

MASSACHUSETTS LAWYERS WEEKLY

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LAWYERS OF THE YEAR

EDWARD C. BASSETT JR. WORCESTER

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Contrary to what some may think, practice outside of Boston is neither slow-paced nor quiet for Bassett. In fact, the Weston native is making quite a name for himself as a personal-injury plaintiffs' attorney.

Earlier this year, he made headlines when he won a \$15-million award (plus another \$7.65 million in interest) in a bench trial before Superior Court Judge Peter A. Velis in a case against a drunk driver who ran a red light and collided with Bassett's client, Wendy Bloniasz.

As a result of the accident, Bloniasz suffered a "traumatic" brain injury that Bassett says has necessitated multiple brain surgeries and the removal of a portion of her skull, as well as causing a significant personality change in the young woman. (The drunk driver received jail time for his crime and did not defend the civil suit.)

Bassett has also been involved in the breast implant litigation against Dow Corning in Michigan, where he represents several women who filed individual claims.

"I find great satisfaction doing contingency fee work," says Bassett, 47, who spends 70 percent of his time doing PI cases and 30 percent handling eminent domain and Appellate Tax Board cases. "I can't imagine billing by the hour because that is a stressful thing for lawyers and clients. I prefer that if I win, I am paid, and if I don't win, then I don't get paid."



Photo by Merrill Shea

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In this special section, Lawyers Weekly has selected 10 Massachusetts lawyers who stood out from the crowd in 1999 – by winning important decisions, being involved in cases that raise challenging legal issues and otherwise furthering the profession's commitment to the rule of law and to justice in the commonwealth.

These 10 lawyers represent the broad spectrum of law practice in Massachusetts. They include sole practitioners and partners in larger firms. They practice in Boston, Pittsfield and other regions of the state. They work in the private sector and the public sector. And their practice specialties vary from criminal law to employment law.

Some of the 10 lawyers selected have been involved in cases or causes that some would consider controversial. In highlighting these attorneys, Massachusetts Lawyers Weekly does not necessarily endorse the result achieved in any particular case but merely acknowledges the significance of the controversy for the law and society.

bio

Born: July 4, 1952, Weston
Education: Boston College Law School, 1977; Boston College, 1974
Massachusetts bar admission: 1978 (Michigan, 1998)
Legal experience: Associate and partner, Mirick, O'Connell, DeMallie & Lougee (1977-present).
Bar affiliations: Massachusetts Bar Association, Worcester County Bar Association, American Trial Lawyers Association, Massachusetts Academy of Trial Attorneys.

Q. In the Bloniasz case, why is it that the damages were decided by a judge rather than a jury?

A. In Massachusetts, when a defendant refuses to show up to defend himself, a default enters and a plaintiff is not entitled to a jury trial on the issue of damages. I

was co-counsel with [Fredric L.] Ellis in the [wrongful death] case against Louise Woodward and, since Louise refused to defend, we obtained a default and the issue of damages went to the judge. However, the federal judge exercised his discretion and said that he would submit the issue of damages to a jury. But as a matter of law and by rule, a defendant takes away a plaintiff's right to a jury trial by defaulting and some defendants do that strategically because they know they will get hit and they'd rather have a judge make the decision than a jury.

Q. *Given that the drunk driver in this case was uninsured and doesn't have many assets, why did you pursue a money judgment against him?*

A. I represented the plaintiff ... since 1993 and became a close friend of hers. It meant a lot to her to have a final judgment against the defendant. It was also a way to put pressure on some of the other defendants. By knowing that we were going ahead to trial, some of them settled out rather than face a final judgment before they had a chance to settle out.

Q. *Does an award of such magnitude realistically send a message to other potential drunk drivers, regardless of whether it is ever collected?*

A. I certainly hope so. That was one of the other reasons why Wendy wanted to do it. She is very active in Mothers Against Drunk Driving. Even though all of the judgment may not be collected, the defendant knows that for the next 20 years, we will collect any assets that are accumulated even though he is out of jail. Hopefully, it will make someone think twice before they do what the defendant did to Wendy.

Q. *You opted for a straightforward approach to proving damages to the judge — for example no expert testimony. Would your strategy have been different if jurors, rather than a judge, were making the damage assessment?*

A. Yes, we would have used expert testimony if it was a jury trial to display what the actual numbers were in terms of the loss of her earning capacity. She was only 21 at the time and the economist I hired projected her loss of earning capacity over her expected lifetime. It would have been helpful to the jury, but I don't think a judge with experience needed that extra help to understand the significance of her injuries.

Q. *You used a somewhat unique strategy of presenting verdict awards in comparable cases to the judge to help him decide the damages. This is apparently done often in settlement negotiations, but not in court. Do you think lawyers should present more evidence of comparable verdicts to help the fact-finders decide damages? Are there any procedural barriers to the admission of this kind of evidence?*

A. Generally, you can't do it with a jury because it is simply not relevant and is prejudicial. But, it is very helpful when dealing with a judge and there are services out there [such as] Lawyers Weekly and a company in Ohio called Jury Verdict Research. It is interesting that with Judge [William G.] Young in the Louise Woodward case, he asked us to provide him with every wrongful death verdict that was decided in federal court in Massachusetts within the past 10 years. We put together a package for him and he thought it was very important to know what juries awarded in other cases so he could come up with a fair amount. Lawyers should present more of this information to judges. I do it all the time in terms of assessing damages when there is a clear case of liability, and with arbitrators and media-

tors. I know that there is a Massachusetts Supreme Judicial Court case indicating that plaintiffs' lawyers should do it because it is a way to check our own valuation of a case, and clients love it because you don't just pick a number out of the air. You can tell them what juries have awarded in similar cases, which makes it easier to deal with clients because you have facts about what their case might be worth.

Q. *Do you think jurors are wary of plaintiffs who claim brain injuries? Are these injuries easy to fake? Does the impression that these injuries are easy to fake make it harder for plaintiffs who have legitimately suffered serious injury?*

A. Where there are no objective findings on CAT scans or MRIs, some mild or moderate brain injuries become very hard to prove. Where you don't have objective evidence, then it's very hard for the judge or jury to buy into it if they are suspicious. But in Wendy's case, she had three brain surgeries and had part of her skull removed — that kind of case is not hard at all. What is worse than having a serious brain injury where you can't work, have a personality change and lose family contact and friends? People can understand that. But I have other brain damage cases where the injury is very subtle and unfortunately a lot of insurance companies simply think that somebody is faking it. It absolutely makes it harder for plaintiffs who are seriously injured.

Q. *In this case, your client's brain injuries were serious enough to render her intelligence "borderline." Is there ever really any way to put a monetary value on that kind of injury to a 21-year-old woman?*

A. No, I don't think there is. I

have three children and can't imagine what it would be like for one of them to have an injury like this. Wendy's parents just don't know who she is anymore, and it's so tragic that no one can put a dollar value on it.

Q. *Do you think the public, when it hears about a highly publicized award like this, understands it, or do you think people ignore the facts and focus on the large sum because it feeds into their image of the "out of control" tort system?*

A. This was not an out of control award. When you have a young man with a prior incident of drunk driving who takes a car without insurance, has no license, goes on a drunken rampage, destroys someone's life, smirks about it after the fact, refuses to tell us what bars he was really in and destroys someone's life — I would hope that the public would think that the award only goes a small way toward compensating someone like this. I hope the message that people get is that this was not a "runaway jury." This was a Superior Court judge who looked at the facts and felt that in this tragic case. This was a fair award.

Q. *We've seen a number of sizable verdicts over the years against drunk drivers, bars and others involved in drunk-driving accidents. Yet despite this, and the criminal crackdown on drunk driving, these tragedies still occur. Are they inevitable?*

A. Some things can be done to reduce the number. One thing is that there should be legislation requiring bars to carry substantial amounts of insurance because right now a bar in Massachusetts doesn't have to have any insurance at all. And continuing education is important. Just the other day, we had a fatality here in Worcester. A 70-year-old woman was hit crossing the street by a drunk driver. Is it inevitable? In a lot of ways, I guess it is. But it seems like we could do a lot more in terms of

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educating the public about it, especially teenagers, and do whatever it takes to keep them off the road.

Q. *You settled your claims against the bars involved for an undisclosed sum. But, in general, how would you describe the responsibility for drunk-driving accidents? In other words, who bears the most responsibility for drunk-driving — the person who consumes the alcohol or the person who provides it?*

A. It depends on the case. Here we had a situation where the defendant was 20 years old. He didn't even have a fake ID. If you saw a picture of him, he looks about 15; yet he was allowed to drink and drink and drink at a number of bars. Yes, he is primarily responsible, but in those kinds of situations where no one is checking IDs, the bars and liquor stores have to assume responsibility as well.

Q. *Businesspeople might say, "You lawyers go after bars not because you really think they are to blame for these accidents but because they're insured and you think they're 'deep pocket' defendants." How would you reply to that statement?*

A. I found soon after I filed suit that of the six bars that were sued, only two had insurance. That didn't deter me from pursuing the bars. But clearly, in the tort system, which is one where the ultimate result is to hopefully collect money for your client, lawyers would prefer to sue defendants who have insurance. But in a case where you have an underage drinker and the police confiscate his license showing he is underage, the bars that served him are clearly responsible. It is not an innovative theory by lawyers to figure that one out. Members of juries and the general public would agree that those bars are responsible in part for what happened.

Q. *In a case like this, how do you determine whether you've done right by your client? You've got a big award against*

the driver you'll probably never collect. You've gotten some money from the bars. The driver has been in jail. Do you think your client feels the system worked, or has she been too traumatized by events to feel any sense of justice?

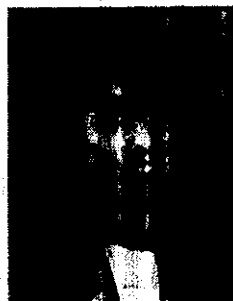
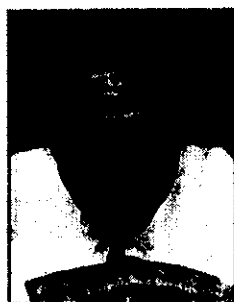
A. When my client was notified of the substantial judgment here, she was very pleased because in part that number made her feel important. That was the real purpose behind this case. No amount of money will change the problems that she has — the brain damage and personality problems. But to have a court, which she respects, put that number on her injuries, it validated her and made her feel valuable as a person again. The judge did a wonderful job in terms of that. Sometimes there is nothing more the system can do other than find the defendant at fault and put a number on the case that makes the person feel valuable and important.

Q. *Being a plaintiffs' lawyer — the segment of the bar that is probably the subject of more derision than any other by the public — how do you feel about the way people view what you do for a living? Is the public perception of the personal-injury bar warped or is there any basis at all for the negative impressions many people have?*

A. I love being a lawyer and I think the greatest privilege as a lawyer is to do plaintiffs' work. There are good lawyers and there are bad lawyers and unfortunately the public forms their opinions from stories about bad lawyers. However, the tort system in the U.S. is a wonderful system and has been responsible for an incredible number of safety changes. For instance in the auto industry, some of the greatest safety features of cars were direct results of lawsuits. I recognize the fact that there are those who do not respect what we do. However, I feel incredibly privileged to represent people who have been hurt.

— MEGHAN S. LASKA

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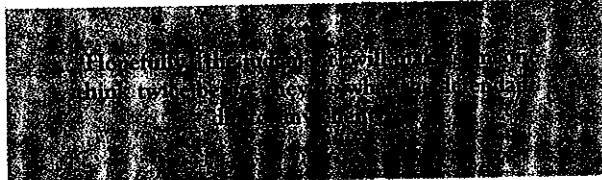
Photo by Merrill Shea

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