

NEWS LETTER

Robert W. Johnson & Associates

FORENSIC ECONOMISTS

Q3/2004

Featured Case:

***ECONOMIST'S TESTIMONY ASSISTS
BROOKLYN JURY IN AWARDING
\$20 MILLION
IN PUNITIVE DAMAGES TO WIDOW
OF LONG-TIME SMOKER WHO DIED
OF LUNG CANCER***

Brooklyn, New York: Robert W. Johnson & Associates was solely retained to provide economic testimony in quantifying punitive damages.

Citation: Gladys Frankson v. Brown and Williamson Tobacco Corporation, et al., Supreme Court of New York, Kings County, Brooklyn, New York, Index No. 24915/00. Plaintiff attorneys Michael London and Gary J. Douglas, New York, New York. Judge Herbert Kramer.

Case Synopsis: Harry W. Frankson began smoking in his early teenage years. He smoked unfiltered Lucky Strike cigarettes for over forty years until he was diagnosed with lung cancer in 1998. Mr. Frankson died in February 1999 at the age of 58.

After his death, Gladys Frankson sued American Tobacco Company, original maker of Lucky Strike, in a product liability suit for failing to warn customers of the dangers of

smoking. In 1995, American Tobacco merged with Brown and Williamson.

On December 18, 2003, the jury awarded Mr. Frankson's estate a \$350,000 verdict against Brown and Williamson Tobacco Corporation. The jury felt that Mr. Frankson was 50 percent responsible, which reduced his compensatory award to \$175,000. The jury also determined that punitive damages would be assessed against the defendants.

Lawyers stated that it was the first time a jury in the state of New York has awarded damages against a tobacco company.

Expert Consultation: In this case, Mr. Johnson was retained to testify as to Brown and Williamson's economic health, wealth and economic status. Mr. Johnson reviewed financials for Brown and Williamson Tobacco Corporation, a wholly owned subsidiary of British American Tobacco, plc. He was able to convey that Brown and Williamson is an extremely strong company with \$3.57 billion

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**"Learn how to defer taxes before year-end
by Structuring your Attorney Fees?"**

See Page 3

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**LIFE ACTIVITY CALENDAR[®]
IMPACTS \$1,475,000 SETTLEMENT
IN WRONGFUL DEATH CASE
OF 31 YEAR-OLD**

LIFE ACTIVITY CALENDAR[®] impacts a \$1,475,000 settlement for 31 year-old oil driller, electrocuted on the job.

Stockton, California: Robert W. Johnson & Associates was retained by plaintiff's attorney to provide an analysis quantifying the lost economic support to the decedent's wife of 1.5 years and three minors living in the residence at the time of the accident. A **LIFE ACTIVITY CALENDAR[®]** was also prepared to graphically illustrate the close family relationship.

Citation: Nickell v. Graham; San Joaquin County; San Joaquin County Superior Court; No. 240459; Attorney Chris W. Burford III; Burnhill, Morehouse, Burford, Inc.; Walnut Creek, California.

Case Synopsis: On September 6, 1991, Mr. Nickell, a 31 year-old "roughneck" on an oil drilling job, was electrocuted when a crane boom cable came into contact with a high voltage line. At the time of the accident, Mr. Nickell was earning approximately \$31,000 per year. He was very close to his wife and three minor children, and they did many activities together. Mr. Nickell would help the children every night with their homework and was involved with their school sports. Additionally, he would read, play, and/or play board games with them on a daily basis. Mrs. Nickell looked forward to taking her husband his lunch



once a week; they shared regular chores including dishwashing, gardening, washing cars, and they would often host family get-togethers, barbecues and holiday parties.

Trial Presentation: Through the use of the **LIFE ACTIVITY CALENDAR[®]**, Mrs. Nickell was able to clearly catalog the many activities she and the children enjoyed doing with their dad.

Attorney's Comments: "The **LIFE ACTIVITY CALENDAR[®]** helped to graphically focus on all of the quality time that this family spent together. Also, the **LIFE ACTIVITY CALENDAR[®]** dramatically demonstrated the effects of the tremendous loss upon their family lives. The defendant made no attempt during settlement negotiations to rebut its validity."

Results: The defense offered \$950,000 and plaintiffs demanded \$2,200,000 pretrial. A structured and cash settlement was subsequently reached that had a present cash value of \$1,475,000.

Let us prepare a LIFE ACTIVITY CALENDAR[®] for your next case. Please call (800) 541-7435 Ext 200.

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STRUCTURING ATTORNEY FEES INCREASES CASH FLOW AND REDUCES TAXES

Since the Appellate Court affirmed the Childs, et al. v. Commissioner of Internal Revenue case in 1996, structuring attorney fees has become more and more prevalent. Here is a good example why more attorneys are turning to Structured Attorney Fees.

Short-Term Perspective – Increase Cash Flow & Reduce Taxes

When structured attorney fees are looked at from a short-term perspective of increasing cash flow while simultaneously reducing taxes, the financial results are impressive.

Consider the following scenario. A 60 year-old attorney wants to ensure that her office expenses of approximately \$10,500 per month over the next five years (60 months) are covered in spite of sporadic income from case settlements. Her goal is to increase cash flow and lower taxes by paying overhead expenses with pre-tax dollars. Her attorney's fees in a recently settled case are \$600,000.

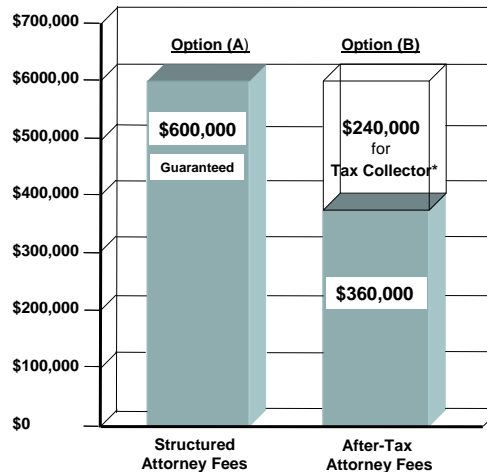
She has two options:

Option (A) - structure her fees to **pay out \$10,500 per month (guaranteed)** for the next five years.

Option (B) – pay taxes of approximately 40% on the \$600,000 and invest the remaining \$360,000 in U.S. Treasury Strips for as many months as it can payout \$10,500 per month (**See CHART 1**).

CHART 1

Structured Attorney Fees v. After-Tax Attorney Fees



* Assumes 40% tax bracket ($\$600,000 - \$240,000 = \$360,000$) on initial fees.

If the attorney elects Option (A) to structure her attorney's fees (at current rates), then she is only taxed on the structured attorney fees as they are paid out.

In her case, since her taxable income from the structured settlement (\$10,500/mo.) matches the tax-deductible office expenses (\$10,500/mo.), then her **net tax is zero**.

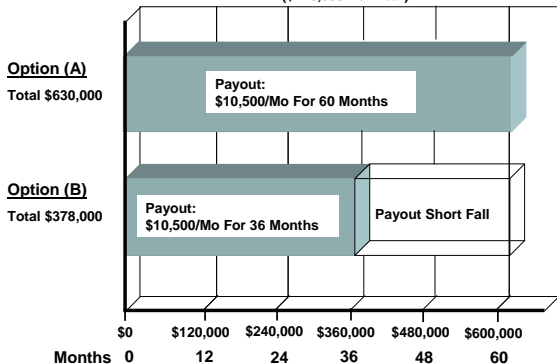
On the other hand, if the attorney elects Option (B) and decides to pay the 40% tax and invests the balance (at current interest rates), she will generate only 36 months of \$10,500 monthly income (**See CHART 2**).

In order for the pay-the-tax Option (B) to match the payout of the structured settlement, the attorney will need an investment return of over 22% per year to generate enough cash to make the \$10,500 per month payment for the full five years. Not even high-yield junk bonds have a yield that extravagant.

Contact Robert W. Johnson & Associates and we can help you **Keep What You Earn**.

CHART 2

PAYOUT AT \$10,500 PER MONTH (\$126,000 Per Year)



(Continued from Page 1, ECONOMIST'S)

in sales and \$530 million in operating profit for the year of 2002. They had a market value of \$3.9 billion at the end of 2003. He also concluded that Brown and Williamson had 10.32% of the U.S. cigarette market share.

Result: On January 16, 2004, the jury awarded \$20 million in punitive damages. The \$20 million was allocated as follows: \$8 million against Brown and Williamson, the successor to the American Tobacco Company; \$6 million against the Council for Tobacco Research; and \$6 million against the Tobacco Institute.

Attorney's Comments: "Mr. Johnson's expert testimony was very helpful in putting punitive damages into perspective. He was able to show that Brown and Williamson could absorb millions in punitive damages without crippling or wounding the company.

One of Mr. Johnson's techniques was to show sales on a per diem, weekly and monthly basis. This illustrated the vast wealth of the tobacco company and allowed the jury to assess a fair, but not excessive, award."

Out-of-the-Ordinary Cases

For over 15 years Robert W. Johnson & Associates has sought to fairly and accurately measure damages in legal matters. Often there is adequate information available to use in our measurement of loss. But what happens when a victim does not *fit the mold*? Maybe a person is injured who does not have W-2 forms to document wages. How do you know what reasonable costs of support are? Robert W. Johnson & Associates has been able to assist clients with these types of special cases. Some examples:

1. A female decedent was a homemaker with no work history or earnings. Robert W. Johnson & Associates performed an analysis of lost Household Services to the survivors. There is no personal consumption deduction for this category of loss.
2. An attorney needed to know the cost of living for several items (i.e. housing, food, clothing, etc.) in a California valley town. Our client needed to show what the true dollar value of support had been to the son of a decedent. We were able to use Bureau of Labor Statistics information by region and age to calculate the dollar value of that support.
3. Sometimes an injured party has no documentation of earnings. Robert W. Johnson & Associates has worked closely with vocational rehabilitation specialists to present losses to people without W-2 forms, 1099's, etc. Since the law specifies loss of economic capacity, there is no problem using information from other specialists or data sources as a proxy for earnings history. There is not a good reason why an injured person should be penalized because their employer did not report earnings.

This is a sampling of out-of-the-ordinary cases we have worked on. If you have a loss that does not *fit the mold*, please contact us. We are here to help.

About Robert W. Johnson & Associates: A nationally recognized, full service consulting firm that specializes in illustrating and quantifying damages. Services include: court-qualified expert witness testimony in quantifying the loss of enjoyment of life (pain and suffering) in personal injury cases and quantifying the loss of love, care, comfort, society,

consortium, etc. to the survivors in wrongful death cases. Other litigation support services include analyzing and placement of structured settlements, generating wage loss reports that include the present value of future medical expenses and illustrating the loss of quality of life with the LIFE ACTIVITY CALENDAR[®].