



## Kelly E. Theard

Managing Partner

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### Practices

Commercial Litigation

Construction Law & Litigation

Design Professional Errors & Omissions

Manufacturer's Liability & Products Liability

Premises Liability

### Industries

Construction

Retail & Restaurant

### Bar Admissions

Louisiana

### Education

J.D., Louisiana State University, 2004

B.C.L., Louisiana State University, 2004

B.A., University of New Orleans, Communications, 2000

Kelly Theard is a construction lawyer representing general contractors, subcontractors, architects, engineers, program managers and material suppliers in a variety of construction related litigation including construction defect, design and professional liability, and third-party injury claims. She also assists her clients in contract negotiations and pre-claim disputes. Ms. Theard currently serves as the firm's Managing Partner as well as Head of the Construction Practice Group.

While Ms. Theard's practice is primarily focused on construction and professional liability matters, she also handles general liability matters for local restaurants and department stores. Her general liability clients have included well-known regional restaurant chains with Louisiana locations, the nation's largest broad-line closeout retailer and one of the largest food retailers in America. She has additional litigation experience in s in the areas of redhibition, products liability and commercial litigation.

Ms. Theard is a recognized practitioner in Construction Law by *Chambers USA* where a client communicated that Kelly "is smart, knows the ins, outs and details of construction and is an extremely hard worker." She is also listed in *The Best Lawyers in America®* List (2015-2023) where she was named a "Lawyer of the Year" in 2018 and received the New Orleans *CityBusiness* "Women of the Year" designation in 2015, 2019 and 2020.

### Professional Associations

- American Bar Association
- Associated Builders & Contractors
  - Safety and Management Education Committee
  - Programs Committee Past Chair
- Association of Women Attorneys
- Claims Litigation Management (CLM)
  - Architects & Engineers/Misc. Professional Liability Committee
- Federal Bar Association
  - New Orleans Chapter, Board Member
- International Association of Defense Counsel (IADC)
- Louisiana Defense Counsel
  - Board of Directors
- Louisiana State Bar Association

- New Orleans Bar Association
- National Retail and Restaurant Defense Association

### Accolades

- *Chambers USA*, Recognized Practitioner, Construction
- AV Preeminent *Martindale-Hubbell*® Peer Review Rating™
- New Orleans *CityBusiness* "Women of the Year" 2015, 2019, 2020
- *New Orleans Magazine* "Top Lawyers" List, 2015-2020
- *Best Lawyers in America*® List, 2015-present
- *Best Lawyers in America*® 2018 Litigation - Construction "Lawyer of the Year", New Orleans, LA.
- *Lawyer Monthly Magazine* "Women In Law Awards" 2019, in recognition of outstanding legal expertise and contributions
- New Orleans *CityBusiness* "Leadership in Law" Award: Top 50 Lawyers in New Orleans, 2014
- Louisiana *Super Lawyers* list 2016-present
- Thomson Reuters "Louisiana Rising Stars" List, 2013-2015

### Community & Other Involvement

- New Orleans Habitat for Humanity, Board Member
- Louisiana Children's Museum, Past Board Member
- Hogs for the Cause Advisory Board, Piggy Stardust Founding Member
- Carrollton Playground, U-8 Girls Volunteer Soccer Coach
- The Committee for a Better New Orleans, 51<sup>st</sup> Bryan Bell Metropolitan Leadership Forum, Certificate
- Junior League of New Orleans, Sustainer
- Lafayette Academy School, Volunteer Tutor through Junior League (2013 – 2017)
- Henry Aucoin Foundation, Secretary and Board Member
- 2015 World's Fair, Country Co-Chair, Louisiana Children's Museum
- New Orleans Hispanic and Heritage Foundation, Azucar Ball Committee (2014-2015), Co-Chair Azucar Ball (2013)

### Representative Successes

- **Construction Defect – Summary Judgment Granted**

Ms. Theard defended a plumbing subcontractor in a construction defect lawsuit filed by a homeowner. The homeowner plaintiff filed suit against the general contractor for various claims for damages related to alleged construction defects in the repair and renovation of her home after Hurricane Katrina. Plaintiffs' alleged damages were in excess of \$1,000,000.00. The general contractor filed a third party demand against several of the subcontractors who performed work on the project. After several depositions and discovery, Ms. Theard filed a motion for summary judgment based on the fact that none of the construction experts or plaintiffs were able to establish any actual damages and/or defects involving the plumbing subcontractor's work. The trial court granted the motion for summary judgment, and dismissed all claims against the plumbing subcontractor with prejudice.

- **New Home Warranty Act – Design and Construction Defects**

Mr. Brennan and Ms. Theard represented the developer and design/builder of a 48-unit luxury condominium development against allegations of design and construction defects. The condominium association filed the lawsuit after occupancy of the condos, claiming that, among other things, issues related to terrace drainage, defective windows and terrace doors, and issues with exterior sealants, coating and insulation contributed to water intrusion within the building during various hurricanes. In addition to various theories of negligence, breach of contract and redhibition, the association claimed they were entitled to bring a claim under the New Home Warranty Act for the alleged construction defects, which created the potential for the recovery of attorney fees. The contractor/developer added several subcontractors to the lawsuit pursuant to contractual defense and indemnity owed on the project. Over the course of the litigation, the association filed suit against the window supplier and manufacturer as well. Mr. Brennan and Ms. Theard filed a motion for summary judgment arguing that a condominium association did not satisfy the definition of an “owner” under the New Home Warranty Act, and as such the association did not have an NHWA claim against the defendants. The Civil District Court for Orleans Parish adopted that argument in granting the summary judgment. The plaintiff appealed the decision to the Fourth Circuit Court of Appeals, who ultimately upheld the lower court’s ruling, again citing the defendants’ argument. The plaintiff then took a writ to the Louisiana Supreme Court, which was denied. The ruling eliminated a major damage in the lawsuit, attorney fees, and ultimately contributed to a reasonable settlement in the matter. Furthermore, the firm’s client was able to avoid potential exposure and legal fees associated with a projected three-month trial.

- **Premises Liability – *Hilda Wood v. Copeland’s of New Orleans, Inc., and ABC Insurance Company***

Ms. Theard and Ms. Salter defended a local restaurant in a slip and fall lawsuit filed in Jefferson Parish. After taking the deposition of the Plaintiff, and without any further discovery, Defendants filed a Motion for Summary Judgment based on deposition testimony elicited from the Plaintiff that demonstrated the condition was open and obvious and Plaintiff would not be able to meet her burden of proof under La. R.S. 9:2800.6. The trial court gave the Plaintiff an additional 60 days to perform additional discovery, and re-set the hearing on the motion. At the second hearing, the Court granted Defendants’ motion for summary judgment, and dismissed all claims with prejudice.

*Hilda Wood v. Copeland’s of New Orleans, Inc., and ABC Insurance Company*, 24th JDC No. 707-847.

- **Premises Liability – *Summary Judgment Granted - Irene Simmons v. Copeland’s of New Orleans, Inc., and Restaurant Development Corporation of Louisiana, LLC***

Ms. Theard defended a local restaurant in a slip and fall lawsuit filed in East Baton Rouge Parish. Upon the completion of discovery, Ms. Theard filed a Motion for Summary Judgment based on the fact that Plaintiff failed to satisfy their burden of proof under La. R.S. 9:2800.6. The trial court granted Defendants’ motion for summary judgment, and dismissed all claims with prejudice. *Irene Simmons v. Copeland’s of New Orleans, Inc., and Restaurant Development Corporation of Louisiana, LLC*, 19th JDC No.: 583,173

- **Slip and Fall - *Martha Ross and Andy Ross v. Copeland’s of New Orleans, Inc., et al.***

Ms. Theard and Mr. Glas successfully defended a well-known restaurant in a slip & fall case which resulted in a defense verdict. The 80-year-old plaintiff fell while walking down a step from the gazebo area of the restaurant in Shreveport, Louisiana. The plaintiff claimed that as a result of the fall, she broke her nose, bruised her knees and aggravated a prior back problem. It was further alleged that the plaintiff’s “overall health and well-being deteriorated significantly in great part as a result of her injuries.” In a judge trial Ms. Theard and Mr. Glas were able to successfully argue that the one step down was not an unreasonably dangerous condition due to the fact that (1) the construction of the step satisfied the code requirements in effect at the time of construction, and (2) the step was sufficiently noticeable due to a handrail on the right side of the step, a contrasting floor pattern between the two levels, and adequate lighting augmented by natural light. Despite the sympathetic nature of the plaintiff, a turning point of the trial was during cross-examination of the plaintiff, when she finally admitted on the stand that she did not know

what caused her to fall. The Court ultimately decided that the plaintiff failed to satisfy their burden to show that the restaurant was liable for the plaintiff's fall, and as a result the Court dismissed the case at the plaintiff's cost with prejudice. *Martha Ross and Andy Ross v. Copeland's of New Orleans, Inc., et al.*, No. 526,060, Section C, 1st JDC, Caddo Parish, Louisiana

- **Architect Liability - *Billie Lorain Barker v. Schindler***

Mr. Brennan and Ms. Theard obtained a summary judgment dismissing claims in excess of \$600,000 against multi-million dollar architectural firm Broadmoor, LLC, arising out of the death of an 85-year-old patron. The patron lost his balance while stepping onto a third floor escalator at a Shreveport, Louisiana, casino, and fell down the escalator. As a result of his injuries, he was taken to a hospital where he died five days later. The man's three children filed suit against the casino, the escalator manufacturer and the contractor, alleging negligence. The casino subsequently filed a third-party demand against the architecture firm demanding defense and indemnity for errors or omissions in the design of the escalators. Mr. Brennan and Ms. Theard filed for summary judgment on the basis that the casino failed to produce any evidence and/or expert testimony to support their claim that the defendant deviated from its standard of care in performing its services on the project. The Caddo Parish Court agreed, and dismissed the casino's claims against Broadmoor. *Billie Lorain Barker v. Schindler*, May 14, 2007.

### Publications

- "State-By-State Guide to Construction and Design Law," Mr. Brennan, Mr. McReynolds and Mrs. Theard co-authored the Louisiana Chapter of this book by ABA, 2009
- "Louisiana Chinese Drywall Litigation," The Legal Blueprint, Issue 2, 2009
- "State-By-State Guide to Design and Construction Contracts and Claims," Mr. Brennan, Mr. Bergeron and Mrs. Theard co-authored the Louisiana Chapter of this book by Aspen Publishers, 2008, with annual supplements thru 2020.
- "The Clock's Ticking," The Legal Blueprint; March 2007

### Presentations

- "Settlement Conferences in Federal Court: Practical Tips to Succeed and Avoid Trouble," 2021 Federal Practice Series hosted by the New Orleans Federal Bar Association, April 2021
- "Litigation Forecast 2020: COVID-19, Tort Reform, and the Future," ACC Webinar, September 2020
- "How Organized Documentation Can Save You in a Dispute," Levelset Webinar, August 6, 2020
- "Pre-Hearing Strategy," LSBA Arbitration Seminar, August 2019
- "Litigation's Demands on the Law Department," Co-presenter, Association of Corporate Counsel CLE presentation. June 28, 2019
- "Survival Guide to a Successful Mediation," co-presenter, Professional Liability Attorney Network (PLAN) Webinar, June 2019
- "You've Been Sued: Now What?" Association of Corporate Counsel Louisiana Chapter; June 2018.
- "Overview of 2017 AIA B101 & A201 changes"; Private presentation with local architects and engineers; May 2018.
- "Overview on AIA A-201 Owner/Contractor Agreement and Relevant Subcontract Provisions," Presentation; The McDonnell Group; April 15, 2013; Metairie, LA.
- "Social Media 101 and Email Etiquette," Presentation; Construction Financial Management Association; February 2013; Metairie, LA.

- “Social Media 101 and Email Etiquette,” Associated Builders and Contractors; July 2012; Metairie, LA.
- “Understanding Your Construction Contract,” Presentation; Associated Builders and Contractors; April 13, 2012; New Orleans, LA.
- “Louisiana Public Bid Law and a Little Lagniappe,” Presentation; Louisiana professional design clients; March 8, 2012; New Orleans, LA.