



February 2021

Dear clients and friends,

We are rolling in this new year and hope you all are well. Kenney & Sams remains here for you regardless of what comes your way.

We hope you enjoy the newsletter!

**Massachusetts Lawyers Weekly
Lawyers of the Year
Chris Kenney & David Kerrigan**



Christopher A. Kenney



David R. Kerrigan

Congratulations to Chris Kenney and David Kerrigan on being included in Lawyers Weekly 2020 Lawyers of the Year!

After their client, a candidate for U.S. Congress, was denied access to the primary election ballot due to alleged non-compliance with unprecedented COVID-19 signature-gathering laws, Chris and David fought the case before the State Ballot Law Commission and the Massachusetts Supreme Judicial Court. Justice was achieved when the SJC ruled in favor of their client, reversed the Commission, and ordered the Massachusetts Secretary of State to include their client on the primary election ballot, after which she became the Republican nominee for Congress.

[Read Full Article Here:](#)

NEW TEAM MEMBER



Anthony da Fonseca

Anthony da Fonseca is a trial lawyer with significant experience in civil litigation, construction litigation and risk management. Anthony represents general contractors, subcontractors, developers, architects, engineers and other construction industry professionals who design and build residential and commercial projects. Anthony serves as outside general counsel to clients on a range of contractual, risk management and other daily business matters.



Getting to Know K&S Team Member Michelle De Oliveira

- **Best advice you were ever given as a lawyer:** Ensure that you are clear on expectations and communicate. Clear communication shows clients that they can rely on us, we care about getting them results, we know why they hired us, and we value their input as part of the team. When speaking with a potential new client, I always ask: “*what is your goal?*” The reason I do this is twofold: first, it allows me to understand what the client’s goals are, while ensuring that the client and I are on the same page; and second, because while meeting with a client, much can be said and discussed. In the end, it is critical that I leave that meeting knowing what the client’s expectations and goals are because it will give

me clarity on expectations for deliverables—and it will allow me to advance the case and analyze the key facts and law, always keeping the client's goals in mind.

- **Favorite part of being a lawyer:** I enjoy the feeling of adrenaline flowing through my veins as I strive to help others solve complex legal issues and manage risk.
- **Something we may not know about you:** I was the president of a youth group at a local church for many years and it was a huge part of who I was at the time. I loved it to the point of coming home from college on weekends to participate in the youth group's weekend activities—which included singing in a choir as part of the group. Nowadays, singing is no longer part of my repertoire!

K&S IN THE NEWS!



K&S Director Nate Cole was recently interviewed by Massachusetts Lawyer Weekly to discuss an important court decision affecting construction contractors and their insurance carriers. The case involved damaged caused by a fire at a private home. The homeowner's insurance carrier paid for the repairs then sued the contractor that allegedly caused the fire. After a jury found in favor of the defendant, the plaintiff insurance carrier appealed the decision. The Massachusetts Appeals Court agreed with the insurance carrier and ordered a

new trial. Lawyers Weekly quoted Nate for the story, who advised on the importance of waivers of subrogation in construction agreements, leases and vendor contracts. "[Waivers of subrogation] help give finality to the parties, who are unlikely to want to participate in litigation involving their insurer years after a claim has been paid." Nate also noted that many insurance policies prohibit insureds from agreeing to such waivers, so he advises clients to speak with their agent and insurance carrier about the implications of subrogation waivers in contracts.

[If you are a Massachusetts Lawyers Weekly Subscriber, you can read the full article here:](#)

ARTICLES OF INTEREST

Construction Contingency Clause

By: Drew Colby

Construction contingency clauses fund events or factors that arise during the course of a project. What constitutes a "contingency", the



process for releasing contingency funds, and how the residual contingency funds are distributed are often heavily negotiated.

[Read Full Article Here](#)

Business Litigation Session Judge Dismisses Restaurants' Covid-19 Claims Against Insurance Carrier



By: Tristan Foley

Courts have begun issuing decisions concerning insurance coverage for Covid-19 claims. [Kenney & Sams anticipated back in March 2020](#) that insurers would likely deny business interruption insurance claims related to Covid-19 because such policies generally require evidence of a direct physical loss to property to trigger coverage. The Suffolk County Superior Court, Business Litigation Session, reached just that conclusion in a recent decision.

[Read Full Article Here](#)

Design and Construction Defect Claims Seldom Offer Obvious Allocations of Liability



By: Anthony da Fonseca

Design and construction defect claims seldom offer obvious allocations of liability. Thus, it is critical for to have an in-depth knowledge and understanding of all concepts to be investigated. Prior to any analysis of the merits of the claim is performed, it is important to ensure that several critical steps are taken.

[Read Full Article Here:](#)

Massachusetts Superior Court Issues Order Strictly Enforcing The Massachusetts Prompt

Pay Act



By: Anthony Fioravanti

In a recent decision, the Massachusetts Superior Court awarded a \$4,000,000 judgment to a general contractor for breach of contract where the project owner failed to strictly adhere to the requirements of the Massachusetts Prompt Pay Act, in response to the contractor's payment requisitions. Although the decision is not binding on other courts because it was issued by a trial court judge, it could have significant

implications for owners, general contractors, and subs involved in payment disputes on major construction projects in Massachusetts.

[Read Full Article Here:](#)

FIRM HAPPENINGS



Drew Colby



Julianne Fitzpatrick

Drew Colby and **Julianne Fitzpatrick** presented a How-To Webinar overview of new updates to AIA documents at a continuing education seminar hosted by HalfMoon Education Online Learning. The seminar included information on general provisions, changes in the work, time, payment and completion, termination, suspension, claims and dispute updates, as well as other miscellaneous provisions.

Mike Sams has been appointed to the board of *Steel Fabricators of New England* as well as *Builders and Remodelers Association of Great Boston*.

Mike recently co-chaired the Defense Research Institute's (DRI's) national webinar concerning artificial intelligence (AI) used in construction and managing related risks. In addition, Mike served as



a panelist on ABC's Town Forum, ***Updates on Covid issues affecting construction.***

On February 5, 2021, **Nate Cole** mediated a [Boston Bar Association panel](#) on the fundamentals of commercial general liability, professional liability, and property liability insurance policies. Nate and the panelists discussed key policy exclusions, traps for the unwary, and relevant endorsements to insurance policies and explored best practices in contract and insurance risk management to minimize catastrophic losses for businesses and individuals.

