

AN EMPLOYMENT REPORT

ON

MR X (DECEASED)

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1. INTRODUCTION: AREA OF STUDY

- 1.1 This report is prepared for the Court on the instructions of Will Sue & Co, solicitors for the Defendant, and will consider the employment opportunities of The Deceased had he not been killed in an incident on XX Juvember 2002. At the time of the incident The Deceased was 34 years old, and employed as a Sales and Marketing Director.
- 1.2 This report will cover The Deceased's qualifications and experience, his employment history, and his pre-incident earnings potential. By considering this information in relation to labour market conditions and comparing to surveys and earnings data, an objective estimate may be made of any loss of earnings he may have suffered.
- 1.3 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.

My business experience of over 36 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 past President of the Institute of Employment Consultants (now Recruitment & Employment Confederation). A past Chair of the Joint Consultative Council for Recruitment Practice, which brought 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, Chair of the Recruitment Committee of the Academy of Experts and a member of the Executive Committee and of Council and was elected Vice Chairman of the Academy in September 1997.

In 1996 I was nominated by the recruitment industry for Personality of the Year and in 1997 for Outstanding Contribution to the Recruitment Industry, both 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.

1.4 As part of the preparation of this report I have had sight of a large bundle of documents including:-

- a) Letter of instruction dated 1st April 2007 and other correspondence from Will Sue & Co.
- b) Claimant's and Defendant's documents
- e) Pleadings, Statement of Claim, Schedule of Special Damages, Schedule of Loss & Damage.
- f) Witness statements by:

Mrs A, and others

Experts:

Mr DD

Mr BC

1.5 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 Deceased'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 2007/2008 tables.

1.6 Opinion relating to The Deceased is presented on the basis of the documentary evidence listed in 1.4 above, supplemented by appropriate reference to external research documents as detailed throughout this report.

2. EDUCATION AND TRAINING

2.1 The Deceased attended local College from 19xx-19xx, attaining 14 O levels and 5 A levels, according to his CVs.

2.2 I contacted Local College who provided the following results for The Deceased:

Exam Series	Subject	Board	Level	Grade
June 19xx	Economics	Oxford & Cambridge	A	A
June 19xx	Physics	Oxford & Cambridge	A	C
June 19xx	Maths	University of London	A	C
June 19xx	179? (code only, no subject)	AEB	O	C
June 19xx	Additional Mathematics	Oxford & Cambridge	AO	B
June 19xx	Religious Studies	Oxford & Cambridge	O	B
June 19xx	English Language	Oxford & Cambridge	O	B
June 19xx	English Literature	Oxford & Cambridge	O	B
June 19xx	History	Oxford & Cambridge	O	D
June 19xx	Geography	Oxford & Cambridge	O	C
June 19xx	Latin	Oxford & Cambridge	O	C
June 19xx	French	Oxford & Cambridge	O	D
June 19xx	Physics	Oxford & Cambridge	O	A
June 19xx	Chemistry	Oxford & Cambridge	O	C
June 19xx	Human Biology	Oxford & Cambridge	O	E
June 19xx	Biology	Oxford & Cambridge	O	C
June 19xx	Religious Studies	Oxford & Cambridge	O	B
June 19xx	Biology	Oxford & Cambridge	O	E

2.3 He claims he attended distant university from 19xx-19xx and achieved a BA Hons in economics.

2.4 His father informs The Deceased started at another distant university where he stayed for a year, but *“as a result of over-socialising The Deceased failed to obtain the standard that he should have done and left as a result...He managed, though, to obtain a place at distant university a year later”*.

- 2.5 I am informed by another distant university that The Deceased registered in October 19xx to study towards a BA Economics and Statistics, and withdrew from the course on 1st July 19xx.
- 2.6 I am informed The Deceased had received a conviction for drink/driving. This is a question a recruitment consultant and potential employer would most certainly ask and may, depending on requirements, have proved a restriction in terms of his ability to travel on behalf of the employer.

3. PRE-INCIDENT EMPLOYMENT HISTORY

- 3.1 Reference to various CVs drafted by The Deceased and witness statements informs me he was flexible in the setting out of his educational and career history. For example, he states he had obtained a degree in economics, but did not, having completed only two years of the course. He claims to have achieved 14 O-levels and 5 A-levels, which is untrue.
- 3.2 Mrs A says in her statement, para 6, *“At the time I met The Deceased he was working for the Anytown xxxxxx. Before then he had worked in London. He had managed a number of bars”*. There is no reference on any of The Deceased’s CVs in my bundle to him working at Anytown xxxxxxxx. I do not know in what capacity or how long he worked there.
- 3.3 In section 93 of my bundle of Claimant’s documents, his CV for the period 19xx-19xx states *“Managerial positions in various small businesses, predominantly in the leisure industry in central London”*, which I take to mean he is referring to his work in bars. In section 42, for a similar period, 19xx-19xx, *“I spent three years after university working in temporary positions within banking, IT, Local Government*

and managing small businesses within the leisure industry”, as does the CV at section 101. I am completely unclear as to what work he did in banking, IT and local government, although the last may have a tenuous connection to his work at Anytown xxxxxxx, as suggested by his widow.

- 3.4 The CV in section 101 is, in my opinion, the earliest drafted and therefore more reliable.
- 3.5 He was the sales and marketing director at ABC company at the time of his death.

4. EARNINGS POTENTIAL BUT FOR HIS DEATH

- 4.1 I have considered several points relating to the Deceased’s earnings and potential increases, the age profile in his field of employment, and the employment opportunities and concomitant earnings, which in their totality can provide a reasonable indication as to where The Deceased fitted in to the overall scheme of things and what he was likely to achieve, given his particular occupational experience and circumstances.
- 4.2 In order to arrive at a reasonable assessment I have referred to a large number of salary surveys and other sources specifically related to marketing and commented on those witness statements, which suggest possible employment options and earnings for The Deceased.
- 4.3 The Deceased was a sales and marketing director in the technology sector and therefore had no foreseeable requirement to step outside of this arena or apparently his employer at the time of his death. Nevertheless, had the need arisen there appears to be no reason he would not have been able to secure similar work. On the face of it there is no reason why he would have wished to step away from an apparently

growing business in which he had an equity interest and the possibility of a planned exit. However, I discuss this later when considering the construction of his curriculum vitae, why I believe he wrote them when he did and the fortunes of his employer, the latter of which is particularly described by a forensic accountant.

4.4 As a sales and marketing director he would not have been involved in the development of new products in any company. His job was to create markets for the products already developed by the ‘techies’ and to be involved in the process of selling.

4.5 It is claimed he was earning £50,000 p.a. at the time of his death and in November 200x his earnings would have increased to £66,000. His earnings at the time of his death and thereafter would only have been dependent on that which his company could afford and would not have related to market conditions.

4.6 In order to compare salaries at the time of his unfortunate passing, I referred to a number of relevant surveys. Remuneration Economics’ 2005 Salary Survey of Sales and Marketing Staff reported in the 12 months to September 2005 that the annual rate of increase in average earnings rose from 4.5% in 2004 to 6.8%. Median salary values reported were:

Director	105,000
Function head	65,920
Department manager	56,498

4.7 The Chartered Institute of Management reported the average earnings of marketing managers and directors in 2004 were, respectively, £38,446 and £116,123.

- 4.8 On the basis of these values it would appear The Deceased, as a director, was paid below market rates for his sector and level at the time of his death. Mr ddd proposes that in the November of 2004 The Deceased's salary would have increased to £66,000. With regard to the accounts of ABC company, I defer to the forensic accountant to comment on available funds.
- 4.9 Any increase would have been within the gift of his employer and dependent upon results and whether his contract involved payment of commission and/or bonus. Scrutiny of his Executive Service Contract dated yy February 200x reveals he was paid at £50,000 gpa without mention of commission and any bonus was discretionary, subject to the Company's performance. It would be usual for a person involved in a sales position to receive commission based either on personal, divisional or company performance. His employment commencement date was stated as aa December 19xx.
- 4.10 I recognise that in creating a new business The Deceased may well have offered to work for the same sort of salary he had enjoyed prior to joining ABC company and perhaps even agreed to forego any salary for a period of time. From the evidence made available to me I cannot see that he received any salary for some considerable period of time or his salary increased beyond that which was originally agreed. It would be normal to see an increase in salary several years down the line, which does not appear to have happened.
- 4.11 However, it can be reasonably assumed that had he left his employer around the time of his death for any reason he should have been able to secure work elsewhere as a Marketing Manager/Director in another IT SME (small to medium enterprise) as he was in the peak earning period

for his age (see below), but unlikely to have been hired by a large corporation as his track record would not offer sufficient evidence of achievement.

- 4.12 Giving consideration to the age factor, allowing that Age Discrimination is now unlawful, the 'Marketing Week' article entitled 'Wishing on the stars' dated 12th January 2006 is very helpful: *"If marketing is a career, it more closely resembles that of a professional footballer or Formula One driver than being a partner in a law firm. Whereas the latter might expect to get continual salary rises with age and experience, and especially with increased responsibility for a larger department, marketing salaries appear to peak early and at smaller scales.*

The highest earning age band for marketing directors, for example, is 31 to 35. The average salary at this age is £70,384. Marketing managers also peak at this age with a salary of £40,948.

This may well reflect an increase in the number of marketers taking career breaks, combined with the stripping out of older practitioners. Just three per cent of marketers are aged over 50, giving a career duration of barely 25 years. For all the discussion of "grey hair wisdom", this remains a young person's profession - 60 per cent are between 27 and 35 years old.

This is an extreme compression of the age profile compared with most other professional services. There is also evidence of a "golden hello" approach to lure young talent, with some marketing directors under 26 earning £68,214, product managers of the same age on £32,000 and marketing services managers of this age getting £41,250. All of these are above the average earnings for their job".

- 4.13 This indicates to me he was within the peak earning period of his working life at the time of his untimely death, but as he got closer to 40 he may have experienced some difficulty changing employers, more so post-40, at which age he would have experienced even greater difficulty retaining his position as new blood came to the fore. It is noted he would have been 37 at the date of this report and already outside the 'golden age' of earnings (27-35). My recruitment experience over a 36 year period of self-employment (40 in total) in various industry sectors at varying occupational levels informs me that any high energy role such as a sales or marketing manager/director, foreign exchange trader and even that of a recruitment consultant, all of which work in a highly pressurised sales environment, has a strong tendency to peak around 40 years of age.
- 4.14 The Marketing Week/Ball & Hoolahan Salary Survey 2006, reported on 12th January 2006, stated the softening of marketing director salaries continued with the reported average salary for that year standing at £66,221 (IT sector £66,600) against £66,490 last year (2005).
- 4.15 Opportunities in the IT sector are vast although constrained by age, which is typically allied to fresh, younger minds, new concepts and broader knowledge of technological innovation. However, as I have stated above it is probable The Deceased would have remained with his employer where he had a vested interest until events forced a change in his circumstances. Although it is likely he may have been fearful as to the security of his job and indeed the future existence of his company at the time of his death it may not have necessarily been apparent, but in the event circumstances changed to force him to consider his position at some time in the future he would have experienced difficulty securing and remaining with new employers the older he became. It is suggested

ABC company may be forced to close by the end of this year at which point The Deceased would have been aged approximately 38.5.

- 4.16 To support the claim for loss of earnings and future opportunity but for his death, there are several witness statements to which I refer: aaa, bbb, ccc, and ddd. Dealing with Mr ddd first;

DDD:

Mr ddd bases his views on documents provided to him and in particular refers to The Deceased's curriculum vitae contained in The Deceased's bundle of documents, which appears to relate to The Deceased's position at death. Mr ddd interestingly makes a point that he does not know why The Deceased produced this curriculum vitae and suggested The Deceased liked to keep an up to date version on his pc. He states; *"The document certainly gives the impression of being a draft version rather than one that was ready to be submitted as part of a job application"*. This is an interesting point and one I will discuss here. It has been my experience of interviewing many thousands of people, including disabled claimants, and especially those in a more senior position, that the structure of a CV such as this ie outlining the current post's duties with a commencement date but no close date, always suggests to me a degree of dissatisfaction or concern regard the existing employment situation and a CV is drafted in the event of imminent need. I have proved this to be so in other cases.

The Deceased produced three CVs, undated but clearly while at ABC company and because of this I believe that taking one CV as a point of reference is not entirely appropriate as it is equally relevant to take into account all the information prepared by A in his CVs. Attention is drawn to the CVs contained in the bundle and comparing them to that upon which Mr ddd places his views (para x). There are subtle

variations, for example The Deceased worked at xxx from August 19xx to January 19xx, but says he worked from July 19yy to December 19yy. I prefer the earlier version as the more reliable in terms of career history, which is borne out by the payments received into his bank account on aa January 19xx from xxxx.

I am inclined to agree with Mr ddd that CV zzz is the most recent as it sets out in more detail the clients with whom A worked. However, I do find CV xxx also of particular interest. The remarks contained under 'relevant work history', December 19xx to date ie "*since commencing active sales in February this year*" suggest the CV was written shortly after the business was incorporated on aaa February 20xx. Therefore, either The Deceased regularly updated his CV just for the sake of it (highly unusual in my view), or had concerns about the progress and future of ABC company even at this early stage.

According to these CVs and his conditions of engagement The Deceased commenced employment with ABC company on aaa December 19xx, even though the company was incorporated in February 20xx.

Mr ddd states his company enjoys a well respected reputation, which implies he is diligent in the matching of candidates to jobs and it is therefore disappointing to note he glosses over the fact The Deceased had not completed his degree and surprisingly states it is not uncommon for candidates to present their CV in this way (candidates making an untruthful statement), although to be fair he said he would have pointed the error of The Deceased's ways in this regard. Cheating does occur but in my experience it is easily and increasingly discovered by a potential employer, especially at this level.

Mr ddd continues on page 5, section 3, by stating *“Had I interviewed The Deceased at the time of writing his draft CV, I would have counselled him to be more specific and to have simply stated that he had completed the first two years of the course. Whilst there are many companies that would not consider a non graduate candidate for a senior position, I believe that most of the organisations that The Deceased could have worked for would not have been too concerned about this fact”*.

On page 12, section 5, C, Mr ddd opens by stating *“In many respects this may have been the most stable option that The Deceased could have considered”*, but then goes in to say in the last para *“this part of the market (large established companies) would be more likely than the others to have had reservations about the incomplete degree course. Some organisations within this category may have a strict policy on this, whilst others as I have suggested earlier would focus more on experience and capabilities”*. Mr ddd’s view, with which I entirely agree, is that most companies of this nature would have reservations about the lack of completion of a degree course. It is difficult, therefore, to follow how he considers this would have been The Deceased’s most likely career option.

It is of particular interest to note Mr ddd’s supporting evidence (page 15, case study 4, referring to appendix 4); the job description of a Sales Director, which he successfully recruited and which he proposes would be a typically suitable job for The Deceased. Reference to the document informs under the sub heading ‘skills, knowledge and experience’ the candidate must be ‘educated to degree standard’. The Deceased did not possess a degree.

Because of this contradiction it is my view Mr ddd is being somewhat generous in his assessment of The Deceased's possible opportunities.

Mr ddd suggests a range of options, including case study 4, and mainly related to sales, had The Deceased sought work elsewhere and provided salary expectations, none of which are supported by external evidence or comparisons. I note Mr ddd provides a salary survey on his company web site, but which is not specific to marketing directors or managers. He also claims his company regularly recruits for overseas organisations, which is not necessarily the same as placing a candidate in a job. However, I note the jobs quoted by Mr ddd contained in his case studies; xxxx, xxxx and xxxx, were all vacancies he handled in 2006 and therefore seem to have no relevance to today or when ABC company may cease trading.

The jobs currently advertised on his web site do not indicate salary. For the sake of comparison I randomly drew down a sales and marketing director vacancy:

Sales and marketing director, London. Requirement for someone who had achieved multi-million pound annual sales over three years and a strong leadership pedigree.

This sort of role would not have been suitable to The Deceased, not least because he did not own a strong leadership pedigree.

AAA:

Is the CEO of ABC company who, together with The Deceased, formed two of the four founding directors.

There is a considerable amount of evidence supporting his statement which I believe is more properly within the remit of a forensic accountant. However, I make the following background observations:

ABC company (formerly xxx Limited) was incorporated on xx/xx/20xx. ABC company was formed in xx/xx/19xx. The Deceased was a main board director in both instances. According to the Schedule of Members as at xx/xx/xx The Deceased held aaa shares out of a total bbb, or 12.91% of ABC company.

The shareholdings of ABC company are held by ABC company and Another company, the latter being incorporated xx/xx/1901. The Deceased was not a director or shareholder of Another company. ABC company reported significant profits to the year ending 30th xxx 200x with shareholders funds doubling to £xxx,xxx. ABC company reversed the previous year's losses before tax of £xxx,xxx to a profit of £xx,xxx. In either event under normal circumstances I assume The Deceased would have been fully aware of the financial position.

One of the main developments of the business was Extended Copyright Protection (XCP) which it sold to xxxx. The XCP product is also described as a Rootkit; a programme which surreptitiously installed XCP when music CDs were played on a PC. It was alleged in an article by xxxx, that it was poorly designed and when xxxxx, now a technical fellow at xxxxx, discovered its behaviour eventually xxxx recalled the CDs and issued a removal program. This is discussed in Mr aaa's statement *"there was a great deal of adverse publicity...however, following the storm of adverse publicity the record labels lost their appetite for copy protection...following the withdrawal of xxxx we substantially cut our overheads from £120,000 to £80,000 per month and closed our premises in anywhere. The Directors also received a*

salary cut". This, of course, was subsequent to the death of The Deceased, but had he been alive this position would have affected him equally. Mr aaa confirms it is their intention to sell the company "*when the time is right*" and believes "*it is not unusual for a company to achieve 20 to 30 times profit as a sale value*". This statement was made on xxth March 200x against the background of a very poor outlook for the global economy, the credit crunch, plus the poor financial state of his own company.

At the time of his death The Deceased was earning £50,000 gpa, which was anticipated to rise, according to Mr aaa, to £66,000 in xxxx 200x, reducing to £50,000 due to the salary cuts which were made due to the XCP2 affair. He states that from xxxx 200x this would have reverted to £66,000.

It was the intention of the directors to seek an exit by floating or selling the Company, but to my knowledge this has not happened at the date of writing this report, at which point The Deceased would have been 37 years of age. As I have stated above, it is highly unlikely in my view, given the state of the global economy, this may occur in the foreseeable future, an economic situation which would have happened in any event irregardless of the death of The Deceased.

The forensic accountant summarises the position of ABC company thus, "*It may be possible to achieve an exit from the business (by way of sale) in the short/medium term but that would be dependent, perhaps unrealistically so as an expectation, on the immediate commercial success of the products of the ABC company group. Based on the historical results to date, there has been little evidence to support the view that the ABC company group will be successful in the future*". In his opinion there is a real prospect that December 200x (if not earlier)

will prove a watershed in the fortunes of the Group and on the balance of probabilities there is some doubt the Group will continue to trade into 200x.

BBB:

Is the Chief Financial Officer of Top Company, which is a significant company and major player in the field of providing solutions to the disruption caused by viruses and spam on the internet, basically providing security in the exchange of information.

He claims to have known The Deceased since they met at another distant university between 198x and 199x (paras 2 and 6 of his statement). This might have occurred as The Deceased was at another distant university for around 9 months from October 19xx to end of June 19xx.

Mr bbb holds a high opinion of The Deceased. He opined (para 10) *“The Deceased had excellent marketing and business development skills”*. In his statement he provides three possible roles within his own organisation which The Deceased may have potentially secured had he wanted to and it is of importance to note none of these have ‘sales’ in their title, but ‘marketing’ or ‘business development’. These are set out at para 11 of his statement. However, Mr bbb describes the first role, that of Senior Vice President, Marketing, as inappropriate because *“it is unlikely The Deceased would have had the full range of marketing skills or experience to undertake (this role)”*. I cannot follow the logic of Mr bbb including this as a potential job if he believes The Deceased did not have the skills to undertake it.

He then discusses the role and earnings of Regional Marketing Vice Presidents/Directors in the geographical areas of EMEA (Europe, Middle East and Africa), US and Asia Pacific. My research of Top Company indicates as of xxth November 20xx xxxx was appointed Vice President to the Asia Pacific region with xxxx the marketing director. xxxx was appointed marketing director to EMEA in xxxx 20xx. In the United States xxxx was appointed Vice President, business development and xxxx Vice President, sales operations. As far as I am able to understand all these people are *in situ*. xxxx, one of the founding directors of Top Company, whose main board role was Chief Marketing Officer, re-located to the United States in or around xxxx 20xx.

He suggests The Deceased would have been suitable to the role of Vice President of Product Management & Business Development and says he would have been in a position recommend him for the role and have been influential in any decision to recruit him. xxxx is the Senior Vice President Marketing, to whom this role reported.

I telephoned Top Company to ask for the name of the Vice President of Product Management & Business Development, but they refused to provide me with the information, repeatedly asking who I was and in what connection was I asking. Eventually I managed to elicit there were several roles of this nature with different functions.

The way Mr bbb describes the role is as if there is only one position. It is important, therefore, to ascertain from him exactly to what function A would have been suited and, indeed, whether a vacancy of this nature exists, or is planned to be vacant in the next two years. He also describes this role as part of the 'senior management team'. This may be misleading as reference to the Top Company web site informs the

‘management team’ consists of those members who really are senior to the business, such as Mr bbb, but does not include vice presidents*.

* In business vice-president refers to a rank in management. Most companies that use this title generally have large numbers of people with the title of vice president with different types of vice president (e.g. vice president for finance). When there are several vice presidents in a company they are sometimes ranked by naming the highest ranking Executive VP, the second highest ranking Senior VP, and the remainder of the management team just VP. There are usually several SVPs in one company, when that title is used. There can also be more than one EVP. In investment banks and broking houses, for example, there are usually several VPs in each local branch office, the title being more of a marketing approach for customers, than denoting an actual managerial position within the company. A corporate vice-president is rarely "second in line" to succeed the corporate president following death or resignation. (source: Wikipedia).

It is of significance to note, as of xxth xxxx 20xx, there were no marketing or management vacancies posted as available on the Top Company web site.

It would be helpful for Mr bbb to provide exact details regarding the anonymous comparators described in his para 11(ii) of his statement and how many vice presidents there are in (iii). Moreover, detailed information by way of payroll advices as to the typical salary enjoyed by people whose role is directly comparable to that of The Deceased.

It is all very well for Mr bbb to propose different job scenarios and indeed perfectly understandable given his claimed long, personal knowledge of The Deceased. However, there are two issues of importance relating specifically to the recruitment of The Deceased; (1) there had to have been a job available in the first place, (2) the recruitment processes operated by Top Company and how that would impact on the recruitment of The Deceased.

(1) This is already answered. There do not appear to be any jobs available at the present time. All those of importance and relevance appear to have been filled for some little while.

(2) Top Company is a world-leader and as such appears no longer to subscribe to the old-boy network or buddy method of recruitment. Their annual report of 2006 states that at £24.3M (2005 £25.8M), sales and marketing costs remained the largest component of total operating expenses, but actually fell year on year by some 6% despite the continued growth in turnover. This was due primarily to effective headcount management and ensuring the Group's sales force perform to its maximum potential as well as ensuring the Group's marketing campaigns are focused.

The Group, at xxxx 200x, had xxx people in management, finance and marketing with a total payroll of 682. Total wages and salaries were £30,373,000. The average salary is therefore £44,535 gpa (200x £44,001). The detail of individual salaries is not available.

In March 200x Top Company entered into partnership with YYY Consulting who became their onsite recruitment partner, deploying a team to support organisational resourcing activity for all permanent personnel across Top Company. The purpose was to implement a robust recruitment process including vacancy requisition, sign off, authorisation, recruitment advertising, rigorous CV analysis and pre-screening, plus competency-based interviewing.

Although, as Mr bbb states, The Deceased would have had the opportunity to potentially secure a job at Top Company of the sort he describes, undoubtedly he would have had to progress through a very rigorous recruitment procedure whilst competing against other perhaps

more qualified candidates before he reached interview stage with Mr bbb. He would likely have had to undergone a competency based interview, had indeed he got that far. In my opinion, it is unlikely he would have secured a job on the basis of personal intervention by Mr bbb. Indeed, it is unthinkable a world-class company with newly-installed rigorous professional recruitment procedures would allow someone personally known to an officer of the Company to ‘sneak in under the wire’. Equally, I would have thought it unprofessional for Mr bbb to propose this course of action to his HR department or YYY Consulting. There would be no point in commissioning YYY Consulting to rigorously screen candidates if the process was to be under-mined at any time by a director of Top Company. Thus, in this scenario it is not a given The Deceased would have been guaranteed a job at Top Company.

Finally, some consideration should be given to Mr bbb’s remarks in 11 (iii) when he referred to The Deceased’s suitability to the role as he “*had performed this role with ABC company in introducing both the xxx product and yyyy to the music industry*”. It is a fact the XCP products were withdrawn following adverse publicity, in which case any thorough recruitment pre-screening process would have discovered several issues of concern regarding The Deceased’s career history; (1) his CV was untruthful (2) although he possessed very good marketing skills, the products he marketed were withdrawn after adverse publicity - an issue perhaps one might have thought The Deceased as a director of the company should have been aware of and additionally the impact such a failure would have on his company, and (3) on the basis of the Schedule of Loss that a job such as Mr bbb describes would have been available in ffff 20xx (after the demise of ABC company, according to the Schedule), his by then evidently poor entrepreneurial skills allied to his lack of recognition of the impact a failed product might have in the

marketplace would not place him at the forefront of, or indeed on, any candidate shortlist, in my opinion.

Mr bbb may very well have had some influence in inserting A into the recruitment process, but serious consideration must be given to this process, which was outsourced and described as 'robust' and the CV pre-screening and analysis as 'rigorous'.

CCC:

Mr ccc provides a positive statement as to the attributes and character of The Deceased. He believes had The Deceased left ABC company for any reason and because Mr ccc is recruiting a Head of Sales and Marketing in Europe for which he would expect to be pay \$200,000 (c£100,000 pa), The Deceased would have been a suitable and likely candidate.

Mr ccc is the president of California based xxxx Studios. From the Company's web site, it appears to be rather modest in size. xxxx Studios (Europe) Limited was incorporated in the United Kingdom on xxxx 20xx and has yet to submit any accounts, a company search revealed. I contacted xxxx Studios in London and was informed the company is in fact connected with xxxx Studios California and duplicates CDs for record labels.

According to his web site, Mr ccc is also a director of Y company, claiming offices in California, New York and London. Interestingly, he does not feature ABC company or any other connected company on his Y web page links to business partners. With regards to his Y London office, shown on his web site as situated at xxxxxxxxxxxxxxxx London EC, I have made extensive enquiries of occupants at the building and

there is no company resident by the name of Y. I understand the Y New York office, cited as at Rockefeller Plaza, to be serviced offices which may be rented by the day or longer.

I have conducted a company search but it reveals little and will leave analysis to the forensic accountant. However, based on the limited information available noted above, it appears to me he may be overstating his position somewhat, in which case there must be some doubt relating to the launch of his Europe venture and his claim he is searching for a Head of Sales and Marketing at a salary of \$200,000 p.a.

4.15 The Schedule of Loss and Damage bases The Deceased's loss of earnings on one premise only that following the cessation of ABC company "*He would have secured a position as a Vice President of Product Management and Business Development at a total salary package of £200,000 per annum excluding pension provision*".

4.16 Turning now to salaries and careers in marketing, I have discovered a significant amount of information and will précis them here. For the sake of clarification I have concentrated on the occupation of marketing and not sales as The Deceased does not appear to have been involved in a traditional sales manager's role and in any event the claim indicates a significant leaning towards marketing and business development.

www.itjobswatch.co.uk provides detailed information on the role of Marketing Managers in IT jobs across the UK to 15 April 2008, compared to market jobs as a whole. As can be seen from the attached graphs, in April 2004 Marketing Managers jobs in IT were 0.10% of the total, rising later that year but declining to the same percentage one year later, rising to a high of 0.35% in April 2007, but declining once more to around 0.19% in April 2008.

The trend for marketing managers salary is shown on another graph where it can be seen that in April 2004 the average minimum salary was c£37.5K and the average maximum salary c.£38K, dropping later that year to £35K and £39K respectively, gradually rising to a peak of £46K and £52K in October 2006, falling considerably to c.£36K and £43K in October 2007 and settling at c.£41K and £47K respectively in April 2008.

A histogram of marketing manager salaries covering the months February to April 2008 reveals that over 90 marketing managers in IT jobs achieved a salary within the range £30-39K, 10 achieved £70-79K, 1 achieved £80-89K, none achieved £90-99K, one achieved £100-109K and none achieved £110-119K.

Desirable qualifications are cited as, in order of priority, a degree, MBA and Prince2 certification (Projects IN Controlled Environments a method of managing projects), none of which The Deceased possessed.

www.careerbuilder.co.uk reveals Britain's top 10 salaries based on the results of the 2007 Annual Survey of Earnings and Hours (ASHE). It informs that the average salary of Managers (marketing and sales) is £54,029.

www.utalkmarketing.com reporting on the Chartered Institute of Marketing 2007 salary survey states that senior marketing managers are still falling behind their Sales equivalents in terms of financial rewards, and that the average salary was £51,188. It notes that marketing directors received a bonus equating to 21% of their salary.

www.mad.co.uk's July 2007 salary survey of marketers in partnership with The SG Group informs on average most marketing professionals have 10 years and 5 months work experience. The mean national salary for men is £43,334. Managing Directors are the highest earners; an average of £84,105. The average value of a car was £10,304 pa. With regard to personal performance related bonus the average was 11.3% of salary. Company performance related bonus was 9% of the person's salary. The average salary for a marketing director was c.£69,000. The average salary of a marketing manager was c.£42.5K.

The Huntress PR and Marketing Salary Survey update 2007 informs marketing managers earned within the range £34-38K and marketing directors in the range £45-80K.

Marketing Week provides some interesting information in an article 'Wishing on the stars' dated 12th January 2006; If a marketing director or manager wants to be sure of earning a premium, one strategy is clear – go to a US owned business. Where the business had an American parent, marketing directors earned £76,785 compared with £63,946 for other companies and for marketing managers the difference was £42,800 against £38,442.

Taken from the Marketing Week/Ball & Hoolahan Salary survey 2006, it is noted marketing directors of UK companies in departments employing over 51 staff earned £78,333 against £58,214 for departments of just one or two people. *“The softening of marketing director salaries continues, with the reported average salary for this year standing at £66,221 against £66,490 last year. The top 10% of marketing directors commanded an average of £97,500, down from £112,333 in the last survey”*.

On 11th January 2007 Marketing Week, according to their latest survey, reported average salaries had risen to £46,310, with marketing directors' salaries standing at £82,261. The average salary for marketing managers was £42,950.

- 4.17 In order to assess the current market I accessed the Marketing Week and Utalkmarketing web sites. Using the search criteria 'marketing director', 'London', 'Midlands', 'southwest' and salary requirement in excess of £40,000 p.a. I was unable to discover any jobs on the Marketing Week web site. Using the same criteria, utalkmarketing.com provided the following:

Head of marketing, Dorset	£50-60K
Client value manager, south west	£50-55K
Marketing manager, London	£45-55K

- 4.18 The latest Marketing Week/Ball & Hoolahan salary survey 2008 informs the average annual salary of a male marketing manager is £50,000 and that of a director, £89,662. Only the top 10% of the upper echelons of the marketing profession (directors) earn the average of £180,714.

- 4.19 To summarise this lengthy section, The Deceased clearly owned a high level of inter-personal skills and was able to relate directly to the customer base for whomsoever he was working. He was able to generate interest and sales as a result of marketing. Indeed, from the evidence I have seen he was a very personable man and highly regarded by his colleagues, peers, seniors and social friends.

- 4.20 A successful sales and/or marketing person usually has the ability to sell themselves as a pre-cursor to marketing and/or selling the products or

services of the company for whom s/he may be working. It is also a singular trait of such people who are, to use the modern vernacular, very good at 'bigging it up' and such people are usually good networkers and business developers and in this regard The Deceased was no exception, if his 3 curriculum vitae are anything to go by. Of course, it is not uncommon for people at this level and particularly in this occupation to re-shape their CV appropriate to any potential career move. It is unusual for someone to prepare three CVs whilst employed and it may be that The Deceased had concerns as to the continuance of ABC company at various stages of his employment.

4.21 Moving forward, but remaining with the subject of The Deceased's CVs, the discrepancies in employment, dates, and the fact he had not achieved the number of O and A-levels or a BA in Economics, as he had claimed, would be easily determined by a thorough pre-screening. This is highly relevant in terms of the opportunity at Top Company, which had outsourced its recruitment function. The service provider's claim is of a robust recruitment process and rigorous pre-screening and analysis of curriculum vitae. Because of this it is highly unlikely in my view The Deceased would have succeeded to short-list, despite what influence Mr aaa says he has. In the alternative, any good recruitment consultant would closely scrutinise his CV, especially for senior positions, and the discrepancies would have been easily revealed. Good scrutiny and good matching ensures the likelihood of a good fee for the consultant.

4.22 There are questions relating to the evidence of Messrs bbb and ccc. Mr ddd contradicts himself when providing suitably comparable jobs. However, these are 2 years old and not relevant to today. He says he would have reservations of a candidate who lacked completion of a

degree course. He appends as an example a job which clearly sets out the requirement for education as to 'degree standard'.

4.23 Equally, I do not place much reliance on the evidence of Mr ccc, as there was very little I discovered which supports his contentions and if anything, quite the contrary.

4.24 The Schedule of Loss and Damages in relation to future earnings relies solely on the assumption The Deceased would have secured a position at Top Company, as set out by Mr aaa in his statement. While I understand the support Mr aaa gives to his old acquaintance and as an investor in ABC company and user of the Company's products, and says he would be influential in any application The Deceased may have made to Top Company, the difficulty arises in that Top Company has had in place since 200x a strict and robust recruitment policy outsourced to YYY Consulting who have installed, among other measures, a 'rigorous curriculum vitae analysis and pre-screening' process. Given the weaknesses I identified in The Deceased's CVs I would be very surprised indeed if he had managed to pass pre-screening and progress through to the next stage and in any event even if unable to secure a position with Top Company I am of the view he would have likely experienced the same investigation by another careful interviewer.

4.26 It is claimed The Deceased's earnings at ABC company would have risen in xxxx 200x to £66,000. It is notable the Company's accounts inform the average salary for the 4 directors was £56,103.25 per director for the period ending xx/xx/0x; £55,939.25 for the period ending xx/xx/0x and £55,500 per director for the period ending xx/xx/0x. Each period had 4 directors. No doubt the forensic accountant will comment on this aspect.

4.27 Had he not suffered the untimely death it seems very likely ABC company would cease trading towards the end of 200x, at which time, if not before, he would have placed himself on the open labour market as available. No doubt he would have attempted to utilise his wide range of contacts.

4.28 However, by that time he would have peaked in terms of career earnings. When searching for a job the most desirable qualifications in order of precedence are: a degree, MBA and Prince 2*, none of which he possessed, but had he owned them his chances of employment could have been enhanced.

(* PRINCE2 is a de facto standard used extensively by the UK Government and is widely recognised and used in the private sector, both in the UK and internationally. The method PRINCE2 is in the public domain, offering non-proprietary best practice guidance on project management. PRINCE2 is a registered trademark of OGC. The key features of PRINCE2 are:

- Its focus on business justification
- A defined organisation structure for the project management team
- Its product-based planning approach
- Its emphasis on dividing the project into manageable and controllable stages
- Its flexibility to be applied at a level appropriate to the project.

(source Prince2.com)

4.29 It is possible he may have achieved a sales and marketing director's job, although as his only experience would have been with a failed company the chances would have been less rather than more, in my view. In order to arrive at reasonable values in relation to the role of marketing director I refer specifically to three surveys: Mad 2007, Huntress 2007 (both uprated by 3% to reflect the average increase in earnings to achieve 2008 values) and Marketing Week/Ball & Hoolahan 2008.

Mad	71,070
Huntress	64,375
MWeek/BH	89,662

The average is £75,035 gpa.

4.30 As a marketing manager, a more probable role in my opinion, the following surveys are points of reference:

Itjobswatch	47,000
Careerbuilder	55,649
Utalk	52,723
Mad	44,634
Mwk/BH	50,000

The average is £50,001 gpa.

5. SUMMARY AND CONCLUSIONS

- 5.1 On xxx 200x The Deceased was killed in an incident.
- 5.2 At the time of the incident he was the Sales and Marketing Director of ABC company, a company in which he was a shareholder and one of four founders.
- 5.3 Had he not died he would have found himself unemployed by ABC company (now xxx company) around the end of this year as the company slid towards closure, at which point he would be on the open labour market. Given the strong likelihood he had earlier concerns as to his employment at ABC company it is probable he would have sought an exit sooner rather than later in order to protect his income. When

placing himself on the job market it is likely he would have tried to utilise his contacts such as Mr aaa or Mr ddd, but at that point found himself past the peak earnings period for his age group in his sector and be in the face of stiff competition from those with more desirable qualifications such as a degree, MBA or Prince2, none of which he owned. Indeed, he had embellished his CVs to suggest he had achieved more school and university qualifications than in fact he did.

- 5.4 These and other facts such as the failure of a business in which he was a director and other discrepancies I have discovered would have been revealed upon careful screening of his CV, especially by the outsourced recruitment facility of Top Company, YYY Consulting, or any other professional recruitment consultancy for that matter. Because of this I have serious reservations as to the integrity of the claim A would have achieved a senior position at Top Company, as suggested by Mr aaa and consequently set out in the Schedule of Loss and Damage. Moreover, there is an implication in Mr aaa's statement that the role of Vice President Product Management & Business Development, which he deems would have been suitable to The Deceased, is just one role, but I have ascertained there are various functions of a similar nature and therefore various roles to which The Deceased may have been suited, or not. Additionally, of course, a position would need to have been available in any event which, as far as I am able to ascertain, is not.
- 5.4 Whether he had gone through the recruitment process of YYY Consulting on behalf of Top Company, or any other organisation, The Deceased's track record and CV would have undergone a strict screening process which would have revealed an untruthful CV and that he was a director of a failed limited company, for which he had a statutory responsibility.

- 5.5 At the end of 200x he would have been aged 38 and just past his peak earnings period, he was also without any desirable qualifications such as a degree, MBA or Prince2. By 200x, the date at which it is postulated The Deceased would have been available for work, he would have been around 40. Thus, apart from the good offices of friends and taking into account he was an apparently a likeable chap, his employment opportunities would have been limited.
- 5.6 The claim is based on just one premise; Mr aaa suggesting The Deceased would have the potential to secure a position with Top Company. In my opinion, Mr aaa's evidence is not sufficiently conclusive for the reasons I have described in this report.
- 5.7 Other witnesses have been put forward to suggest further opportunities and earnings potential, but there is nothing tangible produced in support of their statements. In all instances, my research reveals very compelling evidence, sufficient at least to raise serious doubts as to the veracity of these witness statements. I have also discovered a wealth of evidence by way of salary surveys and market information to postulate a reasonable proposition as to the sort of earnings The Deceased may have achieved had he lived.
- 5.8 Having said all that, The Deceased was clearly liked and very pro-active and good at marketing his company's products and because of this I see no reason why he would not have remained in this field although the likelihood is that it would not have been with a large organisation. Had he secured an alternative marketing manager's post his earnings today would be £50,000 gpa (£@@@ net per week). I am not convinced he would have achieved a marketing director's post, but had he done so he could expect to have earned £75,035 gpa (£@@@ net per week).

5.9 In my opinion the above considerations should be taken into account in relation to this claim for loss of earnings.