

LAWYER REFERRAL SERVICE CASE OF THE MONTH

Mother's death in car crash leads to tangle of tragedy

by Marc Songini

In 1995, Framingham resident Eva Marone (not her real name) was involved in a horrifying automobile accident. Marone and her 98-year-old mother were on their way home from grocery shopping when Marone's car went out of control. She pumped the brakes, but the car wouldn't stop. Her car then crashed into the one in front of her.

Marone's mother was rushed to the hospital and later died. The two occupants in the lead car received minor injuries. Marone did not retain an attorney at that time and the car, which could have served as evidence for Marone's claim that the brake's failed, was not properly preserved.

After the accident, Marone expressed months of sadness and grief over the tragic death of her mother. About a year and half after the accident, Marone was served with summonses and complaints from the occupants of the car she had rear-ended. At the same time, she faced the pressure of having her mother's hospital bills still outstanding. Needing legal help, she contacted the Massachusetts Bar Association Lawyer Referral Service.

The case was referred to Edward C. Bassett Jr., head of the personal injury practice group at the Worcester firm of Mirick, O'Connell, DeMallie & Lougee. When Bassett interviewed Marone, he learned that she was named in her mother's will as the executrix of her estate and that she was the sole beneficiary of the estate. However, Marone had not taken any action to commence the probate of her mother's estate.

Bassett immediately contacted Marone's auto insurance carrier and made arrangements to have Marone defended by separate counsel. While Marone was represented individually by independent counsel, Bassett began negotiations with the insurance company on behalf of her mother's estate.

Although there was no evidence of negligence on Marone's part, Bassett convinced the insurance company that the estate should be paid the policy limits for the wrongful death of Marone's mother. In wrongful death cases, the proceeds can be paid in part for "wrongful death" and in part for "conscious pain and suffering." Sometimes the apportionment between these two elements of recovery will have a substantial impact on the tax consequences for the estate.

Bassett also worked with the insurance company to be certain that the lawsuits against Marone individually were settled within the policy limits and releases were signed.

After resolving the car accident case, Bassett realized that he needed additional legal assistance to probate Marone's mother's estate and to clean up title on her mother's house. Bassett then learned that Marone's father had died more than 15 years earlier and that he was the record owner of the house. Unfortunately, his estate had never been probated.

Recognizing that this aspect of the case was beyond his expertise, he enlisted the help of Robert S. Heppie Jr., an attorney in Bassett's firm who works in the probate department.



Worcester attorney Edward Bassett Jr. assisted a woman with legal problems stemming from an accident in which the woman's elderly mother was killed while the daughter was driving.

When the case closed, the two lawsuits against Marone had been dismissed; the estate recovered the full policy limits on the wrongful death claim and the two estates were cleared up so that title to the house now stands solely in Marone's name.

In this age of specialization, Bassett believes he is fortunate that as a personal injury attorney, he can call upon the expertise of many other attorneys in his 44-

person law firm when he receives an LRS referral. Bassett sees the LRS as being of great value to individuals who do not know who to turn to when they have a legal problem.

"Every now and then a case will come through that's beneficial to the firm or to the client. One of my first trial cases was referred to me through the program," Bassett says.

Case of the month: the lawyer

Edward C. Bassett Jr. has 17 years of experience in civil practice. He is a partner and member of the management committee for the Worcester firm of Mirick, O'Connell, DeMallie & Lougee. Bassett heads the personal injury practice group and is also a member of the land use group. He is a member of the Million Dollar Advocates Forum. Membership to that group is limited to trial lawyers who have demonstrated exceptional skill, experience and excellence in advocacy by achieving a trial verdict award or settlement of \$1 million or more.

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Bassett is a 1977 graduate of Boston College and Boston College Law School. He is a member of the Association of Trial Lawyers of America and the Massachusetts Academy of Trial Attorneys. He lectured as a faculty member for Massachusetts Continuing Legal Education and has been editor of the MATA Journal. He is chairman of the Southborough Zoning Board of Appeals and is on the executive committee of the board of trustees of Anna Maria College.

MBA says tort reform proponents "misuse statistics and perpetuate myths"

Marylin A. Beck, president-elect of the Massachusetts Bar Association, testified at a May 28 Statehouse hearing that tort reform proponents have "misused statistics, cooked numbers and perpetuated myths of frivolous lawsuits" in their bid to insulate businesses from responsibility to consumers. Beck told members of the Joint Committee on the Judiciary that tort reform efforts are driven by manufacturers and other businesses that stand to greatly increase profits if they are no longer held accountable for dangerous products.

Beck cited an number of facts that contradict tort reform proponents' cries of lawsuits out of control. She noted:

- According to the Massachusetts Trial Court, Superior Court filings have dropped to their lowest point in at least 10 years. While data is incomplete, early reports indicate that the decline may be continuing.
- Prior to the drop, filings had remained virtually level since 1986.
- Tort proponents say the National Center for State Courts has rated Massachusetts as the second most litigious state in the country. NCSC denies this. According to a letter from the NCSC to the bar association, NCSC wrote that its statistics are misused. NCSC says 10 states have higher filing rates and that Massachusetts' "tort filing rates are typical, or in the middle range."
- There is no factual evidence of large numbers of frivolous suits. A 1986 study by the state administration found no evidence. More recently, a Boston newspaper's investigative team dropped work on a report about frivolous suits when evidence of such suits proved nonexistent.

Beck said that even Gov. William Weld appears not to believe in widespread frivolous suits. She noted that in a letter to the Legislature vetoing SLAPP suit legislation, Weld wrote, "I believe that in large measure the courts now possess the tools to deal with the relatively rare circumstances where ... frivolous lawsuits are brought."

Beck said that "the more fortunate victims of shoddy products and services only lose their financial investments. The less fortunate are maimed or killed. To suggest locking the courthouse doors on these people in the name of bigger profits is unconscionable."

There are several bills before the Legislature that seek to make changes in the Massachusetts tort system. The bills include each a provision for a limitation of suit and

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