



Johannes S. Kingma (Joe)

Title: Member

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Joe Kingma represents international, national, and regional accounting and law firms in professional liability litigation. He also represents a variety of business entities in commercial litigation. Joe's practice focuses on cases involving audit, secured lending, real estate, corporate governance and tax. He has substantial involvement in matters involving trusts and estates, conservation easements, mergers and acquisitions, captive insurance companies, local government, and election law contests. He has represented auditors in proceedings before the SEC (Washington, Fort Worth, and Manhattan), the FDIC, and the IRS. Joe has more than 45 appellate decisions reported by Westlaw along with more than 100 more trial court decisions issued in the Bankruptcy and Federal District Courts of Georgia, South Carolina, North Carolina, and Tennessee.

CAPABILITIES

Practice Areas

- Arbitration, Mediation & Alternative Dispute Resolution
- Litigation & Appeals
- Professional Liability Litigation

RECENT ASSIGNMENTS

- **Federal Syndicated Conservation Easement class action.** Won a motion to dismiss for a client in a Federal Syndicated Conservation Easement class action filed against 30 different defendants including lawyers, accountants, appraisers, promoters, and engineers. Claims included RICO, malpractice, negligent misrepresentation, breach of fiduciary duty, and fraud. Our client was one of only six defendants who were dismissed by the 251 page order.
- **Georgia Court of Appeals Affirms Summary Judgment Shooting Down Damages Claim** (January 2023). Dan Millman and Joe Kingma prevailed for a Georgia municipality which had denied a liquor license. While Court of Appeals did not address whether the applicant was entitled to the license it agreed that damages for lost profits were not available.
- **Joe Kingma and Billy Newcomb prevail for their attorney clients on a motion to dismiss in the State Court of Muscogee County.** The case arose from a receivership action filed after a real estate partnership fell apart beset by allegations of fraud and self-dealing. The receivership was hotly contested and the original receiver was replaced. Plaintiff alleged the attorney defendants filed the receivership to wrongfully strip him of his interests in 8-figure real estate developments. The original judge withdrew after hearing the motion. But after several years, extensive briefing and multiple hearings, all the claims against the clients including fraud, breach of fiduciary duty, and negligence were dismissed in February 2022.
- **Unanimous Supreme Court Reverses Court of Appeals and Finds Waiver of Attorney Privilege** (February 2020). The case arose from a battle for control of a California aerospace company that had spawned litigation in California and Georgia. One group of litigants brought malpractice claims against Joe's law firm client. Joe sought discovery from another law firm that had also advised the plaintiffs. The trial court granted discovery of the plaintiff's communication with the second firm but the Court of Appeals reversed. The Supreme Court agreed that the privilege was waived by the filing of the malpractice suit.
- **Joe Kingma Prevails for Bankruptcy Trustee in 66 Page Order** (April 2019). Joe represented a bankruptcy trustee in an adversary action relating to three bankruptcy estates. Claims were asserted against the trustee by debtors. The underlying case involved several appeals to the U.S. District Court and had lingered for five years due to the complex bankruptcy issues. After a year and a half of litigation, a motion to dismiss was granted in its entirety. The case presented complexities including: issue preclusion, claim preclusion, liability of a bonding company, finality of orders, failure to state a claim under Twombly, absolute immunity, and the statute of limitations. When the dust settled at the end of 66 pages, all claims against the client were dismissed in their entirety.

- **Jeff Hoffmeyer and Joe Kingma defeated a complex motion which, if granted, would have been disastrous for their receiver client.** Jeff and Joe's client had been appointed receiver of an entity that owned and operated nine hotels. Disputes arose amongst the entity's investors and litigation commenced. Once appointed, the receiver ran the hotels, hiring professionals and others to keep the hotels in operation. After a couple of years and substantial related litigation, the Georgia Court of Appeals ruled that the judge who appointed the receiver should have recused himself and thus the orders appointing the receiver and authorizing payments to him totaling more than \$2,000,000 were void. The defendants, who had opposed the receivership, filed a motion seeking to have all the receiver's fees and expenses repaid by the receiver individually. Jeff Hoffmeyer argued the highly contested motion in a courtroom filled with more than 15 attorneys for the parties. The trial court entered an order denying all the relief sought by the movants against the receiver.
- **Summary Judgment in Legal Malpractice Claim Arising From a Prominent Divorce** (September 2018). Joe won summary judgment for a lawyer in a malpractice suit arising from a mid-8 figure divorce which had been extensively covered in the national media. The claim involved the division of appreciated assets, capital gains, and the tax ramifications of paying off margin debt. Joe sought summary judgment, arguing that (1) plaintiff failed to show a casual relationship between the claimed misconduct and any resulting damages, (2) plaintiff failed to show that she would have obtained a better result at trial, and (3) plaintiff failed to show that she could have obtained a better settlement of her claim. The Court granted the motion and the Court of Appeals affirmed.
- **Jury Verdict for Defendant in Defamation Claim.** Jury verdict after a seven day trial in which client law firm was sued by a plaintiff represented by a national law firm who spent two million dollars prosecuting a defamation claim.
- **Audit Firm Malpractice Defense - Eleventh Circuit Court of Appeals.** A New York audit firm was sued for malpractice in federal court in Georgia. Our ultimate complete triumph was the result of a partial grant of summary judgment, a jury verdict and judicial enforcement of a damage limitation provision. We held that judgment in the Eleventh Circuit Court of Appeals.
- **Plaintiff Win in Trial for Specific Performance and Fraudulent Conveyance.** Represented a plaintiff in trial for specific performance and fraudulent conveyance resulting in plaintiff's verdict and millions of dollars in benefit to clients.
- **Jury Verdict for Bank - Fraudulent Lending and Wrongful Foreclosure.** Jury verdict for a bank sued for fraudulent lending and wrongful foreclosure during the height of the financial crisis.

- **Unanimous Georgia Supreme Court Excludes Evidence of Defendants Wealth.** On January 22, 2013, the Supreme Court of Georgia ruled on a question certified from the U.S. District Court and held that juries imposing damages under O.C.G.A. § 51-12-6 are not entitled to see evidence of the defendant's "worldly circumstances," i.e., wealth. The question arose during a trial before the U.S. District Court for the Southern District of Georgia in Augusta.

BAR ADMISSIONS

- Admitted Pro Hac Vice in Florida, Alabama, New York, Tennessee, North Carolina, and South Carolina
- Georgia
- U.S. District Court for the Southern District of Georgia

RECENT NEWS, ARTICLES & SPEAKING ENGAGEMENTS

- Regulators to Hammer Auditors?
8th Annual Accounting Risk Management Seminar, Atlanta, November 7, 2023
- Fraud: Are You a Gatekeeper or Co-Conspirator?
8th Annual Accounting Risk Management Seminar, November 7, 2023
- Engagement Letters For Lawyers and Accountants
co-author with Daniel H. Hecht, Sompo International Insurance, *TheCLM.org*, March 20, 2023
- Panel Ends Golf Club's Bid for Damages Over Liquor License
by Tom Lotshaw, *Law360.com*, January 26, 2023
- Tax Malpractice Risk
2022 Pre-Tax Season Presentation, co-presenter with Conrad Davis of Crowe LLP and Deb Rood of CAN, December 13, 2022
- Lawyers, Accountants, and Other Professionals (OH MY!)
Fall 2022 National Legal Malpractice Conference, Bellevue, Washington, September 22, 2022

- 7th Annual Accounting Risk Management Seminar
presented by Stites & Harbison's Accounting Defense Team, Atlanta, GA, October 26, 2022
- Managing Partners Roundtable
BDO Alliance Conference Green Group, Las Vegas, NV, May 4, 2022
- Stites & Harbison Continues Expansion in Atlanta: Lands Commercial Litigation Team of 12 from Copeland, Stair, Kingma & Lovell LLP
Franklins, January 25, 2022
- 19 Attorneys Move to Stites & Harbison, Rapidly Growing Atlanta Team
by Jacob Polacheck, *Daily Report*, January 25, 2022
- Stites & Harbison Adds 19 To Atlanta Team From 2 Firms *with Jack Rodgers* Law360, January 24, 2022
- Risk Avoidance
Atlanta Tax Forum, Georgia Society of CPAs, November 5, 2021
- Don't Get Taken Down in a Zombie Ethics Apocalypse
2020 Southern Federal Tax Institute, October 27, 2020
- COVID Related Risk Arising from Audit, Tax and Consulting Engagements
presented to more than 3000 Accountants, Webinar, April 29, 2020
- Accounting Risk Management
2019 Lemme Best Practices Forum (annual gathering of the Managing Partners and General Counsel of most of the 25 largest accounting firms in the U.S.), Chicago, September 5, 2019

MEMBERSHIPS

- American College of Trial Lawyers , Fellow
- Professional Liability Underwriting Society , Member
- State Bar of Georgia , Member
- Atlanta Bar Association , Member
- American Bar Association , Standing Committee on Lawyers Professional Liability (2014-18)

COMMUNITY INVOLVEMENT

- Intown Collaborative Ministries, Board Member (2014-18)
- Druid Hills Golf Club, Member

EDUCATION

University of Pennsylvania Law School J.D.

Grinnell College B.A.

- Varsity Basketball

ACCOLADES

- *Martindale-Hubbell*® AV-Preeminent® Peer Review Rated
- *Best Lawyers in America*®, Legal Malpractice Law - Defendants (2009-24)
- *Best Lawyers in America*®, Atlanta Area Lawyer of the Year for Legal Malpractice Law - Defendants (2021, 2023)
- *Georgia Super Lawyers*® (2005-24)
- *Georgia Super Lawyers*®, Top 100 (2012, 2013, 2014, 2016, 2022)