45. 209 F.R.D. 323, *In re: Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation,* No. M 21-88, MDL 1358 United States District Court, (S.D.N.Y., 2002)("*MTBE I*")

46. 2002 WL 32361003, *In re: Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation,* No. M 21-88, MDL 1358 United States District Court, (S.D.N.Y., May 23, 2002) *("MTBE I")*

47. 174 F.Supp.2d 4, *In re: Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation,* No. M 21-88, MDL 1358 United States District Court, (S.D.N.Y., Oct 16, 2001) *("MTBE I")*

48. 175 F.Supp.2d 593, *In re: Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation,* No. 00-Civ. 1898(BS) United States District Court, (S.D.N.Y., 2001)(*"MTBE I"*)

49. 144 Cal. App.4th 689, *D.J. Nelson, as Trustee, etc. v. The Superior Court,* No. C052420, Court of Appeal, Third District, California, (Nov 6, 2006)

50. *City of Greenville v. Syngenta Crop Prot., Inc.,* 2012 U.S. Dist. LEXIS 151819 (S.D. Ill. Oct. 23, 2012) (granting motion for final approval of settlement and award of attorney's fees and expenses)

51. *City of Greenville v. Syngenta Crop Prot., Inc.,* 2012 U.S. Dist. LEXIS 74305 (S.D. Ill. May 30, 2012) (granting motion for preliminary approval)

52. *City of Greenville v. Syngenta Crop Prot., Inc.,* 830 F. Supp. 2d 550, 565 (S.D. Ill. 2011) (denying Syngenta AG's motion to dismiss for lack of personal jurisdiction)

53. *City of Greenville v. Syngenta Crop Prot., Inc.,* 756 F. Supp. 2d 1001, 1004 (S.D. Ill. 2010) (denying Syngenta's motion to dismiss under Federal Rule of Civil Procedure 12(b)(6))

How to Reach Summy

Scott Summy
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CELESTE A. EVANGELISTI

PROFESSIONAL OVERVIEW

Twenty years litigating complex environmental contamination and toxic tort cases, with a focus on representation of public entities including states, municipalities, public water providers, school boards, and other governmental entities, who seek to recover costs for environmental clean-up, restoration of water supplies, natural resource damages, and any other costs associated with the contamination.

Since 2014, has been litigating against Monsanto for clean-up costs to address the PCB contamination resulting from Monsanto's decision to continue to market and promote PCB, despite knowledge it had become a toxic and ubiquitous environmental contaminant.

A well-known figure in national litigation arising from contamination caused by the gasoline additive Methyl tertiary-butyl ether (MTBE), having been among the first lawyers to litigate cases against the entire oil industry, beginning in 1999. These cases involved various legal claims applying approximately twenty different states' laws against more than two dozen defendants including some of the largest corporations in the world – ExxonMobil, Shell Oil Company, etc. Also involved in litigation involving PCE, TCE and Atrazine against multi-national giant Syngenta.

Instrumental in working up and establishing the general liability case against defendants, but involved in all aspects of litigation, including overall case strategy, discovery and experts. Has been on the trial team for two jury trials and two bench trials.

Licensed to practice law in Texas (1995), California (2003) and New York (2004), and AV-rated by Martindale Hubbell.

PROFESSIONAL EXPERIENCE

Baron & Budd, P.C.
Shareholder, Environmental Litigation Group, 2006-present
Associate, Water Contamination Practice Group, 2002-2006

Cooper & Scully, P.C.
Associate, exclusive work on environmental toxic torts with Scott Summy, 1999-2002

Strasburger & Price, LLP
Associate, Product Liability Group, 1995-1999

EDUCATION

Cornell University School of Law (J.D. 1995)
State University of New York at Binghamton (B.A. Mathematics, 1992)

PROFESSIONAL AWARDS & ASSOCIATIONS

Top 100 Civil Plaintiff Trial Lawyers (National Trial Lawyers, 2017)
Finalist, Public Justice Trial Lawyer of the Year Award (2013)
Finalist, Public Justice Trial Lawyer of the Year Award (2009)
Texas Super Lawyer (Thompson Reuters, 2003-2005)
Daily Journal Corp.'s California Lawyer Attorneys of the Year (CLAY) Award for Environmental Law (2001 - member of legal team/awardee)

American Association for Justice – Environmental Law Section
Public Justice
Dallas Trial Lawyers Association

Not certified by the Texas Board of Legal Specialization

CARY MCDOUGAL

Summary

Mr. McDougal is a shareholder in the law firm of Baron & Budd, P.C., one of the largest and oldest firms in the country, specializing in environmental litigation. Mr. McDougal has been lead attorney in over 60 jury trials in state and federal court. He has tried cases both as plaintiff and defense counsel involving such diverse areas of the law as premises liability, product liability, general personal injury, medical malpractice, insurance litigation, and environmental litigation.

The first 14 years of his legal career, Mr. McDougal handled the defense of matters involving complex litigation throughout Texas and Oklahoma as a partner at two Dallas firms. He focused his practice on civil litigation, and he managed and tried all litigation for several North Texas health care agencies. He co-founded the law firm Aldous & McDougal, which gained recognition for its trial successes on behalf of plaintiffs in medical malpractice, contractual disputes, and other matters. Mr. McDougal joined Baron & Budd, P.C. in 2005.

A shareholder and manager of Baron & Budd's groundwater contamination litigation practice, Mr. McDougal currently represents a number of public entities and and water providers across the country that are seeking clean-up costs for the contamination of their water supplies, restoration costs for damaged natural resources, and additional damages for negative impacts to their property. His cases involve chemical contaminants such as PCBs, PFOA/PFOS, GenX, TCP, TCE, PCE, and Dioxin.

Mr. McDougal has been inducted into the prestigious American Board of Trial Advocates (ABOTA), a recognition by his peers for his jury trial experience, commitment to the jury process, and ethics. He also holds the top rating from the Martindale-Hubbell Law Directory and was named a "Texas Super Lawyer" by Law & Politics Media and Texas Monthly magazine.

Professional Background

BARON & BUDD, P.C., Shareholder, 2005 - present

- Environmental Contamination Litigation practice including a variety of chemical exposures such as MTBE, dioxin, atrazine, TCE, TCP, PCE and others
- Manages firm's Water Contamination Section
- Manages and developed mass toxic tort cases in multiple states
- Manages team designated as co-lead counsel on MTBE Multi-District Litigation ("MDL 1358")

ALDOUS & MCDOUGAL, Partner & Co-Founder, 2003 - 2005

- Lead counsel in complex litigation areas including catastrophic personal injury cases, product liability, general personal injury, and professional liability in Texas State and Federal Courts

COOPER & SCULLY, P.C., Partner, 1991 - 2003

- Lead counsel handling the defense of matters of complex civil litigation including

products liability, personal injury, first party insurance litigation, medical malpractice in Texas and Oklahoma State and Federal Courts, primary lead counsel for health care agencies, providers and organizations, and insurance companies

Educational Background

University of Texas School of Law (J.D. 1988)
University of Texas at Austin LBJ School of Public Affairs (M.P.A. 1988)
Academic emphasis: legislative affairs, federal/state regulatory processes
Baylor University (B.A. 1984)

Admissions

State Bar of Texas
United States District Court for the Western, Eastern, and Northern Districts of Texas
United States District Court for the Southern District of New York
United States District Court for the Eastern District of Kentucky
United States District Court for the Northern District of West Virginia
Pro Hac Admissions: California, Florida, Kansas, Missouri, Illinois, Indiana, Ohio, West Virginia

Memberships, Affiliations and Honors

American Bar Association
American Board of Trial Advocates (ABOTA)
Dallas Bar Association
State Bar of Texas
Texas Trial Lawyers Association
American Association for Justice
American Water Works Association (AWWA)
Martindale-Hubbell, AV rating
American Association for Justice Trial Lawyer of the Year, 2013 finalist
Texas Monthly "Super Lawyer"
2013 Top Rated Lawyers in Mass Torts, *The American Lawyer* and *Corporate Counsel*

CARLA BURKE PICKREL

PROFESSIONAL OVERVIEW

Nineteen years litigation experience in complex environmental contamination and toxic tort cases.

Represents public entities including states, municipalities, public water providers, school boards, and other governmental subdivisions to recover costs of remediation, treatment, disposal, and damages for loss of property, natural resources, and other losses.

Extensive experience litigating complex cases involving multiple legal theories and/or various states' laws in suits against numerous defendants. In the MTBE litigation, stated various causes of action under approximately twenty states' laws against over 20 national oil refiners. Regularly litigates against large, multinational corporations including ExxonMobil, Syngenta, Monsanto, Dow, and DuPont.

Proficiency with briefing and arguing substantive motions in litigation concerning various chemicals including PCBs, MTBE, atrazine, PFAS, TCE, PCE, 1,2,3-TCP, and others.

Develops cutting-edge legal arguments supporting imposing liability under theories of nuisance, negligence, products liability, and various environmental statutes in environmental cases.

PROFESSIONAL EXPERIENCE

Baron & Budd, P.C.
Shareholder, Environmental Litigation Group, 2008-present
Associate, Water Contamination Practice Group, 2004-2007
Associate, Appellate Department, 2000-2004
Contract Writer, Appellate Department 1999-2000

Southern Methodist University School of Law
Adjunct Clinical Instructor, Civil Clinic, 2001-02

Law Office of Frank L. Branson
Law Clerk, 1997-98

EDUCATION

Southern Methodist University (J.D. 1999; M.A. 1994; B.A. 1991)

BAR & COURT ADMISSIONS

State of Texas
State of New York
State of Washington
United States Court of Appeals for the Fifth Circuit
Supreme Court of the United States of America

PROFESSIONAL AWARDS & ASSOCIATIONS

National Trial Lawyers: Top 100, 2018, 2019
Finalist, Public Justice Trial Lawyer of the Year Award, 2013
Finalist, Public Justice Trial Lawyer of the Year Award, 2009
Law & Politics Media's List of "*Texas Rising Stars*," 2006

REPRESENTATIVE REPORTED CASES

Rhode Island v. Atlantic Richfield Company, --- F.3d ---, 2018 WL 6505394 (D.R.I. 2018) (slip opinion)

State of Washington v. Monsanto Co., 274 F.Supp.3d 1125 (W.D.Wa. 2017)

City of San Diego v. Monsanto Co., 2017 WL 5632052, at *11 (S.D.Cal. 2017)

City of Portland v. Monsanto Co., 2017 WL 4236583 (D.Or. Sept. 22 2017) (slip opinion)

Port of Portland v. Monsanto Co., 2017 WL 4236561 (D.Or. Sept. 22 2017) (slip opinion)

City of San Jose v. Monsanto Co., 231 F.Supp.3d 357 (N.D.Cal. 2017)

City of Seattle v. Monsanto Co., 237 F.Supp.3d 1096, 1100 (W.D.Wa. 2017)

City of Spokane v. Monsanto Co., 2016 WL 6275164 (E.D.Wa. 2016)

State v. Atlantic Richfield Co., 2016 VT 61, ¶ 1, 2016 WL 3031662 (Vt. 2016)

Trujillo v. Ametek, Inc., 2015 WL 7313408 (S.D.Cal. 2015)

Greenfield MHP Associates, L.P. v. Ametek, Inc., 145 F.Supp.3d 1000, 1003 (S.D.Cal. 2015)

Town of Westport v. Monsanto Co., 2015 WL 1321466 (D.Mass. 2015) (slip opinion)

Suffolk County Water Authority v. Dow Chemical Co., 121 A.D.3d 50 (N.Y.A.D. 2 Dept. 2014)

City of Greenville v. Syngenta Crop Protection, Inc., 904 F.Supp.2d 902, 903 (S.D.Ill. 2012)

Emerald Coast Utils. Auth. v. 3M Co., 746 F.Supp.2d 1216 (N.D.Fla. 2010)

Nelson v. Exxon Mobil Corp., 102 Cal.Rptr.3d 311 (Cal.App. 3 Dist. Nov 20, 2009)

In re Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation, (S.D.N.Y. 2006) (numerous opinions). *See, e.g.*, 457 F.Supp.2d 324 (S.D.N.Y. Jun 23, 2006), 438 F.Supp.2d 291 (S.D.N.Y. Jun 23, 2006), 415 F.Supp.2d 261 (S.D.N.Y. Nov 09, 2005), 2005 WL 39918 (S.D.N.Y. Jan 06, 2005)

Lawson v. Dallas Co., 286 F.3d 257 (5th Cir. 2002)

Caudillo ex rel. Caudillo v. Lubbock Independent School Dist., 331 F.Supp.2d 550 (N.D.Tex. 2004)

Norfolk Southern Railway Co. v. Bailey, 92 S.W. 3d 577 (Tex.App.– Austin 2002)

PRESENTATIONS

Panelist, "Water Contamination," Harris Martin MDL Conference: The Significance of Proposed Rule Changes in MDL Procedures & Valsartan Agenda, 2019.

Speaker, "How to Deal with Other Contaminants in Drinking Water," Harris Martin Water Contamination Litigation Conference, 2018.

Panelist, "Best Legal Claims and Defenses," Harris Martin Lumber Liquidators Flooring Litigation Conference, May 27, 2015.

Panelist, "Scientific Evidence in Environmental and Toxic Torts Litigation," Mason Judicial Education Program Conference on Environmental Economics, Law, and Litigation, November 19, 2013.

Panelist, "Scientific Evidence in Environmental and Toxic Torts Litigation," Mason Judicial Education Program Conference on Environmental Economics, Law, and Litigation, March 2, 2013.

Panelist, "Setting the Bar for 'Injury' in Environmental Exposure Cases: How Low Can It Go?" Environmental Law Institute Seminar, 2012

Panelist, "Emerging Issues Regarding Toxins Affecting Water," American Association for Justice Annual Convention, 2010

Speaker, "Water Contamination: What Lies Beneath," Harris Martin Oil Spill Litigation Conference, 2010

Speaker, Mealey's MTBE Litigation Conference, 2007

Speaker, Mealey's MTBE Litigation Conference, 2006

Panelist, "Are There Synergistic Effects Between Toxic Tort Suits and Environmental Regulations?" Environmental Law Institute, 2006

Speaker, "Update on MTBE Litigation," Energy Litigation Conference, 2005

Co- Presenter, "Premises Liability Cases: What Does the Future Hold?" Andrews Asbestos Litigation Conference, 2003

Co- Presenter, "Texas Supreme Court Update," Dallas Court of Appeals Seminar, 2000

PUBLICATIONS

Co-Author, "Toxic Torts and Mass Torts," 57 SMU Law Review 1267 (2004)

Contributor, "Toxic Torts and Mass Torts," 56 SMU Law Review 2053 (2003)

Contributor, "Toxic Torts and Mass Torts," 55 SMU Law Review 1375 (2002)

Co-Author, "Applying Texas Premises Liability Law to Asbestos Cases," COLUMNS, September 2001

Not certified by the Texas Board of Legal Specialization

STEPHEN JOHNSTON

PROFESSIONAL OVERVIEW

Twenty-one years litigation experience representing public entities, public water providers, and individuals seeking to recover damages for remediation, restoration of natural resources and other costs associated with chemical contamination in complex environmental contamination and toxic tort cases.

Extensive experience with all phases of discovery including depositions, motion practice, and hearings in litigation concerning various chemical contaminants including MTBE, 1,2,3-trichloropropane, atrazine, and PFAS. Manages and litigates all phases of cases on behalf of public entities arising from the use of a pesticide containing 1,2,3-trichloropropane. Is also litigating claims on behalf of public entities and individuals against the DuPont/Chemours Fayetteville Works facility that discharged various PFAS chemicals into the surrounding environment and the Cape Fear River in North Carolina.

PROFESSIONAL EXPERIENCE

Baron & Budd, P.C.
Shareholder, Environmental Litigation Group, 2009-present
Associate, Water Contamination Practice Group, 2004-2008
Associate, Asbestos Litigation Group, 1997-2003

EDUCATION

Texas Tech University School of Law (J.D., cum laude, 1996)

Texas A&M University (B.S., cum laude, 1993)

BAR & COURT ADMISSIONS

State of Texas (1996)

United States District Court, Southern District of Illinois

PROFESSIONAL AWARDS & ASSOCIATIONS

Law & Politics Media's List of "*Texas Rising Stars*," 2006

American Association for Justice

Public Justice

Dallas Trial Lawyers Association

M. CRISTINA SANCHEZ

PROFESSIONAL OVERVIEW

Thirteen years litigation experience in complex environmental contamination and toxic tort cases. Additional litigation experience involving class actions, multidistrict litigation, personal injury, and nursing home litigation.

Leads the Group's work with businesses, governmental entities, and individuals impacted by the Deepwater Horizon Oil Spill in the Gulf of Mexico in 2010. Handles all aspects of claims, including briefing appeals and settlement negotiations. Represents a variety of businesses, including a number of complex publicly-traded companies.

Experience litigating complex cases on behalf of municipalities, public water providers, and private property owners seeking solutions for polluted drinking water supplies arising from MTBE, TCP, PFAS, and PCE contamination.

Extensive experience with all aspects of discovery in complex litigation. Frequently litigates against large global corporations including, BP plc, ExxonMobil, Shell, Dow, and Dupont. Experience against large pharmaceutical companies, including MDL 1203 In Re: Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Products Liability Litigation.

PROFESSIONAL EXPERIENCE

Baron & Budd, P.C.
Of Counsel, Environmental Litigation Group, 2017-present
Associate, Water Contamination Practice Group, 2005-2016

Law Firm of Ginsberg & Associates
Associate, 2003- March 2005

EDUCATION

Southern Methodist University Dedman School of Law (J.D. 2003)

University of Southern Mississippi (B.S. 1997)
Major in Biology, Minor in Chemistry

BAR & COURT ADMISSIONS

State of Texas
United States District Court, Northern District of Texas
United States Court of Appeals for the Fifth Circuit

PROFESSIONAL AWARDS & ASSOCIATIONS

Super Lawyers Magazine, *Texas Rising Stars*, 2012, 2013, 2014
American Association for Justice

PRESENTATIONS

Panelist, "Where to Draw the Line: When Can the Government Hire Private Lawyers," ABA Environmental, Mass Torts & Products Liability Committees Joint CLE Seminar, January 2012.

LANGUAGES

Spanish

Not certified by the Texas Board of Legal Specialization

JASON JULIUS

PROFESSIONAL OVERVIEW

Eleven years experience representing public entities, communities, and individuals seeking to recover costs of remediation, restoration of natural resources, treatment of water supplies, and any other expenses associated with removing contamination.

Legal research of issues arising in environmental contamination litigation involving TCE, PCBs, and other contaminants.

Experience in drafting complaints and motions in environmental contamination litigation.

Experience in discovery, including written discovery, depositions, motion practice, and oral argument in complex discovery involving multiple defendants.

General litigation experience, including working with public entity and individual clients in all phases of discovery, mediation, settlement and trial.

PROFESSIONAL EXPERIENCE

Baron & Budd, P.C.
Associate, Environmental Litigation Group, 2017-present

Green, Bryant & French, LLP
Associate, Plaintiffs Personal Injury Litigation, 2012-2017

Lincoln, Gustafson & Cercos
Associate, Insurance Defense Litigation, 2007-2012

EDUCATION

California Western School of Law (J.D. 2007, Cum Laude)
California Polytechnic State University San Luis Obispo (B.S. 2002)

BAR & COURT ADMISSIONS

State of California

IRMA ESPINO MACLEAN

PROFESSIONAL OVERVIEW

Eleven years of litigation experience in complex environmental contamination and toxic tort cases.

As a member of the Environmental Litigation Group, Ms. Espino MacLean represents private and public entities in litigation to recover costs of removing chemical contaminants from public water supplies, governmental facilities, natural resources and public property. In this role, Ms. Espino MacLean is a tenacious advocate for clients impacted by environmental disasters and chemical contamination.

In addition to public entities, Ms. Espino MacLean represents a variety of private clients including real estate developers and small businesses, as well as publicly traded companies and others whose businesses and multimillion dollar investments suffered damage due to environmental contamination.

She has extensive experience in mass torts, multi-district litigation and class-action proceedings with multiple defendants. Representative cases include: *In re Deepwater Horizon* MDL 2179 (Louisiana), *In re Aluminum Sulfate Litigation* MDL 2187 (New Jersey).

Proficiency in damage assessment. Creativity in damage assessments and problem-solving has been an asset to her clients in helping to achieve satisfactory resolution of their cases. Ms. Espino MacLean has experience in state, federal, and administrative damage assessments for natural resource including: ecological and environmental damages, including developing full ecosystem damage impact models and alternative damage models to capture impacts to natural resources including tax revenue models, recreational impact models, brand damage, and traditional trespass impact models. Representative cases include: *State of Washington v Monsanto* (King County, Washington, pending), *County of Santa Barbara v. Plains Pipeline* (C.D. California, pending), *City of Santa Barbara – damages suffered as a result of Refugio Oil Spill* (settled via pre-litigation mediation), *In re Deepwater Horizon MDL 2179* (MDL - Science & Experts committee; private litigants; and government entities - natural resource damage impact, revenue, and other damages under state and federal law).

Proficiency in best practices in discovery (Sedona Conference Principles) including large-scale/complex discovery and e-discovery. Proficiency in large-scale legal holds and preservation.

COURT ADMISSIONS

State of Georgia

United States Court of Appeals for the Eleventh Circuit

United States District Court for the Northern District of Georgia

United States District Court for the Eastern District of Louisiana

PROFESSIONAL EXPERIENCE

Baron & Budd, P.C.

Of Counsel, Environmental Litigation Group, 2015-present

Associate, Environmental Litigation Group, 2010-2015

Wiggins Law Group

Associate, Litigation, 2007-2010

Baron & Budd, P.C.

Project Manager, Pharmaceutical Litigation Department 2002-2004

EDUCATION

University of Miami School of Law (J.D. 2007, *cum laude*)

University of Texas at Austin (B.A. Economics 2002, *high honors*)

The National Committee on Accreditation of the Federation of Law Societies of Canada (Certificate of Qualification 2014)

PROFESSIONAL ASSOCIATIONS

American Bar Association, Member

Georgia Bar Association, Young Lawyers Division Board of Directors (2010-2011), Environmental Law Section (2015-present)

Georgia Bar Association of Women Lawyers, Board of Directors, Communications Chair (2009-2011)

Canadian Bar Association, Member (articling)

PUBLICATIONS

Co-Author, "Developments in Administrative Law and Regulatory Practice," American Bar Association, (2007, 2008 and 2009).

Author, "Overview of Civil Liability in Georgia," Hispanic American Commission on Economic Development (HACED) (2008-2009).

JOHN FISKE

PROFESSIONAL OVERVIEW

Co-Lead Counsel for over 60 public entities, including natural resource damages claims, for major Counties, Ports, Cities, and State Attorneys General. Appointed Special Assistant Attorney General to the State of Washington. Surface water, groundwater, stormwater, and wastewater experience, including Human Health Risk Assessment and toxic bioaccumulation experience. Extensive understanding of NPDES, Clean Water Act, Water Quality Standards as expressed through sediment, water, and fish assay data.

PCB Litigation Experience

Co-Lead Counsel for the State of Washington, City of Seattle, City of Spokane, City of Portland, Port of Portland, City of San Jose, City of Oakland, City of Berkeley, City and Port of Long Beach, City of San Diego, and City of Chula Vista.

Lead Counsel, Oral Argument defeating Monsanto's Motions to Dismiss in City of Portland, Port of Portland, City of Oakland, City of Berkeley, City of San Jose, and City of San Diego cases.

Over eleven years litigation experience, including complex environmental contamination and toxic tort cases involving multiple defendants and extensive discovery; broad range of national litigation and mass tort experience.

Court Appointed Co-Lead Counsel for all Public Entities in wildfire natural resource damages claims for counties, cities, water districts, fire districts, and other Open Space and special districts.

PROFESSIONAL EXPERIENCE

Baron & Budd, P.C.
Shareholder, Environmental Litigation Group, 2016-present (San Diego, California)

Gomez Trial Attorneys
Managing Attorney, Complex & Environmental Litigation, 2013- 2016 (San Diego, California)

BarryFiske LLP
Partner, 2011 -2013 (San Diego, CA)

Hosey & Bahrambeygui, LLP
Associate, 2010 – 2011 (San Diego, CA)

Wertz McDade Wallace Moot & Brower, APC
Associate, 2006-2010 (San Diego, CA)

EDUCATION

California Western School of Law (J.D., 2006, Law Review, Dean's List, Full Ride Trustee Scholar, *Cum Laude*)

San Diego State University (B.A., 2004, Political Science, minor Philosophy, *Cum Laude, Phi Beta Kappa*)

BAR & COURT ADMISSIONS

State of California (2007)
California State Bar
United States District Court for the Northern District of California
United States District Court for the Southern District of California
United States District Court for the Eastern District of California
United States District Court for the Central District of California
United States Court of Appeals for the Ninth Circuit
United States District Court for the Western and Eastern Districts of Washington
United States District Court for the District of Oregon
United States District Court for the District of Massachusetts
United States District Court for the Northern District of Indiana
United States District Court for the Northern District of Illinois
United States District Court for the Northern District of Texas
United States District Court for the Eastern District of Pennsylvania

PROFESSIONAL AWARDS & ASSOCIATIONS

2018 "Super Lawyers," *Thomson Reuters;*
2017 "The Burton Awards- Law360 Distinguished Legal Writing Awards- Law Firm," *Poison in the Well*, Trial Magazine, American Association for Justice, August 2016;
2017 "Top 40 Under 40 Civil Plaintiff Trial Lawyers" *National Trial Lawyers;*
2017 "Super Lawyers," *Thomson Reuters;*
2016 "Super Lawyers," *Thomson Reuters;*
2015 "Super Lawyers," *Thomson Reuters;*
2013 "Top 40 Under 40," *SD Metro Magazine*;
2012 "Top Influential," *San Diego Daily Transcript*;
2009 "Top Young Attorney," *The Daily Transcript*;
2007 "50 People to Watch," *San Diego Magazine.*

BRETT LAND

PROFESSIONAL OVERVIEW

Four years litigation experience in complex environmental contamination and toxic tort cases involving multiple defendants and extensive discovery.

Experience includes briefing and arguing both discovery and substantive motions, conducting and defending depositions, and working with scientists to develop expert reports relating to PCBs and PFASs, among other contaminants.

Works with state and other governmental entities to develop strategies for recovering money to compensate for damages to natural resources and other costs.

PROFESSIONAL EXPERIENCE

Baron & Budd, P.C.
Associate, Environmental Litigation Group, 2014-present (Dallas, Texas)
Summer Associate, Environmental Litigation Group, 2012-2013

Jackson Walker LLP
Summer Associate, 2013

EDUCATION

Emory University School of Law (J.D. 2014 *with honors*)
Baylor University (B.A. 2011)

BAR & COURT ADMISSIONS

State of Texas (2014)
State of Washington (2018)
United States District Court, Northern District of Texas
United States District Court, Western District of Washington

PROFESSIONAL AWARDS & ASSOCIATIONS

The National Trial Lawyers' Top 40 Under 40 Civil Plaintiff Trial Lawyers
American Association for Justice
Texas Trial Lawyers Association
Public Justice

*Not certified by the Texas Board of Legal Specialization

STACI J. OLSEN

PROFESSIONAL OVERVIEW

Eight years of experience in complex environmental litigation.

Specializes in the management of electronic information, e-discovery, document management, document review, and training of staff and attorneys to best use electronic resources. Oversees every phase of document management from intake of documents, scanning, coding, searching, bates stamping, substantive review, production, creation of privilege logs, and identification/development of trial exhibits.

Project management of substantive review of client, defendant and third party subpoena documents for creation of damages models including all records of expenses and costs associated with contamination, assessments of impacts to natural resources, and any other evidence necessary for damages calculations.

Manages in-house electronic discovery and document review team. Works with litigation teams to develop keyword searches, issue tags, redaction of PII and privileged information, and development of privileged names and interesting facts for use in litigation.

Assists public entities with document preservation and tracking, data mapping, document location and storage, custodian interviews, document production, and compliance with public records requests. Assists in negotiation of ESI Protocol to be used in the litigation.

Specifically structures tasks to relieve the litigation burden placed on public entities, agencies, and public employees.

PROFESSIONAL EXPERIENCE

Baron & Budd, P.C.

Senior Counsel of Electronic Discovery, Environmental Litigation Group, 2016-present

Attorney, Environmental Litigation Group, 2010-2016

EDUCATION

Baylor University School of Law (J.D. 1996)
Angelo State University (B.A. 1991)

BAR & COURT ADMISSIONS

State of Texas

*Not certified by the Texas Board of Legal Specialization

EXHIBIT D

Exhibit D

7. Litigation about Legal Services

Claim Date	Status	Monetary Award/Payment	Description/Resolution
2012	Closed	None	Expert A sued Lawyer A for unpaid fees. Lawyer A sued Baron & Budd as a third party defendant, arguing that any fees it owed were payable by Baron & Budd. The Court granted summary judgment, dismissing all claims against Baron & Budd.
2011	Closed	Confidential settlement.	Claim made that LeBlanc & Waddell, a firm acquired by Baron & Budd mishandled his asbestos case. Claimant was pro se. The matter was resolved by agreement and all claims were dismissed.
2011	Closed.	None.	A client's estate alleged that Baron & Budd did not fully prosecute the decedent's asbestos claims and did not produce a copy of the file upon the Estate's request. The firm properly handled all claims and provided a copy of the file to the Estate. Plaintiffs voluntarily dismissed all claims against the Firm.
2011	Closed.	Confidential settlement.	Claimants alleged that settlements from their asbestos claims, sent to their probate attorney, were stolen by a paralegal in the probate attorney's office. They alleged that Baron & Budd bore responsibility for the subsequent theft by the probate firm's paralegal. Baron & Budd acted properly in all ways and bears no legal responsibility for the probate attorney's staff actions. The matter was resolved by agreement and all claims were dismissed.
2011	Closed.	None.	Claimant alleged that proceeds of decedent's lawsuit were improperly disbursed. Client's wife was the duly appointed representative of the estate, to whom Baron & Budd distributed funds. The firm maintains that it acted properly. The court granted summary judgment in the firm's favor, dismissing all claims.

Claim Date	Status	Monetary Award/Payment	Description/Resolution
2009	Closed.	None.	Claimant alleged that a former Baron & Budd partner referred claimant to an attorney, who mishandled his case. Baron & Budd's Motion for Summary Judgment was granted. Claimant appealed and lost his Appeal and Motion for Reconsideration. All claims against Baron & Budd were dismissed on Summary Judgment and affirmed on appeal.
2009	Closed.	Confidential settlement.	Plaintiff received a referral from Baron & Budd for a probate attorney. The executrix of the estate absconded with the funds. The probate attorney's insurance wasn't sufficient to cover the deficit. Plaintiff alleged that Baron & Budd had acted negligently. The matter was resolved by agreement and all claims were dismissed.

Response of Kanner & Whiteley, LLC
(Jointly with Hagens Berman Sobol Shapiro LLP)
to State of Vermont Office of the Attorney General Request for Proposal of Legal Services

Submitted By

KANNER & WHITELEY, LLC
701 Camp Street
New Orleans, LA

June 5, 2019

Joshua R. Diamond
Deputy Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
Joshua.Diamond@vermont.gov

Re: Response of Kanner & Whiteley, LLC (Jointly with Hagens Berman Sobol Shapiro LLP) to State of Vermont Office of the Attorney General Request for Proposal of Legal Services

Dear Deputy Attorney General Diamond:

Thank you for the opportunity to submit this response to the State of Vermont Office of the Attorney General's Request for Proposal of Legal Services. The following information provided by Kanner & Whiteley, LLC responds to the specific questions posed in the RFP and supplements the information previously provided by Hagens Berman Sobol Shapiro LLP, who would be our partner in this representation.

With more than thirty-seven years of experience practicing environmental law, natural resource damages, and complex litigation, Kanner & Whiteley has the experience and expertise to successfully advocate on behalf of the State of Vermont in any complex matter and is particularly positioned to provide outside legal services for the State in connection with the PFAS contamination. The firm has an unmatched record in natural resource damage litigation, having obtained for its clients two of the largest natural resource damage recoveries in United States history. The firm is intimately familiar with the issues associated with PFAS and related litigation, as it currently represents the State of New Mexico in an action brought against the United States and the U.S. Department of the Air Force.

Allan Kanner, the founding member of the firm, is also familiar with PFAS litigation through his work as an expert witness in the Minnesota natural resource damage case against PFAS-manufacturer 3M Company, putative trial counsel in a case settled as part of the DuPont settlement in the Southern District of Ohio PFAS MDL, and as the author of an article on PFAS developments.

Given the firm's expertise in these areas, as well as the firm's experience in representing government clients, Kanner & Whiteley, together with Hagens Berman Sobol Shapiro LLP, will provide first-rate services throughout the course of the representation of the State in this matter. We are happy to provide you with any additional information that you may need. We look forward to discussing this matter with you further.

Kanner & Whiteley's specific responses to the questions posed in the RFP are as follows:

1. **A description of the firm's areas of expertise and experience, including experience with the matters identified above in this RFP.**

Kanner & Whiteley, LLC, founded in 1981, is a national firm, based in New Orleans, Louisiana, with one of the most sophisticated and respected complex litigation practices in the United States. For more than thirty-eight years, the firm has excelled in litigating environmental cases on behalf of both private parties and government entities. While its cases encompass a wide array of substantive law, the firm is a recognized leader in the field of environmental law, with specialized expertise in litigating novel natural resource damage cases on behalf of government agencies. The firm is known for its persistence, preparation, personal attention to detail, and its strategic thinking, all of which have allowed it to effectively and efficiently serve its clients. Kanner & Whiteley takes great pride in the leadership role it plays in many of this country's major cases, including those resulting in landmark decisions and precedent-setting rulings.

The firm has obtained for its clients two of the largest natural resource damage recoveries in United States history, including a $225 million recovery for the State of New Jersey against Exxon Mobil Corp. related to chronic contamination at two refineries within the state as well as a $6.8 billion natural resource damage recovery for the State of Louisiana against BP related to the *Deepwater Horizon* oil spill in the Gulf of Mexico.

Kanner & Whiteley currently serves as outside counsel to the State of New Mexico in *State of New Mexico et al. v. The United States et al.*, No. 6:19-cv-00178, a suit against the United States and the U.S. Department of the Air Force seeking an order requiring the Air Force to clean up extensive PFAS contamination at the Cannon Air Force Base near Clovis, New Mexico and the Holloman Air Force Base near Alamogordo, New Mexico. A copy of the Complaint filed by the State of New Mexico is attached to this response as **Exhibit A.**

In addition to cases in which Kanner & Whiteley has represented state attorneys general or state agencies, the firm also has experience and success representing public entities on other levels including school boards, counties, and municipalities in a variety of litigation. This experience gives the firm a direct understanding of the complexities faced by public entities such as the State of Vermont and the challenges they face to balance various interests while protecting their citizens and the public fisc. Examples of Kanner & Whiteley's public entity clients include the following:

- **State of Louisiana (2010-2015)**

Kanner & Whiteley was retained by Louisiana Attorney General James D. "Buddy" Caldwell as Special Counsel to assist the State of Louisiana with its claims resulting from the 2010 *Deepwater Horizon* oil spill in the Gulf of Mexico, including the State's claims to recover economic losses, response costs, and natural resource damages. The firm was retained by the Attorney General immediately after the spill to counsel the State in its efforts to stop the spill, mitigate, and recover available damages.

Throughout the litigation, Kanner & Whiteley successfully managed the production of millions of pages of documents from numerous state agencies; coordinated efforts among the United States and the Gulf states to develop an estimate of damages and implement early restoration projects; and litigated three phases of trial to determine allocation of liability and the appropriate amount of civil penalties. Ultimately, Kanner & Whiteley participated in the negotiation of the $18.7 billion global settlement agreement that resolved all remaining claims against BP Exploration and Production, Inc. brought by the United States, Louisiana, the rest of the Gulf States, and a majority of local government entities in those states. Kanner & Whiteley worked to help secure the recovery of more than $8.8 billion in both environmental and economic damages resulting from the disaster for the State of Louisiana.

Kanner & Whiteley has also represented the State of Louisiana in a number of Medicaid fraud and unfair trade practices cases. Kanner & Whiteley actively litigated the Avandia case on behalf of the State of Louisiana, taking full fact discovery, preparing expert reports, and meeting a very aggressive trial schedule. Subsequently, Kanner & Whiteley represented the State of Louisiana against GlaxoSmithKline ("GSK") in the Multi-Drug Litigation involving many GSK products. Both of these cases were settled in 2013, resulting in a landmark settlement for Louisiana in the amount of $42 million. *See State of Louisiana v. GlaxoSmithKline et al.,* Civ. Act. No. 599353, Div. D (19th JDC, East Baton Rouge Parish, LA) (Avandia). In 2014, Kanner & Whiteley, on behalf of the State of Louisiana, secured a $9.5 million settlement to resolve the State's claims against Abbott Laboratories involving the off-label promotion and marketing of the drug Depakote. *State of Louisiana v. Abbott Laboratories, Inc., et al.*, Civ. Act. No. 620978, Div. D (19th JDC, East Baton Rouge Parish, LA) (Depakote).

- **State of New Mexico (2016-present)**

The New Mexico Attorney General retained Kanner & Whiteley to represent the State in a recently filed suit against the United States and the U.S. Department of the Air Force seeking an order requiring the Air Force to clean up the extensive contamination at the Cannon Air Force Base near Clovis, New Mexico and the Holloman Air Force Base near Alamogordo, New Mexico. Defendants' contamination and pollution of the environment at Cannon and Holloman with PFAS has created an imminent and substantial endangerment to human health and the environment in violation of the New Mexico Hazardous Waste Act. The case is *State of New Mexico et al. v. The United States et al.*, case number 6:19-cv-00178, in the U.S. District Court for the District of New Mexico.

Kanner & Whiteley also represents the State of New Mexico in its investigation of and litigation against Dollar General related to its marketing and sale of obsolete motor oil to New Mexico consumers. The State filed an enforcement action against Dollar General for violations of New Mexico's Unfair Practices Act, New Mexico's False Advertising Act, and common law nuisance, seeking civil penalties, declaratory and injunctive relief, restitution, and attorneys' fees and costs. The State's enforcement action was originally filed in the First Judicial District Court, Santa Fe County, New Mexico. Dollar General removed the action to federal court and successfully had it transferred to and consolidated with the consumer class actions in MDL No. 2709 pending in the Western District of Missouri. Dollar General also filed a lawsuit against the Attorney General related to its enforcement action. Kanner & Whiteley successfully moved to

dismiss this action. The State's motion to remand its enforcement action was also granted and the case is now being litigated in state court. *State of New Mexico, ex rel. Hector Balderas, Attorney General v. Dolgencorp, LLC (d/b/a Dollar General Corporation).*

- **State of Mississippi (2016-present)**

The Mississippi Attorney General retained Kanner & Whiteley to assist in the State's investigation of Dollar General's marketing and sale of obsolete motor oil in Mississippi. The State filed an enforcement action against Dollar General for violations of the Mississippi Consumer Protection Act and public nuisance in Chancery Court of the First Judicial District of Hinds County, Mississippi. Mississippi seeks civil penalties, declaratory and injunctive relief, disgorgement of profits resulting from the unlawful conduct, and attorneys' fees and costs. Dollar General removed this action to the Southern District of Mississippi and the case was transferred to and consolidated with the consumer class actions in MDL No. 2709. The State's motion to remand is currently pending before Judge Fenner in the MDL. *State of Mississippi v. Dolgencorp, LLC (d/b/a Dollar General Corporation),* No. 4:17-cv-00832-GAF (W.D. Mo.).

- **State of New Jersey (2002-present)**

Since 2002, Kanner & Whiteley has acted as Special Counsel to the New Jersey Attorney General and the New Jersey Department of Environmental Protection both to develop New Jersey's comprehensive natural resource damages program and litigate these claims against industry defendants unwilling to amicably resolve their natural resource damage liability with the Department. Initially, the firm was retained to work with former Commissioner Bradley Campbell and former Attorney General David Samson to review and prioritize the State's viable NRD claims and prepare legal theories and factual information to enable enforcement of the State's claims. The firm worked extensively with the New Jersey Division of Law, the Department of Environmental Protection and a number of experts to develop the State's natural resource damage program which included the review and evaluation of hundreds of case files for possible prosecution and/or settlement opportunities.

Kanner & Whiteley began litigating the leading case in New Jersey's natural resource damage program in 2004 against ExxonMobil for injuries at two of ExxonMobil's former refinery sites in the State. In a 2007 opinion in that case, the Appellate Division found in favor of the State on appeal from a partial summary judgment ruling (under the New Jersey Spill Act), finding that damages for loss of use and services of the State's natural resources are available to the State in addition to primary restoration. *N.J. Dep't of Envt'l Prot. v. Exxon Mobil Corp.*, 393 N.J. Super. 388 (App. Div. 2007). Thereafter, Kanner & Whiteley tried the issue of damages on behalf of the State from January 2014 through September 2014 before the Honorable Judge Michael Hogan in Burlington County, New Jersey. Throughout the course of the 66-day trial—during which 25 witnesses were called, 13 of those being experts—Kanner & Whiteley's small team of attorneys opposed a substantially larger defense team. Following the completion of post-trial briefing, the parties reached an agreement to resolve ExxonMobil's NRD liabilities at the sites, and others across the State, for $225 million, the largest NRD recovery in the State's history. The settlement was approved by the trial court, finding that the result was fair, reasonable, and in the public interest and was subsequently upheld on appeal.

In the context of approving attorneys' fees and costs, Judge Hogan discussed Kanner & Whiteley's efforts in the case and its work with the State. Judge Hogan wrote:

> [T]he court by necessity has also become very familiar with the history and previous rulings of this eleven year old case. There can be no question that this case raised complex and novel issues of law, including the application of the controversial Habitat Equivalency Analysis methodology. The Firm was required to undertake a sixty-six day trial before Exxon became motivated to reach a settlement with the State while awaiting the court's decision on the merits. Even the fundamental and difficult question of whether there was a cause of action under the Spill Act for NRD (loss of use) made its way to the Appellate Division on an interlocutory basis as well as statute of limitation issues. The Firm provided the legal services to be successful on those trips to the Appellate Division. Altogether there were three rulings of the Appellate Division litigated by the State under the guidance of Mr. Kanner and his Firm.
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> [T]he high difficulty of conducting discovery and defending the State's prerogatives from a more-than-able adversary demonstrates to this court a high level of competence and skill. There were many novel and untested questions that the Firm had to address at various stages of the proceedings, such as expert evidence questions, loss of use over time damages under the Spill Act, retroactivity of the Spill Act, the role of physical improvements, the application of the Public Trust Doctrine over private uplands, and the applicability of Habitat Equivalency Analysis methodology in NRD litigation, to name a few of the issues that required experienced, motivated, and highly skilled counsel.

Letter Opinion, *N.J. Dep't of Envtl. Prot. v. Exxon Mobil Corp.*, Case No. UNN-L-3026-04 (Law Div. Aug. 25, 2015), at 4-5. Judge Hogan described additional observations from the two years spent overseeing the case and ultimately the trial:

> The Firm was up against a determined adversary who created a daunting ten year defense that a less experienced, less determined, or less skilled effort would not have been able to timely, professionally, and, for the most part, successfully meet the challenge.

Id. (footnotes omitted). Judge Hogan's opinion is attached to this response as **Exhibit B.**

During many of the same years that Kanner & Whiteley litigated the claims against ExxonMobil, the firm also pursued litigation on behalf the State of New Jersey against a number of other corporate defendants, also for compensation for damage to or destruction of natural resources of the State. Kanner & Whiteley continues to represent the State of New Jersey on a number of natural resource damage cases.

On August 1, 2018, Kanner & Whiteley filed suit on behalf of the State of New Jersey against Hess Corporation and Buckeye Partners seeking compensation for the lost use and value of resources injured as a result of discharges at the former Hess refinery in Woodbridge, New Jersey. *See N.J. Dep't of Envtl. Prot. v. Hess Corp., f/k/a Amerada Hess Corp. & Buckeye Partners, L.P.*, Superior Court, Middlesex County, No. MID-L-004579-18.

On March 7, 2019, Kanner & Whiteley filed suit on behalf of the State of New Jersey against ExxonMobil Corp. seeking natural resource damages and restoration for years of injuries caused by PCBs and other contaminants dumped by the company beginning in the 1950s into the wetlands and tidal embayment at the company's property known as the "Lail Site" in Gloucester County, New Jersey. The case is *N.J. Dep't of Envtl. Prot. v. Exxon Mobil Corp.*, Superior Court, Gloucester County, No. GLO-L-000297-19.

- **City and County Governments Represented in Context of Opioid Litigation**

Kanner & Whiteley currently represents local governments in Pennsylvania and New Jersey in their respective opioid litigations seeking to recover the extensive damages they have incurred as a result of the defendants' illegal actions that led to the opioid epidemic. These damages include prescription drug coverage and addiction hospitalization and treatments under self-insured health care programs and workers compensation, as well as emergency services, human services, and other community expenses to deal with the secondary effects of the opioid epidemic. The firm represents the following county governments in currently pending litigation:

  - **Monmouth County, New Jersey (2017-present)**—*Monmouth County v. Purdue Pharma L.P., et al.*, MID L-003010-18 (N.J. Super. Ct. Law Div.);

  - **Northampton County, Pennsylvania (2018-present)**—*Northampton County, Pennsylvania v. Purdue Pharma L.P., et al.*, C48-CV-201-11557 (Delaware County Ct. C.P.); and

  - **Union County, New Jersey (2017-present)**- *Union County v. Purdue Pharma L.P., et al.*, UNN L-004319-18 (N.J. Super Ct. Law Div.).

Kanner & Whiteley has also been retained by the following local government entities, which have matters that are in the pre-suit investigation and damage assessment phase:

  - **Cumberland County, New Jersey (2017-present); and**

  - **City of Vineland, New Jersey (2017-present).**

Kanner & Whiteley has also served as court-appointed Plaintiffs' Lead Counsel or Class Counsel in state and federal coordinated, multi-district, and complex litigation throughout the United States. With co-counsel, the firm has represented clients in hundreds of class and group actions, including some of the most important civil cases litigated in the United States over the last thirty years. Examples of cases in which the firm has served as lead counsel representing private parties include:

- *Press, et al., v. Louisiana Citizens Fair Plan Property Insurance Corporation,* No. 06-5530 (Civil District Court, Orleans Parish, La.) ($23 million class action settlement on behalf of insureds in Louisiana concerning the failure to properly pay general contractor's overhead and profit as part of property damage claims following Hurricanes Katrina and Rita) (Final approval granted on Nov. 18, 2010);

- *Shaffer v. Continental Casualty, et al*, No. CV06-2335 (C.D. Cal 1/26/07) (Klausner, J.)(Certification of class of Long Term Care policyholders), (Gutierrez, J.)(Denial of Motion for Summary Judgment (April 12, 2007), (Gutierrez, J.)(Final approval of multi-million dollar national class action settlement granted on 6/11/08);

- *Waxler v. Trinity Marine Products, Inc. et al*, No. 49-741 (25th Judicial District Court, Parish of Plaquemines, La.) ($18 million class action settlement against barge manufacturer for defective interior coating of barges; final approval granted on Nov. 29, 2007);

- *Lemmings v. Second Chance Body Armor, et al.*, No. CJ-2004-64 (Mayes County District Court, OK) (Feb. 19, 2005) (Goodpaster, J.) (certifying national class of purchasers and users of defective bullet proof vests), (Sept. 2005) (final approval of $29 million national class settlement);

- *Milkman v. American Travellers Life Insurance Co.,* No. 3775, (Ct. Common Pleas, First Judicial District, June Term 2000) (April 1, 2002) (Multi-million dollar national class settlement on behalf of Long Term Care and Home Health Care policyholders; final approval granted April 1, 2002);

- *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 for consumer fraud and products liability; final approval granted on Sept. 13, 2002);

- *In re Synthroid Marketing Litigation*, MDL 1182, 264 F.3d 712 (7th Cir. 2001) ($89 million nationwide class action settlement for consumer fraud 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 for consumer fraud and products liability);

- *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);
- *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) (Multi-million dollar 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. 3rd 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); and
- *Clark v. Household Finance Corp.*, No. 97-2-22420 (King County, WA, Dec. 29, 1997) (Certification and settlement of statewide class for defrauded employees).

Kanner & Whiteley 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, environmental, toxic tort, consumer privacy, antitrust, fiduciary duty, civil RICO, commercial, and other individual and class cases.

For additional information regarding Kanner & Whiteley's experience, see the firm's resume, attached to this response as **Exhibit C.**

2. **Please include the specific identity and experience of the individual attorney or attorneys who would be providing services under the contract. Applicants should present a team of attorneys that have significant experience in complex civil and environmental litigation. Full disclosure of all attorneys and staff who are not directly employed with the firm shall be disclosed. Attach copies of resumes of each member of the proposed team in your response to this RFP.**

The attorneys listed below would provide the services described in this RFP. Each attorney is a member in good standing in each jurisdiction in which they are licensed. In addition to the information provided below, the resumes of these team members are included as **Exhibit D** to this response.

ALLAN KANNER (B.A., University of Pennsylvania; J.D., Harvard Law School) is the President and Founding Member of Kanner & Whiteley. Mr. Kanner has a wealth of experience litigating complex class action lawsuits and practices in the areas of natural resource damages, products liability, environmental, toxic tort, commercial litigation, and consumer fraud. Law 360 recently profiled Mr. Kanner as a "Titan of the Plaintiffs Bar." *Chambers USA* has ranked Mr. Kanner as a Band 1 environmental lawyer, its highest ranking, stating that "Allan Kanner of Kanner & Whiteley enjoys a 'sterling reputation' for plaintiff-side representation in toxic tort trials" (2009); that "[b]y reputation and work product, he is one of the top practitioners" (2015); that Mr. Kanner "offers considerable expertise in bringing class action claims and acting for public sector institutions in natural resource damage disputes" (2018); and that "Allan Kanner is highly commended for his 'top-notch' environmental litigation work. He is a preeminent environmental plaintiffs litigator with excellent experience handling major environmental and consumer fraud disputes. His expertise extends into class action claims and the representation of public bodies in environmental damages disputes" (2019).

In addition to his trial practice, Mr. Kanner has also served the legal profession as an Adjunct Professor at Tulane Law School (1990-2008), a Visiting Lecturer in Law at the 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, natural resource damages, 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 has successfully handled novel and complex matters throughout the United States.

Mr. Kanner has taught and written extensively in his areas of expertise. Many of his articles have been relied upon by courts and legal scholars. Mr. Kanner's publications often discuss topics related to natural resoruce damage litigation and other legal issues unique to natural resoruce trustees. Mr. Kanner has recently published an article related to PFAS litigation, entitled *Emerging Trends In Perflourinated Chemical Regulation And Litigation*, ABA Environmental and Engery Litigation News Letter (August 28, 2017), which is attached to this response as **Exhibit E**. He has also authored numerous natural resource damage articles, including *The Public Trust Doctrine, Parens Patriae, And The Attorney General As The Guardian of the State's Natural Resources*, 16 DUKE ENVTL. L. & POL'Y F. 57 (Fall 2005)

Mr. Kanner is the past President of the Louisiana Association of Justice ("LAJ") (2008-2009) and is on the American Association 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 among attorneys representing insureds against their carriers. Mr. Kanner is licensed to practice in the following courts: State of Louisiana; State of New Jersey; State of California; State of Oklahoma; State of New York; Commonwealth of Pennsylvania; District of Columbia; and the State of Texas.

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. Ms. Petersen is a member of the litigation team for the State of New Jersey in its natural resource damage cases. Ms. Petersen also represented the State of Louisiana in the *Deepwater Horizon* litigation. Prior to joining Kanner & Whiteley, she practiced in the areas of civil and maritime litigation. Ms. Petersen is admitted to practice before the United States District Courts for the Eastern and Western Districts of Louisiana, and Louisiana State Courts.

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 where she 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 served 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.

ALLISON BROUK (B.A., Tulane University; J.D., Tulane University School of Law, Certificate of Environmental Law), Senior Associate, joined Kanner & Whiteley in 2011. Ms. Brouk is a member of the team handling litigation on behalf of the State of New Jersey to recover damages to its natural resources against various defendants, including the case against ExxonMobil Corp., which, following a 66-day trial, resulted in a $225 million settlement, the largest natural resource damage settlement in the history of the State. Ms. Brouk also serves as Special Counsel to the New Mexico Attorney General in the State's litigation against the United States related to PFAS contamination at the Cannon Air Force Base and Holloman Air Force Base, as well as the State's litigation against Dollar General regarding its deceptive marketing and sales practices related to its sale of obsolete motor oil. Ms. Brouk was also part of the Kanner & Whiteley litigation team that represented the State of Louisiana in its claim related to the *Deepwater Horizon* oil spill, the largest environmental disaster ever to occur in the Gulf of Mexico. Ms. Brouk has also litigated on behalf of private property owners for damage suffered by pollution. She is also involved in landmark litigation relating to oil companies' failures to follow the best practices required under federal law in armoring facilities against risks associated with climate change that threaten the companies' facilities and surrounding communities, in addition to other violations of their Clean Water Act permits.

Ms. Brouk graduated magna cum laude from Tulane University Law School, where she received a Certificate in Environmental Law. While in law school, Ms. Brouk practiced as a student attorney for the Tulane Environmental Law Clinic, was Editor in Chief of the Tulane Environmental Law Journal, and was a member of the Tulane Moot Court Board. Ms. Brouk also served as a judicial intern for U.S. District Judge Stanwood R. Duval, Jr. in the Eastern District of Louisiana.

3. **Identify whether your firm has been through significant developments in the past three years, such as a change in ownership or restructuring. Also, please identify whether you anticipate any significant changes within the next five (5) years.**

There have been no material developments in the firm's organization over the past three years, and no material developments are expected in the next five years, except for hiring needs associated with the firm's cases.

4. **An expression of willingness to work under the direction of and with the AGO on this matter.**

Kanner & Whiteley is willing to work with the AGO on this matter, and has demonstrated that it can successfully do so through its partnerships with state attorneys general over the course of seventeen years. The firm understands that the Attorney General's Office, at all times, will direct the litigation in all respects, and plans to maintain responsive and constant communication with the State to report on progress in the litigation.

5. **A description of the existence of any possible conflicts of interest, including any lawsuits and disputes where the firm represents interests adverse to the State of Vermont; a representation that the firm would have no significant conflicts of interest, for example, conflicts that would be difficult to waive or would raise questions about loyalty to the State of Vermont's interests; and a representation as to other clients the firm represents in the subject area of this RFP. In addition, applicants, including any equity owners of the firm, will identify whether they have previously made campaign contributions to the current Attorney General or otherwise registered lobbyists or lobbyist employers with the State of Vermont.**

Kanner & Whiteley is not involved in any material arrangements, relationships, or associations that would cause a conflict that would prevent the firm from representing the State in PFAS litigation. Kanner & Whiteley does represent the State of New Mexico in a PFAS-related matter, but that arrangement would not in any way affect the firm's loyalty to the State of Vermont's interests, as it involves New Mexico-specific sites and wholly different defendants than the instant matter and as such, the interests of the states in the independent lawsuits are not conflicting and the arguments asserted by the firm on behalf of New Mexico would not adversely affect the State of Vermont.

Neither Kanner & Whiteley nor its attorneys have made campaign contributions to the current Attorney General or otherwise registered lobbyists or lobbyist employers with the State of Vermont.

6. **Please report any professional sanctions or other pending or threatened governmental or regulatory proceedings which would have an adverse impact on the firm or any member of the firm. Please also include an explanation and indicate the current status or disposition.**

There have been no complaints nor adverse determinations against Kanner & Whiteley or any of its employees with respect to actions, proceedings, claims, or complaints of any kind under any local, State or Federal laws, regulations, court rules, or Rules of Professional Conduct, including malpractice, criminal, or SEC investigations.

7. **Within the last five (5) years, has your firm, or a partner or attorney in your firm, been involved in litigation or other legal proceedings about legal services provided by your firm, partner, or attorney? If so, please provide an explanation and indicate the current status or disposition.**

There have been no indictments, convictions, or civil offenses arising directly or indirectly from the conduct of business by Kanner & Whiteley or any of its employees in the last five years. There have been no ethics complaints against the Kanner & Whiteley or any attorney in the firm within the last five years.

8. **Please provide your proposed contingency fee arrangement including, but not limited to, allocation of expenses and costs. This proposal should also include information about your firm's financial capacity to sustain complex and protracted litigation on a contingency fee basis.**

Kanner & Whiteley joins Hagens Berman Sobol Shapiro LLP in its proposed fee arrangement. The firms propose the following contingency fee arrangement:

- 25% on any amount recovered up to $100 million;
- 20% on any amount recovered over $100 million up to $300 million;
- 12% on any amount recovered over $300 million.

Contingency fee percentages shall be computed on the basis of the State's gross recovery, before deduction of costs and expenses. The contingent fee is calculated by multiplying the gross recovery by the fee percentage. There shall be no payments to the firms from a general fund of the State.

"Gross recovery" means the total recovery whether by settlement, arbitration award, court judgment following trial or appeal, or otherwise. "Gross recovery" shall include, without limitation, the following: (1) the then-present value of any monetary payments to be made to the State; and (2) the fair market value of any non-monetary property and services to be transferred and/or rendered for the benefit of the State; and (3) any attorneys' fees recovered by the State as part of any cause of action that provides a basis for such an award. "Gross recovery" may come from any source, including, but not limited to, the adverse parties to the action and/or their insurance carriers and/or any third party, whether or not a party to the action.

No General Fund Payments. In no event will the State be required to pay legal fees out of any fund other than the monies recovered from defendants (or their insurers, agents, or other representatives) in this litigation.

9. **Please provide the names and contact information of three (3) references, including at least one (1) governmental client.**

Kanner & Whiteley provides the following references:

New Jersey NRD Litigation:
Richard Engel
Deputy Attorney General
R.J. Hughes Justice Complex
25 Market St., PO Box 093
7th Floor, West Wing
Trenton, NJ 08625-0093
Phone: [redacted]
Email: [redacted]

Louisiana *Deepwater Horizon* Oil Spill Litigation:
Megan K. Terrell
Legal Advisor
Coastal Activities, Environment & Natural Resources
Office of the Louisiana Governor
900 N. Third Street
State Capitol Building- 4th Floor
Baton Rouge, LA 70802
Email: [redacted]

CLF Climate Change Adaptation Litigation/ New Jersey NRD Litigation:
Bradley M. Campbell
President, Conservation Law Foundation[1]
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[1] Bradley Campbell is the President of the Conservation Law Foundation as well as the former New Jersey Department of Environmental Protection Commissioner and has worked closely with the firm in both the context of current CLF litigation as well as the work performed for New Jersey's natural resource damage program.

EXHIBIT "A"

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.* HECTOR BALDERAS, Attorney General, and the NEW MEXICO ENVIRONMENT DEPARTMENT,	§	Case No. _____
Plaintiffs,	§	Complaint
v.	§	
THE UNITED STATES and THE UNITED STATES DEPARTMENT OF THE AIR FORCE,	§	
Defendants.	§	

THE STATE OF NEW MEXICO, by and through New Mexico Attorney General Hector H. Balderas, and the New Mexico Environment Department (collectively, "Plaintiffs" or the "State"), file this Complaint against the above-named Defendants and in support thereof allege as follows:

INTRODUCTION AND STATEMENT OF THE CASE

1. This is a civil action by the State against Defendants United States and the U.S. Department of the Air Force (collectively, "Defendants") brought pursuant to the New Mexico Hazardous Waste Act, NMSA 1978, § 74-4-1 to -14.[1]

2. This action arises from the improper disposal of and failure to contain or address contaminants and hazardous wastes at Cannon Air Force Base ("Cannon"), located approximately

[1] Concurrent with the filing of this Complaint, Plaintiffs have issued a notice to Defendants under the Resource Conservation and Recovery Act ("RCRA") of their intent to bring a claim to remedy the imminent and substantial endangerment created by the conduct of Defendants described herein, and reserves the right to seek any additional remedies that may be available under the law, including but not limited to a claim for natural resource damages pursuant to Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") §107(a)(4), 42 U.S.C. § 9607(a)(4).

seven miles southwest of Clovis, New Mexico and above the Ogallala Aquifer, and Holloman Air Force Base ("Holloman"), located in the Tularosa Basin between the Sacramento and San Andreas mountain ranges ten miles west of Alamogordo, New Mexico, by Defendants, resulting in contamination and pollution of the environment, including public and private water sources both on- and off-site, with per- and polyfluoroalkyl substances ("PFAS"), also known as fluorochemicals, such as perfluorooctanoic acid ("PFOA") and perfluorooctanesulfonic acid ("PFOS"), and other known or suspected toxic compounds.

3. Defendants' discharges and the resulting contamination at Cannon and Holloman have created an imminent and substantial endangerment to human health and the environment.

4. As a result of this ongoing and persistent contamination and pollution, the State seeks declaratory and injunctive relief, and reimbursement of past and future costs incurred by the State associated with these environmental and public health risks and injuries at Cannon and Holloman.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331.

6. This Court has the authority to grant declaratory relief, 28 U.S.C. § 2201, as well as further relief requested in this Complaint, including injunctive relief, 28 U.S.C. § 2202.

7. This Court has personal jurisdiction over Defendants as they conduct sufficient business with sufficient minimum contacts in the State, and/or intentionally subjected themselves to this jurisdiction through the commission of tortious activity within the State.

8. Venue is proper in the United States District Court for the District of New Mexico pursuant to 28 U.S.C. § 1391, because the acts described in this Complaint occurred in this judicial district.

PARTIES

Plaintiffs

9. Plaintiff, the New Mexico Environment Department ("NMED") is a state executive agency pursuant to the Department of Environment Act, NMSA 1978, §§ 9-7A-1 to -15. NMED is charged with the administration and enforcement of the New Mexico Hazardous Waste Act ("HWA") and the Hazardous Waste Management Regulations, 20.4.1-20.4.5 NMAC, and has authority to bring this lawsuit. NMSA 1978, § 74-1-6(A); NMSA 1978, § 74-4-13(A).

10. New Mexico Attorney General Hector Balderas, is the "attorney for the State of New Mexico," *State ex rel. Norvell v. Credit Bureau of Albuquerque, Inc.*, 1973-NMSC-087, ¶ 5, 85 N.M. 521, and his office is recognized in Article V, Section 1 of the New Mexico Constitution. The New Mexico Legislature has authorized the Attorney General to prosecute and defend, in any court, civil actions in which the State is a party, when, in his judgment, the interest of the State requires such an action. NMSA 1978, § 8-5-2; *State ex rel. Attorney Gen. v. Reese*, 1967-NMSC-172, ¶ 14, 78 N.M. 241, 245, 430 P.2d 399.

11. Plaintiffs bring these claims, in part, pursuant to their authority to guard against adverse environmental and health impacts and risks associated with contamination such as that which is present at Cannon and Holloman.

12. Under Article XX, Section 21 of the New Mexico Constitution, "protection of the state's beautiful and healthful environment is . . . declared to be of fundamental importance to the public interest, health, safety and the general welfare." This provision "recognizes that a public trust duty exists for the protection of New Mexico's natural resources . . . for the benefit of the people of this state." *Sanders-Reed ex rel. Sanders-Reed v. Martinez*, 350 P.3d 1221, 1225 (N.M. Ct. App. 2015).

Defendants

13. Defendant is the United States of America, including all federal government agencies and departments responsible for the acts alleged in this Complaint.

14. The Department of the Air Force is one of three military departments of the U.S. Department of Defense and is responsible for the administration and operation of the United States Air Force. The Department of the Air Force is and was at all times relevant to this Complaint the owner and operator of Cannon and Holloman.

GENERAL FACTUAL ALLEGATIONS

A. PFAS Background

15. PFAS comprise a family of approximately 3,500 manmade chemicals not found in nature that have been in use since the 1940s. The backbone of a PFAS chemical is a chain of carbon atoms, which may be fully (per) or partly (poly) fluorinated.

16. Due to their ability to repel heat, oil, stains, grease, and water, PFAS are found in a wide array of industrial and consumer products. Companies used PFAS to make, among other things, carpet, clothing, stain-resistant fabrics for furniture, paper packaging for food, and other materials such as cookware that are resistant to water, grease, or stains.

17. The two most recognized members of the PFAS family are PFOS and PFOA, which are long, eight-chain PFAS. PFOS and PFOA easily dissolve in water and thus they are mobile and readily spread in the environment. They are also persistent. PFOS and PFOA have degradation periods of years, decades, or longer under natural conditions and have a half-life in the human body of two to nine years.

18. PFOA and PFOS also readily contaminate soils and leach from soil into groundwater, where they can travel significant distances.

19. PFOS and PFOA are strong, stable, bioaccumulative, and biomagnifying, meaning that they resist degradation due to light, water, and biological processes and tend to accumulate in organisms up the food chain.

20. Further, PFOS and PFOA are toxic, meaning that they pose significant threats to public health and the environment. Exposure to PFOS and PFOA presents health risks even when PFOS and PFOA are ingested at seemingly low levels.

21. PFOS and PFOA exposure is associated with a variety of illnesses, including increased risk in humans of testicular cancer, kidney cancer, thyroid cancer, high cholesterol, ulcerative colitis, and pregnancy-induced hypertension, as well as other conditions. The chemicals are particularly dangerous for pregnant woman and young children.

22. Toxicology studies show that PFOS and PFOA are readily absorbed after oral exposure and are relatively stable once ingested so that they accumulate in individual organs for significant periods of time, primarily the serum, kidney, and liver.

23. Studies further found that individuals with occupational exposure to PFOA run higher risks of bladder and kidney cancer.

24. In studies involving laboratory animals, PFOA and PFOS exposure increased the risk of tumors, changed hormone levels, and affected the function of the liver, thyroid, pancreas, and the immune system.

25. The adverse effects associated with both PFOS and PFOA are additive when both chemicals are present, meaning that their individual adverse effects are cumulative.

26. However, injuries are not sudden and can arise months or years after exposure to PFOS and/or PFOA.

27. PFAS were formally identified as "emerging contaminants" by the U.S. Environmental Protection Agency ("EPA") in 2014. This term describes contaminants about which the scientific community, regulatory agencies, and the public have an evolving awareness regarding their movements in the environment and effects on public health. PFAS, like other emerging contaminants, are the focus of active research and study, which means new information is released periodically regarding the effects on the environment and human health as a result of exposure to the chemicals.

28. Six PFAS were included by the EPA in the Third Unregulated Contaminant Monitoring Rule per the 1996 Safe Drinking Water Act Amendments in May 2012. Monitoring of these substances was required between 2013 and 2015 to provide a basis for future regulatory action to protect public health.

29. According to the EPA, PFOA and PFOS pose potential adverse effects for the environment and human health. *See, e.g.,* U.S. EPA, *Technical Fact Sheet—Perfluorooctane Sulfonate (PFOS) and Perfluorooctanoic Acid (PFOA)* (Nov. 2017), *available at* https://www.epa.gov/sites/production/files/2017-12/documents/ffrrofactsheet_contaminants_pfos_pfoa_11-20-17_508_0.pdf.

30. In January 2009, EPA established a drinking water Provisional Health Advisory ("HA") level for PFOA and PFOS—two of the PFC compounds about which we have the most toxicological data. EPA set the Provisional HA level at 0.4 parts per billion ("ppb") for PFOA and 0.2 ppb for PFOS.

31. In 2016, following additional study, the EPA lowered the HA for PFOS and PFOA. EPA established the HA levels for PFOS and PFOA at 70 parts per trillion ("ppt"), or 0.07 micrograms per liter ("µg/L"). In addition, EPA, in issuing its 2016 HAs, directs that when both

PFOA and PFOS are found in drinking water, the *combined* concentrations of PFOA and PFOS should be compared with the 70 ppt HA.

32. In 2018, the Agency for Toxic Substances and Disease Registry ("ATSDR") released an updated Toxicological Profile for PFAS that revised its minimal risk levels ("MRLs") for PFOA and PFOS. An MRL is the estimated amount of a chemical a person can eat, drink, or breathe each day without a detectable risk to health. The intermediate oral (15 to 364 days) MRL for PFOA was revised from the previous level of $2x10^{-5}$ (0.00002) mg/kg/day to $3x10^{-6}$ (0.000003) mg/kg/day and for PFOS was revised from the previous level of $3x10^{-5}$ (0.00003) mg/kg/day to $2x10^{-6}$ (0.000002) mg/kg/day. These new MRLs were lowered because they now take into consideration immune system effects; the former thresholds were based only developmental health effects.

33. The EPA acknowledges that the studies associated with PFAS are ongoing and that based upon additional information, the HAs may be adjusted.

34. Additionally, at least four states, Vermont, California, Minnesota, and New Jersey, have adopted limits or health guidelines on PFAS that are lower than the current EPA HAs.

35. As of July 2018, the New Mexico Water Quality Control Commission voted to add PFOA and PFOS to the list of toxic pollutants the State regulates "at a risk-based level" of 70 ppt, matching the federal level. *See* 20.6.2.3103.A(2) and 20.6.2.7.T(2)(s) NMAC. New Mexico's Hazardous Waste Bureau, with the Ground Water Quality Bureau, developed the NMED Risk Assessment Guidance for Site Investigation and Remediation, which helps to determine if a site is contaminated to a point that warrants further investigation or action. The associated screening levels and soil screening levels were developed based on the standards found in 20.6.2.3103

NMAC. The Hazardous Waste Bureau uses those screening levels in its administration of the HWA and the Hazardous Waste Management Regulations.

36. Additional PFAS for which there are currently less scientific information include: Perfluorohexane sulfonic acid ("PFHxS"); Perfluorooctane sulfonamide ("PFOSA"); Perfluorononanoate acid ("PFNA"); Perfluorododecanoic acid ("PFDoA"); and Perfluorobutanesulfonic acid ("PFBS").

37. While more studies have been conducted and thus more is known regarding PFOS and PFOA, all PFAS have generally demonstrated similar characteristics to PFOS and PFOA.

38. By 2015, PFOA was voluntarily phased out of production by the major manufacturers. However early studies of the replacement PFAS indicate they are nearly as harmful. There are still some applications of traditional PFOA and PFOS and the chemicals are persistent in pre-existing products made prior to the phaseout.

B. PFAS in AFFF Used at Bases

39. In the 1960s, 3M Company and the U.S. Navy developed "aqueous film-foaming foam" ("AFFF"), a firefighting foam containing PFOS and PFOA. AFFF concentrate contains fluorochemicals used to meet required performance standards for fire extinguishing agents.

40. In the 1970s, military sites, civilian airports, and firefighting training centers began using AFFF worldwide.

41. The United States Air Force began purchasing and using AFFF-containing PFAS for firefighting training activities and petroleum fire extinguishment in 1970.

42. AFFF was primarily used on Air Force installations at fire training areas, but may have also been used, stored, or released from hangar fire suppression systems, at firefighting

equipment testing and maintenance areas, and during emergency response actions for fuel spills and mishaps.

43. A 1980s study by the U.S. Navy found that AFFF has "adverse effects environmentally" and kills aquatic life.

44. As early as 2011, the U.S. Department of Defense acknowledged that there was a PFAS crisis among its facilities. An internal study identified 594 military sites that were likely to have contaminated groundwater, although it was noted that this number may underestimate the problem by not including AFFF spills, pipeline leaks, or aircraft hangar fire suppression systems.

45. In March 2018, the military acknowledged that PFAS were present at 121 military sites and suspected at hundreds of others. At least 564 drinking water supplies in communities near military sites have PFAS levels that exceed EPA's HA.

46. The USAF is working to replace its current inventory of AFFF with more formations based on shorter carbon chains, such as Phos-Chek, a six-carbon chain ("C6") based foam that does not contain PFOS.

47. C6 PFAS are the most prominent replacements for traditional eight-carbon chain PFAS as they are thought to degrade faster. DuPont, one of the major consumers and producers of PFOA, has a spinoff company, Chemours, that manufactures the most well-known C6 product known as GenX.

48. C6 products are still PFAS and presents similar health and environmental concerns to longer-chain PFAS. In May 2015, 200 scientists signed the Madrid Statement, "which expresses concern about the production of all fluorochemicals, or PFAS, including those that have replaced PFOA. PFOA and its replacements are suspected to belong to a large class of artificial compounds called endocrine-disrupting chemicals; these compounds, which include chemicals used in the

production of pesticides, plastics, and gasoline, interfere with human reproduction and metabolism and cause cancer, thyroid problems and nervous system disorders." A. Blum et al., *The Madrid Statement on Poly-and Perfluoroalkyl Substances (PFASs)*, ENVIRON. HEALTH PERSPECT. 123:A107–A111 (2015), *available at* http://dx.doi.org/10.1289/ehp.1509934.

49. To the extent the Air Force intends to utilize this alternative, its use must similarly be compliant with applicable statutes and common laws that are protective of human health and the environment.

C. PFAS Contamination at New Mexico Air Force Bases

Cannon Air Force Base

50. Cannon is located in eastern New Mexico, near the city of Clovis. Cannon encompasses approximately 3,789 acres of land owned by the United States and hosts a population of roughly 7,800 people.

51. Clovis, New Mexico is a city with a population of approximately 39,000 that relies upon the Ogallala Aquifer for its potable water.

52. Cannon includes two perpendicular active runways in the central and southwest portions; maintenance, support, and operational facilities west of the central runway/flightline; supplemental hangars and apron areas in the south-central region; a wastewater treatment plant to the east; and a golf course and residential and service facilities in the northwest portion.

53. Adjacent land to Cannon includes mixed-use land utilized as residential, agricultural, and farmland to the north; agricultural and farmland to the east and south; and agricultural and open grassland to the west.

54. Cannon is an active military installation that currently houses the 27th Special Operation Wing, which conducts sensitive special missions including close air support, unmanned aerial vehicle operations, and non-standard aviation in response to the Secretary of Defense.

55. Cannon was developed in 1929 when Portair Field was established as a civilian passenger terminal. The Army Air Corps acquired control of the facility in 1942, and it became known as the Clovis Army Air Base. Clovis Army Air Base operated as an installation for aviation, bombing, and gunnery training until 1947 when the facility was deactivated. The Base was reactivated as Clovis Air Force Base in 1951 and became a permanent military installation in June 1957, when it was renamed Cannon Air Force Base.

56. Defendants have used AFFF at Cannon for more than fifty years in training and actual firefighting events at the base. During routine training exercises, AFFF was sprayed directly on the ground and/or tarmac at several fire training areas, allowing PFOA and PFOS to travel to the surrounding groundwater, causing contamination on and offsite. PFAS remains at very high concentrations in groundwater both on and off the base.

57. In addition to routine training for personnel, additional releases of PFAS-containing AFFF have occurred at Cannon through testing of the equipment, false alarms, equipment malfunctions, and other incidental releases in the hangars, fire stations, and other locations. Once the AFFF-containing PFAS was released into the environment, the contamination migrated off-site.

58. On July 26, 2017, Defendants provided NMED with a "*Site Inspection of Aqueous Film Forming Foam (AFFF) Release Areas Environmental Programs Worldwide Installation-Specific Work Plan"* for Cannon ("Cannon SI Work Plan"). The provision of this report to NMED was described "as a courtesy" in a July 27, 2017 letter to NMED.

59. The purpose of the Cannon SI Work Plan was to identify locations where PFAS may have been used and released into the environment and to provide an initial assessment of possible migration pathways and receptors of potential contamination.

60. The Cannon SI Work Plan identified thirteen AFFF release areas that were recommended for site investigation, although it did not preclude the presence of PFAS contamination at other areas throughout the site. The following areas are known to have confirmed releases of AFFF:

a. **Former Fire Training Area ("FTA") No. 2**—Former FTA No. 2 is located in the southeast corner of Cannon, approximately 1,000 feet south of the active FTA, and was used for fire training exercises from approximately 1968 to 1974. The area includes two round depressions in the land surface, each measuring approximately 100 feet in diameter. Fire training exercises were conducted twice per quarter using approximately 300 gallons of the unused jet propellant JP-4. No specific AFFF use was reported at Former FTA No. 2; however, since the FTA operated after initial use of AFFF at the base, it is likely that AFFF was used at this location.

b. **Former FTA No. 3**—Former FTA No. 3 is located in the southeast corner of the base, approximately 800 feet southeast of the active FTA, and was used concurrently with FTA No. 2 between approximately 1968 and 1972. Training exercises were conducted twice per quarter in an unlined, half-moon shaped area approximately 100 feet in length. No specific use of AFFF at Former FTA No. 2 was recorded; however, since the FTA operated after initial use of AFFF at the base, it is likely that AFFF was used at this location.

c. **Former FTA No. 4**—Former FTA No. 4 was used form 1974 through 1995 for fire training exercises. Training activities were conducted twice per quarter, during which an unknown volume of AFFF was used. FTA No. 4 consisted of an unlined circular area approximately 400 feet in diameter with a mock aircraft located in the center. Prior to 1985, the jet propellant JP-4 and AFFF runoff generated during fire training exercises collected in an unlined pit. The pit was backfilled in 1985 and a new, lined pit with an oil/water separator was installed to handle collected runoff. The oil/water separator was subsequently removed in 1996.

d. **Hangar 119**—General storage warehouse hangar located in the west central portion of the base, west of the flight apron, with three accidental AFFF releases. The first incident occurred in September 2006 when approximately 60 gallons of AFFF discharged into a storm drain after the AFFF system was accidentally activated, possibly due to a corroded valve. The second incident occurred in September 2012 when a "significant amount" of AFFF was discharged into bay number one and flowed onto asphalt on the north side of the structure between Hangar 119 and Building 102. Incident reports indicate that a "huge

amount" of AFFF entered a storm drain while the rest was left to evaporate. The third incident occurred in July 2013 when an unknown quantity of AFFF was discharged onto the concrete flight ramp outside of the bays, which convey liquid directly to the South Playa Lake. Due to the large quantity of AFFF released at Hangar 119, there is the potential that AFFF migrated to grassy areas to the south and southwest of the structure.

e. **Hangar 133**—Small aircraft hangar located in the west central portion of the base, immediately south of Hangar 119, with two additional AFFF releases. Several hundred gallons of AFFF were released during a scheduled rinsing of the hangar fire system in December 2000 and entered a nearby storm drain. Approximately 200 gallons of AFFF were released into a hangar bay following a power outage in July 2001. Most of the AFFF entered a floor trench and was routed to the wastewater treatment plan ("WWTP"); however, AFFF that did not enter the floor trench was washed into nearby infield soil and allowed to evaporate.

f. **Former Sewage Lagoon**—The former sewage lagoons consisted of two unlined surface impoundments that were used from 1966 to 1998 and received sanitary and industrial waste from base facilities prior to the construction of the WWTP. The former sewage lagoons would have received any AFFF that entered the sanitary sewer system from 1966 to 1998. Documented releases of AFFF to the sanitary system from Hangars 199 and 208 were reported prior to and during 1998. As such, there is evidence that AFFF was released to the environment at the former sewage lagoons.

g. **North Playa Lake Outfall**—North Playa Lake, located southeast of the WWTP, received all Cannon sanitary and industrial wastewater from 1943 to 1966. Currently, all treated effluent from the WWTPP is released primarily to North Playa Lake with a portion also released to the golf course for irrigation. Since there is no accepted wastewater treatment process for PFAS, any wastewater collected at the WWTP containing PFAS would be passed on to North Playa Lake.

h. **South Playa Lake Outfall**—South Playa Lake is located in the southwestern portion of Cannon and serves as the base's primary stormwater collection point. The lake has received stormwater runoff from portions of the flightline area since 1943. Solvents, fuels, oils, greases, and AFFF are all potential contaminants that would have discharged to the lake from the flightline area. Documented releases of AFFF in the hangars resulted in AFFF entering storm drains with liquid being subsequently routed to South Playa Lake.

i. **Hangar 109**—Parking and general maintenance hangar located in the west central portion of Cannon, with two accidental AFFF releases. The first release occurred in December 1999 when an office fire activated the AFFF fire suppression system, releasing approximately 500 gallons of AFFF in the hangar bay that reportedly entered the floor trench and was routed to the WWTP. No AFFF was reportedly released outside the hangar in 1999. A second release of approximately twenty-five gallons of AFFF solution occurred in 2016. Installation personnel identified that AFFF was released outside the hangar and was allowed to evaporate west and southwest of the hangar.

j. **Active FTA**—Active FTA located in the southeast portion of Cannon, immediately northwest of FT-07, FT-08, and FTA-4. The FTA became operational in 1997 and consists of a circular lined burn pit with a mockup of a large aircraft, a propane fuel tank, a control panel, and a lined evaporation pond. Fire training exercises are conducted at the active FTA approximately monthly using water or AFFF. The fire department also conducts annual vehicle foam checks at the FTA. Liquids discharged into the lined burn pit, including water and AFFF, drain to the lined evaporation pond located approximately 300 feet southwest of the pit and are left to evaporate. The liner of the evaporation pit has required repairs in the past, and breaches in the liner have allowed AFFF to infiltrate the soils beneath the liner. Additionally storms in May 2015 resulted in significant flash flooding across Cannon, which likely resulted in any residual AFFF located in the evaporation basin to overflow and be released in the surrounding environment.

k. **Landfill #4**—Closed landfill covering approximately 7 acres in the east central portion of Cannon that was only operational for one year between 1967 and 1968. The landfill received domestic and industrial wastes including solvents, paints, thinners, and waste oils. Disposal activities consisted of placing waste material into a trench, burning the accumulated waste, and then covering the burned material with soil. Due to the period of operation, AFFF would not have been included in landfilled refuse; however, the landfill cover was revegetated and used water from North Playa Lake, located immediately south of Landfill #4, which receives treated effluents from the WWTP.

l. **Perimeter Road Fuel Spill**—A fuel tanker truck overturned while traveling along Perimeter Road in the southeast corner of the base. All fuel from the tanker was released on the southeast side of the road. The fire department responded with crash trucks and reportedly sprayed AFFF on the fuel spill. The response was conducted over several days with multiple fire trucks discharging the entire supply of AFFF on the release. Contaminated soils were excavated, but the excavation depth is unknown.

m. **Flightline Crash Areas**—Three aircraft crashes have occurred along the flightline where the fire department responded with the use of AFFF. Two incidents involving F-16 aircraft were identified at the southern end of the flightline, and a third incident involving an F-111 aircraft occurred at the north end of the flightline. No information regarding the amount of AFFF released is known at this time.

n. **Whispering Winds Golf Course Outfall**—The base golf course began receiving a portion of treated effluent from the WWTP to fill ponds and irrigate the greens in approximately 2002. The golf course is irrigated five nights per week for approximately four hours using a sprinkler system. Any wastewater collected at the WWTP containing AFFF therefore could be released at the golf course.

o. **Hangar 204**—Hangar 204 was identified as an area for additional investigation due to the release of AFFF outside the structure; however, it was determined during a scoping visit that based on surface topography surrounding the hangar, any AFFF released from hangar doors would drain directly to storm drains in the apron or would evaporate on the concrete apron. Any AFFF that entered the storm drain would have been routed to South Playa

Lake. Infiltration of AFFF into soils in the vicinity of Hangar 204 was thus thought to be unlikely and, therefore, it was removed from further investigation.

61. In August 2018, Cannon submitted a "*Final Site Investigation Report, Investigation of Aqueous Film Foaming Foam Cannon Air Force Base, New Mexico*" to NMED ("Cannon SI Report"). As stated in the Cannon SI Report, exceedances of the EPA's HA of 70 ppt for groundwater were detected in six of the eighteen environmental restoration program monitoring wells at the base.

62. Fourteen AFFF release areas at Cannon were analyzed for PFAS contamination in the soil and groundwater. PFOS and PFOA concentrations in soil and sediment were compared against the regional screening level (RSL) of 0.126 mg/kg. Groundwater concentrations for PFOA and PFOS, or PFOA and PFOS combined, were compared against the EPA's HA of 70 ppt.

63. At Former FTA No. 3, PFOS was detected above the RSL in the surface sample at 0.24 mg/kg, nearly twice the RSL.

64. At Former FTA No. 4., PFOS was detected above the RSL in the surface soil samples at each of the three locations with the highest detected concentration being 0.61 mg/kg, nearly five times the RSL.

65. At Hangars 119 and 113, PFOS was detected above the RSL at each location with the highest detected concentration being 0.42 mg/kg, more than three times the RSL.

66. At the Former Sewage Lagoons, PFOS was detected above the RSL at two subsurface sample sites with the highest detected concentration being 0.29 mg/kg, more than twice the RSL.

67. At the North Playa Lake Outfall, PFOS and PFOA combined were detected above the HA values at both surface water sample sites, with the highest detected combined value being 0.123 µg/L, nearly two times the HA.

68. At Hangar 109, PFOS was detected above the RSL at a maximum concentration of 0.23 mg/kg, nearly twice the RSL.

69. At the Active FTA, PFOS was detected above the RSL at a surface soil location at a concentration of 1.1 mg/kg, more than eight times the RSL, the highest of all soil samples on the base.

70. Two locations, Landfill #4 and Flightline Aircraft Crashes, were presented in the Basewide Groundwater Sampling. PFOS was detected basewide above the HA at five sample sites with a maximum detected concentration of 24 µg/L, 342 times the HA. PFOA was detected above the HA at four sample sites with a maximum detected concentration of 3.1 µg/L, forty-four times the HA. PFOS and PFOA combined exceeded the HA at six sample sites with the maximum concentration of 26.2 µg/L, 374 times the HA.

71. Notably, because these compounds are persistent and bioaccumulative, any detectable amount that can be ingested, regardless of whether or not it exceeds the HA or RSLs, will add to the lifetime concentration of PFAS in any given individual.

72. NMED learned in late 2018 that following a preliminary assessment in 2015 and a scoping visit in in 2016, the Air Force collected samples at four of its public supply wells in 2016, at fourteen potential PFAS release sites in 2017, and at off-base private water supply wells in 2018. The Air Force test results documented high concentrations of PFAS compounds in both on- and off-base groundwater. Sampling has detected PFAS in some off-base wells, which provide drinking water and livestock and irrigation water to local dairies, including the Highland Dairy, half of a mile south and slightly east of Cannon. Air Force sampling showed a maximum of 539 ppt for PFOA in the Highland Dairy well (7.7 times the EPA HA), and Highland Dairy's own

sampling showed 2,920 PFOA (nearly 42 times the HA), with a total PFOS/PFOA of 14,320 ppt in an irrigation well (more than 204 times the HA).

73. The Air Force itself has determined that the "presence [of PFOS and PFOA at Cannon] in drinking water at levels above the EPA [HAs] poses an imminent and substantial danger to public health or welfare," and notified NMED of this determination via letter on January 10, 2019.

74. On September 26, 2018 NMED sent a letter confirming that a teleconference with the Air Force on August 13, 2018, in which the State noted that the detection of PFAS compounds in groundwater exceeding the HA counted as "a notifiable discharge even if the specific date, sources and volumes of the discharge are not yet known." The Air Force provided a formal notice of the discharge event to NMED on August 14, 2018.

75. NMED advised that the Cannon SI Report that was submitted August 27, 2018 would count as an Interim Corrective Action report subject to several conditions as well as additional corrective actions.

76. The Air Force responded to NMED's September 26 letter on October 26, 2018, and declined to make the revisions requested by NMED.

Holloman Air Force Base

77. Holloman is located in Otero County near the city of Alamogordo. The base covers approximately 59,800 acres and hosts a population of roughly 21,000.

78. Alamogordo, New Mexico is a city with a population of approximately 31,000 people who rely partially upon groundwater in the Tularosa Basin for potable water.

79. Holloman, formerly known as Alamogordo Army Air Field, was initiated as a wartime temporary facility in 1942. In March 1947, after a brief inactivation at the end of World

War II, the installation was transferred to the Air Material Command with the mission of providing facilities and testing of pilotless aircraft, guided missiles, and allied equipment in support of the Air Material Command Research and Development Program. The base was renamed Holloman Air Force Base in 1948.

80. Holloman is currently home of the 49th wing of the Air Combat Command, 96th Test Group, 54th Fighter Group, and the German Air Force Flying Training Center. Operations at Holloman include missile testing, aircraft and pilot training, operational equipment and systems testing, and aircraft maintenance and storage.

81. In 2015, the "*Final Preliminary Assessment Report for Perfluorinated Compounds at Holloman Air Force Base, Alamogordo, New Mexico*" identified thirty-one potential PFAS release areas at Holloman. The Preliminary Assessment was provided to NMED as part of the EPA's Health Advisory proceedings.

82. In November 2018, Defendants released the "*Final Site Inspection of Aqueous Film Forming Foam (AFFF) Release Areas Environmental Programs Worldwide*" for Holloman. ("Holloman SI Report").

83. The Holloman SI Report detailed five AFFF release areas, but did not rule out the possibility that releases had occurred elsewhere at the site:

a. **Former FTA**—Fire training activities were conducted generally at the Former FTA since 1942, although the exact dates of fire training in this area is unknown. Fire training was conducted in two unlined burn pit areas within the Former FTA. The volume of AFFF used during each training exercise is unknown. Fire training activities continued at this location until 1990 when training exercises were moved to the current FTA.

b. **Sewage Lagoon Area Outfall**—Prior to construction of a WWTP in 1996, wastewater from Holloman was discharged directly into the sewage lagoon area that was comprised of seven unlined lagoons. Approximately 1.2 million gallons of domestic and industrial wastewater were discharged into the sewage lagoon daily.

c. **Apache Mesa Golf Course Outfall**—In 2011, the golf course began receiving a portion of the effluent from the WWTP to fill two golf course ponds and irrigate greens. Releases of AFFF from within the industrial shops and Holloman would be routed through the WWTP and eventually lead to the water holding tank at the Apache Mesa Golf Course.

d. **Lake Holloman Outfalls**—Wastewater from Holloman was discharged directly into the sewage lagoon area and eventually to Lake Holloman prior to construction of the WWTP in 1996.

e. **Evaporation Pond No. 2**—The evaporation basin was installed in 1991 and currently collects all discharges containing AFFF, routed through hangar bay floor drains from hangars located in the western ramp area of the West Hangar Group. The Holloman Fire Department uses this basin for monthly AFFF tests and firehose washouts. AFFF is reportedly sprayed from vehicles into the pond until a consistent flow pattern is established.

84. The Former FTA (FT-31), the Sewage Lagoon Area Outfall, the Apache Mesa Golf Course Outfall, the Lake Holloman Outfalls, and Evaporation Pond No. 2 release areas were analyzed for PFAS contamination in the soil, sediment, surface water, and groundwater. PFOS and PFOA concentrations in soil and sediment were compared against the RSL of 0.126 mg/kg. Groundwater concentrations for PFOA and PFOS, or PFOA and PFOS combined were compared against the EPA HA of 70 ppt.

85. Six surface soil samples, including one duplicate, and six subsurface soil samples, including one duplicate, from a total of five locations, were taken and analyzed for PFAS at the Former FTA (FT-31). The soils were analyzed for PFOA and PFOS, with each being detected at each sample site. PFOS was detected above the RSL more than half the time with the highest concentration exceeding the 0.126 mg/kg RSL at 1.13 mg/kg, nearly nine times the limit. At the three groundwater sample sites at FT-31, PFOS, PFOA, and PFOA and PFOS combined were detected well above the EPA HA of 0.07 µg/L, with the highest concentrations being 48.4 µg/L (691 times the HA), 254 µg/L (3,628 times the HA), and 302.4 µg/L (4,314 times the HA), respectively.

86. At the Sewage Lagoon Area Outfall, groundwater results at three locations revealed PFOS, PFOA, and PFOS and PFOA combined all exceeding EPA's HA. The surface water sample also revealed PFOS, PFOA, and combined concentrations exceeding the HA.

87. One groundwater, two sediment, two surface water, and two effluent samples were taken at the Apache Mesa Golf Course Outfall. PFOA and PFOS combined were detected above the HA in the groundwater sample with a maximum concentration of 0.1371 µg/L, nearly twice the HA. PFOS, PFOA, and PFOS and PFOA combined exceeded the HA at both of the surface water sample locations, with the highest concentration of 1.317 µg/L. Likewise, PFOS, PFOA, and the two combined exceeded the HA in both of the effluent samples with the highest concentration of 0.995 µg/L, fourteen times the HA.

88. Sediment and surface water samples were taken at Lake Holloman Outfalls. PFOS was detected in sediment above the RSL at 0.519 mg/kg, four times the RSL. The surface water samples each had concentrations of PFOS, PFOA, and PFOS and PFOA combined that exceed the EPA HA, with the maximum concentration of PFOS and PFOA combined at 3.188 µg/L, forty-five times the HA.

89. Finally, soil and groundwater were analyzed at Evaporation Pond No. 2. PFOS was detected above the RSL at the surface and subsurface intervals for each of the soil samples with a maximum concentration of 5.71 mg/kg, the highest of all soil samples for Holloman and forty-five times the RSL. PFOA was also detected above the RSL at the surface level for each sample. PFOS, PFOA, and PFOS and PFOA combined were detected above the HA in the groundwater sample with a maximum PFOS and PFOA combined concentration of 1066.6 µg/L, more than 15,000 times the HA and the highest of all groundwater samples at the base.

90. Sampling at both Cannon and Holloman is ongoing in an effort to more fully characterize the extent of the groundwater contamination plumes and their migration outside of the site boundaries.

STATUTORY AND REGULATORY BACKGROUND

91. Congress enacted the Resource Conservation and Recovery Act ("RCRA") in 1976 in response to "a rising tide of scrap, discarded, and waste materials" that had become a matter of national concern. 42 U.S.C. § 6901(a)(2), (4) (1984). In enacting RCRA, Congress declared it a national policy "that, where feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible. Waste that is nevertheless generated should be treated, stored, or disposed of so as to minimize the present and future threat to human health and the environment." 42 U.S.C. § 6902(b).

92. Congress recognized, however, that the "collection of and disposal of solid wastes should continue to be primarily the function of the State, regional, and local agencies. . . ." 42 U.S.C. § 6901(a)(4). Thus, RCRA allows any state to administer and enforce a hazardous waste program subject to authorization from the EPA. 42 U.S.C. § 6926(b).

93. RCRA includes a clear and unambiguous waiver of sovereign immunity:

> Each [federal entity] engaged in [disposal or management of hazardous waste] shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting control and abatement of solid waste or hazardous waste disposal and management in the same manner, and to the same extent, as any person is subject to such requirements. . . . The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order or civil or administrative penalty or fine . . .).

42 U.S.C. § 6961.

94. EPA authorized New Mexico's state program pursuant to RCRA in 1985, 40 C.F.R. § 272.1601(a), and delegated to New Mexico "primary responsibility for enforcing its hazardous waste management program." 40 C.F.R. § 272.1601(b). New Mexico's HWA and regulations promulgated pursuant to it are incorporated by reference into RCRA. 40 C.F.R. § 272.1601(c)(1).

95. The purpose of New Mexico's HWA is to "ensure the maintenance of the quality of the state's environment; to confer optimum health, safety, comfort and economic and social well-being on its inhabitants; and to protect the proper utilization of its lands." § 74-4-2.

96. Pursuant to the HWA, NMED is authorized to issue permits, § 74-4-4.2(C), and must deny them if an applicant has made a material misrepresentation or has violated any provision of the HWA, among other reasons. § 74-4-4.2(D).

97. NMED may bring suit in the appropriate district court to immediately restrain any person, including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, who has contributed to or is contributing to the past or current handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste or the condition or maintenance of a storage tank that may present an imminent and substantial endangerment to health or the environment. § 74-4-13.

98. The HWA § 74-4-3(K) defines "hazardous waste" as:

> [A]ny solid waste or combination of solid wastes that because of their quantity, concentration or physical, chemical or infections characteristics may:
>
> (1) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
>
> (2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported,

> disposed of or otherwise managed. 'Hazardous waste' does not include any of the following, until the board determines that they are subject to Subtitle C of the federal Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 et seq.: drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil or natural gas or geothermal energy; fly ash waste; bottom ash waste; slag waste; flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels; solid waste from the extraction, beneficiation or processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore; or cement kiln dust waste.

99. New Mexico's Legislature has granted wide latitude to its environmental programs in order to ensure protection of its natural resources. New Mexico's Environmental Protection Regulations and the rulemaking procedures thereunder are to be "liberally construed to carry out their purpose." 20.1.1.108 NMAC.

CAUSE OF ACTION

First Cause of Action:
Violation of the New Mexico Hazardous Waste Act

100. All allegations above are incorporated herein as if specifically set forth at length.

101. Defendants are a "person" under NMSA § 74-4-3(M).

102. PFAS, as described herein, are discarded materials and each is a "solid waste" as defined under the HWA, NMSA § 74-4-3(O), and a "hazardous waste" as defined under NMSA § 74-4-3(K).

103. As a result of the releases of PFAS and other hazardous wastes at Cannon and Holloman as described herein, Defendants have contributed to and will continue to contribute to the past and present handling, storage, treatment, transportation, and/or disposal of solid or hazardous waste which has or may present an imminent and substantial endangerment to health and/or the environment in violation of the HWA, § 74-4-13.

104. Conditions at Cannon and Holloman, as described herein, have presented or may present an imminent and substantial endangerment to health and/or the environment via continued migration of contamination in groundwater and/or drinking water at and around the Bases. In addition to natural resources throughout the environment, members of the public and those living in or visiting surrounding areas are or will be directly exposed to contaminants through all pathways of migration.

105. Although Defendants have acknowledged that the presence of PFOA and PFOS presents an imminent and substantial danger at Cannon, Defendants have declined to take remedial action required under the law.

106. By reason of the foregoing acts and omissions of Defendants, the State is entitled to an order for such relief as may be necessary to remedy the results of Defendants' conduct. Such relief includes but is not limited to injunctive relief compelling Defendants to take all steps necessary to achieve permanent and consistent compliance with the HWA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the State of New Mexico, respectfully requests that the Court enter judgment in its favor and against Defendants by granting relief as follows:

a. An order declaring that Defendants' conduct violated the HWA;

b. Immediate injunctive relief requiring the abatement of ongoing violations of the HWA, abatement of the conditions creating an imminent and substantial endangerment, and to fund any costs associated with each compliance whether incurred by the State or third parties performing abatement;

c. A permanent injunction directing Defendants to take all steps necessary to achieve permanent and consistent compliance with HWA;

d. All available civil penalties under applicable statutes;

e. The payment for past costs incurred by the State and not yet reimbursed by the Defendants in connection with its oversight and efforts to obtain compliance with the HWA in this matter;

f. A declaratory judgment providing the State with a mechanism for reimbursement of future costs incurred by the State in connection with its oversight and efforts to monitor compliance with the HWA in this matter;

g. A judgment awarding the State costs and reasonable attorneys' fees incurred in prosecuting this action, together with prejudgment interest, to the full extent permitted by law; and

h. A judgment awarding the State such other relief as may be necessary, just, or appropriate under the circumstances.

Dated: March 4, 2019

Respectfully submitted:

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EXHIBIT "B"

SUPERIOR COURT OF NEW JERSEY
BURLINGTON VICINAGE

CHAMBERS OF
Michael J. Hogan, J.S.C.
Retired, T/A Recall

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Letter Opinion – Not for Publication
Without Approval of the Committee on Opinions

Re: Motion to Approve Attorneys Fees and Costs
New Jersey Department of Environmental Protection v. Exxon Mobil Corp.,
Docket No. UNN-L-3026-04, consolidated with Docket No. UNN-L-1650-05

Dear Counsel:

The firm of Kanner and Whiteley, L.L.C. (the "Firm" or "Kanner Firm"), with the support of the State of New Jersey ("State"), has applied for the approval of its contingent fee pursuant to N.J. Ct. R. 1:21-7. This rule, in relevant part, provides:

> (c) In any matter where a client's claim for damages is based upon the alleged tortious conduct of another . . . an attorney shall not contract for, charge, or collect a contingent fee in excess of the following limits:
>
> (1) 33 1/3% on the first $ 750,000 recovered;
> (2) 30% on the next $750,000 recovered;
> (3) 25% on the next $750,000 recovered;
> (4) 20% on the next $750,000 recovered;

> (5) on all amounts recovered in excess of the above application for reasonable fee in accordance with the provisions of paragraph (f) hereof;
>
> . . .
>
> (f) If at the conclusion of a matter an attorney considers the fee permitted by paragraph (c) to be inadequate, an application on the written notice to the client may be made to the Assignment Judge or the designee of the Assignment Judge for the hearing and determining of a reasonable fee in light of all the circumstances. This rule shall not preclude the exercise of a client's existing right to a court review of the reasonableness of an attorney's fee.

(emphasis added). In this matter, the State is not questioning the reasonableness of the Firm's fee; rather it is supporting the fee in all respects as reasonable and in accordance with the State's special counsel agreement ("SCA").

The underlying legal services upon which this fee application is based are the services and costs provided by the Firm related to New Jersey Department of Environmental Protection v. Exxon Mobil Corp., Docket No. UNN-L-3026-04, consolidated with Docket No. UNN-L-1650-05. The Firm's client, the State of New Jersey, is to receive a lump sum payment from ExxonMobil ("Exxon") of $225 million as settlement for the State's natural resource damage claims at the Bayway and Bayonne refinery sites as part of a global settlement. The settlement includes claims and certain potential claims at other Exxon sites in New Jersey.[1] The settlement, which the court has previously found to be fair and reasonable and in the public interest, is the largest settlement in New Jersey's environmental jurisprudence to date, according to the Firm and the State.

Under R. 1:21-7(c), the maximum fee recoverable after credit for cost and expenses would be $812,500. The Firm is seeking $44,397,633.41 in contingent fees plus $5,699,332.93 in costs, which would be paid from the gross recovery of 224,000.000.[2] This fee request is extraordinary, and as such, it is consistent with most other facets of the Exxon matter.

As noted above, the rule requires that the application be submitted to the Assignment Judge or the Assignment Judge's designee. For this application, the Union County Assignment Judge, Hon. Karen Cassidy, has authorized the court herein to consider the fee application. Paragraph Fourteen of the approved consent judgment provides that Exxon and the State shall be responsible for their respective fees and costs. Therefore this fee application is not a fee-shifting application.

On July 9, 2003, the State and the Firm entered into a contingent fee agreement to pursue a natural resources damages lawsuit against Exxon. The litigation commenced with the filing of

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[1] A more detailed discussion of the case background and settlement terms is found in previous court decisions and most recently in the courts approval of the consent judgment that settles the case.

[2] The actual settlement is $225 million, but the $1 million recovered for the Paulsboro litigation is not an action in which the Firm participated, thus they seek no fee or costs.

the initial complaints on August 18, 2004. The original SCA provided in relevant part that for cases where settlement occurs after commencement of a trial the contingent fee would be 25% of the first $10,000,000 recovered; 22.5% of the next $15,000,000 recovered; and 20% of any amount recovered over $25,000,000. For cases assigned to the firm where there is a settlement before a suit is instituted, the fee is 15% of the first $10,000.000 recovered. All of these sums were net after deduction for costs.

The SCA was subsequently modified to come into compliance with a lawsuit and order of Superior Court entered subsequent to the contingent fee agreement. This suit challenged the authority of the Attorney General to enter into such a contingent fee agreement with a special counsel. N.J. Soc. for Envtl. & Econ. Dev. v. Campbell, Docket. No. MER-L-343-04 (N.J. Super. Ct. Law. Div. June 17, 2004) (Sabatino, J.S.C.). The outcome of that case provided that the contingent fee agreement was permissible, but special counsel had to follow the procedure and limitations set forth in R. 1:21-7. Thereafter, by confirming letter from the Attorney General on June 28, 2004, the contingent fee agreement was amended to come into in compliance with the Rule as per the court order.

According to Mr. Kanner's certification, for a considerable period of time prior to entering the SCA, the Firm worked with the Attorney General's Office and the Department of Environmental Protection to assist these offices in the development of its Natural Resource Damage Program. This process involved substantial investigation work, including file review, as well as out-of-pocket costs by the Firm. This extensive general work in support of the NRD program is referred to by Mr. Kanner in his certification as the "Mining Process."[3] These services to the State were performed by the Firm at no cost to the State. According to Mr. Kanner, "Kanner and Whiteley bore the costs of this process and expended considerable time and effort in the furtherance of the Department's NRD program, while receiving no compensation. Instead, the thinking at the time was that the Firm would be subsequently retained as Special Counsel to litigate numerous NRD cases on behalf of the Department."[4]

While the Firm's brief and Mr. Kanner's certification show great effort prior to the SCA, the court finds no basis for considering fees and costs based on those services as part of this application. Such services are certainly a good example of the "no stone left unturned" approach to the Firm's NRD efforts However, the expectation of the Firm as stated by Mr. Kanner was that their gratis pre-SCA services would be rewarded with being named special counsel for litigation with the opportunity to earn a fee under a subsequent formal agreement.[5] That expectation was met. While no doubt these pre-SCA services were valuable to the State, under the terms of the arrangement as determined by the Attorney General at that time and accepted by the Firm, those efforts were essentially a form of business development, rewarded by obtaining a litigation retainer agreement from the State.

The SCA does not provide for compensation or costs for services rendered retroactively or prior to its entry. The provision 9(i) of the retainer agreement is prospective in nature and provides no language to suggest it was to be applied retroactively. As former Attorney General

[3] Kanner Certification, Pg. 6, ¶ 10.
[4] Kanner Certification, Pg. 7, ¶ 13.
[5] Ibid.

Samson made clear in the earlier retaining letter of May 31, 2002, executed by Mr. Kanner, the Firm "was authorized to investigate these prospective claims completely at your own expense" and that "this engagement is without fee." Therefore, the court concludes that the examination of the reasonableness of the fee application under the court rule is limited to the contingent fee earned under the four corners of the July 9, 2003 agreement only.

R. 1:27-7(f) requires that that the fee review must be based on a finding that the fees are "reasonable in light of all the circumstances." To make that determination, courts review the relevant factors under the Rules of Professional Conduct ("R.P.C."), and more specifically R.P. C. 1.5. Ehrlich v. Kids of North Jersey. 338 N.J. Super. 442 (App. Div. 2001). In considering these factors it should be noted that the sheer size of the application for $50 million in fees and costs dwarfs the New Jersey caselaw precedents. Even applying those precedents that demonstrate a reasonableness finding in more modest fee applications, when the fee is of such a magnitude a court should also consider whether a contingent fee reaches such a tipping point that what is reasonable becomes an unearned windfall, even if the percentages of recovery are agreed upon by the client.

Below the court examines the factors under R.P.C. 1.5.

R.P.C. 1.5(a)(1) – The time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform the legal series properly.

The court has been responsible for this case since the spring 2013, but the court by necessity has also become very familiar with the history and previous rulings of this eleven year old case. There can be no question that this case raised complex and novel issues of law, including the application of the controversial Habitat Equivalency Analysis methodology. The Firm was required to undertake a sixty-six day trial before Exxon became motivated to reach a settlement with the State while awaiting the court's decision on the merits. Even the fundamental and difficult question of whether there was a cause of action under the Spill Act for NRD (loss of use) made its way to the Appellate Division on an interlocutory basis as well as statute of limitation issues. The Firm provided the legal services to be successful on those trips to the Appellate Division. Altogether there were three rulings of the Appellate Division litigated by the State under the guidance of Mr. Kanner and his Firm.[6]

The Firm has labored in the high weeds of this litigation for eleven years, and during that time it received no compensation or reimbursement, as agreed. However, during that extensive time period the Firm still had to expend money for salaries and firm overhead associated with this case. Mr. Kanner has certified that 40,000 legal service hours of non-compensated time and $5 million in costs were advanced by the firm over the eleven years.[7] These legal services included, in addition to other efforts, three interlocutory appeals, retention of multiple experts, depositions and extensive and difficult discovery practice culminating in a sixty-six day trial. Following the trial there was extensive post-trial briefing as well as the services related to the

[6] Two published and one unpublished decisions.
[7] The court has rounded the numbers for discussion purposes.

final settlement approval. This included another trip to the Appellate Division to fend off a challenge by a group of environmental organizations seeking intervention.[8]

Likewise the high difficulty of conducting discovery and defending the State's prerogatives from a more-than-able adversary demonstrates to this court a high level of competence and skill. There were many novel and untested questions that the Firm had to address at various stages of the proceedings, such as expert evidence questions, loss of use over time damages under the Spill Act, retroactivity of the Spill Act, the role of physical improvements, the application of the Public Trust Doctrine over private uplands, and the applicability of Habitat Equivalency Analysis methodology in NRD litigation, to name a few of the issues that required experienced, motivated, and highly skilled counsel.

The Firm was up against a determined adversary who created a daunting ten year defense that a less experienced, less determined, or less skilled effort would not have been able to timely, professionally, and, for the most part, successfully meet the challenge.

R.P.C 1.5(a)(2) – The likelihood, if apparent to the client that the acceptance of particular employment would preclude other employment by the lawyer.

Natural resource damages, are a relatively unsettled form of damage that are not based so much on tortious activity but based on an expert's opinion of how much money it takes to restore injured natural resources over time, and how much money is needed to compensate for the loss of use of the natural resource over time. These conclusions are by no means determinable by a simple, scientifically objective test. In this case the alleged time period for the damage is as much as a hundred years. Litigating natural resource damages is a complex and time intensive undertaking, involving a close and confident relationship between the Attorney General, the DEP and the Firm. The court was able to observe that this was true during the trial.

The Kanner Firm is, under any definition, a small law firm. It is dwarfed by the firms that it opposed in this case. Yet by having the focus of those attorneys assigned to the case devote the majority of their time to their client's efforts, they undoubtedly were precluded from taking on numerous new clients particularly because of their limited size. The Attorney General's Office, having worked with the firm for over a year on a non-compensation basis before formally retaining the firm, was most certainly well aware of the limitations their retainer agreement and subsequent litigation would place on the economics of the firm and it is no doubt a reason for their support of the Firm's application.

R.P.C. 1.5(a)(3) – The fee customarily charged in the locality for similar legal services.

Because of the size of the fee in this case and its contingent basis there are no state court parallels for such attorney fee amounts in this locality, which for purposes of this determination the court considers to be the entire State of New Jersey. The DEP is a state-wide agency that has been involved historically in many lawsuits in state and federal courts regarding their efforts in

[8] As provided in the Firm's brief, "Written and documentary discovery was also expansive involving approximately 70 expert and fact depositions and over a million pages of document reviewed by the parties and selected for duplication in discovery. Exhibits used at trial totaled over 380,000 pages." Brief in Support of Motion, 12.

protection of the environment under many statutes and their related regulations. While there are no cases with the same or similar fee determinations in New Jersey environmental jurisprudence, as the Firm has cited in its brief, there are numerous cases which provided fee awards that are similar to the percentages sought in this case, even though the ultimate dollar award may be far less. In New Jersey Department of Environmental Protection v. ISP Environmental Services, Docket. No. UNN-L-2271-07 (N.J. Super. Ct. Law Div.), for example, a case in which the DEP was represented by the Kanner Firm, the Superior Court found that a percentage of 24% of the net recovery was reasonable. Of note to this court, is that the settlement in the example was arrived before trial, unlike the instant case where there was a complex and lengthy trial was completed.

The overall fee percentage the Firm seeks in this case, after having conducted a lengthy trial is approximately 20.4% of the net recovery after taking into consideration the contingent fee rule and applying the agreed-upon fee schedule in the SCA. The Attorney General has supplied a list of numerous contingent fee agreements it has with special environmental counsel that provides for a range of similar percentages. The court concludes this factor is satisfied because there is ample basis to conclude that an overall 20.4% recovery rate in such a novel, complex, and nearly on-of-a kind environmental case is within the range of percentages for contingent fee agreements that is customary for the New Jersey locality.

R.P.C. 1.5(a)(4) – The amount involved and the results obtained.

In the underlying case, New Jersey sought $8.9 billion. The settlement with Exxon recovered $225 million. Many public comments opposing the settlement were based on objections to the facially apparent disparity. Relying on this fact alone to argue that the settlement figure was not a substantive outcome oversimplifies the issues that were at stake. Obviously, the Firm and New Jersey believe that this settlement was a successful outcome, and the court has determined it to be fair, reasonable, and in the public interest.

The trial evidence demonstrated that the DEP's NRD strategy from the beginning in 2003 was to bring responsible parties to the table to reach compromise and settlement. Policy Directive 2003-07 (PEX 0544) demonstrated that and former Commissioner Campbell and John Sacco of the DEP testified to that point as well. In trial, the evidence also demonstrated the fact the DEP was mostly successful in this strategy with New Jersey industries. However, Exxon did not take the State's settlement bait. Exxon was for eleven years an exception to the many companies who chose to compromise with the DEP on NRD issues. Exxon exercised its rights and refused to settle and thus forced the hand of the DEP and its counsel to expend ten years of effort and to try the case to its conclusion.

Only after this marathon of a trial and before the court issued its merits trial decision, did the efforts of the State through the representation by the Firm cause Exxon to change course and negotiate a settlement that has been determined to be in the best interest of the public. While the stated goal of the DEP was to recover $8.9 billion, as the trial evidence clearly showed and the subsequent certifications of the Attorney General Hoffman and Commissioner Martin demonstrated, the goal was a litigation goal which had great risk of not being fully achieved. When placed in the context of the settlement efforts over the years through different

administrations, the amount of the settlement was certainly in line with the settlement strategy that the trial evidence showed was a vital component of the NRD program during the pendency of this litigation.

Having presided over the trial and reviewed all the testimony and evidence, the court believes that while its trial decision findings may have led to a different conclusion, the recovery of $225 million is a success for the citizens of New Jersey. This result as well does justice to the Spill Act. By the State and Exxon trying the case, both sides got to see the hand of cards that each side held and, thus, for the first time were in a position to judge for themselves the risks of continuing to play the high stakes gamble. Faced with the trial evidence, the parties found the common ground that had eluded them for 11 years.

In a less complex case, where there was no trial, and the matter was settled without the extraordinary efforts of the Firm and the Attorney General's Office, a good argument could be made that such a fee as the Firm claims here, even if agreed to by the State, would fall into unearned windfall territory when judged against the outcome. But that situation does not exist here. The court finds the fees are in line with the results achieved and otherwise satisfy this factor.

R.P.C. 1.5 (a) (5) – The time limitations imposed by the client or circumstances.

This fact is not relevant to this fee application. There were not any time limitations imposed on the Firm by either the Attorney General, the DEP, or the courts.

R.P.C. 1.5 (a) (6) – The nature and length of the professional relationship with the client.

The professional relationship between the Firm and the State has been ongoing, wherein the State has authorized broad responsibilities over many years, demonstrating a strong trust and respect between the Firm and the Attorney General's Office and the DEP. In addition, while the Attorney General and the Firm have been jointly representing the State, the relationship between them has been apparently seamless as they have pursued the litigation to date.

Beginning in May 2002, the parties formalized an initial representation wherein the Firm was retained, but without cost to the State to help with the development of the DEP's natural resource program. As stated by Mr. Kanner in his certification, "the firm worked for over a year to investigate and assess potential NRD claims, working closely with the DOL and the Department's Office of Natural Resource Restoration (ONRR) and the Bureaus of Site Remediation to evaluate hundreds of sites and hazardous discharges throughout the State."[9] This initial effort was gratis by the Firm, who were expecting to be retained, and indeed were on July 9, 2003, to begin the litigation that the Attorney General would subsequently authorize.

Over several administrations and multiple Attorneys General and DEP Commissioners, the Firm has represented the State in other cases in addition to Exxon. The court is satisfied that this factor favors the application. This long-term relationship has provided the State with a

[9] Kanner Certification, Pg. 4, Item 5.

consistent legal strategy, which is in substantial part responsible for the ultimate settlement outcome in this matter.

R.P.C. 1.5 (a)(7) – The experience, reputation, and ability of the lawyer or lawyers performing the services.

Based upon the exhibits that accompanied the application, the Firm, whose home base is New Orleans, Louisiana, is a well-known environmental firm not only in their home state but in many other jurisdictions around the United States. The Firm or its predecessors has been in existence for thirty-four years. The Firm most recently also represents the State of Louisiana in its environmental claims involving the 2010 BP oil spill. Mr. Kanner himself, has authored academic articles on complex environmental issues as well as having taught on an adjunct basis at nationally known universities. Undoubtedly, former Commissioner Campbell held the firm in high regard because of its reputation when he initiated the relationship between the DEP and the Firm. From the early 2000s onward, succeeding commissioners and attorneys general continued to recognize the abilities, experience, and reputation of the Firm by continuing and building on their relationship.

R.P.C. 1.5 (a)(8) – Whether the fee is fixed or contingent.

The fees sought in this case are contingent on a successful recovery. Contingent fee agreements serve a broad purpose, permitting greater access to our court system for those with claims, but without the financial means to legally pursue such claims. In the areas of litigation where they are permitted they also serve to level the playing field between a deep-pocketed defendant and a client of limited means. Such fee arrangements permit a law firm to assess the risk, and then to take on such a client, and the firm is rewarded for its risk by receiving a fee from the recovery that most likely would exceed what it would have received on an hourly basis, win or lose. Most importantly, if the law firm is not successful in recovery, the client pays no fee for the services. Another benefit of a contingent fee is to potentially weed out frivolous claims. Before taking on such a contingency, the law firm will surely satisfy itself that the dispute risks and unknowns are worth the pursuit of a legitimate claim with genuine recovery potential.

In the public sector, where claims by the State involve complex legal and scientific environmental claims, a contingent fee arrangement, such as in this case, also plays another positive role. Such a fee arrangement allows for the State to husband its resources, and to pursue such complex litigation without the added and extensive costs of paying an experienced law firm by the hour to pursue a case, win or lose. In addition it allows the State to retain law firms that have a special legal expertise and experience that the Attorney General's office might not possess. From a law firm's perspective, they have to decide the legitimacy of the claims and conclude that there is merit sufficient to support taking the risk of exposing its firm resources that could lead to no recovery in the worst case after the expenditure of much time, effort, and expense. It is in this context that the State and the Firm entered into its contingent fee agreement.

There is an inherent risk in any contingent fee agreement, and in the instant case the risk was more significant than the average. To be successful, the Firm would have to litigate many issues that were novel and the outcome was uncertain even before the exposure to the risks

associated with an extensive and prolonged trial. This holds true for the risks of an adverse outcome on appeal.

One of the most important risks was to establish that, as a matter of law, compensatory damages for loss of use of adversely affected natural resources were recoverable under the Spill Act. This issue was overcome by the Firm when the Appellate Division held "'loss of use', is a means of measuring the reduction of services provided by a polluted natural resource and establishing a value for its replacement" and "we find that the DEP's claim for 'compensatory restoration' – loss of use damages – is consistent with the Spill Act's express terms, is harmonious with legislative intent, and is in keeping with the legislative directives articulated in the Act's recent amendments." N.J. Dep't of Envtl. Prot. v. Exxon Mobil Corp., 393 N.J. Super. 388, 393, 410 (App. Div. 2007).

It is this "loss of use" holding that is probably the most important ruling in the case's long history because of its far-ranging precedent, now preserved because of the approved settlement. This important precedent will benefit the public in providing legal support for DEP negotiations with potentially responsible parties in future cases for NRD brought or contemplated by the State. There were many other risks that the Firm and its client faced as well. Those additional risks are set forth in much detail in the court's decision to approve the settlement and need not be repeated here.

The retainer agreement between the Firm and the State was a comprehensive and detailed agreement. In addition to the recovery schedule, the agreement provided that if there is no recovery, there is no fee to be paid to the Firm, and "the repayment of costs is contingent upon a recovery being obtained. If no recovery is made the State owes nothing for costs."[10]

The agreement also gives the Attorney General an independent right to reduce the calculated fee if he determines the fee is unreasonable, using many of the factors found under R.P.C. 1.5(a). Under the retainer agreement the Firm faced the risk that it would have to expend millions of dollars to pursue the litigation and come up empty handed. The benefit to the State is obvious. If, at the conclusion of the case after all appeals are exhausted, the final result is that no money is recovered, the taxpayers of the state will not be obligated to pay the Firm a penny.

* * *

Before coming to a conclusion, the contingent fees and costs must be examined.[11] The Firm provided the court a professional services summary. Subsequent to that submission the

[10] Retainer Agreement, Item 11 (July 9, 2003).

[11] Prior to the oral argument on the fee application on July 30, 2015, the court received unsolicited correspondence from the law firm of Nagel Rice, LLP. The Nagel firm, in its July 24, 2015, letter supports the Kanner Firm application. They also represented that they provided services to the Kanner Firm in connection with this case. On inquiry by the court during oral argument it was represented that the Nagel firm performed services as an associated counsel, and that fees owed to the Nagel firm will be paid from the approved fees payable to the Kanner Firm by the State. Mr. Kanner also confirmed that they are not considered reimbursable costs under his application. It was also confirmed that the Nagel firm has no retainer agreement directly with the State regarding the Exxon litigation. Therefore, the court makes no findings regarding the extent or merits of the Nagal Rice submission, as the payment of their fees and costs is the responsibility of the Kanner Firm and does not entail further payment by the State.

court forwarded to counsel requests for additional information which were responded to in a timely fashion. In addition to reviewing the initial submission in support of the reasonableness of the contingent fee, which included a summary of professional services and costs, with the receipt of more detailed information, the court was able to review the detail of the costs making up the total of reimbursable costs. The court was also provided with and reviewed a list of other contingent fee special counsel agreements the Attorney General has entered into since 2002, along with the hourly rates charged by the Kanner Firm in environmental matters.[12] The Attorney General's list of law firms who have or are acting as special counsel in environmental cases, demonstrates, with only two exceptions, that the contingent fee percentages are in line with the SCA in this case.[13]

The court also asked for and received via a certification from DAG Richard Engel, a further explanation of the scope of review of the fees and costs that he and his staff undertook before recommending that the court approve the fees as being reasonable. The Firm represented that it performed 40,063.40 hours of work by fifteen lawyers and seven paralegals, through December 12, 2014. The Firm has continued to perform services since that date, and under the terms of the SCA will have to continue to do so as necessary. They represent that they expended $5,171,168.71 in reimbursable costs pursuant to the SCA. The Attorney General's Office does not dispute these costs. The court, after having reviewed the detail reimbursable costs, finds them to be reasonable and in accordance with the SCA.

The legal fees themselves are calculated based on $224 million. Of the $225 gross recovery $1 million represents the recovery on the Paulsboro Litigation, for which the Firm performed no services under the SCA. The net recovery therefore is $218,300,667.07 ($224,000,000 minus reimbursable costs of $5,699,332.93 equals $218,300,667.07).

Pursuant to Rule 1:21-7, the fee calculated on the first $3 million of the recovery equals $812,500. Thereafter the fee is calculated based upon the SCA. On the next $7 million (25%) which equates to $1,750,000. On the next $15 million (22.5%) which equates to $3,375,000. On the balance of the recovery ($189,300,667.07), after deducting $4 million which was allocated for the remaining off-site recoveries, which are being settled without litigation, the fee is 20% or $37,860,133.41. The remaining $4 million generates a fee under the SCA based on 15% or $600,000 because the claims were settled without their having to be litigated.

To summarize:

Rule 1:21-7 fees:	$812,500.00	first $3 million
SCA fees:	$1,750,000.00	next $7 million – 25%
	$3,375,000.00	next $15 million – 22.5%

[12] In the submission, it was pointed out that the Firm generally performs most of its work on a contingent fee basis, but it was able to submit hourly rates for its professional staff relative the Firm's work on the recent BP oil spill case for the State of Louisiana. It was further pointed out by the Attorney General's Office that such hourly rates are generally lower than customary hourly rates charged in New Jersey and the Northeast.

[13] One of those exceptions is New Jersey Department of Environmental Protection v. Occidental Chemical Corp, Docket. No ESX-L-9868-05, where the agreement provided for a hybrid where counsel was paid $23 million on $355.4 million in recoveries, plus fees paid on an hour rate.

	$37,860,133.41	next $189,300,667.07 – 20%
	$4,000,000.00	non-litigated recovery – 15%
TOTAL FEE:	$44,397,633.41	

After considering the R.P.C 1.5(a) factors above, and after a thorough review of the Firm's submission, and the Attorney General's supplemental response to questions posed by the court, the court is satisfied that the requested fees and costs are reasonable. In making that finding, the court is well aware of the significance of the size of the fee award. But the court is also aware of the unusual nature of this case, in which the Firm for eleven years has worked diligently and professionally on behalf of their client, the State of New Jersey, without receiving any compensation. The court likewise recognizes the risk that they have taken in financing this litigation for the State of New Jersey – that risk being a real possibility that in the end after all appeals are exhausted there might not be any recovery. That would mean that the eleven-plus years of effort and cost would be absorbed by the Firm.

It is also important to note that the Firm's work may not yet be done, as the approval of the settlement by the court could be the subject of an appeal, which could potentially add years to their effort with uncertain outcomes. This award of fees includes any such future services, should any appeal arise. The SCA provides "Special Counsel's duty to represent the State in assigned NRD case shall include acting on behalf of the State in all levels of appeal."[14] While the rewards for success in this case are generous, such reward potential is counterbalanced by the great risks the Firm faced, which are significant and substantial and will continue until all appeals have been exhausted and the consent judgment becomes non-appealable.

By the terms of the Consent Judgment the $225 million payment by Exxon will be held by the State in a segregated account and cannot be used for any purpose, which the court interprets as including the payment of legal fees and costs, until the Consent Judgment "becomes final and non-appealable."[15] One final point on this application. Contained in the Firm's proposed order submitted with the application is Item 3, which states the fee "shall be adjusted to include all applicable interest thereupon." The interest referred to is footnoted to reference the fact that the settlement proceeds as part of the consent judgment are to be placed in an interest bearing account until the "judgment becomes final and non-appealable." The court will not approve the payment of interest to the Firm accrued in this fashion. Since the terms of the SCA at Paragraph 3 require the Firm to represent the State through appeals and the consent judgment is not fully executed until by its terms it is "non-appealable," the court finds that the fees are not contractually earned and thus not payable by the State until such time as the final judgment becomes "non-appealable."

The Firm has demonstrated no entitlement to a portion of interest earned by the State, as it has performed no efforts related to the accrual of interest. To permit the payment of such interest to the Firm would be unreasonable and an affront to R. 1:21-7(f). and R.P.C. 1.5. The interest provision in the consent judgment was to ensure that if the settlement is not approved, or if the court's approval of the settlement is overturned on appeal, that Exxon would promptly

[14] SCA, Item 3 (emphasis added).
[15] Consent Judgment, ¶ 5.

have its money returned with interest. Even if such interest provision was not in the consent judgment, the State likely would place such settlement funds in an interest bearing account as a prudent practice. The SCA does not contemplate such an unearned payment to the Firm.

In conclusion, the court GRANTS the motion and approves the fee and cost application consistent with this opinion and attached Order.

MICHAEL J. HOGAN, P.J. Ch.
(retired T/A recall)

cc: Superior Court of New Jersey – Union Vicinage
Susan J. Kraham, Esq.
Richard Rudin, Esq.

EXHIBIT "C"

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 in a variety of substantive areas of the law, including the representation of state natural resources trustees. Based in New Orleans, Louisiana, Kanner & Whiteley has successfully secured historic recoveries on behalf of its clients for over 38 years. The firm has been especially successful in environmental and toxic tort litigation, pioneering many of the most important developments in these fields. The firm's attorneys are held in high regard for their persistence, preparation, attention to detail, ability to synthesize large amounts of complex information, problem solving, creativity and strategic thinking. According to Chambers USA, Kanner & Whiteley "enjoys a 'sterling reputation' for plaintiff-side representation," and Allan Kanner has been separately lauded as "'the best oil and gas' expert in the world as lead counsel for [The Deepwater Horizon] spill litigation." Sonia Smith, *Lawmakers Briefed On State's Oil Spill Response*, BATON ROUGE ADVOCATE (June 10, 2010). Mr. Kanner and Ms. Whiteley are 2017 and 2018 Lawdragon 500 Leading Lawyers in America, and the firm was honored as a Finalist by The National Law Journal in 2015 and 2016 as Elite Trial Lawyers.

NATURAL RESOURCE DAMAGE, ENVIRONMENTAL AND TOXIC TORT EXPERIENCE

Since its inception, Kanner & Whiteley has been on the cutting edge of environmental, natural resource and toxic tort law developments. Starting with *Three Mile Island* and the *Louisville Sewer Explosions*, the firm has achieved an unmatched record in helping clients to navigate through the complex and dynamic backdrop of environmental laws and regulations. Our litigation practice has involved successful claims for recovery of compensation for environmental damage to persons, property, government and the Public Trust resulting from contamination in fields including but not limited to toxic torts, natural resource damages, nuclear power, the Resource Consevation Recovery Act, the Clean Water Act, and the Clean Air Act. The firm has pursued causes of action for both private and public entities under various theories, including nuisance, trespass, strict liability, unjust enrichment, *parens patriae*, as well as both federal and state environmental statutes. These actions have taken the form of class, multiple party, government, and individual plaintiff proceedings against a multitude of corporations, including ExxonMobil, Shell, Texaco, ConocoPhillips, and BP/Amoco. Most recently, the firm secured groundbreaking settlements in two of the largest natural resource damage (NRD) cases in history.

The firm has the best NRD record of any firm in America. The firm acts as Special Counsel to the New Jersey Attorney General and the Department of Environmental Protection to both develop New Jersey's comprehensive natural resource damages program, as well as litigate

these claims against industry defendants unwilling to amicably resolve their natural resource damage liability with the Department. Initially the firm worked with Commissioner Bradley Campbell and Attorney General David Samson to catalog and prioritize the State's viable claims and prepare legal theories and factual information to enable the State to enforce its interests.

The firm began litigating the leading and largest case in New Jersey's natural resource damage program in 2004 against Exxon Mobil for injuries at two of Exxon's former refinery sites in the State. In a 2007 opinion in that case, the New Jersey Appellate Division found in favor of the State on appeal from a partial summary judgment ruling (under the New Jersey Spill Act), finding that damages for loss of use and services of the State's natural resources are available to the State. *New Jersey Dep't of Envt'l Prot. v. Exxon Mobil Corp.*, 393 N.J. Super. 388 (App. Div. 2007). Damages were tried from January 2014 through September 2014. After trial, the parties reached a settlement for $225 million. The settlement was approved by the trial and appellate courts as fair and in the interests of the public.

In addition to the case against ExxonMobil, Kanner & Whiteley has served or serves as Special Counsel to the State of New Jersey in other matters seeking restoration or compensation for natural resource injuries and other complex litigation matters. On August 1, 2018, as part of the environmental initiative of the new administration, Kanner & Whiteley filed suit on behalf of the State against Hess Corporation and Buckeye Partners seeking compensation for the lost use and value of resources injured as a result of discharges at the former Hess refinery in Woodbridge, New Jersey. *See N.J. Dep't of Envtl. Prot. v. Hess Corp., f/k/a Amerada Hess Corp. & Buckeye Partners, L.P.*, Superior Court, Middlesex County, No. MID-L-004579-18. Kanner & Whiteley also filed a complaint on behalf of the State of New Jersey against Exxon Mobil Corp. seeking natural resource damages and restoration for years of injuries caused by polychlorinated biphenyl ("PCB") and other contaminants dumped at the Lail Site in Gloucester County, New Jersey. *See New Jersey Department of Environmental Protection, et al. v. Exxon Mobil Corporation,* No. GLO-L-000297-19.

The firm was also retained by Louisiana Attorney General James D. "Buddy" Caldwell as Special Counsel to represent the State of Louisiana with its claims resulting from the BP Deepwater Horizon oil spill in the Gulf of Mexico, including claims to recover economic losses, response costs and natural resource damages. The firm was involved in the negotiation of the $18.7 billion global settlement agreement with British Petroleum that resolved all remaining claims against BP Exploration and Production, Inc. brought by the United States, Louisiana and the rest of the Gulf States, and a majority of local government entities in those states. Kanner & Whiteley secured the recovery of more than $8.8 billion in both environmental and economic damages resulting from the disaster solely for the State of Louisiana, the largest of the States' recoveries and the largest single NRD recovery ever. In addition, the firm assisted the State in its response efforts to the impacts from the spill.

In addition to its current work for the State of New Jersey, Kanner & Whiteley represents the State of New Mexico in PFAS litigation against the United States Air Force. *State of New Mexico, ex rel. v. The United States et al.,* No. 6:19-cv-00178 (D.N.M.).

Kanner & Whiteley continues to bring pioneering environmental cases under innovative theories of liability. In September of 2016, Kanner & Whiteley joined the Conservation Law Foundation in bringing a landmark case against ExxonMobil for failure to follow the best practices required under federal law in armoring the ExxonMobil Everett Terminal in Massachusetts against sea level rise, flooding, and other risks associated with climate change that threaten the Terminal, as well as the repeated violations of its permit conditions. *Conservation Law Found., Inc. v. ExxonMobil Corp. et al.* 1:16-cv-11950-MLW (D. Mass). The trial court denied ExxonMobil's efforts to dismiss this landmark case.

The complaint, filed in the United States District Court for the District of Massachusetts, seeks penalties and injunctive relief for ExxonMobil's violations of the Resource Conservation Recovery Act and the Clean Water Act associated with operations at its Everett Terminal. The complaint alleges in part that despite a broad corporate understanding of the certainty and the effects of climate change dating back decades, ExxonMobil failed to take action to address imminent risks of increased flooding and greater storm tides at the Terminal and to protect local communities from the increased risk of oil and hazardous pollution discharges and spills at the Terminal that are associated with the effects of climate change. In addition, the complaint alleges that ExxonMobil routinely discharges toxic pollutants into the Island End and Mystic Rivers in amounts that far exceed permitted levels and degrade water quality. The firm is also pursuing similar claims against Shell Oil Company relating to violations of the Clean Water Act and the Resource Conservation and Recovery Act for its facility in Providence, Rhode Island. *Conservation Law Found., Inc. v. Shell Corporation USA,* 1:17-cv-00396-WES-KDA (USDC R.I.).

TRIAL AND APPELLATE EXPERIENCE

Kanner & Whiteley has an excellent trial and appellate reputation. The firm has substantial jury trial experience with a number of multi-million-dollar verdicts, including three successful class action trials. Kanner & Whiteley has successfully litigated civil RICO, environmental, toxic tort, antitrust, and fiduciary duty class actions.

The firm has served as lead counsel in a number of cases, including the following: *In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, MDL No. 2179 (E.D. La.) (representing the State of Louisiana to recover for natural resource damages following Deepwater Horizon Oil Spill); *N.J. Dep't of Envtl. Prot. vs. ExxonMobil, Corp.*, Superior Court Union County, Docket No. UNN-L-3026-04 consolidated with UNN-L-1650-05 (representing the State of New Jersey to recover for natural resource damages at the sites of two former refineries under the New Jersey Spill Act and common law theories including nuisance); *In re: Avandia Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 1871 (E.D. Pa.) (representing the State of Louisiana in a fraud case); *In re: Budeprion XL Marketing and Sales Practices Litigation* (MDL 2107) (E.D. Pa.) (Lead Counsel, pending national pharmaceutical consumer class action); *In re Cox Enterprises, Inc., Set-Top Cable Television Box Anti-Trust Litigation*, MDL No. 2048 (W.D. Okla.) (Co-Lead Counsel) ($6 million antitrust jury verdict); *Roeder v. Atlantic Richfield Co.*, 3:11 - CV - 00105-RCJ -WGC *(D. Nev.)* (Settled pollution property damage class action); *Shaffer v. Continental Casualty Co.*, No. CV-06-2235-RGK (C.D. Cal.) (Lead Counsel) ($60 million class action long term care insurance settlement.);

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); *Samples v. Conoco, Inc.,* No. 2001-CA-000631, Div. J (Escambia County, First Judicial Circuit Court, Florida, 2003) (Litigation of groundwater contaminant class action; $65 million property owner class settlement); *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); *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). *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); 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 handling complex litigation and trials:

> Letter Opinion, *N.J. Dep't of Envtl. Prot. v. Exxon Mobil Corp.*, Dkt. Nos. L-3026-04, L-1650-05 (Aug. 25, 2015), at 4-5:
> ("[T]he court by necessity has also become very familiar with the history and previous rulings of this eleven year old case. There can be no question that this case raised complex and novel issues of law, including the application of the controversial Habitat Equivalency Analysis methodology. The Firm was required to undertake a sixty-six day trial before Exxon became motivated to reach a settlement with the State while awaiting the court's decision on the merits. Even the fundamental and difficult question of whether there was a cause of action under the Spill Act for NRD (loss of use) made its way to the Appellate Division on an interlocutory basis as well as statute of limitation issues. The Firm provided the legal services to be successful on those trips to the Appellate Division. Altogether there were three rulings of the Appellate Division litigated by the State under the guidance of Mr. Kanner and his Firm...[T]he high difficulty of conducting discovery and defending the State's prerogatives from a more-than-able adversary demonstrates to this court a high level of competence and skill. There were many novel and untested questions that the Firm had to address at various stages of the proceedings, such as expert evidence questions, loss of use over

time damages under the Spill Act, retroactivity of the Spill Act, the role of physical improvements, the application of the Public Trust Doctrine over private uplands, and the applicability of Habitat Equivalency Analysis methodology in NRD litigation, to name a few of the issues that required experienced, motivated, and highly skilled counsel...The Firm was up against a determined adversary who created a daunting ten year defense that a less experienced, less determined, or less skilled effort would not have been able to timely, professionally, and, for the most part, successfully meet the challenge.")

New Jersey Department of Environmental Protection v. ISP Environmental Services et al, No. UNN-L-2271-07 (Super. Ct., Civil, Union County, New Jersey) (Fasciale, J.) *Hr'g Tr.* (Mar. 5, 2013) at 4-5 (The Attorney General's Office and Special Counsel, Kanner and Whiteley, have a lengthy substantive attorney/client relationship. The firm has been Special Counsel to the AG since July 2003, and prior to the time, the firm worked with the DEP for over a year to assess potential claims. Since 2003, Kanner and Whiteley, has litigated numerous cases on behalf of the attorney general. The firm has also participated in development of the State's natural resource initiative. The firm is a national reputable practice, and Allan Kanner, the primary attorney in this matter, is the founding member of the firm.")

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)

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 Allan Kanner & Associates, P.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, P.C. 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)

Due to the firm's trial experience and success, 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 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 environmental, toxic tort, commercial litigation, and consumer fraud. He is the nation's leading Natural Resource Damage lawyer having won over $9 Billion in NRD recoveries. From 2010-2016 he was lead counsel for the State of Louisiana, recovering over $8.8 billion, midway through trial, in the BP Deepwater Horizon oil spill litigation. Allan Kanner has served as Special Counsel to the New Jersey Attorney General and the New Jersey Department of Environmental Protection since 2002 to both develop New Jersey's comprehensive NRD program and litigate these claims against industry defendants unwilling to amicably resolve their NRD liability with the State. Kanner & Whiteley, with Allan Kanner as lead counsel, began litigating the leading case in New Jersey's NRD program in 2004 against ExxonMobil for injuries at two of ExxonMobil's former refinery sites in the State. Following the completion of pre-trial motion practice, including multiple arguments before the Appellate Division; a nine-month bench trial on damages; and post-trial briefing, the parties reached an agreement to resolve ExxonMobil's NRD liabilities at the sites, and others across the State, for $225 million, the largest NRD recovery in the State's history. During many of the same years that Kanner & Whiteley litigated the claims against ExxonMobil, the firm also pursued litigation on behalf the State against a number of other corporate defendants, also for compensation for damage to or destruction of natural resources of the State. Mr. Kanner is currently lead counsel for the State of New Jersey in the recently filed suit against Hess Corporation and Buckeye Partners, L.P. related to NRD at the Port Reading Terminal, and ExxonMobil related to NRD at Lail. He is also currently lead counsel for the State of New Mexico in its pollution litigation against the United States Air Force.

Allan Kanner has served 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. Mr. Kanner has taught and written extensively in his areas of expertise. Many of his articles have been relied upon by courts and legal scholars. His publications and presentations include the following:

- Allan Kanner, *Emerging Trends In Perflourinated Chemical Regulation And Litigation*, ABA Environmental and Engery Litigation News Letter (August 28, 2017).
- Allan Kanner, *Environmental Gatekeepers: Natural Resource Trustee Assessments And Frivilous Deubert Challenges*, 49 ELR 10420 (May 2019).

- Allan Kanner, *More Than Seals And Sea Otters: OPA Causation And Moratorium Damages*, (forthcoming in DUKE ENVTL. L. & POL'Y F.).
- Allan Kanner & Caitrin Reilly, *Like a Phoenix Rising from the Ashes: Melding Wildfire Law Into a Comprehensive Statute*, (forthcoming in J. ENVTL. L. & LITIG.)
- Allan Kanner, *Issues Trustees Face In Natural Resource Damage Assessments*, Part II, J. OF ENVTL. PROT. (April 2017).
- Allan Kanner, *Issues Trustees Face In Natural Resource Damage Assessments*, Part I, J. OF ENVTL. PROT. (April 2017).
- Allan Kanner, Elizabeth Petersen & Allison Brouk, *Federal Environmental Laws Require Hardening Against Climate Change*, Vol. I, ABA ENVTL. & ENERGY LITIG. NEWS LETTER, Issue No. 1 (Nov. 2016).
- Allan Kanner, *Which Came First, The Incident Or the Oil: The Moratorium and OPA Causation*, Vol. I, ABA ENVTL. & ENERGY LITIG. NEWS LETTER, Issue No. 1 (Nov. 2016).
- Allan Kanner, *Experts in Natural Resource Damages and Toxic Tort Litigation*, Proceedings of the International Network of Environmental Forensic Conference, J. OF ENVTL. PROT. (2015)
- Allan Kanner, *Natural Resource Restoration*, 28 TUL. ENVTL. L. J., 355 (Summer 2015)
- ENVIRONMENTAL & TOXIC TORT TRIALS (2005, Lexis);
- CIVIL RICO (1998, Center for Continuing Legal Education) (Co-author M.H. Patel).

During 1998 and 1999 Allan Kanner 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.

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 seminars on toxic torts as an adjunct professor 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 all 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 with Distinction. In 1995, she obtained a Juris Doctor degree and Certificate of Environmental Law from Tulane University School of Law.

CYNTHIA ST. AMANT, member, joined Kanner & Whiteley, L.L.C. in 1998 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.

ALLISON S. BROUK, associate, joined Kanner & Whiteley, L.L.C. in 2011 and is part of the Kanner & Whiteley litigation team representing the State of New Jersey in natural resource damage cases for the State, including a case against ExxonMobil. Ms. Brouk was also part of the litigation team representing the State of Louisiana in its claim related to the Deepwater Horizon oil spill, the largest environmental disaster ever to occur in the Gulf of Mexico. Ms. Brouk has also served as class counsel in litigation involving property damage related to contaminated groundwater, as well as landmark litigation relating to oil company's failure to follow the best practices required under federal law in armoring its facility against risks associated with climate change that threaten the terminal and surrounding communities, as well as violations of its Clean Water Act permit. Ms. Brouk is admitted to practice in the State of Louisiana; the Eastern, Middle and Western District Courts of Louisiana; and the Fifth Circuit Court of Appeals. She is a member of the Louisiana Bar Association, the Federal Bar Association and the Louisiana Association for Justice. She graduated magna cum laude from Tulane University Law School, where she received a Certificate in Environmental Law. While in law school, she practiced as a student attorney for the Tulane Environmental Law Clinic. Ms. Brouk was Editor in Chief of the Tulane Environmental Law Journal and was a member of the Tulane Moot Court Board. She also served as an intern for U.S. District Judge Stanwood R. Duval, Jr. in the Eastern District of Louisiana.

EXHIBIT "D"