

BUSINESS LAW FIRM SECURES A \$96 MILLION VERDICT IN MEDICAL MALPRACTICE CASE

Featured Case

Glendale, California: Robert W. Johnson & Associates was retained to provide economic testimony in quantifying the present cash value of lost earning capacity and future medical expenses.

Citation: Aidan Ming-Ho Leung, a minor, by and through his guardian ad litem Nancy Leung v. Steven Wayne Nishibayashi, M.D., an individual; Steven Wayne Nishibayashi, M.D., Inc., a Professional Corporation; Verdugo Hills Hospital, a California Corporation; and Does 1 – 50, Inclusive, Superior Court of Los Angeles County, North Central District, Case No. BC343985. Plaintiff's attorneys Luan K. Phan, Albert T. Liou, and Donald Saltzman of Richardson & Patel, LLP, Los Angeles, California. The judge was the Honorable Laura A. Matz.

Case Synopsis: On March 24, 2003, plaintiff Aidan Ming-Ho Leung was born at Verdugo Hills Hospital under the care of Steven Wayne Nishibayashi. Aidan was born a healthy child, but he exhibited numerous risk factors that placed him at high risk to develop kernicterus, a neurological disorder caused by severe jaundice. Shortly after birth, Aidan suffered permanent brain damage caused by the negligence of Verdugo Hills Hospital and its medical staff.

The day after Aidan was born, Dr. Nishibayashi examined him and told the Leungs that Aidan was a

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HOW CAN YOU BENEFIT FROM STRUCTURED ATTORNEY FEES?

Structured Attorney Fees provide a unique opportunity for attorneys to accumulate wealth, with unmatched rates of return.

Structuring is the ideal vehicle to achieve greater wealth accumulation. You can *defer taxes, receive unmatched rates of return* and, most importantly, be able to *pay yourself first*.

As an attorney, you already know that your fees can be unpredictable. You cannot be sure when cases will arrive or when they will conclude, which makes it challenging to manage cash flow. When your fees do arrive, taxes can take a huge bite from your income.

Structured Attorney Fees allow you to:

- Defer up to 100% of your pre-tax income
- Contribute as much income as you like
- Increase your guaranteed flow of income
- Even out your cash flow

Moreover, structuring your fees gives you a chance to plan for the "big things" in your life. For you, the "big thing" might be buying that next big house, or sending your child to Stanford,

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**What are the benefits of Structuring
your Attorney Fees? See Page 3**



BUSINESS LAW FIRM SECURES A \$96 MILLION VERDICT

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healthy baby. According to the Leungs' testimony, Aidan had some bruises on his head, also known as cephalhematomas, which Dr. Nishibayashi stated were potentially caused by coming through the birth canal. He told the Leungs it was nothing to worry about and that Aidan could be discharged. The Leungs were not told that such bruising can generate high levels of bilirubin, which increases the risk of severe jaundice and kernicterus. Jaundice is a sign of the buildup of bilirubin, a yellow bile pigment, produced in greater quantities than a baby's liver can excrete.

According to the Leungs' testimony, Aidan began to experience jaundice a few days after being discharged from the hospital. Aidan's mother called Dr. Nishibayashi's office and spoke to a nurse regarding Aidan's symptoms. After speaking with Dr. Nishibayashi, the nurse told her that Aidan's symptoms are very common and not to worry. The nurse said to put Aidan under sunlight and the jaundice would go away.

Two days later, Aidan became lethargic and was barely feeding. So Mrs. Leung called Dr. Nishibayashi's office again. She was unable to communicate with him, but was referred to another doctor. After Mrs. Leung discussed the symptoms with this doctor, he told her to take Aidan to the emergency room at another hospital.

Initially, the doctors determined Aidan was dehydrated. Once the doctors did additional testing, they were alarmed at his bilirubin levels. Because of the high concentrated levels of bilirubin, they immediately needed to do a blood transfusion. There were two attempts to remove the buildup through blood transfusions that failed.

Aidan, now 4, will require constant medical attention for the rest of his life. According to plaintiff's

counsel, this could have all been avoided had the Verdugo Hills Hospital and its medical staff diagnosed his conditions, alerted the parents and provided timely treatment.

Expert Testimony: First, Mr. Johnson was retained to calculate Aidan's future earning capacity loss. Second, Mr. Johnson was asked to calculate Aidan's future lifetime medical expenses. California medical malpractice law requires that both the present value and total future value (gross lifetime payout) be presented to the jury.

Since Aidan was still a toddler, he had no earning capacity history. Consequently, Mr. Johnson looked to his parents' level of educational attainment to establish a range of potential earnings capacity for Aidan. Both of his parents had advanced degrees, with Aidan's mother holding an MBA and his father a law degree. The data would come from the latest Educational Attainment tables provided by the U.S. Census Bureau. Mr. Johnson was able to calculate three earning capacity scenarios based on educational attainment of a) bachelor's degree, b) a master's degree, and c) a professional degree. Mr. Johnson also included a national average fringe benefits package for each scenario. This yielded a present value range of \$2.3 to \$3.7 million and a future value range of \$18.6 to \$30.4 million.

Next, Mr. Johnson reviewed the 100+ page life care planner's future medical plan. The plan consisted of three different levels of care. Aidan suffered brain damage that will make him dependent on 24 hour a day care for the rest of his life. Mr. Johnson presented the three future medical expense scenarios which had a present value range of \$18.0 million to \$19.4 million and a future value range of \$106.5 million to \$113.3 million.

Result: On July 2nd, after 6 weeks of trial, the jury awarded Aidan \$96,410,375 (or present cash value of \$15,482,375). The jury award consisted of \$78,375 in past medical expenses, \$82,782,000 in future medical expenses, \$13,300,000 in future lost earnings and \$250,000 in general damages. California has a \$250,000 cap on non-economic medical malpractice damages.

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HOW CAN YOU BENEFIT FROM STRUCTURED ATTORNEY FEES?

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or buying out your partner when they retire. Whatever the “big thing” might be for you, the important point is that structuring your fees gives you the ability to achieve it – easily, painlessly, and with an unmatched rate of return.

How do structured settlements compare to traditional investments?

Structured Attorney Fees have been around since the mid 1990's. Unfortunately, attorneys have been reluctant to structure their fees because they have not been able to accurately compare this investment with other investment vehicles. Robert W. Johnson & Associates has developed the Tax Equivalent Guaranteed Return (**T.E.G.R.SM**) methodology to simplify this comparison for you.

What is the **T.E.G.R.SM**? The **T.E.G.R.SM** is the guaranteed rate of return that any other investment needs in order to match the pre-tax payout of Structured Attorney Fees.

Pre-Tax Comparison

It is important to remember that with Structured Attorney Fees you are working with 100% of your money because you invest on a pre-tax basis. It is also important to understand that the results are **guaranteed**. With a traditional investment, you are typically working with 60% - 65% of your money after-taxes, and the results usually are **not guaranteed**.

Unmatchable Rates of Return

Structuring your fees gives you an unmatched rate of return, with annual **Tax Equivalent Guaranteed Returns** that can reach:

- 20+% for a 5-year investment
- 15+% for a 10-year investment
- 10+% for a 20-year investment

A Long-Term Scenario: Funding Retirement

An attorney planning to retire has just settled a case with \$500,000 in fees. The attorney has the option to either (a) structure their \$500,000 fee, or (b) pay the tax and invest the balance.

(a) If the attorney structures their fee, the \$500,000 will pay out \$38,229 annually, before tax, over 20 years, **guaranteed**.

(b) On the other hand, if the attorney pays the 40% tax (\$200,000) and invests the \$300,000 balance, the investment would need to generate a **T.E.G.R.SM of 11.23%** to match the structure's **guaranteed** total payout.

Clearly, few investments are likely to yield a steady return of 11.23% over 20 years, whereas the structure is **guaranteed**, no matter what happens. The structured approach is the obvious choice to maximize the return on the initial fee.

The benefits are clear:

- **Unbeatable, guaranteed returns**
- **Increased cash flow and lower taxes**
- **100% tax deferral**
- **Unlimited contribution allowance**

You can use the structure as an investment vehicle to meet almost any financial goal.

Structured Attorney Fees beat every other guaranteed investment vehicle for investing and maximizing the benefit from your hard-earned fees. It not only makes more money, but it is unhindered by down-turns in the economy and the stock market.

You provide the vision and we'll provide the investment vehicle.

All you need to do is contact us at (800) 541-7435 and we'll help you get started.

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Attorney's Comments: According to Plaintiff's attorney Luan K. Phan of Richardson & Patel, LLP, "Having Mr. Johnson on my team of experts was one of the best decisions I made on this case. At first, I was a little concerned when I saw that Mr. Johnson's future wage and medical damages calculated were over \$100 million. Mr. Johnson was able explain to the jury that the reason why the damages were so large was because Aidan still had a long life expectancy and the concept of compounding. He emphasized that not one penny of the over \$100 million in future medical expenses would go to Aidan or his parents. But every penny of future medical expenses would go to the doctors, nurses, therapists and equip-

ment needed to maintain Aidan's quality and dignity of life.

Mr. Johnson also shredded the opposing economist's opinion to the point where it was not credible. First, Mr. Johnson illustrated how the defense economist's discount rate was actually a 'fantasy' number and did not exist in the current financial markets. Second, Mr. Johnson proved to the jury that the reason the defense economist's numbers were so small was because he wanted the 'taxpayers' to pick-up the bulk of the expenses.

The jury really believed Mr. Johnson's testimony and totally dismissed the defense economist."

2007 Year End Verdict Summary

Select cases for which Robert W. Johnson & Associates provided support.

Attorney	Case	Case Type	Verdict
Albert D. Massi / Chad A. Bowers	Behena v. Goodyear Tire, et al.	WD & PI - Auto Accident	\$30,233,000
Randall H. Scarlett / Thomas D. Malone	Shi v. Coach USA, Inc.	PI - Bus v. Pedestrian	\$22,800,000
Otto L. Haselhoff / Lara J. Haselhoff	Moua v. Karen Vardanyan, et al.	PI - Auto v. Pedestrian	\$21,120,000
Robert H. Tourtelot	Bowman v. City of Los Angeles, et al.	PI - Auto Accident	\$15,735,000
Luan K. Phan / Albert T. Liou / Donald Saltzman	Leung v. Nishibayashi	PI - Medical Malpractice	\$15,482,000
Bradley C. Gage / Sanford M. Gage	Hernandez, et al. v. City of South Gate	Employee Discrimination / Harassment	\$10,396,000
William A. Levin / Timothy Pearce	Felker v. A.W. Chesterton Co., et al.	PI - Mesothelioma	\$5,200,000
Christopher A. Viadro / James G. Butler	Forman v. Exotic Hardwoods & Veneers	PI - Auto Accident	\$4,057,000
Laurence F. Padway / Gregory Silva	Buijs v. State of California, et al.	WD - Auto Accident	\$3,050,000
Jonathan E. Gertler	Madrid v. Alegre Trucking, Inc.	PI - Auto Accident	\$2,689,000
Anthony S. Petru	Batty v. UPRR	PI - Slip & Fall	\$2,376,000
Roger L. Harris	Sexton v. Greco & Nevada Waste Systems, Inc.	WD - Truck v. Motorcycle	\$2,000,000
William C. Johnson	James v. Philip Services Corp.	PI - Auto Accident	\$837,000
Jennifer C. Floyd	Thompson v. Kern County Construction	PI - Ankle Injury	\$283,000
Steven R. Jacobsen	Martinez v. P.J's Rebar, et al.	PI - Traumatic Brain Injury	\$275,000
Rebecca Grey	Aragon v. Liberty Life Assurance Co. et al.	PI - Insurance Bad Faith	\$235,000
Total			\$136,768,000

*Amounts may be rounded

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 analysis 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®.