

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 commercial fraud, environmental and toxic tort litigation, first party insurance, long term care insurance fraud, and in pioneering new legal theories in areas as diverse as environmental law, toxic torts, genetically engineered crops, the due process rights of farm borrowers, and the property rights of workers in their jobs.

INSURANCE CLAIMS EXPERIENCE

Starting with Three Mile Island, our firm has worked with clients to recover insurance proceeds from carriers in the wake of large disasters. Our litigation practice has involved many successful claims for recovery of insurance proceeds, fraud in the inducement when issuing policies, bad faith denial of claims, improper rate increases and other policy disputes against Acceleration Life, Aegon, AIG, Allstate, American National, Cigna, Commonwealth Life, Consec, CNA, Fidelity National, Lafayette, Lexington, Liberty Mutual, Lloyd’s of London, Louisiana Citizens, RSUI, Scottsdale, State Farm, and Travelers. We have handled homeowner insurance, CGL insurance, crop insurance and long-term care insurance cases among others. We have also handled claims by whistleblowers and claims against agents. Our clients’ recovery approaches \$100 million on first party insurance claims.

Following Hurricanes Katrina and Rita, we were asked by several of our long standing commercial and individual clients in the New Orleans area and Gulf Region to investigate and/or pursue claims against their insurers for property damage, loss of use, extra expense coverage and business interruption and/or agent and broker claims, if applicable. Several of our clients include the City of Greta, Plaquemines Parish School Board, Cameron Parish School Board, the Academy of the Sacred Heart, Omega Protein, Innovus, Inc., First Bank & Trust, Goodwill Industries, New Orleans, Milne Home for Girls, and various individuals. We are actively litigating Hurricane Ike claims for governmental and commercial clients.

In addition, in response to the first party insurance claims arising in Louisiana after Hurricanes Katrina and Rita, Allan Kanner founded the Insurance Law section of the Louisiana Association for Justice and served as its chair in 2006 and 2007. Allan Kanner and Cindy St. Amant of the firm authored a number of insurance articles, including: Handling Property Damage and Business Interruption Insurance Claims: VPL Revisited – Recent Developments in Interpreting Louisiana’s Valued

Policy Law, LOUISIANA ADVOCATES, Part XV (May 2007), Handling Property Damage and Business Interruption Insurance Claims: Discovery, LOUISIANA ADVOCATES, Part IX (November 2006), Handling Property Damage and Business Interruption Insurance Claims: Bad Faith Litigation, LOUISIANA ADVOCATES, Part VI (August 2006), and many more.

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).

Mr. Kanner served as a member of the Louisiana Senate's Property Insurance Task Force after Katrina. He is regularly invited to speak on a broad variety of insurance topics before attorneys and governmental entities.

"Flood Insurance Claims", North Dakota Association for Justice Annual Spring Seminar, Fargo, ND (May 8, 2009).

"Fires, Earthquakes, Flooding And Other Natural Disasters", AAJ Mid-Winter Convention, New Orleans, LA (February 8, 2009).

"Insurance Claims", Iowa Trial Lawyers Annual Convention, Des Moines, IA (November 7, 2008).

"Insurance and Natural Disasters", Texas Trial Lawyers Association Webinar (September 26, 2008).

"Law Lunch: Complex Disaster Insurance Claims Seminar" Iowa Trial Lawyers Association, Teleseminar (June 26, 2008).

"Insurance Bad Faith," Last Chance Seminar, New Orleans, LA (Dec. 13, 2007).

"Consumer Protection Issues" and "Insurance Contracts in the Wake of Katrina," Brookings Institute, Second Annual Judicial Symposium on Civil Justice Issues, Northwestern School of Law, Chicago, Illinois (November 12-13, 2007).

"Long Term Care Insurance," Special Committee on Aging, U.S. Senate, Washington, DC (Sept. 13, 2000), www.senate.gov/~aging/hr58.htm.

"Long-Term Care -- Buyer Beware," Senate Report of the Committee on Post Audit and Oversight, Massachusetts Senate (Apr. 2002), pp. 14, 28. ("In the absence of effective consumer regulatory protection, some have resorted to the courts. In the late 1990 's, Attorney Allan Kanner of New Orleans took the lead in filing a class action suit . . .").

OTHER TRIAL AND APPELLATE EXPERIENCE

Mr. Kanner has also been actively involved in insurance coverage issues associated with Chinese drywall. See, Rebecca Mowbray, "N.O. Judge Rules Against Insurer In Drywall

Claim,” Times Picayune (March 27, 2010) (regarding Kanner & Whiteley victory). He serves on the Insurance Committee for MDL Litigation.

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 is or 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 Agrisure*, 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 and class action 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 of Long Term Care policyholders, 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).

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 Allan Kanner & Associates 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. See, *Business Week* (June 18, 1990); *American Bar Association Journal* articles in July 1989 and July 1990 issues.

ATTORNEYS

ALLAN KANNER (B.A., University of Pennsylvania; J.D., Harvard Law School) is the founder and senior member at Kanner & Whiteley, L.L.C. Mr. Kanner has a wealth of experience litigating complex class action lawsuits, and practices in the areas of environment, toxic tort, commercial litigation, and consumer fraud. According to Chambers USA (2009), "Allan Kanner of Kanner & Whiteley enjoys a 'sterling reputation' for plaintiff-side representation in toxic tort trials." In addition to his trial practice, Mr. Kanner also serves the legal profession as an Adjunct Professor at Tulane Law School (1990-2008), a Visiting Lecturer in Law at University of California, Berkeley (Spring 2004), at Yale Law School (Fall 2002), Visiting Senior Lecturer at Duke University (Fall 2000) (Spring 2004), and Visiting Professor at the University of Texas Law School (Spring 2001). Mr. Kanner is a frequent lecturer and speaker on a variety of topics, and is the author of ENVIRONMENTAL AND TOXIC TORT TRIALS (Lexis-Nexis) (2d. ed.), as well as over sixty 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, Mr. Kanner was one of the principal authors of the LOUISIANA JUDGES' COMPLEX LITIGATION BENCH BOOK, and he has also been an instructor at the Louisiana Judicial College. After graduating from Harvard Law School, he clerked for the late Judge Robert S. Vance of the U.S. Court of Appeals, Fifth Circuit. He is a member of the bars of California, District of Columbia, Louisiana, New Jersey, Oklahoma, New York, Pennsylvania, Texas and Puerto Rico (Federal), and has successfully handled novel and complex matters throughout the United States.

Mr. Kanner is the past President of the Louisiana Association of Justice ("LAJ") (2008-2009) and is on the American Associates of Justice Board of Governors. In the wake of Hurricanes Katrina and Rita, he founded and headed the LAJ insurance section to encourage cooperation and information sharing between attorneys representing insureds against their carriers. He has authored numerous articles related to insurance and was recently invited to lecture before the Iowa Association for Justice and Texas Association for Justice, and North Dakota Association for Justice on insurance coverage following natural disasters affecting those states. He has also testified on insurance issues before the U.S. Senate and Louisiana Legislature.

CONLEE S. WHITELEY (B.A., Louisiana State University; J.D. Paul M. Hebert Law Center at Louisiana State University) is the managing member at Kanner & Whiteley. Ms. Whiteley joined the firm in 1994 and practices primarily in the areas of consumer fraud, commercial litigation, agricultural litigation, RICO, and general class action litigation in New Orleans and throughout the country. Ms. Whiteley is licensed to practice law before Louisiana State Courts, the United States District Courts for the Eastern and Western Districts of Louisiana, the United States District Court for the District of North Dakota, the United States Court of Appeals for the First, Fifth and Ninth Circuits. She has also been admitted to practice Pro Hac Vice in the United States District Court for the District of Puerto Rico, United States District Court Central District of California, United States District Court for the Northern District of Iowa as well as in state courts in California, Florida, Illinois, North Dakota, Pennsylvania, Texas and Washington. Ms. Whiteley has been appointed as class counsel in a number of national class

actions in which Kanner & Whiteley served as lead counsel and has been involved in all aspects of litigation of these matters.

Ms. Whiteley has had a substantial role in Kanner & Whiteley's Hurricane Katrina and Rita litigation, representing the City of Gretna, Louisiana, the Academy of Sacred Heart, the Cameron Parish School Board, the Alexander Milne Home for Women, and Joseph Canizaro.

ELIZABETH B. PETERSEN, (B.A. University of California at Berkeley J.D. Tulane University School of Law, Certificate of Environmental Law) member, joined Kanner & Whiteley in 1996. Ms. Petersen practices in the fields of environmental law, complex litigation and class actions, including consumer fraud and environmental property damage litigation. 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 Courts 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, and before the Circuit Court of Escambia County, Florida.

CYNTHIA ST. AMANT, (B.S. Louisiana Tech University, J.D. Paul M. Hebert Law Center at Louisiana State University) member, joined Kanner & Whiteley in 1998. Ms. St. Amant practices general, civil, commercial, consumer fraud, class action and environmental law. Before joining Kanner & Whiteley, 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 Courts, Texas State Courts, the United States District Courts for the Eastern, Middle and Western Districts of Louisiana, the United States District Courts for the Eastern and Western Districts of Arkansas, the United States District Court for the Northern District of Florida, the United States District Court for the Western District of Michigan, and the United States Court of Appeals for the Fifth Circuit.

MICHAEL "RYAN" CASEY (B.A., The College of William and Mary; J.D. University of Oregon School of Law, Pro Bono Certificate and Certificate of Environmental Law) joined Kanner & Whiteley as an associate in 2006. Mr. Casey practices in the fields of insurance litigation, complex litigation and class actions, including consumer fraud, commercial litigation and environmental law. While at Kanner & Whiteley, L.L.C., he has served on the Eastern District of Louisiana's (Section F) Plaintiffs' Liaison Committee for Katrina-related insurance litigation, and has been an active member of the Louisiana Association for Justice's Section on Insurance Litigation. He is admitted to practice before the United States District Courts for the Eastern and Western District of Louisiana and Eastern District of Virginia, as well as before Louisiana and Virginia State Courts. He has also been admitted to practice *Pro Hac Vice* in the United States District Court for the District of Puerto Rico. He has also had a substantial role in the firm's Hurricane Katrina and Rita litigation, representing the City of Gretna, the Cameron Parish School Board, and the Walle Building Condominium Association.

MELISSA MCCONNELL FUSELIER (B.A. University of Alabama, J.D. and Certificate in Civil Law, Loyola University School of Law) joined the firm as an associate in 2008. Ms. Fuselier practices in the fields of insurance litigation, complex litigation and class actions, including consumer fraud and commercial litigation. Prior to joining Kanner & Whiteley, she practiced in the areas of commercial real estate and maritime law. She is admitted to practice before the United States District Courts for the Eastern, Middle, and Western District of Louisiana and before Louisiana and Georgia State Courts.

REBECCA J. DAVIS (B.A. Western Kentucky University, J.D. and Certificate in Environmental Law, Tulane University School of Law) joined the firm as an associate in 2008. Ms. Davis practices in the fields of environmental law, complex litigation and class actions. Prior to joining Kanner & Whiteley, Ms. Davis was an attorney with the Texas Commission on Environmental Quality where she focused on air, water, and waste regulatory and enforcement issues. She is admitted to practice before the United States District Court for the Eastern District of Louisiana and before Louisiana, Texas, and Kentucky State Courts. She has also been admitted *Pro Hac Vice* in New Jersey State Courts.

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.