

# NEWS LETTER

Robert W. Johnson & Associates

FORENSIC ECONOMISTS

2<sup>nd</sup>/3<sup>rd</sup> Qtr 2003

## Featured Case:

### ECONOMIST'S TESTIMONY ASSISTS LOS ANGELES JURY IN \$6.4 MILLION AWARD TO TRUCK DRIVER WHOSE FOOT WAS CRUSHED BY FORKLIFT

**Norwalk, California:** Robert W. Johnson & Associates was retained to provide economic testimony quantifying: (a) the present cash value of lost wages and benefits, (b) the present cash value of loss of household services and (c) the present cash value of future medical costs to the plaintiff.

**Citation:** *James and Carol Eagles v. Albertson's, Inc., Albertson's Realty, Inc., and W.T. Billard, Inc., et al., Superior Court of the State of California for the County of Los Angeles, No. VC034371. Plaintiff attorneys Cynthia Bernet-McGuinn and Miles B. Cooper of the Law Offices of William L. Veen, San Francisco, California.*

**Case Synopsis:** The plaintiff, James L. Eagles, is a 58-year-old life-long Fresno, California resident. On September 19, 2000, he was working for Kings County Truck Line as a truck driver. Mr. Eagles was making a delivery to defendant Albertson's, Inc.'s Brea Distribution Center. While speaking to a receiver on the loading dock, a stand-up electric forklift owned by defendant Albertson's, Inc. and operated by its employee Matthew Slessler struck Mr.

Eagles. The 9,200 pound forklift ran over Mr. Eagles's left foot, crushing the foot and trapping him underneath the forklift for approximately five minutes.

The tissue damage and dry gangrene stopped short of the tarsal area, resulting in a transmetatarsal amputation. This left Mr. Eagles with approximately half of his foot following surgery. As a result of the amputation, his doctor precluded him from returning to his profession as a truck driver. He was found to be unable to depress a clutch, climb steps, or load and unload as a result of the loss of half of his foot.

Defendant Albertson's, Inc. filed a products liability action against The Raymond Corporation, the company that designed and manufactured the forklift. The action was heard concurrently with Mr. Eagles's case. The jury determined that the forklift was not defective and that Albertson's, Inc. was wholly responsible for Mr. Eagles's damages.

Prior to trial, defendant Albertson's, Inc. offered \$400,000 to settle the case in its entirety.

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**WE HAVE MOVED! PLEASE MAKE  
NOTE OF OUR NEW ADDRESS:**

**4984 EL CAMINO REAL #210  
LOS ALTOS, CA 94022**

## \$1,000,000 Jury Verdict for Shortened Life-Expectancy of 80-Year Old

**LIFE ACTIVITY CALENDAR**<sup>®</sup> impacts \$1,000,000 jury verdict for 80-year old retired shipyard worker whose asbestosis is a result of asbestos exposure.

**San Francisco, California** -- Robert W. Johnson & Associates was retained to prepare a **LIFE ACTIVITY CALENDAR**<sup>®</sup> that, admitted through lay testimony, would graphically illustrate how the asbestosis cancer was literally strangling the “color” out of the plaintiff's life-style.

**Citation:** *Phillips v. Abex, San Francisco, California, Superior Court No.927408, Brayton, Gisvold & Harley, by Attorney Philip A. Harley, Novato, California.*

**Case Synopsis:** Mr. Edward Phillips, an 80-year old married and retired shipyard worker, suffered from end stage asbestosis as a result of asbestos exposure. In the year prior to his cancer's manifestations, according to the testimony of his wife, Mr. Phillips was a very active husband and grandfather. He would take long walks every day, dine out at least twice a week, go fishing almost once a month, and never miss a San Francisco 49ers home football game. His greatest joy was the time spent with his grandchildren and great-grandchildren, which was at least once a month. However, as a result of the asbestosis, he is totally bed-ridden and on oxygen. Through the use of the **LIFE ACTIVITY CALENDAR**<sup>®</sup> Checklist, Mrs. Phillips was



able to clearly catalog the activities of Mr. Phillips. At trial, the **LIFE ACTIVITY CALENDAR**<sup>®</sup> was admitted into evidence and became an integral part of Mrs. Phillips' testimony. There was no cross-examination of Mrs. Phillips' testimony.

**Attorney Comments:** “The **LIFE ACTIVITY CALENDAR**<sup>®</sup> made a critical difference and had a significant impact on the jury. It held the jury's attention and dispelled the myth that 80-year old retirees only watch television, take ‘Geritol’ and can barely generate enough energy to change the channel. The jury could literally see how the asbestosis was strangling the life out of Mr. Phillips”.

**Results:** The defense offered less than \$10,000 pre-trial and asked the jury for a defense verdict. The jury reached a verdict of \$1,000,000. This is the largest verdict for the shortened life-expectancy of a plaintiff over 70 years old in San Francisco.

**Let us prepare a LIFE ACTIVITY CALENDAR**<sup>®</sup> for your next case. Please call (800) 541-7435 Ext 200.

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## STRUCTURING ATTORNEY FEES ACCELERATES YOUR WEALTH BUILDING

**The Structuring (deferral) of Attorney Fees has been affirmed by the U.S. Tax Court in the case of Childs v. Commissioner of Internal Revenue, 103 T.C. 634 (1994). Structuring Attorney Fees has the benefit of 100% tax deferral, which means your money grows and compounds faster to achieve greater pre-tax future income.**

### **L**ower Your Taxes & Increase Your Income

The 100% deferral of taxes on Structured Attorney Fees means your money grows and compounds faster to achieve greater pre-tax future income. See Payout Chart below.

### **U**nlimited Contributions & Flexible Payout

Structuring Attorney Fees does not have an upper limit on the amount of money an attorney can contribute in any year. The attorney can contribute up to 100% of fees earned in any given year. In addition, you have full **flexibility** in deciding when and how you receive your payout.

### **P**lan for Future Financial Events

Structuring Attorney Fees allows you to plan for future financial events such as retirement,

financing your children's college tuition, funding your practice or buying out a partner.

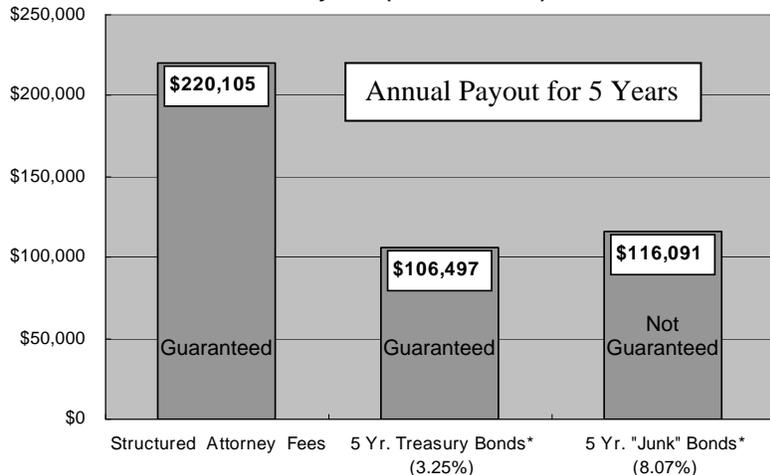
### **S**mooth Sporadic Income Swings

Many times attorneys do not know when they will receive their fees from a settlement or a verdict. Structured Attorney Fees can provide the peace of mind that accompanies a guaranteed monthly income.

### **G**uaranteed Income & Long-Term Security

There is no need to worry about fluctuations in the financial market. The Structured Attorney Fees will provide guaranteed benefits at specific payment dates to assure you of financial security. Structured Attorney Fees are only placed with top rated insurance companies.

**Pre-Tax Payout Comparison Chart**  
5 Yr. Payout - (\$1 Million Fee)



\* Assumes 50% tax bracket (\$1,000,000 - \$500,000 = \$500,000) on initial fee

**See chart for payout comparison of Structured Attorney Fees versus other investment vehicles.**

**For additional information on how to structure your fees, please contact us at Robert W. Johnson & Associates (800) 541-7435 Ext. 204**

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**Expert Consultation:** In this case, Mr. Johnson first testified to Mr. Eagles' impaired earnings capacity. The total present value of the plaintiff's lost wages and fringe benefits yielded over \$568,000. Although Mr. Eagles's past documented annual earnings never exceeded \$35,000, his earnings capacity in today's open market as an experienced truck driver was \$55,000. Second, he testified to the loss of household services even though Mr. Eagles had mitigating income. The total present value of these services over his life expectancy was over \$200,000. Lastly, Mr. Johnson quantified the present value of the cost of future medical expenses to be approximately \$100,000.

**Result:** On June 5, 2003, the jury rendered a \$6,400,000 verdict against the defendant Albertson's, Inc. No punitive damages were claimed.

**Attorney's Comments:** Ms. Bernet-McGuinn had this to say, "Mr. Johnson was instrumental in helping the jury feel comfortable in understanding the economic losses. He used 'real world' analogies to help the jury relate to Mr. Eagles's full loss of earnings capacity. The jury awarded every penny of loss that Mr. Johnson calculated".

## 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. 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.