

**Gary L. Koenigsberg**  
COUNSEL

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*I decided to be a lawyer after becoming interested in the structure of our government and politics in high school. Being a litigator allows me to be part of the process by giving me access to the court systems, which I use to the advantage of the firm's clients.*

Mr. Koenigsberg focuses his practice in litigation. His experience includes contract disputes, shareholder disputes in close corporations, construction matters, employment litigation, probate litigation, product liability cases, family law matters, real estate foreclosures, insurance coverage disputes, and plaintiff and insurance defense in personal injury matters.

*Results may vary depending on your particular facts and legal circumstances.*

#### REPRESENTATIVE MATTERS

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- *Stilianessis v. Dionne, DMD*, Mr. Koenigsberg played a supporting role in representing the plaintiff in this dental malpractice case, securing a victory on appeal after an appellate panel considered what constitutes a net opinion in expert reports. More on this ruling at: <https://bit.ly/2PAIo0x>
- *Parker v. Parker*, Mr. Koenigsberg played a supporting role representing the plaintiff in a litigation involving New Jersey's Oppressed Shareholder Statute. The matter was successfully tried before the Superior Court of New Jersey Chancery Division. The case

#### Departments

Litigation

#### Education

Cornell University Law School, J.D., 1991

University of Virginia, B.A., 1988

#### Bar Admissions

New Jersey, 1991

U.S. District Court, District of New Jersey, 1991

New York, 1992

U.S. District Court, Southern District of New York, 1992

#### Clerkships

Former law clerk to The Honorable Robert W. O'Hagan, Superior Court of New Jersey (1991-1992)

involved two brothers splitting up two corporations in which both were 50% shareholders. The two businesses operated jointly on a single piece of property, which was controlled by a limited partnership also owned jointly and equally by the brothers, however the brothers operated their respective companies independently. Certain overhead expenses and the handling of other responsibilities were intertwined. There was no functional operating agreement in this scenario. The plaintiff suffered the consequences of his brother's business losses, which amounted to as much as \$500,000 per year, and filed suit. His claims relied on the New Jersey Oppressed Shareholder Statute. The Court ruled that the defendant had "oppressed" the plaintiff, breached his fiduciary duty and acted in bad faith. The case appears to be precedential on the issue of losing money as an indicia of shareholder oppression.

- Representation of client GF Princeton, LLC in an ongoing ground lease rent dispute with Herring Land Group over commercial property in Ewing, New Jersey. A significant 2013 victory in the U.S. Court of Appeals for the Third Circuit on behalf of the client affirmed a March 2012 District Court decision disallowing the payment of ground rent for a 5-year period (2006-2011) for which Herring Land Group was claiming approximately \$5.5 million.
- *Palisadium Management Corp. v. Carlyle Towers Condominium, Inc.*, (Superior Court of New Jersey, Bergen County; August 2014) Mr. Koenigsberg played a supporting role in the win of a major motion for summary judgment on behalf of Carlyle Towers, a large condominium association in Cliffside Park, New Jersey. The plaintiff claimed that approximately \$2.5 million was owed to it pursuant to the terms of a 1989 Additional Recreational Facilities Agreement (ARFA) for fees in connection with the Carlyle Towers' use of a health club, known as the Palisadium, which was created by the developer when he built Carlyle Towers, but was a separate entity. The developer had Carlyle Towers enter into a 75 year plus contract. On a motion for summary judgment, the Court (Hon. Rachael Harz, JSC) dismissed plaintiff's claims in their entirety because she determined the 1989 ARFA was "unconscionable and illegal" pursuant to certain sections of the condominium statute, N.J.S.A. 46:8B-32. The Court also found that an illegal agreement is void ab initio regardless of the subsequent conduct of the parties. The Court further determined that "a course of conduct" was established by the parties in accordance with two unsigned ARFA amendments, which despite never being signed by the plaintiff, created a "course of conduct" by which the parties conducted business. As a consequence, the Court found that the plaintiff's acceptance of certain payments without protest for in excess of 14 years resulted in a waiver and/or estoppel of the plaintiff's claims premised on the unconscionable 1989 ARFA.

## PUBLICATIONS & ALERTS

Co-Author, Force Majeure in the Age of COVID-19: A Force to be Reckoned With  
*Greenbaum, Rowe, Smith & Davis LLP Client Alert*, April 23, 2020