



Issue: XII

March 2015

Dear Patricia,

Thank you for reading **news & views** from Kenney & Sams, P.C. We value your time, and promise to keep the content brief, educational and direct. If you would like to discontinue receiving this type of communication, please unsubscribe below.

Around the Firm



Kenney & Sams, P.C. will be hosting an informational breakfast briefing on the new **Massachusetts Leave Acts** and the impact they have on your business.

Thursday, April 30th from 8am to 10am
at our Southborough Office

Sick Leave Law
Domestic Violence Leave Act
Parental Leave Act

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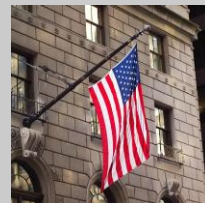
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NOTEWORTHY **CASES AND** **MATTERS**



Mike Sams argued before the First Circuit Court of Appeals, including former U.S. Supreme Court Justice David Souter, concerning the insurer's misapplication of an exclusion endorsement to our contractor client's commercial general liability policy.

Wage Act Update

[To register, please email: Events@KandSlegal.com](mailto:Events@KandSlegal.com)

Kenney & Sams, P.C. Supports The COS Fund

Ross Wecker of Kenney & Sams, P.C. recently helped to run The COS Fund Annual "COS for a Cause" fundraising event on March 1, 2015 at the Hermitage Club in Wilmington, VT.

Ross and his family established the COS Fund in 2011 to assist undergraduate students with high-financial needs in achieving academic success through the gift of textbooks. While many high-financial needs students receive scholarships, few scholarships provide funding for textbooks or other necessary learning materials.

[To learn more: http://www.cosfund.org/get-involved](http://www.cosfund.org/get-involved)



New Associates

Kenney & Sams, P.C. Welcomes Lindsay Manning Burke

Lindsay has extensive experience in complex civil litigation, investigations and intellectual property litigation.



Lindsay Manning
Burke

Before coming to Kenney & Sams, Lindsay was an associate at Wilmer, Cutler, Pickering, Hale & Dorr in Boston, and Sullivan & Cromwell in New York. She has represented businesses in a variety of commercial disputes including technology, biotechnology, and pharmaceutical companies in cases involving theft of trade secrets, allegations of patent infringement and general business disputes.

Tony DeProspo defeated a motion for summary judgment brought by a subcontractor against one of our general contractor clients in Canandaigua, NY. The subcontractor claimed that our client breached the parties' subcontract. The Court found genuine disputes of material fact which required a determination by a jury at trial.

Chris Kenney and **Amanda Cox** successfully resolved a complex intra-family business dispute over title to multiple parcels of commercial real estate and the sale of several corporations. After our clients were sued, we counterclaimed and forced the case to mediation where our clients were released from all claims and the suit against them was dismissed for \$0.00.

Mike Sams and **Amanda Cox** globally resolved a construction case where we represented a contractor on the coverage side of its dispute with a developer. As part of the settlement, Mike and Mandy persuaded the insurer to fund the settlement completely despite its position in a related coverage case against our client, that it did not owe our client any coverage.

Frank Sally and **Ryan Menard** succeeded in securing dismissal of our client, a mortgage lender affiliate of a local financial

Articles of Interest



New "Paid Sick Leave" Law Is Creating Confusion And Headaches For Employers

By:

Ryan P. Menard, Esq.

Beginning on July 1, 2015, the sick-leave law approved by voters in November will take effect, requiring that all Massachusetts employers provide their employees with time off-sometimes with pay-for personal or family illnesses and domestic violence issues. The new law, however, is riddled with ambiguities and potential traps for employers. At least one legislator and a major business group are seeking to rewrite the bill to clarify these issues. In the meantime, employers should use the next few months to prepare for the law to take effect.

The New Law Requires Sick Leave For All Employees, Sometimes With Pay

Employees may use their sick leave time to deal with physical or mental illnesses, injuries, or medical conditions, including the need to stay home or seek medical treatment due to the employee's sickness or the sickness of an employee's child, spouse, parent, or parent of a spouse. Employees also may use sick leave time to recover from or deal with the physical, psychological, and "legal" effects of domestic violence-conceivably including testifying at the abuser's criminal trial, attending a hearing for custody or restraining order, or even consulting with an attorney or attending a deposition.

Under the new statute, employees earn one hour of sick time for every thirty hours the employee works, and can earn up to 40 hours per year, with up to 40 hours of unused sick time carried over into the following year. For employers that have 10 or fewer employees, this accrued sick leave is unpaid, but employers that have 11 or more employees must pay their employees their usual wages during their sick time (though it need not be cashed out upon the employee's separation of

institution, in a Housing Court case. The homeowner alleged defects in the assignment and ultimate foreclosure of a mortgage and sought to have the foreclosure invalidated. Frank and Ryan obtained the dismissal before the homeowner could take our client's deposition or ask for discovery.

Chris Kenney Nominated to Chair the new DRI for Life Committee

DRI is the international membership organization of lawyers involved in the defense of civil litigation.



Chris Kenney Appointed Chairman of the Trial Techniques and Tactics Committee for the International Association of Defense Counsel

The International Association of Defense Counsel (IADC) has been serving a distinguished membership of corporate and insurance defense attorneys and insurance executives since 1920.

The IADC membership is comprised of the world's

employment). It is unclear, however, whether such workers as independent contractors and interns count toward the 11-employee threshold. Also unclear is whether paid leave is required when an employer's size grows above 10 or shrinks below 11 during a year.

Fortunately for employers, there are at least some limits on what the law requires. First, employees can begin using sick time only after working for the employer for 90 calendar days. Further, although employees can carry over unused sick leave hours year to year, they can use up to only 40 hours of sick leave per year. Finally, an employee who requests a sick leave period lasting longer than one workday may be required to provide the employer with a doctor's note

[Read Full Article Here](#)

The New Retainage Law

By: Ross C. Wecker

After years of drafting and negotiating construction contracts, one of the issues that is almost universally important to owners, contractors, and subcontractors is the subject of retainage. How much retainage should be held, when should it be released, what are the conditions that should generate final payment? These are questions that often implicate hundreds of thousands of dollars, are difficult to resolve, and can lead to litigation between contracting parties. In light of these longstanding, troublesome issues with retainage, the Massachusetts legislature recently has taken action to provide significant direction on how the issue of retainage in construction contracts is to be handled.

It is important that you review your current contracts with your counsel to assure they conform to the new law. Of course, if you have additional questions about the application of the new retainage law or would like to make sure your contracts comply with the new law, Kenney & Sams, P.C. would be happy to assist you.



leading corporate and insurance trial lawyers and insurance executives.



Tony DeProspo To Present at Boston Bar Association Continuing Legal Education Program:

Environmental Issues in Construction Projects

The surge of local construction activity has brought increasing focus on the proper legal procedures for removing hazardous materials from sites. Any misstep can lead to project delays, cost overruns and compliance concerns. The panel of federal and state regulators, technical experts and environmental lawyers will discuss key environmental regulations and recent projects to provide attendees with practical advice on managing regulations and advising clients.



Frank Sally was recently appointed to serve as a co-chair of the Human Resources Committee of the Massachusetts Biotechnology Council.

[Read Full Article Here](#)

[Court Finds Contractor's Failure to Comply With Home Improvement Contractor Statute A Violation Of The Consumer Protection Statute](#)

By: Tony DeProspo, Jr.



A Massachusetts Superior Court judge recently found that a contractor's failure to register as a Home Improvement Contractor pursuant to the Massachusetts Home Improvement Contractor Act (HIC Statute), G.L. c. 142A, constituted a violation of the Massachusetts consumer protection statute, G.L. c. 93A.

Home improvement contractors are well advised to adhere to the provisions of the HIC statute. the potential risks, i.e., Chapter 93A liability, far outweigh any potential benefits.

[Read Full Article Here](#)



Frank Sally was recently re-elected to serve as a member of the Board of Governors of the Boston College Club.



~ Committed to Excellence ~

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