

## Kim M. Jackson

Partner

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Office Location: Atlanta

Kim Jackson handles all forms of coverage and bad faith disputes, defends attorneys and other professionals in malpractice claims and licensing grievances, defends catastrophic injury cases, typically focusing on premises liability, represents governmental entities in civil rights claims, represents companies and professionals in various types of complex commercial litigation, and serves as an expert witness on the attorney standard of care and insurance coverage and bad faith issues.

Kim also has extensive experience defending individuals and companies in automobile and other personal injury cases, food product liability, pharmaceutical liability, wrongful death, motor carrier liability, and employment disputes.

### INSURANCE COVERAGE AND BAD FAITH

Kim has represented many insurers and their third-party administrators in coverage analysis, coverage opinions, the preparation of coverage denial and reservation of rights letters, serving as coverage counsel in cases where a reservation of rights was issued but declaratory judgment was not filed, and serving as counsel in cases where coverage was litigated in either a declaratory judgment, breach of insurance contract, or bad faith action, or where insurance companies sought contribution, indemnity, or equitable contribution or subrogation.

Kim's coverage practice is national in scope. He has been involved as lead coverage counsel in matters litigated in Florida, California, North Carolina, Kentucky, Texas, and South Carolina. Because of Kim's contacts outstanding organizations like the Federal of Defense and Corporate Counsel and the Extra-Contractual Defense Network, Kim knows and is able to retain the best coverage and bad faith counsel in any jurisdiction to serve as his co-counsel and local counsel.

Kim's experience in coverage litigation includes the representation



### Practice Areas:

- Civil Rights Defense
- Insurance Coverage and Bad Faith
- Legal Malpractice
- Litigation
- Professional Liability
- Premises Liability
- Insurance Defense
- Transportation

### Admitted to Practice:

- Kentucky, 1994
- Georgia, 1995
- Texas, 2010

of insurers in dozens of declaratory judgment and bad faith cases involving all kinds of insurance policies throughout the country.

Kim has analyzed coverage issues and litigated coverage and bad faith disputes involving all types of insurance policies, including but limited to the following types:

- Commercial General Liability
- Sexual and Physical Abuse and Molestation Coverage
- Directors & Officers
- Various types of Errors and Omissions
- Lawyer and Accountants Liability Coverage
- Employment Practices Liability
- Educational Liability Coverage
- Commercial Property Coverage
- Commercial Auto and Fleet Coverage
- Property Managers Liability
- Auto Dealers Liability
- Environmental Liability Coverage
- Environmental, Mold and Fungi Property Coverage
- Non-profit Commercial Liability
- Commercial Transportation, including Trucking
- Church Liability and Property
- Sports Agent Liability
- Government Entity Liability Policies
- Multi-media Liability Policies

Examples of some of the cases handled by Kim involving coverage and bad faith include the following:

- Successfully initiated coverage litigation and defended bad faith claims involving all of the following in related litigation: (1) a class action bodily injury and property damage claims arising out of negligent housing construction, (2) a bad faith claim against the carrier of a high profile charitable organization, and (3) officer and director claims by one high profile charitable organization against another and its officers and directors. This matter involved participating with multiple insureds, multiple lawsuits, and multiple states.

**Education:**

- J.D., University of Kentucky, 1994, Order of Coif
- B.A., Wabash College, B.A. Economics & Mathematics, Magna Cum Laude

- Represented multiple insurance carriers and multiple claims involving bad faith and insurance coverage seeking to enforce judgments over \$100,000,000. As examples of these claims, they arose out of premises liability wrongful death, tractor-trailer accident, and allegations of widespread sexual abuse and molestation.
- Successfully initiated equitable subrogation claims on behalf of an excess carrier against other insurers within a tower of coverage. The claim arose out of a \$60M claim against an agricultural processor that allegedly permitted an allergen to contaminate raw materials that were incorporated into a final food product that had to be recalled.
- Successfully litigated coverage involving two related bodily injury/wrongful death claims against an apartment and property management company that included significant choice of law issue resulting in a victory before the 11<sup>th</sup> Circuit Court of Appeals.
- Successfully resolved a wrongful death case during litigation of related coverage issues of first impression arising out of the interaction of Georgia's statutory employer rules to a multiple-contractor construction accident and the General Contractor's employer exclusion in a CGL policy.
- Defended numerous insurance companies alleged to have failed to settle claims in bad faith resulting in judgments or settlements of millions of dollars.
- Successfully rescinded a policy of a mega-church in which the lead pastor was alleged to have breached fiduciary duties and engaged in wrongful sexual conduct with minor and adult women of the church.
- Regularly called upon to guide insurance companies through the complexities of "gotcha" policy limit demands designed to be too complex to comply with to try to bust the insurance carriers' policy limits in a bad faith claim.
- Obtained summary judgment and recovered attorney's fees for a liability insurer sued as garnishee following a judgment against its insured arising out of a professional liability action. The Federal Court sides with the insurer and awarded

defense costs under Georgia's garnishment statutes.

- Won summary judgment or judgment on the pleadings in multiple coverage matters relying upon a client's assault and battery exclusion in its commercial general liability policies.

## **PROFESSIONAL LIABILITY EXPERIENCE**

### Legal Malpractice, Professional Liability and Bar Defense

Kim has represented many attorneys in both civil claims brought by clients and non-clients in Georgia, Texas, California, and Ohio, and in licensing issues brought before the State Bar of Georgia.

As a subset of this practice, Kim regularly is asked to defend lawyers and their clients against claims for sanctions or opposing counsel's attorney fees and litigation expenses arising out of Federal Rule 11, 28 U.S.C. 1927, and Georgia's abusive litigation statutes, including OCGA § 9-15-14, OCGA § 9-11-68, and OCGA § 51-7-80 *et seq.*

Among the many cases that Kim has handled include the following examples:

- Obtained a defense verdict following a two-week jury trial of a legal malpractice claim involving an allegedly missed statute of limitation on a construction lawsuit. The jury found that the law firm had not breached the standard of care.
- Obtained summary judgment for a commercial closing attorney who had notarized a forged guarantee. The loan later resulted in a \$1.8 million default. Summary judgment was granted based on an argument that the Plaintiff's claim relied solely on a violation of criminal notary law that did not support a civil remedy.
- Authored a successful amicus curie brief to the Supreme Court of Georgia on behalf of an attorney client that was facing a legal malpractice action had the Supreme Court not reversed the Court of Appeals ruling and issue a decision of first impression in the client's favor.
- Won summary judgment in a legal malpractice case on an issue of first impression involving the application of *res judicata* against a corporation with a complex corporate structure.

- Obtained summary judgment, which was upheld on appeal, for business litigation attorneys accused of failing to sufficiently document their client's settlement agreement arising out of a real estate development.
- Obtained a reversal of a Supreme Court issued suspension, then tried the bar complaint on the remand before a special master. The lawyer was eventually issued a private reprimand rather than the two-year suspension issued prior to Kim's representation.
- Obtained a judgment on the pleadings against a workers' compensation attorney accused of negligently advising a client to engage in conduct that resulted in a criminal conviction for fraud.
- Successfully defended and argued before Georgia's Supreme Court the constitutionality of Georgia's affidavit of merit statute.
- Successfully defended a family law attorney against a large six figure sanctions award by twice having the trial court's judgment overturned by the Georgia Court of Appeals.

## **PREMISES LIABILITY**

Kim represents landowners, security guards, and property management companies in premises liability matters of all types, including claims arising out of falls, third-party criminal acts, and mold exposure.

Examples of some of these defenses include the following:

- Obtained a dismissal, which was upheld on appeal, in favor of a security company alleged to have illegally used radar to enforce traffic regulations in a private, gated community. The claims included false imprisonment, fraud, and theft by taking.
- Has obtained summary judgment for apartment owners and their property management companies in claims involving mold exposure on the basis that the plaintiff has failed to sufficiently link the alleged personal injuries to the alleged mold exposure on multiple occasions.

- Obtained judgment on the pleadings in favor of a security guard on civil rights claims brought by the parents of a hospital patient who were escorted off the property following a dispute over the medical treatment of the child.

## **OTHER EXPERIENCE**

Throughout Kim's career, he has been involved in all kinds of cases under the umbrella of his insurance defense practice. Kim's early career included trying dozens of auto accident and premises liability cases, and representing auto-dealers in consumer fraud cases, grocery stores and pharmacies in all types of liability cases, restaurants in food poisoning cases, and transportation companies in semi-truck accidents.

Kim's current practice includes, in addition to the above discussed types of claims, defending government entities in civil rights claims, including 1983 claims, defending insurance agents and brokers in professional liability claims.

As a result of this varied background, Kim's experience includes such diverse cases as the following:

- Drafted the briefs that obtained summary judgment for a portable plastic gasoline can manufacturer in a wrongful death case arising out of a home fire that began in an indoor wood burning stove/fireplace.
- Obtained summary judgment for fast food franchisees on claims for food poisoning based on an analysis of the scientific evidence.
- Defending a spa from allegations of inappropriate sexual touching by massage therapists.

## **PROFESSIONAL LICENSES**

- State Bar of Georgia
- Kentucky Bar Association
- State Bar of Texas

## **PROFESSIONAL AFFILIATIONS**

- Federation of Defense and Corporate Counsel, an invitation only organization of civil defense attorneys, corporate counsel

and claims professionals.

- Vice-chair, (Chair beginning in July 2022), Insurance Coverage Section
- Vice-chair, Extra-Contractual Liability Section
- Member, Professional Liability and Premises Liability Sections
- Extra-Contractual Defense Network, an invitation only organization of counsel that practice in the area of bad faith insurance defense.
- Defense Research Institute (DRI)
- Georgia Defense Lawyers Association
- American Bar Association
- ABA Professional Liability Symposium
- Professional Liability Underwriting Society
- Atlanta Bar Association
- Lawyer's Club of Atlanta
- Atlanta Apartment Association

## COMMUNITY INVOLVEMENT

- Supporter of My House, Inc.
- Supporter of Norcross Cooperative Ministry

## HONORS

- AV Preeminent® Peer Review Rated by Martindale-Hubbell®
- Bleckley Inn of Court, Barrister (2002-2004)
- Super Lawyer "Rising Star," *Super Lawyers Magazine* (2005-2007)
- Super Lawyer, *Super Lawyers Magazine* (2009-2022)
- Top 100 Lawyers, Georgia Super Lawyer, *Super Lawyer Magazine* (2010, 2012, 2017, 2018, 2019)

## PRESENTATIONS

- **Abusive Litigation:** Georgia ICLE Seminar *Defending Abusive Litigation Claims*, Delivered paper and presentation Feb. 2003, Feb. 2004, Feb. 2005, Feb. 2006, Feb. 2007, Feb. 2008, Feb. 2009, Feb. 2010 (paper only), Feb. 2011, Feb 2012

(also delivered presentation on *O.C.G.A. 9-15-14 Claims*); Feb 2013; Feb 2014 (co-chair and paper, presentation); Feb 2015 (co-chair and provided paper), 2016 (co-chair only), Feb 2017 (co-chair and provided paper), Feb 2018 (co-chair only); Feb 2019 (co-chair only) (2020 cancelled due to Covid-19, 2021 postponed due to Covid); April 2022, (co-chair and panel member).

- **Houston We Have A Problem ... Not Your Typical Legal Malpractice Seminar**; Georgia ICLE, Professional Liability Section of State Bar of Georgia. Presented and provided paper on “*Defending Yourself and Your Firm: Counterbalancing policy considerations for harm suffered by clients with whom you are or were in a fiduciary relationship,*” May 2011, February 2012, February 2013; Presented and provided paper on “*LPL Coverage Q&A,*” in March 2016, March 2017, March 2018.
- **Extra-Contractual Defense Network CLE** presentations at semi-annual meetings:
  - **Avoiding Bad Faith With Multiple Claimants and Limited Policy Limits**; webinar May 2022;
  - **Timing Isn’t Everything: The Lessons of GEICO v. Whiteside**, webinar, December 2021;
  - **The Ambassador of Kwan: The Law Requiring Insured Reimbursement To Insurers for Uncovered Expenses**, webinar, April 2021;
  - **Bad Faith Experts Witnesses: Admissibility and Use**, webinar, March 2020;
  - **Dealing With Public Adjusters (If You Must)**; April 2019;
  - **Bad Faith and Liability Without Privity – Liability Rules Among the Excess, Primary and Defense Counsel**; September 2018.
- **Professional and Ethical Dilemmas in Litigation**, Georgia ICLE Seminar, *panelist*, October 2008, March 2016, March 2017, March 2018; March 2019 (2020 cancelled due to Covid-19).
- **Federation of Defense and Corporate Counsel (FDCC) CLE: Rattling Your Cyber**; FDCC Webinar, lead panel discussion on Cyber Insurance Coverage Issues, February 2022; **Can We Talk? The Importance of Communication With Excess and Reinsurers**, panel discussion, FDCC Annual Conference, July 2017; **The Admissibility of Expert Witness Testimony in Bad Faith Cases** (podcast – May 2022).
- **The Rules of Evidence: A Practical Toolkit**; NBI, presented



and did paper on *Ethical Considerations*, NBI, April 2017.

- **Atlanta Claims Association-Annual Seminar CLE; Yes, We Can Make Claims Great Again**, Chair of Liability Section CLE, panel moderator on Ethics, April 2017; panel chair of Property Section, presented on first-party bad faith claims, April 2018.
- **Wrongful Death Litigation: Start to Finish**, NBI, *Ethics*, September 2017; November 2018.
- **Insurance Bad Faith “Set-Up” In Georgia**, NBI, *Bad Faith Law and the Origin of the Set-Up* and *Ethics*, December 2017.
- **Title Law in Georgia**, BNI, *Ethics*, June 2017; **Title Law Boot Camp**, BNI, *Ethics*, November 2019, **Title Law in Georgia**, BNI *Ethics*, June 2020.
- **Civil Court Judicial Forum**, NBI, *Moderator of judicial panel for six hour CLE day*, upcoming October 2017; December 2018; December 2019.
- **Georgia State University**, Guest Speaker, Fundamentals class, provided reading material and presented on issues of malpractice, risk management and bar discipline, February 2012, April 2017.
- **Auto Injury Litigation From Start to Finish**; presented and paper on *Ethics* and *Bad Faith Litigation*; NBI, December 2016; December 2018; May 2021.
- **Civil Court Judicial Forum: Advanced Discovery and Trial Practice**: NBI, *Panel moderator*; October 2016.
- **Clients From Hell – Handling Failed Attorney-Client Relationships: When to Terminate**; National Constitution Center; presented full 90 minute webinar, July 2016, May 2017
- **Uninsured and Underinsured Motorist Litigation from A to Z**, NBI, provided paper and presented on *Difficult Scenarios of Insurance Coverage Interpretation and UM/UIM Ethical Considerations*, June 2015.
- **Advanced Uninsured/Underinsured Motorist Law**, NBI paper and presentation, *Bad Faith and Legal Ethics in Insurance Practice*, May 2018.
- **Handling Complex Auto Insurance Coverage Disputes**, NBI, paper and presentation *Legislative and Case Law Update*; October 2013.
- **Damages In Personal Injury Cases**, NBI, paper and presentation, *Legal Ethics*; December 2013; September 2015.
- **Successful Trial Practice**; Georgia ICLE, panel member, *Ethics and Professionalism Open Panel*, Georgia

ICLE, Feb 2013.

- **Civil Court Judicial Forum: Advanced Discovery and Trial Practice**, NBI *Panel moderator*; September 2012.
- **The Medicare “Super Lien” and Other Liens Simplified**, NBI, provided paper only due to trial conflict, *Ethics*, Aug 15, 2012
- **Applying the Rules of Evidence-What Every Attorney Needs to Know**: NBI, paper and presentation of *Ethics*, March 2012, *Ethics* and *Demonstrative Evidence*, December 2015.
- **Evidence – A Practical Handbook**, NBI, paper and presentation, *Ethics* and *Presentation of Evidence to Jury*, May 2013.
- **Insurance Coverage Litigation**, NBI, paper and presentation *Bad Faith Litigation*, October 2011.
- **Ending the Attorney-Client Relationship**, Strafford Publications, paper and web presentation, *Ethical and Fiduciary Duties*, August 2010 and August 2011, 90 minute CLE webinar.
- **Hawkins Parnell Thackston & Young, LLP Trial Tactics Seminar**, in firm CLE, *Motions for Summary Judgment*; January 2011.
- **Winning Your First Civil Trial**, NBI, paper and presentation, *Select The Right Jury For Your Case* and *Avoid Common Ethical Pitfalls*, March 2010.
- **Settling Uninsured and Underinsured Motorist Claims**, NBI, paper and presentation *Avoiding Ethical Potholes With Regard to Uninsured and Underinsured Motorist Claims*, October 2008.
- **Depositions A-Z**, NBI, paper and presentation, *Ethical Challenges in Depositions* and *Deposition Reflections*, August 2007 (live CLE), *Ethical Challenges in Depositions*, December 2007 (webinar).
- **Litigation Skills: A Short Course For Legal Assistants**, Half Moon Seminars, paper and presentation, *Practical Law Office Ethics and Client Relation Skills*, April 2006, April 2007 (paper only in 2007 due to trial conflict).
- **Gaining the Competitive Edge: Litigating to Win Through Advanced Trial Advocacy in Georgia**, NBI, paper and presentation *Using Jury Selection To Increase Your Success At Trial*, April 2006.
- **Specialty Ethics in Georgia (Eliminating Bias and Building Credibility)**, NBNR Seminars, paper and presentation, *The*

*Impact of Religious Orientation in Performance of One's Professional Duties and Ethical Obligations*, November 2004.

- Private CLE instruction for law firms, various topics, as requested on multiple occasions.

#### **ARTICLES AND PUBLICATIONS**

- Defending Non-Client Charges, *For The Defense*, Vol. 47, No. 4, April 2005, p. 63.
- When Unprofessionalism Becomes Sanctionable, *For The Defense*; Vol 48, No. 7, July 2006, p. 61.
- LexisNexis Practice Guide: Georgia Trial Procedure: "Verdicts, Judgments and Post-Trial Motions." LEXIS-NEXIS Publishing (2010).

#### **JURY TRIALS**

- Over 25 jury trials began.
- Over 20 jury trials to verdict.