 445 A.2d 370 (1982), where the New Jersey Supreme Court held that its state casino regulations partially divested Resorts of its common law right to exclude. The *Uston* court reasoned that, since the state casino commission had exclusive authority to set the rules of casino games, and card counting was not against the rules, Resorts was precluded from excluding the plaintiff for card counting.

Similarly, Indiana's gaming regulations include an exhaustive set of blackjack regulations, and they do not prohibit card counting. 68 IAC 10-2-14. Casinos may impose additional standards, but they must first submit the proposed additional rules to the Gaming Commission for approval. 68 IAC 10-1-3(c)(4). Rules may be approved to ensure compliance with the regulations and to ensure the integrity of the game. Arguably, a rule barring card counting would help to ensure the integrity of the game. In *Donovan*, however, the casino had not submitted any additional rules regarding card counting for approval by the Commission.

The appellate court noted that, even in the absence of a rule prohibiting card counting, the casino is free to take countermeasures such as using more than one deck. Casinos may also employ automatic shuffling machines that reshuffle the cards every time a hand is dealt, which makes card counting impossible. 68 IAC 2-7.

Following the New Jersey Supreme Court in *Uston*, the *Donovan* court concluded that Grand Victoria could not take refuge in the common law right of exclusion, since the Gaming Commission had been given exclusive authority to set rules of riverboat casino games. Since the Commission did not enact a prohibition against card counting and Grand Victoria did not seek a prohibition by rule amendment, Grand Victoria has no right to exclude Donovan on the grounds that he plays the game under existing rules. "Donovan was ejected solely for his mental conduct in the course of casino blackjack, a Commission-regulated game, and thus his ejection is not protected by the common law."

The *Donovan* holding appears to be a victory for card counters who patronize Indiana riverboat casinos. However, some gamblers believe that the plaintiff in *Donovan* may have "shot himself in the foot", since Indiana casinos are likely to respond by taking legal countermeasures like using constant card shuffling machines.

Illinois courts have yet to address this issue, but the Seventh Circuit, applying Illinois law, expressly chose not to follow the *Uston* holding in the similar, but distinguishable context of exclusion of expert handicappers from Chicago Downs racetrack. *Brooks v. Chicago Downs Ass'n, Inc.*, 791 F.2d 512, 517 (7th Cir. (Ill.) 1986).

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***John Halstead**, an associate in our Merrillville, Indiana office, concentrates his practice in civil litigation, title defense, and mechanics liens. Prior to joining Querrey & Harrow, he gained experience as a plaintiff's attorney in personal injury, contract, and estate law, which provides him a view of opposing perspectives in a lawsuit or in a contract dispute.*

Mr. Halstead is a former law clerk to the Allen Superior Court and interned in the US District Court for the Southern District of Indiana. He was also the Director of the Indiana University Protective Order Project. If you have any questions regarding this article, please contact John via jhalstead@querrey.com, or via (219) 738-1820.

Bankruptcy Update: Bankruptcy Court Expands Its Definition Of An "Insider" When Determining If A Transfer Is A Preference Under § 547(b)(4)(A) Of The Bankruptcy Code

By: Christopher Harney – Chicago Office

The United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, recently held a member and manager of a limited liability company was an "insider" pursuant to § 547(b)(4)(A) of the Bankruptcy Code, because of the similarity between his relationship to the debtor and that of an officer or a director to a corporation.

The debtor, Longview Aluminum, LLC ("Longview") is a Delaware LLC. Initially, Dominic Forte owned a 12% distributional interest and a 12% voting share in Longview and was one of five members of its Board of Managers. On July 10, 2002, Forte filed a derivative complaint against Michael W. Lynch, who owned 51% of the company, alleging that Forte had been denied access to Longview's books and records and was prevented from participating in its business operations.

The parties entered into a settlement agreement providing an initial payment of $200,000.00 to Forte and the remaining $200,000 to be paid in eight monthly installments of $15,000.00. After the initial payment, Forte was to forfeit his interest in Longview and resign from his positions with the company. He could, however, reinstate his interest and positions upon default under the settlement. Longview made the initial $200,000.00 payment on November 7, 2002 and the first installment payment on January 16, 2003, but then filed for Chapter 11 bankruptcy on March 4, 2003.

The trustee filed an adversary complaint seeking to avoid the $200,000.00 payment as a preferential transfer. Forte argued that the $200,000.00 transfer is not a preference under Section 547(b) of the Bankruptcy Code, because it took place more than 90 days before the bankruptcy filing and he is not an "insider" under Section 547(b).

CASE SUCCESSES

Jennifer Medenwald Obtains Summary Judgment in Asbestos Mesothelioma Case

Jennifer Medenwald recently obtained summary judgment in the Cook County Law Division on behalf of a food store chain in a case of first impression in Cook County. The plaintiff's decedent died of mesothelioma as a result of exposure from asbestos. The asbestos exposure allegedly came from the insulation of baking ovens sold by Jennifer's client to the decedent's husband, who was a equipment refurbisher. Of note, the client was the only remaining defendant out of an original 21 defendants in the case.

Jan Farmans Obtains Not Guilty Verdict in Truck v. Bicycle Case

Jan Farmans obtained a not guilty verdict in Will County before Judge James Garrison. The plaintiff was a 15 year old minor at the time of the accident and was riding her bicycle in Plainfield, Illinois when she was struck by a pickup truck, driven by Jan's client. The plaintiff sustained a lacerated kidney, fractured wrist, which required surgery, and scars to her knees, which will require future medical care. The plaintiff asked for $160,000.00. The defense contended that the plaintiff failed to yield the right-of-way at the intersection where this occurrence took place.

Section 547(b) of the Bankruptcy Code allows a trustee to avoid as preferences, transfers that the debtor made to creditors before filing for bankruptcy. Under Section 550(a), any creditor who was provided a preference must then return them or their value to the bankruptcy estate for proper distribution among all creditors of the bankruptcy estate. § 547(b)(4)(A) provides that a transfer may be a preference if it occurred within 90 days before the bankruptcy filing, but for "insiders" it is a preference if it took place within a year of the filing.

§ 101(31)(B) of the Bankruptcy Code defines "insider," assuming the debtor is a "corporation," as follows:

> (i) director of the debtor;
>
> (ii) officer of the debtor;
>
> (iii) person in control of the debtor;
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> (iv) partnership in which the debtor is a general partner;
>
> (v) general partner of the debtor; or
>
> (vi) relative of a general partner, director, officer, or person in control of the debtor.

While a limited liability company is deemed to be a corporation under 101(31)(B), there is no consensus among the courts whether a member or manager of an LLC is an "insider" of the LLC. The court in this case explained that the definition of insider under §101(31) is "illustrative rather than exhaustive;" therefore, this term applies to individuals beyond those who hold the specified positions set forth in § 101(31)(B)."

Courts are split, however, as to the proper test to determine whether an individual not specifically covered by Section 101(31)(B) is an insider. Some courts, including the Ninth Circuit, follow what this article will refer to as the "control test," which determines whether or not a transferee had some control over the debtor.

Other courts use what this article will term, the "similarity test," which determines whether or not the transferee was in a similar relationship to the debtor as any of the per se insiders under § 101(31)(B) are to a corporation. Courts following the "similarity test" have found that if a member or a manger of an LLC holds a position substantially identical to the positions specified in § 101(31), such as a director or officer, then the LLC member or manager is an insider.

The court in this case decided to follow the "similarity test". The court emphasized that what is important is not simply the title of "director" or "officer" that renders an individual an insider, but rather it is the set of legal rights that a typical corporate director or officer holds.

The court determined that Forte's position as one of the five managers of Longview gave him a position equivalent to that of a corporate director. The court highlighted that under Delaware law, Longview's managers were named either by an LLC agreement or by the members of the company, and similarly, a corporation's officers are "appointed or designated" by bylaws or its directors. Furthermore, an LLC is managed by its members unless the LLC agreement provides otherwise, and similarly, a corporation is managed by or under the direction of a board of directors.

The court then pointed out that Longview's LLC agreement vests management authority, responsibility, and power in the Board of Managers and the Members, and grants the Board of Managers complete authority to act except for certain major decisions specifically reserved to members. The court found that under Delaware law and Longview's LLC agreement, Forte's

position as a manager and member was similar to that of a director of a corporation.

The court went on to reject Forte's argument that several cases support the proposition that, despite an analogous relationship to one of the per se insiders, a transferee is not an insider if she does not actively participate in the corporate management. The court held that the cases cited by Forte, "at most…stand for the proposition that insiders must be able to exercise some degree of control or influence over the debtor-but only if they do not have a formal legal relationship with the debtor that is among the examples listed in the statute or closely analogous to them." The court added that Forte held a position as manager and member until the date of the $200,000 transfer and only resigned after he received the funds. Furthermore, Forte obtained the settlement agreement, which is the very nature of the transfer at issue, as a result of a lawsuit claiming that he was entitled to exercise his management rights.

While it initially appears that this court adopts the "control test" and rejects the "similarity test," a closer inspection suggests that this court merely favors the "similarity test." Following this court's reasoning, if the transferee falls within one of the categories described in 101(31)(B), then she is an insider *per se*. If not, then the courts must look to see whether the relationship between the transferee and the debtor is analogous to the relationships between a debtor and any of the per se insiders. Lastly, if no such per se or analogous relationship exists, then the transferee must be able to exercise some degree of control or influence over the debtor to be found an "insider." While it is unclear whether and to what extent this court will embrace the "control test" in the future; it is clear that the court holds a clear preference for the "similarity test."

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***Christopher Harney**, an associate in our Chicago office, concentrates his practice in bankruptcy matters, construction liens/disputes and mortgage foreclosures.*

If you have any questions regarding this article, please contact Chris via charney@querrey.com, or via 312-540-7622. Questions regarding Querrey & Harrow's bankruptcy practice can also be directed to Group Chair Bob Benjamin, at rbenjamin@querrey.com.

Q&H Attorneys Vindicate Cook County Sheriff in 7th Circuit

Congratulations to **Dan Gallagher**, **Larry Kowalczyk** and **Chris Keleher** for obtaining a ruling overturning a trial court's verdict in a wrongful death case involving the Cook County Jail.

In the case, which involved the meningitis death of a detainee in custody at the jail on drug charges, the Seventh Circuit Court agreed with arguments raised by Dan, Larry and Chris that the trial court's verdict, finding the death was caused by the Sheriff's alleged policy of understaffing the jail, was inconsistent with the jury's finding that certain correctional officers were deliberately indifferent to complaints regarding the decedent's declining physical condition. In simple terms, if the guards were there to observe the decedent's declining health, issues regarding staffing were not the cause of his death.

Based on these successful arguments, the Seventh Circuit reversed the trial court's verdict and remanded the matter with instructions that the trial court enter judgment in the Sheriff's favor.

Constitutional Law Update: Supreme Court Dismisses Potentially Important Property Rights Case as Moot

By: Terrence Guolee – Chicago Office

In a closely watched case, the United States Supreme Court on December 8, 2009 dismissed as moot the claims in *Alvarez v. Smith*, a potentially important property rights case.

In the case, the Chicago Police Department seized property belonging to the plaintiffs, using the power granted by the Illinois Drug Asset Forfeiture Procedure Act (DAFPA). The State of Illinois, like most states and the federal government, authorizes police agencies to seize vehicles and cash involved in certain drug crimes. Even if the owner of the property did not participate in the crime, DAFPA allows the State to wait as many as 187 days before filing forfeiture proceedings, which test the legitimacy of the state's seizure in court. This forfeiture proceeding may then be delayed indefinitely for "good cause," or if there is a related proceeding in criminal court.

The plaintiffs filed suit in an Illinois federal district court under 42 U.S.C. Section 1983, arguing that when property is seized under the DAFPA, due process requires a prompt, postseizure, probable cause hearing. The district court dismissed, but the plaintiffs asked for a rehearing based on prior precedent which arguably prohibited the seizure of real property without a prior hearing. The U.S. Court of Appeals for the Seventh Circuit granted review.

On appeal, the Seventh Circuit held that the DAFPA did not provide adequate due process for an owner to contest the seizure of his property, reasoning the length of time between seizure and contest was too long (a maximum of 97 to 187 days). The court remanded the case and instructed the district court to devise a mechanism by which an owner can contest the validity of the retention of his property. Notable, was that many of the claimants had not been charged with any criminal charges.

Petitioner Anita Alvarez, the Cook County State's Attorney, sought review of the Seventh Circuit's decision, which in her view flouted Supreme Court precedent and created a conflict among the circuits. Alvarez argued that both Supreme Court precedent and authority from seven other circuits dictate that the courts ask only whether the delay before a forfeiture proceeding is unconstitutionally long and therefore requires dismissal of the proceeding. The plaintiffs countered that the Seventh and Second Circuits add another inquiry: whether, even if dismissal of the forfeiture action is not required, the burden of the seizure is so onerous that a pre-forfeiture probable cause hearing must be held.

Beverly Berneman Joins Ranks of Q&H Admittees Before United States Supreme Court

Congratulations to Chicago Shareholder **Beverly Berneman** who was recently admitted to practice before the United States Supreme Court. Beverly joins Q&H attorneys **Daniel Gallagher**, **Terrence Guolee**, **Larry Kowalczyk**, **Paul O'Grady**, **Kevin Caplis**, **Christopher Keleher** and **E. Leonard Rubin** who have also been admitted to practice before the country's highest court.

However, the Supreme Court decided that the case was moot because the State had settled the case and returned all three cars at issue to their owners prior to oral argument, and had also reached settlement agreements addressing the other seized property. In this respect, the Court held that Article III §2 of the U.S. Constitution permits it only to decide legal questions in the context of actual "cases" or "controversies," and an actual controversy must exist at all stages of review, not just when the complaint is filed.

On this basis, the Court found that there was no longer any actual controversy regarding ownership or possession of the underlying property, noting that there was no claim for damages before the Court; that there was no properly certified class or dispute over class certification; and the case did not fit within the category of cases that are "capable of repetition" while "evading review." Thus, the court found only an abstract dispute about the law remained.

The Court then vacated the judgment below, reasoning that it normally vacates lower court's judgments when cases become moot before it, which clears the path for re-litigation of the issues and preserves the rights of the parties, while prejudicing none by a "preliminary" decision. In this respect, the court found the mooting of the claims between the parties before it occurred more as a matter of "happenstance," as opposed to through a settlement based on the ruling of the Seventh Circuit.

While it was considered that the settlement may well have occurred, at least in part, as a result of the Seventh Circuit's decision, the Supreme Court found instead that the presence of the federal case played no significant role in the termination of plaintiffs' state-court forfeiture proceedings, finding that Plaintiffs' forfeiture cases took place with no procedural link to the case before it.

Interesting, is that the decision vacates the holding of the Seventh Circuit finding Illinois' practices under DAFPA were unconstitutional. This, despite that the Seventh Circuit clearly had jurisdiction over the case at the time it was decided. Nevertheless, the Supreme Court's decision not only avoids resolving the underlying constitutional issues, but also allows Illinois' Drug Asset Forfeiture Procedure Act (DAFPA) to stand, since the Court vacated the lower court decision striking it down.

What is unknown at this time is what police agencies in Illinois will do given that DAFPA is now once again available to municipalities.

COMMUNITY INVOLVEMENT

Berneman Appointed to ABA Intellectual Property Subcommittee

Beverly A. Berneman, Chair of the Intellectual Property Department, has been appointed to a special subcommittee of the American Bar Association Section of Intellectual Property Law. The subcommittee will focus on security interests in Intellectual Property Law.

Bruce Schoumacher Serves ISBA Subcommittee

Q&H shareholder **Bruce Schoumacher** is currently working with an ISBA Subcommittee on Construction Law to submit a proposal to the Illinois Continuing Legal Education committee to present a seminar in May, 2010. Bruce and shareholder **Jennifer Pohlenz** are to speak at the seminar.

While there are other challenges to drug forfeiture statutes pending around the country, both Illinois municipalities and people caught up in DAFPA forfeitures had been awaiting the Supreme Court's decision for guidance on what procedures would be deemed proper in their particular cases.

As a result of the Supreme Court's ruling, there now exists a situation where the Seventh Circuit is clearly antagonistic to DAFPA, but there exists no case decision striking down its provisions - such that police agencies may feel compelled to proceed under the law which, currently, stands as a valid and enforceable law in Illinois. Clearly further challenges to the act will follow should it once again be used by Illinois municipalities, but resolution of such new challenges could again take several years to work there way through the courts.

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***Terrence Guolee**, a shareholder in our Chicago has successfully represented defendants, plaintiffs and carriers in dozens of complex, multimillion dollar claims covering a wide area of facts and law, in both state and federal court*

If you have any questions regarding this article or Querrey & Harrow's municipal practice, please feel free to contact Terrence via tguolee@querrey.com, or via 312-540-7544.

Construction Law Update: Quantum Meruit and the Home Repair and Remodeling Act

By: Thomas J. Condon – Chicago Office

In a recent decision by the First District of the Illinois Appellate Court in *K. Miller Construction Company, Inc. v. Joseph and Francis McGinnis*, 2009 WL 2448568, the court held that the Illinois Home Repair and Remodeling Act ("Act"), 815 ILCS 513/1 *et seq.*, does not bar the equitable remedy of Quantum Meruit.

The decision contradicts a 2007 Fourth District Appellate Court case, *Smith v. Bogard*, 377 Ill.App.3d 842, 879 N.E.2d 543 (2007), in which the court held that permitting a recovery under Quantum Meruit would "run afoul of the legislators' intent of protecting consumers, would reward the deceptive practices and violate public policy." The court recognized the contradiction and stated that the previous court was incorrect in their analysis of the language of the Act, specifically stating that the Act "does not provide a clear and plain expression of the legislative intent to repeal the common law remedy." Further, the court reasoned the prevention of unjust enrichment clearly comports with the legislators' intent in passing the legislation.

The Act provides that it is "unlawful" for a contractor to charge for remodeling or repair work prior to obtaining a signed contract for work with a value over $1,000.00. The purpose of the Act is to facilitate communications between people in the home repair and remodeling business and their customers and promote fair and honest practices. It was designed to protect the average consumer in a transaction with a sophisticated contractor.

In this case, the McGinnis' contacted Miller's sole owner, a friend of theirs and a person who had performed work for them in the past, to perform $187,000.00 worth of remodeling work to their home. The work was to be done in accordance with a written proposal from another construction company. As they were familiar and comfortable with each other, they did not enter into a written contract. During the

course of the construction, the scope of the project was expanded significantly and, ultimately, the project costs ran up to $500,000.00. Again, the modifications were not reduced to writing. It is important to note that Mr. McGinnis is a real estate attorney.

During the early stages of the project, Miller sent invoices and they were paid. However, the McGinnis' stopped paying invoices and indicated that they would pay when the project was complete. Upon the completion of the project, the McGinnis' approved all of the construction work, with the exception of asking for a $300.00 credit to address minor flood damage. Notwithstanding, they refused to make any payments above $177,580.33.

As a result of the non-payment, K. Miller filed a three count complaint against the McGinnis'. The complaint sought a lien on the property for non-payment under an oral contract, payment under a breach of an oral contract, and compensation for labor, materials and services under Quantum Meruit. The McGinnis' filed a motion to dismiss all counts on the theory that they were barred under the Act. The Trial Court granted their motion and dismissed all counts of the complaint.

The appellate court upheld the dismissal of the two counts based upon breach of contract as the contract between the parties was oral and the plaintiff's action in attempting to collect was unlawful under the Act. However, the court was troubled by the dismissal of the Quantum Merit claim.

Quantum Meruit, according to Black's Law Dictionary, means "as much as he deserves." The theory of Quantum Merit is to enable a person to recover the reasonable value of services which were non-gratuitously provided where there is no contract to determine specifically how much should be paid. To recover under Quantum Merit theory, a plaintiff must prove that (1) he performed a service to benefit the defendant; (2) he did not perform the service gratuitously; (3) that the defendant accepted the service and no contract existed to prescribe the payment of the service.

In reviewing the legislative history of the Act, the court stated there was never any mention of Quantum Merit. Accordingly, it is difficult to determine whether or not there was a legislative intent to preclude the theory of recovery. The court continued that, when confronted with a contention of determining the intent of legislation to repeal a common law remedy, "intent will not be presumed from ambiguous or doubtful language."

PUBLICATIONS

Chicago office shareholder **Larry Kowalczyk's** article, *Video Gaming - Flush with Questions*, will be published in the Winter issue of *Seasonings*, the quarterly publication of the Illinois Restaurant Association.

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Congratulations to Chicago office associate **Christopher Keleher**, who has had his article, *The Repercussions of Anonymous Juries*, accepted for publication in the University of San Francisco Law Review.

Further, the court was troubled that a contractor would have no recourse whatsoever to recover the value of services performed without a written contract, regardless of the situation. In this case the purchaser was a lawyer that was regularly engaged in a real estate practice. Clearly, he was not unsophisticated and, therefore, the McGinnis' were not those that the legislature sought to protect. Further, the court stated that "outside of the context of the Act, no party would dispute that a trial on the Quantum Merit claim will render justice" to both parties.

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***Thomas J. Condon, Jr.**, an associate in our Chicago office, has experience in the areas of commercial, construction, liquor liability, accident and municipal litigation. He has successfully tried multiple cases to verdict.*

Previously, Tom was the Assistant Department Counsel for the City of Chicago Department of Buildings. Tom prosecuted violations of the City of Chicago Building Code, drafted and analyzed proposed legislation and amendments to the Building Code and advised management on legal issues related to departmental operations. Additionally, Tom served as the Director of the City of Chicago's Fast Track demolition program.

If you have any questions regarding this article, or matters concerning the Home Repair and Remodeling Act, please contact Tom via tcondon@querrey.com, or via 312-540-7606.

Q&H Attorneys Prevail Before Seventh Circuit in Municipal Water Case

Congratulations to **Paul Rettberg** and **Brandon Lemley** on obtaining a ruling from the Seventh Circuit Appellate Court upholding the summary judgment order they obtained in the U.S. District Court in a class action filed against the Village of Lisle, Illinois, alleging denial of equal protection.

Plaintiffs sued the Village of Lisle, claiming that Lisle had violated the Equal Protection Clause of the Fourteenth Amendment and state negligence laws by discriminating against them when determining the reach of the Village's water service. The district court certified a class consisting of all individuals who owned or resided in residential property in the affected subdivision. Subsequently, the district court granted Lisle's summary judgment motion on the equal protection claim, accepting Paul and Brandon's arguments that the decisions made on the water service were proper municipal decisions, and declined to exercise supplemental jurisdiction over plaintiff's state law claims.