



Michael B. Bogdanow is Lawyers Weekly's
Lawyer of the Year for 2015



PHOTO BY MERRILL SHEA

MICHAEL B. BOGDANOW

MEEHAN, BOYLE, BLACK & BOGDANOW

“The message is that this shouldn’t have happened. Manufacturers have a responsibility and consumers deserve to be warned about the risks of drugs despite the impact on sales.”

In what he calls the “trial and appeal of a lifetime,” Michael B. Bogdanow last year persuaded the Supreme Judicial Court to affirm a record-setting \$63 million verdict in favor of a client who suffered horrific injuries as a result of ingesting ibuprofen.

Over Thanksgiving weekend in 2003, 7-year-old Samantha Reckis was given multiple doses of Children’s Motrin for a fever she was running. Although she developed a rash, her pediatrician advised her parents to continue the Motrin, not recognizing the rash as an adverse drug reaction.

Only after she was rushed to Massachusetts General Hospital was she diagnosed with toxic epidermal necrolysis, or TEN, a life-threatening condition that separates the top layer of skin and attacks mucous membranes all over the body.

The disease affected more than 90 percent of Reckis’ body, rendering her legally blind and leaving her with just 30 percent lung capacity after months in intensive care.

Her parents, Lisa and Richard, filed suit alleging that the warning label on Johnson & Johnson’s product failed to adequately warn consumers about the serious risks of TEN.

After trial in Plymouth Superior Court, a jury awarded Samantha \$50 million in compensatory damages with an additional \$6.5 million for each of her parents.

Johnson & Johnson appealed.

The oral argument presented some of the most hotly debated issues in the law today, from federal preemption — did the Food, Drug and Cosmetic Act preempt Reckis’ state law failure-to-warn claim? — to due process concerns surrounding sizable jury awards.

Last April, the SJC affirmed the verdict in *Reckis v. Johnson & Johnson*, a unanimous opinion that Bogdanow calls “a victory for the jury system.”

Characterizing his role as “the relief pitcher” trying to preserve the lead in the ninth inning of a baseball game, Bogdanow credits the team effort of his Boston law firm over the last decade for bringing justice to the Reckis family.

Q. What was your biggest challenge in the Reckis case?

A. The biggest challenge was that we were David fighting Goliath. We were up against numerous huge national and international law firms with the resources of a billion-dollar corporate defendant. We are an eight-attorney law firm, so we used a team approach with lawyers and staff working closely together, constantly communicating and strategizing at all times for a singular, unified purpose: to achieve a fair, just result for Sammy and her parents, Rick and Lisa.

Q. Do you feel like the SJC was trying to send a message with the decision, and if so, what was it?

A. I can’t say it was the intent of the court to send a message, but there was one built into this case. The SJC applied a major U.S. Supreme Court case called *Wyeth v. Levine*, which stands for the proposition that the manufacturer bears responsibility for the content of its label at all times. The defendant gave testimony about why the company doesn’t like to put risks on the label: sales go down. The trial court judge found that the company’s marketing department had the largest operating budget of any department but only used that money to communicate benefits; they never spent one penny on communicating risks like TEN. Adverse drug reactions result in 150,000 deaths in this country each year and are the fourth largest cause of death. The scientific community agrees that TEN is always caused by an adverse drug reaction, and the one way to prevent it is to stop taking the drug right away. But that warning is bad for business. The message is that this shouldn’t have happened. Manufacturers have a responsibility, and consumers deserve to be warned about the risks of drugs despite the impact on sales.

Q. What will be the impact of the SJC’s decision?

A. The SJC opinion really showed continuing support for the jury system. The jury in this case traveled through snow and ice to get to court for the five weeks of trial and deliberated four days, taking their roles very seriously. The trial judge’s written

opinion rejecting all of the defendant’s many post-trial motions recognized that and really expressed respect for the jury system and this particular jury. The SJC demonstrated its continuing support for the jury system, which has already been felt and will continue to be felt.

Q. After working with them for more than a decade, what kind of impact did the Reckis family have on you and your law firm?

A. It was a labor of love. The Reckises are a heroic family, and Samantha Reckis is alive today because she is amazing. Her parents were told over and over her chances of survival were less than 1 percent. She has a positive attitude about life, and it has been a pleasure to work on her behalf. We faced many challenges litigating the case, but not odds as tough as what Sammy had to face when she was 7.

Q. The defendants have filed a writ of certiorari with the Supreme Court. Any concerns?

A. There have been a lot of battles in this case. The defendants have taken advantage of every opportunity to get this case thrown out, from a summary judgment motion before trial, to motions during and after trial, to the SJC appeal seeking to have the verdict reversed, and now the cert petition. We are optimistic the Supreme Court is not going to take this case.

— CORREY E. STEPHENSON