

AN EMPLOYMENT REPORT

ON

MRS X

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CONTENTS

	SECTION
INTRODUCTION: AREA OF STUDY	1
PERSONAL PROFILE	2
PRE-ILLNESS EMPLOYMENT HISTORY	4
SKILLS, ATTAINMENTS AND EARNINGS POTENTIAL	5
THE ILLNESS AND ITS CONSEQUENCES	6
POST-ILLNESS EMPLOYMENT HISTORY	7
PRESENT TRANSFERABLE SKILLS	8
PRESENT EMPLOYABILITY	9
LABOUR MARKET CONDITIONS	10
RESIDUAL EARNINGS CAPACITY	12
SUMMARY AND CONCLUSIONS	13
EXPERT'S DECLARATION	

1. INTRODUCTION: AREA OF STUDY

- 1.1 This report is prepared for the Court on the instructions of Sue and Sue, solicitors for the Claimant, and will consider the employment opportunities of Mrs X following a claim for medical misdiagnosis on or around xxxxxxxx. At the time of the diagnosis Mrs X was 44 years old, and employed as an Equity Client Relationship Director with a Tier 1 City of London bank.
- 1.2 This report will cover Mrs X's qualifications and experience, her employment history, and her pre-injury earnings potential. It will then look at the occupational implications of the misdiagnosis, her current employability, transferable skills, and her efforts to return to the labour market. By considering this information in relation to labour market conditions, an objective estimate may be made of any loss of earnings she may have suffered and may suffer in the future.
- 1.3 For information, I have prepared a number of reports on senior executives within the investment banking fraternity and it is important for the Court to recognise this arena is virtually a 'closed shop' where information on salaries, bonus and career progression is guarded to an unusually high degree and therefore difficult to obtain information from source ie the employer.
- 1.4 The opinions expressed in this report are correct to the best of my knowledge and belief and fall within my expertise as an employment consultant. My qualifications and background are as follows:

Qualifications: Fellow of the Royal Society of Arts (FRSA), Member of the Academy of Experts (MAE), Chartered Member of the Chartered Institute of Personnel and Development (CMCIPD), Qualified Dispute

Resolver (QDR), Member of the Institute of Conflict Management (MICM).

I have been Chairman and CEO of The TRG Group since 1972, which delivers a range of services; outsourcing, managed services, conflict management/strategy and negotiating skills training, vocational rehabilitation, Internet business-to-business recruitment platforms, a B2B directory, and an expert witness practice – Trevor Gilbert & Associates. TGA is also an accredited and approved training provider for the delivery of CPD by various professional bodies including The Law Society and the Bar Council.

My business experience of over 30 years has encompassed conceptualisation and delivery of a range of client led services in the private and public sectors. My specialist knowledge of real time employment and recruitment issues is substantial and widely recognised. I was an advisor to the Conservative government on disability issues. I have practised as an expert since 1990, but remain very much ‘hands-on’, and personally delivered expert evidence in many hundreds of cases, usually of high value and demanding detailed investigation and analysis. Being a qualified mediator, I have a particular interest in conflict management and have designed training programmes specifically for this highly topical issue.

In terms of recruitment and employment, I have interviewed many thousands of candidates from a wide variety of occupations. The TRG Group has placed or assisted in excess of 250,000 people in to work.

I am a past Area Chairman of The Prince’s Trust, which assists disadvantaged young people set up in business. I am a keen advocate of

the need to introduce young people at an early stage to the concept of self-employment and have chaired the area Young Enterprise scheme.

I am a past President of the Institute of Employment Consultants (now Recruitment & Employment Confederation). Past Chair of the Joint Consultative Council for Recruitment Practice, bringing together all organisations concerned with employment including the then Department of Education and Employment, the CIPD and other industry organisations, as a forum to promote best recruitment practice. From 1993-1995, I was Chair of the Recruitment Committee of the Academy of Experts and a member of the Executive Committee and of Council. I was elected Vice Chairman of the Academy in September 1997.

I have been nominated by the recruitment industry for Personality of the Year and for Outstanding Contribution to the Recruitment Industry for my work in founding and co-ordinating the Priority 2000 employment agency initiative, which helped over 1,700 people with disabilities return to work.

1.5 As part of the preparation of this report I have had sight of copies of the following documents:-

- a) Letter of instruction dated 34th March 2007
- b) Schedule of Special Damages
- c) Forensic accountancy report by Mr Y, dated xxxxx.
- d) Career remuneration report by Mr Z, dated xxxxx.
- f) Witness statements by:

Mrs X

Mr A

Mr B

- 1.6 Unless otherwise stated earnings levels referred to in this report are gross figures. Where net figures are quoted these are taken from the *Personal Injury Toolkit* published by Sweet and Maxwell. At present these do not include figures for the tax credit system introduced in April 2003 because of the complexity of the calculation. In years when marriage allowances were granted there was a beneficial effect on net pay for employees who had the allowance. These calculations are based on standard tax codes and do not therefore take into account any variations in the Claimant's tax code and, as such, are only intended as an approximate guide to net equivalents. Net earnings for the current year are calculated according to 2006/7 tables.
- 1.7 The report draws upon information from a variety of documentary sources, research data, and information supplied by Mrs X from a telephone interview, which took place on X April 2007.
- 1.9 Although I have not been provided with any medical evidence I am advised by my instructing solicitors to consider the witness statement of Mrs X in relation to the claimed misdiagnosis.

2. PERSONAL PROFILE

- 2.1 Mrs X is married to Albert, a xxx. The couple have no children and live in a manor house in Suffex which was purchased in October 2000.
- 2.2 Prior to her diagnosis she had achieved a work-life balance which was prompted by termination of her husband's lease of his xxxx practice. They had owned a cottage in Middlefolk and their home was in London. They decided to sell both and bought the manor house from where she would commute to work in the City, staying at her sister's home in

London two or three nights a week when entertaining clients late in to the evening.

- 2.4 Mrs X 's condition would not necessarily be immediately apparent to an interviewing employer although she has not had a breast re-construction. Many employers automatically demand a medical examination or declaration on their application forms. If appropriate, the personnel department should pass the details to an occupational health person/department/advisor for further processing.

3. PRE-ILLNESS EMPLOYMENT HISTORY

- 3.1 According to her statement Mrs X left Top University in 1985 and developed a successful career in the City of London, initially working for XXX Bank as a Financial Analyst. She then joined YYY Securities selling equities for 3 years and in 1992 was headhunted to join ZZZ brokers to work in pan European sales. She was further headhunted in 1995 and joined AAA bank, again working in pan European sales.

- 3.2 At the age of 37, on 47th May 2001 she was offered an exciting opportunity at 123 Bank. I will come back to the point of her age at this critical time in her career later in my report as it has important relevance to this claim. The post was an executive role, that of Equity Client Relationship Director with responsibility for managing key accounts. Mr A, her direct superior, says in his statement "*I was very pleased that we were able to persuade her to move from AAA bank*".

- 3.3 www.hereisthecity.com ran a poll 'Which firm came top of our "Poll of Polls"', which included Best Place to Work, Bonus Approval Poll, Boss of the Year, Best Firm for Diversity, Ethics and for Job Satisfaction, and placed at No.1 was 123 Bank. Clearly, a first-rated employer.

3.4 She was in this position at the time of the diagnosis in 2004.

4. SKILLS, ATTAINMENTS AND EARNINGS POTENTIAL

4.1 At the time of the diagnosis in 2004, Mrs X had the following range of skills, attainments and experience:

- a) an experienced and highly regarded Executive Director;
- b) dedicated and committed, working 24/7, meaning that her mind was never off the subject;
- c) by definition, an articulate and intelligent person with a sound knowledge of the equity market and the needs of clients;
- d) a high level of inter-personal skills, essential to the level of key account client with whom she was dealing ;
- e) thoroughly knowledgeable of the requirements of 123 Bank's key clients and the products available to them.
- f) She had mapped out a career that would interest her and in which she could learn about new financial markets and instruments, ensuring that she was motivated and driven.

4.2 Prior to joining 123 Bank Mrs X had been in a sales role and it is useful at this point to outline this type of work as it has relevance to why she was appointed at 123 Bank as an Equity Client Relationship Director . To assist, the following is taken from the web site of ICMA Centre, Business School for Financial Markets: *As a sales person you will be responsible for developing relationships with clients, perhaps major corporations, institutional investors or wealthy individuals. You will work hard to understand their businesses and anticipate their needs, providing advice and informing them of trends, suggesting ideas and selling financial products. It is vital that you are aware of all economic,*

financial and political events that may affect your client. This will require you to work closely with research staff and economists, as well as traders.

Though many sales professionals have graduated in economics and finance, those from an Arts or Languages background can be very successful, as personal qualities are highly important. Sales people clearly need strong interpersonal skills, they need to be persuasive and have a thick skin. It is critical to obtain a thorough understanding of your clients and the financial products you are selling. You will probably specialise, for example fixed income or equities sales, or possibly concentrate on a geographic region or particular type of client, such as government agencies and central banks.

In common with your trading colleagues, you must be resilient and able to perform to a consistently high standard under pressure. Self-motivation is essential,- will you be able to pick up the telephone and make the next call even when you have just lost some valuable business? Can you cope with rejection? On a more positive note, will you gain genuine immediate satisfaction from closing a deal? If your answers are yes then Sales could be the career for you. Hours of work tend to be similar to those in trading, though you must be prepared for longer hours sometimes, for example in attempting to place a new equity or bond issue in a short space of time.

It is very important that everyone in a dealing environment is resilient, able to concentrate under pressure and can maintain energy levels for long periods of time. The old masculine 'macho' culture is fading but is still more prevalent in some banks than others, so individuals should do as much as they can to learn about the culture in any institution in which they think they would like to work. Paradoxically perhaps, in view

of what has been said, trading and sales staff must also be prepared for periods of boredom and inactivity when the markets are quiet.

- 4.3 The characteristics required of this role lend themselves easily to a more responsible and executive relationship role such as offered to Mrs X. Moreover, she had recognised the critical issue of “burn out” and was making a career change at exactly the right time in her life. “Burn out” is well known and I will not repeat it at great length here other than to quote from a report by eFinancialCareers.com in their 2005-6 report ‘Careers in Financial Markets’: *“Investment banking has long had a reputation for long hours, high-pressure environments, and high burn-out rates”*. The same report confirms the widely held view the industry will *“crush the unsuccessful at any level”*, and that a career is susceptible to fits and starts depending on the phase of the economic cycle. This sort of pressure places incredible demands on those whose job it is to produce money and it would not be unkind to describe the industry as akin to a jungle, where only the fittest survive.
- 4.4 There are few other industries that attract applications from tens of thousands of graduates each year for just a few thousand places and where one can make millions by the mid-30s and at the same time there are few organisations so ruthless as investment banks and securities firms at downsizing when business stalls. They have a reputation for hiring wildly when things are good and firing just as wildly when things are bad.
- 4.5 To put it succinctly, the investment banking industry is all about making money, lots of it, and then more, very ruthlessly. Great success is rewarded by extravagant bonuses. It is also a male dominated industry, in which it is difficult for women to succeed.

4.6 According to www.auroravoice.com (Aurora is a marketing consultancy based in the City of London, serving over 100 corporate clients globally across sectors. The majority of Aurora's clients are from the professional services, finance and technology sectors) in their article 'Financial Woman Magazine' dated 25 November 2005, *'Forging a career in investment banking is not for the faint hearted...A lack of role models and a highly competitive recruitment process, combined with a traditionally male-dominated workforce have, understandably, led to women questioning whether they have the required skill set and appetite for such a sector. And salacious headlines about sexism in the City have hardly helped foster the idea that women can make it on equal terms with men in investment banking...According to the CFA Institute, the global membership organization which administers the CFA examination for the finance industry, women in the UK finance industry are still paid 18% less, on average, than their male counterparts. However this gap closes with experience: those women who spend between 10 and 20 years in the City can expect to achieve parity with their counterparts. In the US, the gender gap is closing: women are paid 13% less than men'*.

4.7 Considering the progress of women in the investment banking industry the report continues *'While female-focused recruitment drives are changing the gender balance at graduate level, current statistics on female representation at senior management level are less than impressive. However, some banks are making valiant attempts to address the imbalance. Citigroup says that its female managing directors have risen from 7% in 2002 to 12% of the total in 2005, and of its new managing director appointments in the last quarter of 2004, 28% of those made were female. Other investment banks report similar increases. "We would like this to increase and we have more work to do," says Citigroup's Fisher. "Women need to have a critical mass*

within the bank to get a voice in the business, particularly in the revenue-generating areas where the power is.”

Ruth Martin, managing director at the Securities & Investment Institute, believes that the big investment banks are very much in favour of senior women, on the whole: *“We don’t really see the evidence of discrimination, and the percentages of women in senior management have risen year-on-year”*. According to Martin, women now make up 30% of the senior management workforce at investment banks, an increase from 26% in 2000. *“Women are represented in the various sectors across investment banking. Some are in operations, some direct operational risk and some are traders.”*

4.8 Work life balance is just as important when related to ‘burn out’ and when considering career progression. Aurora informs *“Combining children and a career in investment banking is challenging, but possible, as some women are able to illustrate. According to the head of recruitment at one major European bank, the intense work schedules can mean that burn out at 40 is not unusual. An organised and flexible support system is vital. And if client-facing women do take maternity leave there are many issues that need to be addressed during their maternity leave and on their return to work: how can the employee keep in touch with business developments; how can the client be kept happy if their main contact is away; and how can the employee be engaged back into such a dynamic and fast-moving business”*.

4.9 Mrs X had considered the implications of her career and in my view taken appropriate steps to ameliorate the possibility of ‘burn out’ in relation to her circumstances and experience. The important and responsible role of an executive Director was offered at precisely the right time. The post of Director is defined in the eFinancialCareers.co.uk

report as *“By this point the top rungs of the ladder are within (your) grasp. Directors are the right-hand men or women of the real big-wigs of the investment banking world, managing directors...in sales, directors have bigger and more important clients to call”*.

4.10 She had every expectation to work until the age of 50 and with this I am entirely in agreement. She had moved away from the more volatile and excessively demanding world of high-pressure sales where ‘burn out’ is a feature at around age late 30s-early 40s to a more executive role with a clear expectation to eventually receive promotion to the role of Managing Director. This is disputed in the report of Mr B on the basis she had failed interviews, this notwithstanding the witness statement of her superior and 123 Bank Managing Director, Mr BB, who describes her as *“an exceptional talent and a very bright woman. I had put Mrs X forward for promotion to the role of Managing Director in 2003 (but she was unsuccessful)...however, it was not unusual to have to apply on more than one occasion and it was my view that she would make it to the position of Managing Director at some point”*.

4.11 The role of Managing Director as defined by eFinancialCareers.co.uk is *‘The Managing Director sits at the upper echelons of the banking hierarchy. They typically make the most money, have the biggest offices and command the most respect. MDs are the rainmakers – they deal directly with clients and bring in business...at the end of the day, individual performance, revenue generation and client service are paramount to moving up the investment banking ladder’*.

4.12 In order to help assess her suitability for promotion I have been provided with three Feedback reports 2001-3 (appraisals) in which she consistently rated average or above. The 2003 assessment contains comments such as *“you also have a good internal profile”*, *“worked*

tirelessly”, “*you have achieved all that has been asked of you and more. You are a credit to the ECRD team*”, “(she) *took our product to another level*”, “*doing an excellent job*” suggesting to me that her star was on the wax. Given these results and the opinion of her line manager, Mr C, I see no reason to suppose that she would have not ultimately have achieved the rank of Managing Director. I am unsure when this would have been but at the date of this report I would be surprised if she had not reached this level under different circumstances.

4.13 Being female does not appear to be a barrier to promotion at 123 Bank either. A report prepared by the bank informs “*123 Bank has essential training for senior management focusing on managing in a diverse environment. 123 Bank also present workshops tailored to women and minorities that focus on cultivating skills and strategies for success*”.

4.14 With regard to earnings, this is a notoriously difficult subject to address simply because of the closed door culture of the industry, as also confirmed in para 10.1 of Mr B’s report. However, as far as his report is concerned and how it is constructed, it seems to me that it is based entirely on his experience, particularly the illustration of remuneration split as described in para 10.6 of his report. So far as I can see there is no supporting data by way of salary surveys or other objective information, notwithstanding he refers to this in paragraphs 11.1/2 in his report.

4.15 By far the most definitive of remuneration and benefits surveys is McLagans where results are drawn from subscriber banks. However, I believe the cost to be around £5,000 which precludes me referring to it. Moreover, McLagans are very protective of their product and reluctant to release information. Nevertheless, there are other surveys and sources of information that can provide values that may assist this case.

- 4.16 The latest Napier Scott (banking and financial recruitment consultants) annual survey informs that the average salary in a Tier 1 bank at Director level in the equity arena is £110,000 basic + £445,000 bonus.
- 4.17 In order to discover salaries at a more practical level I referred to a number of recruitment consultancy sites and not least to the 123 Bank web site where I noted they are seeking Client Advisors/Relationship Managers.
- 4.18 www.GloriaMundi.org offered the post of Relationship/originator banker (Director level) with Longbridge International at a compensation equivalent to a Global Tier 1 bank. It is unusual that Director or Managing Director posts are advertised as these are usually filled as a result of a search assignment. I also discovered a number of client relationship jobs at managerial level, seemingly contradicting Mr B's view contained at 13.7 of his report ie "*few senior managerial or client relationship roles*" (given as a reason for early retirement in investment banking).
- 4.19 eFinancialCareers.co.uk advised in an article dated 18th August 2006 'Jobs and Pay up in the City', "*Job creation soared by almost 20% in July, forcing investment banks to offer deeper 'golden hellos' in the scramble to attract the best staff.....there were more than 27% more new jobs than there were new candidates, reflecting a shortage of staff which is boosting pay for junior and senior candidates alike.....recruitment firm Joslin Rowe found that average golden handshakes are £15,000 but star players can easily demand £500,000 and above. What's more JR says new candidates can expect to get their full year bonus in December*'.

4.20 As I have described, the issue of employment, pay scales and recruitment processes are kept secret and consequently it is extremely difficult to obtain any form of disclosure. Also, search and selection consultants' reputations depend entirely on their discretion and confidential undertakings and will only speak 'off the record', if at all. However, I am able to report that I did speak at length with one very well known City consultant who informed me that Client Relationship Directors tend to be the domain of people who have had a successful career in sales. These people tended to be door openers for new and existing clients, accessing other parts of the client's business in order to widen the bank's opportunity to sell in more products.

4.21 In real terms of earnings however, my starting point is that Mrs X had been hired at the most expensive rate for her post 123 Bank had paid up to that time. Mr F, who interviewed her for the post at that time is clear in his assessment of her; *"Mrs X was the most expensive person that we had hired in Europe in Equity distribution. This reflected her economic value to the firm and also her exceptional reputation in the field.....in relative terms (she) was one of the highest paid people in that particular role in Europe"*.

4.22 I would prefer to leave the calculation of her remuneration package to Mr P. However, I note that he is using the basis of calculation described by Mrs X from her experience at YYY. This may not be the exactly the same at 123 Bank, but no doubt similar. Ultimately, any bonus is derived from a pool as a result of the profitability within the specific arena - in this case, equities. Logically, individual bonuses are awarded at the discretion of the individual's line manager. What I can say is that bonuses were in decline following the dotcom bubble bursting, but have since risen as evidenced in this report. As to basic salary, given market conditions and research I have no disagreement with the various expert

reports that £120,000 is a reasonable estimate. As shown above, the Napier Scott survey places average basic salary at £110,000 plus £445,000 bonus.

4.23 Had she not suffered the illness and the subsequent impact on her lifestyle and employment it is reasonable to assume that she would have received promotion from her status of Executive Director to Managing Director in due course, probably around the time of this report.

4.24 Mr B suggests she may have continued in her role as an Executive Director for another three to five years, from 31st December 2003. To discuss this;

(1) 'Burn out' does not apply in her case as she had already recognised this and made a career change

(2) Mr B provides no evidence to support his contention there are 'few senior managerial or client relationship roles', whereas I have.

(3) This implies that as she had financial resources she would have implemented a lifestyle change. It is more the case that she had achieved an excellent work-life balance whilst maintaining her role to the satisfaction of her employer.

(4) The evidence of the witness statements contradicts this.

(5) She had no desire to contemplate starting a business and there is no evidence to show that she would have worked in a boutique environment. As to changing careers, she had already identified the

opportunity at 123 Bank and contemplated remaining in that environment.

4.25 As can be seen from the labour market described in section 9, while 2004 was depressed, markets and hirings rose in 2005 and 2006. Even in 2004 staff who were made redundant were achieving higher salaries elsewhere. Mrs X was employed by a Tier 1 bank and it is more than probable, therefore, that in the unlikely event she found herself out of employment, a Tier 2 (say, a smaller European bank) would have been eager to secure her services because of her reputation and experience. There would no reason to assume she would receive a lesser salary working for a lesser bank, or indeed unable to obtain similar employment. eFinancialCareers.co.uk informed on 25th April 2006 in an article 'Banks face war of retention', quoting Morgan McKinley, "*the latest market study paints a picture of rampant hiring and reticent candidates*".

4.26 In summary, Mrs X had succeeded in a male-dominated environment. She was extremely highly regarded by her employer and had every expectation to receive generous bonuses in an improving market and to progress to the role of Managing Director. She had achieved an excellent work-life balance and had reasonably expected to sustain this through to the age of 50 which she anticipated could be a sensible age to retire. Given the evidence available to me I have no hesitation in supporting this contention as had the diagnosis been correct in the first place and appropriate treatment given (as I am informed), she might have expected to return to work after around six months. I can confirm that this is likely as in our London office over a period of 5 years three of my staff also suffered from breast cancer and each returned to work on a full time basis within that timeframe. It would be inappropriate for me to reveal the final outcomes in this report.

4.27 However, the sort of issues that may have faced her and which are touched upon in 4.8 above are not insurmountable by any means and matters that one would have expected a professional, responsible and caring employer such as hers to take responsibility for. The 123 Bank web site is fulsome in its support of diversity. To quote the Group CEO, *“The bottom line is that Diversity is important for all employees as we attempt to build a culture that enables 123 Bank to attract and retain the very best talent”*. I see no reason, therefore, that under ordinary circumstances whereby Mrs X had returned to work following successful treatment, she would have received the sort of support she would have expected to enable her to pick up where she left off.

5. THE ILLNESS AND ITS CONSEQUENCES

5.1 Mrs X was diagnosed with cancer and stopped work to undergo extensive treatment, including a total left mastectomy in April.

6. POST-ILLNESS EMPLOYMENT HISTORY

6.1 Mrs X has not returned to work. However, she is in receipt of an income protection insurance which may cease at the end of March.

7. PRESENT TRANSFERABLE SKILLS

7.1 Unquestionably Mrs X retains all her occupationally acquired skills although it is fair to say these have not been put into practice since she stopped work. According to Mr G it is unlikely these skills can be put to identical pre-condition use under the normal pressures of the industry. I also note both Messrs R and T state the post cannot be carried out part

time. As the latter succinctly puts it, “*Customers are not part time and do not expect their bankers to be*”.

7.2 In considering the difficulties Mrs X would experience after a return to her position, or similar, after a break of 2.5 to 3 years I am mindful that under other circumstances where a career break is requested so that the employee may further develop themselves, for employer and employee this can be a valuable arrangement although there is no statutory right to such a break, but many employers have policies or collective agreements which outline eligibility and conditions. However, I recognise that in the circumstances under discussion the break is due to illness and not for the purposes of development, but the underlying principle of returning to work remains the same.

7.3 Today there are more flexible employment options and although I further recognise it would be difficult to re-establish one’s position and contacts after a prolonged absence nevertheless it is generally recognised that a career break does not necessarily damage a career.

8. PRESENT EMPLOYABILITY

8.1 Employability can be defined as a range of qualities which make a candidate attractive to a potential employer. These include the following: presentation; interpersonal skills; flexibility and a positive attitude towards work; occupational skills; qualifications; experience; commitment; trainability and willingness to learn.

8.2 Undoubtedly, Mrs X meets all the above criteria and thus is employable as I define it. As she put it to me when we spoke at the telephone, “*There is nothing to stop me from going to work 5 days a week tomorrow*”, but she has been advised by her Surgeon, Oncologist and

GP not to return to work and her husband very much believes she should follow their advice. Moreover, Mr BC is of the view that it is possible for her to consider returning to work part time, and difficult to be confident when considering full-time, because of the mental and physical stresses associated with the pre-illness job. I interpret this letter to mean that full or part time return the work relates to that of her pre-condition job.

8.3 Although I have discussed ‘career breaks’ above, banking is a ruthless business and notwithstanding whatever policies 123 Bank may have in place regarding a return to work, nevertheless her Rolodex will be significantly out of date and thus her value to 123 Bank diminished. There is also the matter of travel to London, which she would not be able to undertake.

8.4 As an employee of 123 Bank she will fall under the auspices of the Disability Discrimination Act which requires employers to make reasonable adjustments. However, “a disability should not bar a person from employment unless it would genuinely and significantly impede that person from doing the work in question, and there is nothing the employer can reasonably be expected to do to overcome this”.

9. LABOUR MARKET CONDITIONS

9.1 The City of London financial services market is dependant on national and international economic trends.

9.2 The volatility of financial markets and its effect on City hiring is common knowledge and I do not intend to repeat them here to any great extent, but I do present an overview of recent years.

- 9.3 According to eFinancialCareers.co.uk, 7 April 2004, *'Staff made redundant in the City of London are increasingly likely to win a salary increase when they find a new job. They are also finding it easier to get back into financial services positions...in the first quarter of 2004, 49% of people who found new jobs did so on higher salaries than in their latest position'*.
- 9.4 By 25 July 2005 they were reporting *'base salaries were rising after years of stagnation'*.
- 9.5 Reference to www.incomesdata.co.uk revealed on 29th October 2005 that *'City optimism and confidence are improving'* (a CBI/Pricewaterhouse Coopers survey in June) and, according to Morgan McKinley, recruitment firm, *job prospects for City professionals are looking good. The number of new City jobs created in August 2005 stood at 6,489 compared to 4,347 in August 2004, an increase of 49%'*.
- 9.6 The City of London Economy Digest, February 2006, informs *'City activity performed strongly in the last quarter of 2005 with the near-term outlook remaining rosy...employment and wage survey data continue to support other data showing the buoyancy of financial services in the City. Morgan McKinley suggests that 2006 should be another good year for the City jobs markets'*.
- 9.7 IDS also revealed that in 2006 jobs and pay were up in the City (19 August 2006) *'Job creation soared by almost 20% in July, forcing investment banks to offer deeper "golden hellos" in the scramble to attract the best staff'*

9.8 eFinancialCareers.co.uk reported on a study by pay consultants Johnson Associates; *'2006 bonuses will be up by an average of 15% across all business areas in the financial markets'*, and the *'laws of supply and demand drive pay higher than ever'*. A further reported dated 25 April informs *'As hiring continues to outpace supply, the chief executive of one City of London recruiter says banks are paying more attention to keeping hold of the staff they've already got'*.

9.9 The same source informed on 25 August *'This (accelerated time to hire) trend shows firms' willingness to shorten the interview process as they all go after the same, ever-shrinking talent pool'*.

10. EFFORTS TO MITIGATE LOSS (JOBSEARCH)

10.1 Mrs X has received extensive medical treatment which has rendered employment, or seeking employment impossible.

11. RESIDUAL EARNINGS CAPACITY

11.1 According to her statement, Mrs X would be unable to work a 12 hour day as she has far less energy than hitherto and requires more sleep. Mr BC is of the opinion that although it would be possible for her to consider returning to work on a part-time basis *"it is difficult to be confident that this is appropriate on a full-time basis...because of the physical and mental stresses associated with the job that she had been doing prior to her illness"*.

11.2 It is not uncommon for people at Mrs X 's executive level who have been absent from their specialist role for some time to find themselves "yesterday's person" in terms of their potential contribution, simply because their 'Rolodex' is not up to date. However, she is protected in

law and would no doubt have the support of 123 Bank should she wish to return to work. In that event I believe her basic salary would be no less than at the point when she stopped working, or the existing rate for the post, but undoubtedly any bonus would be reliant upon the good will of 123 Bank until or if she were able to translate that into positive measurable income set against targets.

11.3 It is unlikely in my opinion Mrs X will contemplate a return to full time work in the City as her work could not be carried out in a part time capacity for the simple reason that clients expect continuity, nor is it advised by Mr BC. Likewise, I have considered whether this sort of work could be carried out at arm's length and I have come to the conclusion that although technologically this is highly possible Mrs X told me that 123 Bank would not countenance this scenario, even though they might pay lip service to the possibility. I am afraid I am unable to comment any further on this particular aspect and moreover I suspect it will be impossible to support the contention either way by evidence from 123 Bank . However, it would be unreasonable in my view for an employer to expect an employee who had suffered traumatic and devastating consequences as a result of cancer and with a limited life expectancy to ultimately return to the same level of productivity in a pressurised environment.

11.4 Were she to return to 123 Bank in a part time role or one with less responsibility, I agree with Mr B that her remuneration would be adjusted to reflect this. However, I believe that a part-time role as an Equity Client Relationship Director is impractical for the reasons stated in this report and the likelihood is that if she returned it would be in a lesser role, which she would not do. My point is that neither he nor I know whether there any restrictions.

- 11.5 It is not correct for Mr B to state that executives resume working when a PHI benefit has ceased following medical opinion that they are fit to do so. This is a catch-all statement and does not take into account the conditions that may be contained in a policy such as ‘own occupation’, in which case no matter whether a claimant can work (in any capacity) it would be the case they cannot carry out their former occupation and therefore would be covered under the terms of the policy.
- 11.6 Mr B contends in his report that it is entirely possible for Mrs X to return to her current role at 123 Bank, albeit achieved over a period of time and based upon a specific return to work programme, and further states “*I cannot envisage circumstances in which Mrs X’s employment with 123 Bank would now come to an end*”, but makes an odd reference to it continuing “*up until the end of the period I have already indicated*”, which I assume to mean at some point between 31st December 2006 and 31st December 2008. I believe this to be a reference to potential redundancy, which is always possible, although I find the comments difficult to reconcile. In any case if Mrs X were to have been made redundant, which I consider highly unlikely, I believe that but for the alleged clinical negligence she would have had no difficulty in immediately obtaining an alternative position which would have given her a salary and bonuses at least equal to those she would have been receiving at 123 Bank bearing in mind that, for some years now, there has been a rising market and verified by my research contained in section 9.
- 11.7 In order to contribute to her loss it is probable that Mrs X could secure relationship management work within easier travelling distance of her home, albeit with far less responsibility. When I conducted web research into her local labour market, by an extraordinary coincidence I discovered a home-based Client Manager’s job for one of the UK’s most

respected banking institutions, paying a basic salary of between £28,000-65,000 gpa with on-target earnings of £65,000 gpa. Other Client Relationship Managers' posts within easy travelling distance of her home, for example with Reed Accountancy, paid £22-25,000 gpa. I am unable to comment on the level of responsibility and demand to meet targets, but I would assume, given my experience in the recruitment field, that the job at Reed would be less demanding than the home-based banking job.

12. SUMMARY AND CONCLUSIONS

12.1 Mrs X received a misdiagnosis of xxxxxxxx and subsequently underwent extensive invasive surgery. She has not worked since on the advice of her medical advisors.

12.2 At the time she worked as an Equity Client Relationship Director for 123 Bank in the City of London. She had been appointed at the highest remuneration level for that rank in comparison to others and was considered of exceptional talent. Her earnings are a matter of evidence and considered in the forensic accounting report, with which I have no disagreement.

12.3 She had every expectation to continue in this role as she had made the right career move at the right time in order to avoid 'burn out' and had achieved a highly satisfactory work-life balance and anticipated working until she was 50. In my opinion this was an entirely sensible approach that suggests she had a very good understanding of banking trends. Although bonuses had decreased in the few years following the dotcom disaster, nevertheless the market has improved and today's rainmakers, of which she was one, are enjoying stellar bonuses as evidenced from current media exposure. Bonuses are derived from the profitability of a

specific area, in her case equities, and allocated to the pool from which the line manager allots individual bonuses dependent on performance. Although I am unable to quantify what they might be today it is clear they are more than likely to be significantly in excess of that which she enjoyed in earlier years.

12.4 There is no reason to suppose, therefore, that this would not have continued but for her unfortunate circumstances.

12.5 She had also ultimately expected to receive promotion to Managing Director, which is supported by her line manager. Given the reasons why she was hired in the first place, her subsequent performance, and overall opinion of her peers and seniors, I see no reason why this would not have occurred.

12.6 It is unlikely in my opinion that Mrs X could return to 123 Bank in her previous role, either part time, job share or on a phased basis. Simply speaking, the job requires full time commitment. Had she returned to work following appropriate referral and treatment after, say, six months and then on a phased basis, I see no reason why she should not have continued her career without interruption. As it is, the pressure and demands of work and travel would fatigue her and she would not be able to cope full time.

12.7 Mrs X states that she could work full time 5 days per week, but given the evidence of Mr BC I feel she may be over optimistic in this regard. However, I recognise Mr BC is probably referring to her pre-condition post and it may be appropriate to obtain further comment from him in relation to Mrs X returning to any form of similar work, even locally, as I have described in this report. If the Court determines that Mrs X is capable of returning to a less demanding job within easier travelling

distance of her home she would expect to earn in the region of £22,000 - £25,000 gpa (£320.40 - £359.07 net per week) which reflects a much lower level of responsibility and without the pressure of delivering to demanding sales targets. These values may be fairly halved if part-time is considered a more suitable option.

- 12.8 The above considerations should be taken into account in relation to Mrs X's claim for loss of earnings.