

***KEVIN B. JOHNSON v. THE BIG BROKERAGE HOUSE***

**DAMAGES REPORT**

**FOR USE IN AN ARBITRATION**

## **DAMAGES REPORT**

This report calculates damages sustained by Kevin B. Johnson as a result of the actions of The Big Brokerage House. It assumes that liability exists. Damages have been calculated to be \$18,185,652.

**BACKGROUND:** Mr. Johnson had been employed by The Big Brokerage House for 16 years prior to his termination on November 2, 2004. At the time of his termination, Mr. Johnson was a Senior Vice President - Investments producing in excess of \$20 million in “production credits” during the prior 10 years. Despite this track record and his efforts to become employed with other major brokerage houses, he currently remains unemployed. Mr. Johnson’s income history from The Big Brokerage House from 1994 to 2004 appears in Table 1.

**DAMAGE CALCULATIONS:** The economic damages suffered by Mr. Johnson were based on the following information:

Termination Date	November 2, 2004
Arbitration Date	July 26, 2006
Mr. Johnson's Birth Date	December 17, 1946
Age at Dismissal	57.88 years
Work Life Expectancy <sup>1</sup>	9.30 years
Retirement Age	67.18 years
Life Expectancy <sup>2</sup>	22.01 years
Expected Age at Death	79.89 years

Mr. Johnson earned \$1,141,937 from January 1, 2004 through November 2, 2004, or \$1,361,398, on an annualized basis. *But for* the action of the defendant, there is no reason to believe that Mr. Johnson would not have continued in his employment position, or in another equivalent position with another firm, earning income with similar growth rates as he had in the past.

In order to forecast Mr. Johnson's income, I turned to two frequently used forecast models; linear trendline and exponential trendline. Table 2 reflects Mr. Johnson's historical earnings, and his forecasted earnings from 2005 through 2014 using both of these acceptable techniques.

In my opinion, either of the forecasts is likely. Factors such as growth in the market and new product introductions, as well as Mr. Johnson's proven track record leads me to believe that either growth scenario could be achieved. However, I have chosen to be more conservative in my calculations which is intended to reflect the possible fluctuations in the stock market performance. Therefore, I have used the lower of the two alternatives in my calculations.

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<sup>1</sup> Worklife Estimates: Effects of Race and Education, U.S. Department of Labor, Bureau of Labor Statistics, February, 1986 Bulletin 2254, for men active in the workforce, and with 15 or more years of education.

<sup>2</sup> Life Expectancy information from: "Arias, E., United States life tables, 2002, National Vital Statistics Reports, Vol. 53, No. 6. Hyattsville, MD, National Center for Health Statistics, 2004."

In addition to lost earnings, Mr. Johnson lost the fringe benefits that he received as part of his compensation package. I have estimated the lost fringe benefits to be 30 percent of earnings. I have requested, but have not received, detailed fringe benefit information from The Big Brokerage House. I reserve the right to amend this report if and when this information is received.

Damages have been calculated in Tables 3 and 4. Interest and present value calculations were based on the 10-year Treasury rates at the date of termination.

Therefore, the damages estimated in this report, are as follows:

Pre-Trial Lost Earnings	\$	3,405,663
Post-Trial Lost Earnings		14,779,989
<b>Total</b>	<b>\$</b>	<b>18,185,652</b>

I reserve the right to update this report if additional information is received.

## **DOCUMENTS REVIEWED IN PREPARATION OF THIS ANALYSIS**

In order to perform this assignment, the following documents were reviewed:

1. Statement of Claim by Mr. Johnson against The Big Brokerage House dated May 9, 2005.
2. The Big Brokerage House's answer and affirmative defenses dated June 30, 2005.
3. U.S. Individual Income Tax Returns for Kevin and Carla Johnson for 1994 through 2004.
4. Form W-2 Wages and Tax Statements for Kevin Johnson for 1994 through 2004.
5. Uniform Submission Agreement dated June 28, 2005.
6. FC Pool Participation Agreement between Kevin Johnson and Steve Brown dated December 13, 2002.
7. Memo dated October 5, 2004 from Tom Thomas to Kevin Johnson and Steve Brown.
8. Letter sent via e-mail from Kevin Johnson to Tom Thomas dated October 21, 2004.
9. Various e-mails from Kevin Johnson.
10. Other items cited in the report.

In addition to the documents reviewed, I interviewed Mr. Johnson.

**TABLE 1  
KEVIN JOHNSON INCOME GROWTH ANALYSIS**

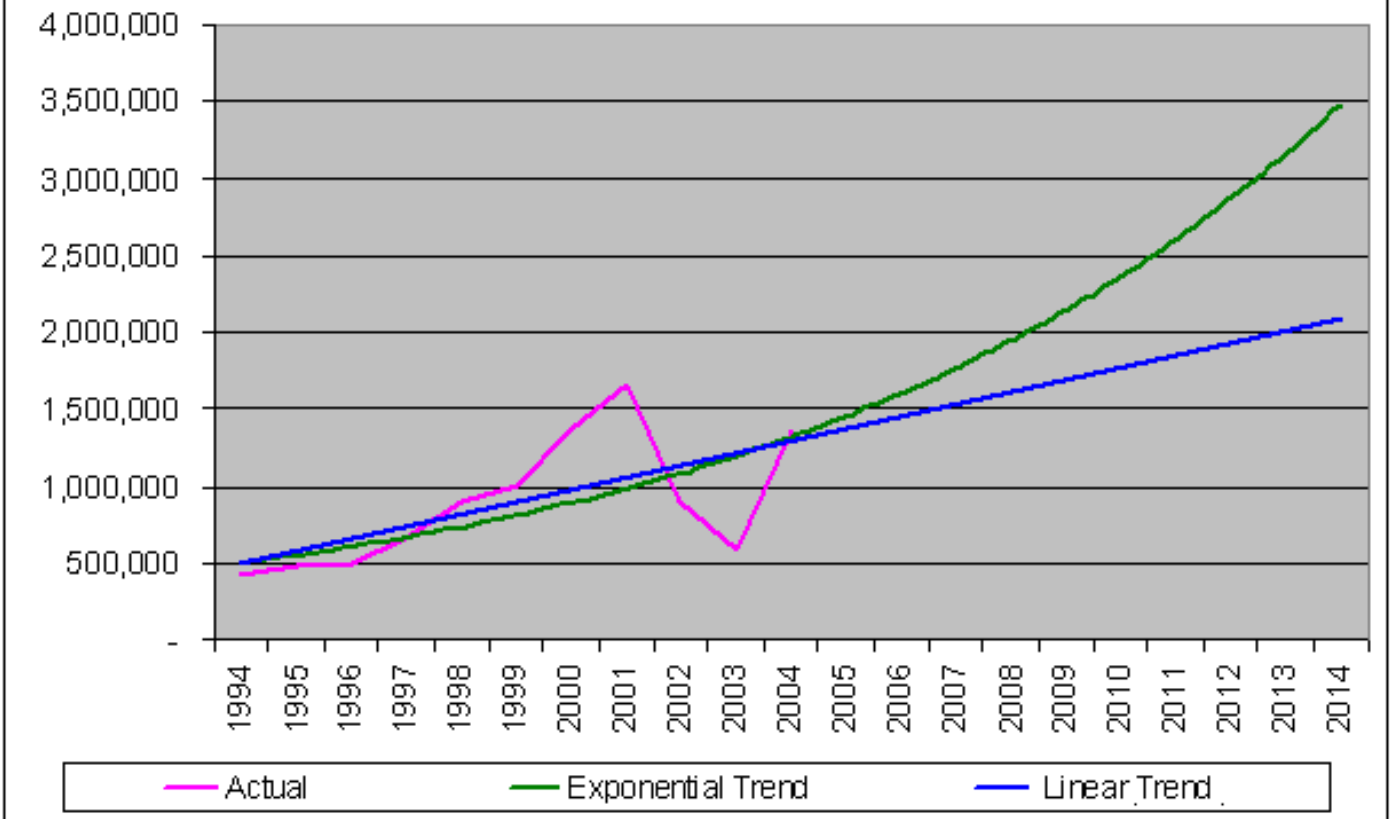
<b>Year</b>	<b>W-2 Income</b>	<b>Annualized W-2 Income</b>	<b>% Growth</b>
1994	\$ 417,620.39	\$ 417,620.39	
1995	481,287.10	481,287.10	15%
1996	502,887.69	502,887.69	4%
1997	663,495.46	663,495.46	32%
1998	892,688.56	892,688.56	35%
1999	1,005,512.84	1,005,512.84	13%
2000	1,360,598.41	1,360,598.41	35%
2001	1,660,323.40	1,660,323.40	22%
2002	901,953.29	901,953.29	-46%
2003	585,484.22	585,484.22	-35%
2004	1,141,937.34	1,361,397.61	133%
<b>Average</b>			<b>21%</b>
<b>Median</b>			<b>19%</b>

**TABLE 2  
KEVIN JOHNSON INCOME FORECAST**

<b>Year</b>	<b>Exponential W-2 Income</b>	<b>% Growth</b>	<b>Linear W-2 Income</b>	<b>% Growth</b>
1994(h)	\$ 417,620		\$ 417,620	
1995(h)	481,287	15%	481,287	15%
1996(h)	502,888	4%	502,888	4%
1997(h)	663,495	32%	663,495	32%
1998(h)	892,689	35%	892,689	35%
1999(h)	1,005,513	13%	1,005,513	13%
2000(h)	1,360,598	35%	1,360,598	35%
2001(h)	1,660,323	22%	1,660,323	22%
2002(h)	901,953	-46%	901,953	-46%
2003(h)	585,484	-35%	585,484	-35%
2004(h)(a)	1,361,398	133%	1,361,398	133%
2005(f)	1,451,076	6.6%	1,373,628	0.9%
2006(f)	1,599,333	10.2%	1,453,578	5.8%
2007(f)	1,762,736	10.2%	1,533,527	5.5%
2008(f)	1,942,835	10.2%	1,613,477	5.2%
2009(f)	2,141,334	10.2%	1,693,426	5.0%
2010(f)	2,360,114	10.2%	1,773,375	4.7%
2011(f)	2,601,246	10.2%	1,853,325	4.5%
2012(f)	2,867,015	10.2%	1,933,274	4.3%
2013(f)	3,159,938	10.2%	2,013,224	4.1%
2014(f)	3,482,788	10.2%	2,093,173	4.0%

(h)= historical earnings  
(a)= annualized  
(f)= forecasted earnings

GRAPH 1  
1994 - 2004 Earnings and 10 year  
Exponential Trend Forecast vs Linear Trend Forecast





**TABLE 3  
PRE-ARBITRATION LOST EARNINGS**

<u>Date From</u>	<u>Date To</u>	<u>Earnings Growth</u>	<u>Plaintiff Would Have Earned</u>		<u>Totals</u>	
			<u>Annual Income</u>	<u>Fringe Benefits</u>	<u>Total Lost Earnings</u>	<u>Present Value of Loss</u>
11/02/2004	12/31/2004	0.00%	\$ 219,460	\$ 65,838	\$ 285,298	\$ 309,172
01/01/2005	12/31/2005	0.90%	1,373,628	412,088	1,785,717	1,935,147
01/01/2006	07/26/2006	5.82%	824,358	247,307	1,071,665	1,161,343
			<u>\$ 2,417,446</u>	<u>\$ 725,234</u>	<u>\$ 3,142,680</u>	<u>\$ 3,405,663</u>

**TABLE 4  
POST-ARBITRATION LOST EARNINGS**

<u>Year Ending</u>	<u>Earnings Growth</u>	<u>Discount Rate</u>	<u>Plaintiff Would Have Earned</u>		<u>Totals</u>	
			<u>Annual Income</u>	<u>Fringe Benefits</u>	<u>Total Lost Earnings</u>	<u>Present Value of Loss</u>
12/31/2006 (p)	5.82%	4.10%	\$ 629,220	\$ 188,766	\$ 817,986	\$ 817,986
12/31/2007	5.50%	4.10%	1,533,527	460,058	1,993,585	1,915,068
12/31/2008	5.21%	4.10%	1,613,477	484,043	2,097,520	1,935,551
12/31/2009	4.96%	4.10%	1,693,426	508,028	2,201,454	1,951,450
12/31/2010	4.72%	4.10%	1,773,375	532,013	2,305,388	1,963,094
12/31/2011	4.51%	4.10%	1,853,325	555,997	2,409,322	1,970,794
12/31/2012	4.31%	4.10%	1,933,274	579,982	2,513,257	1,974,842
12/31/2013	4.14%	4.10%	2,013,224	603,967	2,617,191	1,975,515
12/31/2014(p)	3.97%	4.10%	292,471	87,741	380,212	275,689
			<u>\$13,335,319</u>	<u>\$ 4,000,596</u>	<u>\$ 17,335,914</u>	<u>\$14,779,989</u>

(p)= partial period

**GARY R. TRUGMAN, C.P.A.\* /A.B.V., M.C.B.A., A.S.A., M.V.S.**  
**PROFESSIONAL QUALIFICATIONS**

## **Experience**

President of Trugman Valuation Associates, Inc., a firm specializing in business valuation and litigation support services. Business valuation experience includes a wide variety of assignments including closely-held businesses, professional practices and thinly traded public companies. Industries include but are not limited to security, automotive, funeral homes, health care, securities brokerage and financial institutions, retail, manufacturing, service, and professional business establishments. Assignments have also included the valuation of stock options and various types of intangible assets.

Business valuation and litigation support services have been rendered for a variety of purposes including, but not limited to family law matters, business damages, lender liability litigation, buy-sell agreements, shareholder litigation, estate and gift tax matters, buying and selling businesses, malpractice litigation, wrongful death, sexual discrimination, age discrimination, wrongful termination, and breach of contract. Representation in litigation includes plaintiff, defendant, mutual, and court-appointed neutral.

*Court Testimony.* Has been qualified as an expert witness in various state and federal courts, as well as before the National Association of Securities Dealers and the American Stock Exchange.

## **Professional Designations**

- **\*CPA:** Licensed in Florida (1996), New Jersey (1978) and New York (1977).
- **ABV:** Accredited in Business Valuation designated by The American Institute of Certified Public Accountants (1998).
- **MCBA:** Master Certified Business Appraiser designated by The Institute of Business Appraisers, Inc. (1999). Original certification (CBA) in 1987.
- **ASA:** Accredited Senior Appraiser designated by the American Society of Appraisers (1991). Reaccredited in 2001.

## **Education**

- Masters in Valuation Sciences - Lindenwood College, St. Charles, MO (1990). Thesis topic: Equitable Distribution Value of Closely-Held Businesses and Professional Practices.
- B.B.A. in Accountancy - Bernard M. Baruch College, New York, NY (1977).

## **Faculty**

- *National Judicial College, Reno, Nevada since 1997.*

**GARY R. TRUGMAN, C.P.A.\* /A.B.V., M.C.B.A., A.S.A., M.V.S.**  
**PROFESSIONAL QUALIFICATIONS**

**Continuing Education**

- Regular participates in continuing education in the fields of concentration.

**Lecturer**

- Lectures nationally for all of the leading appraisal and accounting organizations, as well as many legal organizations, on business valuation and economic damages.

**Organizations**

- The Institute of Business Appraisers, Inc.
- American Society of Appraisers.
- American Institute of Certified Public Accountants.
- New Jersey Society of Certified Public Accountants.
- New York State Society of Certified Public Accountants.
- The American College of Forensic Examiners.
- Florida Institute of Certified Public Accountants.
- Collaborative Family Lawyers of South Florida
- International Academy of Collaborative Professionals

**Author**

- *A CPA's Guide to Valuing a Closely Held Business*, American Institute of Certified Public Accountants (2001).
- *Understanding Business Valuation: A Practical Guide to Valuing Small to Medium-Sized Businesses*, American Institute of Certified Public Accountants, First Edition (1998) Second Edition (2002).
- *Understanding Business Valuations* for The Institute of Continuing Legal Education (1997).