

# The Indiana Jury Verdict Reporter

The Most Current and Complete Summary of Indiana Jury Verdicts

September, 2006

Statewide Jury Verdict Coverage

7 IJVR 9

## Unbiased and Independently Researched Jury Verdict Results

### In This Issue

#### Marion County

Legal Negligence - \$17,991,043	p. 1
Auto Negligence - \$75,000	p. 4
Forklift Repair Neg. - Defense verdict	p. 5
Auto Negligence - \$12,500	p. 7
Auto Negligence - \$9,161	p. 9

#### Lake County

Auto Negligence - \$60,524	p. 3
Bus Negligence - Defense verdict	p. 4
Auto Negligence - \$15,000	p. 6
Auto Negligence - \$7,819	p. 10
Auto Negligence - \$2,425	p. 11
Auto Negligence - Defense verdict	p. 12
Auto Negligence - Defense verdict	p. 12

#### Porter County

Medical Negligence - Defense verdict	p. 3
Bad Faith - Defense verdict	p. 7

#### Bartholomew County

Auto Negligence - \$33,111	p. 5
Auto Negligence - \$7,297	p. 10

#### Dearborn County

Subrogation - Defense verdict	p. 8
-------------------------------	------

#### Monroe County

Auto Negligence - \$10,000	p. 8
Auto Negligence - Defense verdict	p. 12

#### Federal Court - Indianapolis

Race Discrimination - Defense verdict	p. 8
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#### Madison County

Auto Negligence - \$10,000	p. 9
----------------------------	------

#### Federal Court - Fort Wayne

Education/Sex Disc. - Defense verdict	p. 9
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#### Federal Court - South Bend

Race Discrimination - Defense verdict	p. 10
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#### Kosciusko County

Auto Negligence - \$4,000	p. 11
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#### Tippecanoe County

Auto Negligence - \$2,129	p. 11
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<b>Notable Out of State Verdicts</b>	p. 13
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### Civil Jury Verdicts

Timely coverage of civil jury verdicts in Indiana including court, division, presiding judge, parties, cause number, attorneys and results.

### Legal Negligence - When a health insurance trust became insolvent, the Department of Insurance sued the trust's legal counsel to recover massive unpaid claims made against the trust

*Atterholt v. Dennerline, et al.*,  
49C01-0207-PL-1884-1

Plaintiff: Irwin B. Levin and Richard E. Shevitz, *Cohen & Malad, LLP.*, Indianapolis  
Defense: David J. Beach, Gregory A. Crisman, David C. Jensen, and Katherine H. Hosty, *Eichhorn & Eichhorn*, Hammond

Verdict: \$17,991,043 for plaintiff

County: **Marion**, Circuit

Court: J. Sosin, 8-28-06

In the later 1960s, a group of construction industry trade associations formed an entity called the Indiana Construction Industry Trust (hereinafter, "ICIT"). The purpose of the ICIT was to provide health care benefits to workers in the construction industry.

Initially, the health care coverage the ICIT provided to its members was purchased from an outside insurer. However, the trust eventually transformed itself into a self-insured entity, known technically as a "MEWA," or "Multiple Employer Welfare Arrangement." That fact would later have some significance for this case.

Beginning in 1995, attorney Frederick Dennerline, III, of the Indianapolis law firm of Fillenwarth, Dennerline, Groth & Towe, began providing legal advice to the ICIT. By 1998, Dennerline had officially become the ICIT's outside legal counsel.

However, all was not well with the ICIT. As the millennium turned, the entire operation began falling apart. There is some disagreement about the exact source of the difficulties, but a

major part of the problem seems to be traceable to the excessive ambitions of the management team.

Among other things, a cabal of three of the top managers decided to expand the trust's customer base beyond the construction industry. The three managers were chairman Paul Scali, general operations manager Russell Roth, and accountant David Norris. In pursuing their dreams of expansion, insufficient care was taken to set premiums at a level that could cover payments on future claims.

In addition to such recklessness, the three managers allegedly embezzled some \$450,000 from the trust over a two-year period. They were apparently able to get away with this scheme by keeping the trustees in the dark about day-to-day operations. When the trust began to have financial difficulties, Scali, Roth, and Norris simply explained it away as due in part to difficulties with a new computer system.

Also, in order to pump up the balance sheet, the men listed a collection of precious jewels as an asset of the trust valued at nearly \$3,000,000. In reality, however, the jewels had been leased from a company in New Orleans and were therefore actually a liability rather than an asset.

As a result of these and other forms of financial chicanery, the trust became insolvent and was unable to pay approximately 8,200 claims for health care benefits made by its members. When the house of cards finally collapsed, and the Indiana Department of Insurance stepped in and put the ICIT in liquidation in July of 2002. The total amount of the unpaid claims was calculated at nearly \$18,000,000.

Scali and Roth were indicted for their embezzlement, and Norris was indicted for assisting in covering up their scheme. Scali and Roth both ended up