

KEN ROBERTS

'Addicted' to Solving Problems for Utility Construction Clients

by John Flynn Rooney

Kenneth M. Roberts' typical business attire is blue jeans, a flannel shirt, and work boots.

"In that regard, I haven't gone that far from Clinton, Iowa," Roberts, a **Schiff Hardin LLP** partner, says of his birthplace.

Roberts is co-chair of Schiff Hardin's Construction Law Group and a member of the executive committee of the Chicago-based firm comprising nearly 400 lawyers.

He spends about 85 percent of his working hours outside of Chicago overseeing teams of Schiff Hardin lawyers that handle projects at various locations throughout the U.S. and elsewhere.

Roberts clocks many hours each week in construction trailers in places like Kansas City, Maryland and Toronto.

Roberts and the other 15 to 20 lawyers comprising the firm's Construction Law Group concentrate on project control tracking. His practice also is focused on representing owners and architects/engineers in the area of construction law, contracting and procurement, dispute resolution and insurance issues affecting owners on large capital construction projects.

The construction group's clients include Ontario Power Generation, Kansas City Power & Light Co., the Metropolitan Pier and Exposition Authority in Chicago, along with Nicor.

But it is in the area of project controls that Roberts and his team provide a unique service, according to Schiff Hardin lawyers and some of the Construction Law Group's clients. Roberts has created a profitable niche practice providing project controls and troubleshooting, particularly for large utility firms, his colleagues say.

"The whole goal is problem solving," Roberts says of his work.

Roberts and his colleagues also work with clients, such as boards of directors with companies, to provide independent verification about the status of a project specifically related to schedule and budget.

Roberts adds that the lawyers are not looking to pick fights with contractors and vendors.

"A lot of times we are delivering very unpopular news," Roberts says. "Every time out of the box, we walk in and have to prove our credibility."



In 2004, Roberts and the Schiff Hardin team were chosen to provide project control methods and analysis on a troubled Ontario Power Generation project in the Canadian province.

The project involved restarting and returning to commercial operation four reactors at Ontario Power Generation's oldest nuclear station. The project encountered significant delays and cost overruns. The cost of the initial phase of the project ballooned to \$1.26 billion, approximately three times the original budget projection.

The utility retained Roberts and the Schiff Hardin team to analyze the main causes for the cost and schedule overruns and to identify information that could be used when restarting the other nuclear units.

John Manley, a former deputy prime minister of Canada, which is the country's second highest elected position, chaired the Ontario Power Generation Review Committee.

Roberts worked closely with Manley and the committee.

"He was extremely thorough," says Manley, now counsel to McCarthy Tétrault, a law firm with offices in Ottawa and Toronto. "He led a review of the project and was able to give us a real sense of where the management of the project had gone off the rails."

Manley and Roberts presented the

committee's recommendations to Ontario's cabinet in March 2004.

"Ken spoke at length and very much carried the day," Manley says. "He was thorough, convincing and gave the politicians confidence in the recommendations we were making."

After the session, a senior cabinet minister told Manley his mind had been changed by Roberts' presentation, according to Manley.

Manley says he recommended that Atomic Energy of Canada Limited retain Roberts and Schiff Hardin for a matter.

Atomic Energy, which is a government entity, is reviewing a bid for what is expected to be a more than \$10 billion nuclear reactor construction project.

Allan A. Hawryluk, Atomic Energy's senior vice president and general counsel, says the entity interviewed a number of law firms late last summer and Roberts and the Schiff Hardin team were selected to provide independent advice about the risk elements and mitigation strategies for the project.

"There isn't a leaf I think they will leave unturned to give the board of our company the unblemished fact about where we are with things," Hawryluk says,

On a late December 2008 day, Roberts said he was on the phone at home from 5 a.m. to 7

a.m. with his fellow team members who were at various construction sites. The previous night, he received three telephone calls after 11 p.m.

Roberts says that during 2008, he billed about 2,800 hours and actually worked more than 3,000 hours. For the last 15 years, he has always billed more than 2,200 hours to Schiff Hardin, he adds.

Mark C. Freidlander, the other co-chair of Schiff Hardin's Construction Law Group, says that if "Roberts' practice is not the most profitable construction law practice in the country, it is in the top tier.

"Ken has found a way to create value in a way that is not really sensitive to billing rates because the value he's creating for clients, the millions of dollars that are being saved by better information and earlier problem solving, dwarf the legal fees and expenses involved," Friedlander adds.

Paul M. Lurie, a Schiff Hardin partner who founded the firm's Construction Law Group, says, "What Ken represents is someone who knows how to increase the size of the pie. Boy, is that important in the modern-day law firm."

Iowa Roots

Roberts, 49, is the youngest of William A. Roberts Jr. and his wife Bernadette's three children. Both parents are retired and living in Clinton.

William Roberts Jr. was a sociology professor at a local community college. Bernadette Roberts worked in the medical records department of a local hospital.

Roberts says his jobs as a youth included removing tassels from corn, working for the local park district and performing cold tar roofing.

While attending Clinton High School, Roberts was on the debate team and played several sports. Roberts says he was adept at debating and enjoyed that activity.

During high school, a number of teachers and others "really encouraged me, not only to be a practicing lawyer, but were constantly telling me that there were better things outside of Clinton for me," Roberts says.

Roberts "is a small-town guy who has done well but he's never lost the ethics or the values that come with that upbringing," says William H. Downey, president of Kansas City Power & Light Co.

A number of colleges and universities, including some on the East Coast, offered him scholarships, Roberts says. But when decision time came, he opted for the University of Iowa.

"My family could afford Iowa," which also allowed him to pursue the type of education

that interested him, Roberts says.

At the Iowa City-based university, several professors knew Roberts' father or other previous students from Clinton, according to Roberts.

"It was a very nurturing environment," Roberts says of his college experience.

Roberts was a member of the debate team while in college. His older brother by a dozen years, William A. Roberts III, was already a lawyer. William Roberts currently co-chairs the Government Contracts group at Wiley Rein LLP based in Washington, D.C. Their sister, Kathy Regenwether, is married to Steve Regenwether, also a lawyer; they live in Memphis.

Roberts graduated with honors from the University of Iowa in 1982.

When it came time for his next move, Roberts decided to apply to the university's College of Law.

"It was just a natural," Roberts says of attending law school. "I liked to argue."

The summer between his first and second years of law school, Roberts worked as a clerk at the Department of Labor in Washington, D.C.

The following summer, Roberts was a law clerk at Miller & Bash P.C., a Kansas City, Missouri-based law firm.

Roberts graduated with distinction from the University of Iowa College Law in 1985.

He was admitted to the Missouri bar the same year and began working as an associate at Miller & Bash.

Working in Kansas City provided Roberts with his first exposure to construction law. Roberts followed his brother's background in government contracts and he had planned to practice in that area. But Roberts also began handling contracts on major construction projects.

Roberts married his wife Adonna, whom he had dated since college, in 1986. Adonna was originally from the Inverness/Barrington area.

The couple agreed they would take jobs together in the same area. Adonna landed a job at the University of Chicago Hospitals as an executive.

Roberts says he was aware of Lurie, a nationally-known construction law practitioner. In the mid 1980s, Lurie was a partner at the Chicago law firm of Neal, Gerber, Eisenberg & Lurie.

Roberts was admitted to the Illinois bar in November 1987. He then took a job as an associate working under Lurie at the Neal, Gerber firm.

Lurie says Roberts had a strong academic record, was personable and had gained

valuable experience at Miller & Bash. "It think it was love at first sight," Lurie says of his hiring of Roberts.

In 1989, Lurie, Roberts and other lawyers left Neal, Gerber to join Schiff Hardin, where Roberts became a partner in 1992.

In the Field

A couple of days before Christmas, Roberts worked in a construction trailer in Kansas City.

"I spend the vast, vast majority of my time on site at clients' projects, Roberts says. "It's not a glamorous job."

Roberts adds, "My motto is to come in through the back door and leave through the side. We're not there to impress anybody."

Since 2004, Roberts has led a team of Schiff, Hardin lawyers advising Kansas City Power & Light Co, on a more than \$2 billion project aimed at meeting the future energy, economic and environmental needs of the Kansas City area.

The two-phase project involves constructions of a new 850-megawatt coal-fired plant and environmental upgrades to an existing plant.

Roberts meets regularly with Downey, who also serves as Kansas City Light & Power Co.'s chief operating officer.

Downey says Roberts and Schiff Hardin have created a "unique sort of offering in that while they are a law firm, they have a specialized group that gets engaged in large complex construction. Frequently, they're called on after a problem has arisen or there is a commercial dispute in these large projects."

Roberts has a strong overall knowledge of the construction industry, particularly related to power plants, Downey adds.

"He understands the critical information that will be needed for regulatory approval," Downey continues. "He has the ability to take thousands of pieces of data and provide insight about the data."

Using a flying analogy, Roberts says, "We help the owner see the cockpit, see the data and look out the window in real time."

Downey notes that Roberts "is a driven, intense guy, but with genuine concern for his (clients). He becomes a true partner."

In May 2008, a construction crane accident occurred at the Kansas City Power & Light Co. job site near Kansas City, resulting in the death of a man working as a subcontractor.

Kevin L. Kolton, a member of Schiff, Hardin's Construction Law Group, worked closely with the company's team, the Occupational Health and Safety Administration and other regulatory bodies that investigated the accident. No charges were filed against Kansas City Power

& Light, according to Roberts.

That project included a huge amount of data, including about the cause of the crane collapse and the resulting damage that would require repair, Roberts says.

Team Chemistry

Roberts stresses that the Construction Law Group operates as a team. Roberts talks several times each day to team members at various construction sites. Those colleagues also include Virgil R. Montgomery, Carrie L. Okizaki, and Susan Haynes, the project controls coordinator, along with Eric Gould, the project controls analyst.

"I literally talk to (Haynes) and (Gould) more than anyone, including my family," Roberts says.

He adds, "We spend a lot of time together. Team chemistry is critical."

Okizaki says, "The sense of team comes from Ken."

Despite the long hours and constant travel, none of Schiff, Hardin's Construction Law Group members are divorced, according to Roberts.

"We are all incredibly lucky we have unbelievably supportive spouses," Roberts continues. "Our spouses really make us look good because we are on the road constantly."

Schiff Hardin is unusual in that the firm's Construction Law Group includes two female partners, Roberts says. The female partners in the group are Okizaki and Heidi H. Rowe.

Okizaki is frequently the only female in a room full of men when she works on a project.

"We may face challenges that others (male lawyers) don't," Okizaki says. Roberts "is sensitive to that."

A concession Roberts made to his wife was to leave his BlackBerry downstairs, rather than in the bedroom over night. But he can hear the portable device go off during the night and answers it, he says.

Roberts and the group's members typically write 20 to 30 contracts for projects a month, he says.

The Construction Law Group members understand the contract for a project "inside and out," according to Roberts. It not unusual for the contract and related documentation for a project to fill seven banker boxes, he says.

Roberts has previously litigated construction disputes in courts in several states, including Illinois, New Jersey, Texas, and Utah.

Roberts and the Construction Law Group typically are involved in four to five mediations each year. During the past 10 years, Roberts and his team have resolved more than 20 high-profile cases involving more than \$1

billion in damages through mediation or the alternative dispute resolution process.

In one such case Roberts and his team represent Midwest Generation LLC, a large utility company, in a \$60 million dispute relating to the decommissioning and demolition of one of its facilities.

The matter eventually resulted in arbitration with the American Arbitration Association. The parties, including a contractor, exchanged more than 300,000 documents. Many of the documents were entered in a sophisticated database designed especially for the dispute.

The arbitration hearings began in winter 2007 and ended in the spring of 2008.

Midwest Generation prevailed on a majority of the issues in the arbitration, says, Daniel W. McDevitt, vice president and general counsel of Edison Mission Energy Inc., Midwest Generation's parent company.

Roberts and his team were "thorough and tenacious," McDevitt says.

"Our goal is to solve it on a business basis," Roberts says referring to the use of alternative dispute resolution.

Roberts also serves as chair of the dispute resolution board for the Miami International Airport.

Roberts and his wife are the parents of two daughters: Dominique, 16, and Gabrielle, 12.

"When I'm not working, I try to be with them," Roberts says of his daughters.

He is a member of Medinah Country Club and takes his younger daughter there for golf lessons on early Sunday mornings. Roberts rarely gets in a round of golf himself.

Dominique recently finished performing in *American Girl Review*, a live music and dance show.

Roberts says he tries to exercise even when he's on the road. Sometimes that might be at 4 a.m. or 11 p.m.

He enjoys reading books by John Irving and David McCullough, including the latter author's *John Adams* biography.

Roberts says the biggest drawback to his job is the incessant travel.

"When you know the maintenance crew that's cleaning the plane, that's when you're flying too much" Roberts says.

"It's a pain in the butt being away from home, but you get addicted to solving big problems that have a lot at stake," Roberts says. ■