

# NEWS LETTER

Robert W. Johnson & Associates

FORENSIC ECONOMISTS

Q2/2004

## Featured Case:

*ECONOMIST'S TESTIMONY ASSISTS  
LOS ANGELES JURY IN  
\$58 MILLION AWARD  
TO SEVERELY BURNED HEAVY  
MACHINE OPERATOR*

**Los Angeles, California:** Robert W. Johnson & Associates was retained to provide economic testimony quantifying: (a) the present cash values of lost wages and fringe benefits and (b) the present cash value of medical expenses to the plaintiff.

**Citation:** Joseph Bryant Griggs v. Caterpillar, Inc., et al., Superior Court of the State of California for the County of Los Angeles, No. BC 216425. Plaintiff attorneys Brian J. Panish and Christine D. Spagnoli of the Law Offices of Greene, Broillet, Panish & Wheeler, Santa Monica, California.

**Case Synopsis:** On September 10, 1998, Mr. Griggs was operating a Caterpillar J-621, grading land for a self storage facility in Valley Springs, California. During the time he was in the cab, an O-ring on the hydraulic line failed. The hydraulic fluid caught fire and sprayed Mr. Griggs. He was severely burned while trapped in the enclosed cab.

Doctors at the U.C. Davis Regional Burn Center determined that Mr. Griggs had suffered third degree burns to more than 75% of his body. Since the accident, Mr. Griggs has undergone more than 25 surgical procedures. To date, Mr. Griggs has incurred more than \$3.5 million in medical expenses and will require several more years of burn reconstruction surgery.

**Expert Consultation:** In this case, Mr. Johnson first testified to Mr. Griggs' lost earnings capacity. Mr. Johnson reviewed Mr. Griggs' earnings history with Moyle Excavation, Inc. He also examined the earnings of a construction equipment operator in the Sonora, California area using data from the Economic Research Institute. The total present value of lost wages and fringe benefits yielded slightly over \$1.0 million.

Additionally, Mr. Johnson testified to the present value of Mr. Griggs' medical expenses.

*(Continued on Page 4, ECONOMIST'S)*

**"How much did you defer in income taxes by Structuring your Attorney Fees?"**

*See Page 3*

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## ERRATA

*In our last Newsletter, the 2003 Year End Verdicts and Settlements mistakenly described Mr. Gary G. Goldberg's Sholes v. Network Pharmaceuticals case. The type of case should have read "Fractured Legs" and not "Amputation of Legs".*



**LIFE ACTIVITY CALENDAR<sup>®</sup>  
IMPACTS JURY IN LOW SPEED  
REAR-ENDER.  
\$2,243,667 VERDICT**

Jury awards \$2,243,667 in low speed (3 to 12 m.p.h.) multi-car rear-ender; pre-existing back injuries; **LIFE ACTIVITY CALENDAR<sup>®</sup>** used in closing arguments with no rebuttal by defendant.

**Los Angeles, California:** Robert W. Johnson & Associates was retained to prepare a **LIFE ACTIVITY CALENDAR<sup>®</sup>** that reflected actual testimony to be used in closing arguments. The **LIFE ACTIVITY CALENDAR'S<sup>®</sup>** high-impact colors convincingly illustrated how the multi-faceted life of a Hollywood television location manager was reduced to a mere shadow by the accident.

**Citation:** Kruse v. Matsumoto, et al., Los Angeles, California, Superior Court No. BC 008975, Attorney David W. Berglund, Berglund & Johnson, Granada Hills, California.

**Case Synopsis:** Douglas Kruse, a 26 year-old Hollywood television location manager, was rear-ended by the defendant in a low-speed, multi-vehicle, chain reaction freeway accident. Mr. Kruse had a pre-existing narrowing of the spinal cord in his neck and pars interarticularis at L-5, S-1. Within 24 months he underwent neck and lower back surgery. Past medical expenses totaled \$83,000.

As well as being a respected television location manager, Mr. Kruse was a very active family man. He often spent four out of every seven days working in his garden or repairing items around the home. He also found time to read daily to his children, horseplay with them and, at least once a week, take them to the park.

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



**Trial Presentation:** Through the use of the **LIFE ACTIVITY CALENDAR<sup>®</sup>**, Mr. Kruse was able to catalog all of the varied non-work activities that he enjoyed with his children and relatives, his occasional hunting and fishing trips, and his intensive gardening and home maintenance pastimes. During trial, the **LIFE ACTIVITY CALENDAR<sup>®</sup>** was an integral part of the frame work of Mr. Kruse's direct testimony questions that told the story of what the accident had taken from his life. The **LIFE ACTIVITY CALENDAR<sup>®</sup>** was shown to the jury during closing arguments to powerfully and graphically illustrate the total loss suffered by Mr. Kruse.

**Attorney's Comments:** The defense objected to the **LIFE ACTIVITY CALENDAR<sup>®</sup>**, but the judge noted that he had just returned from a conference where he saw the **LIFE ACTIVITY CALENDAR<sup>®</sup>** and the general consensus was that the calendar should be admitted. "We decided to be conservative and use the **LIFE ACTIVITY CALENDAR<sup>®</sup>** only during closing arguments. The defense was totally at a loss for words to rebut the **LIFE ACTIVITY CALENDAR<sup>®</sup>**".

**Results:** The defense offered \$100,000 pre-trial, withdrew the offer and still asked for a defense verdict. The jury was out two days and returned a verdict of \$2,243,667.99.

## 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 \$10,000 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.

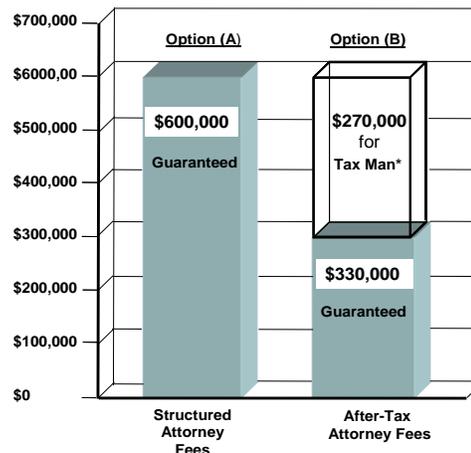
She has two options:

Option (A) - structure her fees to **pay out \$10,000 per month (guaranteed)** for the next five years.

Option (B) – pay the tax on the \$600,000 and invest the remaining \$330,000 in U.S. Government Bonds for as many months as it can payout \$10,000 per month (**See CHART 1**).

**CHART 1**

**Structured Attorney Fees v. After-Tax Attorney Fees**



\* Assumes 45% tax bracket (\$600,000 - \$270,000 = \$330,000) 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 (\$10,000/mo.) matches the tax-deductible office expenses (\$10,000/mo.), then her **net tax is zero**.

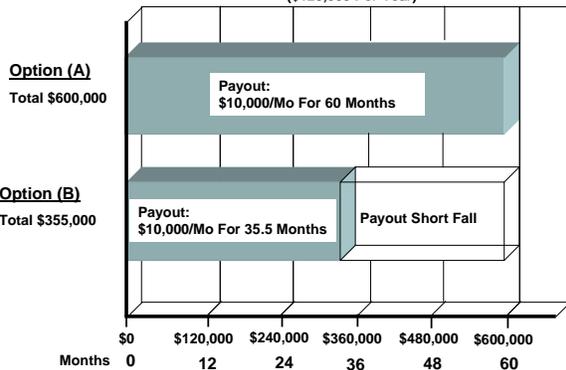
On the other hand, if the attorney elects Option (B) and decides to pay the 45% tax and invests the balance (at current interest rates), she will generate only 35 months of \$10,000 monthly income (**See CHART 2**).

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 \$10,000 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 \$10,000 PER MONTH**  
(\$120,000 Per Year)



(Continued from Page 1, ECONOMIST'S)

The total present value of the medical expenses over his life expectancy was \$4.2 million (future) and \$3.5 million (past) for a total of \$7.7 million. The total present value of earnings and medical expenses that Mr. Johnson testified to was \$8.7 million.

**Result:** The trial began on February 2, 2004 and was presided over by Judge Victor Person. On March 23, 2004, after three and one-half days of deliberation, the Los Angeles Superior Court jury awarded the

largest personal injury verdict in California history, in the amount of \$58,137,361, against defendants West-Pac Industries and Tools Exchange.

**Attorney's Comments:** Mr. Johnson's expert testimony was clear, credible and convincing. Although the numbers were high, the jury believed the amounts to be reasonable and even conservative. Mr. Johnson turned his cross-examination testimony into a re-direct.

## **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.

**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®.