

Lawyers
of the **Year** 2011

Martin E. Levin

In April 2003, a barge owned by Bouchard Transportation Co. struck a rocky ledge at the mouth of Buzzards Bay, spilling 98,000 gallons of oil.

The accident polluted some 100 miles of coastline, killed hundreds of birds, and closed shellfish beds up and down the waters of Massachusetts and Rhode Island.

After winning class certification for Mat-tapoisett homeowners affected by the spill, attorney Martin E. Levin proceeded to broker a \$12.4 million settlement last January, nine months after a two-week jury trial determined that Bouchard owed varying amounts in damages to eight property owners who lost the right to use or enjoy their beaches for months or even years. The trial was part of a broader class-action lawsuit involving 1,104 plaintiffs.

In April, Superior Court Judge Raymond J. Brassard signed off after a review of the settlement, which is the state's second largest of the year to date. Under the terms of the deal, each of the thousand-plus landowners will receive between \$5,000 and \$30,000.

According to Levin, the case is the first environmental class action lawsuit to be certified and settled in the commonwealth, hopefully serving as a precedent in the event of another major oil spill in New England waters.

Q. *The \$12.4 million figure represents the maximum distribution amount. Was it all claimed?*

A. Over 99 percent of eligible claimants filed the required forms and received almost 100 percent of the settlement money. As of Aug. 1, only a couple of thousand [dollars] remained.



PHOTOS BY MERRILL SHEA

Q. *How did you initially go about getting the word out to potential victims of the spill?*

A. Through footwork in the town and research at the Registry of Deeds, we became familiar enough with a number of [the affected neighborhoods] to compile a list of over 250 properties. Next, Mat-tapoisett real estate attorney Beth Kunz, who has an encyclopedic knowledge of the town and private beach rights, helped us put together a more comprehensive list of more than 1,000 homes. We mailed out individual notices in addition to publishing general notices in local and regional newspapers. We also developed a settlement website, with a link on the town's website.

Q. *What were the biggest challenges to getting all the affected landowners to come forward?*

Age: 55

Education: University of Virginia School of Law (1981); Yale College (1978)

Bar admission: 1982

Professional experience: Partner, Stern, Shapiro, Weissberg & Garin, Boston (2003-present); of counsel, Choate, Hall & Stewart, Boston (2000-2003); assistant attorney general and chief of Environmental Crimes Strike Force, Attorney General's Office, Boston (1991-2000); associate, Zelle & Larson, Waltham (1988-1990), partner (1991); associate, Morrison, Mahoney & Miller, Boston (1987-1988); assistant attorney general, Criminal Bureau, Attorney General's Office, Boston (1982-1987)

A. Some people didn't think anything could happen after eight years and would just toss the mailed notices in the trash. People move away. A large number had passed away. When we got down to the hardest group of non-responders to reach, we sent someone to knock on doors. In one particularly memorable instance, our staff discovered that the house in question had actually burned down not too long before; the husband was reportedly still recovering in an outpatient facility from the effects of the fire, and the wife living with neighbors. When our paralegal tracked her down to tell her about her recovery, she thanked him with tears in her eyes.

Q. *How did you determine what you believe are fair individual payments across such a widely varying landscape of damages?*

A. There are several factors. We had a formula for determining "lost rental value," which doesn't mean lost rent. Under state law, every property has a rental value that theoretically can be objectively determined. Second was the degree of oiling, which was determined by a combination of what the jury found and information that came during the cleanup. Also, there was the issue of fee or easement interest. Does the owner own/have rights to the beach?

Q. *Fuel-oil spills of such magnitude are not exactly common to the area. Did you have to bone up on the physical intricacies of such a foreign environmental scourge?*



A. Not with respect to impact on the environment, as this was a property-damage case. But what made it complex was how the oil behaved. The defense said, "We immediately came and cleaned this up." In fact, our experts — and the defense's own reports — indicated a recurrence of oil. Oil that moves from beach to beach, buried under stones, and liberated depending on the use of beach or the weather. On one beach, you wouldn't see sub-surface oil in winter, but in the summer on a 90-degree day, you see quite a bit of it, as the heat mobilized it.

Q. *You say you hope to have set a precedent with this settlement. What advice can you take from the experience that you could impart to*

the next attorney who takes on such a case?

A. First, thoroughly vet the legal issues likely to be raised by the claims, then simplify the claims as much as possible so they rest on a very few basic facts and legal theories. It was important that we could explain from the very beginning that the case was really very simple, the most complicating fact being the number of properties affected. The most difficult problems could therefore be seen as case management problems — not insignificant, but certainly ones the court was willing to address so people would not be deprived a forum to make their claims.

Second, follow the parallel proceedings closely. Reports filed by the defendant with the regulatory agencies, and perhaps government enforcement proceedings, will result in a record that can be important in making your case. It's hard for a party to walk away from data and conclusions filed as part of legally required reports to the government. On the other hand, limitations and conditions placed on those data and conclusions may be very important. For example, in this case it was very important to understand what the cleanup standards were for the beaches in question — how much oil could remain on a beach that was considered "clean" by the applicable regulatory standard.

— MATT YAS

Martin Levin on ...

His most memorable moment at law school:

"The day the assistant dean of students suggested that maybe I didn't belong in law school. I was not one of those students who took to it. I was unhappy with the emphasis on legal reasoning and theory with what seemed to me to be little regard for social context and clinical training. When my unhappiness led me to the Dean's Office looking for advice, that was the response I got. It's the kind of institutional response you remember, for many different reasons. I should add that I think things have

changed in legal education since then."

Highlight of his legal career: "I guess if I had to choose one highlight it would be my tenure as chief of the Environmental Strike Force at the Attorney General's Office. With the help of other government agencies, we were able to put together prosecutions which had real, on-the-ground benefits for the environment and the public. And, having experienced the challenges of putting together affirmative legal cases, I knew that I wanted plaintiffs' work to be part of my legal practice when I returned to private practice."

One thing about him that might surprise other people: "I was less than three years past the bar

when I argued before the U.S. Supreme Court. In retrospect, it surprises even me that I was permitted to do it."

Favorite book or film: "I guess it's a trite answer for a lawyer, but 'To Kill a Mockingbird' remains my favorite book. It's beautifully written and I've read it at several different stages of my life and each time gotten something a little different out of it."

What has kept him in the practice of law: "Almost every case provides the opportunity to learn something new — about the law, about people, and often in my practice about various scientific facts and theories. And I get to have the satisfaction of helping others while I'm doing it."