

2520032540105

Plan / Agreement: Jeffrey R. Moderski Employment Agreement

Employee: Jeffrey R. Moderski

Employer: Kevco, Inc.

Employer Address: Kevco, Inc.  
c/o Kevin A. Powalisz  
Post Office Box 37225  
Milwaukee, Wisconsin 53237-0225

Employer  
Identification Number: #39-1685234

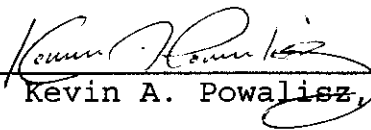
Number of Plans /  
Agreements Executed  
by Employer: 2

Statement of Employer: Kevco, Inc. maintains the above  
referenced Plan / Employment Agreement  
in order to provide deferred  
compensation for a select group of  
management or highly compensated  
employees.

Number of Employees  
in each Plan /  
Employment Agreement: 1

Executed this 8th day of August, 1996.

Kevco, Inc.

  
By: Kevin A. Powalisz, President

901-PWCA  
2025 OCT 23 11:11:02

DOMNITZ, MAWICKE, GOISMAN & ROSENBERG, S.C.

ATTORNEYS AT LAW

1509 NORTH PROSPECT AVENUE  
MILWAUKEE, WISCONSIN 53202

TELEPHONE (414) 224-0600  
FACSIMILE (414) 224-9359

October 21, 1996

• DONALD A. ALLEN  
KEITH R. BUTLER  
LUKE J. CHIARELLI  
BRADLEY I. DALLET  
• MERRICK R. DOMNITZ  
• JOSEPH E. FENZEL  
RICHARD S. GOISMAN  
ROBERT L. JASKULSKI

THAD W. JELINSKE  
KRIS M. KLOVERS  
• VICTOR A. KORNIS  
JEFFREY J. MAWICKE  
• MARTIN W. MEYER  
▲ SUSAN ROSENBERG  
PAUL G. SHERBURNE  
HOWARD S. SICULA

• Certified by National Board of Trial Advocacy  
• Also licensed in Michigan  
• Also licensed in New York  
and Arizona

◆ Also licensed CPA  
▲ Court Commissioner

Pension and Welfare Benefits Administration  
Division of Reporting and Disclosure  
Room N5669  
200 Constitution NW  
Washington, D.C. 20210

Re: Top-Hat Plan Disclosure Statements  
Our File No.: T8516

25 OCT 23 11:02  
FBI - WASH DC  
RECEIVED

Dear Sir or Madam:

Pursuant to Employee Retirement Income Security Act of 1974, §4 and §101, and the Department of Labor Regulations, §2520.104-23, enclosed please find a Top-Hat Plan Disclosure Statement for each of the following Key Management Employees for employment agreements which include a deferred compensation bonus provision:

<u>Employee</u>	<u>Employer</u>
John W. Johnson	Kevco, Inc.
Jeffrey R. Moderski	Kevco, Inc.

The enclosed statements are being submitted within 120 days of the execution of the Deferred Compensation Employment Agreements in order to fulfill the one-time reporting and disclosure requirements for Top-Hat Plans.

Please stamp the duplicate copy of this letter and return it to me in the enclosed envelope as proof of filing.

Please contact me should you have any questions or concerns regarding these matters.

Very truly yours,

  
Luke J. Chiarelli

cc:  
Kevin A. Powalisz  
Kevco, Inc.  
Post Office Box 37225  
Milwaukee, Wisconsin 53237-0225

Tim R. Neumann  
Northwestern Mutual Life  
Post Office Box 760  
Germantown, Wisconsin 53022

## EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT is made as of this 8th day of August, 1996 by and between Kevco, Inc., with its mailing address at Post Office Box 37225, Milwaukee, Wisconsin 53237-0225, (the "Employer"), and Jeffrey R. Moderski residing at N88 W18088 Duke Street, Menomonee Falls, Wisconsin 53051 (the "Employee").

### RECITALS:

A. Employer wishes to employ and Employee wishes to be employed by Employer pursuant to the terms and conditions set forth in this Employment Agreement ("Agreement").

B. Employer and Employee agree that Employee is in a select group of management employees due to his unique and specialized abilities, skills and knowledge is a key management employee, vital to the success of the Employer's business.

C. Employer and Employee mutually acknowledge the importance of the execution of this Agreement between the Employer and Employee in order to mitigate the financial loss that would occur to Employer should for any reason the employment relationship between the Employee and Employer terminate.

D. This Agreement is understood by the Employer and Employee to in no way provide for retirement income to the Employee by the Employer.

E. This Agreement is understood by the Employer and Employee that should the Employee meet each and every requirement provided for herein, a lump sum Bonus as defined in Section 5(a) (the "Bonus") shall be paid to the Employee.

F. Payment of the Bonus pursuant to the terms and conditions of this Agreement is understood by Employer and Employee to in no way result in the termination of the covered employment of the Employee by the Employer.

In consideration of the mutual covenants contained herein, and for other good and valuable consideration, the parties hereby agree as follows:

1. TERM AND NOTICE. The Employer agrees to employ the Employee and the Employee agrees to serve the Employer in such capacity as the Employer may designate from time to time, beginning August 8, 1996 and continuing until terminated by either party on at least thirty (30) days prior written notice to the other at:

EMPLOYER: Kevco, Inc.  
c/o Kevin A. Powalisz  
Post Office Box 37225  
Milwaukee, Wisconsin 53237-0225

EMPLOYEE: Jeffrey R. Moderski  
N88 W18088 Duke Street  
Menomonee Falls, Wisconsin 53051

2. EMPLOYEE'S DUTIES. During the term of his employment, the Employee shall devote all of his time, attention, skill and efforts to the performance of his duties for the Employer.

3. EMPLOYEE'S WAGE. The Employer shall pay the Employee an annual salary as mutually agreed to by the Employer and Employee beginning August 8, 1996 and continuing during the term of his employment hereunder. Said salary shall be payable as the Employer may from time to time determine.

4. ACCOUNTING.

(a) BOOKKEEPING. The Employer shall establish and credit a book reserve account (the "Bonus Account") any amounts the Employer in its sole discretion deems necessary for the purposes of tracking and accumulation of the Employee's projected Bonus.

(b) INVESTING. Any such funds so credited to the Bonus Account may be kept in cash or invested and reinvested in insurance contracts, mutual funds, stocks, bonds, securities or any other assets as may be selected by the Employer in its sole discretion. In the exercise of the foregoing discretionary investment powers, the Employer may engage investment counsel and, if it so desires, may delegate to such counsel full or limited authority to select the assets in which the funds are to be invested.

(c) TITLE. Title to and beneficial ownership of any assets, whether cash or investments which the Employer may earmark to pay the Bonus hereunder, shall at all times remain with the Employer and the Employee, his assigns, designated beneficiary or estate shall not have any property interest whatsoever in any specific assets of the Employer.

5. BONUS. The benefits to be paid as the Bonus (unless it is forfeited by the occurrence of any of the events of forfeiture specified in Section 7 below) are as follows:

(a) AMOUNT. If the Employee hereunder is employed by the Employer on August 7, 2016, (the "Payment Date") the Employer shall pay to his in one lump sum the Bonus in the sum of, Fifty Thousand and No/100ths Dollars (\$50,000.00) on the Payment Date, or as soon as possible thereafter, not to exceed thirty (30) days.

(b) TERMINATION. If the Employee's employment hereunder is terminated for any reason, before the Employee shall have reached the Payment Date, then the amount in the Bonus Account shall continue to be invested or held in cash as the Employer in its discretion may determine and no payment of the Bonus or any part thereof shall be paid to the Employee.

(c) EMPLOYER DISCRETIONARY PAYMENT. Employer in its sole discretion may make the full or partial payment(s) of the Bonus to the Employee, his assigns, designated beneficiary or estate to the same extent as provided in Section 5(a) above at any time prior to the Payment Date.

6. NO TRUST OR FIDUCIARY RESPONSIBILITY. Nothing contained in this Agreement and no action taken pursuant to the provisions of this Agreement shall create or be construed to create a trust of any kind, or a fiduciary relationship between the Employer and the Employee, his designated beneficiary or any other person. Any funds which may be invested under the provisions of this Agreement shall continue for all purposes to be a part of the general funds of the Employer and no person other than the Employer shall, by virtue of the provisions of this Agreement, have any interest in such funds. To the extent that any person acquires a right to receive payments from the Employer under this Agreement, such right shall be no greater than the right of any unsecured general creditor of the Employer.

7. FORFEITURE CONDITIONS. Notwithstanding anything herein contained to the contrary, no payment of Bonus shall be made and all rights under the Agreement of the Employee, his designated beneficiary, executors of administrators, or any other person, to receive payments thereof shall be forfeited if either or both of the following events shall occur:

(a) BEST INTERESTS OF EMPLOYER. The Employee shall engage in any activity or conduct which, in the opinion of the Employer, is inimical to the best interests of the Employer.

(b) CEASING EMPLOYMENT. The Employee ceases to be employed by the Employer prior to the Payment Date.

8. INCAPACITY OF EMPLOYEE. If the Employer shall find that any person to whom the Bonus payment is payable under this Agreement is unable to care for his affairs because of illness or accident, or is a minor, any payment due (unless a prior claim therefor shall have been made by a duly appointed guardian, committee or their legal representative) may be paid to the spouse, a child, a parent, or a brother or sister, or to any person deemed by the Employer to have incurred expense for such person otherwise entitled to the Bonus payment, in such manner and proportions as the Employer may determine. Any such payment

shall be a complete discharge of the liabilities of the Employer under this Agreement.

9. PENSION PLANS. Any Bonus payable under this Agreement shall not be deemed salary or other compensation to the Employee for the purpose of computing benefits to which he may be entitled under any pension plan or other arrangement of the Employer for the benefit of its employees.

10. ADMINISTRATION. The Employer shall have full power and authority to interpret, construe, and administer this Agreement and the Employer's interpretations and construction thereof, and actions thereunder, including any valuation of the Bonus Account, or the amount or recipient of the Bonus payment to be made therefrom, shall be binding and conclusive on all persons for all purposes. No member of the Employer shall be liable to any persona for any action taken or omitted in connection with the interpretation and administration of this Agreement unless attributable to his own willful misconduct or lack of good faith.

11. MISCELLANEOUS PROVISIONS.

(a) SECTION HEADINGS. The section headings are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Agreement nor in any way affect this Agreement.

(b) AGREEMENT INURES TO BENEFIT OF. This Agreement shall be binding upon and inure to the benefit of the Employer, its successors and assigns, and the Employee and his heirs, executors, administrators, and legal representatives.

(c) ENTIRE AGREEMENT. This Agreement, including any rider or amendments, sets forth all the covenants, promises, Agreement and future Agreements, conditions and understandings between Employer and Employee concerning the Employee's employment with the Employer and Agreement and future Agreements and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon Employer unless reduced to writing and signed by them.

(d) SEVERABILITY. In the event that any provision or section of this Agreement is rendered invalid by the decision of any court or by the enactment of any law, ordinance or regulation, such provision of this Agreement shall be deemed to have never been included therein and the balance of this Agreement shall continue in effect in accordance with its terms.

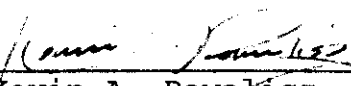
(e) APPLICABLE LAW. This Agreement and the rights and obligations of the parties arising hereunder shall be construed in accordance with the laws of the State of Wisconsin.

(f) NO PRESUMPTION. Should any provision of this Agreement require judicial interpretation, it is agreed that the Court interpreting or construing the same, shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the person who herself or through his agent prepared the same, it being understood and agreed that both parties have participated in the preparation hereof.

IN WITNESS WHEREOF, the Employer has caused this Agreement to be executed by its duly authorized officers and Employee has hereunto set his hand and seal as of the date first above written.

EMPLOYER:

Kevco, Inc.

By:   
Kevin A. Powalisz, President

EMPLOYEE:

  
Jeffrey R. Moderski

Plan / Agreement: John W. Johnson Employment Agreement

Employee: John W. Johnson

Employer: Kevco, Inc.

Employer Address: Kevco, Inc.  
c/o Kevin A. Powalisz  
Post Office Box 37225  
Milwaukee, Wisconsin 53237-0225

Employer  
Identification Number: #39-1685234

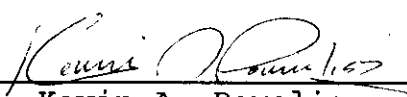
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in order to provide deferred  
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management or highly compensated  
employees.

Number of Employees  
in each Plan /  
Employment Agreement: 1

Executed this 8th day of August, 1996.

Kevco, Inc.

  
By: Kevin A. Powalisz, President

REC'D - PERSA  
55 OCT 28 11:02

## EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT is made as of this 8th day of August, 1996 by and between Kevco, Inc., located at Post Office Box 37225, Milwaukee, Wisconsin 53237-0225, (the "Employer"), and John W. Johnson residing at 3749 South 48th Street, Milwaukee, Wisconsin 53220 (the "Employee").

### RECITALS:

A. Employer wishes to employ and Employee wishes to be employed by Employer pursuant to the terms and conditions set forth in this Employment Agreement ("Agreement").

B. Employer and Employee agree that Employee is in a select group of management employees due to his unique and specialized abilities, skills and knowledge is a key management employee, vital to the success of the Employer's business.

C. Employer and Employee mutually acknowledge the importance of the execution of this Agreement between the Employer and Employee in order to mitigate the financial loss that would occur to Employer should for any reason the employment relationship between the Employee and Employer terminate.

D. This Agreement is understood by the Employer and Employee to in no way provide for retirement income to the Employee by the Employer.

E. This Agreement is understood by the Employer and Employee that should the Employee meet each and every requirement provided for herein, a lump sum Bonus as defined in Section 5(a) (the "Bonus") shall be paid to the Employee.

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In consideration of the mutual covenants contained herein, and for other good and valuable consideration, the parties hereby agree as follows:

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EMPLOYER: Kevco, Inc.  
c/o Kevin A. Powalisz  
Post Office Box 37225  
Milwaukee, Wisconsin 53237-0225

EMPLOYEE: John W. Johnson  
3749 South 48th Street  
Milwaukee, Wisconsin 53220

2. EMPLOYEE'S DUTIES. During the term of his employment, the Employee shall devote all of his time, attention, skill and efforts to the performance of his duties for the Employer.

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(c) ENTIRE AGREEMENT. This Agreement, including any rider or amendments, sets forth all the covenants, promises, Agreement and future Agreements, conditions and understandings between Employer and Employee concerning the Employee's employment with the Employer and Agreement and future Agreements and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon Employer unless reduced to writing and signed by them.

(d) SEVERABILITY. In the event that any provision or section of this Agreement is rendered invalid by the decision of any court or by the enactment of any law, ordinance or regulation, such provision of this Agreement shall be deemed to have never been included therein and the balance of this Agreement shall continue in effect in accordance with its terms.

(e) APPLICABLE LAW. This Agreement and the rights and obligations of the parties arising hereunder shall be construed in accordance with the laws of the State of Wisconsin.

(f) NO PRESUMPTION. Should any provision of this Agreement require judicial interpretation, it is agreed that the Court interpreting or construing the same, shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the person who herself or through his agent prepared the same, it being understood and agreed that both parties have participated in the preparation hereof.

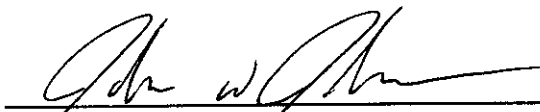
IN WITNESS WHEREOF, the Employer has caused this Agreement to be executed by its duly authorized officers and Employee has hereunto set his hand and seal as of the date first above written.

EMPLOYER:

Kevco, Inc.

By:   
Kevin A. Powalisz, President

EMPLOYEE:

  
John W. Johnson