



## Jennifer H. Thiem

### Partner

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### OVERVIEW

Jennifer Thiem is a partner in the firm's Charleston office. Her practice focuses on complex commercial litigation and insurance and risk management counseling.

In her commercial litigation practice, Jennifer has represented a diverse group of clients as plaintiffs and defendants in both state and federal courts. Jennifer has represented clients with a variety of cases, including claims for fraud, negligent misrepresentation, trademark infringement, breach of contract, breach of fiduciary duty, tortious interference with contract, deceptive trade practices and trade secret misappropriation. She also regularly represents consumer financial services institutions in litigation matters in state and federal courts in South Carolina.

Jennifer also provides insurance and risk management counseling for commercial policyholders. Jennifer has counseled clients with respect to coverage or potential claims under a variety of insurance policies, including general liability, directors and officers liability, professional liability, employers liability, representations and warranties and commercial property. With respect to representations and warranties insurance, Jennifer works collaboratively with deal counsel to represent publicly and privately-held companies in the placement and negotiation of representations and warranties insurance policies. Jennifer also works with real estate counsel in drafting and reviewing insurance and indemnification provisions.

### PROFESSIONAL BACKGROUND

Prior to joining the firm, Jennifer practiced business litigation as an associate at a regional law firm in Charleston.

### ACHIEVEMENTS

- South Carolina Super Lawyers Rising Star 2013-2015
- Woodward/White's *The Best Lawyers in America*, Insurance Law, 2018-2021

## PROFESSIONAL / CIVIC ACTIVITIES

- K&L Gates Firm Committees: Women in the Profession Committee; Pro Bono Coordinator, Charleston Office; Recruitment
- Porter-Gaud School, Board of Trustees, Executive Committee Member
- Leadership Charleston, Class of 2012
- Junior League of Charleston, 2006-2009
- Board of Visitors, Charleston Southern University, 2009-2012
- Charleston Symphony Orchestra, Business Development 2007-2008
- Representation of indigent clients in various pro bono matters, including participation in the Crisis Ministries Legal Clinic (2006-2008), assistance with domestic adoptions, serving as guardian ad litem in conservatorship and guardianship proceedings, and prosecution of § 1983 cases
- South Carolina Bar
- Charleston County Bar Association
- Federal Bar Association

## SPEAKING ENGAGEMENTS

- Panelist, *Outside the Lines: Practical and Strategic Considerations in Avoiding, Prosecuting and Defending Against the Bad Faith Claim*, American Bar Association Tort Trial & Insurance Practice 27th Annual Insurance Coverage Litigation Midyear Conference
- *Speaker*, Cybersecurity: How to Prepare and Protect Your Company, January 2019
- *Speaker*, Starwood, Voya Financial Advisors and GDPR: What Corporate Practitioners Need to Know about Using Insurance for Cyber Liabilities, January 2019
- *Moderator*, iTs|SC Executive Speaker Series, Cybersecurity & Insurance, December 7, 2018
- Panelist, *Crisis Management*, K&L Gates Conversation Series, Charleston, SC, November 8, 2018
- *Speaker*, Preparedness for Natural Disasters, NSSGA Legal Symposium, March, 2018
- *Speaker*, Top Five Issues Busy Practitioners Should Know About Insurance, K&L Gates Breakfast Conversation, March, 2018
- *Speaker*, *Transaction Liability Insurance: A Strategic Approach to Deal Risk Management*, October 2017
- *Speaker*, *Insurance Coverage: The Basics of What You Need to Know*, K&L Gates Boardroom Conversation Series, September 2016

- Speaker, *Additional Insured Coverage: Achieving Your Intended Risk Allocation*, South Carolina Association of Corporate Counsel Midyear Meeting, June 2016
- Panelist, *Cybersecurity: Managing the Risks*, November 2014

## EDUCATION

- J.D., University of South Carolina School of Law, 2005 (*cum laude*, *Order of the Wig and Robe*, *Order of the Coif*, *CALI Award for Income Tax*, *Student Words Editor of the South Carolina Law Review*, *John Belton O'Neill Inn of Court*)
- B.B.A., University of Georgia, 2002 (*risk management and insurance, magna cum laude*)

## ADMISSIONS

- Bar of South Carolina
- United States Court of Appeals for the Fourth Circuit
- United States District Court for the District of South Carolina

## THOUGHT LEADERSHIP POWERED BY HUB

- February 2021, Representations and Warranties Insurance - How to Navigate the Potential Gaps and Traps in Buy-Side Policies (*Webinar*)
- 9 September 2020, Disaster Preparedness Toolkit (*Alerts/Updates*)
- 6 May 2020, COVID-19: Congress, Pennsylvania, Michigan, and South Carolina Join Other Jurisdictions Proposing Legislation Addressing Insurers' Obligations to Pay for Pandemic-Related Losses (*Alerts/Updates*)
- 29 October 2018, OnRisk: Insurance for Cyber Risk in M&A Transactions (*Podcast*)
- 8 February 2018, OnRisk: Representations and Warranties Insurance (*Podcast*)
- 15 November 2017, Planning for Cybersecurity Risks in M&A Transactions (*Alerts/Updates*)
- 12 October 2017, K&L Gates Triage: Emergency Preparedness and Response in Long Term Care - Part II (*Podcast*)
- 19 September 2017, Losses Caused by Hurricanes: Are You Covered? (*Alerts/Updates*)
- 12 October 2016, Important Insurance Coverage Considerations for Losses Caused by Hurricane Matthew (*Alerts/Updates*)

## OTHER PUBLICATIONS

- "Insurance Coverage Basics for Cyber Risks," *South Carolina Chapter of the Association of Corporate Counsel*, 23 August 2019
- "Insurance for Cyber Risks in M&A Transactions," *Lexis Practice Advisor*, June 2018
- "Moving for a Judgment on the Merits During a Bench Trial, Fed. R. Civ. P. 52(c) and SCRPC 41(b)," *SC Lawyer Magazine*, March 2018
- "Planning for M&A Cybersecurity Risks," *Deal Lawyers, Volume 12, No. 1*, January-February 2018
- "Facing the Fear of Fraud: The Rise of Senate Bill 555 After the Fall of Carolina Investors," *55 S.C. L. Rev.* 653, 2004

## NEWS & EVENTS

- 23 February 2021, K&L Gates Advises Sinch AB on \$1.14 Billion Acquisition of U.S. Telecom Provider Inteliquent (*Noteworthy Work*)
- 27 November 2019, K&L Gates Advises on Cross-Border \$1.3 Billion Pending Tender Offer for Veloxis Pharmaceuticals (*Press Release*)
- 29 April 2019, K&L Gates Cross-Platform Team Advises LG Household & Healthcare Company in Acquisition Agreement with New Avon LLC (*Noteworthy Work*)
- 17 February 2016, K&L Gates Names 50 New Partners (*Press Release*)

## MEDIA MENTIONS

- Cyber Caveat Emptor, LeadersEdge.com, 3 May 2021

## AREAS OF FOCUS

- Complex Commercial Litigation and Disputes
- Financial Institutions and Services Litigation
- Health Care Payor-Provider Disputes (U.S.)
- Insurance Recovery and Counseling
- Product Liability

## REPRESENTATIVE EXPERIENCE

- Obtained summary judgment for financial services company in breach of contract action involving allegations of improper refusal to allow a short sale
- Defended financial services companies in cases involving allegations regarding premature repossession of foreclosed property
- Review proposed insurance program to confirm compliance with the insurance requirements of a commercial loan agreement
- Counseled client regarding trust documents, probate of estate and the filing of potential claims in probate court
- Representation of debtor in possession in adversary proceeding involving an anchor tenant's breach of commercial lease. The adversary was settled resulting in the resolution of all claims in bankruptcy and the attendant adversary proceedings, actually yielding a return to equity holders following satisfaction of all creditors
- Defense of hospital system in putative class action alleging that hospital failed to submit medical bills to private insurance and instead billed directly to patient when patient identified as likely to receive a recovery from a third party for injuries
- Advise client regarding purchase of "tail" coverage post-closing
- Represented publicly and privately-held entities in connection with the underwriting and placement of representations and warranties insurance in mergers and acquisitions, including advice on modifying policy language and negotiation of coverage; advise deal team regarding transfer and ownership of insurance policies as a result of transaction
- Advised policyholder regarding commercial property insurance company's classification of Unmapped/Zone D situated property as Zone A property and coverage implications relating to same
- Counseled client regarding potential insurance claims for violations of the Advisor's Act and investment agreement and costs of recovery under various investment advisor insurance policies
- Defense of client in connection with employment dispute alleging that employer failed to compensate former employee per agreement
- Represented client in connection with LLC membership dispute and ensuing settlement that involved sale and assignment of membership shares
- Advised client regarding potential insurance coverage for cyber breach under commercial general liability policy and commercial property policy
- Advised policyholder regarding coverage for potential employment liabilities under directors and officers liability and commercial liability policies

- Counseled financial services client regarding coverage under title insurance policy and assisted with insurance claim
- Represented client in connection with trade secret dispute against potential investor in client's business
- Representation of client in litigation against former employee and vendors regarding unlawful kickbacks
- Defended manufacturer in trade secret matter/preliminary injunction matter in which client hired competitor's employee who was alleged to have misappropriated confidential documents from competitor after resigning from employment
- Advised hospital in negotiating insurance and indemnity provisions in construction contract
- Representation of client in post-closing dispute alleging stockholders breached their representations and warranties in the acquisition agreement
- Advise policyholder regarding implications of potential settlement of a worker's compensation matter
- Obtained dismissal on behalf of a foreign corporation in lawsuit alleging corporation and its directors failed to compensate a consultant for its role in procuring investments in corporation's business
- Assist client with claim notice on representations warranties and insurance policy
- Successfully defended financial services company after writ of certiorari was granted in a contested foreclosure to review the trial court's dismissal of borrower's foreclosure defenses and counterclaim
- Defended financial services company in case alleging trespass, sham legal process, violation of South Carolina Unfair Trade Practices Act, negligence
- Defense of agent in dispute alleging misappropriation of business opportunity, breach of contract, breach of covenant of good faith and fair dealing, breach of contract accompanied by fraudulent act, breach of fiduciary duty, negligent misrepresentation, civil conspiracy and violation of South Carolina Unfair Trade Practices Act
- Represented publicly and privately-held entities in connection with the underwriting and placement of representations and warranties insurance in mergers and acquisitions, including advice on modifying policy language and negotiation of coverage
- Assist deal team with insurance due diligence and other issues related to historical asbestos liabilities