

**ASSESSMENT OF THE
LOST EARNINGS & EMPLOYMENT BENEFITS 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

Earnings

Past Losses =	\$ 227,146
Future Losses =	<u>243,635</u>
Total Lost Earnings =	<u>\$ 470,781</u>

Employment Benefits

Past Losses =	\$ 41,243
Future Losses =	<u>(110,321)</u>
Total Lost Employment Benefits =	<u>\$ (69,078)</u>

TOTAL EMPLOYMENT LOSSES = \$ 401,703

PRE-TAX AWARD EQUIVALENT = =====
\$ 591,372
=====

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 loss of earnings and employment benefits of Mr. Joe Sampler for the period beginning in 2005 through his remaining worklife expectancy. The information provided to me, in addition to other sources, was used in determining a valuation of these factors. Specific sources of information provided to me and upon which I relied included the following:

- Tax returns of Joe Sampler for the years 2003 – 2007
- Miscellaneous pay stubs for Mr. Sampler from Midas Group
- Midas Group, Inc., Employee Handbook
- Letter to Joe Sampler from Bob Bland dated December 23, 2003
- E-mail to Joe Sampler from Julie Mariachi dated March 16, 2005
- Letter of termination from Bob Bland dated April 29, 2005

The rationale and methodology employed to arrive at my conclusions are briefly summarized below.

Background

Joe Sampler was born on September 9, 1964, and was employed by Midas Group, Inc., where he had worked since March of 2002 at the time that he was terminated in April of 2005. Since his termination, Mr. Sampler has worked as a self-employed consultant as a consequence of his inability to obtain full-time employment. This report assumes that Mr. Sampler will find full-time employment beginning July 1, 2009, at the average wage rate for men of his age with a master's degree in the Houston area.

Lost Earnings

Exhibit I presents the earnings stream, under the column entitled PROJECTED INCOME, that Joe Sampler could reasonably have anticipated generating had he not been terminated from the employ of Midas Group, Inc., in April of 2005. The earnings projections are based upon the annual wage rate of approximately \$67,500 as documented in his pay stubs. 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 Mid-March of 2030, the remaining worklife expectancy of Mr. Sampler and at which time he will be 65½ 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). The earnings that Mr. Sampler could reasonably have anticipated generating had he continued to work for Midas Group, Inc., 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 earnings that Mr. Sampler has actually generated since his termination in 2005 and that he can reasonably anticipate generating in the future are reflected in the column entitled ACTUAL INCOME on Exhibit I. These figures are based upon the earnings that he has actually generated in 2005 – 2008, but assume that he has earned net earnings of zero thus far in 2009, an amount consistent with the general information provided regarding his income and expenses. Future wage rates assume that Mr. Sampler is able to obtain full-time employment at an annual wage rate of approximately \$58 thousand dollars beginning on July 1, 2009. This amount represents the average annual earnings of a forty-one year old man with a master's degree in the Houston area. These earnings were again increased by the anticipated rate of inflation of 2.5% through the remainder of Joe Sampler's worklife expectancy and adjusted for income taxes. The difference between the after-tax earnings that Mr. Sampler could reasonably anticipate generating had he remained employed with Midas Group and the after-tax earnings stream that currently confronts his is his loss of earnings and is depicted under the column entitled DIFF. on the exhibit. This amount was then discounted at 2.33%, the average rate of interest on government notes (or an after-tax rate of 1.75%), 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 lost after-tax earnings to Joe Sampler had he remained employed by Midas Group, Inc., amounts to \$470,781 over his remaining worklife expectancy. Of

this amount, the sum of \$227,146 is the past loss of earnings while his future lost earnings amount to \$243,635 in current dollar terms.

Lost Employment Benefits

Social Security

In addition to the loss of earnings, Mr. Sampler has incurred the loss of the employment benefits associated with his employment. 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. The figures in the exhibit under the column entitled SOCIAL SECURITY represent 6.2% of the loss of earnings that Mr. Sampler has sustained as a result of losing his position of employment with Midas Group. 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 \$44,901 in present value terms.

Health Care

As well as the mandated contributions to Social Security, Joe Sampler was provided with health care coverage by Midas Group. The column entitled HEALTH CARE on Exhibit II depicts the value of the health care coverage that Midas provided to Mr. Sampler after consideration of his contributions towards its cost. Future projections were again 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 an after-tax rate of interest of 1.75%, it was found that the value of the lost health care coverage amounts to \$74,643 in today's dollar terms.

Dental Care

Mr. Sampler also received dental care coverage with Midas Group, Inc. The value of this coverage is also presented on Exhibit II after adjusting for his contributions towards its cost. The total loss of dental care coverage was determined to have a value of \$6,295 in present value terms after discounting at a 1.75% after-tax rate of interest.

401(k)

Midas Group encourages its employees to plan for their retirement by offering a 401(k)

retirement plan wherein the company matches one-half of employee contributions up to 3% of income. The figures listed under the column entitled 401(k) on Exhibit II represent 3% of the loss of earnings that Mr. Sampler has incurred. After discounting these contributions to the 401(k) retirement plan of Joe Sampler at a 1.75% after-tax rate of interest, it was found that the total loss of retirement contributions to his retirement plan amount to \$60,591 in current dollar terms.

Cell Phone

Mr. Sampler was also provided a cell phone as a benefit accompanying his employment with Midas Group. The reported taxable value of the phone to him was \$50.00 per month. This employment benefit is presented on Exhibit II and found to have a total value of \$17,926 in today's 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 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 21.11% of his loss of earnings. The figures on Exhibit II under the column entitled OTHER BENEFITS represent 21.11% of Mr. Sampler's projected future earnings assuming that he returns to work on a full-time basis beginning July 1, 2009. After discounting these figures to a present value, it was found that the value of other employment benefits amounts to \$(273,434) in current dollar terms. Note that the negative nature of the value represents an *offset* against other losses.

In total, the loss of employment benefits that Mr. Sampler could have reasonably expected to receive had he remained employed by Midas Group, Inc., totals \$(69,078) in today's dollar terms. Of this amount, the sum of \$41,243 represents the past loss of employment benefits while the value of future losses of benefits is \$(110,321) in present value terms.

Combined, the after-tax loss of earnings and employment benefits that Joe Sampler has incurred as a result of his termination from the employ of Midas Group sums to \$401,703 in today's dollar terms. (Please see Figures 2, 3 and 4 for a graphical depiction of the loss of earnings and employment benefits on an annual, present value and cumulative present value basis, respectively.)

Pre-tax Award Equivalent

Since any award for the loss of earnings and benefits to Mr. Sampler is treated as taxable income by the Internal Revenue Service, it is necessary to calculate the amount that an award for loss of earnings and employment benefits would have to be on a pre-tax basis that would result in

an after-tax amount equivalent to the present value of the after-tax losses. Assuming that Mr. Sampler receives such an award in the year 2009, and including consideration of his current and projected annual earnings, Mr. Sampler would have to receive an award equivalent to \$591,372 in order to net \$401,703 in after-tax compensation for his after-tax losses of earnings and employment benefits.

Summary and Conclusions

In summary, Joe Sampler has incurred substantial losses of earnings and employment benefits as a result of no longer being employed by Midas Group, Inc. These losses may be summarized in the following manner:

Earnings

Past Losses =	\$ 227,146
Future Losses =	<u>243,635</u>
Total Lost Earnings =	<u>\$ 470,781</u>

Employment Benefits

Past Losses =	\$ 41,243
Future Losses =	<u>(110,321)</u>
Total Lost Employment Benefits =	<u>\$ (69,078)</u>

TOTAL EMPLOYMENT LOSSES = \$ 401,703

PRE-TAX AWARD EQUIVALENT = \$ 591,372

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
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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", is enclosed in a light blue rectangular box.

Keith Wm. Fairchild, Ph.D.

REFERENCES

1. *Economic Report of the President*, U.S. Government Printing Office (February 2008)
2. *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)
3. *May 2007 National Occupational Employment and Wage Estimates – United States*, U.S. Department of Labor, Bureau of Labor Statistics, http://www.bls.gov/oes/2007/may/oes_nat.htm
4. *May 2007 Metropolitan and Nonmetropolitan Area Occupational Employment and Wage Estimates – Houston TX*, U.S. Department of Labor, Bureau of Labor Statistics, http://www.bls.gov/oes/2007/may/oes_41700.htm#b29-0000
5. *2008 Employer Costs for Employee Compensation*, U.S. Department of Labor, Bureau of Labor Statistics (usdl: 08-0788), http://www.bls.gov/schedule/archives/ecec_nr.htm
6. *Wall Street Journal Online*, www.wsj.com (May 26, 2009)
7. *2009 U.S. Master Tax Guide*, CCH Incorporated
8. *Annual Social and Economic (ASEC) Supplement*, U.S. Department of Labor, Bureau of Labor Statistics, http://pubdb3.census.gov/macro/032008/perinc/new04_000.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 FOR
JOE SAMPLER**

REFERENCE DATE: 26-May-09

BACKGROUND DATA:

Inflation Estimate ----->	2.50%
Treasury Note Rate ----->	2.33%
Date of Birth ----->	09-Sep-64
Life Expectancy ----->	26-Sep-42
Date of Incident ----->	29-Apr-05
Work-Life Expectancy ----->	12-Mar-30

	PROJECTED	AFTER-TAX	ACTUAL	AFTER-TAX		PRESENT
YEAR	INCOME	INCOME	INCOME	INCOME	DIFF.	VALUE
-----	-----	-----	-----	-----	-----	-----
2005	45,561	37,404	2,314	2,314	35,090	35,090
2006	69,890	54,673	(2,738)	(2,738)	57,411	57,411
2007	72,145	56,466	7,433	7,433	49,033	49,033
2008	74,200	58,040	(3,592)	(3,592)	61,632	61,632
2009 - PRESENT	30,819	23,981	0	0	23,981	23,981
TOTAL PAST LOSSES =						\$ 227,146

PRESENT - 2009	46,229	35,971	29,260	26,691	9,280	9,263
2010	78,975	61,806	59,493	50,924	10,882	10,676
2011	80,949	61,973	60,981	51,294	10,679	10,297
2012	82,973	63,522	62,505	52,576	10,946	10,373
2013	85,047	65,110	64,068	53,890	11,220	10,449
2014	87,173	66,738	65,670	55,238	11,500	10,526
2015	89,353	68,406	67,311	56,619	11,788	10,604
2016	91,587	70,116	68,994	58,034	12,082	10,683
2017	93,876	71,869	70,719	59,485	12,384	10,762
2018	96,223	73,666	72,487	60,972	12,694	10,841
2019	98,629	75,508	74,299	62,496	13,011	10,921
2020	101,094	77,395	76,157	64,059	13,337	11,002
2021	103,622	79,330	78,061	65,660	13,670	11,083
2022	106,212	81,314	80,012	67,302	14,012	11,165
2023	108,868	83,346	82,012	68,984	14,362	11,248

EXHIBIT I

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

YEAR	PROJECTED INCOME	AFTER-TAX INCOME	ACTUAL INCOME	AFTER-TAX INCOME	DIFF.	PRESENT VALUE
-----	-----	-----	-----	-----	-----	-----
2024	111,589	85,430	84,063	70,709	14,721	11,331
2025	114,379	87,566	86,164	72,477	15,089	11,414
2026	117,239	89,755	88,318	74,289	15,466	11,499
2027	120,170	91,999	90,526	76,146	15,853	11,584
2028	123,174	101,689	92,790	78,049	23,640	16,977
2029	126,253	104,231	95,109	80,001	24,231	17,102
2030	25,439	24,174	19,164	18,645	5,529	3,835
TOTAL FUTURE LOSSES =						\$ 243,635
 PAST LOSSES =						 \$ 227,146
FUTURE LOSSES =						\$ 243,635
TOTAL LOSSES =						\$ 470,781

EXHIBIT II

**ASSESSMENT OF LOST EMPLOYMENT BENEFITS
JOE SAMPLER**

YEAR	SOCIAL SECURITY	PRESENT VALUE	HEALTH CARE	PRESENT VALUE	DENTAL CARE	PRESENT VALUE	401(k)	PRESENT VALUE
2005	2,825	2,825	1,684	1,684	142	142	1,367	1,367
2006	4,333	4,333	2,583	2,583	218	218	2,097	2,097
2007	4,473	4,473	2,666	2,666	225	225	2,164	2,164
2008	4,600	4,600	2,742	2,742	231	231	2,226	2,226
2009 - PRESENT	1,911	1,911	1,139	1,139	96	96	925	925
TOTAL PAST LOSSES =		\$ 18,142		\$ 10,814		\$ 912		\$ 8,778
PRESENT - 2009	1,052	1,050	1,709	1,705	144	144	1,387	1,384
2010	1,208	1,185	2,919	2,863	246	241	2,369	2,324
2011	1,238	1,194	2,992	2,885	252	243	2,428	2,341
2012	1,269	1,203	3,066	2,906	259	245	2,489	2,359
2013	1,301	1,211	3,143	2,927	265	247	2,551	2,376
2014	1,333	1,220	3,222	2,949	272	249	2,615	2,394
2015	1,367	1,229	3,302	2,971	278	251	2,681	2,411
2016	1,401	1,238	3,385	2,993	285	252	2,748	2,429
2017	1,436	1,248	3,469	3,015	293	254	2,816	2,447
2018	1,472	1,257	3,556	3,037	300	256	2,887	2,465
2019	1,508	1,266	3,645	3,060	307	258	2,959	2,484
2020	1,546	1,275	3,736	3,082	315	260	3,033	2,502
2021	1,585	1,285	3,830	3,105	323	262	3,109	2,520
2022	1,624	1,294	3,925	3,128	331	264	3,186	2,539

EXHIBIT II

**ASSESSMENT OF LOST EMPLOYMENT BENEFITS
JOE SAMPLER
(continued)**

YEAR	SOCIAL SECURITY	PRESENT VALUE	HEALTH CARE	PRESENT VALUE	DENTAL CARE	PRESENT VALUE	401(k)	PRESENT VALUE
2023	1,665	1,304	4,024	3,151	339	266	3,266	2,558
2024	1,707	1,314	4,124	3,174	348	268	3,348	2,577
2025	1,749	1,323	4,227	3,198	356	270	3,431	2,596
2026	1,793	1,333	4,333	3,221	365	272	3,517	2,615
2027	1,838	1,343	4,441	3,245	375	274	3,605	2,634
2028	1,884	1,353	4,552	3,269	384	276	3,695	2,654
2029	1,931	1,363	4,666	3,293	393	278	3,788	2,673
2030	389	270	940	652	79	55	763	529
TOTAL FUTURE LOSSES =		\$ 26,759		\$ 63,829		\$ 5,383		\$ 51,813
PAST LOSSES =		\$ 18,142		\$ 10,814		\$ 912		\$ 8,778
FUTURE LOSSES =		\$ 26,759		\$ 63,829		\$ 5,383		\$ 51,813
TOTAL LOSSES =		\$ 44,901		\$ 74,643		\$ 6,295		\$ 60,591

EXHIBIT II

**ASSESSMENT OF LOST EMPLOYMENT BENEFITS
JOE SAMPLER
(continued)**

YEAR	CELL PHONE	PRESENT VALUE	OTHER BENEFITS	PRESENT VALUE	TOTAL	PRESENT VALUE
2005	404	404	0	0	6,422	6,422
2006	620	620	0	0	9,851	9,851
2007	640	640	0	0	10,169	10,169
2008	659	659	0	0	10,458	10,458
2009 - PRESENT	274	274	0	0	4,344	4,344
TOTAL PAST LOSSES =		\$ 2,597		\$ -		\$ 41,243
PRESENT - 2009	410	410	(6,175)	(6,175)	(1,474)	(1,474)
2010	701	688	(12,556)	(12,318)	(5,114)	(5,017)
2011	718	693	(12,870)	(12,409)	(5,241)	(5,054)
2012	736	698	(13,192)	(12,501)	(5,372)	(5,091)
2013	755	703	(13,522)	(12,593)	(5,507)	(5,129)
2014	774	708	(13,860)	(12,686)	(5,644)	(5,166)
2015	793	713	(14,206)	(12,780)	(5,785)	(5,205)
2016	813	719	(14,562)	(12,875)	(5,930)	(5,243)
2017	833	724	(14,926)	(12,970)	(6,078)	(5,282)
2018	854	729	(15,299)	(13,066)	(6,230)	(5,321)
2019	875	735	(15,681)	(13,162)	(6,386)	(5,360)
2020	897	740	(16,073)	(13,259)	(6,546)	(5,400)
2021	920	746	(16,475)	(13,357)	(6,709)	(5,440)
2022	943	751	(16,887)	(13,456)	(6,877)	(5,480)

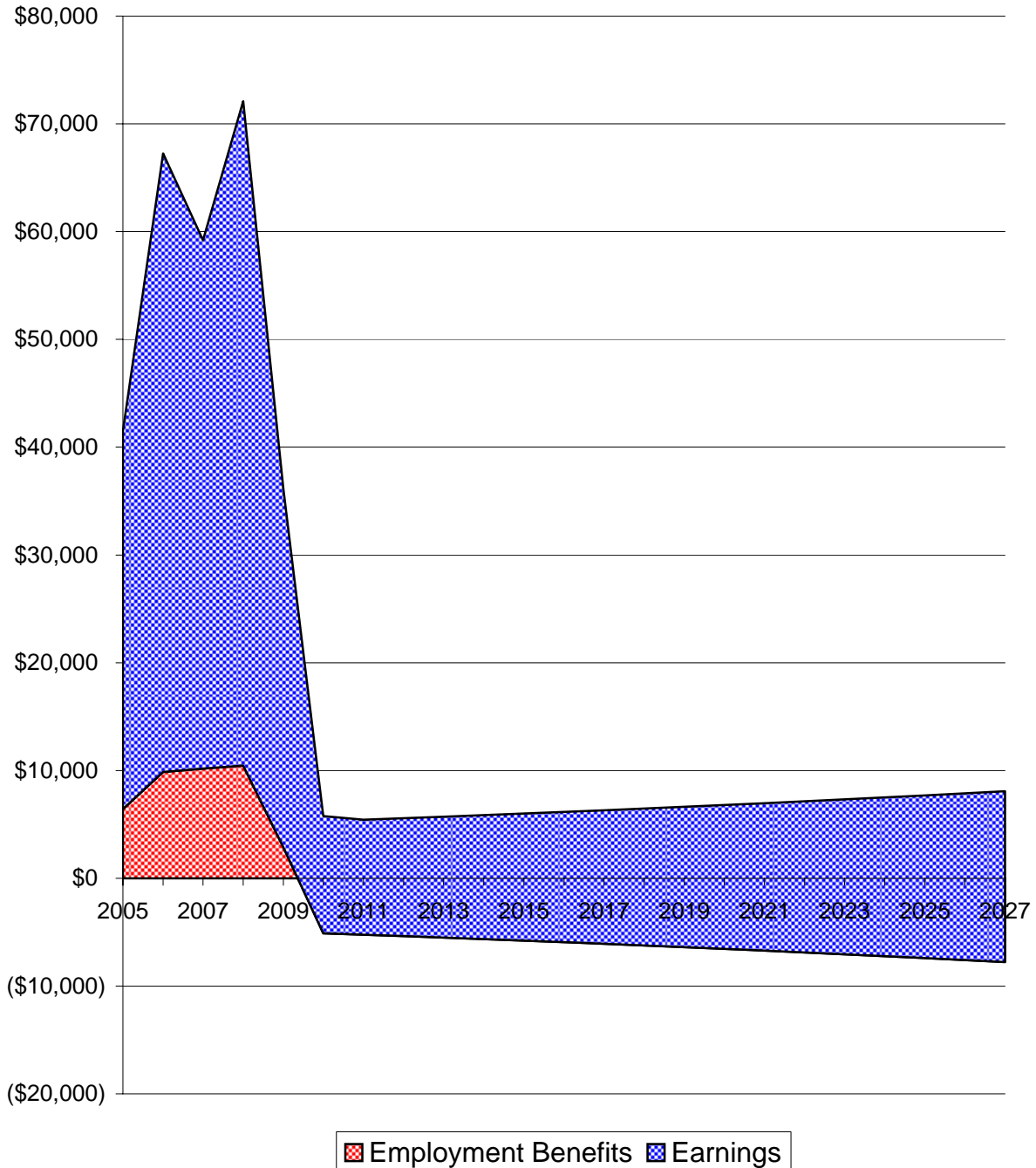
EXHIBIT II

**ASSESSMENT OF LOST EMPLOYMENT BENEFITS
JOE SAMPLER
(continued)**

YEAR	CELL PHONE	PRESENT VALUE	OTHER BENEFITS	PRESENT VALUE	TOTAL	PRESENT VALUE
2023	966	757	(17,309)	(13,556)	(7,049)	(5,520)
2024	990	762	(17,742)	(13,656)	(7,225)	(5,561)
2025	1,015	768	(18,185)	(13,757)	(7,406)	(5,602)
2026	1,041	774	(18,640)	(13,858)	(7,591)	(5,644)
2027	1,067	779	(19,106)	(13,961)	(7,781)	(5,685)
2028	1,093	785	(19,584)	(14,064)	(7,975)	(5,727)
2029	1,121	791	(20,073)	(14,168)	(8,175)	(5,770)
2030	226	157	(4,045)	(2,806)	(1,647)	(1,143)
TOTAL FUTURE LOSSES =		\$ 15,329		\$ (273,434)		\$ (110,321)
PAST LOSSES =		\$ 2,597		\$ -		\$ 41,243
FUTURE LOSSES =		\$ 15,329		\$ (273,434)		\$ (110,321)
TOTAL LOSSES =		\$ 17,926		\$ (273,434)		\$ (69,078)

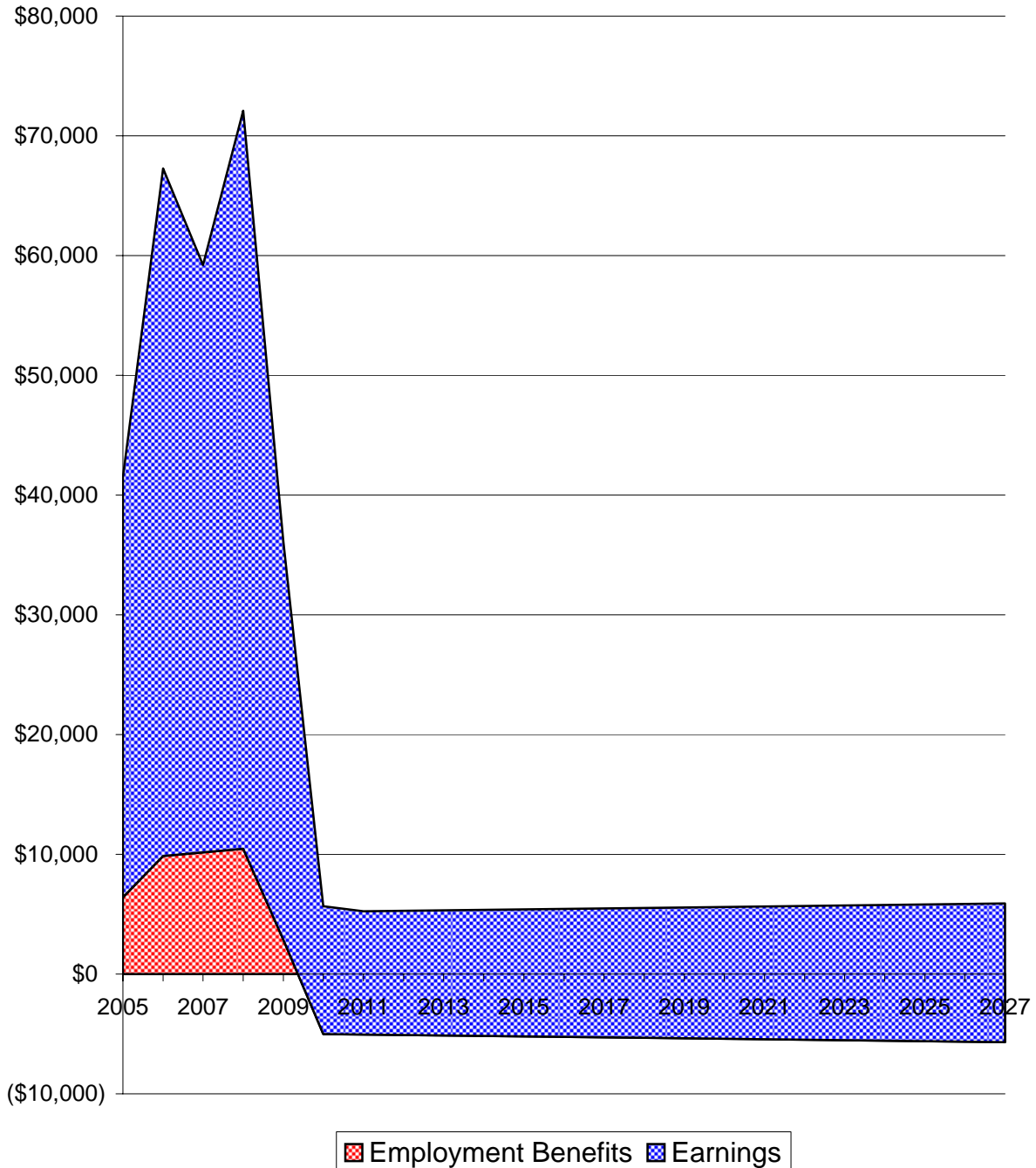
ANNUAL LOST EARNINGS & EMPLOYMENT BENEFITS

JOE SAMPLER



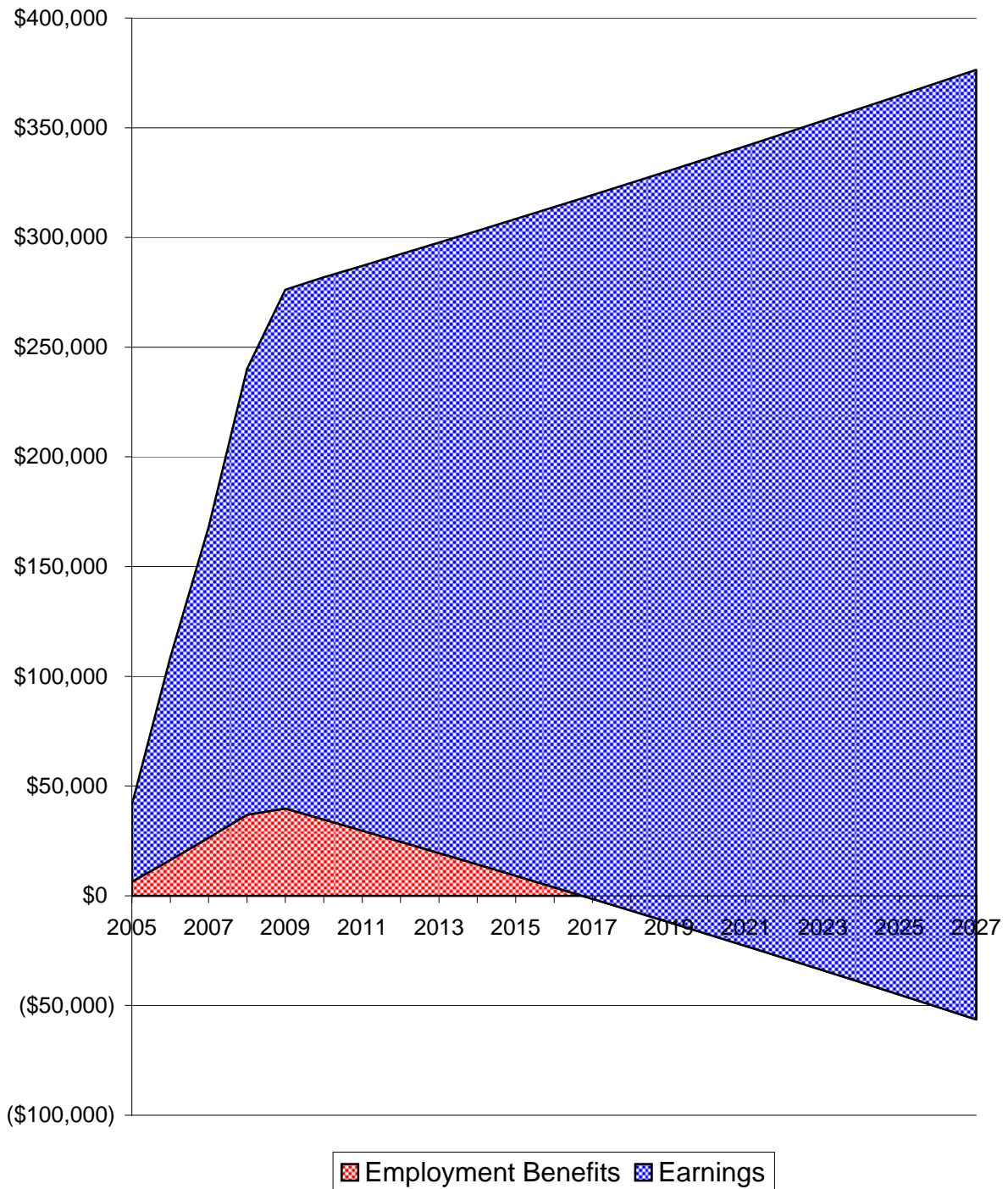
PRESENT VALUE OF LOST EARNINGS & EMPLOYMENT BENEFITS

JOE SAMPLER



CUMULATIVE PRESENT VALUE

JOE SAMPLER



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.