

VIRGIL MONTGOMERY

Working on the Ground So Clients Can See the Stars

by Olivia Clarke

Virgil Montgomery didn't take a traditional path to becoming a lawyer—but it's a path that has led to a career he thoroughly enjoys.

Montgomery, 53, divides his construction practice at **Schiff Hardin LLP** among procurement, project controls, and dispute resolution through mediation, arbitration and litigation. He draws on a lifetime of experience in the construction industry that predates and includes his practicing law.

He has drafted and provided assistance in preparing contracts ranging in value to several billion dollars for construction projects on behalf of owners, contractors, and energy clients. He has advised clients during the negotiation phase and works closely with project participants to develop detailed evaluations of scope, bidding, cost, and schedule issues.

"I am driven to get to the bottom of problems and try to get to a resolution with the client's overall strategic goals in mind," he says. "Getting a victory in a minor dispute that takes up project resources and does not advance the completion of the project is a Pyrrhic victory and as a general rule does not help the client."

Foundation for Construction Law

Montgomery grew up in Valparaiso, Ind., and school was not his favorite place to be. After graduating from high school, he took manual labor jobs with such companies as Grand Trunk Railroad and U.S. Steel, where he worked as a millwright.

He joined the carpenters union and worked as a carpenter in Northwest Indiana until 1980, when he moved to Denver and worked for five years as a carpenter on various construction projects, including a dam, an oil processing facility, and several high-rise buildings.

"I enjoyed my career as a union carpenter, and I was at the point in my career where I was quickly advancing in the company that I worked for," he says. "In part, it was because I enjoyed problem-solving, and construction projects are loaded with problems that need solving."

Not long after his first daughter was born, his life changed when a construction accident

injured his left wrist and caused severe nerve damage. The doctor told him he would be off work at least six months, and if the injury did not heal, and if the nerve did not regenerate correctly, he would be permanently disabled. He eventually learned that there was little hope of a complete recovery because the surgical technology did not permit the microsurgery that would have been required to guarantee recovery.

"Given the prognosis and the fact that I would have six months recovery time off of work, I decided to get some college courses out of the way," Montgomery says. "My wife and I had often discussed ways that we could get me into and through college but working at my

historic cities. While most children would dread those types of trips, he didn't. Around age 6, he learned that most of the country's founding fathers were lawyers, and that profession soon became a goal—behind becoming an athlete.

After undergraduate school, he went to Harvard Law School, graduating in 1992.

"I would never have been able to do this if Lisa had not gone back to work to support our family for the seven years that it took to get through college and law school," he says about his wife. "That said, and aside from the fact that we had to live on a lot less money, I liked the academic world and enjoyed the challenges it presented. ...Oh, and by the way and in order



job was always the priority. The real decision to pursue a college career and law school was made sometime after it was obvious that my injury was not going to heal correctly."

Forced to end his career in construction, he attended the University of Colorado at age 28.

Still, he credits that work for teaching him "hard work and perseverance."

Heading to Academia

In the back of his mind, Montgomery knew he wanted to be a lawyer.

As a child, he and his family traveled to

to make our lives even more challenging, two years after the injury, my son was born."

While in law school, he didn't know that there was a defined area of law that dealt with construction. But after two years at his first firm, Vorys, Sater, Seymour and Pease LLP in Columbus, Ohio, the firm decided to start its construction practice.

While he enjoyed working at that firm, it didn't create the type of construction practice he wanted. He moved to Schottenstein, Zox & Dunn Co. LPA in 1996, spending two years in the firm's construction practice before moving

to Buckingham, Doolittle & Burroughs LLP, where he again worked on construction law.

He met Schiff Hardin partner Ken Roberts, co-chair of the construction group, at an ABA Construction Forum golf outing and kept in touch with Roberts over the years. When Montgomery was considering where to go next, Roberts suggested he interview at Schiff Hardin; he started there in 2000.

On the Job Site

Montgomery and his colleagues travel extensively to construction projects all over the country and in Canada. They predominantly work with owners of large construction projects in every field, including utilities and power providers.

It's not unusual for him to travel throughout the week and work from a trailer on a project site—only instead of swinging a hammer, he's handling negotiations and evaluating and reporting the status of the client's projects, including the project schedule and budget.

Montgomery says most owners do not regularly manage and track large, complex construction projects; it's not part of their core competency. Unlike the contractors who are engaged to perform the work on such projects, owners do not typically have experienced teams who actively evaluate the hefty data generated weekly on a construction project and identify ways of maximizing profit and mitigating or appropriately spreading the risk.

"Owners in regulated and competitive environments have increasingly found the need for independent oversight of large, complex projects so that senior management is informed as to the planning, progress, and potential risks of such large undertakings on an on-going basis, so that there are fewer surprises on the project and so that they are meeting their corporate governance obligations," he says.

"Schiff levels the playing field by providing the owner with an experienced team that focuses on project controls—i.e., tracking budgets and schedules—and works on behalf of utilities on major capital improvement projects. Schiff has been providing independent oversight and project controls advice to utility and independent power provider owners, both nationally and internationally, on fossil, nuclear, and alternative energy projects for more than 20 years."

Kevin Kolton, a partner at Schiff Hardin, considers Montgomery at the top of his game in terms of negotiations with contractors.

The practice requires lawyers to travel to their clients so that someone is "on the ground," he says. And Montgomery never complains about traveling throughout the

week because he's absolutely devoted to his clients and his practice, Kolton says.

"Virgil doesn't mix words, and he's very comfortable describing the options," Kolton says. "He's very good at explaining the reason a certain provision has to be the way it has to be."

Montgomery's expertise goes beyond typical contracting, Kolton says. The reason he is needed on the ground is because the firm offers its clients real-time project controls, which means that Montgomery is always aware of a project's status from a schedule and budget perspective—the true value of being at a project site.

Mark Friedlander, co-chair of Schiff Hardin's construction law group, says Montgomery is "one of the hardest working lawyers certainly in the firm, and maybe even in the city. He's on the road pretty much full time."

Montgomery is terrific at litigation dispute resolution as well as transactions, Friedlander says. He has a strong specialty in construction-related issues and very good judgment.

"He is very good at seeing the large, overall picture, and yet he personally gets his finger nails dirty in the details as well," he says. "He's working with senior corporate managers at the very top levels. He knows how to communicate on their level as well as going to the construction sites and working from the trailers and communicating with the hard hats too."

In the Field

These days, Montgomery spends most of his week in Baltimore on a project involving the company Constellation Power Generation.

The firm's engagement with Constellation includes providing project controls and procurement advice throughout the course of, among other projects, a flue gas desulfurization, or FGD, project. The FGD project is at Brandon Shores, just south of Baltimore. Its genesis was for Constellation to reduce constituents in the atmosphere from the Brandon Shores coal-fired facility, in part, to meet a Maryland mandate.

Schiff's independent review of Constellation's FGD project has allowed senior executive management to react to issues before they become major problems and allowed regulators/governmental officials to gain confidence in Constellation's ability to succeed in performing a large, complex, and high-profile effort such as the FGD project, he says.

The latter benefit was particularly important to Constellation as it embarked on developing a new nuclear project in Maryland. Schiff is helping UniStar, a company formed by Constellation and Energie de Francais, a French nuclear company, with its project controls processes on that nuclear project.

On the Brandon Shores project, the firm is assisting Constellation with its contracting strategy and contract negotiations, including contract-related advice throughout the course of the project; accurately reporting the project's progress to Constellation's senior management, including ongoing assessments and reviews; and identifying ways Constellation may improve in executing the various phases of the project's work, including reviews and analysis of project controls processes and methodologies of all project participants from a scheduling and cost perspective.

"The biggest drawback to what I and other members of our group do is the traveling virtually every week," he says. "Obviously, this requires a lot of support from all of our spouses and family members. Nevertheless, my job is exciting almost every day because, on construction projects, every day brings a new situation or problem that needs to be addressed and resolved and, frequently, that resolution must occur immediately or progress or costs will be impacted.

"Having come from a construction background and having seen projects that were failures in the past and as a lawyer, I have learned a lot about what it takes to have a successful construction project."

David Sikora, vice president of project management for Constellation Power Generation, has known Montgomery for about three years. He describes Montgomery as smart, thorough, and hard-working. He provides good advice, Sikora says, and is a tough negotiator.

"The value he has added to Constellation Energy is his experience in the construction industry," Sikora says. "He helps us avoid mistakes we would otherwise make that would cost us a great deal of money. He's a very valuable counsel, broader than just legal counsel."

Support of Family

Montgomery and Lisa have three children: 24-year-old Erika, 22-year-old Nick, and 14-year-old Madison.

Erika helps manage Oliver Winery near Bloomington, Ind. After recovering from a traumatic brain injury during his senior year in high school, Nick now attends Purdue University North Central and is going into early childhood education. And Madison is doing extremely well in school and enjoys scuba diving.

In addition to raising a family and supporting the family economically when he recovered from his construction accident and went to school, his wife helped nurse him back to health during a major near-death health crisis

that required a four-month hospital stay, with two months in a hospital bed at home and another month of home recovery time.

And if those challenges were not enough, he and Lisa later needed to help their son recover from a roll-over car accident.

“It was my wife that kept us together and who challenged, in fact insisted, that the hospitals, doctors, and staff do their very best for Nick,” he says. “Much of Nick’s recovery is attributed to the care that he got at the Rehabilitation Institute of Chicago, but without Lisa, it probably would not have happened.”

Montgomery says Schiff Hardin, and particularly Roberts and Managing Partner Ron Safer, demanded he shut work out of his life until Nick had some resolution with his health. And his colleagues picked up his work while he spent time with his family during that tragic time.

Lisa says her husband is a great father and an incredibly intelligent person, but he doesn’t flaunt it. She and the children are always amazed at the facts he is able to recall, no matter how trivial.

“It just tickles us sometimes,” she says.

“He loves the profession he has chosen and the firm he is with,” she says. “They’ve just been tremendous to us, especially during times of family crisis.”

In terms of his practice, he says, “The projects that we work on are very dynamic, and therefore the work that we do has to go with the flow and adapt to the exigencies and fluctuations that happen all the time on large construction projects. It only ends when the project is over and totally closed out. Our days start very early in the morning with site meetings with project personnel and end late at night with executive meetings or evaluating data for reporting purposes and processing interview and meeting information to prepare for the next day or to help keep or get work back on the rails.

“In a manner of speaking, our group, despite the fact that we can be on five or six project sites all over North America, meets by phone or BlackBerry late at night to coordinate efforts and discuss issues on our various projects to get a favorable resolution without having major project disputes or to facilitate project progress. It is incredible to be up late working on an issue that requires help, and, more often than not, I am able to get someone from our group to help me—even after midnight. Our group is highly dedicated and has a work ethic that is second to none.” ■