



Legal team in watershed nursing home lawsuit wins top Consumer Attorney award

SACRAMENTO (Nov. 12, 2011) – The team of attorneys that held one of the nation’s largest for-profit nursing home operators accountable for illegal understaffing has been honored as the 2011 Consumer Attorneys of the Year by Consumer Attorneys of California. The announcement was made Saturday, Nov. 12, at the awards dinner during CAOC’s 50th Annual Convention in San Francisco.

W. Timothy Needham, Michael J. Crowley, Amelia F. Burroughs and Patrik Griego of Janssen Malloy LLP in Eureka, solo practitioner **Michael D. Thamer** of Callahan, Calif. and **Christopher J. Healey** of Luce Forward in San Diego represented 32,000 residents, former residents and family members of residents of 22 California nursing facilities owned by Skilled Healthcare Group, the nation’s fifth-largest nursing home chain. The suit, *Lavender, et al., v. Skilled Healthcare Group, Inc.*, came after a number of wrongful death claims in which attorneys learned the underlying cause for many of the deaths was inadequate staffing.

The attorneys presented evidence that, from 2003 to 2010, Skilled Healthcare regularly failed to meet minimum staffing requirements under the California Health and Safety Code and ignored staffing deficiency warnings from the state Department of Public Health. They sought damages up to the maximum allowed under the California Consumer Legal Remedies Act. After a seven-month trial, a jury returned the largest verdict ever in a case against a nursing home chain anywhere in the nation. Before punitive damages could be decided, the case was resolved with the inclusion of an injunction under which Skilled Healthcare is paying for a court-appointed monitor to ensure it meets minimum staffing requirements.

Earlier this year, Needham, Crowley, Burroughs, Griego, Thamer and Healey were named the 2011 Trial Lawyers of the Year by the Public Justice Foundation, a national public interest organization based in Washington, D.C.

“As the first class action on nursing home understaffing to be tried to a verdict, this was a landmark case that has caused nursing homes throughout California to re-evaluate their staffing levels,” said Niall McCarthy, incoming president of Consumer Attorneys of California, who introduced the winners at the awards dinner. “Through the work of these members, all California nursing home residents will be safer because facility operators have been given a huge financial incentive to observe the law and have adequate staffing numbers to meet residents’ needs.”

Also honored at the awards dinner was **Shawn A. McMillan**, winner of CAOC’s Street Fighter of the Year award. The award recognizes outstanding legal performance by an attorney who either works in a firm with no more than five attorneys or has been a member of the bar for no more than ten years.

McMillan helped an Orange County woman regain custody of her two daughters after a legal battle of more than six years. Deanna Fogarty had been awarded custody of her two daughters after her divorce,

but after a personality clash with social workers, a court ordered the children removed from Fogarty's home and social workers coerced Fogarty into giving her ex-husband full custody of the children.

In 2001 Fogarty sued for violation of her constitutional right to familial association, alleging social workers fabricated evidence and withheld evidence from the juvenile court to obtain the orders allowing the removal of her daughters. Fogarty also sued Orange County, claiming its customs, policies, and practices were unconstitutional. In 2007 an Orange County jury found the defendants liable and handed down one of the largest parental rights judgments against a child protective services agency in the U.S., with Fogarty regaining custody of her children. The judgment became final in April 2011, when the U.S. Supreme Court refused to hear the case.

Also honored at Saturday's dinner were:

Amy Fisch Solomon (partner, Girardi | Keese, Los Angeles), winner of the Robert E. Cartwright, Sr., Award "in recognition of excellence in trial advocacy and dedication to teaching trial advocacy to fellow lawyers and to the public."

Mark Robinson Jr. (senior partner, Robinson Calcagnie Robinson Shapiro Davis, Newport Beach), winner of the Marvin E. Lewis Award "in recognition of continued guidance, loyalty and dedication, all of which have been an inspiration to fellow attorneys."

David Rosen (managing partner, Rose, Klein & Marias, Los Angeles), winner of the Edward I. Pollock Award "in recognition of many years of dedication, outstanding efforts and effectiveness on behalf of the causes and ideals."

Ibiere Seck (senior associate, The Cochran Firm, Los Angeles), winner of the CAOC Community Service Award for using her legal skills and training to benefit the community on a volunteer basis.

Sen. Mark Leno (D-San Francisco), named CAOC's 2011 Legislator of the Year for his record of consumer advocacy, including authoring a first-in-the-nation bill to enhance patient safety by protecting the integrity of electronic medical records.

For more information:

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