



Legal news & views

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Dear W. Robert,

Thank you for reading **news & views** from Kenney & Sams. 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.

One Man's Virtue Is Another Man's Downfall

Michael P. Sams, Esq.
Joseph P. Calandrelli, Esq.
Kenney & Sams, P.C.

It is often said that patience is a virtue. But just how "virtuous" should a subcontractor be when it has not been paid? Every subcontractor on a privately-owned construction project faces the same predicament: does it risk creating acrimony and distrust on the job site by recording its notice of contract at the commencement of work or does it wait and preserve goodwill while potentially exposing itself to a subsequent inability to enforce its perfected mechanic's lien? A recent decision from the Massachusetts Appeals Court confirms that the subcontractor's patience will not be rewarded, at least not in its collection efforts.

Chris Kenney Named Massachusetts Defense Lawyer of the Year...

Chris Kenney was named the 2012 Defense Lawyer of the Year by the Massachusetts Defense Lawyers Association. Chris represents clients in all types of civil litigation, including employment litigation, business disputes, real estate and construction disputes, and insurance matters. He is a former

Massachusetts permits a subcontractor to enforce a lien for non-payment against the real estate improved by the subcontractor's work. The value of the lien, however, is not necessarily determined solely by the value of the unpaid work. By law, the lien cannot exceed the amount that is "due or to become due" to the general contractor as of the date the owner receives notice of the subcontractor's contract. G.L. c. 254, § 4.

For nearly ten years, subcontractors have known that notices of contract recorded after the general contractor has been terminated from the project will be rendered valueless if, as is likely the case, the owner owes no further money to the terminated contractor. In the recent case of Superior Mechanical Plumbing & Heating, Inc. v. Insurance Co. of the West, 81 Mass. App. Ct. 584 (2012), the Appeals Court held that a lien also will be nullified if the subcontractor's contract is recorded after the general fails to comply with a condition precedent in its contract, even if the notice is recorded prior to the owner's knowledge of the general's default.

[read more...](#)

CORI Law Reform: Know Your Obligations Or Face Civil And Criminal Sanctions

Kimberly A. Alley Esq.
Ryan P. Menard, Esq.
Kenney & Sams P.C.

Sweeping changes to the Criminal Offender Record Information (CORI) Act, effective on May 4, 2012, substantially alter an employer's obligations concerning its criminal background hiring and recordkeeping practices. Failure to comply with the new mandates subjects employers to severe civil and criminal penalties. With fines as high as \$75,000 per violation, possible imprisonment, and new avenues for aggrieved applicants to sue, employers must be diligent about CORI Act compliance.

The Employer's Obligations

The reformed CORI Act introduces several new provisions. Among the key changes are restrictions on an employer's ability to inquire into applicants' criminal background, new procedures concerning adverse employment actions based on CORI reports, and additional recordkeeping requirements.

It is now illegal discrimination to request *any* written information about an applicant's criminal background in a job application. Employers must review their written application forms to ensure the form is void of any such request.

President of the Massachusetts Defense Lawyers Association, a national Director of the Defense Research Institute, and a member of the International Association of Defense Counsel.

Ryan Menard Joins Kenney & Sams

Kenney & Sams, P.C. is pleased to announce that Ryan P. Menard has joined the firm.

Mr. Menard's previous experience includes representing clients in rental discrimination and G.L. 93A matters at one of the Commonwealth's largest legal aid organizations, and interning at two Boston civil litigation firms, concentrating on business litigation, employment law compliance consulting, and construction litigation. He also interned at the Massachusetts Attorney General's Office in the Civil Rights Division, focusing on employment and rental discrimination, and as a clerk for the Hon. Peter W. Agnes, Jr. of the Massachusetts Superior Court, prior to his appointment to the Massachusetts Appeals Court.

An employer must refrain from asking about an applicant's criminal background until it has fully complied with the Act's procedure for pursuing this information. First, an applicant's written authorization allowing the employer to request a CORI report from the state must be obtained. Upon receipt of the CORI report, the employer is required to provide the applicant with a copy of the report. Thereafter, an employer may inquire about the criminal background, but only if it has first provided the applicant with a copy of the CORI report.

[read more...](#)

Kim Alley Participates in Discovering Justice

Kimberly Alley of Kenney & Sams participated in the Worcester Public Schools Discovering Justice Program. Working with students from the Woodland Academy and Goddard School of Science and Technology, Kim assisted school children in learning to use their voices to advocate for themselves and others through education about democratic values, history, justice, and civic responsibility.

Students who participate in Discovering Justice develop a sense of personal responsibility and respect for others, learn that they can make a difference in their lives and their communities, and become cognizant of the value of their participation in society.

Kim met with students once per week for 15 weeks teaching them the finer points of the legal system, the trial system, and the differences between civil and criminal litigation.

Her group selected a "bullying" scenario from which to create a "mock" trial in May. The trial was held in Worcester before Federal Judges.



Kenney & Sams, P.C. will be hosting an informational seminar on Friday July 27th from 11am to 1pm. In this session you will learn:

Wage & Hour Law

- What the law requires regarding payment of wages to employees;
- When may an employer pay employees a salary instead of an hourly rate;
- Enforcement trends; and traps for the unwary

Independent Contractor Law

- Is your independent contractor really your employee?
- The legislature amended the so-called Massachusetts independent contractor statute in 2004 to make it much harder to properly classify workers as independent contractors;
- Just because they carry their own insurance and drive their own trucks, doesn't end the analysis;
- In Massachusetts, anyone you hire is initially presumed by law to be an employee, until and unless you can satisfy a three part test under Massachusetts law:

RESULTS:

Kenney & Sams Latest Decisions

Multi-National Litigation

K&S obtained a dismissal of claims against a Korean national who executed a personal guaranty to secure a corporate loan made to his employer as a condition of assuming the title of CEO. The employer defaulted on the loan, and a Korean national bank obtained a judgment against the guarantor worth in excess of \$8 million.

Property Management / Wrongful Death

K&S obtained the dismissal of wrongful death claims that had been filed against its property management client. The plaintiff's decedent fell from a ladder after being struck by loose bricks, while working on a building.

Equipment Rental / Property Damages and Business Interruption

K&S obtained the dismissal of contract and tort claims filed against a waste disposal company arising from the alleged nonpayment for equipment rental and reimbursement for equipment damage costs.

Corporate Derivative Litigation

K&S obtained the dismissal of a shareholder derivative action filed in the Federal Court in Boston, Massachusetts, against a former director of a Canadian corporation.

- The statute was ignored in large part for several years but Governor Patrick established a task force to address the Massachusetts "underground economy" and that task force has investigated the independent contractor issue steadily, with substantial resulting fines.

Come learn about what the law requires to properly classify someone as an independent contractor and the proper way to navigate wage and hour regulations.

Space is limited. To register, email events@kandslegal.com

Announcements

Mike Sams was appointed President of the Massachusetts Defense Lawyers Association for 2012-2013.

Mike Sams was appointed Co-Chair of the Boston Bar Association's Construction Law Committee for 2012-2014.

[read more on K&S Decisions...](#)

Awards

Boston University School of Law is presenting Chris Kenney with its Silver Shingle Award for Outstanding Service to the Law School. This is the highest award given to Law alumni. Chris served as president of the BU Law Alumni Association in 2010-2011