

**ASSESSMENT OF
THE PECUNIARY LOSSES 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

Pecuniary Loss of Maintenance and Support

Earnings Capacity

Past Losses =	\$ 25,009
Future Losses =	<u>338,208</u>
Total Loss of Earnings Capacity =	<u>\$ 363,217</u>

Employment Benefits

Past Losses =	\$ 1,566
Future Losses =	<u>22,884</u>
Total Loss of Employment Benefits =	<u>\$ 24,450</u>

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Total Pecuniary Loss of Maintenance and Support =	\$ 387,667
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Pecuniary Loss of Services

Past Losses =	\$ 6,393
Future Losses =	<u>185,575</u>
Total Pecuniary Loss of Services =	<u>\$ 191,968</u>

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TOTAL PECUNIARY LOSSES =	\$ 579,635
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ECOFIN, INC.

Economic and Financial Consulting

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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 pecuniary losses of Mr. Joe Sampler to the extent to which they would accrue to his wife, Jane, and their children for the period beginning in January of 2008 through his remaining life expectancy. The information provided to me, and upon which I relied, included the following:

- Miscellaneous pay stubs for Joe Sampler from CyberWorx, Inc.
- W-2 Form for 2008 for Joe Sampler from CyberWorx, Inc.
- Tax returns of Joe and Jane Sampler for the years 2004 – 2007
- Interview with Jane Sampler on May 6, 2009

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 August 25, 1971, and worked for CyberWorx, Inc., at the time of his demise on January 15, 2008. At the time of his death, he was earning \$9.50 per hour with time-and-a-half for overtime, or an annualized wage rate of approximately \$25,600 based upon the average earnings that he generated in the employ of CyberWorx, Inc.

Pecuniary Loss of Maintenance and Support

Lost Earnings Capacity

Exhibit I presents the earnings stream that Joe Sampler could reasonably have anticipated generating had he not perished on January 15, 2008. The earnings projections are based upon

the actual wage rate that Mr. Sampler was earning at the time of his demise. Past wage rates were increased by the actual rate of inflation while future wage rates reflect annual increases of 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 mid-April of 2031, the remaining worklife expectancy of Mr. Sampler and at which time he would have been just over 59½ years of age. The rate of inflation was used to estimate earnings increases since it reflects, in general, the experience of the U.S. workforce in recent years (see Figure 1).

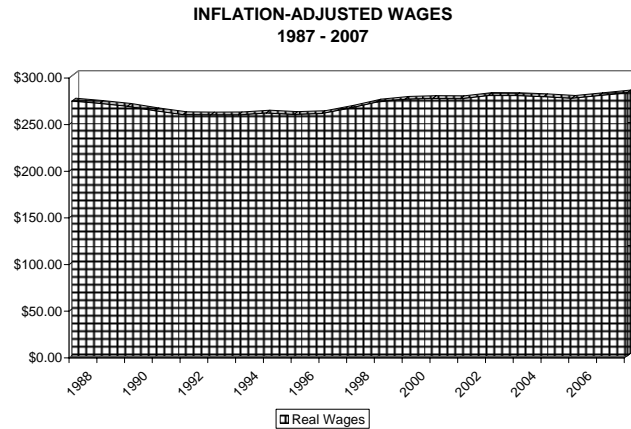


Figure 1
Source: *Economic Reports of the President*

The figures on Exhibit II reflect the earnings that Jane Sampler can reasonably expect to generate over her worklife expectancy and are based upon her inflation-adjusted average earnings for the years 2004 – 2007. Future wage rates have also been increased by the projected rate of inflation of 2.5% per year.

Exhibit III depicts the combined earnings of Joe and Jane Sampler under the column entitled PROJECTED INCOME. These figures were adjusted for both income taxes and the personal consumption of Joe Sampler and are depicted in the immediately adjacent column. The earnings stream that currently confronts Jane Sampler is depicted in the column entitled ACTUAL INCOME and was also adjusted for the tax consequences that she will encounter in her current circumstances. The difference between the after-tax combined earnings stream of Joe and Jane Sampler, after adjusting for the personal consumption expenditures of Mr. Sampler, and the after-tax income stream that Jane Sampler can now anticipate realizing, is the pecuniary loss of maintenance and support that has been incurred as a result of Mr. Sampler's lost earnings capacity. This loss of maintenance and support was then discounted at 2.49%, the average rate of interest on government notes, (or 2.37% after tax considerations) 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 second page of the exhibit, the total present value of the pecuniary loss of maintenance and support after personal consumption of Joe Sampler that would have accrued to his surviving family members amounts to \$363,217 over his remaining worklife expectancy. Of this amount, the sum of \$25,009 is the loss of past earnings capacity while the future loss of earnings capacity totals \$338,208 in current dollar terms.

Lost Employment Benefits – Social Security

In addition to the loss of earnings capacity, Mr. Sampler's death has 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 IV 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 (after personal consumption considerations) that has occurred as a result of the death of Joe Sampler. These figures were also discounted at a 2.37% after-tax rate of interest in order to arrive at a total present value of these lost benefits. As may be observed 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 \$24,450 in today's dollar terms.

Pecuniary Loss of Services

Mr. Sampler's death has also resulted in the loss of the services that an individual provides to the well-being of his family. Exhibit V presents the value of the pecuniary loss of services contributed by Mr. Sampler through the remainder of his life expectancy after adjustment for the personal consumption of Mr. Sampler. The figures on the exhibit represent the statistical average of weekly services contributed by a male at various ages throughout his life expectancy. The value of the 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 in the minimum wage rate through 2009 while wage rates subsequent to 2010 reflect increases at the estimated rate of inflation of 2.5% that is anticipated for the economy overall. The projected future values of the pecuniary loss of services were then discounted at the tax-adjusted 2.37% rate of interest available on non-indexed government notes. As indicated at the bottom of the exhibit on the second page, the total present value of the pecuniary loss of services of Joe Sampler that would have been contributed to his family's well-being through the remainder of his life expectancy after adjustment for his own personal consumption patterns amounts to \$191,968 in current dollar terms when valued using the minimum wage rate. Of this amount, the sum of \$6,393 is the past loss of services while the future pecuniary loss of services amounts to \$185,575 in present value terms.

(Please see Figures 2, 3 and 4 for a graphical depiction of the pecuniary loss of maintenance and support, and services on an annual, present value and cumulative present value basis, respectively.)

Summary and Conclusions

In summary, the death of Joe Sampler has resulted in significant pecuniary losses of

maintenance and support, and services that would have accrued to his wife, Jane, and their children. These losses may be summarized in the following manner:

Pecuniary Loss of Maintenance and Support

Earnings Capacity

Past Losses =	\$ 25,009
Future Losses =	<u>338,208</u>
Total Loss of Earnings Capacity =	<u>\$ 363,217</u>

Employment Benefits

Past Losses =	\$ 1,566
Future Losses =	<u>22,884</u>
Total Loss of Employment Benefits =	<u>\$ 24,450</u>

Total Pecuniary Loss of Maintenance and Support = \$ 387,667

Pecuniary Loss of Services

Past Losses =	\$ 6,393
Future Losses =	<u>185,575</u>
Total Pecuniary Loss of Services =	<u>\$ 191,968</u>

TOTAL PECUNIARY LOSSES = \$ 579,635

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.

Mr. John H. Smith
May 26, 2009
Page 3

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,

A handwritten signature in blue ink, appearing to read "Keith Wm. Fairchild". The signature is written in a cursive style with a large, stylized initial "K".

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. *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
5. *Wall Street Journal Online*, www.wsj.com (May 26, 2009)
6. *2009 U.S. Master Tax Guide*, CCH Incorporated
7. *Determining Economic Damages*, Gerald D. Martin (James Publishing, Inc.)
8. *American Time Use Survey*, U.S. Department of Labor, Bureau of Labor Statistics (usdl: 05-1766), <http://www.bls.gov/news.release/pdf/atus.pdf>
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 EARNINGS CAPACITY
JOE SAMPLER**

REFERENCE DATE: 26-May-09

BACKGROUND DATA:

Inflation Estimate ----->	2.50%
Treasury Note Rate ----->	2.49%
Date of Birth ----->	25-Aug-71
Life Expectancy ----->	22-May-49
Date of Incident ----->	15-Jan-08
Work-Life Expectancy ----->	15-Apr-31

YEAR -----	PROJECTED INCOME -----
2008	24,631
2009 - PRESENT	10,639
PRESENT - 2009	15,958
2010	27,262
2011	27,944
2012	28,643
2013	29,359
2014	30,093
2015	30,845
2016	31,616
2017	32,406
2018	33,217
2019	34,047
2020	34,898
2021	35,771
2022	36,665
2023	37,581
2024	38,521
2025	39,484
2026	40,471
2027	41,483
2028	42,520
2029	43,583
2030	44,673
2031	13,197

EXHIBIT II

ASSESSMENT OF EARNINGS CAPACITY JANE SAMPLER

REFERENCE DATE: 26-May-09

BACKGROUND DATA:

Inflation Estimate ----->	2.50%
Treasury Note Rate ----->	2.49%
Date of Birth ----->	08-Feb-74
Life Expectancy ----->	14-Feb-56
Date of Incident ----->	15-Jan-08
Work-Life Expectancy ----->	26-Jan-27

YEAR -----	PROJECTED INCOME -----
2008	8,434
2009 - PRESENT	3,503
PRESENT - 2009	5,255
2010	8,977
2011	9,201
2012	9,431
2013	9,667
2014	9,909
2015	10,156
2016	10,410
2017	10,671
2018	10,937
2019	11,211
2020	11,491
2021	11,778
2022	12,073
2023	12,375
2024	12,684
2025	13,001
2026	13,326
2027	973

EXHIBIT III

**ASSESSMENT OF LOST EARNINGS CAPACITY
JOE SAMPLER**

REFERENCE DATE: 26-May-09

BACKGROUND DATA:

Inflation Estimate ----->	2.50%
Treasury Note Rate ----->	2.49%
Date of Birth ----->	25-Aug-71
Life Expectancy ----->	22-May-49
Date of Incident ----->	15-Jan-08
Work-Life Expectancy ----->	15-Apr-31
Children:	
Name: Joseph	
Date of Birth ----->	04-Apr-93
Name: Madeleine	
Date of Birth ----->	03-Dec-97
Name: Larry	
Date of Birth ----->	05-Feb-99
Name: Alicia	
Date of Birth ----->	07-Jan-01

	PROJECTED	AFTER-TAX	ACTUAL	AFTER-TAX		PRESENT
YEAR	INCOME	INCOME	INCOME	INCOME	DIFF.	VALUE
2008	33,066	25,964	8,434	8,434	17,530	17,530
2009 - PRESENT	14,142	10,982	3,503	3,503	7,479	7,479
TOTAL PAST LOSSES =						\$ 25,009
PRESENT - 2009	21,213	16,716	5,255	5,255	11,461	11,433
2010	36,239	28,390	8,977	8,977	19,414	18,916
2011	37,145	29,002	9,201	9,201	19,801	18,847
2012	38,074	29,220	9,431	9,431	19,789	18,398
2013	39,026	29,931	9,667	9,667	20,263	18,403
2014	40,001	30,658	9,909	9,909	20,749	18,407
2015	41,001	31,402	10,156	10,156	21,246	18,410
2016	42,026	31,074	10,410	10,410	20,663	17,490
2017	43,077	31,811	10,671	10,671	21,141	17,479

EXHIBIT III

**ASSESSMENT OF LOST EARNINGS CAPACITY
JOE SAMPLER
(continued)**

YEAR	PROJECTED INCOME	AFTER-TAX INCOME	ACTUAL INCOME	AFTER-TAX INCOME	DIFF.	PRESENT VALUE
2018	44,154	29,395	10,937	10,937	18,457	14,907
2019	45,258	30,074	11,211	11,211	18,863	14,881
2020	46,389	27,610	11,491	11,491	16,119	12,421
2021	47,549	28,228	11,778	11,778	16,449	12,382
2022	48,738	28,858	12,073	12,073	16,785	12,342
2023	49,956	29,499	12,375	12,375	17,125	12,300
2024	51,205	30,153	12,684	12,684	17,469	12,256
2025	52,485	30,819	13,001	13,001	17,817	12,211
2026	53,797	31,496	13,326	13,326	18,170	12,164
2027	42,456	23,490	973	973	22,517	14,724
2028	42,520	23,577	0	0	23,577	15,060
2029	43,583	24,120	0	0	24,120	15,049
2030	44,673	24,674	0	0	24,674	15,038
2031	13,197	7,879	0	0	7,879	4,691
TOTAL FUTURE LOSSES =						\$ 338,208
PAST LOSSES =						\$ 25,009
FUTURE LOSSES =						\$ 338,208
NET TOTAL LOSSES =						\$ 363,217

EXHIBIT IV

**ASSESSMENT OF LOST EMPLOYMENT BENEFITS
JOE SAMPLER**

YEAR -----	SOCIAL SECURITY -----	PRESENT VALUE -----
2008	1,093	1,093
2009 - PRESENT	474	474
TOTAL PAST LOSSES =		<u>\$ 1,566</u>
PRESENT - 2009	711	709
2010	1,214	1,183
2011	1,244	1,184
2012	1,275	1,186
2013	1,307	1,187
2014	1,340	1,189
2015	1,373	1,190
2016	1,377	1,165
2017	1,411	1,167
2018	1,279	1,033
2019	1,311	1,034
2020	1,174	905
2021	1,204	906
2022	1,234	907
2023	1,265	908
2024	1,296	909
2025	1,329	911
2026	1,362	912
2027	1,511	988
2028	1,574	1,005
2029	1,613	1,007
2030	1,654	1,008
2031	488	291
TOTAL FUTURE LOSSES =		<u>\$ 22,884</u>
PAST LOSSES =		\$ 1,566
FUTURE LOSSES =		<u>\$ 22,884</u>
NET TOTAL LOSSES =		<u><u>\$ 24,450</u></u>

EXHIBIT V

**ASSESSMENT OF LOST HOUSEHOLD SERVICES
JOE SAMPLER**

	<u>Household Activities</u>	<u>Purchasing Goods & Services</u>	<u>Caring for Household Members</u>
Men:			
15 - 19 years ----->	3.85	2.94	0.42
20 - 24 years ----->	7.07	4.62	1.12
25 - 34 years ----->	8.75	4.06	3.99
35 - 44 years ----->	9.31	4.27	4.69
45 - 54 years ----->	11.20	4.69	2.17
55 - 64 years ----->	14.07	4.76	0.98
65 - 74 years ----->	13.58	5.60	0.56
75 years and over ----->	12.81	5.11	0.56

<u>YEAR</u>	<u>LOSS OF SERVICES</u>	<u>PRESENT VALUE</u>	<u>CUMULATIVE PRESENT VALUE</u>
2008	4,432	4,432	4,432
2009 - PRESENT	1,961	1,961	6,393
TOTAL PAST LOSSES =		<u>\$ 6,393</u>	
PRESENT - 2009	2,962	2,955	9,348
2010	5,428	5,289	14,637
2011	5,563	5,295	19,932
2012	5,702	5,302	25,233
2013	5,845	5,308	30,542
2014	5,991	5,315	35,856
2015	6,141	5,321	41,178
2016	6,127	5,186	46,364
2017	6,280	5,193	51,557
2018	5,931	4,790	56,347
2019	6,080	4,796	61,143
2020	5,717	4,406	65,549
2021	5,860	4,411	69,961
2022	6,007	4,417	74,378
2023	6,157	4,422	78,800
2024	6,311	4,428	83,228
2025	6,469	4,433	87,661

EXHIBIT V

**ASSESSMENT OF LOST HOUSEHOLD SERVICES
JOE SAMPLER
(continued)**

<u>YEAR</u>	<u>LOSS OF SERVICES</u>	<u>PRESENT VALUE</u>	<u>CUMULATIVE PRESENT VALUE</u>
2026	7,273	4,869	92,530
2027	6,784	4,436	96,966
2028	6,954	4,442	101,408
2029	7,128	4,447	105,855
2030	7,306	4,453	110,308
2031	7,489	4,458	114,766
2032	7,676	4,464	119,229
2033	7,868	4,469	123,699
2034	8,064	4,475	128,173
2035	8,266	4,480	132,654
2036	8,443	4,470	137,123
2037	8,654	4,475	141,599
2038	8,870	4,481	146,080
2039	9,092	4,486	150,566
2040	9,319	4,492	155,058
2041	9,552	4,497	159,556
2042	9,791	4,503	164,059
2043	10,036	4,509	168,567
2044	10,287	4,514	173,081
2045	10,544	4,520	177,601
2046	10,118	4,236	181,837
2047	10,371	4,242	186,079
2048	10,630	4,247	190,326
2049	4,210	1,643	191,969
TOTAL FUTURE LOSSES =		\$ 185,575	
PAST LOSSES =		\$ 6,393	
FUTURE LOSSES =		\$ 185,575	
TOTAL LOSSES =		\$ 191,968	

FIGURE 2

ANNUAL LOST EARNINGS CAPACITY, EMPLOYMENT BENEFITS & HOUSEHOLD SERVICES

JOE SAMPLER

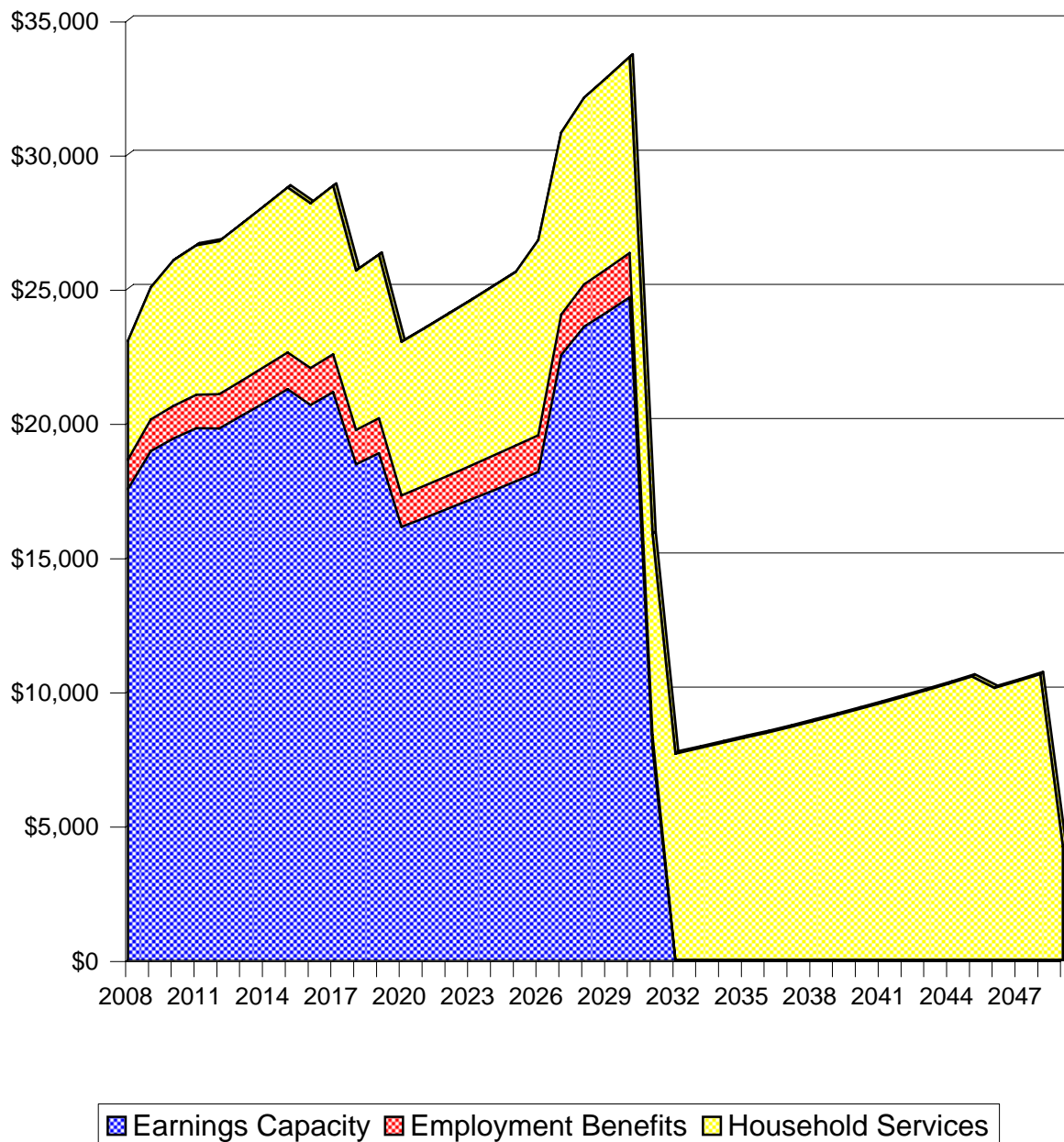
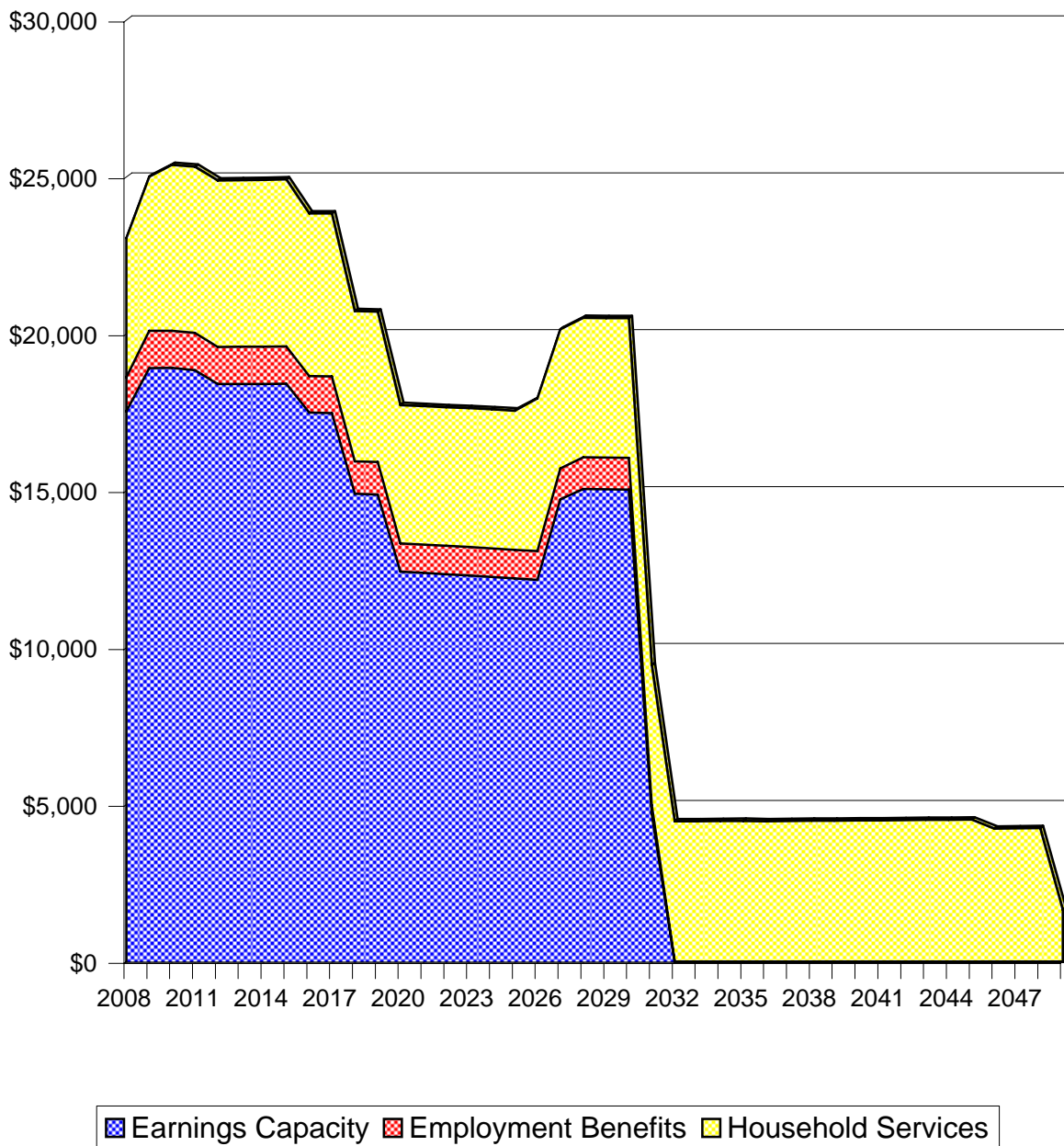


FIGURE 3

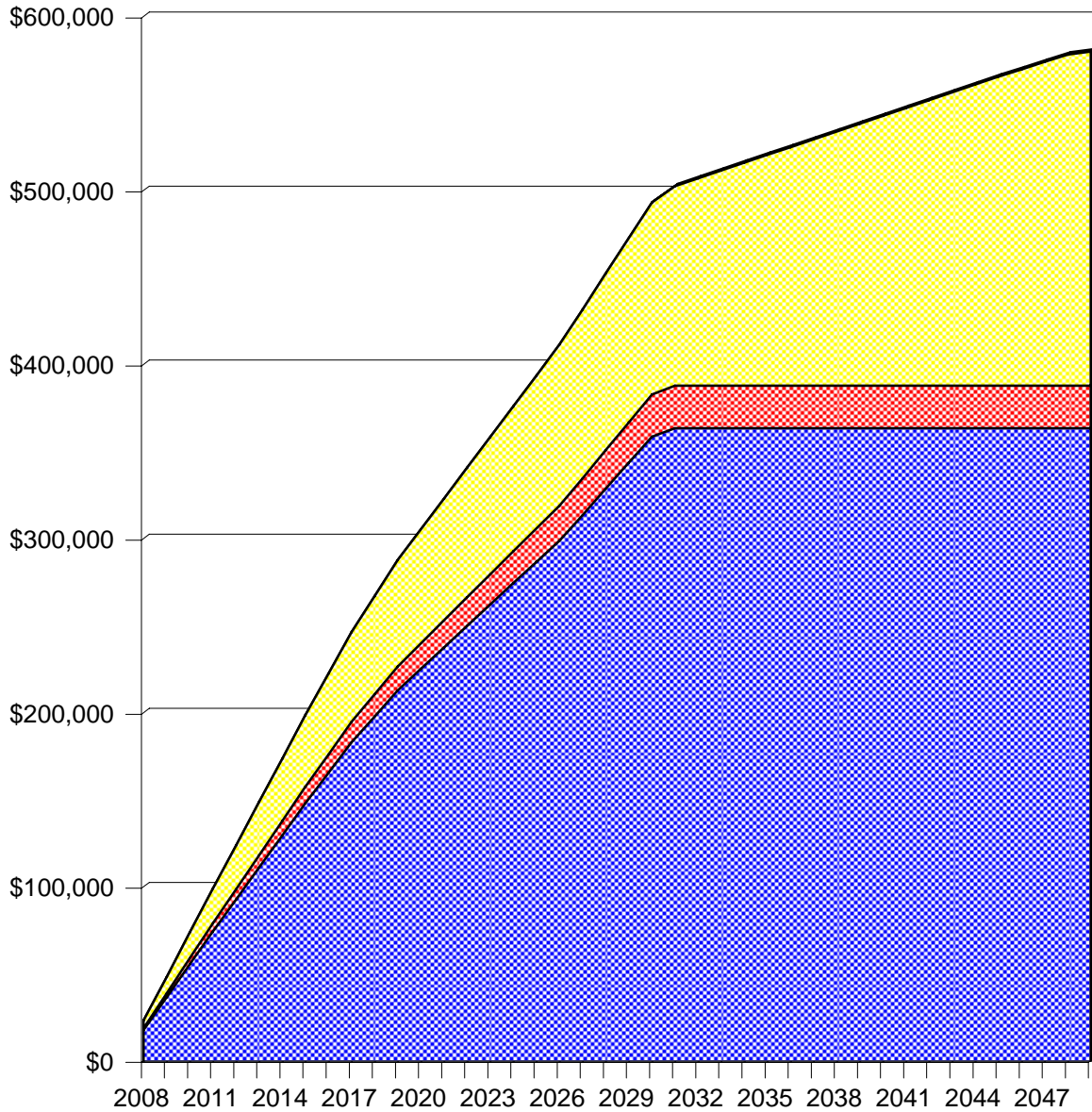
PRESENT VALUE OF LOST EARNINGS CAPACITY, EMPLOYMENT BENEFITS & HOUSEHOLD SERVICES

JOE SAMPLER



CUMULATIVE PRESENT VALUE

JOE SAMPLER



■ Earnings Capacity ■ Employment Benefits ■ Household Services

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.