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FOR IMMEDIATE RELEASE
JULY 14, 2011

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Six California Lawyers Who Won Historic Verdict for Nursing Home Residents Are Named 2011 Trial Lawyers of the Year

A team of Southern California attorneys has been named the 2011 Trial Lawyers of the Year by the Public Justice Foundation, the national public interest organization based in Washington.

Attorneys **Tim Needham** of Eureka, Calif., **Michael Thamer** of Callahan, Calif.; **Chris Healey** of San Diego; and **Michael Crowley, Patrik Griego** and **Amelia Burroughs**, also of Eureka, were announced as award winners at the Foundation's annual Gala and Awards Dinner on July 12 in New York.

The team was cited for having won a staggering \$677 million jury verdict against Skilled Healthcare Group, Inc., a for-profit corporation that owns and operates nursing homes throughout the U.S. The lawyers represented a class of approximately 32,000 current and former nursing home residents and their families in *Lavender v. Skilled Healthcare Group, Inc.* It was the first class-wide understaffing case to be tried to verdict and the largest ever verdict against a nursing home chain.

Skilled Healthcare is the fifth-largest nursing home chain in the country, and, since going public in 2007, has reported an average annual profit of more than \$120 million.

But even with such hefty assets, for years the company wasn't employing enough staff to provide the care needed by its elder residents: overstretched employees working double and triple shifts simply could not get to all the residents. Some residents weren't given their medications or pain killers in a timely manner; others weren't provided a shower or food; and some incontinent patients were left to lie in their own waste.

Needham and his team filed the class action lawsuit in May 2006, contending that 22 California nursing homes owned by Skilled Healthcare had failed to provide adequate staffing for its residents over a period from 2003 to 2010, in violation of California health and safety laws. The class sought damages of up to \$500 per violation per patient day, as well as injunctive relief requiring the nursing home chain to improve its staffing levels.

Needham and his co-counsel gathered evidence showing that Skilled Healthcare had violated adequate staffing requirements for 9,617 days, translating to 1,178,090 patient days.

More than three years elapsed before the case went to trial in 2009. The patients' attorneys had to slog through numerous procedural fights as the defense did all it could to slow the case to a crawl. Over 120 motions were filed; the plaintiffs'

lawyers prevailed on all of them. The team defeated a motion to decertify the class, motions to change venue, and motions to disqualify the trial judge on alleged bias, among others.

Needham's team also prevailed on a dozen appellate writs and two appeals filed by the defendant. By the end of the case, Needham and his team had logged nearly 29,000 hours and had incurred more than \$1.7 million in out-of-pocket expenses.

Trying the class action was a massive undertaking that took seven months: 150 witnesses testified and over 5,000 exhibits were introduced. Needham's main trial strategy was to avoid having the case appear to be about numbers; the goal was to get the jury to understand that the numbers equated to human suffering. Many nursing home residents and their family members testified.

The Needham team also tried to show that, even when the state's Department of Public Health (DPH) issued staffing deficiency warnings against Skilled Healthcare, the company ignored them. Indeed, internal e-mails showed that the DPH warnings were treated as a running joke among Skilled Healthcare's corporate higher-ups. Finally, the trial team also demonstrated that Skilled Healthcare's decision to understaff its facilities was made at the highest levels of its corporate ladder.

Needham's trial strategy paid off. In July 2011, a Humboldt County jury awarded the class a historic \$677 million, finding that Skilled Healthcare had failed to maintain the state-mandated 3.2 nursing hours of "direct patient care" per patient per day at all 22 of its facilities over the course of more than six years.

Because the amount of the jury's award far exceeded the defendant's net worth, the parties entered into mediation after trial. In December 2010, the court approved a settlement requiring the defendant to pay \$50 million to the class and to spend \$12.8 million over a two-year period to improve staffing levels in its nursing homes, which includes paying for a court-appointed monitor to ensure compliance.

The *Lavender* case has had a major impact on the nursing home industry. The verdict forced a significant number of nursing homes to increase the level of care they provide and caused nursing homes throughout California to re-evaluate their staffing levels.

The case also filled an important void by getting justice for thousands of citizens that the state could not protect: DPH, suffering from the state's significant budget deficit, simply lacked the resources to enforce its policy of protecting elders in residential care facilities. Other plaintiffs' attorneys are now helping to fill this void, thanks to the victory that Needham and his team achieved in *Lavender*.

All six 2011 Trial Lawyer of the Year Award Finalist teams were honored at the July 12 Gala. The other Finalists' cases are summarized below in alphabetical order according to the lead counsel's last name.

- More than 25 years after killing or permanently injuring hundreds of babies, the manufacturer and distributor of E-Ferol -- a drug designed to aid in preventing vision impairment in premature infants, but never approved by the FDA -- were finally held accountable thanks to Texas trial lawyers **Art Brender, Dwain Dent, Fred Streck** and **David Nix**. In a class action settlement reached in *Klein v. O'Neal*, the insurers of the manufacturer and distributor of E-Ferol have to pay \$110 million to the 369 people who are either surviving recipients of E-Ferol or surviving family members of infants who died, bringing some justice to victims and long-aggrieved families.
- In *United States ex rel. Eckard v. GlaxoSmithKline*, attorneys **Neil Getnick, Leslie Ann Skillen, Margaret Finerty**, and **Richard Dircks**, all of New York City; **Michael Getnick** of Utica, N.Y.; and **Scott Tucker** of Boston, Mass., brought a whistleblower lawsuit on behalf of Cheryl Eckard, a former GSK employee, who was fired after complaining that the drug manufacturer was selling contaminated drugs to the federal Medicaid and Medicare programs. The team won a \$750-million-dollar settlement against British drug giant GlaxoSmithKline for defying manufacturing standards and selling contaminated drugs.
- Kaiser Foundation Health Plan, which provides health insurance coverage for nearly 8.6 million families, sued the pharmaceutical company Pfizer for selling it a drug that was illegally marketed for off-label uses and then

inappropriately prescribed to patients. Following a five-week trial in *Kaiser v. Pfizer*, the health insurer was awarded \$142 million in restitution thanks to the work of attorneys **Tom Greene** of Boston, Mass., **Tom Sobol** of Cambridge, Mass., **Don Barrett** of Lexington, Miss., **Linda Nussbaum** of New York, N.Y., **Ilyas Rona** of Boston, and **Kristen Johnson Parker** of Cambridge.

- In *Lee v. State of Minnesota*, trial lawyer **Robert Hilliard** of Corpus Christi, Tex., and local defense counsel **Brent Schafer** of Eagan, Minn., argued that Koua Fong Lee was wrongfully convicted of vehicular manslaughter for an accident that occurred on June 10, 2006, when Lee was driving his 1996 Toyota Camry. At his trial, Lee adamantly maintained that he pumped the brake, but the car wouldn't stop. Nonetheless, he was convicted and sentenced to jail. A few years after the conviction, when Toyota began recalling some its late-model Camrys due to a problem with unintended acceleration, Hilliard and Schafer used evidence that was buried during Lee's original trial to win a new trial -- and ultimately convinced the state to drop the charges and release Lee from prison.
- While white farmers typically got the low-interest loans they requested of the U.S. Department of Agriculture, Native American farmers and ranchers were routinely rejected. In 2001, a group of attorneys asked **Joseph Sellers**, a lawyer in Washington, D.C., to lead a class action lawsuit they had recently filed against the USDA. After ten years of litigation in *Keepseagle v. Vilsack*, Sellers' 12-attorney team -- which included Washington, D.C., lawyers **Christine Webber**, **Peter Romer-Friedman**, **David Frantz**, **Paul Smith**, **Katherine Fallow**, **Michael Brody**, **Jessica Amunson**, **Carrie Apfel**, **Anurag Varma**, and **Phillip Fraas**; and **Sarah Vogel** of Bismarck, N.D. -- convinced the USDA to agree to a \$760-million-dollar settlement with thousands of Native American farmers and ranchers around the country.

The Finalists were chosen from 15 nominated teams from around the country, involving an array of cases that ended with socially significant and/or precedent-setting verdicts or settlements.

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