

KEVIN KOLTON

Sculpting Construction Clients' Success

by Mike Bailey

Whether he is representing iconic sports legend Michael Jordan, a local concrete contractor, or a large utility, Kevin Kolton's goal is always the same: cut to the heart of the issue and find a quick but fair resolution.

That clarity and the ability to quickly analyze complex issues have made Kolton one of the premier construction law attorneys in Illinois.

But that unparalleled success has not changed his intense focus and complete dedication to his clients. "He is the epitome of what I think a lawyer should be," says Eamonn

"I sat in with the lawyers as we discussed certain legal matters, and I was intrigued by the law," he recalls. "And a lot of times, I had to sit on my hands and be quiet while they were discussing a course of action because I thought there were more creative solutions than what was being proposed."

So, in 1985, Kolton enrolled in law school. Like many who come late to the profession, it was a three-and-a-half year odyssey of long nights of reading and studying and long days at work.

deferred to the next semester, and Darlene and I got married."

Both of Kolton's decisions proved beneficial: his law career catapulted him to the top of his profession and his 25-year marriage to Darlene is stronger than ever ("She's my rock, my best friend.")

While in law school, Kolton formed a close bond with two classmates who were also leaving one career for the field of law. Together, they pushed each other to study and work hard. "We had a lot of classes together and I guess we took it more seriously than other younger students. We all graduated near the top of our class because of it."

After graduation, the Koltons faced another question: in which state should he take the bar exam? "We wrestled with that for awhile. I grew up in Evanston and graduated from Evanston High School. I had also clerked for three firms and had job offers from firms in Houston and Chicago."

In the end, Kolton came to Chicago to work with nationally-known construction law attorney and mentor Paul Lurie. After a brief stay at another firm, he landed with Lurie at Schiff Hardin.

Leaving Egos at the Door

Schiff Hardin's approach to construction law was unique then and remains unique to this day, Kolton says. Instead of one or two lawyers whose practice is centered on construction law, Schiff Hardin has assembled a team of 12 attorneys with a combined 200 years of experience in the field (almost all of it together as a team), all with different areas of expertise.

"We have a construction group," Kolton says. "Ken Roberts is co-chairman of the group and is also on the management committee of the firm so we are well-represented there."

Roberts says the construction law department operates as a unified team, involved in projects controls, budget and schedule. "We offer an independent view to the board and management," he says.

Roberts noted that the Schiff Hardin Construction Law Group has brought in seven projects of more than \$1 billion each with no

McCauley, a contractor who credits Kolton with saving his business from ruin. "I owe him my life."

Like many successful lawyers, Kolton's career initially took a different path. But today, his expertise and style is in demand across the country as he and his colleagues have built the construction law team at Chicago's **Schiff Hardin LLP** into a one-of-a-kind operation with clients across the United States and Canada.

Kolton graduated from the University of Illinois in 1981 with a degree in engineering. He was hired by Borg-Warner in its air conditioning unit and moved to Houston but then realized that his interests lay elsewhere.

He chose South Texas College of Law because it had a night school. "So, I worked from 8-5 at Borg-Warner and then from 6 p.m. until about 2 a.m. for law school; classes, reading, papers, etc."

If that wasn't enough stress, Kolton and his fiancée, Darlene, decided to get married during his first semester of law school. "But I discovered the final exams were scheduled for my wedding day."

That's when Darlene learned the field of law requires family to be flexible. "My philosophy is to do whatever you have to do. I knew we could work around it," she says.

They did. "I was able to get the finals



litigation, using mediation to resolve disputes and thus keeping the projects on schedule.

The vision that created a group of construction law specialists to handle all aspects of a project elevated the Schiff Hardin team to the first tier of construction law firms in Illinois as ranked by the UK-based *Chambers USA 2010 Edition*.

"We have been able to recruit lawyers from other firms because of our unique approach. We focus on long-term utility construction projects, those lasting anywhere from one to ten years. We go where the work is: Canada, Kansas City, Maryland, the East coast, etc."

"Each member of our team has an area of expertise to handle all the moving pieces on these huge projects, everything from payment to vendors, change orders, and quality issues. Any time an issue arises that one of us needs to address, we call him or her in. Our group is so successful because we leave our egos at the door. We don't hesitate to bring in another member of our group if we believe that his or her knowledge is greater than our own about a specific issue," he says. "We work for the client."

"I could get a call today from someone on our team that I need to be in Kansas City tomorrow morning to handle an urgent issue. We feel comfortable with each other and know the individual skill sets we possess. And the good thing is, we've had almost no turnover in the group; [we have the] same individuals we started with so we've all worked together for years."

Remarkable Achievements

That expertise was put to the test in May, 2008, when a multi-story crane collapsed on the site of a Kansas City Power & Light construction site. One man was killed and the wreckage of the crane was strewn across the site.

"It happened at 7 a.m., the Friday before Memorial Day," Kolton recalls. "We immediately assembled a rapid response team. We knew it would be ongoing, and yet time-sensitive because the crane was spread across the work area. We were very sensitive to the tragedy, but we also knew that long delays would impact the ability of the project to move forward and those delays would be very costly to our client."

Kolton helped organize a three-dimensional scan of the work area that clearly marked the position of the crane and worked with various lawyers representing interested parties to develop the protocol to preserve the evidence.

"Believe me, we were very sensitive to the family of the young man who lost his life, but we also did not want the project to get bogged down," he says. "Within about 30 days, they started to remove the crane, workers returned

and the project was completed with virtually no loss time due to the crane accident. That was a remarkable achievement."

It is that kind of sensitive yet dogged determination that endears Kolton to his clients, especially McCauley.

"It was about 10 years ago, and I was 35 years old and full of ambition," says McCauley. "I was a sub-contractor on a large project in Chicago. It was a very difficult job, and near the end, the project manager for the general contractor told me they weren't going to pay me, that I had screwed up everything. I was owed about \$2 million. This was the biggest thing I had ever done, and this was going to ruin me. My brother and my dad were in the project with me. I didn't know how I would feed my family.

"I called (a former client) and asked for help, and he told me to call Kevin. I went to see him and explained that I had no money to hire him, that I had entered this very ambitious bid to get the job and everything I had was tied up in it. I was in way over my head.

"Kevin called the project manager, who told him to get lost and that they were never going to pay. Kevin told me every step of the way what was going to happen and it went just like he said it would.

"We filed a mechanic's lien and then they sued me for \$4 million (twice his bond). But Kevin didn't back down. He took 40 depositions and established that I had built the building according to specs."

Kolton explains that "they alleged that Mr. McCauley had poured the concrete out of tolerances on one floor. Well, we discovered that every floor had been poured the same way. I got really wrapped up in this case. This guy had put everything he had on the line and had borrowed from friends and relatives."

Kolton was able to establish in depositions that the building was built to specifications. The preparation and foundation he built in depositions and discovery was so compelling that a judge granted McCauley's motion for summary judgment, a rarity in such cases.

"The general contractor went out of business because we weren't the only ones suing him, but we collected from his bond," and McCauley was able to pay Schiff Hardin for the lengthy but satisfying case.

Identifying Common Interests

His background in mechanical engineering prepared him well for the practice of law.

"I think I look at issues a little differently because of my engineering background. You have to figure out how to solve a mechanical problem through the laws of physics, and in

law, you have to figure out how to resolve a legal problem by applying the rules of law.

"The first thing I try to do is identify common interests, the things we agree on. I realize I am entering hostile territory so we first eliminate as much of the potential animosity as possible by identifying common interests and the things we can agree on. In the crane collapse, for example, the last thing we wanted to do was alienate anyone. We had to address everyone's needs and concerns. Then, we looked at common interests, not differences of opinion. We found that we agreed on a lot more things than we disagreed on. It actually came down to one two core issues for which we needed to work out a solution."

Clients, Kolton says, expect attorneys to find solutions and solve problems; at the end of the day, that is what must occur in a way amenable to all parties.

"Every problem has a solution. My approach is to first clear the decks of the distractions so we can identify the problem that has to be resolved. In the course of getting there, you have to negotiate and concede a few things. You can't fight to win every issue."

Roberts says Kolton's strength is in his ability to be "parachuted" into any situation and hit the ground running. "He's calm and he works through problems quickly. He responds to pressure well. For over 15 years, Kevin has been our go-to guy.

"The second thing that makes Kevin so special is that he is absolutely great at helping us settle matters (through mediation). People are rubbing up against each other (and problems arise). Over the last 15 years, we have had 12 major settlements (without litigation). Kevin makes sure those agreements don't blow up," Roberts says.

Not all of Kolton's work involves contentious battles. A good portion of the construction group's work involves oversight of complex projects to ensure they are completed on time and on budget with minimal disputes. Kolton refers to this work as the group's project control services.

"We represent utility clients throughout the United States and Canada," he says. "One of services we provide to them is project controls, a kind of soup-to-nuts monitoring of all aspects of their complex projects. Often times, we have two or three members of our team on-site. We provide real-time, on-the-ground project oversight to address contract, scheduling, and budget issues including resolving potentially costly change orders."

Outside Kolton's 69th floor office in Chicago's Willis Tower stretches a sea of buildings large and small, new and old, simple

and complex, a testament to Chicago's vibrant business climate.

"We've been involved in virtually every large project in the city of Chicago in the last 15 years," he says. Those include the construction of McCormick Place, the United Center and the successful representation of Helmut Jahn, the architect for the troubled Thompson Center State of Illinois building in downtown Chicago.

About 20 percent of Kolton's practice involves representation of what he calls "niche" clients, like basketball legend Michael Jordan.

"Michael has been involved in a few projects around the United States including several residences in various parts of the country," Kolton says. "I represent him in these 'passion projects.'"

Kolton met Jordan about 15 years ago through a mutual attorney acquaintance and has handled several matters for the basketball and pop culture icon. "Jordan is an extremely methodical and detail-oriented businessman," Kolton says.

"Michael tries to put everyone in the room at ease," Kolton says. "He is very unassuming and not intimidating at all, just another guy."

Kolton attributes his own determination and unwavering focus to his childhood, which included participation on the Evanston High School wrestling team.

"Wrestling requires so much mental discipline. I wrestled at a weight about 10 pounds below my regular weight so it wasn't unusual for me to have to lose 10 pounds between Monday and Friday. I lost that weight through will power and sacrifice. I would actually drink one or two cups of water a day with a spoon to ration it over that five-day period. After the weigh-in, I would eat a meal my mother had packed for me in a sack."

That long view and laser-like focus has prepared him well for life. "When I started to think about going to law school, I said to myself that it was going to be a long three years, but three years was going to go by anyway and where did I want to be when it was over.

"When I started the practice of law, it was not uncommon for me to spend the night at the office. I knew which partners had the softest couches to sleep on. The hard part was not looking like you slept in your clothes the next day."

Though he is a partner in a large Chicago firm, Kolton's real partner is his wife, Darlene, who stood with him through three and a half years of attending law school at night and sleeping in his office as a young lawyer.

Now 10-year residents of Glencoe, the Koltons have a daughter, Samantha, 20, a business accounting major at the University of

Miami, Ohio, and a son, Lucas, 17, a senior at New Trier High School and a member of the school's nationally ranked hockey team.

Away from law and family, the Koltons enjoy distance running and have competed in several Chicago marathons together. With their children about to be on their own, Darlene is returning to school to get her master's degree in special education to teach autistic children. "She's very good with children," Kolton says proudly.

The 20 percent of his practice spent with niche clients helps keep Kolton connected to young developers. And his passion in representing them effectively is just as dogged as if they were billion dollar utilities.

"You know, I think it was Dan Webb who said, 'You can't let your client's problems become your problems.' But I am guilty of that. I can't avoid it."

The efficient, fair, and rapid manner in which many of Kolton's cases are resolved has propelled him to the very top of a difficult and complex area of the law.

"I think my clients would describe me as someone with vision, someone who is dedicated and who can be dropped into a situation who can quickly identify the issues and bring it to closure. I try to look at the big picture and resolve problems quickly, efficiently, and fairly." ■