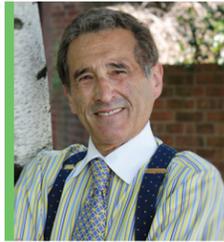




ATTORNEYS & COUNSELORS AT LAW



## Yet Another Discipline of A Business Litigator

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As a commercial collection attorney, I am often asked what the difference is between a commercial collection attorney and a retail collection attorney. Commercial refers to business to business, as opposed to retail, which is business to person.

The next inquiry is what is the difference between a commercial collection situation and a breach of contract situation? To answer that question, I must first answer the question, what is a breach of contract? A business contract creates certain obligations that are to be fulfilled by the parties who entered into the agreement. Legally, one party's failure to fulfill any of its contractual obligations is known as a "breach" of the contract. Depending on the specifics, a breach can occur when a party fails to perform on time, does not perform in accordance with the terms of the agreement, or does not perform at all. So, how does this differ from a commercial collection situation? Generally, money is at the crux of the situation. Commonly, the right and/or remedies in a commercial collection situation are already well established. The only major issues are how much is owed by one business to the other business and what is the likelihood of success for collection of that debt. In other words, the contract has already been breached.

Commercial debts are not like fine wine; they do not become better with age! Small/medium businesses tend to hold on to their commercial accounts far too long. The chief advantage of turning over an account to a commercial collection attorney is an increased likelihood of a successful outcome. The old expression, the squeaky wheel gets the grease, rings true.

What makes a good commercial collection attorney? The immediate reaction is the one who gets the money back. That may seem to be the correct answer, but the better answer is one who can accurately review the quality of the potential claim, which actually means its ultimate collectability. If the claim is eventually uncollectible, a business is better off to cut its losses

and move on. Why spend good money and resources when, at the end of the day, the business will get nothing? Sometimes this is an emotional decision. But it should not be; it is a simple cost analysis. Should one spend more time, money and energy, only to get little, if anything, in return? Additionally, pursuing a claim also means that the business may be spending time and effort away from its main goal, namely growing and developing the business.

A seasoned commercial collection attorney is your best defense against being taken advantage of either as a creditor or as a debtor. Such an attorney can help come up with strategies either to get you the money that you are owed or to protect you from overeager creditors. If you are a creditor, a commercial collection attorney can help you develop a strategy to put you in the best possible position to be able to recover any money due the company. If you are a debtor, a commercial collection attorney can help provide advice to try to protect your assets and offer alternatives to resolve the situation.

At the end of the day, I, as a seasoned commercial collection attorney, thoroughly investigate my business clients' commercial/corporate goals and apply my many years of experience to provide advice based on principled thinking that not only has their backs, but their futures, too. If you are caught in the crosshairs and need someone to talk with, call me at (781) 237-0033 x236 or email me at [ssk@kongreen.com](mailto:ssk@kongreen.com).

*To paraphrase Donna Summer:*

**"The Company works hard for the money, so hard for it...  
The Company works hard for the money so you better treat The Company right!"**



## A Firm Decision: Returning to the Practice of Law

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I am well past the days of sippy cups and Cheerios; even the days of Little League games and surviving kids' frenetic birthday parties are in the rearview mirror. With two young men launched, I am facing just one more high school graduation, and one more college application challenge. So, the time has come for me to do what makes me happy, fulfilled, and proud: activate my attorney status with the Massachusetts Board of Bar Overseers and GO FOR IT!

**"... a law firm that serves its clients with the utmost respect, talent and compassion."**

That is exactly what I have done, enthusiastically landing here at Konowitz & Greenberg, PC. Could there be a better fit? A place where I am not the shortest or the oldest? A firm where attorneys don't just talk about being family-friendly but indeed, the partners, Steven and Karen, are siblings! And most importantly, a law firm that serves its clients with the utmost respect, talent and compassion.

My interest in law germinated during my college years at Oberlin, a small liberals arts school with a reputation for progressive politics. As a psychology major, I became fascinated with the laws surrounding the involuntary commitment of individuals with psychiatric disorders. Back in the day when an internship was one of the many ways a college student could choose to spend the summer – having since evolved into practically a mandatory credential – I sweated away the summer in the Public Defenders' Office at St. Elizabeth's Hospital in Washington D.C., trying to catch a glimpse of John Hinckley. Fast forward, I graduated college, worked as a real estate paralegal in a large Boston law firm and went on to law school at Northeastern University. What an amazing group of classmates, ranging in age from 23 to 66! Immersive class discussions, hilarious skits parodying law school and lawyers, and unique clerking experiences all followed.

I knew I wanted to become a practitioner, and I was intrigued by the range of available specialties. What better way to learn about the numerous and varied practice areas than to clerk after graduation – which I did, for two years, in the Massachusetts Trial Courts. Mission accomplished, I joined a mid-size Boston law firm and became a litigator, practicing in such areas as employment, banking, business, real estate, discrimination and domestic law. It was a great run of over ten years but by then, with two small children and the desire for another, it was time to stow the briefcase in the closet for a few years.

Well, it is now a little more than a "few years." As is often said about having children, "the days are long, but the years are short." I'm certain that none of you parents will be the least bit surprised that my hiatus was longer than anticipated. And I am grateful to my husband that we had the ability to do things the way that we did. No doubt, my 16-year old daughter is thrilled now that I have another focus; her only regret being that I need the car to drive to K & G, thereby demoting her to passenger-only status.

Feeling almost as if I had been a member of the Witness Protection Program, I wasn't sure how comfortable I would be shedding my cover and becoming an "Esq." all over again! But, funny, with the support and confidence of my K & G colleagues, it all came flooding back to me in very short order. The biggest challenge, as you can probably guess, has been catching up with all of the technology. Luckily, I have my own Genius Bar in my family: three children and a husband (less up-to-date than the other Geniuses!). And I have our wonderful office manager, Karen, and our star junior associate, young Cassandra!

While I intend to continue my practice in litigation and general business law, I also plan to expand my specialty areas to include consultation on work place issues, including rights and responsibilities, with respect to both employers and employees.

So, with the support of K & G, I am set and ready to share my expertise with you, resolve your legal problems and, most importantly, improve the quality of your life. Can't wait to meet you!



## Beginner Home Buyer Basics

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Envision yourself walking through a house (or condominium) for sale. As you walk through, you see the backyard is a perfect place for your dogs and children to play. The dining room would be great for hosting friends and family for the holidays. The living room looks perfect for binge-watching your favorite show. This could be your new *home*. Buying your first house is an exciting time, but this monumental new beginning is not worry-free. Before this house becomes your home, you must be cognizant that many issues may arise that can cause unease, from needing small repairs to serious legal issues that affect your ability to own the property. However, certain steps can be taken to ensure that you are protected and that these issues are minimized.

Even though the house is as beautiful in person as it was in the staging photos, someone must take a deeper look into the house, meaning an independent inspector. Even if the seller hired an inspector, you must hire your own inspector to make sure that your interest, as the buyer, is shielded. The seller's inspector might feel no particular allegiance to the seller, but regardless, it is important to remember that inspectors, like the rest of us, are all human who can make mistakes or miss things. This is an additional layer of affirmation to ensure there are no issues, such as leaky plumbing, lead, or mold, which have been overlooked or are just harder to unearth, turning your dream home into a nightmare.

Owning a property not only means that you own the land and whatever structures on it, but you also own the title to the property. Similar to the way in which the inspector examines the physical property for any unwelcome surprises, the title to the property must also be examined because title defects can cloud a title to a property and prevent free and clear ownership. Some title issues, such as missing mortgage discharges, easements, and liens, are common and will typically be revealed by the title inspection, but some title defects, such as fraud and forgery, can be hidden and more difficult to pinpoint. If these defects arise post-sale, it will likely cost a substantial amount to remedy. Title insurance can protect buyers from financial loss stemming from an undetected title defect. While this is merely an option,

it is worth careful consideration to ensure that your interest in your home remains safeguarded. Moreover, it is to your advantage to ensure the title is clear *prior* to your purchase. Don't let someone else's headache become yours.

The purchase and sales agreement ("P & S"), which governs the terms and conditions between the seller and you until the closing, must be reviewed by an attorney. Every property is unique, which is why that house you wish to buy is so special to you. Thus, every real estate transaction is unique and every P & S governing a transaction is unique. Once the P & S is signed, you, as the buyer, are bound by its terms, and retracting is considered a breach of contract. Prior to signing, consulting with attorney, who will know what issues to hone in on with the P & S, can help ensure that you, as the homebuyer, fully understand the terms contained in the P & S before being bound by them. An attorney can also negotiate additional terms and modifications that benefit or protect you. For example, under Massachusetts common law, the buyer bears the risk of loss, meaning that, absent a provision stating otherwise in the P & S, in the event that that house gets destroyed by a fire, the buyer is liable. The P & S must contain language that shifts the risk of loss away from the buyer and onto the seller, who likely has homeowner's insurance to address such disasters.

**"Purchasing a house is a wonderful event, but the process can be riddled with legalities."**

Purchasing a house is a wonderful event, but the process can be riddled with legalities. Taking precautions is the key to preventing any issues from ballooning. When you are preparing to turn a new house into your dream home, the costs of these precautions are small prices to pay for peace of mind.



## What Will They Think of Next? Baby Born in Dallas to Woman without Uterus

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Recently, a woman in Texas born without a uterus gave birth to a child. (<https://tinyurl.com/yaangd5q>) According to the article, there have been at least 16 uterus transplants, the first one in Sweden, several years ago.

There are many women who do not have a uterus. Some are born without, while others lack a uterus because of medical reasons. Previously, a woman without a uterus who wanted to build a family would have had to rely upon adoption or some form of assisted reproduction technology by traditional surrogacy or gestational carrier arrangement. Now, she may carry herself!

Let me explain a few terms and concepts.

**Traditional surrogacy** refers to a contractual arrangement whereby a woman agrees to have her egg fertilized with the intended father's sperm, or donor sperm. When the child is born, Massachusetts requires the child be adopted by the intended parents, which cures the parentage question. Mass. Gen. Laws Ch. 210 § 2. In Massachusetts, the surrogate's parental rights may not be terminated by contract. *R.R. v. M.H.*, 426 Mass. 501(1998).

A **gestational carrier** is a woman who agrees to have an in vitro fertilized embryo, to which she has no genetic relationship, implanted into her uterus, and carry to term. The gestational carrier agrees to relinquish her parental rights upon the birth of the child. The egg and/or the sperm may be the intended parents or donated. Massachusetts Probate and Family Courts recognize intended parents as the legal parents and issue pre-birth orders. *Culliton v. Beth Isr. Deaconess Med. Ctr.*, 435 Mass. 285 (2001). No subsequent adoption is needed.

Uterus donors may be dead or alive. Prior to the transplant, the woman's eggs are retrieved, fertilized and the embryos frozen. The embryos are not

implanted until at least a year has passed since the transplant, to ensure the womb is functioning as it should. The baby is delivered by a cesarean section. A transplanted uterus must not remain permanent because of the potent drugs required to avoid organ rejection.

**"If there is no success in the back seat of Daddy's Lincoln, and the dependable turkey baster is just not reliable enough, good old-fashioned research has found another way. We have come a long way, baby!!!!!"**

If there is no success in the back seat of Daddy's Lincoln, and the dependable turkey baster is just not reliable enough, good old-fashioned research has found another way. We have come a long way, baby!!!!!

Kudos to Attorney Peggy Swain of Maryland, the AAARTA Director, who shared the Cullman Times Article on the Academy Listserv.



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