

KENNEY & SAMS



May 2021

Many thanks to our clients, colleagues, and friends for their confidence, trust, and support over the last 15 years.

Top Women in Law Massachusetts 2021



Michelle De Oliveira
Rising Star
Employment Litigation: Defense



Julianne Fitzpatrick
Rising Star
Civil Litigation: Defense

MASSACHUSETTS TOP WOMEN ATTORNEYS 2021

Super Lawyers 2021

ARTICLES OF INTEREST

Reservation of Rights Letter...The Insurer's Prenuptial Agreement with Its Insured

By: Mike Sams

When an insurance company agrees to defend you, but reserves the right to disclaim coverage —



you can hire your own counsel and the insurer, not you, must pay for that counsel.

[Read Full Article Here](#)

Battleground Selection For Resolving Real Estate Disputes



By: Chris Kenney

As any party to a lawsuit soon learns, it is expensive to fight. Real estate development, with the confluence of property rights, contract rights, and tort risks is fertile ground for disputes to arise. In some cases, prompt, reasonable settlement is the best business decision. It reduces expense, eliminates delay and preserves relationships. In other cases, principle, profit or an unreasonable adversary make battle inevitable.

[Read Full Article Here](#)

Rise of the Machines



By: Anthony da Fonseca

The construction industry—like many other industries—has been faced with significant challenges surrounding how to safely operate and meet project deadlines amidst daily uncertainties and strict government regulations imposed due to the COVID-19 pandemic.

Adjusting to the “new normal” has forced many design and construction firms to leave behind legacy project management systems and processes and leap into virtual cloud-based management and communication platforms. While historical distrust of technological innovation previously impeded change, COVID-19 has forced this necessary adaptation to improve efficiency, communication, and profitability.

[Read Full Article Here:](#)

Complex Commercial Litigation is Challenging, but the Business Litigation Session Can Make it Easier



Whether your business is the plaintiff, seeking to protect its trade secrets, or the defendant, fighting off a complicated breach of contract claim, a lawsuit can quickly grow to become a “bet the company” event. Litigation is an expensive and unwelcome distraction from your money-making activities. It is also risky, imposing uncertainty in everything from how your case will proceed to who will oversee it.

When the case involves complex commercial disputes, however, the Massachusetts court system offers a special forum called the “Business Litigation Session” that can provide the individualized attention necessary to move your case forward efficiently and effectively. The Business Litigation Session, or the “BLS,” is a limited session of the Superior Court that sits in Boston.

[Read Full Article Here:](#)

FIRM HAPPENINGS

- In April, **Mike Sams** and **David Kerrigan** served as faculty members for the National Institute of Trial Advocacy’s (NITA) trial training program. NITA provides one of the foremost trial training programs in the country. Dave was faculty for the Opening Statement/Closing Argument component, and Mike taught on advanced cross examination techniques and issues.
- **Chris Kenney** conducted a mock trial as a faculty member on MCLE's program Trying Civil Cases.

ADR

An Alternative to Litigation and Trial



Is your case appropriate for mediation? Most types of cases can be mediated.

Common types include:

- Personal injury and wrongful death claims
- Employment and Wage Act claims
- Construction, real estate and HIC disputes
- Business litigation and shareholder disputes
- General tort and contract disputes

It is important to hire an experienced, effective litigator to represent you in your dispute. The best mediator is someone familiar with the subject matter of your case who has the ability to navigate you through the process and guide you toward a satisfactory resolution of the dispute.

Our trial lawyers have years of experience litigating and mediating a wide variety of tort and contract claims before state and federal courts, administrative agencies, and at arbitration.

Please contact our office for more information.

GETTING RESULTS FOR OUR CLIENTS

Chris Kenney & Ben Hinks: Makris v. Blum (Norfolk Superior Court, April 2021): This case involved a failed real estate development, missing promissory notes, fraud in the inducement and assorted other claims and defenses. Because of COVID-19 restrictions, we waived the right to a jury trial. The Superior Court judge then acted as judge and jury, imposed COVID-19 safety protocols in the courtroom (yes, we tried this case in person), and our case went in well. Ben was a big help as second chair, and did a fine job arguing evidentiary motions to the court during trial. The judge ruled in favor of our client on all counts.

Tony DeProspo and Mike Sams recently obtained a great result for an architect client. The architect had previously provided services to a property owner for which it had not been paid. The architect filed suit to recover amounts owed. At mediation, the architect recovered all amounts due, plus attorney's fees and interest.

Nate Cole & Julianne Fitzpatrick obtained a significant settlement for a construction contractor at mediation. The firm brought suit on behalf of the contractor against its insurance agent for failing to adequately advise our client on its workers' compensation insurance policy. The client purchased an unusual workers' compensation product on the recommendation of its long-time insurance agent. Once enrolled in the policy, however, it became clear that the product was not as the agent had described, as the premiums were significantly higher than as presented by the agent. K&S filed suit and brought claims against the agent for breach of contract, negligence, and breach of fiduciary duty.

Nate argued that under Massachusetts law, an insurance agent has a heightened duty to advise agency customers on the purchase of complex and unusual insurance products, especially where the agency customer has worked with the agent for many years and relied on his advice. He and Julianne conducted extensive depositions and retained both insurance and accounting experts. At mediation, Nate and Julianne obtained a high six figure recovery and forced the insurance carrier to agree to drop its claims against our client for remaining premiums due. The client was thrilled that it recovered virtually all its damages while also avoiding trial.

Michelle De Oliveira won an interesting eviction case. Her client, who owns a multi-family property in Worcester, discovered that trespassers had taken up living in one of the units and claimed it for their own. They refused to leave.

It would seem obvious that they should have been arrested and pulled out but eviction can be a painful and confusing process. In fact, Michelle was advised by several lawyers who practice in this area that she would lose the hearing. Undeterred, she proceeded and conquered, obtaining an eviction order and regaining possession of the property for our client.

K&S IN THE NEWS!

Lawyers Weekly: "Hospital 'offer letter' found not to be binding contract."

[Full Lawyers Weekly Article Here](#)

Michelle was also published in the Mass Bar Journal discussing employer Covid-19 vaccine mandates.

[See Full Article Here](#)



Michelle De Oliveira



GETTING TO KNOW K&S TEAM MEMBER *ALEX ZWILLINGER*

- **Best advice you were ever given as a professional:**

"Your reputation is everything. Build it up, and then protect it at all costs."

- **Favorite part about working for K&S:**

"Hands down, it's the clients. There is nothing more satisfying than making your clients' problems your own, and finding a solution that delivers the best result possible even in difficult times. To do that, though, you need to appreciate your clients' challenges, internalize their goals and

identify the right options to make forward progress. My favorite part of working at Kenney & Sams is working with the clients to do each those things.”

- **Best non-legal job you’ve ever had and why:**

“When I was 19, I worked in a masonry supply yard, stacking bricks and shoveling dirt. It was backbreaking work, but I learned that the only way to move a mountain of bricks, is one at a time. Through consistent effort, you can get even the heaviest tasks done.”

- **Something we may not know about you:**

“I love listening to podcasts. Whether it is a daily news brief or discussion of the legal issues facing cryptocurrencies, it is amazing what you can learn in forty-five minutes or less.”

WHAT CLIENTS ARE SAYING ABOUT US

“You guys are officially part of our team from now on! No need for me to call anyone else. Thank you very much for putting in the time needed.”

