

KANNER & WHITELEY, L.L.C.

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FIRM BIOGRAPHY

Kanner & Whiteley, L.L.C. ("K&W") is an AV-rated national trial firm founded in 1981 that excels in handling complex and novel matters. The firm has been especially successful in environmental and toxic tort litigation, commercial fraud, long term care insurance fraud, and in pioneering new legal theories in areas as diverse as natural resource damages, environmental law, toxic torts, genetically engineered crops, the due process rights of farm borrowers, and the property rights of States in their *parens patriae* capacity.

CHINESE DRYWALL EXPERIENCE

Chinese Drywall litigation is a classic toxic tort, so the firm's tremendous expertise in that area immediately comes to bear. In addition, K & W has been involved in Chinese drywall ("CDW") issues since the problem first burst onto the national scene. The firm is currently involved in homeowner cases in both state and federal court. In *In re Chinese Drywall*, MDL 2407 (E.D. La.), Mr. Kanner serves on the Insurance, Trial and Trial Package Committee, Overall, MDL and Louisiana, Law Committees, Experts Science, Medical Monitoring Committee, and Remediation and Release Committee. Mr. Kanner is lead counsel in *Finger v. Audubon Insurance*, Div. D - 16, No. 09-871, 2010 WL 1222273 (CDC Chief Judge Medley) (March 22, 2010) (first case striking standard exclusions in Chinese drywall case).

TRIAL AND APPELLATE EXPERIENCE

K&W has an excellent trial and appellate reputation. We have substantial jury trial experience with a number of multi-million-dollar verdicts, including three successful class action trials. We have successfully litigated civil RICO, environmental, toxic tort, antitrust, fiduciary duty, and other cases. The firm has also successfully defended an antitrust class action. The firm has served as lead counsel in a number of recent cases, including *In re Cox Enterprises, Inc., Set-Top Cable Television Box Anti-Trust Litigation*, MDL No. 2048 (W.D. Okla.) (Co-Lead) (pending antitrust class); *Shaffer v. Continental Casualty Co.*, No. CV-06-2235-RGK (C.D. Cal.) (Lead) (\$60 million long term care insurance settlement pending); *United States ex rel. Branch Consultants v. Allstate*, No. 06-4091 (E.D. La.) (Lead) (pending *qui tam*); *Lemmings v. Second Chance Body Armor, et al.*, No. CJ-2004-64 (Mayes County District Court, OK) (2/19/05)(certification of class of bullet proof vest purchasers/users) (7/12/05 Order Preliminarily Approving \$29 million national class settlement) (9/23/05 Final Approval Granted); *Milkman v. American Travellers Life Insurance Co.*, No. 3775, (Ct. Common Pleas, First Judicial District, June Term 2000) (4/01/02) (multi-million-dollar national class settlement on behalf of Long Term Care and Home Health Care policyholders; final approval granted

4/01/02); *Talalai v. Cooper Tire & Rubber Co.*, MID-L-8839-OOMT, Mass Tort 259, (Law Div. Middlesex Cty.) (multi-million-dollar national class settlement on behalf of Cooper Tire purchasers; final approval granted on 9/13/02); *Hanson v. Acceleration Life Ins. Co.*, Civ. No. 3:97-152 (D.N.D. 1999) (\$14.7 million settlement on behalf of Long Term Care policyholders); *Wallace v. American Agrisurance*, No. LR-C-99-669 (E.D.AR) (\$3.7 million settlement on behalf of rice growers holding CRC Plus policies); *Thomas v. Schwab*, No. 66,700 (10th Jud. Dist. Ct., Natchitoches, La) *aff'd*, 683 So.2d 734 (La. App. 3 Cir. 1996) (Certification of national class action); *Dumont v. Charles Schwab & Co. Inc.*, Civ. Act. No. 99-2840 c/w 99-2841 (settlement of certified national class of Schwab customers July 21, 2000, 2000 WL 1023231); *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140 (8th Cir. 1999)(settlement of certified pollution property class action affirmed on appeal); *Tompkins v. BASF*, No. 96-59 (Traill County, N.D.) (multi-million-dollar settlement on behalf of agricultural product purchasers); *Clark v. Household Finance Corp.*, No. 97-2-22420 (King County, WA, 12/29/97) (certification and settlement of statewide class for defrauded employees). We have served as co-lead counsel in *In re Synthroid Marketing Litigation*, MDL 1182, 264 F.3d 712 (7th Cir. 2001) (\$89 million nationwide class action settlement granted final approval and affirmed on appeal); *Jorgenson, et al. v. Agway, Inc.*, Civ. No. A3-00-59 (D.N.D. 2002) (\$3.2 million settlement on behalf of sunflower growers); and *Bonilla v. Trebol Motors*, No. 92-1795 (D. P.R.) (\$129.5 million class action verdict affirmed in part and reversed in part on appeal; settled as to all parties).

Courts have consistently acknowledged the firm's expertise in complex litigation:

Ralph Shaffer v. Continental Casualty Company, CV 06-2235-PSG (June 12, 2008) (Final Approval) ("The Court finds Class Counsel have achieved a substantial benefit for the Class in the face of formidable defenses to liability and difficult damages issues. Class Counsel's skill and experience enhanced the Settlement, and Class Counsel took on a substantial risk by taking this case on a contingency basis and advancing all of the necessary litigation expenses. Class Counsel fought numerous motions, took or defended several depositions in various locations throughout the Country, analyzed thousands of documents and several expert reports, extensively prepared for trial, and after nearly two years of litigation and effort to build a compelling case against an aggressive opponent, engaged in difficult settlement negotiations.")

Lemmings, et al., v. Second Chance Body Armor, Inc., et al., CJ-2004-62 (District Court, Mayes County, Oklahoma) (Final Approval Hearing 9/23/05, Judge James D. Goodpaster) ("Having been in this business some 40 years and having been through some litigation right here from this bench and personally I think that the lawyers for the claimants and for Toyobo have done an outstanding job and I really do thank you all for the hard work that all of you have done in putting this settlement together."); (2/9/05 Order Certifying Class Action with Findings of Fact and

Conclusion of Law) (“Plaintiffs’ lawyers are qualified, experienced and generally able to conduct the proposed litigation and there are no antagonistic interests between the representative party and the class. Plaintiffs have retained attorneys that are qualified and skilled in complex and consumer class litigation.”)

Wallace v. American Agrinsurance, Inc., No LR-C-99-669 (E.D.Ark, 2005) (“I have nothing but admiration for you and your associates for the outstanding manner in which you at all time represented the class plaintiffs in this case.”)

Samples v. Conoco, Inc., No. 2001-CA-000631, Div. J (Escambia County, First Judicial Circuit Court, Florida, 2003) (Class Counsel were “shown to be qualified, adequately financed and possessed sufficient experience...[and] have demonstrated both their commitment to vigorously pursue this matter on behalf of the class as well as their qualifications to do so.”)

Janes v. CIBA-GEIGY Corporation, Docket No. L-1669-01 Mass Tort 248 (Law Div. Middlesex Cty.) (5/16/03 Opinion and Order Certifying Litigation Class for pollution property damages) (Plaintiffs’ “attorneys are qualified and experienced to conduct this litigation. Class counsel has the requisite experience, skill, and competency in dealing with class actions and complex litigation.”)

Hanson v. Acceleration Life Ins. Co., Civ. No. A3:97-152 (D.N.D. Mar. 18, 1999) (certifying class, rejecting filed rate doctrine and denying summary judgment): Order of December 11, 1999 (approving final settlement of \$14.7 million), pp. 8-9: (“*This litigation was hard fought* throughout its two year pendency and required thousands of hours of counsel’s time and hundreds of thousands of dollars advanced for expenses, with significant risk of no compensation. Both local counsel and national *class counsel are commended for their willingness to take on this cause when there were virtually no precedents to assure them of likely success.* They are all highly skilled and well-experienced attorneys who appreciate the risky nature of this litigation, yet their desire to correct a perceived injustice suffered by a vulnerable group of people led them to take this risk. *Counsel’s considerable skill, both in the substantive areas of this case as well as in discovery and class action procedure, together with their degrees of preparation were primary factors leading to the favorable settlement for the class. Of equal note is the fact that counsel unquestionably put the interests of the class far ahead of their own interest.*”) (emphasis added). This case involved a North Dakota class action certified against Acceleration Life Insurance and Commonwealth Life Insurance

Company for fraud in connection with multiple premium increases of up to 700% between 1989 and 1997 on “guaranteed renewable” Long-Term Care insurance policies. Shortly before trial a national class action settlement, supervised and approved by the federal magistrate, was entered into which brought over \$7.7 million in cash payouts to numerous elderly policyholders and their families and an addition \$4 million in insurance benefits tailored to the specific needs of each class member.

Talalai v. Cooper Tire & Rubber Co., MID-L-8839-00MT, Mass Tort 249, (Law Div. Middlesex Cty.) (11/1/01 Opinion and Order Certifying National Class and Preliminarily Approving Settlement) (“The attorneys of Kanner & Whiteley, L.L.C. have substantial jury trial experience with a number of multi-million-dollar verdicts, including a number of successful class action trials. The firm is known for its willingness to try class actions to verdicts and has done so on at least three occasions, winning every time”); Opinion of September 13, 2002 (Approving Certification and Final Settlement of National Class), p. 5: (“The Stipulation was the result of extensive and intensive arm’s length negotiations among highly experienced counsel, with the benefit of extensive discovery and full knowledge of the risks inherent in this litigation.”)

Milkman v. American Travellers Life Insurance Co., No. 3775, (Ct. Cm. Pleas, First Judicial District, June Term 2000) (Preliminary Approval of National Class: 11/26/01) (“As demonstrated by the credentials set forth in the Motion, the Plaintiff’s attorneys are more than capable of representing the interests of the Class and there do not appear to be any conflicts of interest between the Plaintiff and the Class.”). (Final Approval of National Class: 4/1/02), p. 47 (“Again, the quality of the legal representation provided by Class Counsel is exceptional. The extensive experience of each of the firms and individual attorneys serving the Class is set forth in Kanner Affidavit Paragraphs 54 through 68. Moreover, the Court can attest to Class Counsel’s professionalism and skill, as demonstrated by the extensive memoranda of law and the first-class oral arguments delivered on behalf of the Class.”).

Bonilla, et al. v. Trebol Motors Corporation, et al., No. 92-1795 (JP) (D.P.R.) (\$129,000,000 jury verdict in civil RICO class action against Volvo and local distributor) (describing the firm’s abilities on March 27, 1997, as follows: “*We have no trouble concluding that the experience and resources of Kanner & Whiteley was a major reason that the plaintiffs’ class was able to so successfully present its case to the jury and achieve such an estimable result. Mr. Kanner, who served as lead counsel at trial, has perhaps as*

much experience litigating complex class action suits as any attorney in the United States. He has authored, chaired, consulted on, contributed to, and given articles, symposiums, classes, books, practice guides, etc. More importantly, his resume is replete with instances in which he served as counsel in complex class action suits. His experience was essential to the success realized by the plaintiffs in this action.”) (emphasis added).

Glass, Molders, Pottery Plastics, and Allied Workers International Union, et al. v. Wickes Companies, Inc., No. L-06023-88 (Sup.Ct., Camden Cty., February 24, 1992) (certifying national class of workers who lost jobs as a result of tortious conduct occurring in the context of hostile corporate raid) (describing the firm’s abilities to represent the class as follows: “Plaintiffs’ attorneys have extensive professional experience representing plaintiffs in class actions. Additionally, the attorneys representing the plaintiffs are equipped with the staff and resources to adequately handle a technical and complex class action. *In short, I am satisfied that plaintiffs’ attorneys are committed to the class and competent to advocate its interest.*”); (emphasis added) Order Approving Counsel Fees of December 16, 1993 (“This Court finds that the Kanner firm, [and co-counsel] have all *provided outstanding service to the class* and faithfully executed their fiduciary duties in connection with this litigation.”) (emphasis added).

Local 7-515, Oil Chemical and Atomic Workers International Union (OCAWIU), et al v. American Home Products, et al., Civ. No. 92-1238 (JP) (D.P.R.) (Order of April 13, 1992, certifying national class of workers who lost jobs as a result of fraudulent job transfers to Puerto Rico under civil RICO theory), *Oil Chemical and Atomic Workers International Union v. American Home Products, et al.*, Civil No. 91-1093 consol. with Civil No. 92-1238 (Order of September 17, 1992, approving \$24 million settlement); p. 38 of transcript: “Indeed, the Court affirmatively finds that Mr. Kanner and [co-counsel] have in all matters handled this case and conducted themselves, in relation to their co-counsel, with *the highest degree of professionalism, integrity and ability.* There is no doubt in the Court’s mind, based on his intimate familiarity with the record, that *but for the outstanding efforts of Mr. Kanner and [co-counsel] there would not have been such a significant and landmark result in this case*, and I have been telling you all this long before this moment.” (emphasis added).

The Board of Commissioners of the New Orleans Exhibition Hall Authority v. Missouri Pacific Railroad Company, et al., No. 92-4155 (Judgment of February 15, 1996) “It must be said that

both firms and all attorneys involved in this protracted litigation exemplified *the highest standard of trial experience and skill* which was brought to bear on *this novel and difficult matter* in a specialized area of the law.” (emphasis added).

As a result, Allan Kanner is regularly asked to lecture and write on presenting the plaintiff’s case for trial. The firm is especially well known for its ability to communicate novel theories effectively, and has been featured in *Business Week*, *American Bar Association Journal*, *New York Times*, *Washington Post* and *Wall Street Journal* articles.

ATTORNEYS

ALLAN KANNER (B.A., University of Pennsylvania; J.D., Harvard Law School), founding member, handles significant environmental, toxic tort, commercial and consumer fraud cases. According to Chambers USA (2009), “Allan Kanner of Kanner & Whiteley enjoys a ‘sterling reputation’ for plaintiff-side representation in toxic tort trials.” In 1996, he was recognized for winning one of the year’s largest verdicts, a \$129,500,000 judgment in a civil RICO class action. Allan Kanner is also an Adjunct Professor at Tulane Law School, and has taught as a Visiting Lecturer in Law at Yale Law School (Fall 2002), Visiting Senior Lecturer at Duke University (Fall 2000), and Visiting Professor at the University of Texas Law School (Spring 2001). He is the author of ENVIRONMENTAL AND TOXIC TORT TRIALS (Lexis-Nexis) (2d ed.), as well as over 50 articles in the diverse fields of torts, trial practice, civil discovery, civil RICO, environmental law, toxic torts, class actions, and business and consumer fraud

During 1998 and 1999 he was one of the principal authors of the LOUISIANA JUDGES’ COMPLEX LITIGATION BENCH BOOK. He has taught at the Louisiana Judicial College, and the Brookings Institute is Judicial Symposium on Civil Justice Issues. He is a member of the bars of California, District of Columbia, Louisiana, New Jersey, New York, Oklahoma, Pennsylvania, Texas and Puerto Rico (Federal) and has successfully handled matters throughout the United States.

Because of his expertise, Mr. Kanner has been asked to lecture on Chinese Drywall litigation:

Kanner, Speaker, "Latest on Class Actions And the MDL, Chinese Drywall Litigation & Insurance Coverage Update, HB Litigation Conference, New Orleans, LA (November 11, 2009).

Kanner, Speaker, "Chinese Drywall Litigation," STEP Section Program, American Association For Justice, Annual Convention, San Francisco, CA (July 27, 2009).

He has also written extensively on the subject and related matters, including a book and scores of toxic tort articles:

Kanner & Petrisor, “Chinese Drywall - Environmental Forensic Opportunities”, Vol. 11 ENVIRONMENTAL FORENSICS, p.6 (March 2010).

Kanner, "The Evolving Crisis Over Defective Chinese Drywall, An Overview of Legal Claims and Legislative Efforts", BNA TOXIC TORT LITIGATION REPORTER (November 19, 2009), p. 1337.

Mr. Kanner has been selected for HB's Chinese Drywall Litigation Advisory Council, and is quoted extensively in the media on Chinese Drywall Litigation:

Rebecca Mowbray, "N.O. Judge Rules Against Insurer In Drywall Claim," Times Picayune (March 27, 2010) (regarding Kanner & Whiteley victory).

Allison Burtka, "New Class Action Moves Drywall Litigation Forward," AAJ Trial News (December 17, 2009).

Allison Burtka, "Chinese Drywall Plaintiffs Sue Commercial, Homeowners, Insurers," AAJ Trial News (November 5, 2009).

Rebecca Mowbray, "Homeowners With Chinese Drywall Have Been Rebuffed By Insurers, But Hope May Not Be Lost," Times Picayune (October 18, 2009).

Rebecca Mowbray, "Chinese Drywall Problems Have Spotlit Flaws In the U.S. Legal System," Times Picayune (October 4, 2009).

CONLEE S. WHITELEY, managing member, joined Kanner & Whiteley, L.L.C. in 1994. Ms. Whiteley practices in the fields of complex litigation and class actions, including consumer fraud, securities, RICO, agricultural product and commercial litigation. Before joining Kanner & Whiteley, she worked for the Louisiana State Law Institute in the areas of the Louisiana Code of Civil Procedure and the Louisiana Children's Code. Ms. Whiteley is admitted to practice before Louisiana State Courts and the United States District Courts for the Eastern and Western Districts of Louisiana, the District of North Dakota and the United States Court of Appeals, First and Fifth Circuits. She has also been admitted to practice *Pro Hac Vice* in the United States District Court for the District of Puerto Rico, state courts of California, Florida, Illinois, North Dakota, Pennsylvania, Texas and Washington. She graduated in 1989 from Louisiana State University where she obtained a Bachelor of Arts degree in History with a minor in Political Science. In 1993, she obtained a Juris Doctor degree from the Paul M. Hebert Law Center at Louisiana State University.

ELIZABETH B. PETERSEN, member, joined Kanner & Whiteley, L.L.C. in 1996. Ms. Petersen practices in the fields of environmental law, complex litigation and class actions, including consumer fraud and environmental property damage litigation. She has taught a Seminar on Toxic Torts at Tulane Law School. Prior to joining Kanner & Whiteley, she practiced in the areas of civil and maritime litigation. She is admitted to practice before the United States District Court for the Eastern and Western Districts of Louisiana and before Louisiana State Courts. She has also been admitted to practice *Pro Hac Vice* in the United States District Courts for the Western District of Missouri; the District of Puerto Rico, the Southern District of Texas; the Northern District of Illinois, the Circuit Court of Escambia County, Florida, the District Court for Kay County, Oklahoma, and before several of New Jersey's state courts. Ms. Petersen graduated in 1992 with a Bachelor of Arts degree in English from the University of California at Berkeley. In 1995, she obtained a Juris Doctor and Certificate of Environmental Law from Tulane University School of Law.

CYNTHIA GREEN ST. AMANT joined Kanner & Whiteley, L.L.C. in 1998 as an associate in the litigation section where she practices general, civil, commercial, consumer fraud, class action and environmental law. Before joining Kanner & Whiteley, L.L.C., she worked at the Louisiana Supreme Court, clerking for Justices Lemmon and Bleich and serving as a staff attorney in the Court's Civil Staff Division. Ms. St. Amant is a member of both the Louisiana and Texas bars and is admitted to practice before Louisiana State and Federal Courts, Texas State Courts and the Fifth Circuit Court of Appeal. She graduated with a Bachelor of Science degree in Business Administration from Louisiana Tech University in 1993. In 1996, she obtained a Juris Doctor degree from the Paul M. Hebert Law Center at Louisiana State University.

MICHAEL "RYAN" CASEY joined Kanner & Whiteley, L.L.C. in 2006 as an associate attorney in the litigation section where he practices general, civil, commercial, consumer fraud, complex litigation, and environmental law. Mr. Casey graduated with a Bachelor of Arts degree in Philosophy and Government in 2000 from The College of William and Mary. In 2006 he obtained a Juris Doctor degree from the University of Oregon School of Law with a Pro Bono Certificate and Certificate of Environmental Law. Prior to attending law school, Mr. Casey was a Peace Corps volunteer in Penza, Russia. During law school, he was a student attorney at the Western Environmental Law Center, clerked with the Environmental Law Alliance Worldwide, served on the boards of the Oregon Law Students Public Interest Fund and Coalition Against Environmental Racism, and was the founding President of the Student chapter of the Oregon Trial Lawyers Association. He was awarded summer work-grants from both the Land Air Water Society and OLSPIF, and worked as a summer clerk with non-profit international environmental law firms in Russia and Venezuela.

REBECCA J. DAVIS (B.A., Western Kentucky University; J.D., Tulane University Law School) is an associate attorney who joined the firm in 2008. Ms. Davis practices environmental law. Prior to joining the firm, she was an attorney with the Texas Commission on Environmental Quality where she focused on air, water, and waste regulatory and compliance issues. Additionally, she also implemented federal legislation, drafted air regulations, and worked on Clean Air Act state implementation plans for the State of Texas. Ms. Davis later practiced in the private sector in the areas of personal injury, toxic tort, and casualty litigation. Ms. Davis is admitted to the Eastern District Court of Louisiana. She is also admitted Pro Hac Vice in the Superior Court of New Jersey.

DAVID A. POTE joined Kanner & Whiteley in 2010 and practices environmental law, natural resource damages and class actions. Prior to joining the firm, he practiced general civil litigation in both Alabama and Florida, including the areas of toxic torts, complex tort litigation, insurance coverage law and medical malpractice. Mr. Pote is admitted to practice before the United States District Court for the Northern, Middle and Southern Districts of Alabama, as well as all Louisiana state courts, Florida state courts, and Alabama state courts. He graduated with a Bachelor of Science degree from Birmingham-Southern College in 1994, and earned his Juris Doctorate degree from Tulane Law School in 2000, where he was the Senior Appellate Justice on the Moot Court Board.

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