



## Kenney & Sams, P.C. News & Updates March 2018

*Greetings from Kenney & Sams. Please peruse our newsletter for recent developments in the law and at our firm!*

### *In This Issue*

- Legal Issues You Should Know About
- Recent Successes
- Noteworthy Events
- Awards and Accolades



### *About Us*



#### ***Old City Hall***

Kenney & Sams's Boston office is located in the historic Old City Hall. The Boston Latin School, Boston's first public school (1635) and the oldest educational institution in the country, stood here first. Some notable figures in history who attended this school include Cotton Mather, Benjamin Franklin, John Hancock, and Sam Adams.

In 1810, the Suffolk County Courthouse, designed by renowned architect Charles Bulfinch, was erected here.

There are numerous works of art both within and outside Old City Hall, including the bronze statue of Benjamin Franklin, which was the first portrait statue to be erected in Boston (1856).



For more fun facts, please visit:

[Old City Hall](#)



**Welcome**  
**Julianne Fitzpatrick**

Kenney & Sams is pleased to welcome Julianne Fitzpatrick as an Associate to the firm.

Julianne's practice focuses on product liability, employment law, business disputes and general civil litigation.

Julianne currently serves as the President of the Massachusetts Association of Women Lawyers. She is the Vice President of the Holy Cross Club of Boston and co-chair of the Massachusetts Defense Lawyers Association's Young Lawyers Division.

Julianne is a graduate of the College of the Holy Cross, and New England School of Law, where she was an editor of the law review.

## *Legal Issues You Should Know*

### *Dig Safe*

By: Roddy Ames

In theory, the Massachusetts Dig Safe law is comprised of straightforward regulations to promote safe excavation on construction projects in the Commonwealth. In practice, however, many construction projects pose challenges to navigating the Dig Safe law without consequence. The most often disputed and fact-intensive violation is for excavation work that “was not performed with precaution” and resulted in damage to an underground utility service.

[Read Full Article Here](#)

# Down the Garden Path

By: Lindsay Burke

In a state with an innovation economy like Massachusetts, the balance between protecting both a company's pioneering intellectual property and the employee's ability to move freely in the marketplace often is in tension. It is no surprise then, that in recent years the Commonwealth's legislature has trained its fire on non-competition agreements. Legislators have focused on issues such as the propriety of non-competition agreements for lower-level employees and whether non-competition restrictions are justified by legitimate business interests, such as protecting trade secrets, or function merely as a tool to suppress healthy competition. As we begin 2018, the perennial question looms for those who practice at the intersection of intellectual property and employment law: Will this be the year that Massachusetts finally reforms or eliminates non-competition agreements?

[Read Full Article Here](#)

*\*\*This article was first published in the Massachusetts Bar Association's ComCom Quarterly, the newsletter of the MBA Complex Commercial Litigation Section.*

## A Review of the AIA 201 and ConsensusDocs

By: Michael Sams and Amanda Cox

This article summarizes important contract sections and provides bullet pointed analysis of particular issues to consider from the AIA 201 (2007 and 2017 versions) and the ConsensusDocs (2014 and 2017 versions). It is not intended to be all inclusive, but provides a summary comparison of the various documents. Key contract issues include:

- Financial Assurances
- Design Risk
- Project Management/Contract Administration
- Schedule/Time
- Consequential Damages/LDs
- Claims
- Disputes/ADR
- Insurance and Indemnification
- Payment

[Read Full Article Here](#)

## Recent Successes

## A Win in Vegas!

Chris Kenney and Tony DeProspero recently obtained summary judgment on behalf of a major real estate developer in the United District Court for the District of Nevada. In 2012, the Tropicana Casino in Las Vegas sought to expand its footprint to include multiple retail shops and restaurants. Tropicana hired a real estate broker to sign up new retail tenants. After the broker's efforts stalled, Tropicana recruited our client to jointly develop the property.

Unfortunately, due to logistical concerns, the project never went forward. Nevertheless, the broker sued Tropicana for breach of contract and sued our client for alleged tortious interference. The broker claimed that, notwithstanding the project never being completed, it had satisfied all conditions necessary to have earned commissions on the project, and sought \$14 million in damages. The parties engaged in extensive deposition practice in Boston, New York and Las Vegas.

A turning point in the case came when Chris successfully cross-examined the former CEO of MGM Studios, who conceded that our client did not cause the broker's termination or the project to be suspended.

Our client ultimately moved for summary judgment. The District Court granted our motion, and dismissed all counts in the broker's complaint.

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## A Win in New Hampshire!

Mike Sams and Jason Rogers won a motion to remove a default against a new client in New Hampshire. The client had been defaulted by the court close to a year and a half before engaging Kenney & Sams and a hearing was set for an assessment of damages and entry of judgment. Jason and Mike convinced the court that predecessor counsel, not the client, had failed to follow process, that the client had strong meritorious defenses, and that the client's failure to seek removal of the default earlier was not its fault under the circumstances. The field now has been leveled. The client avoided a default judgment in excess of \$1,000,000, and K&S is eager and ready to advance the client's defense!

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## Can't Stop Me

Lindsay Burke successfully defeated a motion for preliminary injunction in a non-competition case for her client, a manager in the technology services sector.

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## Home Sweet Home

Ashley Healy defended a client in a probate and family court trial where the court had ordered the client to sell the home in which she resides with her special needs son to pay off a debt to her ex-husband. After holding an extensive evidentiary



hearing, the court vacated its previous order and allowed the client to remain in her home.

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## Family Feud

Chris Kenney and Lindsay Burke recently prevailed in a complex shareholder dispute after a three-week jury trial in the Business Litigation Session of Suffolk Superior Court in Boston, MA.

After presenting their case, Chris and Lindsay moved for a directed verdict. The court was considering the motion when plaintiffs abruptly and voluntarily dismissed all claims against our client with prejudice for \$0 before our closing argument.

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## Oh, My Deer!

Ashley Healy recently obtained a defense verdict in a trial for our client, an airport management company. In 2014, a pilot struck a deer while landing his airplane at our client's airport, damaging the plane. The pilot sued our client for negligence, claiming that it had allowed a "recognized wildlife problem" to exist at the airport. After trial, the special magistrate ruled in favor of the airport manager.

## *Noteworthy Events*



Lindsay Burke moderated a roundtable discussion on "Recent Developments in Close Corporation Law," featuring Hon. Janet Sanders of the Superior Court Business Litigation Session, which was held at the Massachusetts Bar Association.



Mike Sams led a webinar for the Associated Subcontractors of Massachusetts concerning the Worker's Compensation Rating and Inspection Bureau (WCRIB). Mike discussed what WCRIB does, how it functions, rules and regulations, worker's compensation classification, related potential liability for misclassification, and pending changes to classification.

To View the Entire PowerPoint:

[Everything you Subconsciously Wanted to Know About the WCRIB, and Related Risks](#)

Chris Kenney and J. Nathan Cole recently spoke at the Boston Bar Association's "Brown Bag Lunch Program." The program featured a panel of insurance broker E&O litigators and risk management professionals. Chris and Nate discussed various claims that insurance agency customers may bring against their insurance agents, applicable standards of care and frequently litigated areas, including certificates of insurance, failing to advise a client to purchase specific insurance, and the agent as a fiduciary.



Lindsay Burke was selected to co chair the "Women in the Courtroom" Committee of the Women's Bar Association.



Mike Sams was re-appointed to Northeastern University School of Law's Board of Trustees. Mike is a Past-President of the Board.



## ***Congratulations Judy!***

And the winner is....Congratulations Judy for winning the K&S "Super Bowl" Chili contest. The "other" Boston team may not have won, but we DID OUR JOB getting ready!



Trial-Think ['tri(ə)l think] *noun*

1. An approach to dispute resolution and risk management that brings trial experience, preparation and effectiveness to everything we do for our clients.

**Litigation - Construction Law - Employment Law - Business Law  
- Insurance Law - Risk Management**

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