

INDIANAPOLIS BUSINESS JOURNAL

CENTRAL INDIANA'S BUSINESS AUTHORITY

VOL. 32 NO. 41 • DECEMBER 12-18, 2011

BEHIND THE NEWS | GREG ANDREWS | gandrews@ibj.com

Judge in high-stakes lawsuit drowns lawyers in praise



Indianapolis class-action attorney Irwin Levin just helped lead a legal team that is going to collect more than \$6.7 million in fees in a high-profile Iowa lawsuit involving price fixing in the concrete

industry.

That in itself is great news for Levin and his firm, Cohen & Malad. So perhaps it's icing on the cake that the judge, in his Nov. 9 order approving the fees, lavished praise on all the attorneys in the case.

He said class counsel achieved "fabulous results with incredible efficiency" and that he had never been more proud of his profession in his 36-year legal career.

"This case has been to me what it was like when I stood before da Vinci's Mona Lisa and Michelangelo's David, observing the great masters' works," wrote Mark Bennett, U.S. District Court judge for the Northern District of Iowa. "I was overcome with a rare and gargantuan sense of awe that will likely last a lifetime."

Bennett isn't some country judge who has never seen a big case before. Appointed in 1994 by President Clinton, he is a former chief judge for the district and is widely regarded as a candidate for a federal appeals court judgeship.

While serving on a special, three-judge panel in 2000, Bennett wrote a "brilliant and detailed" dissent in a criminal case that became the basis for the U.S. Supreme Court's later reversal. *Slate* magazine wrote in a 2008 profile of standout judges.

Levin, managing partner of Cohen & Malad, said: "I've been fortunate to have many kind words directed at our efforts in the past. But this is obviously quite unique. It is especially gratifying com-

ing from a judge with the stature of Judge Bennett."

The judge on Nov. 1 approved an \$18.5 million settlement to resolve the case brought by Iowa buyers of ready-mix concrete against five concrete companies and three executives who had pleaded guilty to price-fixing.

The topic of the case probably rings a bell. Levin waged a similar battle in Indiana after prosecutors brought price-fixing charges in the state in 2004. The last of seven defendants settled last year, bringing the total recovery to more than \$60 million. The legal team—led by Levin and Stephen Susman of Susman Godfrey in Houston—received \$18 million in fees.

Iowa is the only other state where prosecutors have brought similar concrete price-fixing charges. In that litigation, Levin—working closely with Cohen & Malad's Scott Gilchrist—served as co-lead counsel with Gregory Hansel of Preti Flaherty Beliveau & Pachios of Portland, Maine.

Bennett praised attorneys for bringing the case to conclusion in a little more than a year, despite myriad "complexities in proving the scope of the price fixing conspiracies and damages to class members."

He also noted that the settlement was so large that plaintiffs recovered all their losses, even after paying attorneys' fees. And that's based on the loss estimate provided by plaintiffs' expert witness. The Justice Department had estimated the total volume of commerce affected by the price-fixing conspiracy was just \$5.7 million.

Despite the favorable outcome for plaintiffs, Bennett said in his order that attorneys for the defendants—including



Levin

Krieg DeVault in Indianapolis—did a bang-up job as well.

"These exceptionally knowledgeable and sophisticated defense antitrust counsel provided their clients—from rural northwest Iowa small businessmen to an international conglomerate—with invaluable and insightful guidance and representation, sparing their clients likely treble damages, years upon years of litigation stress, and millions of dollars in litigation costs," Bennett wrote.

Things weren't always looking so good for Cohen & Malad. Plaintiffs lost on a key motion early on, forcing attorneys to replead the case in a different way.

Given that early setback and the speedy resolution of the case, at first blush the attorneys' request for more than \$6 million in fees "might read more like a ubiquitous Nigerian e-mail scam than the highly meritorious motion it has turned out to be," Bennett wrote.

He added: "This case is a model for the nation that class actions can, indeed, work exactly as Congress and the federal courts intended—though they rarely do."

Lilly watch continues

Analysts' predictions that the fate of an experimental Alzheimer's drug would have a big impact on Eli Lilly and Co.'s stock price are starting to come true, even before next year's release of Phase III results.

Lilly shares rocketed to \$39.63 on Dec. 7, one day after Sanford C. Bernstein analyst Tim Anderson said in a report that success with the drug, solanezumab, could boost Lilly's stock price 50 percent to 100 percent. Over two days, the shares advanced 5 percent.

The report itself wasn't particularly upbeat. Anderson put Lilly's chances of success with solanezumab at just 10 percent to 20 percent. •