

# Game Plan

*Neutral Keith Koeller uses pressure point lists and issue sheets to devise resolutions.*

By Shane Nelson

Special to the Daily Journal

The son of a general contractor, JAMS neutral Keith D. Koeller also ran his own painting business toward the end of his time in high school and while he was an undergraduate at USC.

"I employed my brother, my cousin and a few other people," Koeller recalled. "We predominantly painted homes in Huntington Harbor or in Huntington Beach downtown, and we occasionally did some strip malls. ... So between working for my dad and my own little business, I definitely had some background in construction."

After graduating from Loyola Law School in 1981, Koeller spent five years at a law firm in Orange County, where he was introduced to construction defect litigation. He then struck out with a former colleague to launch their own firm – now called Koeller, Nebeker, Carlson & Haluck LLP – where Koeller spent more than three decades representing large general contractors and publicly-held homebuilders.

Koeller was routinely defense counsel for his clients, and he said it wasn't unusual for him to be involved in cases featuring as many as 40 parties.

"So I often found myself trying to bring a large group of people together to mediate resolution, trying to get everyone going in the same direction," he explained. "In a way, I was kind of serving as a mediator while still representing a party. ... Based on that experience, I just knew that if I was going to have a final chapter in my career



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after I was done with running the law firm and handling cases and dealing with trial dates and so forth, that mediation would be a great next step."

In 2021, Koeller retired from the firm he founded and joined the JAMS' portfolio of private neutrals as a full-time mediator and arbitrator. He often handled disputes that involved construction defects, breach of contract or insurance matters.

"I would say 80% to 90% of my work is on mediation and 10% to 20% is on arbitration," he said.

As an arbitrator, Koeller said he's focused on striking a balance between fairness and efficiency.

"Arbitration is supposed to be an alternative to litigation that is not as costly and time-consuming," Koeller explained. "So in terms of processing the case, I don't want to lose sight of trying to eliminate some of the expense and aggravation that can be present in traditional litigation."

When working as a mediator, Koeller said he likes to receive briefs and speak over the phone or

**[Keith D. Koeller](#)**  
**[Esq.](#)**

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Zoom with attorneys before each mediation to get their candid assessment of what the key issues and challenges will be for resolving the case.

“Then I develop what I call issue sheets, where I identify the issues and each side’s position on those issues, so I’m prepared to articulate them during the mediation,” Koeller added. “Then I’ll also generate for each party a list of pressure points, or things that I think should be mentioned to them to help facilitate the ability to get the case settled. That gives me a game plan for when we get into the day of the mediation.”

Koeller said that early on he tries to give each party a chance to tell their story.

“They need an opportunity to vent their grievances with me, and I allow them to do that. I think it’s important to express some empathy for what they’ve been through,” he said. “But then I do try to pivot towards the practical need to move forward and see if we can come up with a more businesslike solution to the problem.”

Newport Beach construction plaintiffs’ attorney Jonathan C. Terry has used Koeller as a mediator to resolve four disputes, and described the JAMS neutral as kind but firm.

“He’s polite to people, but he tells you what you need to hear if your case is bogus,” Terry said. “He tells you where you’ve got pitfalls and what you’re going to face in front of a jury or judge if you push the issue. But he does it sweetly with a smile. He doesn’t talk down to you. He doesn’t use bad words. He’s just one of those guys that’s able to be firm and say, ‘Well, this is the law, and this is my experience.’”

Palm Desert plaintiffs’ attorney Robert J. Gilliland Jr. opposed Koeller many times on cases over the past 30 years and recently used him as a mediator to resolve a multi-party, multimillion-dollar construction defect dispute.

“One might be concerned about a mediator who has a very extensive defense background because they might think, ‘Well, that mediator is slanted or biased toward the defense,’” Gilliland said. “But

I would definitely say that Keith is very impartial, and he brings to the table his tremendous experience in understanding construction defect litigation and complicated insurance issues that often really drive the case toward settlement and resolution.”

Gilliland noted that in some of the largest and most complicated cases of his career Koeller was opposing counsel, representing a defendant. He said Koeller’s extensive experience with complex, multi-party disputes remains a major strong suit.

“The case he recently settled was like 10 cases. It was massive in terms of the number of parties and the issues, and it was extremely complicated,” Gilliland said. “He was able to take a very complicated case and reduce it and get to the bottom line very quickly. That takes real talent, and he has that ability.”

Los Angeles construction defense attorney Richard H. Glucksman met Koeller 25 years ago, and he used the JAMS neutral recently to resolve a construction defect case involving 20 parties with more than 20 different law firms.

“The attributes that make him a good mediator are many of the same things that were true of him as an attorney,” Glucksman said of Koeller. “He’s a good listener. He’s prepared. If you’re not prepared, he’ll call you on it. He is empathetic to a position, but he won’t let you off the hook on certain things. And on this last case, he dove into it in much greater detail than I typically see from most mediators.”

Glucksman also said Koeller’s height distinguishes him, noting the neutral is 6-foot-5.

“When he walks into a room, there’s a presence there,” Glucksman explained. “Now, you can have height and not have a presence. But he has height, presence, poise, humor, and he can be dead serious when he needs to be to get his point across.”

*Here are some attorneys who have used Koeller’s services:* Richard H. Glucksman, Chapman Glucksman APC; Robert J. Gilliland, Jr., Guralnick & Gilliland LLP; Jonathan C. Terry, Terry Mudge LLP; John A. O’Hara, Newmeyer & Dillion; Larry J. Kent, Law Office of Larry Kent.