Qued In

A Monthly Legal Newsletter from
Querrey & Harrow

March 2011

Editors: *Terrence Guolee and Jillian Taylor*

Employment Law Update: U.S. Supreme Court Lashes Out At Employers With "Cats Paw" Ruling in *Staub v. Proctor Hospital*

By: **Terrence Guolee**- Chicago, Illinois

Construction Law Update: Illinois Supreme Court Clarifies Contractual Limits on Scope of Duty in *Thompson v. Gordon*

By: **Brian Begley** – Joliet, Illinois

Litigation Update: Politics and Sports Intersect- With Free Speech The Winner.

By: **Patrick S. Wall** – Chicago, Illinois

Recent Case Successes

- Querrey & Harrow Obtains Dismissal On Behalf Of Police Officer Who Pepper Sprayed An Intoxicated Judge
- Querrey & Harrow Obtains Important Victory for Taxpayers In Seventh Circuit Antitrust Decision
- Burden and Turiello Obtain Summary Judgment for Homeowners Association
- Hat Trick of Success in Joliet Office

Community Involvement

- Three Querrey & Harrow Attorneys Seek To Serve Their Local School Boards
- Q&H Proudly Sponsors the 11th Annual Lew Blond Memorial Run/Walk

Seminars

- Pohlenz Counsels General Counsel Association on Environmental Construction Strategies
- Schoumacher to Speak at ISBA Seminar on Mechanics Liens

CHICAGO
175 W. Jackson Boulevard
Chicago, IL 60604
Tel: 312.540.7000
Toll Free: 800.678.2756

JOLIET, IL
3180 Theodore Street
Joliet, IL 60435
Tel: 815.726.1600

MERRILLVILLE, IN
233 East 84th Drive
Merrillville, IN 46410
Tel: 219.738.1820

OAK LAWN, IL
4550 W. 103rd Street
Oak Lawn, IL 60653
Tel: 708.424.0200

PEORIA, IL
416 Main Street
Peoria, IL 61602
Tel: 309.676.7777

WAUKEGAN, IL
415 W. Washington Street
Waukegan, IL 60085
Tel: 847.249.4400

WHEATON, IL
300 S. County Farm Road
Wheaton, IL 60187
Tel: 630.653.2600

Employment Law Update:
U.S. Supreme Court Lashes Out At Employers
With "Cats Paw" Ruling in *Staub v. Proctor Hospital*

By: Terrence Guolee - Chicago office

The Supreme Court, on March 1, 2011 in *Staub v. Proctor Hospital,* broadened the potential liability of employers for job discrimination. In an 8-0 ruling (Justice Kagan did not participate in the case), the court - in a decision authored by Justice Scalia - held that employers may be held liable when an unbiased supervisor fires an employee based on the actions of an allegedly biased lower-level manager. In particular, the court dealt with conflicts between various lower district court decisions over the so-called "cat's paw" theory of job discrimination, under which employers can be held liable for the discriminatory actions of a supervisor who did not make the ultimate employment decision.

Plaintiff Staub was an angiography technician at a hospital and a member of the U.S. Army Reserve. Staub was required by the Army to attend drills and train full time at various times during the year. However, Staub claimed his immediate supervisor and her supervisor at the hospital were hostile to his military obligations. Per plaintiff, they made that hostility known to him and co-workers through comments, by scheduling him for additional shifts without notice and filing false disciplinary warnings in his file.

In 2004, a hospital human relations vice-president fired Staub, relying on an accusation by Staub's immediate supervisor and after reviewing that supervisor's personnel report. Staub then filed suit under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), claiming his firing was motivated by hostility to his Army Reserve obligations. Under the act, an employer is liable for an adverse job action if the employee's military or reserve membership is a "motivating factor" in the employer's action.

Following trial, a jury agreed with Staub and awarded him $57,640 in damages. However, the Seventh Circuit Court of Appeals (which covers federal cases in Wisconsin, Illinois and Indiana) reversed, ruling that a "cat's paw" case could not succeed unless the lower-level supervisor exercised "singular influence" over the actual decision-maker, such that the decision to fire him was the product of "blind reliance." Because the hospital vice-president was not wholly dependent on Staub's supervisors' advice, the appellate court held the hospital was not liable.

In reversing the Seventh Circuit, Justice Scalia said the "central difficulty" in the case involved interpreting the phrase "motivating factor in the employer's action." Rejecting the Seventh Circuit's singular influence test, Scalia reviewed general tort law and concluded, "[t]he employer is at fault because one of its agents committed an action based on discriminatory animus that was intended to cause, and did in fact cause, an adverse employment decision." In effect, the actions of the lower-level supervisors was the proximate cause of the job action.

Justices Alito and Thomas concurred in the judgment, but not the reasoning. Alito argued that for discrimination to be a motivating factor in an employer's action, it must be in the mind of the person making the decision to take the job action. The employer's action in this case, he said, was the decision to fire Staub. So Staub had to prove the discrimination motivated that specific action. Alito also warned that the Court's decision "will impose liability unfairly on employers who make every effort to comply with the law, and it may have the adverse effect of discouraging employers from hiring applicants who are members of the Reserves or the National Guard."

In response, Justice Scalia called "speculative and implausible" Alito's prediction that "our Nation's employers will systematically disfavor members of the armed services in their hiring decisions to avoid the possibility of cat's paw

liability, a policy that would violate USERRA in any event."

Of most importance for employers is that it is very possible that the Supreme Court's decision on cat's paw liability will affect cases brought under Title VII of the Civil Rights Act of 1964. Indeed, Justice Scalia noted that the Civil Rights Act also uses "motivating factor" language.

Likewise, while the Age Discrimination in Employment Act (ADEA) uses a different standard, it is possible lower courts will look at the Supreme Court's proximate cause test as a guide to considering cat's paw claims. As an example, we recently obtained summary judgment and sanctions against the plaintiff employee in an ADEA "cat's paw" age discrimination case brought by a deputy sheriff, with these orders affirmed by the Seventh Circuit on appeal. In the case, the Seventh Circuit discussed the need for a "causal relation" between a lower-level supervisor's alleged discriminatory statement and the Sheriff's eventual employment decision before liability could be assessed under "cat's paw" theory. See *Mach v. Will County Sheriff*, 580 F.3d 495, 500 (7th Cir. 2009).

Analysis of proximate cause issues in an employment context often results in fact-intensive examinations of conflicting testimony between the employee and lower-level supervisors on one hand, and conflicting evidence on how persuasive the recommendations of the lower supervisor(s) were on the ultimate decision-maker. Indeed, in addition to requiring extensive and expensive discovery, such conflicting fact questions often serve as the basis to deny motions for summary judgment brought by defendant employers. At a minimum, the Supreme Court's decision in *Staub* threatens greater litigation costs and risks on employers in discrimination claims.

In order to avoid actions of claimed animus by lower-level supervisors, employers should be careful to document the reasons job actions were taken, the deficiencies noted in the subject employee's job performance and the particular supervisors involved in the decision on the job action. Likewise, each supervisor's input to the decision should be well-documented. Only with such information can an employer counteract claims that any particular lower-level supervisor's claimed discriminatory actions or comments had any effect on the eventual decision made regarding an employee's job status.

* * *

***Terrence Guolee**, a shareholder in our Chicago office and an editor of this newsletter, 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, please contact Terrence via tguolee@querrey.com, or via 312-540-7544.

Querrey & Harrow Obtains Dismissal On Behalf Of Police Officer Who Pepper Sprayed An Intoxicated Judge



Through strategic and aggressive discovery, Chicago office shareholders **Paul O'Grady**, **Dan Gallagher** and **Brandon Lemley** convinced the plaintiff in a high-profile excessive force case to abandon the litigation altogether and dismiss the case with prejudice. The plaintiff was a judge in Lake County, Illinois, who was pulled over by a police officer and arrested for driving under the influence. During the traffic stop, the plaintiff reached for the ignition and began to roll the window up, prompting the officer to use pepper spray in an effort to prevent the plaintiff from fleeing.

After aggressive discovery by Querrey & Harrow, the plaintiff decided to dismiss the case with prejudice, bringing about an early, cost-effective end to a high-profile case.

Construction Law Update: Illinois Supreme Court Clarifies Contractual Limits on Scope of Duty in *Thompson v. Gordon*

By: Brian Begley - Joliet office

The Illinois Supreme Court's recent decision in *Thompson v. Gordon*, 2011 WL 190290, preserves the precedent established by the Illinois Supreme Court in *Ferentchak v. Village of Frankfort*, 105 Ill.2d. 474 (1985), establishing that the scope of duty owed is defined by the terms of the contract between the parties.

Plaintiff-appellee, Corinne Thompson, filed a complaint grounded in negligence in the Circuit Court of Lake County on behalf of the estates of her husband and daughter against engineering firms hired by a shopping mall developer to design a roadway interchange and the replacement of a bridge deck. The engineers entered into a contract to, in part, replace a bridge deck median which previously stood six inches high and approximately four feet wide. Following replacement of said median to essentially the same dimensions, on November 27, 1998, decedents Trevor and Amber Thompson were traveling westbound on the bridge when Christy Gordon, traveling eastbound, swerved to avoid another vehicle, proceeded over the median and was vaulted into the air, eventually landing on top of Thompson's vehicle, killing Trevor and Amber Thompson.

Essentially, plaintiff's complaint alleged that the engineers were negligent in breaching their duty to construct a "Jersey barrier" median to prevent crossover of oncoming traffic.

The defendant engineers at the trial court level filed a motion for summary judgment claiming that they owed no duty where the contract with the developer called only for replacement of the median as it previously existed and did not call for further analysis or design. In response, plaintiffs filed an affidavit of their expert witness asserting that the defendants failed to meet the "ordinary standard of care" in performing the replacement of said median. The trial court, relying on the Illinois Supreme Court's decision in *Ferentchak*, granted the defendant's motion asserting that the defendant's duty to plaintiff was circumscribed or limited by the terms of the contract and the scope of their work was determined by the contractual undertaking, which did not call for an assessment of the sufficiency of the median barrier constructed.

On appeal to the Second District Appellate Court, plaintiffs argued that although the duty established by the terms of the contract called only for replacement of the bridge deck median, the standard of care clause obligated the defendants to act within the prescribed standard of care, thus establishing a question of fact. Through the affidavit of their disclosed expert, plaintiffs argued that an engineer using the degree of skill and diligence normally employed by professional engineers would have considered and designed an improved median barrier. In response, the defendants adopted the trial court's reliance on the ruling in *Ferentchak* in claiming that the defendants' duties were confined to those explicitly mentioned in the contract. Rejecting the defendants' reliance on the ruling in *Ferentchak*, the Second District distinguished that ruling from the case at hand in holding that the engineer in *Ferentchak* had no duty because he had no knowledge about the defective design at issue and no involvement in creating it. In the alternative, per the Second District, the defendant engineers had both knowledge of the defective design at issue and involvement in creating it.

On appeal to the Illinois Supreme Court, defendants again argued that the contract did not impose a duty to recommend or design a "Jersey barrier" and that the appellate court erred in relying upon the affidavit of plaintiff's disclosed expert in considering the scope of the defendants' duty. In response, plaintiffs contended that the defendants mischaracterized the use of the expert's affidavit, noting that the Second District Appellate Court majority determined through the language of the contract that defendants owed a standard of care to use

the degree of skill and diligence normally employed by professional engineers in designing the bridge deck and that the appellate court did not err in looking to their expert's affidavit to determine whether plaintiffs had presented any evidence that defendants breached their duty.

Adopting the dissenting opinion of the Second District Appellate Court, Justice Thomas delivered the Supreme Court's opinion affirming the decision of the trial court, holding that the express terms of the contract between defendant engineers and the development company established the duty owed by the defendant and specifically limited the scope of the duty owed. Clarifying its ruling in *Ferentchak*, the Supreme Court noted that regardless of the Second District Appellate Court's view of the "essence" of the ruling, the actual holding in *Ferentchak* was that the degree of skill and care required of the engineer in that case depended on his contractual obligation and the scope of that duty was defined by the contract. Similarly, in the present case, all parties agreed that the contract called specifically for replacement of the median requiring defendants to "use a degree of skill and diligence normally employed by professional engineers performing the same or similar services". Indeed, the use of the phrase "same or similar services" expressly limited the scope of defendants' standard of care to replacing the bridge deck.

Accordingly, the application of the recent decision in *Thompson v. Gordon* serves to clarify the precedent established in *Ferentchak* that the duty of care owed by the defendant and the scope of said duty is expressly limited to those duties imposed by the express terms of the contract. Of import, this decision provides design and engineering companies and others doing work under contracts broad protections as long as their duties and expectations under their contracts are properly described. With proper scope of service language and discussion of what work contractors are to provide, potential liability for accidents allegedly caused by the failure to perform extra services can be avoided.

Querrey & Harrow has extensive experience in drafting construction and other service contracts and advising parties both at the job development and contracting phases of projects, as well as in defending contractors in the event litigation follows.

* * *

***Brian Begley**, an associate in our Joliet, Illinois office, concentrates his practice in municipal and premises liability.*

If you have any questions regarding this article, please contact Brian via bbegley@querrey.com, or via 815-726-8153.

Three Querrey & Harrow Attorneys Seek To Serve Their Local School Boards

Good luck to Querrey & Harrow's lawyers running for spots on their local school boards in the April 5, 2011 consolidated municipal election, adding on to the firm's over 70 years of service to local communities throughout Illinois and northern Indiana. Chicago shareholder **James Bream** is running to retain his spot as President of Glenview School District 30, Chicago shareholder **Terrence Guolee** is running for a spot on Skokie School District 73.5 and Chicago associate **R. Scott Rochelle** is running for a spot on the board of Evanston School District 202.

For more on their campaigns, visit their websites (click on names): James Bream, Terrence Guolee and R. Scott Rochelle.

Litigation Update:
Politics and Sports Intersect- With Free Speech The Winner.

By: Patrick S. Wall - Chicago office

The Second District recently held that a petition to remove a basketball coach, involving blog postings, letters to the school board and local newspapers, and comments on a call-in radio show were protected speech under the SLAPP Act, a recent legislative product, which protects statements in the furtherance of issues in the public interest. *Sandholm v. Kuecker*, No. 2-09-1015 (2d Dist. Oct. 18, 2010).

SLAPP stands for "Strategic Lawsuit Against Public Participation". It refers to lawsuits filed by targets of the campaigns, which look to "bury" defendants in legal bills and force them to stop their campaign. The Act allows defendants to dismiss suits and recover attorneys' fees when sued for their public statements. In this case, a high school's former head basketball coach desired to punish defendants for their campaign to fire him.

The SLAPP Act states:

> [I]t is declared to be the public policy of the State of Illinois that the constitutional rights of citizens and organizations to be involved and participate freely in the process of government must be encouraged and safeguarded with great diligence. Civil actions for money damages have been filed against citizens and organizations of this State as a result of their valid exercise of their constitutional rights to petition, speak freely, associate freely, and otherwise participate in and communicate with government. The threat of SLAPPs significantly chills and diminishes citizen participation in government. This abuse has been used as a means of intimidating, harassing, or punishing citizens for involving themselves in public affairs. It is in the public interest and it is the purpose of this Act to strike a balance between the rights of persons to file lawsuits for injury and the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government; to protect and encourage public participation in government to the maximum extent permitted by law..... *735 ILCS 110/5*.

Q&H Proudly Sponsors the 11th Annual Lew Blond Memorial Run/Walk

Q&H is again a leading sponsor of the 11th Annual Lew Blond Memorial 5k Run/Walk, scheduled for Saturday, May 21, 2011 at Maple School in Northbrook, Illinois. Q&H is proud to have been a sponsor of the event since its inception in 2001. Chicago office shareholder **Jim Bream** is a lead organizer of the run each year. Over 750 people attended the event in 2010 at Maple School. The event was organized ten years ago to memorialize Lew Blond, beloved Maple School teacher, who passed away from ALS in February 2000. The race raises money for several charitable purposes: The Les Turner ALS Foundation, scholarships for graduating seniors at Glenbrook North and South High Schools, and school projects funded by the District 30 Education Foundation.

Funds raised from the event allowed the District to purchase equipment for the Lew Blond Applied Technology Lab at Maple School. Sign up now for the race at https://www.signmeup.com/site/online-event-registration/70751, and become a "fan" of the Lew Blond Run/Walk on Facebook at http://www.facebook.com/pages/The-Lew-Blond-Run/376067647179?ref=ts.

As background, plaintiff was hired as a teacher and head basketball coach at Dixon High School for the 1999-2000 school year. In 2003, plaintiff was made Athletic Director for the high school as well. Plaintiff always received positive performance evaluations during his time at Dixon High School.

Beginning in February 2008, defendants started a campaign to have plaintiff removed as basketball coach and athletic director due to their disagreement with his coaching style. Defendants approached members of the Dixon School District Board to complain about plaintiff's coaching style and performance. When the school board and school administration did not remove plaintiff from his positions, defendants continued the campaign against him, forming a group known as the "Save Dixon Sports Committee."

On April 23, 2008, the school board removed plaintiff as basketball coach, but retained him as the school's athletic director. On April 25, 2008, plaintiff filed his initial complaint, which alleged defendants said "plaintiff adversely performed his job that his coaching philosophy was to verbally abuse, bully, discourage, and desecrate players; one citizen said plaintiff was criticizing to the brink of abuse, demands bordering on slavery, [and] serious[ly] void of true citizenship". Defendants said plaintiff was a "pshyco [sic] nut [who] talks in circles and is only coaching for his glory" and that he did not care about the players. Defendants further stated "plaintiff abused his power, that plaintiff claimed that girls' sports were not really sports; that the Dixon Boosters were a bunch of losers, that plaintiff thought that anyone who did not play basketball was not loyal, and that plaintiff stated that he did not owe the people of Dixon anything".

The defendants moved to dismiss, raising the SLAPP Act. The trial court found for all defendants, and dismissed the complaint. The court stated the SLAPP Act applied to "any claim based on, related to, or in response to any act or acts of the moving party in furtherance of the moving party's rights to petition, speak, assemble, or otherwise participate in government". Therefore, defendants' statements were protected speech, and immune from legal challenge.

Hat Trick of Success in Joliet Office


Joliet shareholder **Janet Farmans** and associate **Aaron DeAngelis** recently received a favorable jury verdict for a rear-end automobile accident. The impact was substantial in that it caused the plaintiff's vehicle to strike the vehicle directly in front of her. The plaintiff alleged that as a result of the accident she suffered severe pain in her head, neck and right elbow, and underwent multiple surgeries on her right elbow. The defendant admitted negligence, but disputed the nature and extent of the plaintiff's injuries. At the conclusion of trial, the plaintiff sought nearly $200,000 in damages for medical expenses, pain and suffering and lost wages. A Will County jury returned a verdict in favor of the plaintiff for only $30,000.

Janet and Aaron also recently obtained summary judgment in a case alleging that their client negligently renovated her former residence prior to moving out and relinquishing control and possession of the property to her ex-husband/co-defendant. In the case, the plaintiff sustained a traumatic brain injury, which required several brain surgeries, when he fell down the stairwell at the former residence. Ultimately, summary judgment was granted on the basis that the client could not be held liable for the injuries sustained by the plaintiff subsequent to her transfer of possession and control of the property. The plaintiff sought damages in excess of $3 Million.

Janet also obtained a very favorable settlement for her client, an owner of an apartment building. The plaintiff alleged that he sustained a fracture to his foot and other injuries, including a deformed toe, when he tripped on a seam in the carpet at the apartment complex owned by her client. The plaintiff incurred over $30,000 in medical expenses. The case settled on the eve of trial for only $10,000.

On appeal, plaintiff argued: (1) the SLAPP Act deprives him of his constitutional right to remedies for his injuries; (2) defendants' conduct was not performed with the genuine aim of procuring favorable government action; and (3) the trial court failed to strike a balance between the rights of persons to file lawsuits and the constitutional rights of persons to petition and participate in the government. Defendants countered that the Act is broad, constitutional, and applicable to the facts of this case

In particular, Plaintiff argued the law was unconstitutional in that it prevented him from a remedy under the Illinois Constitution. Article I, section 12, of the Illinois Constitution provides:

> Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly. *Ill. Const. 1970, art. I, §12*.

The court rejected plaintiff's argument. They stated "Article I, section 12, has been held to represent an *expression* of philosophy rather than a *mandate* for a certain remedy in any specific form".

Next, plaintiff argued that the Act did not apply to his situation. Specifically, plaintiff argued that the trial court was wrong in determining the Act protected defendants' statements made *outside the actual petition* to the school board. Defendants argued that the Act applied to their statements made outside the school board meeting.

The court sided with the defendants. Specifically, the appellate court held the privilege will apply where: (1) the defendant's acts were in furtherance of his rights to petition, speak, associate, or otherwise participate in government to obtain favorable government action; (2) the plaintiff's claim is based on, related to, or in response to the defendant's "acts in furtherance"; and (3) the plaintiff fails to produce clear and convincing evidence that the defendant's acts were not genuinely aimed at procuring favorable government action. *Id.*

Burden and Turiello Obtain Summary Judgment for Homeowners Association


Chicago shareholders **Ernie Burden** and **Jennifer Turiello** were successful in obtaining a summary judgment ruling on behalf of their clients, a homeowners association and a real estate management company. Plaintiff, who is a member of the homeowners association, brought a lawsuit after suffering severe and permanent injuries when she slipped while attempting to ascend a stainless steel ladder in the deep end of the Association's pool. The plaintiff alleged that at the time of the accident, the pool's ladder was in a state of disrepair and it lacked sufficient slip resistance surface on the ladder's rungs.

The plaintiff disclosed a park recreational expert who testified that the ladder was substandard. On behalf the defendants, Q&H retained a former U.S. Naval Academy mechanical engineer, who tested the ladder and opined that it met industry standards for sufficient slip resistance.

The plaintiff demanded $1.5 million dollars to settle. In granting defendants' motion for summary judgment, the circuit court opined that, as a matter of law, the defendants could not be held liable for the plaintiff's injuries because they did not have prior knowledge of any alleged defective condition of the pool's ladder.

To highlight how defendants statements were "acts in furtherance", the court cited how:

> Defendants first complained to the Dixon High School principal, the Superintendent, and members of the school board. After a school board meeting that did not end in termination of the head coach, defendants sought to gain more support through a website and speaking publicly. This is part of the process of influencing the government to make a decision in person's favor. Defendants had a right to participate in this process.

In rejecting plaintiff's argument, the court said, the school board could hear defendants' complaints more than once and change its mind. It also found plaintiff "ignored the reality that, oftentimes, governmental bodies react to increasing numbers or public pressure".

Plaintiff next argued the recall campaign was not a "government process". The appellate court again disagreed. It found that a school board decision is a government process. Specifically, Dixon High School was a public school, and plaintiff was a public high school employee. Defendants sought action by the school board, and the school board acts under the authority granted to it by the laws of the state. See *105 ILCS 5/10 et seq*. (West 2008). Further, federal courts have previously deemed a campaign to remove a school principal as "classic political speech," as "it is direct involvement in governance." *Stevens v. Tillman*, 855 F.2d 394, 403 (7th Cir. 1988).

As the Act states, defendants are "immune from liability, regardless of intent or purpose, except when not genuinely aimed at procuring favorable government action." *735 ILCS 110/15* (West 2008). "Intent or purpose" is not considered unless a reasonable person could not expect a favorable government outcome. Such was not the case here, as a recall campaign could obtain the dismissal of the head coach. Thus, the appellate court agreed with the trial court that defendants acted in furtherance of their rights. For the reasons stated within, the appellate court affirmed the trial court's dismissal of the complaint.

The provisions found in this article would be well served when dealing with other potential immunity claims. It is important for all to take note that this Act provides wide, blanket immunity for acts and statements by citizens. This even holds true for those instances that may be deemed defamatory, and are outside government proceedings. Where most will feel the impact however, is in the pocketbook. Civil law does not usually award fees to the prevailing party, but the SLAPP Act allows for recovery of attorneys fees associated with bringing the motion to dismiss. In this claim alone, the court awarded attorney fees in the amount of approximately $54,000.

* * *

***Patrick Wall**, an associate in our Chicago office, concentrates his practice in the defense of medical malpractice and Nursing Home Care Act litigation. He has represented individuals and corporations in matters through all phases of litigation including trying several matters to verdict. Additionally, Pat has assisted with large-scale commercial litigation and research projects in the construction, commercial, real estate, employment, intellectual property and environmental practice areas*

If you have any questions regarding this article, contact Pat via pwall@querrey.com, or via 312-540-7598.

Querrey & Harrow Obtains Important Victory of Taxpayers In Seventh Circuit Antitrust Decision



On March 14, 2011, the Seventh Circuit issued an important victory for municipalities across Illinois. In *Active Disposal v. City of Darien*, No. 10-2568, the Court held for a group of municipalities represented by Querrey & Harrow shareholders **Paul Rettberg**, **Christopher Keleher** and **Brandon Lemley**. The case was brought as a class-action on behalf of several waste haulers as well as a class of customers who used the haulers. The catalyst for the suit was municipal ordinances granting exclusive contracts to a single waste hauler to provide roll off dumpsters. Such dumpsters are a common sight in residential areas, typically used for home remodeling and construction projects.

The exclusivity ordinances facilitated the health and safety of the municipalities because, inter alia, they required waste haulers to demonstrate and abide by safety requirements. Nevertheless, the class claimed the municipalities' exclusive contracts violated federal antitrust law. The municipalities prevailed in the district court. The district court held that the exclusive contracts fell within the state-action exception to antitrust law and dismissed the complaint. The state-action doctrine, as its name suggests, allows municipalities to engage in conduct that would otherwise violate antitrust law when the conduct is authorized by the state. The Seventh Circuit affirmed. The appeals court determined the state-action doctrine applied to the municipalities' contracts for trash disposal. It reasoned that anti-competitive effects were a foreseeable result of Illinois's authorization for municipalities to make contracts for the collection and disposition of roll off waste.

The Seventh Circuit's decision reflects the notion that municipalities need freedom and flexibility in dealing with waste issues. The *Active Disposal* decision preserves the ability of municipalities across Illinois to streamline how they contract with waste haulers and other vendors.

SEMINARS

Pohlenz Counsels General Counsel Association on Environmental Construction Strategies

On March 8, 2011, Chicago shareholder Jennifer Sackett Pohlenz spoke at the General Counsel Association's luncheon in Vernon Hills, Illinois on the topic of Environmental Strategies in Construction.

Schoumacher to Speak at ISBA Seminar on Mechanics Liens

Chicago shareholder **Bruce Schoumacher** will speak on about "Perfecting Mechanics Liens on Private Property" at an upcoming ISBA seminar on April 8, 2011 at Northern Illinois University. The program is designed as a primer for construction lawyers, real estate practitioners, and general practice attorneys with basic to intermediate practice experience. For more information, visit http://www.isba.org/cle/2011/04/08/constructionlaw.