

BOB LINTON

Pushing Hard to Help Clients Get Their Deals Done

by Mike Bailey

The most compelling attribute of a real estate attorney is the ability to get the deal done. Few do a better job than Robert C. Linton of **Dykema**, a leading national law firm with one of the foremost real estate and commercial leasing practices in Chicago.

Linton, who heads the firm's 35-person real estate practice group, has dozens of repeat customers and referrals from satisfied clients all over the United States.

"My job is to find a way to complete the deal," he says from his offices at 10 S. Wacker Drive in downtown Chicago. "The client wants to get this done and my job is to explain how we can accomplish that. We never want to walk away from a deal unless the risks are unacceptable."

Linton focuses especially on negotiating commercial leases with large national tenants for major developers and investment companies, a talent for which he has a national reputation.

"Bob has the rare ability in challenging negotiations to be able to push hard to represent my interests but keep a calm demeanor and a good relationship with the opposing counsel," says Brad Pearl, vice president and co-founder of the Leasing and Development division of NewMark Merrill Companies, a large development firm headquartered in California with offices in Illinois and Colorado.

"He just has a way of creating a relationship with the opposing counsel while still getting what I need accomplished. There is no chest pounding, no table pounding because that can leave a bad taste and can harm you later in negotiations. He never says 'No' to the opposing counsel without giving a reason. He finds a compromise and has a way of keeping the negotiations friendly. That is a very difficult skill to master. It's just a solid, Midwestern way of doing business," Pearl says.

Recognizing that every deal—every lease—is different and presents its own unique challenge is what motivates Linton and keeps him fresh.

"That is the most challenging and interesting part of my job," he says. "When I represent a landlord who owns a shopping center and we have to negotiate leases with multiple tenants, the contingencies, delay penalty clauses, exclusive uses, prohibited uses and permitted expense charges have to be thoroughly examined and negotiated."

Balancing the needs of tenants with those of his landlord clients is a delicate act that requires a deft hand. One such instance, Linton notes, is when a large, dominant retailer seeks exclusive rights to sell pharmaceuticals, groceries and liquor in the shopping center.

Linton says he typically starts with the tenant's standard lease form and modifies it to suit his landlord client's needs and the nature of the development. In the preceding example, the large retailer may get the exclusive right to sell groceries

but not liquor or pharmaceuticals, or he may carve-out specific exceptions to the exclusive rights, for example.

Restrictions on changes to the common areas, provisions governing the sale of items on the sidewalk outside the store, restrictions on types of business at the center and other similar issues may also need to be negotiated.

Even then, not all issues can be anticipated. One recent dispute Linton addressed arose out of one store's plans for an outdoor holiday display that would have obscured visibility of an adjoining business. While seemingly minor, those disputes can become quite heated.

In one shopping center complex represented by Dykema, a fence erected around a construction site at an anchor tenant to protect passersby initiated a complaint from the adjacent national drugstore. That tenant claimed to be adversely impacted by the fence and the work because it impeded access to their store. The drugstore thus sought relief from the landlord and Linton had to position his client for possible litigation.

"We talked to the anchor and discussed whether the work could be done differently or whether material deliveries could occur somewhere else. We talked to everyone trying to figure out a way around this. It's like pre-litigation searches for solutions. We really don't want to try to defend our client against a suit claiming loss of business."

Leases governing uses are just one aspect of commercial leasing. Terms also include whether the tenant has the right to break the lease if the anchor store leaves (known as co-tenancy), so-called self-help rights to cure a landlord's failure to maintain, use and control of common areas, provisions covering what happens if sales decline, protecting visibility and parking, outdoor sales and landlord's right to develop outlots, for example.

Linton is adept at handling all of those issues.

Harry Seigle, president of the Elgin Company, says Linton's greatest attribute is how well he listens to his clients. Linton handled several complex business dealings for the company. One involved working on the sale of hardware and building materials business exclusive of the real estate and large leasing operations at a high profile intersection in Chicago.

"I like Bob's modesty and that is reflected in how well he listens," Seigle says. "I can tell how intelligent he is by the questions he asks. He picks up on the subtle nuances in a deal faster than most."

Seigle commends Linton for his expert handling of a very complex deal that involved buyers and sellers, third and fourth party interests, and tenants, and he "kept all the balls in the air."

"He is a very good draftsman of language," Seigle says. "Bob and I have worked together for more than a decade. He knows I am an antique in that I prefer to do business face to face. So we meet

for every new transaction. Every one of these is unique with special requirements. Bob keeps a very close eye on the associates and very clearly edits their work."

Client's Interests in Forefront

Bob's practice goes beyond leasing. He often represents clients in purchases, sales and developments. In certain cases, he relies on the skills of other Dykema attorneys such as Andrew Scott who can assist a developer in zoning as well as securing public incentives to redevelop a parcel of property.

"We were retained by a company called the Hub Group Inc., which is a transportation logistics business, a travel agent for freight," Linton says. "They wanted to move their corporate headquarters and hired us to assist with site selection, incentives, acquisition and construction. We have specialists here at Dykema for all those areas."

Hub had identified a building in Oak Brook in which they had substantial interest but Linton advised them to walk away from that site because of what he considered unacceptable risks concerning their parking rights and some cross easements in the larger development.

"They did and, as it turned out, they found the perfect location across the street. They constructed a beautiful 'green' building and it all turned out very well for them," he says.

Linton says redevelopment and construction have enjoyed an uptick in the past several months, as he has seen banks much more willing to lend money than at any time since the recession. "Landlords are acquiring existing locations and adapting them for new uses because they can now find value there," he says.

"Municipalities and the marketplace now want to limit sprawl and are asking developers and landlords to become more responsible environmentally by repurposing existing obsolete projects. There was a glut of commercial building, and I'm happy to see much of that being redeveloped and absorbed."

He also notes many new developments incorporate the principles of sustainability, a trend he applauds.

Uptown Theatre Acquisition

Sometimes, acquisitions themselves can become testy. The Uptown Theatre, located in the Uptown neighborhood of Chicago, was an old movie house converted to a small concert venue. It is designated as an historical landmark.

Constructed in 1925, it was the largest movie theater in Chicago, boasting 4,381 seats. Its interior volume is said to be larger than any other movie palace in the United States, including Radio City Music Hall in New York. It occupies over 46,000 square feet of land at the corner of Lawrence Avenue and Broadway in the Uptown

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Entertainment District. The mammoth theater has an ornate five-story entrance lobby with an eight-story facade.

It was billed as “An Acre of Seats in a Magic City.” The grand opening of the Uptown Theatre was accompanied by a “Central Uptown Parade” of over 200 floats and a grand ball at Harmon’s Arcadia in Uptown. More than 12,000 people stood in line to be ticketholders in the very first audience.

It closed in 1981 and sat dormant for years until a sudden, renewed interest developed in the site.

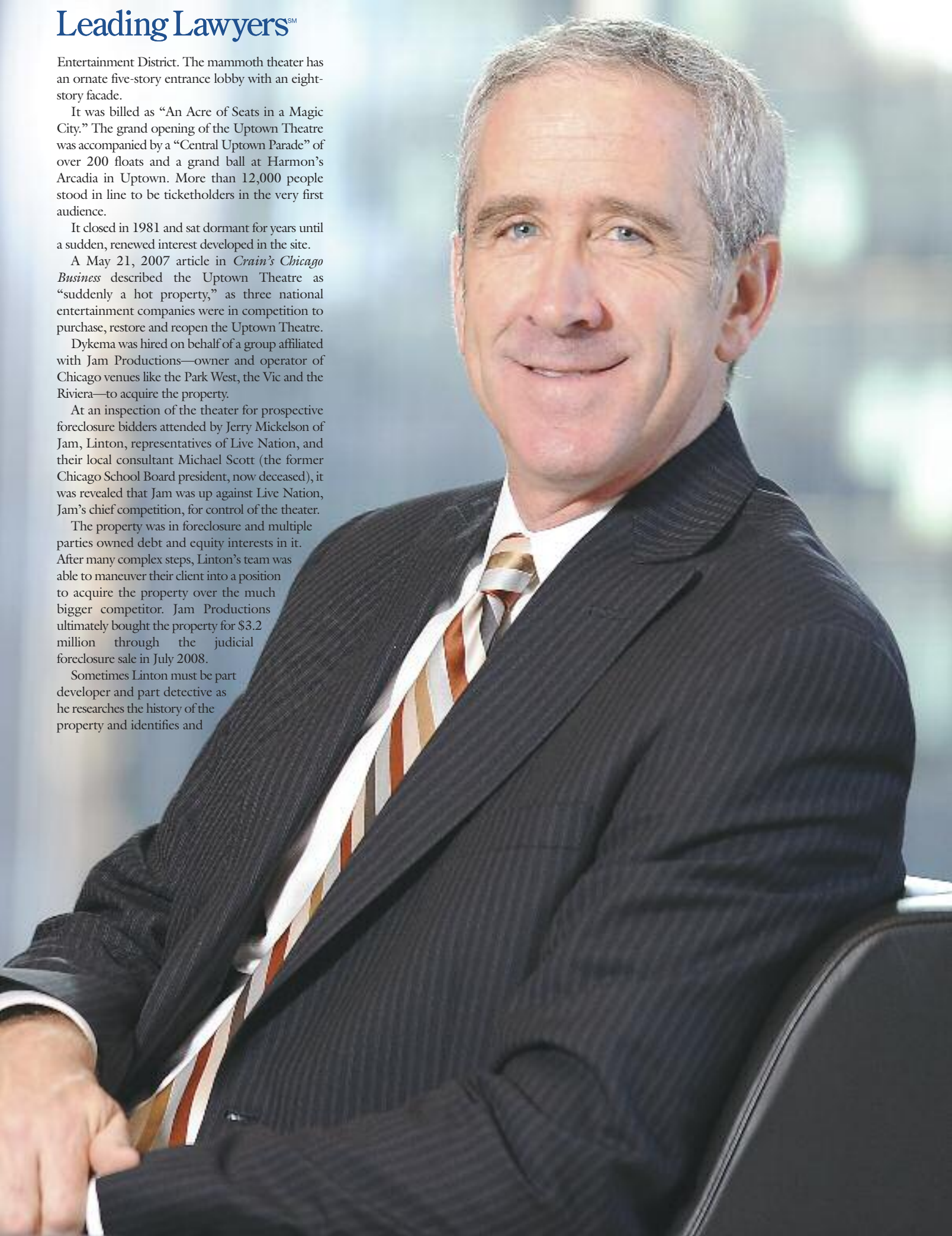
A May 21, 2007 article in *Crain’s Chicago Business* described the Uptown Theatre as “suddenly a hot property,” as three national entertainment companies were in competition to purchase, restore and reopen the Uptown Theatre.

Dykema was hired on behalf of a group affiliated with Jam Productions—owner and operator of Chicago venues like the Park West, the Vic and the Riviera—to acquire the property.

At an inspection of the theater for prospective foreclosure bidders attended by Jerry Mickelson of Jam, Linton, representatives of Live Nation, and their local consultant Michael Scott (the former Chicago School Board president, now deceased), it was revealed that Jam was up against Live Nation, Jam’s chief competition, for control of the theater.

The property was in foreclosure and multiple parties owned debt and equity interests in it. After many complex steps, Linton’s team was able to maneuver their client into a position to acquire the property over the much bigger competitor. Jam Productions ultimately bought the property for \$3.2 million through the judicial foreclosure sale in July 2008.

Sometimes Linton must be part developer and part detective as he researches the history of the property and identifies and



assesses any issues that may exist there, such as environmental contamination. “We have environmental lawyers at Dykema I turn to if that arises. My go-to guy is Mark Jacobs in Detroit, who can take a 70-page environmental report and clearly explain the risks to the client.”

When not engaged as a lawyer, Linton is an avid music lover. “One of my biggest passions in life is attending live performances,” he says. “I go to the Newport Jazz Festival, the New Orleans Jazz Festival, Austin, Texas, and anywhere I can to listen to live music.

“As a north suburban teenager, we’d sneak down to Chicago and go to Blues performances at the Checkerboard Lounge at 43rd and King. Had my parents known, it would have scared them to death. In fact, we used to go to the Uptown Theatre as kids with our older brothers to listen to live bands perform before the theater closed in 1981. Going back and seeing it dormant in 2007 was the coolest site inspection I’ve done in my career.”

That passion for music is not only stimulating but also beneficial because it led Linton to his wife, Jennifer, nine years ago.

“I was at a performance of a Clash cover band (a group playing songs made famous by the group ‘The Clash.’) It was at Schubas Tavern at Belmont and Southport and she was there to hear them, also. It was fun to find another person so passionate about music, and she and I just really hit it off. We went to shows and music festivals together and still do whenever we can,” he says.

Linton’s children include Bryan, 20, who attends the University of Wisconsin, Evan, 18, a student of the University of Colorado at Boulder, and Sabrina, 16, who is at Deerfield High School. His stepchildren with Jennifer include Abby Hornberger, 14, a freshman at Glenbrook North High School, and Emma, 11, a middle schooler.

He and his family love to travel, visiting Alaska, Hawaii, the Tuscany region of Italy and other interesting destinations. He’s also an avid sports fan, attending a couple of Bears games a year, as well as Wisconsin and Michigan football games. He also admits to being an avid fan and season ticket holder of the Chicago Cubs, for whom he holds great hope, tempered by experience.

“When I attended the University of Michigan, I played rugby and every year, they have the old boys game where 80 to 100 of us gather and play again. The last one I attended was in 2009 when I was 45. I gotta tell you, it’s hard to play rugby at 45 years old. We’ll have one next year, and I’m thinking of trying one more time at 50.”

Linton tries to keep himself in good physical condition, running for sport and exercise. He participates in 5K, 10K and 15K runs in Bucktown and Grant Park. He recently completed a half marathon, and he attends the North Shore Turkey Trot with his family.

And he puts at least that much time and energy into fulfilling his clients’ needs.

“Very few deals die,” he says. “We pride ourselves in finding creative solutions to problems that arise. The whole business is risk allocation. We identify the risks, quantify them and decide how significant they are. Sometimes, we’ll decide that something has a

one in 100 chance of occurring, so we’ll accept that risk. For others, there may be insurance.”

For that reason, Linton has had to acquaint himself thoroughly with the insurance industry as it pertains to lease negotiations. He says a lot of businesses and landlords don’t understand or even pay attention to aspects of the insurance provisions, so he does that for them. He has made it part of his service to clients to be thoroughly knowledgeable about insurance provisions.

Some Deals Can’t Be Completed

Sometimes, no matter how badly everyone wants a deal to be completed, Linton has to advise his client to walk away.

“We were negotiating a lease agreement with a tenant for a development, and we of course require liability insurance. The tenant said it had a blanket policy (for all locations), which is not uncommon. But that policy was for \$3 million and they had 100 locations. They could blow that policy in one location and we’d have no protection,” he says.

Sometimes, he notes, clients must be told that compromise is needed to get the deal completed. “I might tell a landlord, ‘Look, what they are asking for is something 9 out of 10 tenants would expect to get. Let’s let them have this one.’ Other times, I might tell my client to hold his ground on a particular point because, based on my experience, the tenant won’t walk away because of it.”

And that experience is what separates Linton from a lot of other real estate attorneys.

“Every tenant has three to five sacred cows,” agrees Pearl, of NewMark Merrill. “It may be co-tenancy, exclusivity, reimbursable common area expenses, or something like that. Bob just has the ability to weave all of the interests into a successful deal.

“He’s worked on lease agreements for 70,000 square feet to 400,000 square feet with tenants like Meijer, Best Buy, 99 Cents Only, PNC Bank, Chuck E. Cheese’s, and all of them have special needs or requirements.

“Bob has performed incredibly well on every

assignment we’ve given him. He’s always accessible and has a remarkable turnaround time. We’ve had some that required completion in 24 hours, and he pulled it out every time. He’s never let me down.”

Some of that valuable experience comes from Linton’s attendance at the Advanced Commercial Leasing Institute at Georgetown University, which he has attended on a couple of occasions.

Participants, including lawyers from firms and national retailers like PetSmart or Sprouts, gather to conduct mock negotiations, collect market information and build relationships with other attorneys and potential clients and adversaries.

“These are people who you may sit across from one day on a deal,” Linton says.



Linton and his wife, Jennifer, attending a 2011 wedding in Chicago for one of the firm’s real estate partners.



Linton’s family ziplining in San Juan, Puerto Rico, in 2013.

Participants also draw on each other's experiences with various clients and deals and exchange information that is helpful in identifying complex issues and arriving at creative solutions. And the networking aspect alone is immensely helpful to the process and clients.

"There's a high level of trust and cooperation when you're working with someone you know, and that's better for the client," he says.

Linton is also a member of the International Conference of Shopping Centers (ICSC) and attends their legal conference where seminars are offered on trends in the industry and participants exchange information with dealmakers.

He takes part in the ICSC convention in Las Vegas each year, which is well-attended by lawyers, bankers, landlords, developers, builders, architects and major tenants, and is invaluable in establishing and solidifying connections and networking. That broad-based experience and interconnectivity with members of his profession and industry is what keeps clients coming back and referring him to others.

While Linton tries to find ways to overcome every objection and every issue, that is not always possible.

"We were negotiating with a tenant on behalf of the landlord for tenancy in a development," he recalls. "We of course require insurance and the prospective tenant wanted to self-insure, which is not uncommon if they have deep pockets.

"The potential tenant had impressive financials at first blush, but a closer look revealed that most of

their assets were intangible, namely as goodwill, patents and intellectual property, and thus wouldn't meet our tangible net worth requirements. They were a huge company but did not have enough cash and tangible assets to absorb a substantial loss, as a typical insurance program should."

That attention to detail and the protection of his clients' interests is what keeps major investment companies and institutional real estate holders returning to Dykema for Linton's service.

"We've been working with Bob for about seven to eight years," says David Laner of Invesco Real Estate, a large investment firm with real estate holdings in several states.

"Bob is very thorough, but he has the ability to cut to the chase and get us to the finish line. He also has the skill and experience to work with diverse situations and people and is completely committed to us as a landlord. Therefore we give him a lot of rope."

Getting a Good Deal for Client

Linton says he learned early in his career that the secret to being a good real estate lawyer is to have a clear definition of what winning really is. "Winning is not getting everything you can get," he says. "Winning is getting a good deal for your client. The practice of real estate law is a small world. You'll sit across from the other side in another deal someday. You may have the leverage this time, but next time you won't, and they will remember how you treated them."

Laner agrees. "Bob's experience is the key to his

success," he says. "We get clear explanations of the issues and the course he recommends we follow. And he knows when to compromise to get the deal done."

Michelle Panovich, executive vice president of the Mid-America Real Estate Group headquartered in Oak Brook, praises Linton for his ability to think like a businessperson as well as a lawyer.

"Bob and I have been working together for about eight to 10 years," Panovich says. "We were introduced to him by another institutional client of his, and it's been such a great experience that we've recommended him to others.

"Our association has been in the area of commercial real estate leases in which we've worked on negotiating with prospective tenants. One thing we really appreciate is that he is a very good listener.

"He has a business thought process as much as a legal one. A lot of attorneys can't get past the law to get a deal done. But Bob figures out ways to make it possible. He doesn't get sidetracked by things that are not really that important to the matter at hand. And he makes you feel very confident and comfortable with him."

As for the distant future, Linton says he and his wife, Jennifer, have discussed what they might like to do when his career winds down.

"We talked about getting an Airstream camper and visiting the national parks and attending music festivals," he says.

As they explore their divergent interests in planning for their future, his skills and knowledge as a master of compromise will be invaluable. ■