



FALL 2022 NEWSLETTER

Many thanks to our clients, colleagues, and friends for their confidence, trust, and support over the last 16 years.

ANNOUNCEMENTS



* Named to the 2023 Best Lawyers: Ones to Watch List

Kenney & Sams, P.C. is pleased to announce that 8 lawyers have been included in the 2023 edition of The Best Lawyers in America. Congratulations [Drew](#), [Nate](#), [Michelle](#), [Chris](#), [David](#), [Laura](#), [Mike](#), & [Alex](#)!

[Please read the full press release here.](#)



K&S is pleased to welcome [Brittany Darcy](#) & [Herling Romero](#) to the Firm.

[Brittany Darcy](#) is a litigation associate supporting the firm's partners in matters related to commercial litigation, corporate disputes, construction, employment, and general business law. As part of the firm's experienced trial team, Brittany assists in all stages of case analysis and trial preparation, including written discovery, depositions, motion practice, and witness preparation. Brittany is a dedicated advocate who helps clients navigate challenging scenarios with skill, compassion and patience.



[Herling Romero](#) is an employment litigator and counselor. As a litigator, Herling advises defendants and plaintiffs on employment matters related to wage and hour, allegations of discrimination and harassment, accommodations, and other disputes between employees and employers. As a counselor, Herling advises clients in daily business operations stemming from the employer-employee relationship such as employment contracts, policies and handbooks, independent contractor relationships, severance agreements, restrictive covenants, non-compete agreements and offer letters.

Welcome to the team, Brittany & Herling!



Kenney & Sams is proud to announce the Firm has been published in Worcester Business Journal's Book of Lists 2022 for Top Law Firms.

For more details, please read more [here](#).

CLIENT VICTORIES



[Chris Kenney](#) and [Laura Raisty](#) recently resolved a case for a business client who was in a dispute over management of a franchise operation. Through aggressive, proactive legal strategy, we resolved the dispute in our client's favor within weeks of being hired, and recovered all sums due, plus having the opposing party pay our client's entire legal expenses.

[Ross Wecker](#) obtained a \$1.04 Million Summary Judgment award for a subcontractor client based on violations of M.G.L. ch. 149 § 29E, the Massachusetts Prompt Payment Act. The favorable ruling relied upon the recent Appeals Court decision in *Tocci Bldg. Corp. v. IRIV Partners, LLC* and focused on the general contractor's failure to certify responses to payment applications in accordance with the Prompt Payment Act. The result is an excellent example of how the Prompt Payment Act can be utilized proactively to resolve a dispute.



ARTICLES OF INTEREST

BUSINESS LITIGATION



Know Your Contracts: Indemnity Clause Might Not Provide For Attorneys' Fees

By: [Drew Colby, Esq.](#)

Although parties often attempt to collect attorneys' fees through indemnity clauses, courts have held that indemnity clauses do not typically permit the recovery of attorneys' fees in disputes between two contracting parties. The so-called "American Rule" generally prohibits one party from obtaining attorneys' fees from the other.

[Read More Here](#)



Attorney-Client Relationships In The Metaverse

By: [Matthew C. Welnicki, Esq.](#)
and [Michael P. Dickman, Esq.](#)

As commerce extends in the metaverse, the legal profession will need to keep pace. Lawyers and firms have already established a presence in these virtual worlds. Time will tell whether this proves to be a viable platform for legal engagements or simply a marketing tool. But companies that choose to test the waters and engage counsel in the metaverse should be mindful of certain issues; lawyers and firms must, too.

[Read More Here](#)



CONSTRUCTION & REAL ESTATE LITIGATION

**Massachusetts Mechanic's Lien Statutory
Deadlines Are Strictly Enforced, Pandemic
or Not**



By: [Nathan Cole, Esq.](#)
and [Herling D. Romero, Esq.](#)

The Massachusetts Mechanic's Lien Statute, Mass. G. L. c. 254, has notoriously strict deadlines by which notices of contract, statements of account, and certified complaints must be filed in relation to work performed on private property to "perfect" and enforce a lien. Failure to comply with the statutory recording requirements will almost certainly result in the discharge of the lien—and the loss of potentially significant leverage against a general contractor or landowner that has not paid for services or materials provided to improve the property.

[Read More Here](#)



EMPLOYMENT LAW & RISK MANAGEMENT



Does The Massachusetts Noncompetition Agreement Act Cover a Salesperson's Sale of Her Book of Business?

By: [Laura M. Raisty, Esq.](#)

The Massachusetts Noncompetition Agreement Act, M.G.L. c. 149, § 124L ("MNAA"), effective October 1, 2018, established legal requirements for a valid and enforceable noncompetition agreement between a Massachusetts employer and employee. By its terms, however, it does not apply to a noncompetition agreement made in connection with the sale of a business.

[Read More Here](#)



EEOC Updates Its Guidance To Address COVID-19 Workplace Testing

By: [Michelle De Oliveira, Esq.](#)

On July 12, 2022, the Equal Employment Opportunity Commission ("EEOC") updated its [Guidance](#) with respect to COVID-19 workplace testing. According to the EEOC, an employer may administer a COVID-19 test when evaluating an employee's initial or continued presence in the workplace so long as the employer can show that it is job-related and consistent with business necessity.

[Read More Here](#)



Court Provides Employers with Roadmap to Ensure Proper Employee Versus Independent Contractor Classification

By: [Greg Vanden-Eykel, Esq.](#)

On July 13, 2022, the Massachusetts Appeals Court reemphasized the importance of compliance with the "ABC Test" to ensure proper employee versus independent contractor classification.

[Read More Here](#)

MEDIATOR'S CORNER

[Chris Kenney](#) has built a burgeoning practice as a mediator. In that role he helps parties to resolve pending lawsuits before trial. The cases Chris has mediated range from business disputes, personal injury claims, and wrongful death claims to employment disputes, real estate matters and construction claims.

Tip: "Don't Buy a Pig in a Poke." Before mediating a dispute, insist that both sides exchange key documents and information to promote a fully informed consideration of risk management. Once a dispute is resolved and releases are exchanged, there is no "second bite at the apple."

For more information, please visit our site: [here](#)



FIRM HAPPENINGS

Partner [Michelle De Oliveira](#) was quoted in Massachusetts Lawyers Weekly article, "Alternate explanation' sinks suit over 'Black Lives Matter' mask ban" from July 8th. The article discusses a recent 1st U.S. Circuit Court of Appeals decision, *Frith, et al. v. Whole Foods Market, Inc., et al.*, holding that Whole Foods employees who were disciplined for wearing



[Mike Dickman](#) began his tenure as a member of the Board of Directors for the Massachusetts Bar Association's Young Lawyers Division in September 2022. The Young Lawyers Division is for lawyers admitted to practice for 10 years or less. The YLD provides the professional tools that newer practitioners need to excel within their careers, including continuing legal education and networking opportunities. As a Board Member, Mike is engaged in coordinating events and speaking opportunities with other bar organizations and industry groups throughout the Commonwealth.



Kenney & Sams congratulates [Brittany Darcy](#) for her selection to the Massachusetts Bar Association's Leadership Academy for the 2022-23 class year. Continuing its commitment to cultivating leaders who will work diligently toward the improvement of the legal profession in Massachusetts, the MBA developed the Leadership Academy to better prepare young attorneys to assume leadership roles at the bar, in government, and in private practice. [Read more here.](#)

SPEAKING ENGAGEMENTS

[Mike Sams](#) moderated the Associated Subcontractors of Massachusetts Prompt Pay Law program on September 8th. The program focused on the Prompt Pay statutory requirements, Court interpretation of the law, and best practices related to the law.

For more details, please [click here](#).

[Greg Vanden-Eykel](#) will serve as a panelist for Massachusetts Bar Association's program, "Managing a Remote Workforce Across State Lines." Please join Greg and his fellow panelists on November 9th from 12:30pm – 2:00pm as they discuss the various obstacles presented by a remote work environment.

For more information and to register, please [click here](#).

On November 15th, [Greg Vanden-Eykel](#) will also speak at MassDLA's program, "Employment Law Year in Review: How Key Case Decisions Have Changed the Practice and Developments to Watch for in 2023."

For more information and to register, please [click here](#).

[Laura Raisty](#) will be presenting at the Boston Bar Association's program, "The Supremes: A Review of Recent Labor and Employment Decisions at the U.S. Supreme Court and Supreme Judicial Court" on November 17th at 12:00pm. Please join Laura, along with her panelists, for a discussion of the recent employment decisions from the Massachusetts Supreme Judicial Court and the United States Supreme Court.

For more information and to register, please [click here](#).

WHAT CLIENTS ARE SAYING

"Kenney & Sams is a fabulous law firm. They saved me over \$100K on two projects. They also represent friends of mine who never need their litigation services because their contracts are so good! They are great!"

"Kenney & Sams has already helped our family so much...we know you have our backs and that helps us sleep easier at night. Thank you!"

WEBINARS

K&S KENNEY & SAMS

30 MINUTE WEBINAR SERIES

BUSINESS LITIGATION SERIES | EMPLOYMENT LAW SERIES

CONSTRUCTION RISK SERIES

K&S continues to offer our clients substantive updates on key issues affecting the construction, business litigation and employment law industries. Join us live at one of our upcoming webinars or, if you missed any, you can view past webinars here:

New! 30-Minute Business Litigation Basics Series

Starting on October 25, Kenney & Sams presented a new series of 30-minute webinars on business litigation basics. This series will focus on a variety of issues that businesses might encounter when engaged in litigation. The topics will include an overview of common types of lawsuits companies might face (or bring), the litigation process itself, and practical tips on how to work with counsel towards a positive resolution. Each session will start at 8:00am. This will be an excellent resource for all businesses and executives.

If you have any questions about this series, please contact [Matt Welnicki](mailto:Matt.Welnicki@KSlegal.com) at mcwelnicki@KSlegal.com. This is a free series. It will be broadcast live and then recordings will be available for later viewing.

PREVIOUSLY RECORDED WEBINARS:

- **Employment Law Series** - *Critical Massachusetts Wage Act Considerations for Employers* | [Watch here](#)
- **Employment Law Series** - *Employee Classifications & Why It Matters* | [Watch here](#)
- **Construction Risk Series** - *Getting Out of a Bad Contract* | [Watch here](#)
- **Business Litigation Series** - *First Things First: The Types of Lawsuits and Claims a Business Might Encounter* | [Watch here](#)

GET TO KNOW YOUR K&S TEAM MEMBER: ANTHONY FIORAVANTI



Best advice you were ever given as a professional: Don't be a jerk. It seems like advice that shouldn't need to be given, but in litigation there are times when the parties' ill will towards one another can infect the relationship among counsel. It took some time for me to appreciate that taking hard positions on behalf of a client can be done without making the parties' dispute a personal dispute among counsel. Being firm but civil and reasonable in furtherance of the client's objectives ultimately saves time and expense by avoiding sideshows that do not advance a dispute to resolution.

Favorite part about working for K&S: The people. The K&S team — lawyers, administrative professionals, office staff — is a great group of people that I enjoy spending time with. K&S has fostered a collaborative work environment with dedicated professionals all rowing in the same direction, which is reflected in the results we obtain for our client.

Best non-legal job you've ever had: When I was at the University of Vermont, I spent a summer working for a company that set up tents for weddings, food festivals, concerts, the Ironman Triathlon, and other outdoor events. We traveled all over Vermont and upstate New York, which was an amazing experience. I love Vermont in the summertime.

Something we may not know about you: I don't know how to do a cartwheel. I tried and tried as a kid but could never actually do one. I haven't fared any better as an adult.



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