



ATTORNEYS AT LAW

THE BRIEF

of konowitz & greenberg

K&G Welcomes 2 New Staff Members to the Team

Meet Them on Page 3!

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There Must Be 50 Ways to Leave Your Partners

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Let me tell you about two different groups that went

into business together:

group one—3 *College Buddies*, group two—3 *Neighborhood Friends*.

Among the *College Buddies*, there were no agreements. The business relationship flourished, and there was no reason for them to keep detailed records. Why should they? They were buddies! Their various enterprises either flourished (as did their bank accounts) or dissolved, and there was more than enough activity for any of them to be worrying about the details. Meanwhile, among the second group of *Neighborhood Friends*, there were agreements and disagreements, from the get go.

Eventually, the relationships in both groups became strained. In both groups, there became an alliance of two against one. In *College Buddies*, it was the one who felt he was owed more than the other two. Despite the disagreement, they had been together for a long time and eventually, when their final enterprise was sold, they figured they would settle up. Regrettably, it was many years later when the settling came due. The trust that was their foundation and that had guided them for years had eroded. The issues became personal.

Back to our second group, the *Neighborhood Friends*, one friend thought he could run the business more effectively than the other two. The other two felt the business would flourish regardless of the first friend's involvement. It became an argument over business acumen and leadership theories.

K&G became involved in both the *College Buddies* and *Neighborhood Friends* only after litigation was filed. K&G represented the “two” against the “one.” Once litigation begins, it takes on a life on its own. It is like a fast moving train. It takes a lot of energy to get it started, but once it gets going, it's difficult to stop it. Being a business advisor, as well as a litigator, it is my job at

K&G to try to stop that train, ideally, before it builds momentum.

How does one man stop a train? The answer: I start at the end of the story, and then slowly go back to the beginning. I focus on uncovering the true dynamics of the litigation:

- If it is purely a **business dispute**, it becomes a simple cost-benefit analysis as to the least expensive way for the parties to resolve the issue.
- If it is a **personal dispute**, it is really about the “principle” of the disagreement. In 99% of the cases I have seen, it requires a judge to settle the dispute and to take the emotion out of the case.
- If it is a blend of **personal and business issues**, then it becomes much more complicated and costly for all. I extend a supportive hand (and sometimes a box of tissues) to guide my client through what will surely be a process of reconciling and tough decision making.

Until this exercise is concluded, I cannot truly and effectively advise my client.

For the *College Buddies*, the relationship was 100% personal and not about the money. These successful business people could easily afford to “settle” with one another. The case had to be tried because neither side would let go of the fight. Once this strategy was in place, then the train moved smoothly with a positive result for my clients. My clients toasted one another over a beer and then moved on to ponder their futures together.

For the *Neighborhood Friends*, it was purely business. The litigation strategy could be altered to increase the pace of the train, which would only mean more costs and force a settlement by the one. So, that is what we did. My clients settled the case within weeks. They celebrated with a nice back yard barbeque and discussed their various theories on lawn maintenance.

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Not All Is Fair in Love and Adoption

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I have spent the past several months struggling with a dangerously off track international adoption. An adoptive mom of one teenager, (“Prospective Adoptive Mom”/ “PAM”)

traveled east, anticipating adopting a young girl (“Miss T”) abandoned at an orphanage. Upon arrival, plans changed; Miss T had a half sibling, Ms. V, age 16. PAM sensed Ms. V did not want to leave her country. And yet, after a private discussion with the orphanage director, Ms. V had a change of heart. Traveling back to the States, PAM noticed the huge abscess Ms. V was told to hide, and ear infections which compromised her hearing. Medical procedures resolved all issues.

Settling into their Massachusetts home, Miss T remained shy, quiet and avoided her sister. Ms. V wanted to return to her home country, reiterating the orphanage director’s promise to come get her if things did not work out.

As the months went on, refusing therapy, Ms. V tormented her sister with bullying, hair pulling, pinching and threats. PAM consulted the Massachusetts agency supervising the adoption; it was in neither girl’s best interest to remain together. The international agency that approved and coordinated the placement with the girls’ country of origin sent a social worker. After barely speaking with Miss T, the social worker pointed the finger at PAM labeling her incompetent

to raise a teenage girl, although she was already doing so, rather successfully, with her other daughter. PAM urged the international agency to recognize the failed placement, that the girls should never have been placed together and to make a suitable plan for Ms.V.

Miss T blossomed. She met with success in school, socially and academically, and began to develop a loving relationship with PAM and the other teenager, previously adopted. While Ms. V refused therapy, Miss T welcomed it. Experts concluded that Miss T, victimized by Ms. V, suffered from trauma at the hand of her sister. Supported by experts’ clinical reports of both Miss T and Ms. V, PAM requested that she be allowed to adopt Miss T, only.

Countries that are signatories to the Hague Treaty, a treaty designed to protect the rights of children and families in the international adoption process, must have a Central Authority ensuring compliance with the Hague. In the United States, it is the State Department. PAM’s request and appeals, supported by documented reports to the contrary, were denied by the Central Authority of the child’s country of origin.

After representatives of the Central Authority interviewed Ms. V, claiming no time for Miss T, a directive issued to move both girls to a family in the Midwest. PAM’s household anxiously lives with uncertainty. Miss T has been robbed by people entrusted to know better. Whatever happened to best interests?

K&G Welcomes Bernard Posner and Kristin Cappello!



Learning from Your Client

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Over the past few years, one of my primary areas of practice has been professional liability. I have represented lawyers and accountants in a wide variety of matters. These cases

always provide unique challenges. The claims are negligence based. While negligence is often equated with carelessness, there is more to it. The plaintiff first needs to prove that my client represented them. This is often not disputed. Next, the plaintiff needs to show that my client had a duty to perform a certain task for them. While defining the scope of a professional’s duty should be an easy task, often agreements are not clear as to responsibilities and goals. A large portion of the matters I handle could be avoided if the relationship between the professional and the client in the underlying matter was clearly laid out and communicated.

The plaintiff also needs to demonstrate that my client failed to live up to their legal duty, causing them harm. To prove this “breach” a plaintiff needs to demonstrate what the standard of care was for my client, and that their actions deviated from that standard of care. The plaintiff then needs to prove that the deviation caused them actual damages. This seems simple. But to win, a plaintiff needs to prove that “but-for” the professional’s actions they would have obtained a better result in their underlying case. This is the so-called “case-within-the-case.” For each professional I represent, I need to

learn as much about their particular area of business as possible. I need to evaluate not only whether the professional arguably made a mistake, but more importantly, whether that mistake made a difference in the plaintiff’s underlying matter. If the plaintiff’s chance of success in the underlying matter was already terrible, the alleged mistake might not have made any difference in the outcome. Making this evaluation involves working closely with my client, who invariably knows more about their practice area than I do. It also involves hiring experts early in the litigation to determine what the standard of care is, whether the client violated it, and whether that violation made any difference.

The importance of working in partnership with my client and our experts from an early stage was readily apparent in one of my recent victories. After several years of litigation in federal and state court, I convinced a judge on the first day of a scheduled two-week trial, that the case against my client should be dismissed. The dismissal was, in large part, based on the plaintiffs’ failure to prove that my client’s actions, during a commercial real estate closing, caused them any damage. By working closely with my client and our expert, I became fluent in commercial real estate, and was able to develop a compelling argument that the plaintiffs had no chance at trial of proving they were unable to sell their property because of my client’s supposed mistake.



Meet the New K&G Office Manager

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My name is Kristin Cappello, and I am the new Office Manager of Konowitz & Greenberg. I am a divorced mother of three wonderful children, who are, without a doubt, the light

in my heart and the realization of my true purpose in life. Like many of our clients, my divorce was nothing short of a ferocious emotional expedition that my children and I were forced to endure. During the last ten years, I have struggled to support my family. I became a part-time fitness instructor, and a full time pre-school aide, and although I worked very hard to provide for my family, as well as maintain some normalcy for my children, I was not always successful.

The day I met Steven Konowitz and Karen Greenberg that all changed. From the moment I stepped into the office of Konowitz & Greenberg, I felt like I had been welcomed into a new family, a family who not only cares tremendously, but has this incredible knowledge.

I have witnessed this reaction from many of their clients as well. The attorneys and staff at Konowitz & Greenberg have the aptitude to console, as well as, resolve your problems.

As the new Office Manager, I would like to assure you, I know how it feels to be distressed and fearful. In light of my difficult divorce experience, it is my priority to make sure everyone who walks through the door at Konowitz & Greenberg is treated with respect and is welcomed into the family.

For those who feel as if all the doors have closed, and your opportunities have vanished, don’t ever give up striving for excellence, and searching for a solution. With effort, confidence and desire, you can achieve greatness.

“Life is not about finding yourself, it is about creating yourself.”



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The Supreme Court's Landmark DOMA Decision

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In a historic ruling on June 26, 2013, the Supreme Court struck down Section 3 of the federal Defense of Marriage Act (DOMA) which defined marriage as a legal union between one man and one woman as husband and wife for the purpose of all federal laws. DOMA prohibited married same-sex couples from taking advantage of over one thousand federal rights, responsibilities and benefits including laws regulating Social Security benefits, health insurance, medical leave, veterans and military benefits, and federal income tax.

The case, *Windsor v. U.S.*, involved an estate tax dispute between a surviving spouse of a same-sex marriage and the Internal Revenue Service. The Plaintiff, Edie Windsor, of New York, sued the federal government after the Internal Revenue Service (IRS) denied her refund request for the \$363,000 in federal estate taxes she paid after her spouse died. DOMA barred Edie Windsor from claiming the federal estate marital deduction.

The Supreme Court found that the definition of marriage under DOMA violates the equal protection clause of the Fifth Amendment of the U.S. Constitution as applied to persons of the same sex who are legally married under the laws of their state. Writing for the 5-4 majority, Justice Anthony Kennedy said that "DOMA rejects the long established precepts that the incidents, benefits and obligations of marriage are uniform for all married couples within each State, though they may vary, subject to constitutional guarantees, from one State to the next." He went on to say that "by creating two contradictory marriage regimes within the same State, DOMA forces same-sex couples to live as married for the purpose of state law but unmarried for the purpose of federal law, thus diminishing the stability and predictability of basic personal relations the State had found it proper to acknowledge and protect."

The Supreme Court did not extend same-sex marriage nationwide. It also declined to say whether same-sex couples had a constitutional right to marriage that would override state law. But the decision ensures that federal benefits and protections will be extended equally to married same-sex couples in Massachusetts, and the other twelve states (California, Connecticut, Delaware, Iowa, Maine, Maryland, Minnesota, New Hampshire, New York, Rhode Island, Vermont and Washington) plus the District of Columbia where same-sex marriage is legal.

When the decision was issued, President Obama directed all federal agencies, including the IRS, to revise their regulations as soon as possible. To date, no changes have been made and it is unclear how

quickly the IRS and other federal agencies will react to the decision. However, there is no question that the implications of the decision will be far reaching for same-sex couples who are married in their home state or in other states that recognize same-sex marriage. The decision impacts the hundreds of provisions in the Tax Code involving major life events such as marriage, employment, retirement and death, including filing joint tax returns, estate tax and gifting, employee and health care benefits, adoption benefits, the child tax credit, education tax credits and retirement plans. Social Security survivor benefits, as well as military and veterans benefits will be available, as will COBRA and spousal benefits in Medicare. The decision also impacts immigration laws, permitting same-sex spouses who are citizens to sponsor a visa for a non-citizen spouse.

In addition, estate planning for same-sex couples in Massachusetts opens up new opportunities that were never available until now. For example, same-sex married couples in Massachusetts will be able to file a joint federal tax return, whereas, prior to the decision, they could only file a joint return for Massachusetts and then file separately as a single person for their federal tax returns. This, coupled with an unlimited marital deduction that applies to state and federal taxes, offers same-sex couples potentially significant tax savings.

At Konowitz & Greenberg, we believe in a proactive and preventative approach to the law.

We take pride in working collaboratively as a TEAM and with an extensive network of trusted advisors to provide comprehensive, yet cost-effective, creative solutions for our individual and business clients with the legal issues they face in the following areas: corporate transactions, advising small and medium private entities; all matters relating to divorce, post divorce, alimony, support, and custody issues; adoption, contested and complex adoptions, consult to agencies on complex adoption matters; estate planning, estate and trust administration; business, civil and personal injury litigation and appeals; and real estate transactions.

Responsiveness to our clients is our priority.



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