



KEITH D. KOELLER, ESQ.
 Arbitrator, Mediator and
 Special Master, JAMS

Keith Koeller has been a key player in many important developments in construction defect since he co-founded Koeller, Nebeker, Carlson & Haluck, LLP in the 1980s. Now, as he transitions to a career as a mediator at JAMS, Koeller reflects on those developments, how the insurance and legal landscapes have evolved for the better in construction defect, and how his new role as a mediator will be similar to his longtime career in construction law where he had to bring many interests together on any given case.

“My background was in construction; I wanted to be a lawyer, so I gravitated to construction law.”

Koeller is the son of a homebuilder and general contractor, and he started his own painting business while attending college at the University of Southern California. But he always knew he wanted to be a lawyer, so he combined his construction background with his entrepreneurial spirit and helped start a law firm in 1986 that focuses heavily on construction law.

“I’ve been very much involved in the risk-transfer issues over the years.”

Koeller witnessed the rise of construction-defect claims in Southern California decades ago, and the subsequent spread to other parts of the country. The sheer amount of litigation was one challenge. On top of that, complications arose due to the number of insurers and parties involved in a given case as developers and general contractors file cross complaints against subcontractors.

“HOW CAN WE CREATE A SYSTEM WHEREBY WE CAN CONSOLIDATE THE DEFENSE?”

Early stakeholder discussions Koeller participated in to address construction defect focused on this question, with potential solutions involving cost-sharing agreements among the involved parties. However, there were challenges bringing multiple insurers together into a consolidated effort on any given case. Ultimately, the idea of wrap products—OCIPS and CCIPS—grew out of these early efforts. “Rather than trying to consolidate a situation where everyone had their own insurance, you basically had an insurance product that did that.”

“I’d say the industry is in a much better position than it was in the 1980s.”

Koeller says while there are issues with wrap products—“sometimes the limits aren’t sufficient; sometimes defense costs burn down limits”—he believes they have been, overall, a positive development that has helped improve both the insurance and legal landscapes around construction defect.

“I’ve thought about doing this for a decade”

Koeller is excited about his latest career move to mediation, and he says it is similar in spirit to what he has done in construction law, where he has had to bring together many parties involved in a given construction-defect case. “It’s a very natural transition to go from that role and to move over to become a mediator, where you’re trying to do the same thing, but now as a neutral and not an advocate for anyone in the process.”

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