

**ASSESSMENT OF THE LOST
EARNINGS CAPACITY, EMPLOYMENT BENEFITS
AND HOUSEHOLD SERVICES OF
JOE SAMPLER**

Prepared by

Keith Wm. Fairchild, Ph.D.

ECOFIN, INC.
2610 Friar Tuck Road
San Antonio, Texas 78209
(210) 832-8200

May 26, 2009

SUMMARY OF LOSSES

<u>Earnings Capacity</u>	<u>Half-time Employment</u>	<u>Remains Unemployed</u>
Past Losses =	\$ 157,698	\$ 157,698
Future Losses =	<u>240,613</u>	<u>288,309</u>
Total Lost Earnings Capacity =	<u>\$ 398,311</u>	<u>\$ 446,007</u>
<u>Employment Benefits</u>		
Past Losses =	\$ 24,776	\$ 24,776
Future Losses =	<u>33,794</u>	<u>46,201</u>
Total Lost Employment Benefits =	<u>\$ 58,570</u>	<u>\$ 70,977</u>
TOTAL EMPLOYMENT LOSSES =	===== \$ 456,881 =====	===== \$ 516,984 =====
<u>Household Services – One Hour per Week</u>		
Past Losses =	\$ 952	
Future Losses =	<u>7,890</u>	
Total Lost Household Services =	<u>\$ 8,842</u>	

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May 26, 2009

Mr. John H. Smith
Black, White & Gray, L.L.P.
100 Main Blvd.
Midtown, Texas 77986

Re: Joe Sampler

Dear Mr. Smith:

You requested that I conduct an independent appraisal of the loss of earnings capacity, employment benefits and household services of Mr. Joe Sampler for the period beginning in March of 2006 through his remaining life expectancy. The information provided to me, and upon which I relied, included the following:

- Vocational Analysis report of Robert L. Miller, Ed.D., dated October 30, 2008
- Deposition of John R. Garcia, M.D., dated April 25, 2009
- Tax returns of Joe Sampler for the years 2004 – 2006

This information, in addition to other sources, was used in determining a valuation of these factors. The rationale and methodology employed to arrive at my conclusions are briefly summarized below.

Background

Joe Sampler was born on July 19, 1950, and was employed as a long-haul truck driver by Snake Bite Trucking, where he had worked for seven years, at the time that he sustained his injuries on March 17, 2006. Mr. Sampler's injuries required that he undergo surgeries on May 15, 2007, and April 7, 2008. In the two years prior to his injury, Mr. Sampler earned an average inflation-adjusted wage rate of approximately \$55,000 per year. Two scenarios are considered; the first assumes that Mr. Sampler will be able to obtain and retain half-time employment of a non-physical nature beginning on October 1, 2009. The second scenario assumes that Mr. Sampler's injuries will prevent him from obtaining meaningful employment in the future.

HALF-TIME EMPLOYMENT

Lost Earnings Capacity

Exhibit I presents the earnings stream that Joe Sampler could reasonably have anticipated generating had he not been injured on July 31, 1996. The earnings projections are based upon the annualized actual wage rate that Mr. Sampler generated as an employee of Diamond L. Trucking Company. Past wage rates were increased by the actual rate of inflation for each year, while future wage rates were increased by 2.5%, the general consensus for the rate of inflation in the future as reported in the *Livingston Survey* and the *Survey of Professional Forecasters* of the Federal Reserve Bank of Philadelphia, through early January of 2015, the remaining worklife expectancy of Mr. Sampler and at which time he will be just over 64½ years of age. The rate of inflation was used to estimate overall earnings increases since it reflects, in general, the experience of the U.S. workforce in recent years (see Figure 1). The earnings that Mr. Sampler could reasonably have anticipated generating had he not been injured were also adjusted for income tax consequences and are reflected under the column entitled AFTER-TAX INCOME immediately adjacent on Exhibit I.



Figure 1
Source: *Economic Reports of the President*

The figures under the column entitled ACTUAL INCOME depict the earnings stream that currently confronts Mr. Sampler assuming that he obtains and retains employment on a half-time basis beginning October 1, 2009. The types of non-physical employment that could possibly be obtained on a half-time basis which were considered were the following:

	<u>2007</u>	<u>2009</u>
	<u>Dollars</u>	<u>Dollars</u>
Taxi Drivers	8.43	9.00
Parking Lot Attendants	8.12	8.67
Cashiers	7.86	8.39
Telemarketers	8.14	<u>8.69</u>
Average =		\$8.69

Future earnings were again increased by the projected rate of inflation of 2.5% anticipated for the economy overall and adjusted for tax consequences. The difference between the after-tax

earnings that Mr. Sampler could reasonably expect to generate had he not been injured and the after-tax earnings that he may generate if he obtains half-time employment is the loss of earnings capacity that he has incurred in this scenario. These amounts were then discounted at 2.73%, the average rate of interest on government notes (or an after-tax rate of 2.32%), in order to arrive at a present value of each year's lost income. As indicated at the bottom of the column entitled PRESENT VALUE on the exhibit, the total present value of lost after-tax earnings to Joe Sampler had he not been injured amounts to \$398,311 over his remaining worklife expectancy under these circumstances. Of this amount, the sum of \$157,698 is the past loss of earnings capacity while his future lost earnings capacity sums to \$240,613 in current dollar terms.

Lost Employment Benefits

Social Security Contributions

In addition to the loss of earnings capacity, Mr. Sampler's injuries have resulted in the loss of his employer's contribution to Social Security taxes. As an employee, Mr. Sampler's employer is required to make contributions on his behalf for Social Security and Medicare. The combined contributions amount to 7.65% of the wages earned by Mr. Sampler. Since the Medicare benefits are not a function of earnings, only the 6.2% of the employer's contribution to Social Security is considered. Exhibit II summarizes the loss of this employment benefit that accompanies his loss of earnings capacity. The figures in the exhibit under the column entitled SOCIAL SECURITY represent 6.2% of the lost earnings capacity that Joe Sampler has incurred as a result of his injury. As indicated at the bottom of the column labeled PRESENT VALUE immediately adjacent on the exhibit, the total value of the lost contributions to Social Security amounts to \$29,730 in today's dollar terms.

Health Care

In addition to the loss of Social Security contributions, Mr. Sampler has lost the health care coverage that was provided by his employer. The value of this employment benefit is also presented on Exhibit II. Future projections were calculated by applying the projected rate of inflation of 2.5% to determine the value of this benefit. Although health care costs have generally increased by an amount substantially greater than inflation, the rate of inflation was employed to reflect the trend in recent years of employers sharing health care cost increases with employees. After discounting the projected future health care benefits at a 2.32% tax-adjusted rate of interest, it was found that the value of the lost health care coverage amounts to \$38,290 in current dollar terms.

Other Benefits

Since the specific circumstances that have been assumed for future employment of Joe Sampler are not known at this time, the average benefits received by employees in the services

industry were utilized to determine the value of his future benefits under alternative employment that can be anticipated. Based upon statistical averages, these other non-government mandated benefits constitute an amount equivalent to 19.81% of his future earnings based upon half-time employment. The figures on Exhibit II under the column entitled OTHER BENEFITS represent 19.81% of Mr. Sampler's projected future earnings assuming that he returns to work on a half-time basis beginning October 1, 2009. After discounting these figures to a present value, it was found that the value of other employment benefits amounts to \$(9,450) in current dollar terms. Note that the negative nature of the value represents an *offset* against other losses.

Combined, the total loss of employment benefits that Joe Sampler has lost as a consequence of his injuries totals \$58,570 in present value terms. Of this amount, the past loss of employment benefits sums to \$24,776 while the future loss of benefits is \$33,794. (Please see Figures 2, 3 and 4 for a graphical depiction of the loss of earnings capacity and employment benefits on an annual, present value and cumulative present value basis, respectively, assuming half-time employment.)

REMAINS UNEMPLOYED

Lost Earnings Capacity

Exhibit III repeats the preceding analysis of lost earnings capacity under the assumption that Mr. Sampler will be unable to obtain employment in the future. As indicated on the second page of the exhibit, the total loss of earnings capacity in these circumstances sums to \$446,007 in present value terms when discounted at a tax-adjusted 2.32% rate of interest.

Lost Employment Benefits

The loss of employment benefits sustained by Joe Sampler assuming that he does not obtain future employment is depicted in Exhibit IV. The total loss of employment benefits in this scenario sums to \$70,977.

(Please see Figures 5, 6 and 7 for a graphical depiction of the loss of earnings capacity and employment benefits on an annual, present value and cumulative present value basis, respectively, assuming that Mr. Sampler remains unemployed.)

Lost Household Services – One Hour per Week

The injuries sustained by Joe Sampler have also resulted in the loss of his ability to perform many of the personal household services that an individual normally contributes to his own well-being. Exhibit V presents the value of the loss of one hour per week in personal

household services contributed by Mr. Sampler through the remainder of his life expectancy. The value of the household services was calculated using the minimum wage rate, the minimum value that the U.S. government places on an individual's work efforts (although replacement costs would be substantially higher). The wage rate for years subsequent to today reflects scheduled increases through the year 2009, while wage rates beyond 2010 reflect the estimated rate of inflation of 2.5% that is anticipated for the economy overall. The projected future values of the loss of household services were then discounted at the tax-adjusted 2.32% rate of interest available on non-indexed government notes. As indicated at the bottom of the column entitled PRESENT VALUE on the second page of the exhibit, the total value of the loss of one hour per week of household services of Joe Sampler through the remainder of his life expectancy amounts to \$8,842 in today's dollar terms. Of this amount, the sum of \$952 is the past loss of one hour per week of household services while the future loss of one hour per week of household services amounts to \$7,890 in present value terms. Should it be determined that Mr. Sampler has lost the ability to perform two hours per week in household services, then this figure should be doubled (or tripled, etc.). Similarly, if it is determined that he has lost the capability to perform only one-half of an hour per week, this figure should be halved.

Summary and Conclusions

In summary, the injuries sustained by Joe Sampler, have resulted in substantial losses of earnings capacity, employment benefits and household services. These losses may be summarized in the following manner:

<u>Earnings Capacity</u>	<u>Half-time Employment</u>	<u>Remains Unemployed</u>
Past Losses =	\$ 157,698	\$ 157,698
Future Losses =	<u>240,613</u>	<u>288,309</u>
Total Lost Earnings Capacity =	<u>\$ 398,311</u>	<u>\$ 446,007</u>
<u>Employment Benefits</u>		
Past Losses =	\$ 24,776	\$ 24,776
Future Losses =	<u>33,794</u>	<u>46,201</u>
Total Lost Employment Benefits =	<u>\$ 58,570</u>	<u>\$ 70,977</u>
TOTAL EMPLOYMENT LOSSES =	===== \$ 456,881 =====	===== \$ 516,984 =====

Mr. John H. Smith
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Household Services – One Hour per Week

Past Losses =	\$	952
Future Losses =		<u>7,890</u>
Total Lost Household Services =	\$	<u><u>8,842</u></u>

Please note that this report is based upon the information available to me at the time. Should additional information become available, it may be necessary to revise the opinions and conclusions elucidated herein.

If I can answer any questions, provide additional information, or be of further service in this or any other matters, please do not hesitate to call.

Sincerely,



Keith Wm. Fairchild, Ph.D.

REFERENCES

1. *Economic Report of the President*, U.S. Government Printing Office (February 2008)
2. *United States Life Tables, Vol. 56 No. 9*, National Center for Health Statistics, <http://www.cdc.gov/nchs/fastats/lifexpec.htm>
3. *The Markov (Increment-Decrement) Model of Labor Force Activity: Extended Tables of Central Tendency, Variation, and Probability Intervals*, Gary R. Skoog and James E. Ciecka, The Journal of Legal Economics (Volume 11, Number 1, Spring/Summer 2001)
4. *Wall Street Journal Online*, www.wsj.com (May 26, 2009)
5. *2009 U.S. Master Tax Guide*, CCH Incorporated (and earlier editions)
6. *Occupational Outlook Handbook*, U.S. Department of Labor, Bureau of Labor Statistics, <http://www.bls.gov/oco/> (and earlier editions)
7. *May 2007 State Occupational Employment and Wage Estimates*, U.S. Department of Labor, Bureau of Labor Statistics, http://www.bls.gov/oes/current/oes_tx.htm
8. *2008 Employer Costs for Employee Compensation*, U.S. Department of Labor, Bureau of Labor Statistics (usdl: 09-0247), http://www.bls.gov/schedule/archives/ecec_nr.htm
9. *Livingston Survey*, Federal Reserve Board of Philadelphia, <http://www.philadelphiafed.org/research-and-data/real-time-center/livingston-survey/>
10. *Survey of Professional Forecasters*, Federal Reserve Board of Philadelphia, <http://www.philadelphiafed.org/research-and-data/real-time-center/survey-of-professional-forecasters/index.cfm>

EXHIBIT I

**ASSESSMENT OF LOST EARNINGS CAPACITY
JOE SAMPLER**

Half-time Employment

REFERENCE DATE: 26-May-09

BACKGROUND DATA:

Inflation Estimate ----->	2.50%
Real Increase in Driver Wages ----->	0.00%
Treasury Note Rate ----->	2.73%
Date of Birth ----->	19-Jul-50
Life Expectancy ----->	21-Jul-30
Date of Incident ----->	17-Mar-06
Work-Life Expectancy ----->	05-Jan-15

	PROJECTED YEAR	INCOME	AFTER-TAX INCOME	ACTUAL INCOME	AFTER-TAX INCOME	DIFF.	PRESENT VALUE
	2006	43,802	38,407	0	0	38,407	38,407
	2007	57,106	48,593	0	0	48,593	48,593
	2008	58,732	49,943	0	0	49,943	49,943
	2009 - PRESENT	24,395	20,756	0	0	20,756	20,756
TOTAL PAST LOSSES =							\$ 157,698
PRESENT - 2009	36,592	31,134	2,253	2,253	28,881	28,811	
2010	62,512	53,188	9,264	9,264	43,923	42,823	
2011	64,075	53,521	9,496	9,496	44,025	41,949	
2012	65,676	54,859	9,733	9,733	45,126	42,023	
2013	67,318	56,231	9,977	9,977	46,254	42,097	
2014	69,001	57,636	10,226	10,226	47,410	42,171	
2015	998	998	148	148	850	739	
TOTAL FUTURE LOSSES =							\$ 240,613
PAST LOSSES =							\$ 157,698
FUTURE LOSSES =							\$ 240,613
TOTAL LOSSES =							\$ 398,311

EXHIBIT II

**ASSESSMENT OF LOST EMPLOYMENT BENEFITS
JOE SAMPLER**

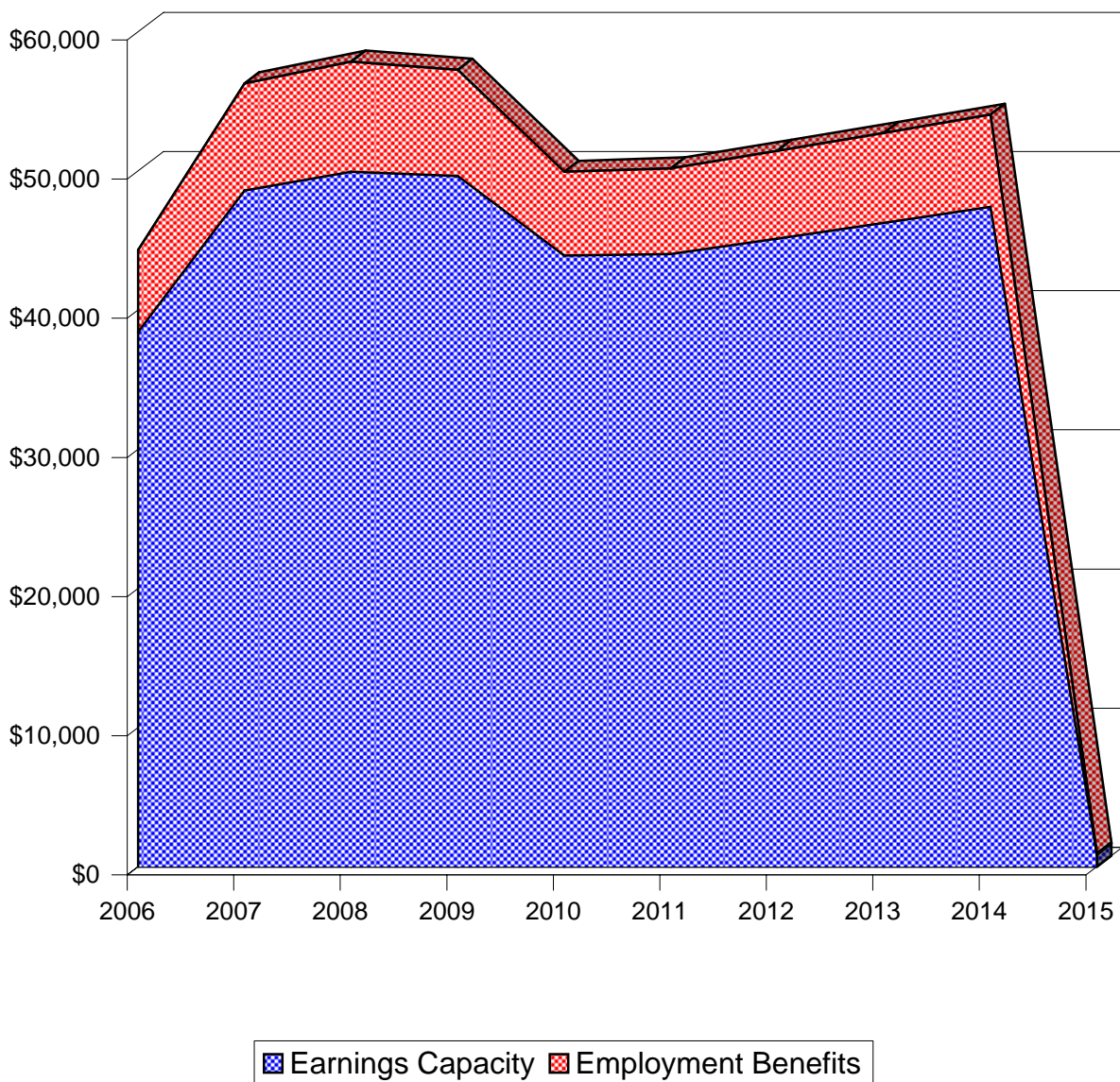
Half-time Employment

YEAR	SOCIAL SECURITY	PRESENT VALUE	HEALTH CARE	PRESENT VALUE	OTHER BENEFITS	PRESENT VALUE	TOTAL	PRESENT VALUE
2006	2,716	2,716	3,181	3,181	0	0	5,897	5,897
2007	3,541	3,541	4,148	4,148	0	0	7,688	7,688
2008	3,641	3,641	4,266	4,266	0	0	7,907	7,907
2009 - PRESENT	1,512	1,512	1,772	1,772	0	0	3,284	3,284
TOTAL PAST LOSSES =		\$ 11,410		\$ 13,366		\$ -		\$ 24,776
PRESENT - 2009	2,129	2,124	2,658	2,651	(446)	(446)	4,340	4,330
2010	3,301	3,219	4,540	4,426	(1,835)	(1,789)	6,006	5,856
2011	3,384	3,224	4,654	4,434	(1,881)	(1,793)	6,156	5,866
2012	3,468	3,230	4,770	4,442	(1,928)	(1,796)	6,310	5,876
2013	3,555	3,236	4,889	4,450	(1,976)	(1,799)	6,468	5,887
2014	3,644	3,241	5,012	4,458	(2,026)	(1,802)	6,630	5,897
2015	53	46	72	63	(29)	(25)	96	83
TOTAL FUTURE LOSSES =		\$ 18,320		\$ 24,924		\$ (9,450)		\$ 33,794
PAST LOSSES =		\$ 11,410		\$ 13,366		\$ -		\$ 24,776
FUTURE LOSSES =		\$ 18,320		\$ 24,924		\$ (9,450)		\$ 33,794
TOTAL LOSSES =		\$ 29,730		\$ 38,290		\$ (9,450)		\$ 58,570

ANNUAL LOST EARNINGS CAPACITY & EMPLOYMENT BENEFITS

JOE SAMPLER

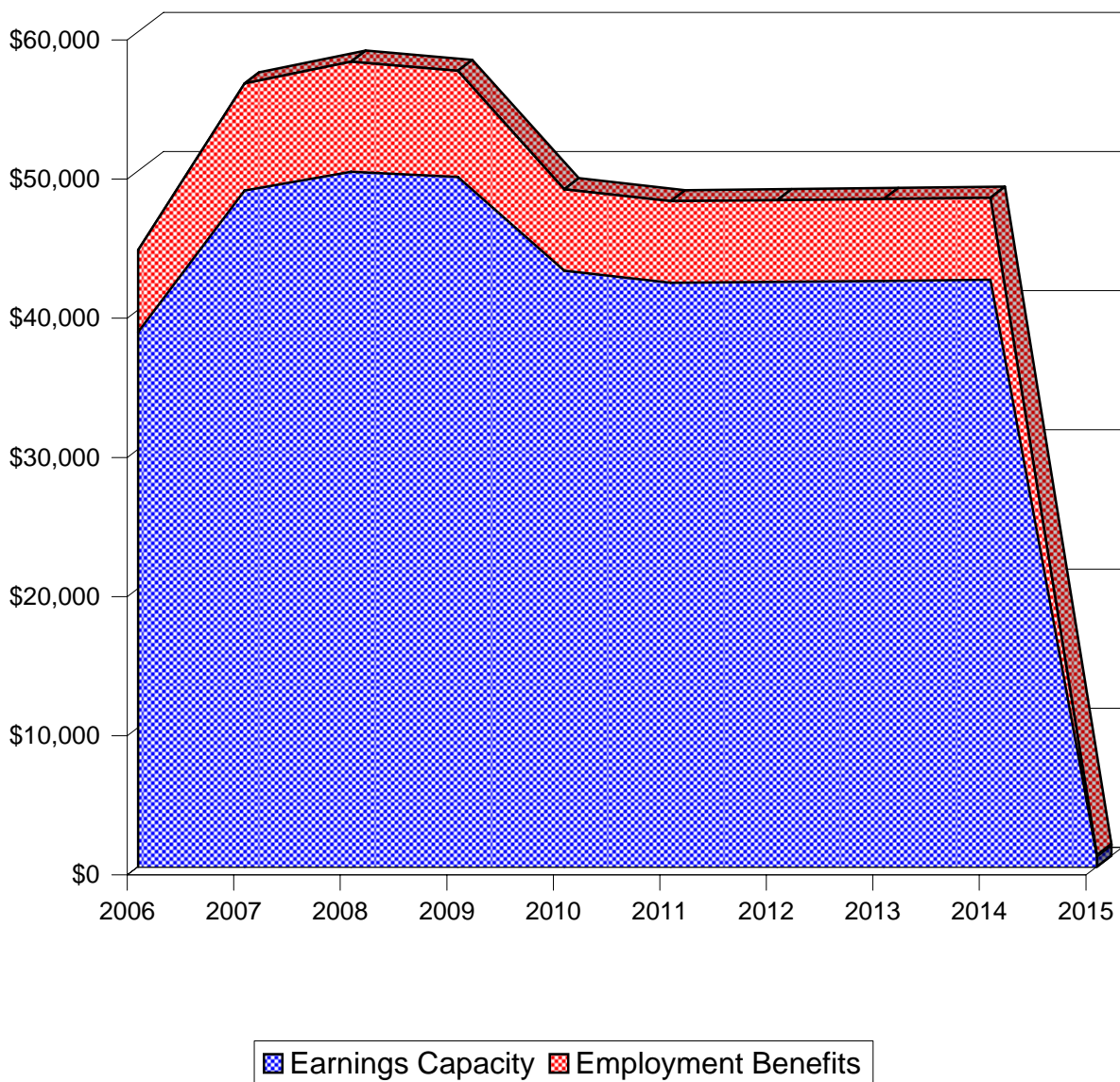
Half-time Employment



PRESENT VALUE OF LOST EARNINGS CAPACITY & EMPLOYMENT BENEFITS

JOE SAMPLER

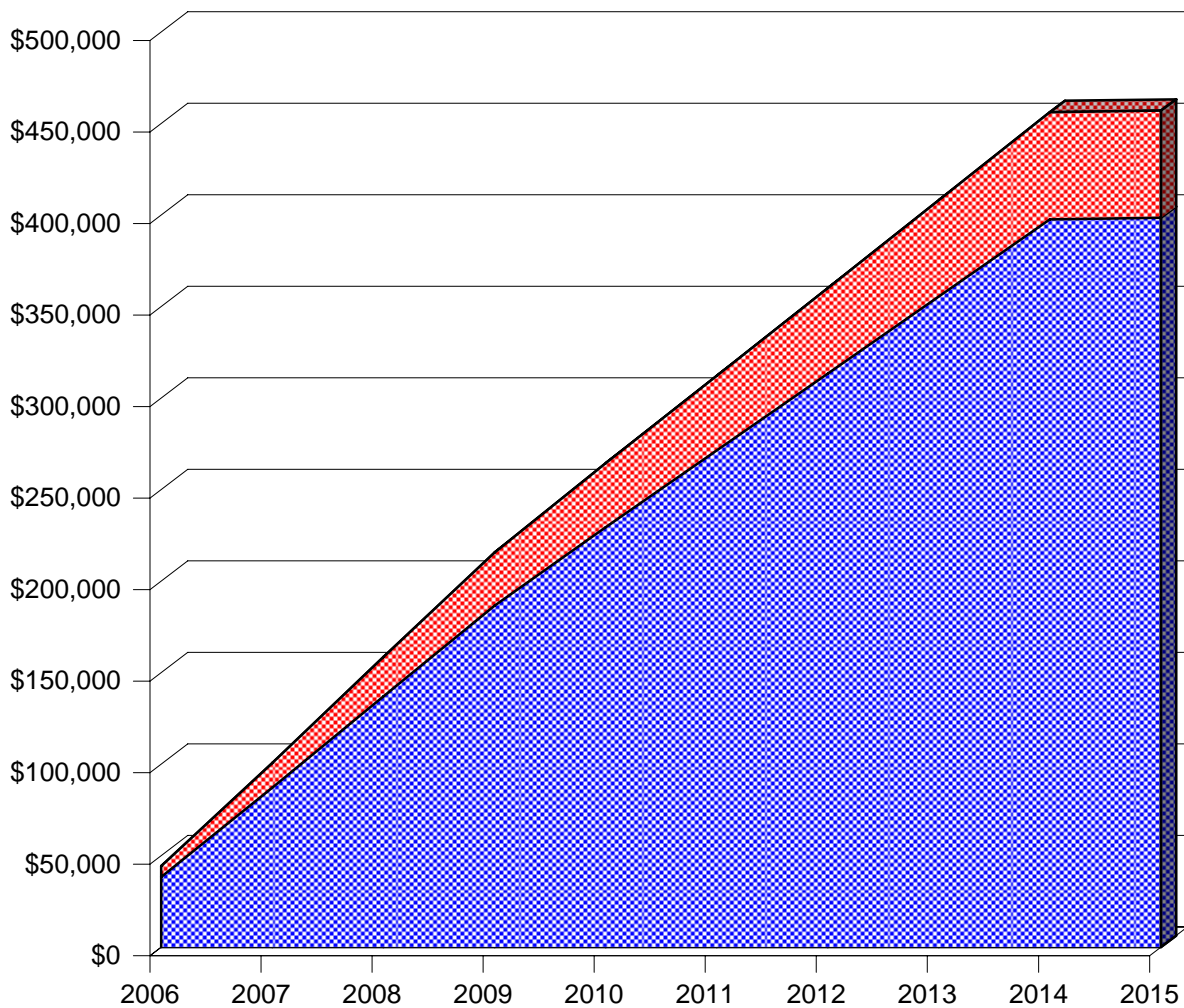
Half-time Employment



CUMULATIVE PRESENT VALUE

JOE SAMPLER

Half-time Employment



■ Earnings Capacity ■ Employment Benefits

EXHIBIT III

**ASSESSMENT OF LOST EARNINGS CAPACITY
JOE SAMPLER**

Remains Unemployed

REFERENCE DATE: 26-May-09

BACKGROUND DATA:

Inflation Estimate ----->	2.50%
Real Increase in Driver Wages ----->	0.00%
Treasury Note Rate ----->	2.73%
Date of Birth ----->	19-Jul-50
Life Expectancy ----->	21-Jul-30
Date of Incident ----->	17-Mar-06
Work-Life Expectancy ----->	05-Jan-15

YEAR -----	PROJECTED INCOME -----	AFTER-TAX INCOME -----	PRESENT VALUE -----
2006	43,802	38,407	38,407
2007	57,106	48,593	48,593
2008	58,732	49,943	49,943
2009 - PRESENT	24,395	20,756	20,756
TOTAL PAST LOSSES =			<u><u>\$ 157,698</u></u>
PRESENT - 2009	36,592	31,134	31,059
2010	62,512	53,188	51,856
2011	64,075	53,521	50,997
2012	65,676	54,859	51,087
2013	67,318	56,231	51,176
2014	69,001	57,636	51,266
2015	998	998	867
TOTAL FUTURE LOSSES =			<u><u>\$ 288,309</u></u>
PAST LOSSES =			\$ 157,698
FUTURE LOSSES =			\$ 288,309
TOTAL LOSSES =			<u><u>\$ 446,007</u></u>

EXHIBIT IV

**ASSESSMENT OF LOST EMPLOYMENT BENEFITS
JOE SAMPLER**

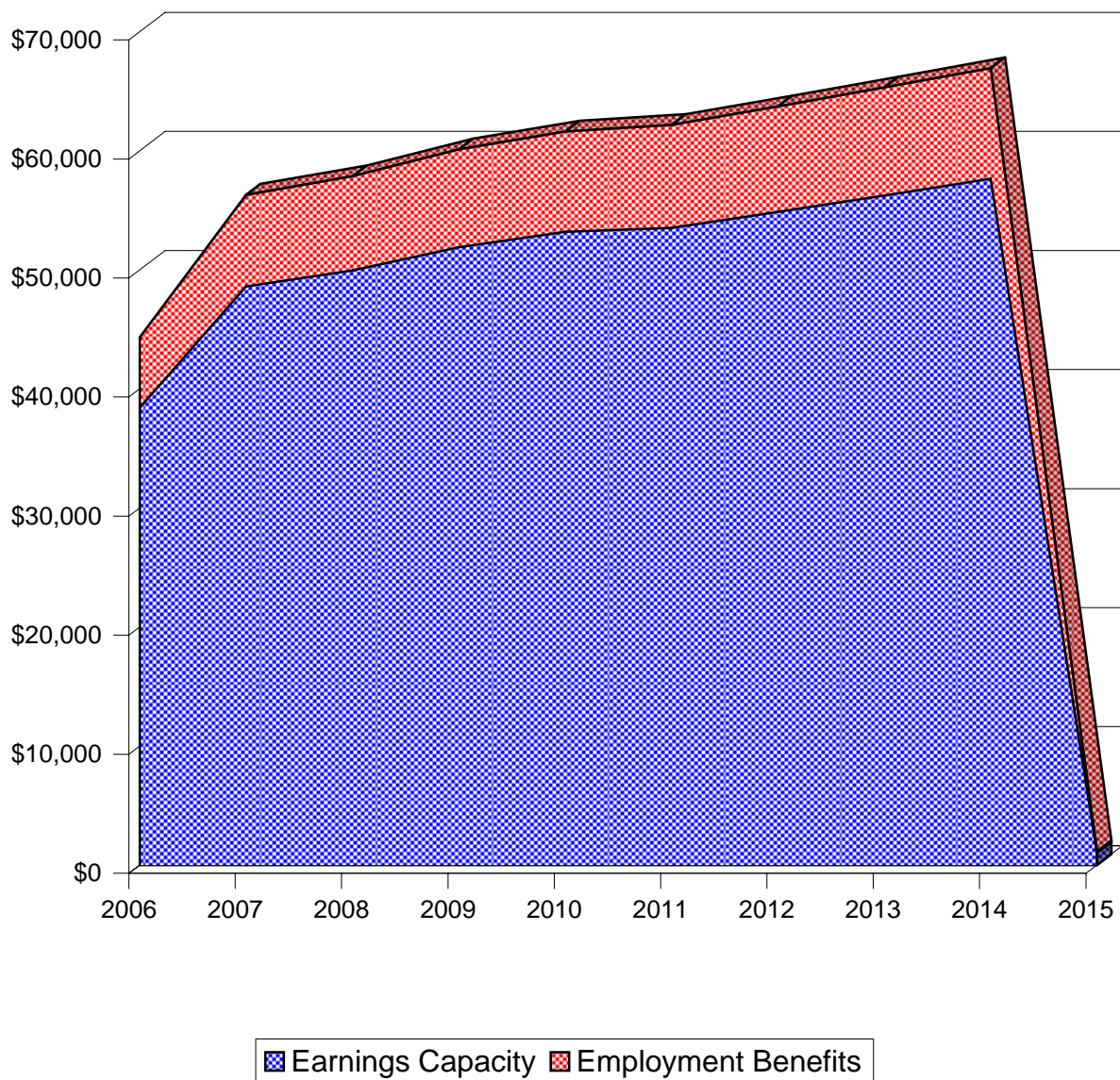
Remains Unemployed

<u>YEAR</u>	<u>SOCIAL SECURITY</u>	<u>PRESENT VALUE</u>	<u>HEALTH CARE</u>	<u>PRESENT VALUE</u>	<u>TOTAL</u>	<u>PRESENT VALUE</u>
2006	2,716	2,716	3,181	3,181	5,897	5,897
2007	3,541	3,541	4,148	4,148	7,688	7,688
2008	3,641	3,641	4,266	4,266	7,907	7,907
2009 - PRESENT	1,512	1,512	1,772	1,772	3,284	3,284
TOTAL PAST LOSSES =		\$ 11,410		\$ 13,366		\$ 24,776
PRESENT - 2009	2,269	2,263	2,658	2,651	4,926	4,914
2010	3,876	3,779	4,540	4,426	8,416	8,205
2011	3,973	3,785	4,654	4,434	8,626	8,220
2012	4,072	3,792	4,770	4,442	8,842	8,234
2013	4,174	3,799	4,889	4,450	9,063	8,248
2014	4,278	3,805	5,012	4,458	9,290	8,263
2015	62	54	72	63	134	117
TOTAL FUTURE LOSSES =		\$ 21,277		\$ 24,924		\$ 46,201
PAST LOSSES =		\$ 11,410		\$ 13,366		\$ 24,776
FUTURE LOSSES =		\$ 21,277		\$ 24,924		\$ 46,201
TOTAL LOSSES =		\$ 32,687		\$ 38,290		\$ 70,977

ANNUAL LOST EARNINGS CAPACITY & EMPLOYMENT BENEFITS

JOE SAMPLER

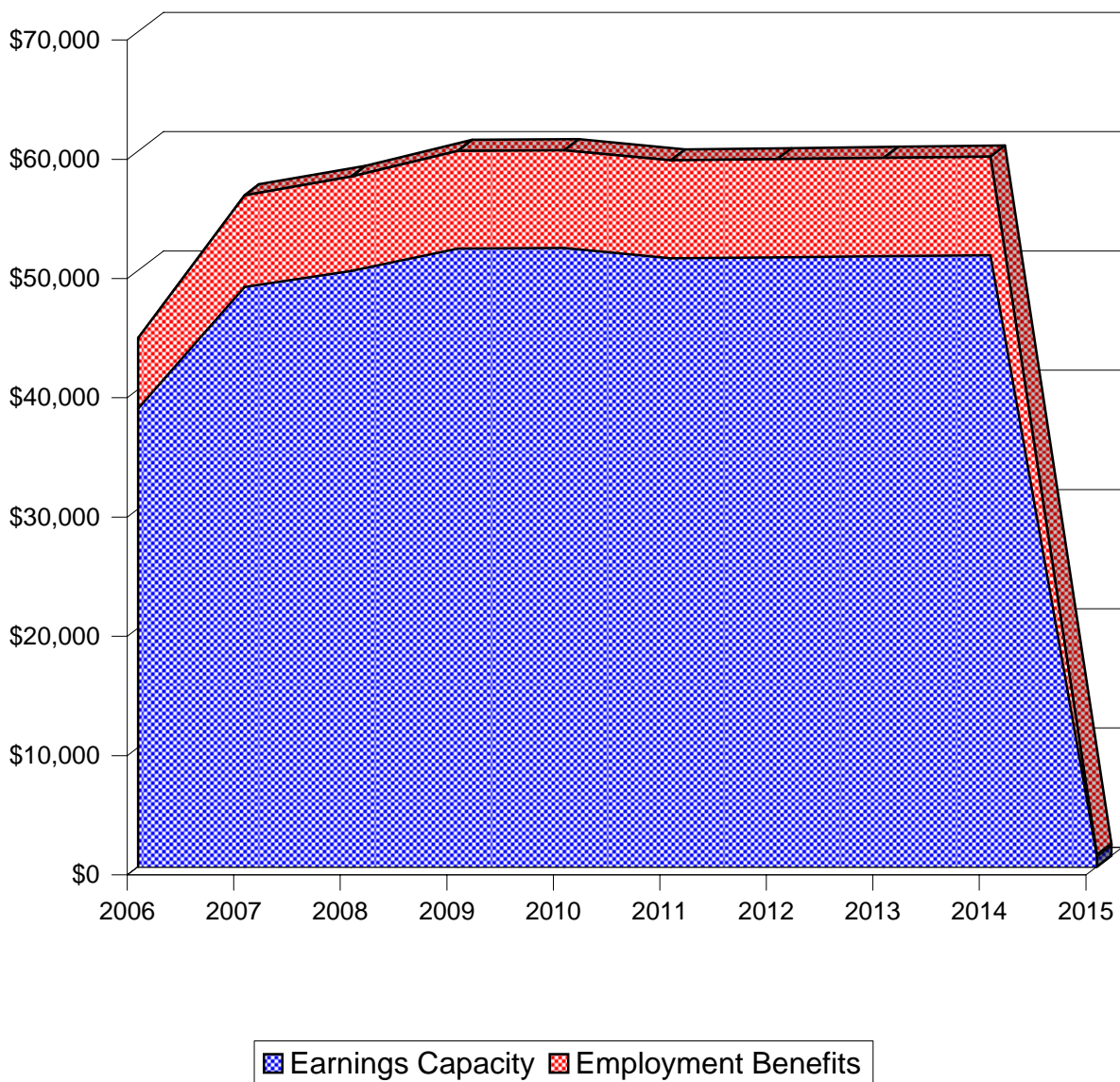
Remains Unemployed



PRESENT VALUE OF LOST EARNINGS CAPACITY & EMPLOYMENT BENEFITS

JOE SAMPLER

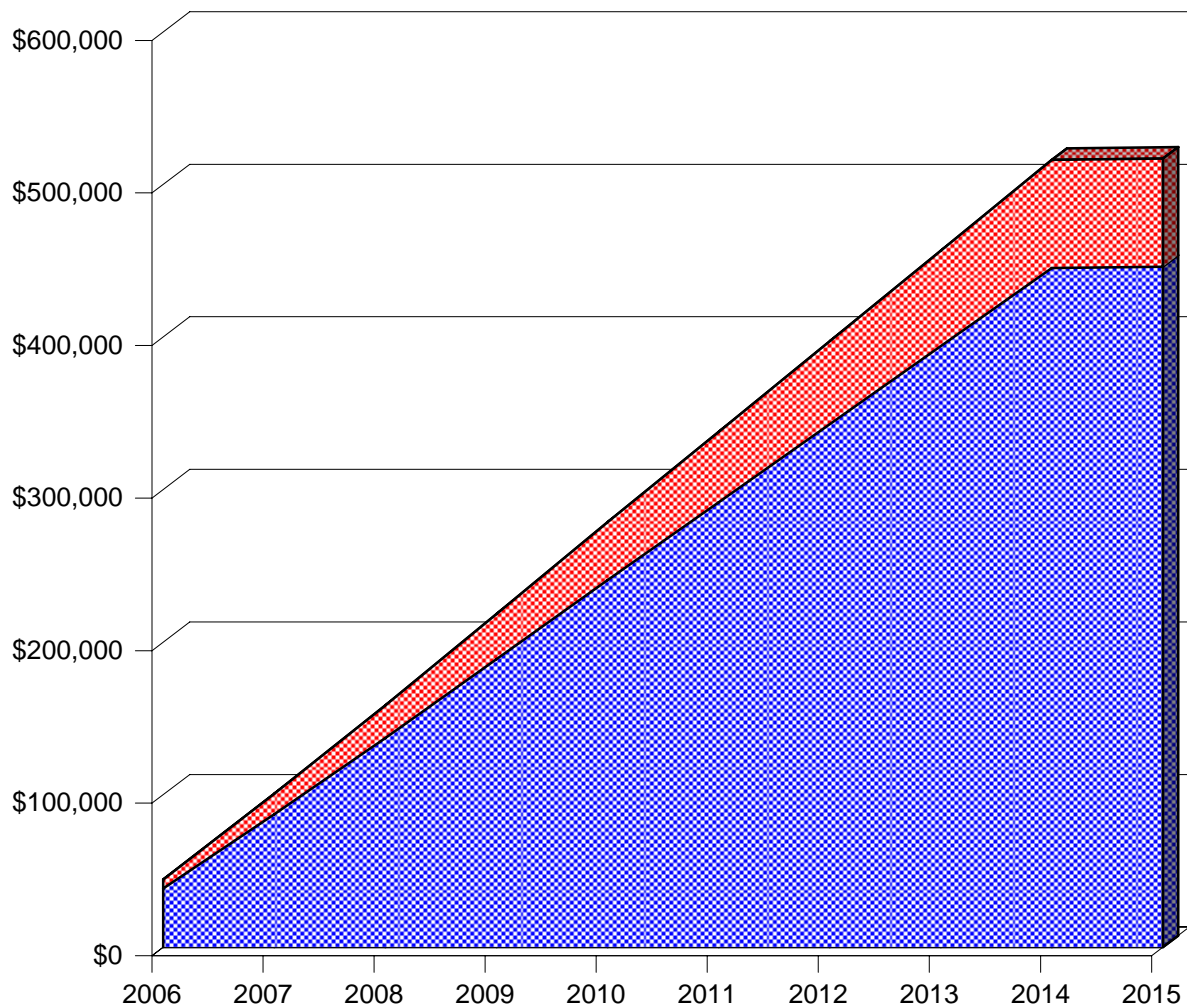
Remains Unemployed



CUMULATIVE PRESENT VALUE

JOE SAMPLER

Remains Unemployed



■ Earnings Capacity ■ Employment Benefits

EXHIBIT V

ASSESSMENT OF LOST HOUSEHOLD SERVICES
JOE SAMPLER

One Hour Per Week

YEAR	LOSS OF SERVICES	PRESENT VALUE	CUMULATIVE PRESENT VALUE
2006	212	212	212
2007	284	284	496
2008	320	320	816
2009 - PRESENT	136	136	952
TOTAL PAST LOSSES =		\$ 952	
PRESENT - 2009	206	205	1,157
2010	377	368	1,525
2011	386	368	1,893
2012	396	369	2,262
2013	406	369	2,632
2014	416	370	3,002
2015	427	371	3,372
2016	437	371	3,744
2017	448	372	4,116
2018	459	373	4,489
2019	471	373	4,862
2020	483	374	5,236
2021	495	375	5,611
2022	507	375	5,986
2023	520	376	6,362
2024	533	377	6,739
2025	546	377	7,116
2026	560	378	7,494
2027	574	379	7,873
2028	588	379	8,252
2029	603	380	8,632
2030	341	210	8,842
TOTAL FUTURE LOSSES =		\$ 7,890	
PAST LOSSES =		\$ 952	
FUTURE LOSSES =		\$ 7,890	
TOTAL LOSSES =		\$ 8,842	

SUMMARY OF QUALIFICATIONS

Keith Wm. Fairchild received his Ph.D. in Finance from the University of Texas at Austin and is an Associate Professor of Finance, the former Chair of the Department of Finance, and current Director of the MBA Programs at the University of Texas at San Antonio where he teaches various courses in Entrepreneurial-, Corporate- and International Finance, Investments, and Real Estate as well as publishing research in these areas. In addition to teaching, he has extensive experience as a consultant with real estate investors, venture capitalists and business owners, and has served as an expert witness in support of both plaintiffs and defendants in litigation.

Business Valuations

Dr. Fairchild has valued more than 100 businesses for purposes of mergers and acquisitions, ESOPs, capital investment, estate planning and commercial damages, including those engaged in the following industries:

- Manufacturing - Aerospace, semiconductors, textiles, medical and industrial equipment, plastics, electrical equipment, ice cream
- Wholesale - Office equipment and supplies, gasoline, foods, gifts and novelties, security systems
- Retail - Convenience stores, jewelry, restaurants/nightclubs, mail order, automotive, manufactured housing, ornamental metals, equipment leasing
- Services - Professional practices, trucking/transportation, laundry/dry cleaning, air conditioning/heating, home health care, construction, daycare, car/truck washes, computer equipment/consulting, oil and gas directional drilling, water drilling

Real Estate

Valuation of and financing arrangements for: hotels; apartment complexes; commercial buildings; shopping malls; strip centers; raw land for development in master-planned, mixed-use communities; and dormitories in Texas, Colorado, Utah, California, Oregon and México.

Venture Capital / Private Equity

Investment analysis and financial planning for: aerospace manufacturers; semiconductor equipment manufacturing; precision instruments; plastics products; paperboard products; medical equipment; personal computers; computer security systems; metals reclamation; agricultural and extractive industries; styling salon; and farm equipment.

Other

Pricing of secured, unsecured, senior, subordinated and convertible debt; straight and convertible preferred stock; tax loss credits; accounts receivable; executive stock options; warrants; letter stock; limited partnership interests; health and pension benefits; structured settlements; debt/equity restructurings; utility divisional cost of capital.

Expert witness in assessments of personal injury (approximately 30% defense and 70% plaintiff); wrongful death; wrongful termination; sexual harassment; commercial damages; business valuations; losses due to fraud; portfolio management.