

**QUESTION 10 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK IV
OR IN SOFTEST ANSWER SCREEN 10**

Peter Plaintiff worked as a laborer in a mail distribution center. As part of his job, he was required to lift 50-pound mail bags onto a conveyer belt, and when necessary, repair the conveyer belt. Peter was married, and though he worked approximately 60 hours a week, he still found time to fish (particularly wading in Michigan's rivers), golf, and tend to his large garden. He and his wife also liked to travel the country in their motor home.

One day in June, Peter was legally walking across the street when he was struck by a vehicle travelling between 10 and 15 miles per hour. Peter was tossed in the air, landed on the pavement and broke his ankle. He also complained that his pre-existing lower back pain was aggravated. His ankle needed surgical repair which included placing a metal rod into the ankle for support. An MRI showed that discs in Peter's lower back were aggravated and bulging. As a result of these injuries, Peter's physician restricted him from carrying or lifting any weight in excess of 10 pounds and limited him to standing/walking for no more than 10 continuous minutes. Peter was placed into physical therapy and was given pain medication for his back.

Peter's restrictions precluded him from working in his laborer position. He was also initially unable to golf, fish, or tend to his garden. Additionally, his wife had to drive him around during the summer because his ankle precluded him from driving. These restrictions lasted for three months, or until mid-September. By that point, Peter's ankle had healed and his back pain was at a tolerable, pre-accident level. As a result of his injuries, Peter lost the entire summer's opportunity to play golf, fish, and tend to his garden (as well as work). A summer road trip across the continent was also cancelled. Peter returned to part-time restricted work in September and to full-time work in October.

Peter sued the driver, seeking to recover in tort for his pain and suffering and emotional injuries arising from the ankle and back injuries. The driver has challenged Peter's ability to prove his claim. Can Peter succeed, and should the judge or jury decide the issue? Explain your answer.

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