Journal of Case Research and Inquiry

Case, Notes and Articles

A publication of the Western Casewriters Association

Vol. 6
December 2020

Journal of Case Research and Inquiry

A publication of the Western Casewriters Association
Published online at www.jcri.org

ISSN 2377-7389 (online)

The cases, notes, and articles included herein, and their respective accompanying instructors' manuals, were anonymously peer reviewed and accepted by the *Journal of Case Research and Inquiry,* Vol. 6, 2020.

For membership in the Western Casewriters Association, visit www.westerncasewriters.org

Editor
Stephen J.J. McGuire, California State University, Los Angeles

Journal of Case Research and Inquiry
California State University, Los Angeles
5151 State University Drive, STF 709
Los Angeles, CA 90032 U.S.A.

Please send all Inquiries and Submissions to:
editor@jcri.org

Qualified instructors will be provided with peer-reviewed instructor's manuals for each case. To request an instructor's manual, please complete the request form at www.jcri.org, or write to the editor of the journal.

Western Casewriters Association

The Western Casewriters Association (WCA) is the Western regional association of business casewriters. Its purpose is to train, develop and support business case writing for research and pedagogical purposes. WCA organizes an annual conference for experienced and new case-writers and academics using cases for teaching, and publishes the *Journal of Case Research and Inquiry*. www.westerncaswriters.org

JCRI Editorial Board Members and Reviewers

JCRI Webmaster

JCRI Editorial Policy

Aim and goals

The *Journal of Case Research and Inquiry* (JCRI) is a publication of the Western Casewriters Association (www.westerncasewriters.org). The *Journal of Case Research and Inquiry* publishes peer-reviewed teaching case studies (cases) prepared from primary and secondary research, as well as pedagogical notes and scholarly articles concerned with case research and teaching with cases. The journal publishes one issue per year, and if submissions so merit, may publish additional issues with editorial board approval. Cases, notes, and articles published in the journal are available online, full text, and free of charge at www.jcri.org.

Scope

The journal publishes cases that address significant contemporary and perennial issues faced by organizations and mangers in the areas of business and public administration, nonprofit management, social entrepreneurship, and public policy. All cases are necessarily accompanied by instructor manuals (IMs) that are not published but may be provided to the instructors upon request. All cases and IMs are double blind peer-reviewed by at least two reviewers. Cases may be derived from primary field research, secondary research, or a combination of both. JCRI does not accept fictional cases, nor cases, notes, or articles previously published elsewhere. Case authors are required to obtain release forms, when necessary, from the organizations studied.

Pedagogical notes that accompany a given case may also be published; notes may be summaries of industry characteristics and trends, or theoretical or legal analyses useful in the understanding of a case. All notes are blind peer-reviewed by at least two reviewers.

Finally, the journal publishes scholarly articles addressing significant issues related to case research, case writing, and teaching with cases. All articles are blind peer-reviewed by at least two reviewers.

JCRI open source availability policy

Cases, notes, and articles are available online at www.jcri.org at no cost to instructors and students at state and nonprofit educational institutions, who shall be granted the right to reproduce them for educational purposes. The journal shall encourage instructors to include in their course syllabi links to the JCRI website so that students can easily access cases, notes, and articles. For reproductions for commercial purposes in textbooks or elsewhere, authors shall retain all rights.

Submission of manuscripts

Authors should submit manuscripts electronically to editor@jcri.org. All submissions must follow the JCRI submission guidelines available in detail at www.jcri.org. The minimum requirements for submission shall be:

When submitting manuscripts, authors should submit two WORD files, attached to a single email to editor@jcri.org. Each file sent to the journal should be saved with a name that clearly identifies the manuscript short title, type of manuscript, and date. At no place in any document except the Submission Form should authors be identified.

The first WORD file should contain the SUBMISSION FORM and the CASE SYNOPSIS (for cases) or ABSTRACT (for notes or articles). (See submission guidelines). This document contains the information required for contacting the author(s). It is used only by the editor and authorship is not revealed to reviewers. Please do not send PDF files to the journal.

The second WORD file should contain the CASE and INSTRUCTOR'S MANUAL (IM) for cases, or the NOTE or ARTICLE. (See submission guidelines).

In all documents submitted, use a size 12 Calibri font, 1 ½ spaced for text. Use a size 10 Calibri font, single-spaced, for Exhibits, Tables, Appendices, Footnotes, Endnotes, Financial Statements, and References. Leave a one-inch margin on the top, bottom, and sides of all pages. Align text with the left except for major titles, and do not "justify" the text. Number (starting with 1) all pages of each document. Do not submit more than two files. Include any charts, graphs, figures, images, or photographs in the manuscript in the approximate place where it should be included. While IMs, notes, and articles may be written in the present tense, by convention all cases should be written in the past tense (*e.g.*, "In 2019, Widgets-R-Us was the global leader in widget manufacturing.")

JCRI is an online publication. Case authors are encouraged to include photos, maps, links to websites, embedded videos and other features that take advantage of the internet.

Review policy
At the editor's discretion, a submission to the journal may be rejected without a full review, particularly if the manuscript does not align well with the aim and scope of the journal.

Otherwise, all submissions shall be blind peer reviewed by at least two qualified reviewers. Authors shall receive the two reviewer's comments, together with a decision (reject, revise and re-submit, accept) by the editor. Unless approved by the editorial board, no cases or papers shall be invited and none published without undergoing the peer review process.

WCA Membership requirement for authors
There shall be no fees to publish in the journal, however the policy of the journal is that at least one author must be a WCA member for the year in which the case is published. To join WCA, please visit www.westerncasewriters.org

WCA conference cases
Authors of cases presented at the WCA conference will be invited and encouraged to submit their work to the journal. However, all submissions (whether presented at a NACRA, WCA, or other conference) will undergo the peer review process. No paper - even a WCA award-winning case - shall be guaranteed publication in the journal.

Content of the journal
Published manuscripts may include CASE STUDIES, NOTES, and ARTICLES, which will be duly identified in different parts of the journal

- ***Case studies*** - The main part of the journal shall contain peer reviewed teaching case studies (cases) by authors who conducted primary research, secondary research, or a combination of both. Cases shall be about real organizations or managers facing issues in business administration, public administration, nonprofit management, or social entrepreneurship.

Cases must be submitted together with complete instructor manuals (IMs). IMs shall not be published in the journal, but shall be peer reviewed together with the case.

- ***Notes and exercises*** **-** A second part of the journal shall contain peer reviewed Notes, which can be summaries of literature, theory, or industry descriptions designed to be assigned to students together with cases. Peer reviewed Exercises may be short case-like assignments that provide less context about the organization and its environment than do cases studies but permit some of the learning associated with the case method.

- ***Articles*** - A third part of the journal may contain peer reviewed scholarly articles that address issues related to case research, teaching with cases, publishing case studies, and other topics related to case research.

Release forms

The journal shall require signed release forms from organizations, which must be collected by case authors for any case to be published that was carried out using primary research. The journal shall not publish a case based on primary research without a signed release form.

Ownership and distribution of Instructor Manuals

Instructor manuals (IMs) shall be archived by the journal for a period of at least three years after publication of a given case. IMs will only be provided to educators who so request them when such instructors are formally affiliated with a College or University.

No fees shall be charged to instructors who receive IMs, nor is membership in the WCA required to receive an IM. Educators seeking an IM should complete a request form on the JCRI website. IMs will then be sent by the journal editor to the requesting instructor with a cc to the case author, who may wish to know who is using his or her case and for what purpose. After the three-year period, inquiries for IMs should be made directly to the case author.

JCRI Publication Ethics Policy

Approved by the JCRI Editorial Board, March 9, 2017

1. ***Board Accountability***. The JCRI Editorial Board shall be responsible for establishing and updating, as needed, the Publication Ethics Policy of the *Journal of Case Research and Inquiry*.

2. ***Editor Responsibilities.*** The JCRI Editor shall be responsible for the content of the cases, notes, articles, and letters published in the journal. In consultation with the Editorial Board, the Editor shall endeavor to ensure that the content of the journal meets the standards of quality expected by the Western Casewriters Association (WCA) through the application of the blind peer-review process. The Editor shall also be responsible for ensuring that any non-peer reviewed content of the journal is clearly identifiable.

3. ***Records.*** The JCRI Editor shall keep accurate records of submissions to the journal, reviews, revisions, acceptances, and all other pertinent information to be able to inform the Editorial Board and WCA members of the status of the journal. The Editor shall also maintain a list of qualified reviewers for the journal that is updated based on reviewers' performance (availability, quality of review, and timeliness).

4. ***Continuous improvement.*** The Editor shall strive for continuous improvement of the quality of the journal and the quality of the published cases, notes and articles in each issue. The Editor shall seek the advice and input of Editorial Board and WCA members on ways to improve the quality, appeal, and usefulness of the journal.

5. ***Retractions and Corrections.*** The JCRI Editor shall be responsible for the publication of retractions, corrections, or clarification as needed, and shall keep the Editorial Board aware of any issues that might necessitate a retraction, correction, clarification or apology.

6. ***Volunteer Basis.*** The JCRI Editor, Editorial Board members, and reviewers shall carry out their duties on a volunteer basis, and under no circumstances accept any payment for such duties. Under no circumstances shall potential authors be required to make any payments to the JCRI or its Editor, Editorial Board, or reviewers, nor shall any such payment be accepted.

7. ***Quality of the Review Process.*** The Editor, in consultation with Editorial Board, shall review and as needed update the journal's editorial policy and guidelines for reviewers in order to ensure that thorough and timely reviews are prepared. The Editor shall also endeavor to ensure that the reviewers selected are qualified to review the submissions sent to them. The Editor shall apply the same review policies, procedures, and standards to submissions by WCA members, JCRI Editorial Board members, and non-WCA members. In addition, the JCRI Editor shall encourage reviewers to comment on the originality of submissions and be attentive to redundant publications or plagiarism. JCRI shall not accept fictional cases, nor cases, notes, or articles previously published elsewhere.

8. ***Decisions and Appeals.*** Decisions to accept or reject cases, notes, and articles shall be based on each paper's importance, originality, clarity, and pedagogical relevance as well as adherence to the submission requirements provided at www.jcri.org. Editorial decisions shall not be affected by the origins of the manuscript, including the institutional affiliation, nationality, ethnicity, political beliefs, race, gender, religion, or sexual orientation of authors. Authors whose submissions to JCRI have been rejected may appeal to the President of the Western Casewriters Association at www.westerncasewriters.org.

9. ***Support of the Scholarly Process.*** As appropriate, the Editor shall provide information to authors, reviewers, and institutions in order to support recognition of scholarly contributions.

10. ***Support for author rights.*** As per JCRI editorial policy, authors shall maintain full ownership and copyright for all papers published in the journal, with all the associated rights and obligations.

11. ***Case Release Permissions.*** Authors of cases shall be required to reveal the sources of information (primary, secondary or both) and to obtain release forms, when necessary, from the organizations studied, prior to publication of cases. In particular, release forms shall be required when primary data have been used as source of information.

Table of Contents with Case Synopses

WESTERN CASEWRITERS ASSOCIATION, p. 2
JCRI EDITORIAL POLICY, p. 3
JCRI PUBLICATION ETHICS POLICY, p. 6
LETTER FROM THE EDITOR, p. 12

Case Studies

WHAT'S IN A NAME, ANYWAY?
MAKING SENSE OF TITLE IX, HOSTILE ACTS, AND MICROAGGRESSIONS? pp. 14-26
By Inae Yang, Asbjorn Osland, Linda M. Dunn-Jensen, and Nanette Clinch

Students, staff, and faculty in a university setting can experience tension between the right to free speech and Title IX regulations. A University of Tennessee freshman, Keaton Wahlbon failed a quiz and was accused of sexual harassment after he got an instructor's name wrong. A question on the quiz asked, *"What is your lab instructor's name? (if you don't remember, make something good up)."* Wahlbon couldn't remember the name of his female lab instructor and wrote *"Sarah Jackson,"* the name of a pornographic model. Wahlbon received a zero, with *"inappropriate"* written next to his response. Wahlbon emailed the professor about the grade of zero and to request a grade change; Wahlbon explained that it was an honest mistake, that "Sarah Jackson" was a generic name, and that he had never heard of the porn actress. The professor responded he had no way of knowing Wahlbon's intent, and refused to change the grade. Does this action fall under Title IX?

Key words: Title IX, free speech, hostile environment, sexual harassment, gender bias

ELON MUSK: LEADER OR LIABILITY? pp. 27-50
By Franziska M. Renz and Julian U. N. Vogel

Elon Musk, Co-founder and CEO of Tesla, Inc., inspired as the financier and promoter of clean and affordable innovation, especially in the automotive industry. Musk advanced humanity as the Founder and CEO of SpaceX. He supported philanthropic projects such as the Thailand cave rescue. He became an important figure of popular culture and was referred to as the *"real-life Iron Man."* However, Musk also attracted controversy when he smoked cannabis on a podcast, criticized COVID-19 safety measures, and took on the German automotive industry and Martin Eberhard – the former CEO and Co-founder of Tesla, Inc. Was Musk an inspiring leader or did his impulsive personality interfere with his genius? Was Musk a source of sustained competitive advantage for Tesla, Inc., or did he harm more than help the company's attractiveness to investors?

Key words: Elon Musk, Tesla, leadership, stock price, SpaceX

CEO DECISION-MAKING: IS B LAB CERTIFICATION A KEY PRIORITY FOR THE WINDOW SPECIALIST? pp. 51-70
By Connie Allsopp, George L. Whaley and Keith Perry

This decision case follows a technology entrepreneur from learning about benefit corporations (BC) to the balancing act of how much could be implemented while meeting the ten-times organic growth goal for the window replacement construction firm. Kim Payne's first step was re-incorporating the company as a BC while he became familiar with the industry. He then implemented strategies to grow The Window Specialist (TWS) 500% while introducing conscious capitalism. Students are asked to focus on a CEO's decision-making process with several alternative priorities: continue his growth strategic planning, finalize TWS's vision and mission statements by integrating his BC focus to maintain regular BC status, act on his vision of global expansion with an upgrade of TWS infrastructure and quoting technology, implement his ideals of BCs with B Lab certification, and tackle an IRS tax threat.

Key words: Entrepreneurship, B-corporations, B Lab certification, strategic planning

DYING TO WORK, pp. 71-87
By Troy A. Voelker, Jonathan Everhart and Laura Guerrero

Sarah Rogers and her family were concerned for the risks Sarah faced on the job during the COVID-19 pandemic. As a restaurant employee, Sarah was in a high-risk contagion setting and her employer, Stephens Country Catfish, refused to allow employees to wear facemasks during their shifts. Fearing the consequences of personal infection and risks posed to her senior parents (who cared for Sarah's daughter), and the financial risks associated with losing her present employment, Sarah was at an impasse. What options existed for Sarah? What options and responsibilities existed for her employer? Students are encouraged to consider the health and business continuity risks from a legal and ethical perspective. Details for this case parallel the lawsuit, Jane Doe v. Hillstone Restaurant Group, Inc.

Key words: COVID-19, Corona virus, workplace safety, employee rights, exit, voice, loyalty

TAX CONSEQUENCES OF GENERAL MOTORS' BANKRUPTCY, pp. 88-112
By Gretchen R. Lawrie

In 2008, General Motors Corporation (Old GM) was the largest manufacturer in the U.S. of cars, trucks, and other vehicles and the second largest in the world with a worldwide market share of 12.4 percent. The 2008 global credit market crisis *"created a substantially difficult business environment,"* which had a *"dramatic effect"* on both Old GM and the automotive industry. In late 2008 and early 2009, Old GM received emergency loans from the U.S. Department of Treasury (UST) and the governments of Canada and the province of Ontario, Canada (Canadian Government) and attempted to develop a restructuring plan to sustain its long-term viability without filing for bankruptcy protection.

Because Old GM was not able to carry out the necessary cost reductions and restructuring actions, on June 1, 2009, it and several of its subsidiaries filed for bankruptcy protection under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the Southern District of New York. As part of its bankruptcy reorganization, on July 10, 2009, Old GM sold substantially all of its assets and transferred certain of its liabilities to the General Motors Company (New GM). In satisfaction of their claims against Old GM, New GM issued stock, warrants, and notes to the UST, the Canadian Government, a New United Auto Workers (UAW) Retiree Medical Trust (New UAW VEBA), and Old GM's Unsecured Creditors. After the sale, the UST owned 60.8 percent of New GM, the Canadian Government 11.7 percent, the New UAW VEBA 17.5 percent, and the Old GM Unsecured Creditors 10 percent.

What would have been the U.S. tax and non-tax consequences of Old GM's bankruptcy reorganization for Old GM, Old GM's creditors and shareholders, and the New GM?

Key words: Tax, bankruptcy, General Motors, restructuring, U.S., Canada, tax law

DON WALTERS AND NEXTBLOK, pp. 113-138
By Stephen J.J. McGuire

"NextBlok will change the way houses are built in the United States and the world," claimed Don Walters, the 88-year-old inventor and serial entrepreneur. Walters, a California businessperson and former general contractor, received a U.S. patent for an insulated concrete form (ICF) block used for building construction. Unpatented – but surely as important – were Don's notions of how a house could be efficiently constructed using his block. NextBloks clicked together and were held by glue, so that construction would be easy and waste-free. The big advantage, Don claimed, was that his block would be *"easy to build with"* compared with rival non-wood materials for housing construction. However, NextBlok offered several other advantages: it was fire-resistant, wind and hurricane resistant, impervious to water, pest and termite-free, and because the material itself served as insulation, it would reduce homeowners' heating and cooling costs significantly. All for a price comparable to a wood house… a wood house that could burn, blow away in a storm and wash away in a flood, become a nest for rodents and termites, and require enormous energy to heat and cool. Who wouldn't want a NextBlok house?

Key words: Entrepreneurship, entrepreneur, housing, construction, invention, U.S., Mexico, ICF

IS THE STRATEGIC PLAN FOR THE KULI KULI FOODS BENEFIT CORPORATION SUSTAINABLE?
pp. 139-176
By George L. Whaley

Lisa Curtis returned to the U.S. from a Peace Corps stint in West Africa and co-founded Kuli Kuli, a social mission-driven, moringa plant-based superfood business. Kuli Kuli's social goals were to drive economic growth, women's empowerment, and sustainable agricultural development overseas. The firm extended its social footprint and became certified as a B Corporation (BC) through the third-party B Laboratory. Kuli Kuli experienced fast growth for the first five years with first-to-market entry moringa advantages in the U.S. and various financial assistance sources. The firm and Curtis won numerous social entrepreneurship, humanitarian, and leadership awards. Curtis pondered whether a 4Q decline in sales was an early warning that Kuli Kuli could not sustain past success. She reflected on her CEO leadership style and its role in social engagement and impact, the product line, branding, supply chain risk, and marketplace advantages in an increasingly competitive environment. Students are asked to make recommendations for key business areas and the CEO's leadership approach to sustain Kuli Kuli over the next five years.

Key words: Moringa, entrepreneurship, leadership, strategic plan, B Corporation, Certified B Corporation, superfood, social engagement, social impact.

Article

HOW DOES COMPASSION SHOW UP IN HEALTHCARE ORGANIZATIONS? pp. 178-195
By Andre S. Avramchuk and Xiaohan Zhang

This article calls upon case researchers to write case studies about compassion in healthcare organizations and offers several synthesizing vignettes from the current literature in support for doing so. It also provides case teachers and readers with the ideas for what to consider when exploring the cases of how compassion presents itself (or not) in healthcare settings. It aims at addressing the gaps in case research and teaching about the culturally sensitive healthcare compassion fatigue, leadership, organizational processes, and self-compassion.

Key words: Compassion, health care, case research

Letter from the Editor

This is the sixth issue of the ***Journal of Case Research and Inquiry***. So far, **JCRI** has published 47 peer-reviewed teaching case studies prepared from primary and secondary research. Each case has been thoroughly peer-reviewed and all cases are accompanied by a peer-reviewed instructor's manuals available to qualified instructors upon request. The cases published in **JCRI** address diverse issues in business and society. They include studies of for-profit, nonprofit, and governmental organizations in several countries around the world. Instructors will find cases that focus on everything from entrepreneurship and small business management to decisions made in multi-national organizations. The journal has also published several peer-reviewed scholarly articles or notes concerned with case research and teaching with cases. Cases, notes, exercises, and articles published in the journal are available online, full text, and free of charge at www.jcri.org. The editor is available to write to authors' tenure and promotion committees, upon request.

In the volume, we publish seven new cases. These cases address topics from the ethics and law of wearing masks in the current COVID-19 environment, the ethics and law of micro-aggression, leadership, strategic planning, entrepreneurship, tax, B Corporations, and more. JCRI cases are ready for use in the classroom, and all have peer-reviewed instructor manuals to assist with their classroom use.

JCRI is the publication of the Western Casewriters Association (WCA). On the WCA website, http://www.westerncasewriters.org/, authors will find a call for cases for the next (virtual) WCA conference. The WCA annual conference is a unique opportunity to engage with other casewriters in a small group format to exchange feedback and polish-up a case, learn about teaching with cases, and enjoy presentations from leading case authors and case educators. The WCA is held in association with the annual meeting of the Western Academy of Management.

We are grateful to our authors for their submission and especially grateful to our reviewers for their detailed, insightful comments on the case submissions this year. We look forward to receiving well-written cases, notes, and articles in 2021 and urge you to consider the journal for your case research.

Thank you,

Stephen J.J. McGuire,
Editor, ***Journal of Case Research and Inquiry***

Case Studies

WHAT'S IN A NAME, ANYWAY?
MAKING SENSE OF TITLE IX, HOSTILE ACTS, AND MICROAGGRESSIONS

INAE YANG
San José State University

ASBJORN OSLAND
San José State University

LINDA M. DUNN-JENSEN
California State University, Stanislaus

NANETTE CLINCH
San José State University

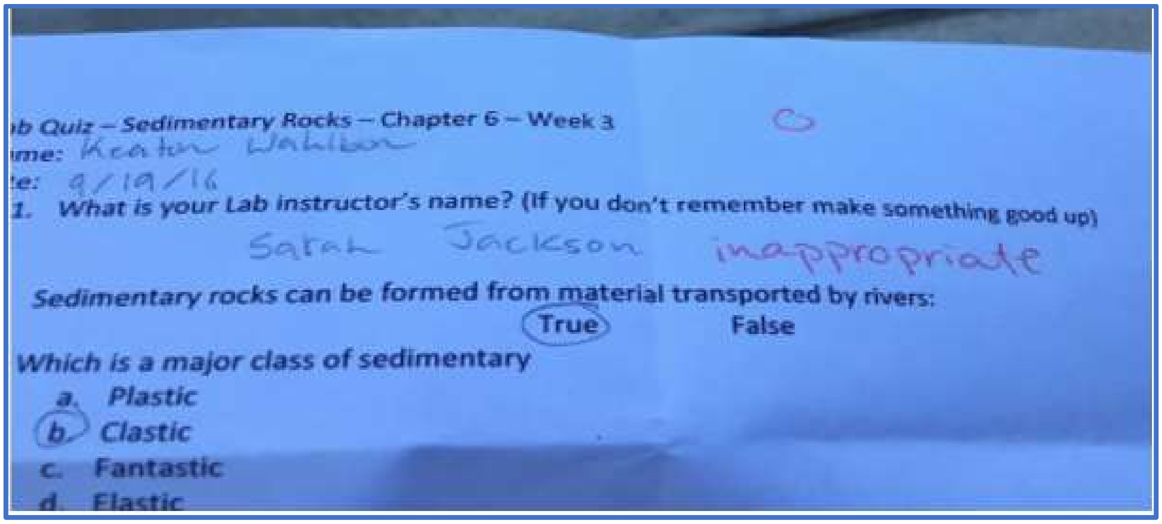
An incident at the University of Tennessee brought Title IX to the forefront of discussion when freshman Keaton Walhbon was accused of sexual harassment after writing a pornographic model's name to refer to his lab instructor on a quiz. A question on the quiz (see Exhibit 1) in his Earth Science course asked students to write the name of their lab instructor or to *"make something good up"* if they could not remember it.

According to him, Keaton Wahlbon simply could not remember the name of his female lab instructor, so he wrote *"Sarah Jackson."* Professor Deane, the instructor, gave Wahlbon a grade of zero on the quiz and wrote *"inappropriate"* next to Wahlbon's response, believing that Wahlbon had deliberately used the name of a famous porn actress. Wahlbon emailed the professor (see Exhibit 2) to ask why he was given a grade of zero and to request that the grade be changed.

The authors developed the case for class discussion rather than to illustrate either effective or ineffective handling of the situation. The case and its accompanying instructor's manual were anonymously peer reviewed and accepted by the ***Journal of Case Research and Inquiry, Vol. 6, 2020***, a publication of the Western Casewriters Association. Contact: Inae Yang, San José State University, 1 Washington Sq., San Jose, CA 95192, inae.yang@sjsu.edu.

Exhibit 1. The Quiz

Source: https://archive.totalfratmove.com/keaton-wahlbon-sarah-jackson-tennessee/


b Quiz – Sedimentary Rocks – Chapter 6 – Week 3

me: Keaton Wahlbon

te: 9/19/16

1. What is your Lab instructor's name? (If you don't remember make something good up)

Sarah Jackson inappropriate

Sedimentary rocks can be formed from material transported by rivers:

True False

Which is a major class of sedimentary

a. Plastic

b. Clastic

c. Fantastic

d. Elastic

Exhibit 2. The Email

Source: https://archive.totalfratmove.com/keaton-wahlbon-sarah-jackson-tennessee/


Inbox

Bill From:

Wahlbon, Keaton

to Deane,

3 hours ago Details

I wanted to talk about a grade I received on a lab quiz. I got a 0 on my geology lab quiz because we had to put our instructors name. A bunch of us didn't know so I literally put down a very common girl name and a common last name, so I put down Sarah Jackson. Turns out Sarah Jackson is a porn star so I got a 0 for the whole quiz... I had no idea that was the case and zero intention of trying to be funny or rude. I talked to my TA about it and she said she won't change the grade. It's not that it's going to affect my grade it's just the principle of the whole thing. I shouldn't get a 0 for a coincidence like that. I even googled "Sarah Jackson" and nothing like that came up so she had to do some digging or something. I really just think that's totally unfair. If you'd like me to come in to talk about it I'm free today until my 3:35 class. Thanks!

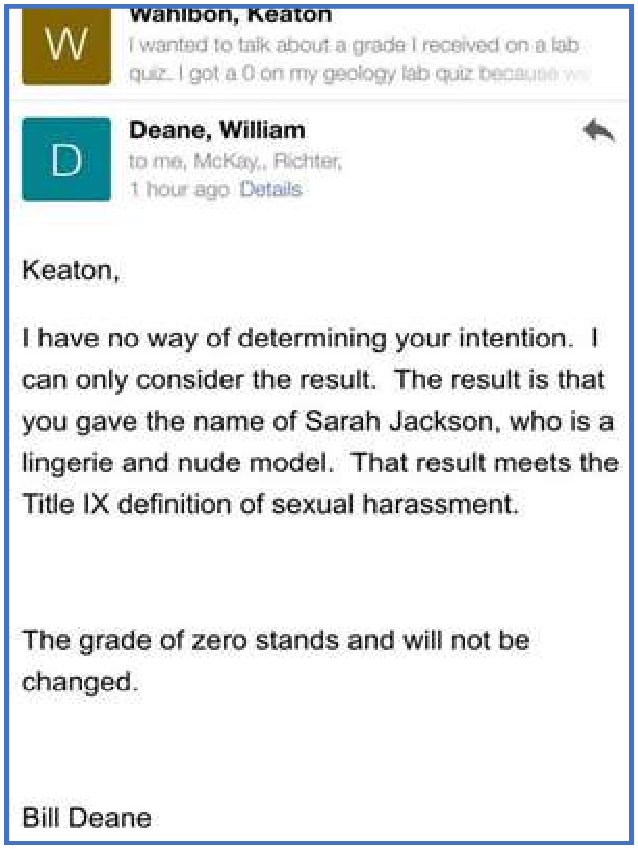
Deane, William

Keaton, I have no way of determining your intention. I can only consider the result. The result is that you

Professor Deane responded (see Exhibit 3) that he had *“no way of determining* [Wahlbon’s] *intent”* and believed that giving Wahlbon a grade of zero was the appropriate action in the context of the Title IX definition of sexual harassment.

Exhibit 3. The Professor’s Reply

Source: *https://archive.totalfratmove.com/keaton-wahlbon-sarah-jackson-tennessee/*



W
Wahlbon, Keaton
I wanted to talk about a grade I received on a lab quiz. I got a 0 on my geology lab quiz because

D
Deane, William
to me, McKay,, Richter,
1 hour ago Details

Keaton,

I have no way of determining your intention. I can only consider the result. The result is that you gave the name of Sarah Jackson, who is a lingerie and nude model. That result meets the Title IX definition of sexual harassment.

The grade of zero stands and will not be changed.

Bill Deane

Wahlbon claimed that it was an honest mistake and that *“Sarah Jackson”* was a generic name that had just popped into his mind. He also insisted that he had never heard of the porn actress. Wahlbon wrote:

> *I literally put down a very common girl name and a common last name, so I put down Sarah Jackson. Turns out Sarah Jackson is a porn star so I got a 0 for the whole quiz…I had no idea that was the case and* [I had] *zero intention of trying to be funny or rude* (Lee 2016).

Neither Professor Deane nor the lab instructor filed a complaint. Nonetheless, university officials investigated the case to determine if there was a Title IX violation after an anonymous faculty member, who had read about the incident online, raised the issue. Was this incident a Title IX violation? Why should it matter in an academic setting? Should students be concerned that something they said or did in the classroom could be interpreted as sexual harassment?

Definition of Sexual Harassment under Title IX

Passed in 1972, Title IX of the Education Amendments Act ("Title IX") prohibited discrimination on the basis of sex in federally funded education programs and activities. Title IX defined sexual harassment as *"unwelcome conduct of a sexual nature"* which can encompass *"sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature."* Title IX also includes a prohibition of *quid pro quo* sexual-harassment behavior - a situation in which a superior offered advancements or benefits to someone in exchange for sexual favors. In 1980, the Equal Employment Opportunity Commission expanded the definition of sexual harassment to include the idea of a *hostile working environment* (EEOC 2016), which encompassed sexual stereotyping or derogatory speech based on sex. For an academic environment to be considered a hostile environment under Title IX, the perpetrator's actions needed to be so *"severe, pervasive and objectionably offensive such that it undermines the victim's educational experience and denies equal access to an institution's resources and opportunities"* (*Davis v. Monroe County Board of Education* 1999).

That definition can become more complex in academia where such policies may conflict with free speech rights under the First Amendment. Public universities are obligated to abide by constitutional guarantees, such as free speech, but they must also consider that sexual harassment in an academic context can severely affect a student's ability to participate in or benefit from school. In the court case *Saxe v. State College Area School District* (2001), the Third Circuit Court stated that the Free Speech Clause protected a wide variety of speech that listeners may consider deeply offensive, such as such as derogatory remarks on an individual's ethnicity or cultural background. The court further noted that anti-discrimination laws could not regulate oral or written expression on topics that may offend others due to the First Amendment rights, *"however detestable the views expressed may be"* (*Saxe v. State College Area School District* 2001).

The Department of Education's Office for Civil Rights (OCR) was tasked with interpreting and enforcing Title IX; it issued *Questions and Answers on Title IX and Sexual Violence* (Lhamon 2016). In that document, the OCR addressed potential conflicts with the principles of free speech; OCR noted that some students' opinions that a statement was offensive was insufficient evidence to constitute a hostile environment under Title IX. Only unlawful physical harassment required reporting to the school Title IX coordinator or other appropriate school officials. In practice, OCR's guidelines made it more difficult for educational institutions to identify and address claims of sexual harassment.

Trends of Sexual Harassment in Higher Education

According to the *AAU Campus Climate Survey on Sexual Assault and Misconduct* (2017: p. xiv), of the 150,000 students who completed the survey, 47.7 percent of students indicated that they had been victims of sexual harassment. Nonetheless, the actual numbers of cases reported were significantly lower. Specifically, at the 28,000-student University of Tennessee, there were only three sexual harassment cases reported to the school (Title IX Annual Plan, University of Tennessee 2016). The faculty member who brought the Wahlbon incident to the forefront might have been drawn to do so due to a previous high-profile case in which the University of Tennessee paid a $2.48 million dollar settlement to 8 women in response to their complaints against male student athletes. The federal lawsuit stated that the University had committed Title IX violations and fostered a *"hostile sexual environment"* beginning in 1995 (Andrusewicz 2016). The ***Policy on Sexual Misconduct, Relationship Violence, Stalking, and Retaliation*** for the University of Tennessee can be found at https://titleix.utk.edu/university-policy-procedures/.

Title IX Cases at the Supreme Court

More than 25 years after Title IX was passed, the U.S. Supreme court issued a standard that would be applied to sexual harassment claims made against educational institutions under Title IX. There were three Supreme Court cases on Title IX that addressed students' claims of sexual harassment (Heckman 2006; MacKinnon 2016).

Franklin v. Gwinnett County Public Schools (1992) was the first case in which the Supreme Court upheld an award of monetary damages under Title IX. This case went to the Supreme Court when a high school student brought a Title IX claim against the school board, seeking monetary reparations after the board took no effective action against a report of sexual harassment. The court analyzed the case to determine if there was a legislative intent concerning any limitations on the available remedies allowed by Title IX. In the *Franklin* case, the Supreme Court upheld the recovery of damages, finding it reasonable to conclude that the legislative intent was concordant with the implication of monetary damages as a reasonable remedy. The decision expanded the scope of available remedies for sex discrimination in federally funded education. At the same time, it increased the incentive for schools to be vigilant and proactive against sexual harassment.

Six years later, the Supreme Court was once again called upon, this time to delimit the circumstances in which damages were to be recovered in *Gebser v. Lago Vista Independent School District* (1998). The court examined whether the school district should be held liable for damages under Title IX after a male teacher's sexual harassment of a female student even when the school district had not been officially notified of the situation. The court ruled that *"damages may not be recovered in those circumstances unless an official of the school district who, at a minimum, has authority to institute corrective measures on the district's behalf has actual notice of, and is deliberately indifferent to, the teacher's misconduct"* (*Gebser v. Lago Vista Independent School District* 1998). By addressing the internal complaint procedure in Title IX in the Gebser case, the court indicated that "[f]*ailure to comply with the regulations,* *however, does not establish the requisite actual notice and deliberate indifference"* (*Gebser v. Lago Vista Independent School District* 1998). For young victims of sexual abuse by educators, however, the consequences of this decision have been significant. In some cases, it has created an insurmountable hurdle for a victim trying to prove the school liable.

One year later, the Supreme Court in *Davis v. Monroe County Board of Education* examined if the school district should be held liable for sexual harassment among peers under Title IX. The court ruled that *"[f]unding recipients are properly held liable in damages only where they are deliberately indifferent to sexual harassment, of which they have actual knowledge, that is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school"* (*Davis v. Monroe County Board of Education* 1999). The court additionally noted that certain behaviors would not satisfy this standard, even though it may be offensive, stating that *"damages are not available for simple acts of teasing and name–calling among school children, however, even where these comments target differences in gender"* (*Davis v. Monroe County Board of Education* 1999). Therefore, behaviors must meet certain standards to be considered sexual harassment.

These court decisions provided the groundwork for defining what was considered sexual harassment under Title IX and what circumstances called for reparations. Considering these Supreme Court guidelines, should Wahlhon's actions be considered sexual harassment?

Freedom of Speech and Education

The First Amendment of the United States Constitution was adopted in 1791 as one of the ten amendments that constitute the Bill of Rights. The First Amendment states: "*Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."* It protects several basic liberties: freedom of religion, speech, press, petition, and assembly. The First Amendment prevents the government from restricting a person or organization's expression of ideas, messages, or content. This means that it allows individuals or private organizations to determine their own rules for the liberties mentioned above.

One of the most fundamental rights guaranteed is the freedom of speech, as many other constitutional freedoms would be meaningless without it. The free speech clause protects speech only - not conduct - but does not define what speech entails. The Supreme Court has interpreted the clause to protect against government regulation of certain core areas of protected speech, while in other scenarios the court treated certain types of speech as having limits. In some cases, courts have had to find a delicate balance to determine if the right of free speech outweighs the governmental interest claimed.

The right to speak freely one's mind is generally protected by the First Amendment, such as by expressing dissatisfaction with the government. In other words, the government cannot prohibit or regulate the content of fully protected speech. However, some speech falls outside of constitutional protections and may be entirely forbidden by the government. The U.S. Supreme Court has identified select categories of unprotected speech, which include obscenity, defamation, incitement, fighting words, true threats, speech integral to criminal conduct, and child pornography. Other types of speech, such as commercial speech or political speech, are entitled to First Amendment protection, but this protection is considered limited. This means that the government may impose restrictions on the time, place, or manner of speech when this restriction is reasonably related to the protection of public interest.

Free speech ideas often conflict with the rights and values embodied in Titles VII and IX, which address the non-discrimination and equal opportunity policy (Roederer 2018). There has been considerable tension between the right to free speech and the right to equality. In particular, educational institutions have a duty to enforce Title IX regulations by protecting students from gender-based violence and harassment, as well as by providing equitable facilities. As in the educational institutions, they are instrumental in achieving other important educational values;

however, these policies may limit free speech. The courts have often struggled to find a balance in this scenario (Kirshenbaum 2002). They are tasked with both protecting a person's right to free speech while at the same time considering how speech might negatively affect other people or groups of people, especially when it comes to their educational and professional opportunities (Roederer 2018). Educational institutions must find the balance between free speech and the mission provide equal opportunity and an environment conducive to institutional goals.

However, Title VII differed from Title IX in that it applied to employers of 15 employees or more, not only recipients of Federal financial assistance like colleges and universities. Title VII deals with employment discrimination by requiring employers to adhere to statutory requirements (McGuire 2016). One of those requirements is that employees should be free from sexual harassment or any other hostile environment. The Equal Employment Opportunity Commission (EEOC) enforces Title VII, which prohibits unlawful employment discrimination and workplace harassment. The EEOC definition of harassment was based on employment discrimination with the important difference that petty slights and isolated incidents were not illegal (EEOC 2016). Under Title VII, unlawful conduct was defined as what a reasonable person would regard as intimidating, hostile, or offensive, which was unwelcome conduct directed at protected groups (*i.e.*, race, color, religion, sex, those 40 or over, and those with disabilities). For example, harassment was considered illegal when offenses, such as physical or verbal abuse, affect an individual's ability to perform at work (EEOC 2016). Employers were motivated by Title VII to eliminate conduct and speech that could lead to harassment in the workplace. If the complaints were unfounded or involve innocuous remarks, a company could ignore the concern. However, companies had the authority to decide, even in the name of efficiency, to reprimand or fire employees who might be contributing to a hostile environment.

Microaggression or Hostile Act: The Difficulties of Defining Actions under Title IX

There was wide support for the intolerance of sexual harassment and discrimination. However, when rude remarks were not considered severe enough to cause substantial emotional distress, they were often called *"slights."* Slights could be labeled as micro-aggressions or narcissistic injuries when they bruised one's ego or made one feel belittled (Taylor 2012). Certainly, speech that preyed on others' vulnerabilities, which was often true of sexual harassment, merited immediate denouncement. Yet some inappropriate comments could have innocent explanations: they could have been said on impulse, were not intended to be threatening, provided a different perspective, or were born of immaturity or ignorance. In these cases, initiating a conversation or confronting the speaker about why the comment was hurtful, might help avoid an escalation to the Title IX office.

In education, microaggressions can create an environment in which the victim experiences stress, lower self-esteem, and career consequences (Ellemers 2018). Microaggressions are defined as *"subtle, stunning, often automatic, and nonverbal exchanges which are 'put downs' of people from minority and marginalized statuses"* (Pierce, Carew, Pierce-Gonzalez & Wills 1977, p. 65). Microaggressions are also found to be resultant of gender bias (Heilman 2012).

While microaggressions are subtler, the action could also be considered a hostile act. Rotundo and her colleagues categorize these behaviors into "personal derogatory attitudes" in which the "behaviors reflect derogatory attitudes toward women" and can be "aimed specifically at the target person" (Rotundo, Nguyen & Sackett 2001, p.916). With this definition in mind, was Wahlbon's action intentionally directed at his lab instructor, and therefore a hostile act? Alternatively, should Wahlbon's action be considered a microaggression rather than a hostile act?

Conclusion

Students, staff, and faculty in a university setting can experience a tension between the right to free speech and Title IX regulations. In this case, how does the First Amendment come into play in this incident? Was Wahlbon's speech protected under the First Amendment? How did Title IX influence the actions of those involved in this case? Why was this a Title IX and not a Title VII violation? How is Title VII similar to and different from Title IX? Finally, would punishing these types of incidents prevent future incidents? More specifically, was Professor Deane right to fail Wahlbon's assignment? Was there instead a middle ground between failing Wahlbon and ignoring the situation? How else could this situation have been handled?

Inae (Lena) Yang is an attorney with a doctoral degree in law from Tulane University Law School in New Orleans, is a lecturer at San Jose State University, where she teaches both graduate and undergraduate courses in Business law and ethics, international business, and negotiation and conflict resolution since 2013. Her research interests include business law and ethics, and she has been published in Journal of International Arbitration and Journal of Comparative law. She is also a member of the Chartered Institute of Arbitrators.

Asbjorn Osland is a professor at San Jose State University. He teaches upper-division undergraduates in international business and graduate students in management and international business. Before becoming a professor, he served as a Peace Corps Volunteer in Colombia and then worked abroad for Plan International for 10 years. He also spent two years as the HR Director for Chiquita in Panama. Primarily a case writer, he has published over 100 pieces, including cases, articles, and book chapters.

Linda M. Dunn-Jensen is an Assistant Professor of Management at Cal State, Stanislaus. She holds a Ph.D. degree in Organizational Behavior from New York University, an M.S. degree in Human Resources from Loyola University, and a B.S. degree in Computer Science from Marquette University. She teaches courses in organizational behavior and change, leadership, negotiation, and principles of management. Dr. Dunn-Jensen's research and consulting work focuses on employee engagement and pro-social behavior in organizations, unconscious gender bias, and negotiation. Her work has been published in *Organization Management Journal*, *Journal of Management Education*, and *International Journal of Conflict Management*.

Nanette Clinch, an attorney with a doctoral degree in English, is a lecturer in the College of Business at San Jose State University, teaching undergraduate courses in business law, graduate courses in law and ethics in the MBA and MSA programs, and undergraduate communication courses. Prior to joining San Jose State University, she practiced civil and criminal law, including service as an Assistant Prosecutor in Bergen County, New Jersey, gaining appointments as Chief of the Arson Section and Chief of the Environmental Crimes Section, which she organized. Research interests include beauty, ethical judgment, bioethics, religion and the law, classical philosophy, Shakespeare, and the moral imagination. She received a B.A. *magna cum laude* from Mount Holyoke College, a Ph.D. from the University of Toronto and a J.D. from Rutgers Law School-Newark.

References

American Association of Universities. (2017). AAU Campus Climate Survey on Sexual Assault and Misconduct. Retrieved from: https://www.aau.edu/sites/default/files/AAU-Files/Key-Issues/Campus-Safety/AAU-Campus-Climate-Survey-FINAL-10-20-17.pdf

Andreusewicz, M. (2016, July 6). University of Tennessee settles sexual assault lawsuit. The Two-Way. Retrieved from https://www.npr.org/sections/thetwo-way/2016/07/06/484891430/university-of-tennessee-settles-sexual-assault-lawsuit

Davis v. Monroe County Board of Education, 526 U.S. 629 (1999).

EEOC. (2016). Harassment. Equal Employment Opportunity Commission.

Ellemers, N. (2018). Gender stereotypes, *Annual Review of Psychology, 69*, 275-298.

FIRE. (2013, July 13). Department of Justice and Department of Education's Office for Civil Rights Joint Findings Letter to the University of Montana. FIRE.

Franklin v. Gwinnett County Public Schools, 503 U.S. 60 (1992).

Gebser v. Lago Independent School District, 524 U.S. 274 (1998).

Heckman, D. (2006). Deconstructing Title IX Sexual Harassment Matters Involving Students and Student-Athletes in the Post-Davis Era, *Education Law Reporter, 206*, 469-500.

Heilman, M. E. (2012). Gender stereotypes and workplace bias. *Research in Organizational Behavior, 32*, 113-135.

https://www.aau.edu/sites/default/files/AAU-Files/Key-Issues/Campus-Safety/AAU-Campus-Climate-Survey-FINAL-10-20-17.pdf

Kirshenbaum, A. M. (2002). Hostile Environment Sexual Harassment Law and the First Amendment: Can the Two Peacefully Coexist, *Texas Journal of Women and the Law, 12*, 67-95.

Lee, H. (2016, October 3). Tennessee student accidentally puts porn star's name on quiz, professor gives him 0 for sexual harassment. Retrieved from https://archive.totalfratmove.com/keaton-wahlbon-sarah-jackson-tennessee/

Lhamon, C.E. (2016, February 17). Letter to Honorable James Lankford from Catherine E. Lhamon, Assistant Secretary for Civil Rights, United States Department of Education]. United States Department of Education.

MacKinnon, C. A. (2016). In Their Hands: Restoring Institutional Liability for Sexual Harassment in Education, *Yale Law Journal, 125*, 2038-2105.

McGuire, Stephen. (2016). Note on Gender Discrimination and Sexual Harassment, J*ournal of Case Research and Inquiry, 2*. 139-165.

Pierce, C. M., Carew, J. V., Pierce-Gonzalez, D., & Wills, D. (1977). An experiment in racism: TV commercials, *Education and Urban Society, 10*, 61– 87.

Roederer, C. J. (2018). Free speech on the law school campus: Is it the hammer or the wrecking ball that speaks? *University of St. Thomas Law Journal, 15*(1), 26.

Rotundo, M., Nguyen, D. H., & Sackett, P. R. (2001). A meta-analytic review of gender differences in perceptions of sexual harassment, *Journal of Applied Psychology, 86*(5), 914-922.

Saxe v. State College Area School District, 240 F. 3d 200 206 (3rd Cir. 2001).

Taylor, S. (2012, January 22). Slighting-the dangers of being disrespected. Retrieved from https://www.psychologytoday.com/us/blog/out-the-darkness/201201/slighting-the-dangers-being-disrespected

University of Tennessee. (2016). Sexual misconduct, relationship violence, stalking, and retaliation annual report (January – December, 2016). Retrieved from https://titleix.utk.edu/wp-content/uploads/sites/75/2017/05/2016_annual-report.pdf

ELON MUSK: LEADER OR LIABILITY?

FRANZISKA M. RENZ
JULIAN U. N. VOGEL
University of Texas at El Paso

"So, in short, the master plan is:
Build sports car;
Use that money to build an affordable car;
Use that money to build an even more affordable car;
While doing above, also provide zero emission electric power generation options.
Don't tell anyone."
- *Elon Musk*

That was Elon Musk's master plan. Musk was the Co-founder and CEO of Tesla, Inc., initially called Tesla Motors. He inspired many others as the promoter of clean and affordable innovation, especially in the automotive industry (Musk 2006), and advanced humanity as the Founder and CEO of SpaceX. He also supported philanthropic projects such as the Thailand cave rescue (Liptak 2018). Musk had become an important figure in popular culture who was referred to as the *"real-life Iron Man"* (Blumenthal 2016; Hern 2018). However, Musk also attracted controversy when he smoked cannabis on a podcast (PowerfulJRE 2018), criticized COVID-19 safety measures (Isidore 2020), or took on the German automotive industry (Chazan 2019), Martin Eberhard (the former CEO and Co-founder of Tesla), and even the U.S. Securities and Exchange Commission (Goldstein & Flitter 2018; O'Kane & Lopatto 2018; Reuters 2018a; Rapier 2019; Squatriglia 2009).

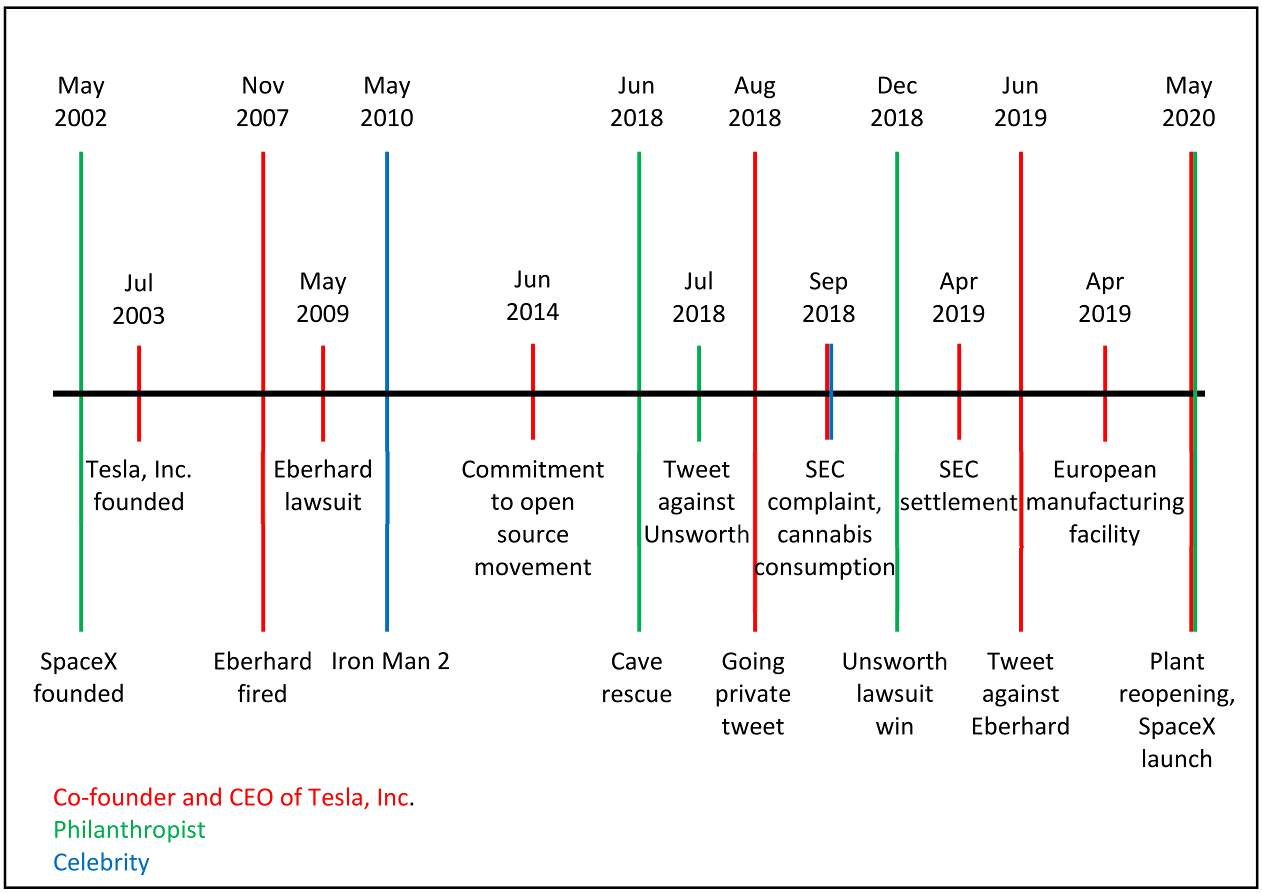
You are evaluating Musk's behavior as a Co-founder and CEO, philanthropist, and celebrity on your way to the Annual General Meeting of Tesla, Inc. in California. At the meeting, you will meet other investors and vote on whether Musk should continue to be the CEO of the company.

The authors developed the case for class discussion rather than to illustrate either effective or ineffective handling of the situation. The case and its accompanying instructor's manual were anonymously peer reviewed and accepted by the ***Journal of Case Research and Inquiry, Vol. 6, 2020***, a publication of the Western Casewriters Association. Contact: Franziska M. Renz, University of Texas at El Paso, 500 W. University Ave., El Paso, TX 79968, fmrenz@utep.edu

While many investors only observe the past financial performance of a company and its short-term projections, you know how important it is to analyze the person at the top, the CEO, and the CEO's effect on the company. Exhibit 1 summarizes important incidents. You use the time before the meeting to look at Musk and the effect of his behavior on Tesla, Inc. Was Musk an inspiring, charismatic leader or did his impulsive personality interfere with his genius? Was Musk a source of sustained competitive advantage for Tesla, Inc., or did he harm the company's attractiveness to investors? In short, for Tesla, did Musk's liabilities as a leader outweigh his strengths?

Exhibit 1. Musk as a Co-founder and CEO of Tesla, Inc.,
Philanthropist and Celebrity over Time

Source: Authors' Notes (2020)



Co-founder and CEO of Tesla, Inc.

Financier of Groundbreaking Innovation

Musk described himself as the company's *"primary funding source from when the company was just three people and a business plan"* (Musk 2006, para. 1). From its beginnings in July 2003, Tesla, Inc. wanted to transform the image of electric vehicles. It wanted to show that *"electric vehicles can be better, quicker and more fun to drive than gasoline cars"* (Tesla, Inc. 2019a, para. 1). Hence, in 2006, the company introduced an electric sports car, the Tesla Roadster, to the market. The *Time* magazine named it one of the Best Innovations of 2006 in the category Transportation (Time 2006). The Tesla Roadster was first delivered in 2008 (Tesla, Inc. 2019a). It went from zero to 60 in 4 seconds (Time 2006). In 2017, Tesla, Inc. unveiled an updated version of its Roadster (see Exhibit 2). It needed 1.9 seconds to go from zero to 60 (Tesla, Inc. 2019b). Musk pointed out that this was the *"first time that any car has broken two seconds in zero to 60"* (Tesla, Inc. 2019b, 3:40). The new model was setting world records (Tesla, Inc. 2019b).

Exhibit 2. Watch the Tesla Roadster Unveil
Source: Tesla, Inc. (2019b) https://player.vimeo.com/video/249563752

Musk versus Eberhard

Despite of its groundbreaking innovation, Tesla, Inc. struggled during the financial crisis (2007 to 2010). The demand for a $100,000 luxury car had understandably been weakened by the economic downturn. In response, the company laid off dozens of employees and closed an office near Detroit. Musk also took over as the company's CEO (Morrison 2008). The former CEO and Co-founder, Martin Eberhard, was fired in November 2007. Eberhard filed a defamation lawsuit against Musk in May 2009, accusing him of libel, slander and breach of contract (Rapier 2019; Squatriglia 2009). Eberhard claimed he was forced out of the company without severance pay while Musk *"compromised Tesla Motors' financial health"* (Squatriglia 2009, para. 5) and attempted to take credit for the success of the pioneering Tesla Roadster (Squatriglia 2009). Tesla, Inc. reacted by calling Eberhard a poor CEO who *"left the company's finances in shambles"* (Rapier 2019; Squatriglia 2009, para. 6). Eberhard eventually dropped the case (Rapier 2019; Squatriglia 2009). Experts assumed that both parties reached a settlement or agreed to mediation or arbitration outside of court (Squatriglia 2009).

However, in June 2019, the differences between Eberhard and Musk seemed still not to be settled. When an anonymous user tweeted, *"Martin Eberhard is responsible for all of Tesla's success,"* Musk responded: *"Tesla is alive in spite of Eberhard, but he seeks credit constantly & fools give it him"* (Rapier 2019, para. 3). Musk went on to say, *"No one should be credited with anything ever"* (Rapier 2019, para. 8).

Promoter of Affordable Innovation

Having overcome financial difficulties, Tesla, Inc. was able to follow through on Musk's master plan and deliver on its promise of affordable electric vehicles. After the Roadster, Tesla, Inc. developed the Model S, *"the world's first ever premium all-electric sedan from the ground up"* (see Exhibit 3; Tesla, Inc. 2019a, para. 2). It convinced customers in terms of safety, performance, and efficiency. In 2015, Tesla introduced the Model X, *"the safest, quickest and most capable sport utility vehicle in history"* (see Exhibit 3; Tesla, Inc. 2019a, para. 2). Finally, in

2016, Model 3, *"a low-priced, high-volume electric vehicle"* was presented (see Exhibit 3; Tesla, Inc. 2019a, para. 2). Its production started in 2017. Tesla additionally introduced the Tesla Semi, *"the safest, most comfortable truck ever"* (Tesla, Inc. 2019a, para. 2) which was supposed to convince customers with its fuel economy (see Exhibit 3). It could reduce the owner's fuel costs by $200,000 over a million miles (Tesla, Inc. 2019a). Tesla also unveiled another truck, the Cybertruck (see Exhibit 3), and Model Y, a crossover utility vehicle (see Exhibit 3) in 2019 (Tesla, Inc. 2019c). These successes contributed to Musk becoming the longest-tenured CEO of an automotive manufacturing company by 2019 (Benzinga 2019). To promote affordable innovation, Musk committed to the open source movement in June 2014 and removed the patents of Tesla, Inc. from the lobby of its headquarters in Palo Alto, California. Read Musk's reasoning in Exhibit 4.

Exhibit 3. Tesla Models

Source: Tesla, Inc. (2019d)

Model S

Tesla Semi

Model X

Cybertruck

Model 3

Model Y

Exhibit 4. Musk's Reasons for Removing Patents

Source: Musk (2014, para. 4-8)

"[…] At Tesla, however, we felt compelled to create patents out of concern that the big car companies would copy our technology and then use their massive manufacturing, sales and marketing power to overwhelm Tesla. We couldn't have been more wrong. The unfortunate reality is the opposite: electric car programs (or programs for any vehicle that doesn't burn hydrocarbons) at the major manufacturers are small to non-existent, constituting an average of far less than 1% of their total vehicle sales.

At best, the large automakers are producing electric cars with limited range in limited volume. Some produce no zero emission cars at all.

Given that annual new vehicle production is approaching 100 million per year and the global fleet is approximately 2 billion cars, it is impossible for Tesla to build electric cars fast enough to address the carbon crisis. By the same token, it means the market is enormous. Our true competition is not the small trickle of non-Tesla electric cars being produced, but rather the enormous flood of gasoline cars pouring out of the world's factories every day.

We believe that Tesla, other companies making electric cars, and the world would all benefit from a common, rapidly evolving technology platform.

Technology leadership is not defined by patents, which history has repeatedly shown to be small protection indeed against a determined competitor, but rather by the ability of a company to attract and motivate the world's most talented engineers. We believe that applying the open source philosophy to our patents will strengthen rather than diminish Tesla's position in this regard."

Musk versus U.S. Securities and Exchange Commission (SEC)

On August 7, 2018, at 12:48 pm ET, Musk tweeted: *"Am considering taking Tesla private at $420. Funding secured."* (Goldstein & Flitter 2018; O'Kane & Lopatto 2018; Reuters 2018a, para. 15). Although Musk did not have a finalized funding agreement, he expanded on his privatization plans and communicated with other Twitter users (Reuters 2018a). In response, the SEC sued Musk (Goldstein & Flitter 2018; O'Kane & Lopatto 2018; Reuters 2018a). Exhibit 5 shows the announcement of the SEC complaint in September 2018.

Musk responded to the lawsuit: *"I have always taken action in the best interests of truth, transparency and investors. Integrity is the most important value in my life and the facts will show I never compromised this in any way"* (O'Donovan 2018, para. 9). Musk also indicated that being public "[s]*ubjects Tesla to constant defamatory attacks by the short-selling community, resulting in great harm to our valuable brand"* (O'Kane & Lopatto 2018, para. 10). Between August 6, 2018 and September 27, 2018, the stock price of Tesla, Inc. decreased by about ten percent (Reuters 2018a). Exhibit 6 shows the daily stock price and major incidents that affected the stock price over time. Exhibit 7 shows the monthly average stock return by fiscal year of Tesla, Inc. as well as Ford Motor Co. and Toyota Motor Corp., two important competitors of Tesla, Inc. (Investopedia 2019). Additionally, Exhibits 7 and 8 illustrate the evaluation of the three companies by analysts and investors.

The SEC and Musk reached a settlement in April 2019. Its terms required that Musk stepped down as the Chairman of Tesla, Inc. but remained the company's CEO. The company as well as Musk also needed to pay a fine of $20 million each. Additionally, Musk's communications needed to be monitored by a lawyer from this point on (O'Kane 2018). Musk called his tweet *"worth it"* (Reuters 2018b, para. 1).

Exhibit 5. Watch the Announcement of the SEC Complaint (Starting at 4:50 min)

Source: CNBC Television (2018) https://www.youtube.com/embed/kJzed7DQdGs?feature=oembed

Exhibit 6. Daily Stock Price of Tesla, Inc., Ford Motor Co., and Toyota Motor Corp.

Source: The Center for Research in Security Prices (CRSP)

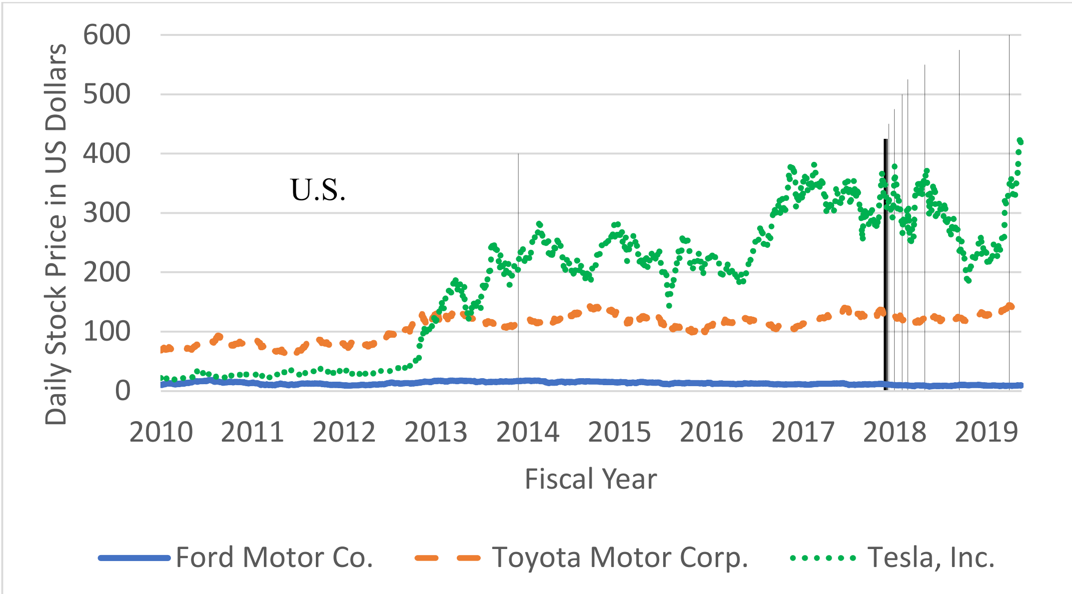


Exhibit 7. Monthly Average Stock Return by Fiscal Year of Tesla, Inc., Ford Motor Co., and Toyota Motor Corp.

Source: The Center for Research in Security Prices (CRSP)

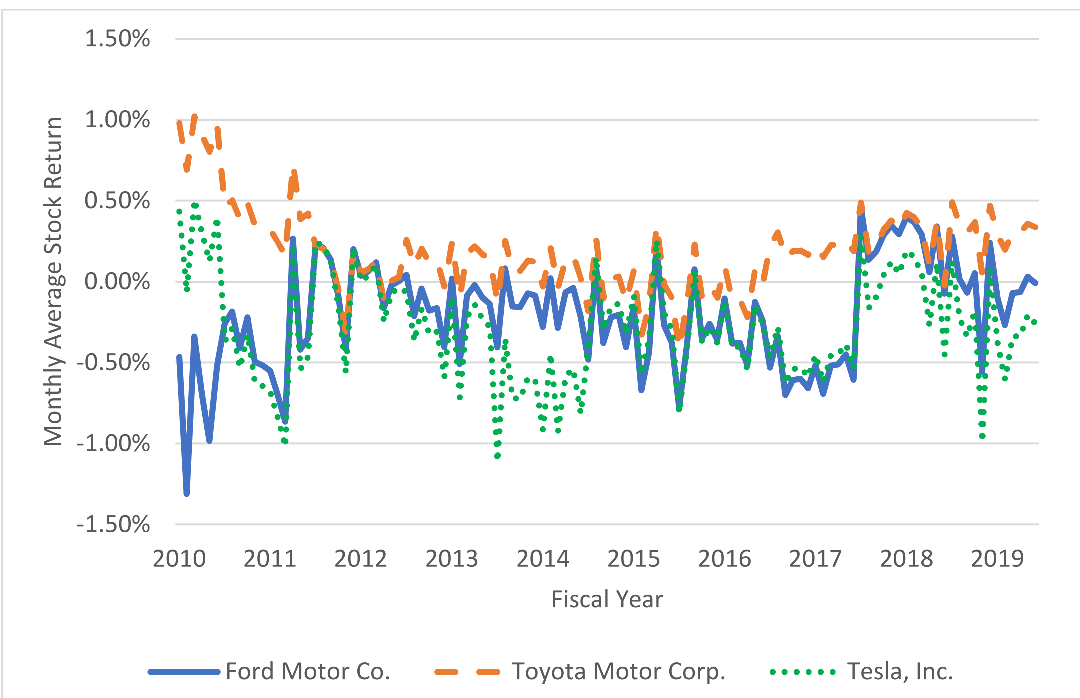


Exhibit 8. Difference between Actual and Expected Monthly Average Stock Return of Tesla, Inc., Ford Motor Co., and Toyota Motor Corp.

Source: The Center for Research in Security Prices (CRSP) and Federal Reserve Bank (Fed)

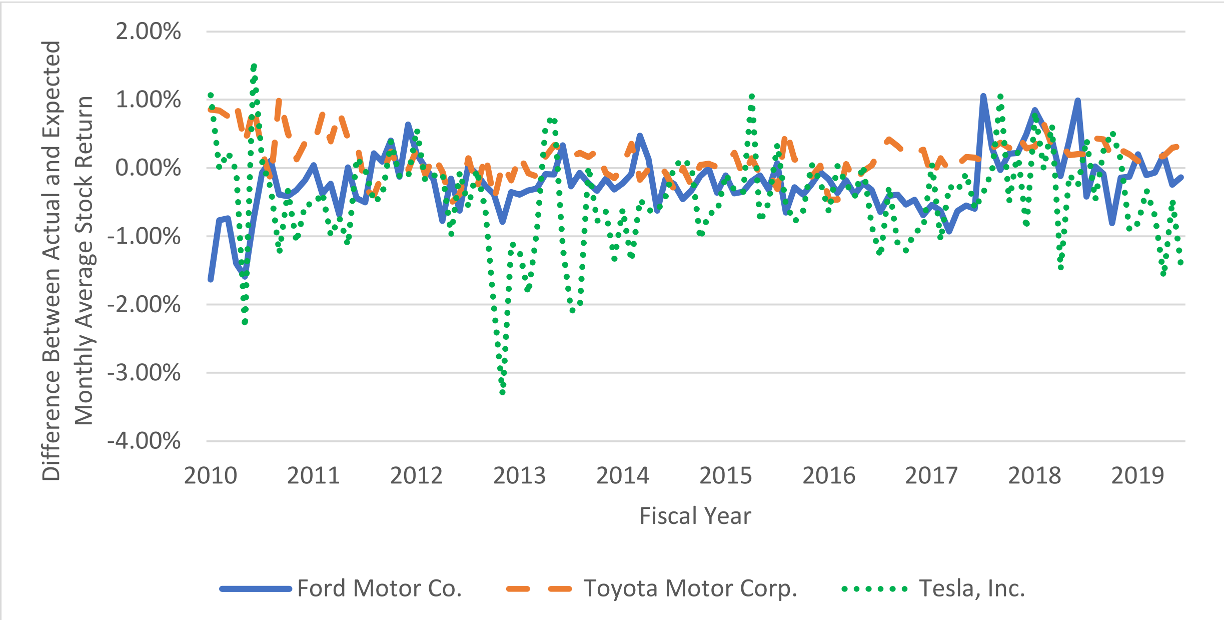


Exhibit 9. Key Financial Ratios of Tesla, Inc., Ford Motor Co., and Toyota Motor Corp.

Source: Compustat and Institutional Brokers Estimate System (IBES)

	Ford Motor Co.		Toyota Motor Corp.		Tesla, Inc.		
Fiscal Year	Analyst-Predicted Earnings per Share	Actual Earnings per Share	Analyst-Predicted Earnings per Share	Actual Earnings per Share	Analyst-Predicted Earnings per Share	Actual Earnings per Share	Price-Earnings Ratio
2010	1.58	1.73	0.43	3.15	-2.39	-1.63	-0.1726
2011	1.87	5.32	2.26	2.17	-2.13	-2.43	-0.1123
2012	1.35	1.44	2.50	6.45	-2.75	-3.47	-0.0855
2013	1.51	1.81	6.96	11.17	0.25	-0.60	-2.0324
2014	1.23	0.81	11.35	11.51	1.12	-2.34	-0.7564
2015	1.65	1.86	11.86	13.54	-0.35	-6.76	-0.2701
2016	1.89	1.16	12.99	11.05	-0.50	-4.18	-0.3166
2017	1.67	1.91	11.12	16.14	-6.00	-11.62	-0.1587
2018	1.43	0.92	12.49	12.00	-5.11	-5.66	-0.3410
2019	1.26	0.01	13.84	13.95	-0.71	-4.76	-0.4853

Note. The analyst-predicted earnings per share show the predictions for the respective period, not the predictions made during that period. The price-earnings ratio is based on the closing price of the fiscal year.

Musk versus German Car Manufacturers

In November 2019, Musk announced that Tesla, Inc. would build the first European manufacturing facility near Berlin, Germany. The German economic minister, Peter Altmaier, appreciated this move as *"further proof of how attractive Germany is as a place to make cars"* (Chazan 2019, para. 3). However, others saw Musk's decision as a deliberate provocation of German car manufacturers such as Audi, BMW, and Mercedes Benz in their home country. The conservative newspaper *Frankfurter Allgemeine Zeitung* called it a *"declaration of war"* (Chazan 2019, para. 4). A former manager of Audi, Jan Burgard, noted that Musk *"is challenging Germany's automakers to a duel right in front of their own castle gate* […]. *You have to respect the guy, he really is fearless"* (Chazan 2019, para. 5).

Musk explained, *"*[S]*ome of the best cars in the world are made in Germany. Everyone knows that German engineering is outstanding, for sure. That's part of the reason why we are locating our Gigafactory Europe in Germany. We are also going to create an engineering and design center in Berlin"* (Porterfield 2019, para. 5). Since the European auto market was not growing, obtaining an existing manufacturing facility or hiring a manufacturer would have been a more rational decision, according to experts (DeBord 2019). Tesla, Inc. was expected to face the same problems with the German labor laws and work culture as had other U.S. companies before, such as Amazon, Walmart, and Chrysler. Tesla, Inc. had already received complaints about its work environment. In Berlin, Tesla, Inc. would have to work together with labor unions that advocated for fair compensation and safe working environments. In Germany, working over-time, working on Sundays, holiday entitlements, and sick leave were heavily regulated in comparison to the U.S. Besides, language and cross-cultural communication problems were expected. Germans were highly critical and favored thorough planning while Americans wanted to experiment; Americans also hid their criticism in positive feedback (Resetarits & Ankel 2019).

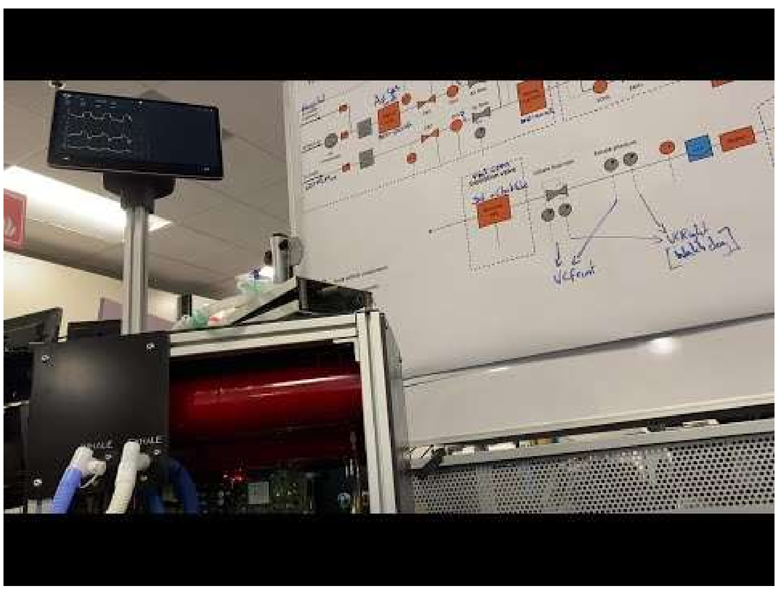
Crisis Manager during COVID-19

In 2020, Musk joined other executives in devoting their companies' resources to produce critical supplies (*e.g.*, masks, face shields, ventilators) needed for the fight against the COVID-19 pandemic (Roberson 2020). Exhibit 10 shows the development of a ventilator by Tesla, Inc.

However, several news outlets reported that the ventilators donated by Tesla to hospitals were the wrong type. The donated ventilators included masks that covered the nose or face of a patient and could be used to alleviate medical breathing issues such as sleep apnea, but could not be used to intubate COVID-19 patients (Passantino 2020; Roberson 2020).

Exhibit 10. Watch the Development of a Ventilator

Source: Tesla (2020) https://www.youtube.com/embed/zZbDq24dfN0?feature=oembed



Musk was a vocal critic of COVID-19 safety measures, calling them fascist and un-American. He pursued an in-person annual meeting with shareholders while most other major companies held virtual annual meetings. In May 2020, Musk reopened a Tesla plant in Fremont, California although COVID-19 restrictions for businesses in Alameda County were still in place (Isidore 2020). Exhibit 11 shows a discussion of the incident on Yahoo! Finance.

Exhibit 11. Watch a Discussion on the Reopening of Tesla, Inc.

Source: Yahoo Finance (2020) https://www.youtube.com/embed/wKfqXiL34EQ?feature=oembed

Philanthropist

Founder and CEO of SpaceX

Besides Tesla, Inc., Musk was the Co-founder or founder of various other ventures: Neuralink Corporation; The Boring Company; OpenAI, Inc.; PayPal Holdings, Inc. (Biography.com 2019). In May 2002, Musk founded SpaceX, a company he led as the CEO with the purpose of advancing humanity. SpaceX maintained several offices, and development and launch facilities throughout the U.S. The company *"designs, manufactures and launches advanced rockets and spacecraft* […] *to revolutionize space technology, with the ultimate goal of enabling people to live on other planets"* (Space Exploration Technologies Corporation 2019, para. 1). Musk pursued the goal to go to Mars and make life multi-planetary (SpaceX 2013). Exhibit 12 shows Musk's case for Mars.

On May 30, 2020, Musk came closer to his goal by launching two NASA astronauts from U.S. soil. It was the first crewed launch in the history of SpaceX. Exhibit 13 shows the launch.

Exhibit 12. Watch Musk's Case for Mars
Source: SpaceX (2013) https://www.youtube.com/embed/Ndpxuf-uJHE?feature=oembed

Exhibit 13. Watch SpaceX Launch of NASA Astronauts
Source: CNBC Television (2020) https://www.youtube.com/embed/zAtjTawE5KA?feature=oembed

Supporter of Thailand Cave Rescue

Musk did not only try to serve a higher purpose through his business ventures but also through other philanthropic projects, such as the Musk Foundation (Muskfoundation.org 2019). In June and July 2018, Musk responded to Twitter users asking for help with rescuing 12 boys from the Tham Luang caves in Thailand (Smith 2018). With a SpaceX team, Musk started working on a device to get the boys out of the caves and explained via Twitter: "*Got more great feedback from Thailand. Primary path is basically a tiny, kid-size submarine using the liquid oxygen transfer tube of Falcon rocket as hull. Light enough to be carried by 2 divers, small enough to get through narrow gaps. Extremely robust"* (Liptak 2018, para. 3). The submarine is described in Exhibit 14.

Within a few days, Musk personally delivered the tiny submarine to the cave rescue site (ABC News 2018). However, authorities rejected Musk's innovation (ABC News 2018; Rawlinson 2018). The commander of the rescue effort, Narongsak Osatanakorn, explained, *"Even though their equipment is technologically sophisticated, it doesn't fit with our mission to go in the cave"* (Rawlinson 2018, para. 4). Musk questioned the expertise of the authorities stating, *"*[…B]*ased on extensive cave video review and discussion with several divers who know journey, SpaceX engineering is absolutely certain that mini-sub can do entire journey & demonstrate at any time"* (Rawlinson 2018, para. 8), but added *"Great news that they made it out safely. Congratulations to an outstanding rescue team."* (Rawlinson 2018, para. 9).

In the aftermath of the rescue effort, the British diver, Vernon Unsworth, criticized Musk's tiny submarine. It *"wouldn't have made the first 50 meters into the cave"* and would have been only *"a PR stunt"* (Morris 2018, para. 2). Musk reacted indignantly and called Unsworth a pedophile in a July 2018 tweet, *"We will make* [a video] *of the mini-sub/pod going all the way to Cave 5 no problemo. Sorry pedo guy, you really did ask for it"* (Morris 2018, para. 4). However, Musk could not provide any concrete evidence for repeated pedophile allegations that resulted in a defamation lawsuit brought forward by Unsworth (BBC News 2019). Exhibit 15 shows the outcome of the lawsuit in December 2018.

Exhibit 14. Watch the Submarine to Rescue 12 Boys from a Cave
Source: CNET (2018) https://www.youtube.com/embed/gHJZGcj5KHU?feature=oembed

Exhibit 15. Watch the Outcome of the Defamations Lawsuit
Source: 9 News Australia (2019) https://www.youtube.com/embed/MBNxgqKzYDk?feature=oembed

Inspiration and Mentor to Entrepreneurs and Employees

Many people, especially entrepreneurs, were inspired by Musk's innovation and success. Exhibit 16 shows Musk's advice for entrepreneurs. However, former employees admit that it can also be difficult to work with him (see Exhibit 17).

At the same time, Musk was called an abusive supervisor and was known for his rage firings. To avoid being fired for no reason, employees were instructed not to walk past Musk's desk (Duhigg 2018; Hamilton 2018). If employees wanted to keep their jobs, they should avoid telling Musk that staying within a certain budget or meeting a certain deadline was not possible. Musk fired such employees and took over their jobs (Umoh 2018). Exhibit 18 shows a conversation that allegedly took place between Musk and a young engineer who worked 13-hour days, 7 days a week at a Tesla Gigafactory. This was the first time the engineer personally met Musk. Afterwards, the engineer was fired by his manager (Duhigg 2018).

Exhibit 16. Watch Musk's Advice for Entrepreneurs

Source: Vator (2013) https://www.youtube.com/embed/GtaxU6DZvLs?feature=oembed

Exhibit 17. Watch what it is Like to Work with Musk

Source: Yahoo Finance (2019) https://www.youtube.com/embed/Wwt4Hdp-MKg?feature=oembed

Exhibit 18. Conversation between Musk and a Young Engineer at Tesla, Inc.

Source: Duhigg (2018, para. 5, 7).

Musk (shouting):
"Hey, buddy, this doesn't work! Did you do this?"

Engineer:
"You mean, program the robot? Or design that tool?"

Musk:
"Did you f****** do this?"

Engineer:
"I'm not sure what you're referring to?"

Musk:
"You're a f****** idiot! Get the f*** out and don't come back!"

Celebrity

Consumer of Cannabis on Podcast

In September 2018, Musk appeared on a podcast by Joe Rogan called the Joe Rogan Experience. Musk discussed numerous topics, such as artificial intelligence, flamethrowers, and social media, for over two hours. The major reason why Musk's appearance drew public attention was that he took a puff from a cigar consisting of tobacco laced with cannabis (see Exhibit 19). Musk commented on how often he consumed cannabis: *"Almost never. I know a lot of people like weed and that's fine, but I don't find that is very good for productivity... not for me."* (PowerfulJRE 2018, 2:18:04).

In an interview on 60 Minutes with Leslie Stahl, Musk explained, *"I do not smoke pot* […]. *As anybody who watched that podcast could tell, I have no idea how to smoke pot, or anything"* (Donaghey 2018, para. 3).

Exhibit 19. Watch Musk Trying Cigar Laced with Cannabis
Source: MSNBC (2018) https://www.youtube.com/embed/1rS8fFbW57o?feature=oembed

Figure in Popular Culture

Musk was also a figure in popular culture. He appeared in multiple movies and series. Musk played himself in an episode of ***The Simpsons*** called The Musk who Fell to Earth (Dickerson 2015). In ***Iron Man 2***, released in May 2010, Musk briefly talked with Tony Stark about an idea for an electric engine (Tate 2012). Indeed, media frequently referred to Musk as the *"real-life Iron Man"* (Blumenthal 2016; Hern 2018, title). In ***The Big Bang Theory*** and its spin-off ***Young Sheldon***, Musk also appeared as himself, the innovative engineer and entrepreneur (ET Bureau 2015; Whittington 2017). Exhibit 20 gives an overview of Musk's movie and series appearances.

Exhibit 20. Watch an Overview of Musk's Movie and Series Appearances
Source: Kagdiyal (2019) https://www.youtube.com/embed/3b_fXi4Kgkg?feature=oembed

Leader or Liability?

Given how Elon Musk behaved as the CEO of Tesla, Inc., was he a leader or a liability for the company? Did his impulsive and reckless behaviors inhibit his genius and leadership? Was Musk a source of sustained competitive advantage for Tesla, Inc., or did he harm the company's attractiveness to investors by picking the wrong battles? In a few hours, you will vote on whether Musk should continue to be the CEO. How will you vote?

Franziska M. Renz is a Ph.D. Candidate in Business Administration – Management at The University of Texas at El Paso. She earned a M.B.A. from Murray State University as well as a M.Sc. in Business Administration from the University of Regensburg, Germany, and a B.Sc. in Business Administration and Economics from the University of Passau, Germany. She conducts research in business education as well as organizational behavior and human resource management, especially psychological ownership, leadership, high-performance work practices, and cross-cultural contexts.

Julian U. N. Vogel is a Ph.D. Candidate in Business Administration – Finance at The University of Texas at El Paso. He earned a M.B.A. from Murray State University as well as a M.Sc. in Business Administration from the University of Regensburg, Germany, and a B.Sc. in Business Administration and Economics from the University of Passau, Germany. He performs research in business education as well as corporate finance and corporate governance.

References

9 News Australia (2019, December 6). Elon Musk wins defamation case| Nine News Australia. YouTube. https://www.youtube.com/watch?v=MBNxggKzYDk

ABC News (2018, July 10). Thai cave rescue: Elon Musk delivered tiny submarine, rescuers said no thanks. ABC. https://www.abc.net.au/news/2018-07-10/thai-cave-rescue-elon-musk-submarine-wont-be-needed/9965698

BBC News (2018, September 17). Elon Musk sued for libel by British Thai cave rescuer. BBC. https://www.bbc.com/news/world-us-canada-45551895

Benzinga, D.R. (2019, July 8). Industry shift: With four departures this year, who is the longest-tenured automotive CEO? Yahoo! Finance. https://finance.yahoo.com/news/industry-shift-four-departures-longest-190424759.html

Biography.com Editors. (2019, November 12). Elon Musk biography. The Biography.com website. https://www.biography.com/business-figure/elon-musk

Blumenthal, E. (2016, June 9). Elon Musk may or may not actually be Iron Man. USA Today. https://www.usatoday.com/story/tech/2016/06/09/elon-musk-may-may-not-actually-iron-man/85641024/

Chazan, G. (2019, November 15). Tesla's Berlin plant sets up 'duel' with German carmakers. Financial Times. https://www.ft.com/content/3a793902-0787-11ea-9afa-d9e2401fa7ca

CNBC Television (2018, September 27). Tesla's Elon Musk sued by SEC for fraud – Thursday, Sept. 27 2018. YouTube. https://www.youtube.com/watch?v=kJzed7DQdGs

CNBC Television (2020, May 30). Watch SpaceX launch NASA astronauts into space in a historic mission. YouTube. https://www.youtube.com/watch?v=zAtjTawE5KA

CNET (2018, July 9). Thai cave rescue: Elon Musk rescue submarine explained (CNET News). YouTube. https://www.youtube.com/watch?v=gHJZGcj5KHU

DeBord, M. (2019, November 16). Elon Musk's plan to build a new Tesla factory in Germany makes no sense. Here's why. Business Insider. https://www.businessinsider.com/tesla-plan-to-build-factory-in-germany-makes-no-sense-2019-11

Dickerson, K. (2015, January 27). Elon Musk's appearance on 'The Simpsons' reminds us how insane — and ingenious — Musk's ideas are. Business Insider. https://www.businessinsider.com/elon-musk-spacex-tesla-on-the-simpsons-2015-1

Donaghey, R. (2018, December 7). Elon Musk has 'no idea' how to smoke weed, says Elon Musk. Voice. https://www.vice.com/en_ca/article/xwj5pa/elon-musk-weed-i-have-no-idea-how-to-smoke-pot-vgtrn

Duhigg, C. (2018, December 13). Dr. Elon & Mr. Musk: Life inside Tesla's production hell. Wired. https://www.wired.com/story/elon-musk-tesla-life-inside-gigafactory/

ET Bureau (2015, November 25). SpaceX's Elon Musk does a cameo on popular sitcom 'Big Bang theory'. The Economic Times. https://economictimes.indiatimes.com/magazines/panache/spacexs-elon-musk-does-a-cameo-on-popular-sitcom-big-bang-theory/articleshow/49919987.cms?from=mdr

Goldstein, M. & Flitter, E. (2018, September 27). Tesla chief Elon Musk is sued by S.E.C. in move that could oust him. The New York Times. https://www.nytimes.com/2018/09/27/business/elon-musk-sec-lawsuit-tesla.html

Hamilton, I.A. (2018, December 13). Tesla employees were reportedly told not to walk past Elon Musk's desk because of his wild firing rampages. Business Insider. https://www.businessinsider.com/elon-musk-reportedly-terrified-tesla-staff-with-his-firing-sprees-2018-12

Hern, A. (2018, February 9). Elon Musk: The real-life Iron Man. The Guardian. https://www.theguardian.com/technology/2018/feb/09/elon-musk-the-real-life-iron-man

Investopedia (2019, June 25). Who are Tesla's (TSLA) main competitors? Investopedia. https://www.investopedia.com/ask/answers/120314/who-are-teslas-tsla-main-competitors.asp

Isidore, C. (2020, June 24). What pandemic? Tesla really wants an in-person annual meeting. CNN Business. https://www.cnn.com/2020/06/23/tech/elon-musk-tesla-annual-meeting-covid/index.html

Kagdiyal, S. (2019, February 26). New 2019 updated – All Elon Musk cameos (HD) – Meme review, BBT, Iron Man 2 & more. YouTube. https://www.youtube.com/watch?v=3b_fXi4Kgkg

Liptak, A. (2018, July 8). Elon Musk says SpaceX is building a 'kid-sized submarine' to rescue trapped soccer team. The Verge. https://www.theverge.com/2018/7/7/17544452/elon-musk-spacex-thailand-cave-soccer-team-kid-sized-submarine-rescue

Morris, D.Z. (2018, July 15). Elon Musk calls diver in Thai soccer team rescue a pedophile. Forbes. https://fortune.com/2018/07/15/elon-musk-thai-rescue-diver-pedo-guy/

Morrison, C. (2008, October 15). Elon Musk steps in as CEO at Tesla, lays off staff. The New York Times. https://archive.nytimes.com/www.nytimes.com/external/venturebeat/2008/10/15/15venturebeat-elon-musk-steps-in-as-ceo-at-tesla-lays-off-99182.html

MSNBC (2018, September 7). Tesla CEO Elon Musk smokes weed during Joe Rogan podcast interview | Velshi & Ruhle | MSNBC. YouTube. https://www.youtube.com/watch?v=1rS8fFbW57o

Musk, E. (2006, August 2). The secret Tesla Motors master plan (just between you and me). Tesla. https://www.tesla.com/blog/secret-tesla-motors-master-plan-just-between-you-and-me

Musk, E. (2014, June 12). All our patent are belong to you. Tesla. https://www.tesla.com/blog/all-our-patent-are-belong-you

Muskfoundation.org (2019). Musk Foundation. http://www.muskfoundation.org/

O'Donovan, C. (2018, September 28). The SEC is suing Elon Musk. Buzzfeed. https://www.buzzfeednews.com/article/carolineodonovan/elon-musk-is-being-sued-by-the-feds-sec

O'Kane, S. (2018, September 29). Elon Musk forced to step down as chairman of Tesla, remains CEO. The Verge. https://www.theverge.com/2018/9/29/17918252/elon-musk-tesla-sec-securities-fraud-lawsuit-settlement-fine-penalty

O'Kane, S. & Lopatto, E. (2018, September 27). Elon Musk sued by SEC over 'funding secured' tweet. The Verge. https://www.theverge.com/platform/amp/2018/9/27/17911428/sec-lawsuit-elon-musk-tesla-funding-tweet

Passantino, J. (2020, April 17). Elon Musk says he sent ventilators to California hospitals, they say they got something else instead. CNN Business. https://www.cnn.com/2020/04/17/tech/elon-musk-ventilators-california/index.html

Porterfield, C. (2019, November 13). Elon Musk says Europe's first Tesla factory will go to Germany instead of the U.K. because of Brexit. Forbes. https://www.forbes.com/sites/carlieporterfield/2019/11/13/elon-musk-says-europes-first-tesla-factory-will-go-to-germany-over-the-uk-because-of-brexit/#497909031297

PowerfulJRE. (2018, September 6). Joe Rogan Experience #1169 - Elon Musk. YouTube. https://www.youtube.com/watch?v=ycPr5-27vSI

Rapier, G. (2019, June 17). Elon Musk deletes tweet attacking Tesla cofounder Martin Eberhard. Business Insider. https://www.businessinsider.com/elon-musk-deletes-tweet-attacking-tesla-co-founder-martin-eberhard-2019-6

Rawlinson, K. (2018, July 10). Elon Musk queries expertise of Thai cave rescue officials. The Guardian. https://www.theguardian.com/news/2018/jul/10/elon-musk-queries-expertise-of-thai-cave-rescue-officials

Resetarits, V. & Ankel, S. (2019, November 14). Elon Musk just chose Berlin as the location for Tesla's newest factory. But the CEO might be wildly underestimating cultural differences between the US and Germany as Walmart, Amazon, and Chrysler have done before. Business Insider. https://www.businessinsider.com/german-work-culture-could-cause-trouble-teslas-new-berlin-factory-2019-11

Reuters (2018a, September 28). Factbox - 'Funding secured': SEC gives timeline surrounding tweet from Tesla's Musk. https://www.reuters.com/article/us-tesla-musk-factbox/factbox-funding-secured-sec-gives-timeline-surrounding-tweet-from-teslas-musk-idUSKCN1M8139

Reuters (2018b, October 27). Tesla's Elon Musk says tweet that led to $20 million fine 'Worth It'. https://www.reuters.com/article/us-tesla-musk-tweet-idUSKCN1N10K2

Roberson, B. (2020, April 4). Health officials say ‘ventilators’ donated by Tesla are wrong type and not powerful enough. Forbes. https://www.forbes.com/sites/billroberson/2020/04/04/health-officials-say-ventilators-donated-by-tesla-are-wrong-type-and-not-powerful-enough/#24bd94c76264

Smith, N. (2018, July 6). Elon Musk joins effort to free Thai boys from cave, as immediate diving attempt ruled out. The Telegraph. https://www.telegraph.co.uk/news/2018/07/06/elon-musk-joins-effort-free-thai-boys-cave-immediate-diving/

Space Exploration Technologies Corporation (2019). About SpaceX. SpaceX. https://www.spacex.com/about

SpaceX (2013, July 9). Elon Musk: The case for Mars. YouTube. https://www.youtube.com/watch?time_continue=62&v=Ndpxuf-uJHE&feature=emb_title

Squatriglia, C. (2009, August 19). Eberhard says 'uncle' in Tesla lawsuit. Wired. https://www.wired.com/2009/08/eberhard-tesla-lawsuit/

Tate, R. (2012, September 28). 10 awkward Hollywood cameos by tech founders. Wired. https://www.wired.com/2012/09/founders-awkward-hollywood-cameos/

Tesla, Inc. (2019a). About Tesla. Tesla’s mission is to accelerate the world’s transition to sustainable energy. Tesla. https://www.tesla.com/about

Tesla, Inc. (2019b). Tesla Roadster. Tesla. https://www.tesla.com/roadster

Tesla, Inc. (2019c). Tesla. Tesla. https://www.tesla.com/

Tesla, Inc. (2019d). Tesla Press Information. Tesla. https://www.tesla.com/presskit

Tesla (2020, April 5). Tesla ventilator. YouTube. https://www.youtube.com/watch?v=zZbDg24dfN0

Time (2006). Best innovations of 2006. Time. http://content.time.com/time/specials/packages/article/0,28804,1939342_1939392_1939459,00.html

Umoh, R. (2018, October 18). Saying this to Elon Musk could get you fired off your projects at SpaceX. CNBC. https://www.cnbc.com/2018/10/18/saying-this-to-elon-musk-could-get-you-fired-off-your-projects-at-spacex.html

Vator (2013, August 9). Elon Musk: Work twice as hard as others. YouTube. https://www.youtube.com/watch?v=GtaxU6DZvLs

Whittington, M. (2017, December 1). How ‘Young Sheldon’ solved the problem of reusing rocket. Blasting News US. https://us.blastingnews.com/showbiz-tv/2017/12/how-young-sheldon-solved-the-problem-of-reusing-rocket-002204443.html

Yahoo Finance (2019, March 14). ‘Elon Musk is difficult,’ says former SpaceX employee. YouTube. https://www.youtube.com/watch?v=Wwt4Hdp-MKg

Yahoo Finance (2020, May 11). Elon Musk threatens to move Tesla out of California and files a lawsuit against Alameda County. YouTube. https://www.youtube.com/watch?v=wKfgXiL34EQ

CEO DECISION MAKING: IS B LAB CERTIFICATION A KEY PRIORITY FOR THE WINDOW SPECIALIST?

CONNIE ALLSOPP
The World's Registrar

GEORGE L. WHALEY
KEITH PERRY
San José State University

Introduction

Since graduate school, Kim Payne believed that firms were too *"bottom line"* oriented. He became interested in benefit corporations (BCs) and told a friend, *"Benefit corporations are consistent with my values of focusing on financials, people and the environment. My next company will be one!"* After a successful career in high technology, Payne purchased The Window Specialist (TWS), a company based in Oakland, California in 2014 and defined it as a benefit corporation. The Articles of Incorporation (see Appendix A) documented TWS's intention to provide benefits to the environment and low-income individuals.

Payne focused on his background in sales, marketing, and engineering to grow TWS organically while hiring experienced staff in accounting to improve the firm. TWS grew more than 500% (see Appendix B) by the end of 2016. Even though he made BC inroads during this time, he did not pursue certification.

Payne's dream was to transform the industry globally, so he developed an artificial intelligence-based minimal viable product (MVP) in parallel to taking ownership of the company. The software measured the dimensions of a window in a picture that included a standard 8 ½" X 11"

The authors developed the case for class discussion rather than to illustrate either effective or ineffective handling of the situation. The case and its accompanying instructor's manual were anonymously peer reviewed and accepted by the ***Journal of Case Research and Inquiry, Vol. 6*, *2020***, a publication of the Western Casewriters Association. Contact: Connie Allsopp, the World's Registrar, 6253 Springlea Road Victoria, BC V8Z 5Z5 Canada, connie@theworldsregistrar.com

printer paper that was used as a reference. He applied for a U.S. patent (Payne, Parikh, Chirimar & Nallapothula 2015). However, Payne realized over time as he gained knowledge of the industry that his MVP reminded him of the phrase *"a solution looking for a problem"* (Aus 2006), so he pivoted to a formal strategic planning method, creating the company's first vision, mission, and values statements in early 2017 to avoid similar mistakes (see Exhibit 5).

Payne knew that TWS was thinly stretched when revenue dipped 25% in 2017 (see Appendix B), a situation that created a high level of internal tension concerning his priorities as Chief Executive Officer (CEO). Payne was even more conflicted by a tax issue when a consultant informed him that TWS could be shut down at any time by the IRS because no tax returns had been filed. He reviewed his priorities at year end 2017: (a) continue his dramatic pre-2017 growth strategy, (b) finalize TWS's vision and mission with BC terminology as part of his regular BC focus, (c) act on his vision of global expansion by developing quoting technology, (d) implement his BC ideals (Montgomery 2012) that included BC certification, and (e) tackle the IRS tax threat. He said to himself, *"It is challenging enough to develop a top-down strategy, provide strong financial growth, and keep accounting up-to-date, let alone proceed with BC certification as much as I am committed to its ideals of using business as a force for good. What should be my top priority?"*

Industry Background

Characteristics and Classifications of the Windows Industry

Three overlapping segments with different products and skills were generally grouped by consumers into:

- ***Glaziers:*** These companies focused on glass. Commercial buildings, including retail stores with glass on the front facade, were their specialty. They installed glass and aluminum cut to hold the glass.
- ***Windows***: These dealers sold windows and patio doors. Window dealers bought these products prebuilt with glass inserted into frames from manufacturers, who shipped products to dealers' sites. Dealers stored them until customers were ready for installation.

- ***Doors:*** These dealers sold doors with hinges and did carpentry at their shops to create finished products. Carpentry work included beveling the edges of door slabs; cutting holes for angles, locks, and hinges; and building frames around slabs to install pre-hung doors.

Window dealers were categorized in the North American Industry Classification System (NAICS 2012) under number 423310: Door, Window or Assembled Millwork-Installation, Services or Repair-Metal. Window frame composition was the primary cost driver. To decrease costs, the following elements of frame composition were followed: steel (used in elite luxury homes); architectural aluminum (sold to the top 3% of luxury home owners and many commercial buildings); wood clad with aluminum on the exterior (to avoid painting); all wood (used to meet historical preservation requirements); fiberglass with wood; fiberglass; aluminum (historically); and vinyl. Pricing from these different frame compositions covers a wide range of income demographics giving most homeowners access to well-made products. Vinyl was considered the best value as it had the lowest cost and was the most energy efficient.

The California Building Standards Commission created Title 24 in 1978, which improved the energy efficiency of residential and commercial buildings (see California Energy Commission 2017). The commission continued to increase the energy standards, and Payne noted that it had caused almost all regular aluminum window manufacturers to close down while giving other frame manufacturers the opportunity to upgrade to dual-pane glass with multiple energy efficiency coatings to meet the new requirements. Nationally, the Energy Star program was created by the Environmental Protection Agency in 1992 to improve products and homes as well as commercial/industrial programs (Energy Star 2017).

Competition

Payne recalled from his graduate work that many strategic management researchers had concluded that the attractiveness of an industry was related to the direct amount of competition inside and outside the industry (Barney 2010; Porter 2008, 1980; Rothaermel 2016). Approximately 25,000 competitors (IBISWorld 2017) gave customers substantial market choice and power.

When Payne purchased TWS, he conducted a *"quick and dirty"* analysis of the industry's competitive landscape (personal communication September 18, 2014). Home Depot (2014) was the largest and strongest general competitor of window sales in Payne's local area but it used third parties for installation. Lumberyards were next in terms of being strong competitors in this general niche that usually sold vinyl, fiberglass, and wood windows. They referred installations to third parties as well. Installation warranty issues were not the responsibility of Home Depot nor the lumberyards, and over time, claims were virtually impossible for consumers to follow up.

Renewal by Anderson (2014) was a company based in multiple states who sold and installed windows. Other local competitors who sold and installed windows were American Vision Windows (2014); Bay Area Window Pros (2014); Bestoff Windows and Construction (2014); Brothers Home Improvements (2014); Northwest Exteriors (2014); and SGK Home Solutions which went out of business in 2017.

Payne's hunch was that even though considerable competition existed in the residential window remodeling industry, the attractiveness of the industry appeared to vary by industry niche and product. He noted that none of the world's window companies were BC certified (B Lab 2014). Additionally, no local window dealers stated on their websites that they were even regular BCs.

TWS Company Background

TWS was founded in 1977 primarily as a residential window remodeling company. Payne's purchase in 2014 triggered a new entity number within Dun & Bradstreet's system. TWS was assigned the DUNS number 01-419-0788 with the appropriate NAICS number for this industry. Payne focused on the residential market, with the highest sales from single-family residences (see Exhibit 1), the highest revenue from three-story apartments and, on occasion, sales from commercial properties such as high-rise buildings (see Exhibit 1).

Exhibit 1. TWS Windows Installed in Residential and Commercial Properties
Source: Company Records (2016)

Payne made key decisions since purchasing the company in 2014 but he spent the first year learning the business without making any major changes to find out what was working and what was not working (see Appendix C). Separate from the company, he developed his MVP with 3 graduate students and submitted a patent for it (Payne *et al.* 2015).

With a year's experience in the industry now under his belt, Payne made changes in 2015 to sales and marketing while leveraging technology, such as adding an electronic company calendar on the wall to track installations. He created an online survey and sent it to all staff, major suppliers, and key customers to identify areas TWS could improve on. On summarizing the year-end results, he made further changes rationalizing TWS's product offerings by selecting the best-of-breed windows for clad wood, custom handcrafted wood, fiberglass, and vinyl. He was particularly pleased to recall from his industry background analysis that vinyl frames led the market in energy efficiency. The best price points in the industry made replacements available to low income homeowners. Payne was truly encouraged that he provided quality products with variable price points that aligned well with his BC goals and provided solutions for homeowners of all incomes.

Payne also filled the luxury homeowner void by becoming a Fleetwood Window and Door dealer and selling architectural aluminum frames. TWS quickly led its dealers' network by being one of the first window companies to invest in equipment specifically designed to lift windows and door panels up to 1300 pounds, thus improving the company's efficiency in jobs with large windows (see Exhibit 2). The equipment also reduced the risk of employee injury.

Exhibit 2. TWS's SmartLift

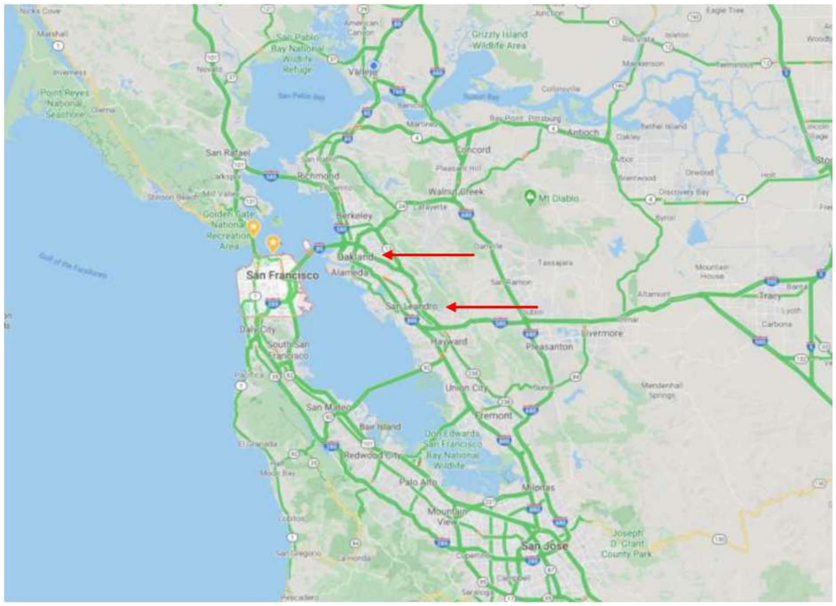
Source: Company Records (2017)

Payne added hinged doors to the company's offerings because doors were a complement to windows in the sales cycle, just as buns were to hot dogs (Stonehouse & Snowdon 2007). In addition to having graduate degrees in business and software, Payne had received numerous sales recognition awards from companies for whom he had previously worked, such the Deloitte and Touche's 2014 *Fast 50 Award*. He adapted his knowledge to the window industry and as a result of his leadership, TWS grew 500% by the end of 2016 (see Appendix B).

California's tightening of energy efficiency requirements tied in well with Payne's focus on improving the environment. Consumers were also supportive of this direction. The most common reason TWS's customers gave for ordering new windows was to improve energy efficiency (personal communication 2017). The Oakland Fox TV affiliate's investigative unit called Payne directly asking about a high-energy efficient glass with three coatings required for hotter climates. Fox was investigating a window company that was allegedly selling this type of product, but instead installing glass with two coatings. Payne was called on as an industry expert and featured in multiple news reports as the story unfolded (Oakland FOX TV Investigates 2016a, 2016b). During this time, Payne focused on other BC initiatives: He gave time and money to local construction non-profits, developed the company's recycling program, and donated windows and recycled aluminum to the less fortunate.

On January 1, 2016, TWS moved its office and warehouse physical site after receiving notice that the building - leased for nearly a decade - was about to be razed to make way for an apartment complex. Marijuana growers had occupied similar-sized warehouses, reducing availability to 5% and increasing all rents. This space crisis drove TWS out of the Oakland area after nearly 40 years. TWS's rent still went up by 400% (personal communication 2016) when it relocated south to a light industrial complex in lower cost San Leandro (see Exhibit 3).

Exhibit 3. Map of the San Francisco Bay Area
Source: Google Maps (2017)

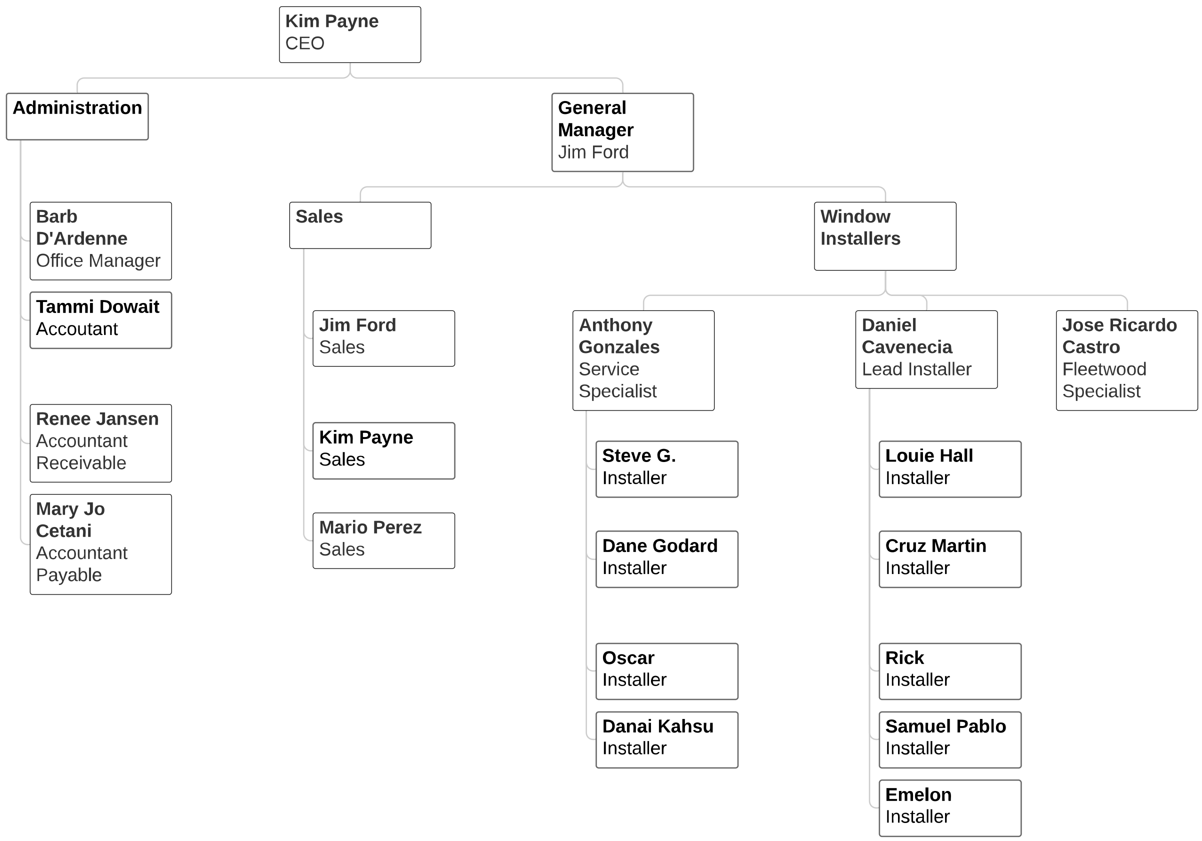


Payne expanded the company's staff in the newer San Leandro facilities to support its high organic growth (see Appendix B). He was previously a leader in the high-tech industry, where he had held roles in pre-sales engineering, sales, marketing, and product management, ultimately receiving worldwide positions within a Fortune 500 company. He moved on to medium sized companies as the senior vice president of sales and marketing for a data storage company, and then a consulting firm where he dramatically grew shareholder value. His interest in leadership motivated Payne to move into his next career phase as a venture capitalist, and ultimately as an entrepreneur.

Payne ran TWS as an entrepreneur with a flat organization. A general manager, Jim Ford, could step in at a moment's notice. Ford was used to running the company when Payne's predecessor went on month-long vacations. The areas of the company included the following: accounting, office manager, sales, and window installers. The office and accounting managers reported directly to Payne (see Exhibit 4). The new facilities and additional staff provided an opportunity to develop a sense of community that Payne and Ford leveraged.

Exhibit 4. TWS Organization Chart

Source: Company Records (2016)



TWS's revenue growth record and BC initiative had been accomplished, however, Payne's newfound industry knowledge made him realize that his MVP was just a *"point solution"* with little value in creating a sustainable competitive advantage. Payne chastised himself for even considering circumventing the tried-and-true strategic planning process of which he was such a believer.

Over the 2016 Christmas holidays, Payne focused on Deming and Goldratt's theory of constraints, isolating quoting systems supplied by TWS's manufacturers as the major constraint for his company as well as for his competitors (Lepore & Cohen 2006). Payne continued his top-down approach, and along with his marketing consultant, drafted the company's first ever vision, mission, and values statements in early 2017 (see Exhibit 5).

Exhibit 5. TWS Vision, Mission and Core Values Statements
Source: Company Records (2017)

Vision	To simplify the window replacement industry globally
Mission	Boutique best-of-breed construction window selection and installation for all income levels while providing services for those less fortunate
Values	Demonstrate expertise by talking a consultative approach to customer needs
	Be a learning organization with more skills than the competition
	Deliver WOW (extraordinary factor) through customer service
	Deal ethically in all relationships

The BC Certification Dilemma

What Is a Benefit Corporation?

Collins (2018) asserted that several researchers indicate that the primary obligation of traditional corporations was to maximize shareholder wealth. BCs emerged as a new organizational form to legitimize the pursuit of corporate social responsibility and best ethical practices (Collins 2018; Montgomery 2012). Despite different laws in various U.S. states, BCs generally were required to have public benefit purposed in the articles of incorporation that reflected not only the needs of society and the environment but also the profit shared by stakeholders (Collins 2018; Montgomery 2012). Montgomery (2012) suggested a scorecard report to track these three areas and connect BCs to Conscious Capitalism (2020). Some firms developed strategies to attract investors who value triple bottom-line contributions to profit, people, and the planet (see Exhibit 6).

Exhibit 6. Benefit Corporation-Related Videos
Source: Authors' Notes (2018)

Title: Speaker	Date uploaded	Video uploader	URL	Length
What is a Benefit Corporation: Dirk Sampselle	2013, Dec. 20	DocstocTV	https://youtu.be/ecbbxR-ei1s	4:11 mins
Why B Corps Matter: Greenwashing	2017, Nov. 8	Guayaki Yerba Mate	https://youtu.be/tlxZjnBEsal	5:58 mins
How Conscious Corporations Attract Success: John Montgomery	2013, Nov. 24	TEDx Lower East Side	https://youtu.be/6o6LTRntscQ	13:16 mins
Vote Every Day Campaign: B Lab	2018, Nov. 11	*B Corporation*	https://youtu.be/sPvoFpm7Ef4	50 secs

Alignment of BC with Payne's Values and Actions

Payne initially became intrigued with BCs after he heard John Montgomery speak at a conference and then read his book (Montgomery 2012). Payne believed that TWS's BC actions were consistent with his personal values of treating everyone ethically while he worked toward achieving 10 times organic growth (personal communication January 31, 2017). Payne incorporated the company in 2014 with the basic wording required for a BC (see Appendix A) that also focused on improving the environment and helping those less fortunate. TWS gave away aluminum from old window frames to those less fortunate, who then made money by selling the aluminum to recyclers. Payne also was proud of his efforts to donate 60 new mis-measured windows from TWS's inventory to a Mexican village via one of his staff.

However, TWS did not complete the required BC annual impact report (see B Lab's website for an example: Fireclay Tile 2016 Annual Benefit Report) or pursue a third-party external BC certification process. Payne was concerned that TWS could be labelled *"greenwashing"* (Why B Corps Matter 2017; Dahl 2010). Greenwashing was a term used to refer to companies that made overinflated claims of environmental friendliness while not truly taking these actions. The construction industry was especially known for greenwashing as companies often over-promised and under-delivered. This naturally led him to think of the advantages and disadvantages of BC certification (see Exhibit 7).

If Payne made the decision for TWS to become a certified BC, it would improve the company brand, demonstrate transparency, and provide a powerful impact, but the certification process required more company resources (see Exhibit 7). Payne said, *"It is challenging enough to have strong financials and keep accounting up-to-date, let alone proceed with BC certification at this time"* (personal communication December 29, 2017).

Exhibit 7. CEO's Decision-Making Regarding BC Certification

Source: Authors' Notes (2019) as adapted from Chen 2019

Advantages	Disadvantages
1. Join a global community that uses business as a force for good. 2. Be a role model and add value to local communities. 3. Demonstrate environmentally friendly products and processes (*i.e.* recycling parts of used windows). 4. Expanded company resources as they align and do business together with other certified BCs. 5. Ongoing third-party reports available that confirm accountability. 6. Hire more qualified staff who align with the company values, vision and mission statements. 7. Retain team members who are committed and loyal to this joint purpose. 8. Obtain permits for large jobs such as apartment blocks on meeting recycling standards required by city bylaws. 9. Reduce costs by recycling. 10. Attract investors who see the value of supporting companies that are B Lab certified. 11. Attract more business from like-minded consumers and leverage the power of alignment. 12. Be recognized for helping those less fortunate.	1. Time consuming with a potential 20% slowdown during implementation. 2. Diverting the CEO's attention for any period of time within a small firm is a serious concern. 3. Initial start-up costs and annual fees to become a certificated B Lab company. 4. Annual reports required on up-to-date financials. 5. Potential diversion of resources that may not be sustainable as TWS focuses on its vision and mission.

Comparison of Benefit Corporations and Certified Benefit Corporations

A CEO's decision to complete BC certification through the non-profit B Lab formalized the company's commitment to using business as a force for good (Honeyman 2014). The third-party evaluation process provided a high level of public accountability and transparency - similar to Fairtrade coffee or LEED green buildings - for being ethical, sustainable, and socially responsible (Collins 2018; Honeyman 2014; Honeyman & Jana 2019). It required additional resources and management focus. Storper's (2015) cost-benefit analysis suggested that a completed scorecard evaluated the firm's overall impact and proper documentation that countered any greenwashing claims. Certified BCs were required to update their assessments every 2 years and maintain a minimum score of 80 of 200 points on their scorecards to be eligible for recertification. They paid an annual tiered fee for certification based on revenue. B Lab (2017) indicated that annual fees at the time ranged from $500 for smaller firms such as TWS to more than $50,000 for companies such as Patagonia or Danone. Marquis and Sapuridis's (2018) case also featured the multiyear process that Danone took as the world's largest certified BC.

TWS Company BC Certification Decision

Payne purchased TWS in 2014 with BC wording that aligned with a philanthropic passion of improving the environment and helping those less fortunate (see Appendix A). He quickly expanded the product line to increase revenue growth and profitability while supporting BC activities. However, his long-term goal also included developing software that would disrupt the industry's quoting process. Payne wrote TWS's mission, vision, and core values statements (see Exhibit 5) with his marketing adviser in early 2017. As the months progressed, Payne again felt rising personal tension to implement the BC process fully and move forward with B Lab certification. Small business's vision and mission statements reflected the owners' direction for their companies and often were a first step to align with the B Lab certification process.

The Management Challenge

Payne became more conflicted by December of 2017 as he reflected on his pressing CEO decisions. Although Payne knew that additional effort was needed, he asked himself, *"How can TWS execute this top-down strategic plan and act on the certification process with B Lab?"* (personal communication December 29, 2017).

As year-end 2017 approached, Payne pondered, *"What analysis should I do to achieve strategic alignment with B Lab to advance the goal of 10 times organic growth and become a global brand as noted in TWS's vision statement?"* (personal communication December 29, 2017). He reflected on TWS's vision and mission statements to determine if they should be rewritten to align with strategic goals, other global certified BCs, and determine whether BC certification provided benefits for the construction industry (B Lab 2017; Honeyman 2014; Honeyman & Jana 2019). As Payne re-evaluated this strategic business plan from profit, people, and planet perspectives, he wondered if the advantages exceeded the disadvantages (see Exhibit 7) for B Lab-certified BCs. With this in mind, specifically how should the CEO prioritize the following alternatives to achieve his future strategic growth goals: (a) continue his top-down strategic planning to meet 10 times growth, (b) finalize TWS's vision and mission statements with BC terminology as part of his regular BC focus, (c) act on his vision of global expansion by developing quoting technology, (d) implement his ideals of BCs (Montgomery 2012) that included BC certification; and (e) tackle the IRS tax threat?

Connie D. M. Allsopp, Ph.D., is a business and education consultant in private practice, the founder of The World's Registrar, and a former supervisor and instructor at the University of Victoria, B.C., Canada. Dr. Allsopp holds a B.Ed. in Literacy and Inclusive Education, a M.Ed. in Administration, and a Ph.D. in Leadership from the University of Manitoba, along with a post doctorate in Program Education from the University of Victoria. She has twenty plus years of teaching, consulting and school leadership at all levels of education while concurrently working as an entrepreneur in product sales and online marketing. Additionally, she has served on the review boards of the *Business Case Journal* and *Journal of School Leadership*, and has authored/co-authored several publications, including teacher manuals for Scholastic. She has given multiple international talks, most recently in China; served on a medical team in the Dominican Republic; and constructed a public school in Mexico. Recently, she launched a nonprofit dental clinic for children and youth, worked at a family style dental clinic, and now chairs a co-founded nonprofit: Hope for PTSD Foundation. Her research focus has been on Leadership, Knowledge Mobilization, Entrepreneurship, Strategy, Project Management, Program Evaluation, Mental Health and Certified Benefit Corporations. Contact her at connie@theworldsregistrar.com

George L. Whaley is Emeritus Professor of Human Resource Management at San José State University. Over the past twenty years, he has authored numerous case studies of companies in the high technology and biotechnology industries. Professor Whaley holds a B.S. in Engineering Mathematics, an M.B.A. from the University of Arizona and a Ph.D. in Organizational Behavior from the University of Colorado. He has forty years of combined management, consulting and teaching experience. Professor Whaley serves on the editorial board of several academic journals and is the co-editor of the *Business Case Journal*. His research focuses on Strategic Human Resource Management, Sustainability, Leadership, Diversity, and Entrepreneurship, and he teaches Organizational Behavior, Human Resource Management and Organizational Change in the Lucas College and Graduate School of Business at San José State University.

Keith C. Perry is Director of Engineering Programs in Community Service (EPICS) for the College of Engineering and Industry Professor for the Department of Computer Engineering at San José State University (SJSU). He has also taught for the School of Management and the School of Global Innovation and Leadership in SJSU's College of Business. Recently, he taught for the Biological Sciences Department in the College of Science and for the College of Professional and Global Education at SJSU. He holds a B.S. in Computer Science (Honors) from the University of Manitoba, Canada as well as an M.B.A. and a Master in Software Engineering from SJSU. His forty years of industry experience span executive positions at numerous technology companies including a technology global Fortune 500, as CEO in multiple startups, and as a partner at a venture capitalist. He currently is CEO and owner of The Window Specialist and owner of BK Sales and Services. He is a frequent keynote speaker to international audiences on entrepreneurship in Silicon Valley and a regular session chair at international IEEE conferences on big data, mobile cloud, artificial intelligence, machine learning and block chain. His research and publications focus on strategy, entrepreneurship, leadership, mobile cloud, artificial intelligence and the environment. Perry is listed in *Marquis Who's Who in America*.

Appendix A
Extract from TWS's Articles of Incorporation
Source: Company Records (2014)

Table A1. TWS's Articles of Incorporation (2014)

How did Payne start a legal business as a benefit corporation? He created and filed Articles of Incorporation with the state to document the creation of TWS. Each Article listed in these documents provides separate information such as a firm's name, physical address, board, liability, and the amount of stock.

A number of states provided a BC incorporation template for companies to pursue both for-profit and non-profit objectives. Payne created a California Benefit Corporation by including the following required statement within the company's Articles of Incorporation: *"The corporation is a benefit corporation."* He also specified his public benefit purposes that were not required but allowed optionally.

The following article showed evidence of Payne's fulfillment of the BC requirements along with two public purposes as listed in Article III.

ARTICLE III. This is a benefit corporation. It will provide the following public benefits for the environment and to society by (a) preserving the environment, and (b) providing low-income or underserved individuals with beneficial products or services.

Appendix B
Financials

Source: Company Records Using Cash Basis Accounting (2014-2017)

Table B1. TWS Financials

Payne acquired TWS with a mission to achieve 10 tens organic growth, *i.e.* without buying other companies and folding in their revenue. The following annual revenue numbers below illustrate how TWS achieved 500% growth by 2016, but then dipped to 400% growth in 2017 for reasons described in the case.

Description	2014	2015	2016	2017
Revenue	$256,407 (prorated)	608,559	1,354,700	1,020,220
Percentage change year over year	n/a	237%	223%	75%
Percent change from 2014	n/a	237%	528%	398%

Appendix C
Company Milestones
Source: Company Records (2017)

Table C1. Company Milestones

The following was included to highlight the CEO's key actions related to the company's strategic growth plan and movement toward BC certification during the case's timeframe.

Decisions	Dates	CEO actions
	Mar. 2013	- Enthralled by Montgomery, who wrote on the BC legislation.
Benefit Corporation	Mar. 2014	- Focused on research for articles of incorporation to be a BC.
	June 2014	- Found areas that captured the essence of his intent and incorporated TWS as a BC.
	Mar. 2015	- Spoke with his general manager about TWS previous owner's efforts to recycle aluminum.
	Sept. 2015	- Noted to a friend that he was remiss in completing their annual benefit reports.
	Dec. 2016	- Increased his benefit corporation focus and contributions.
	May 2017	- Acknowledged that TWS's vision should have captured his BC focus and that he was reluctant to make a commitment regarding certification because of the latest financial results and accounting priorities.
	Dec. 2017	- Spoke about the challenges of balancing priorities as a CEO and questioned how becoming a certified BC would create an advantage in the marketplace.
Strategy	Aug. 2014	- Purchased Nvidia Jetson TK1 hardware for computer engineering master students.
	Oct. 2014	- Discussed concept of measuring windows from pictures to be done outside of the master course.
	Nov. 2014	- Developed software to measure windows using a reference such as printer paper in the same picture to compare the size by counting pixels.
	May 2015	- Submitted provisional patent application to the U.S. Patent and Trademark Office (Payne *et al*., 2015).
	Jan 2016	- TWS was forced to move locations. Payne used this as an opportunity to support his growth strategy with higher end facilities, additional office space for new staff, and a showroom that met Fleetwood's requirements for higher end dealers.
	May 2016	- Submitted full patent application (Payne *et al*., 2015).
	Oct 2016	- Realized that this patent was not viable as a sustainable competitive advantage. Employed Deming and Goldratt's theory of constraints (Lepore & Cohen, 2006) to develop a formal strategy that the company could pivot to: quoting software.
	Dec. 2016	- Developed company's first vision, mission, and core value statements based on this pivot.
	Jan. 2017	- Abandoned patent due to a shortage of resources to invest in a non-strategic endeavor.
	Feb. 2017	- Identified software challenges of developing dealer based state-of-the-art quoting software and wrote code to complete proof of concepts on each.

References

American Vision Windows. (2014). Welcome to American Vision Windows. https://www.americanvisionwindows.com

Aus, J. (2006). Eurodac: A solution looking for a problem? European Integration Online Papers. 10.6. http://eiop.or.at/eiop/texte/2006-006a.htm

B Corporation (2018, November 11). Vote Every Day Campaign: B Lab [Video]. YouTube. https://youtu.be/sPvoFpm7Ef4

B Lab (2014). About B Lab. https://bcorporation.net/about-b-lab

B Lab (2017). About B Lab. https://bcorporation.net/about-b-lab

Barney, J. (2010). Gaining and sustaining competitive advantage (4th ed). Pearson Prentice Hall.

Bay Area Window Pros (2014). Looking to Replace your Windows? https://bayareawindowpros.com

Bestoff Windows & Construction (2014). Get a free quote now! https://www.bestoffwindows.com

Brothers Home Improvement (2014). Your trusted window experts. https://www.brotherswindows.com

California Energy Commission (2017). Past building energy efficiency standards. https://www.energy.ca.gov/programs-and-topics/programs/ building-energy-efficiency-standards/past-building-energy-efficiency

Chen, J. (2017). The Difference between B Corporations and Benefit Corporations. http://jeremychenlaw.com/the-difference-between-a-b-corporation-and-a-benefit-corporation/

Collins, D. (2018). Business ethics (2nd ed.). Sage.

Conscious Capitalism (2020). Conscious Capitalism home. https://www.consciouscapitalism.org/

Dahl, R. (2010). Greenwashing. Do you know what you are buying? Environmental Health Perspectives, 118(6), 246-252.

Deloitte & Touche (2014). Technology Fast 500 awards. https://www2.deloitte.com/us/ en/pages/technology-media-and-telecommunications/articles/fast500-apply.html

Energy Star (2017). Energy Star history and major milestones. https://www.energystar.gov/about/history/major-milestones

Fleetwood Windows and Doors (2015). Build it better, not cheaper. http://www1.fleetwoodusa.com

Guayaki Yerba Mate (2017). Why B Corps matter [Video]. YouTube. https://youtu.be/tlxZjnBEsaI

Hersey, P. & Blanchard, K.H. (1969). Management of Organizational Behavior – Utilizing Human Resources. Prentice Hall.

Home Depot (2014). Beautiful windows, trusted installation. https://www.homedepot.com/b/Doors-Windows-Windows/N-5yc1vZaq1w

Honeyman, R. & Jana, T. (2019). The B Corp handbook (2nd ed.): How to use business as a force for good. Berrett-Koehler.

Honeyman, R. (2014). The B Corp handbook: How to use business as a force for good. Berrett-Koehler.

IBISWorld (2017). Window installation industry in the USA: Market research report. https://www.ibisworld.com/united-states/market-research-reports/window-installation-industry/

Lepore, D. & Cohen, O. (2006). Deming and Goldratt: The theory of constraints and the system of profound knowledge – The decalogue. North River Press.

Marquis, C. & Sapuridis, E. (2018, December). Danone North America: The world's largest B corporation [Case study]. https://store.hbr.org/product/danone-north-america-the-world-s-largest-b-corporation/KS12842

Montgomery, J. (2012). Great from the start. How conscious corporations attract success. Morgan James.

Montgomery, J. (2013). How conscious corporations attract success. TEDx Lower East Side [Video]. YouTube. https://youtu.be/6o6LTRntscQ

NAICS Association (2012). Door, window or assembled millwork-installation services or repair-metal No. 423310. http://www.naisc.com/naics-codedescription/?code+541711

Northwest Exteriors (2014). Simply the best…Trust Northwest. https://northwestexteriors.com

Oakland FOX TV Investigates (2016a). Window company not following up to rectify scam. Oakland Channel 2 Fox TV affiliate. http://www.ktvu.com/news/218067069-story

Oakland FOX TV Investigates (2016b). Window company scam. Oakland Channel 2 Fox TV affiliate. http://www.ktvu.com/news/2-investigates/145006734-story

Payne, K., Parikh, D., Chirimar, T. & Nallapothula, J. (2015). US Patent Application No. 62/230,038.

Porter, M. E. (1980). Competitive strategy: Techniques for analyzing industries and competitors. Free Press.

Porter, M. E. (2008, January). The five competitive forces that shape strategy. Harvard Business Review.

Renewal by Anderson (2014). Award winning customer satisfaction. https://www.renewalbyandersen.com

Rothaermel, F. (2016). Strategic management (3rd ed). McGraw Hill.

Sampselle, D. (2013, Dec 20). What is a benefit corporation? [Video]. YouTube. https://www.youtube.com/watch?v=ecbbxR-ei1s

Stonehouse, G. & Snowdon, B. (2007). Competitive advantage revisited: Michael Porter on strategy and competitiveness. Journal of Management Inquiry, 16(3), 256-273.

Storper, J. (2015). What's the difference between a B Corp and a benefit corporation? https://consciouscompanymedia.com/sustainable-business/whats-the-difference-between-a-b-corp-and-a-benefit-corporation

DYING TO WORK?

TROY A. VOELKER
JONATHAN EVERHART
LAURA GUERRERO
University of Houston-Clear Lake

Sarah Rogers and her family were concerned about the risks Sarah faced on the job during the COVID-19 pandemic. As a food-services employee, Sarah worked in a high-risk contagion setting in Amarillo, Texas. Her employer, Stephens Country Catfish, refused to allow employees to wear facemasks during their shifts. Fearing personal infection, the risks posed to her senior parents who helped care for her child, and the financial risks associated with losing her present employment, Sarah was at an impasse. Her employer, Brian Stephens, worried that turning away maskless customers could ruin his business, and that accommodating the demands of customers who simply did not want to see a mask while dining was important to his survival. What options existed for Sarah? What options and responsibilities existed for her employer?

Introduction

> *"It is difficult to get a man to understand something when his salary depends upon his not understanding it."* - Upton Sinclair

"Sarah, it's really a very simple decision. Either you remove the mask and stay at work, or you go home and don't come back." Sarah reflected upon the conversation with her manager, Brian, during her last shift at work. With her manager, Brian, glaring at her, Sarah had quietly removed her cloth facemask and went back out to the hostess' station. She was terrified, but she needed the paycheck. She had whispered a silent prayer to herself and finished her shift. On her way home from work, she burst into tears. Should she go back to work tomorrow? Could she afford not to?

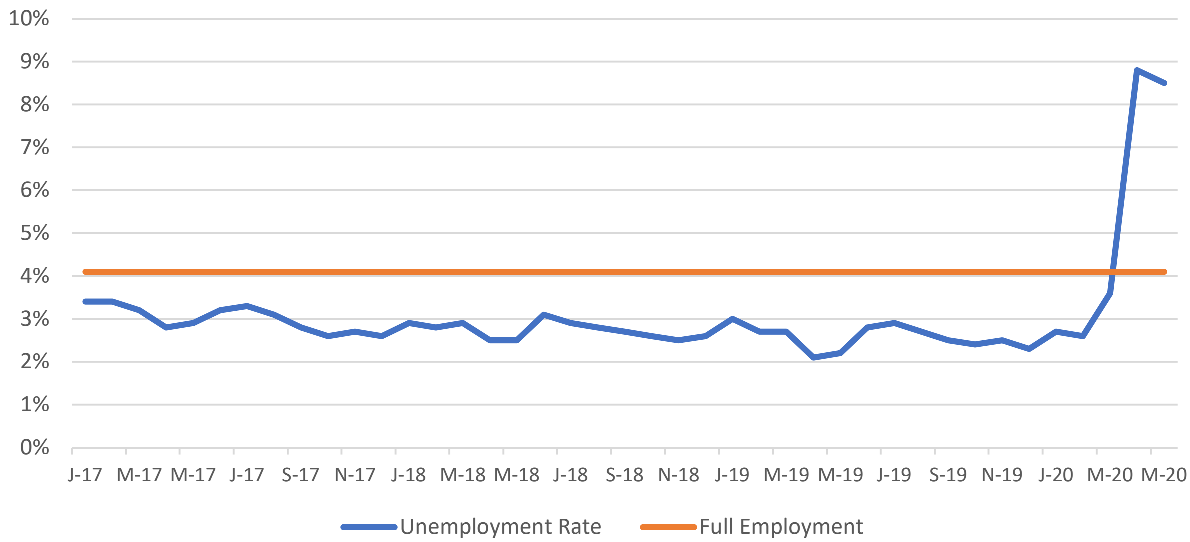
The authors developed the case for class discussion rather than to illustrate either effective or ineffective handling of the situation. The case and its accompanying instructor's manual were anonymously peer reviewed and accepted by the ***Journal of Case Research and Inquiry, Vol. 6*, *2020***, a publication of the Western Casewriters Association. The authors and the ***Journal of Case Research and Inquiry*** grant state and nonprofit institutions the right to access and reproduce this manuscript for educational purposes. Contact: Troy A. Voelker, University of Houston-Clear Lake, 2700 Bay Area Blvd, Houston, TX 77058, voelker@uhcl.edu

Like many Americans, Sarah Rogers lived paycheck to paycheck. Working part time at the restaurant and pulling some overnight shifts as a cleaner, she could usually make ends meet and keep up with the rent on the small apartment she shared with her daughter Sophie. Like most restaurant workers, she carried minimal health insurance and the scant protection provided by her health care would be unsustainable should she lose her job (Goger & Hadden Loh 2020). The minimal aid available under the CARES Act might help a bit if she lost her job, but she doubted she could cover rent and basic needs for long. When times were tough in the past, she had always been able to consider returning to live with her parents. Could she safely move in with her elderly parents during the pandemic? Even if they collectively took the risk, how far would her parents' Social Security check stretch to meet the needs of the extended household if she lost her job?

Hourly wages for hosts and hostesses at restaurants in Amarillo, Texas typically hovered around $10.59 an hour (BLS 2020). While that was not a lot of money, it paid the bills, usually. Amarillo had a cost of living well below the national average for housing (-28%), utilities (-10%), groceries (-8%) and transportation (-13%) (Payscale 2020). The past few years had been generally good. While she was not getting ahead financially, it had been a while since Sarah felt any real economic distress. Then the pandemic started.

Even though money was usually tight, Sarah enjoyed her work at Stephens Country Catfish. It was a small, family-owned restaurant, specializing in business lunches and family dinners. Much of the business came from repeat customers. The Stephens family, who owned the restaurant, felt like an extension to her own family. She had watched her manager, Brian, grow up. Despite her present conflict with him, she genuinely enjoyed working for him.

Exhibit 1. Unemployment Rates - Amarillo, Texas
Source: Bureau of Labor and Statistics

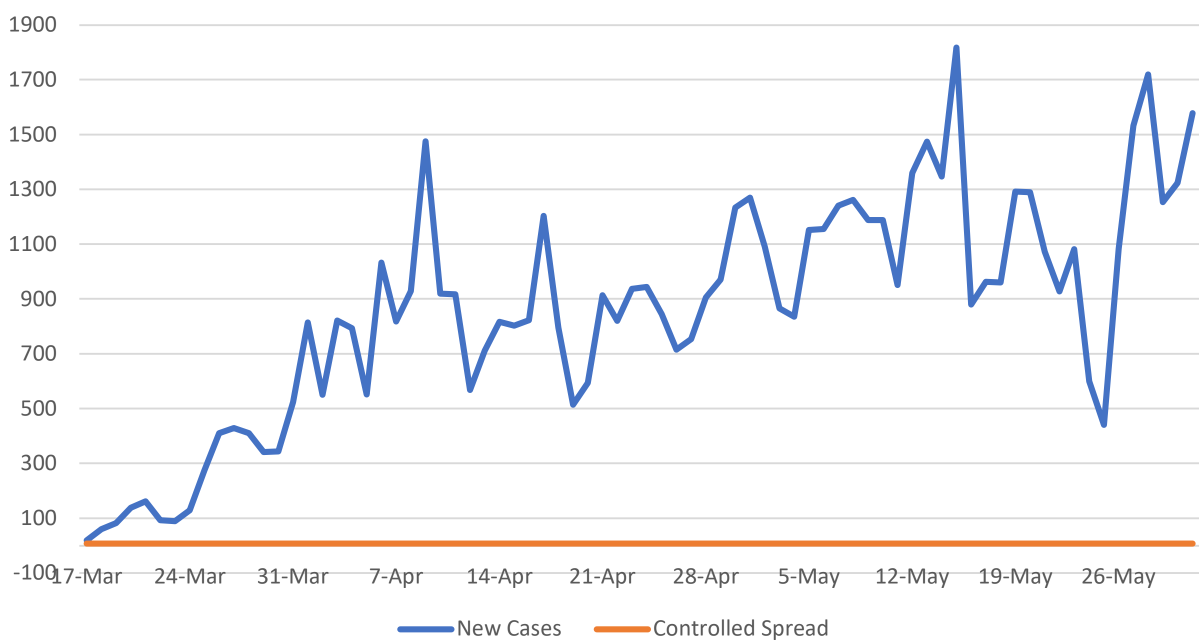


Life in Amarillo, Texas

The U.S. Census Bureau estimated the population of Amarillo at 198,773. The city was slightly younger (average 33.9 years) than the U.S. population (37.9 years), slightly less educated (84.1% completed high school or higher) than the U.S. population (87.7%), and slightly poorer ($34,928 median female earnings) than the United States ($41,690) (U.S. Census Bureau 2020). Its local economy depended on employment from food processing (Tyson Foods), military manufacturing (Bell), and higher education (West Texas A&M and the Texas Tech University Health Science Centers) along with a typical array of municipal and retail employers. Employment had been strong in recent years and the city had high expectations going into 2020. The restaurant industry as a whole had performed exceptionally well in recent years. *"Americans spent more than half of their food budget eating outside of the home … bars and restaurants played a significant role in the country's recovery from the Great Recession"* (Goger & Hadden Loh 2020).

In May 2020, the days of making ends meet relatively easily seemed like a long-forgotten dream. The COVID-19 virus had wreaked havoc on the health and economic well-being of Amarillo, Texas. In the early months of the pandemic, Amarillo suffered heavily for a city its size. The U.S. Centers for Disease Control and Prevention (CDC) used several metrics to estimate the extent to which the spread of the contagion was under control. One of the most important metrics was the number of new cases per day, which the CDC recommended, for a "controlled rate", to be 4 or fewer per 100,000 persons; that meant fewer than 8 per day for Amarillo. Amarillo had exceeded a controlled state in early March and reached daily rates 200-times higher than the controlled rate.

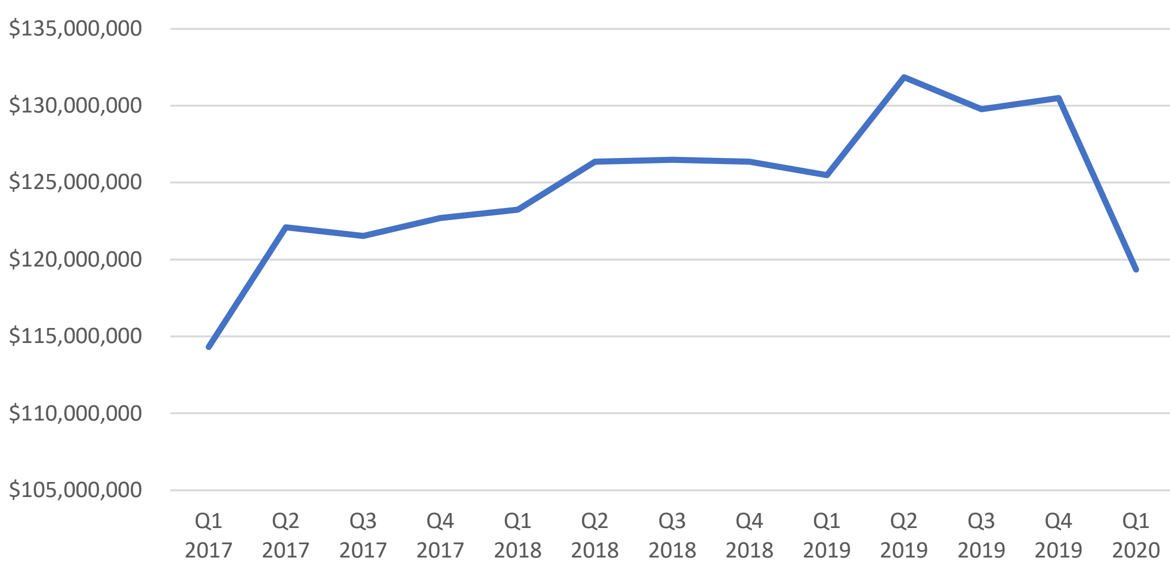
Exhibit 2. COVID-19 New Cases by day - Amarillo, Texas
Source: New York Times



Recognizing the health risks of COVID-19, Texas began a lockdown in March 2020 requiring all but the most essential businesses shut down. Unfortunately, the state of Texas and its local governments were not well situated for a long-duration economic crisis. Texas was a balanced budget state, requiring the state to equalized expenditures and revenues. In a situation where expenditures exceeded tax revenues, the state had the option to either decrease expenditures or to dip into its surplus, the so-called *"rainy day fund,"* which was reasonably well stocked going into 2020 (Walczak 2020).

Texas depended on sales taxes, *"the largest source of state funding for the state budget, accounting for 59 percent of all tax collections"* (Texas Comptroller 2020). Given the anticipated long duration for the pandemic, the state budget implications of a closed economy, and the livelihood implications of business owners and their employees in a prolonged lockdown, Texas Governor Gregg Abbot felt pressured to reopen the Texas economy before COVID-19 was contained. Reflecting on the economic damage from the pandemic, the Governor's office announced a phased back-to-work plan in early May, 2020, which returned operating permission to most businesses. Over the subsequent weeks, restrictions on operations were phased out. State residents who had been stuck in their homes for nearly two months eagerly returned to some of their favorite venues, leading to the crisis Sarah faced.

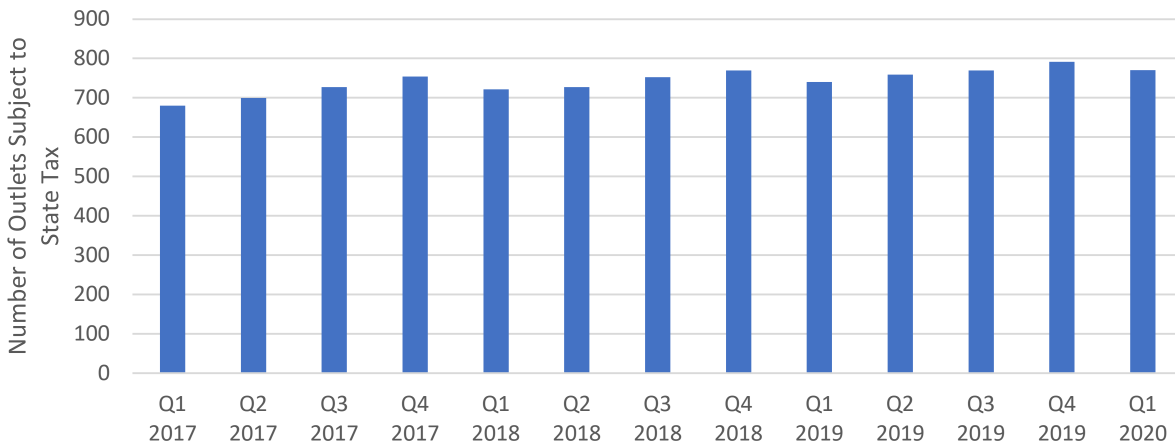
Exhibit 3. Gross Sales Food and Lodging - Amarillo, Texas
Source: Comptroller of Public Accounts



The federal government provided a one-time short-term economic stimulus early in the pandemic, passing the Coronavirus Aid, Relief, and Economic Security (CARES) Act that was signed into law on March 27, 2020 (U.S. Treasury Department 2020). The CARES Act included extended unemployment coverage with weekly payments, a moratorium on evictions, and the payment protection program to provide employment continuance. Most of these benefits were scheduled to phase out over the summer. For many employers and employees, this meant that a return to work in the second quarter of 2020 was the only reliable safety net.

The Texas Comptroller's office reported a contraction of 8.5% in first quarter sales by the food and lodging businesses in Amarillo. Going into March 2020, the food and lodging sector in Amarillo was doing well, generally posting increasing sales for several consecutive years. All of that seemed to have disappeared in a flash. For the Stephens family, the reopening of business had arrived in the nick of time. The Country Catfish was not the only restaurant the Stephens family owned. Stephens L.L.C. (holding company) owned several restaurants in the north Texas area, all of which had performed well prior to March. Most of the restaurants in the portfolio were casual dining, and those were the ones most precipitously affected by the pandemic. While the Payment Protection Program had offered some stability, there was no way the company could sustain a full quarter contraction at the level it had experienced in March and April. Operating at limited seating capacity greatly reduced the sales of restaurants, as the mid-scale casual dining menu did not lend itself to curbside pickup or delivery. For Country Catfish and other restaurants in the family portfolio, the quarter could very well be their last.

Exhibit 4. Number of Food and Lodging entities - Amarillo, Texas
Source: Texas Comptroller of Public Accounts



Restaurants had been one of the hardest hit sectors in the COVID-19 pandemic. The Texas Comptroller's office showed a modest decrease in the number of Amarillo based food and lodging entities paying sales taxes in the first quarter. Yelp's economic activity reports suggested that restaurant closures as a result of the pandemic were higher than closures in any other sector; the June 2020 Yelp economic activity report identified 23,981 closed restaurants that had been open on March 1. 60% of the closed restaurants were permanent closures, with Texas faring particularly poorly (Yelp 2020). These findings were corroborated by the State of Small Business Report issued by Facebook in May 2020. A survey found that among 86,000 persons who owned, managed, or worked at a small or medium-sized business (SMB), 31% reported no-longer operating, most reported problems with negative cash-flow and a lack of demand, and many (93% for food and lodging employees) of their employees reported a lack of paid sick leave or paid time off to manage personal needs exacerbated by the pandemic (Facebook 2020).

Reopening

At first, it was a joy to get back to work, even with the fear of infection. The Stephens family initially decided that facemasks were optional for employees. The restaurant posted signs encouraging social distancing, but these signs were merely recommendations and not enforced policies. Restaurant employees were permitted to remind customers politely to adhere to social distance, but an employee could not request that customers remain at a distance. Many customers and most of her co-workers wore masks, at least at first, and most people remained a respectful and safe distance apart.

Some did not, and those who did not seemed to undermine safe separation intentionally. Customers who did not wear masks loudly complained about employees and customers who did wear masks, sometimes coming much closer than would have been expected prior to COVID-19 *"just to prove a point."* This phenomenon was not unique to restaurants, nor was it confined to Amarillo. As national news provided more examples of customers around the country negatively reacting to masks and social distancing, Sarah's manager Brian changed the restaurant policy.

In the restaurant, masks had been optional, but they were now banned. All employees, regardless of their situation, could not wear masks anywhere in the restaurant. An employee could wear a mask in the back areas outside of the kitchen while on break, but if a customer could see the employee, the employee had to be mask-free. Brian pointed to national headlines where customers had physically assaulted employees over mask and social distancing policies, sometimes leading to serious injuries. In one extreme national incident, an angry customer had shot the employees of a store who had attempted to enforce mask policies. Brian needed the restaurant to succeed and he desperately wanted everyone to get along and everything to get back to normal. He did not want the Country Catfish to be the next small business featured negatively on the local news.

Sarah wanted things to return to normal too, but she was terrified. While her concerns about her risk early in the pandemic seemed to be little more than supposition, those worries were later supported by evidence as the pandemic advanced. Analysis of cell-phone network data for 98 million persons from the earliest months of the pandemic suggested that a high percentage of so-called *"super spreader"* events occurred in places where large numbers of persons congregated socially and indoors, primarily restaurants, bars, coffee shops, and religious establishments (Chang *et al.* 2020). Infection rates were highest among economically disadvantaged groups, many who held service-industry jobs in high-risk environments. A CDC analysis published in July 2020 demonstrated that individuals who had been inside of a business that provided on-site eating and drinking (*e.g.*, restaurants, bars, diners, and coffee shops) were twice as likely to have become infected with COVID-19 than were those who had avoided such establishments (CDC July 2020a). The CDC study further confirmed the risk to service sector employees, many of whom also lacked paid sick leave or vacation leave.

Sarah worried about her health, and knew that if she became ill, the financial cost of not working would be devastating, even if she made it through the illness with minimal health complications. She also knew that her infection might lead to her daughter's infection and, while the complications for her daughter seemed minor, percentages lose meaning when the risk is to one's own child! On top of that, her parents often took care of her daughter; passing an illness to her parents could result in loss of life. Her father wanted her to file a complaint with OSHA or to sue the store to demand a return to the mask-allowed policy. Her friends recommended that she quit and sue for the dangers she was being forced to face.

COVID-19 and Facemasks

Neither the federal nor the state government initially provided clear rules and policies on how businesses should function. Instead, general guidelines were offered by varying government entities. Some guidelines, such as screening for sick employees, were common to multiple government entity recommendations, while others varied from one entity to another. At times, federal, state, and local governments provided conflicting standards. In some cases, such as with masks, there were conflict or confusing statements from the World Health Organization (WHO) and the CDC. While these conflicts may have resulted from well-meaning, differing interpretations at different stages of the crisis, the lack of clear national guidelines ultimately contributed to very confusing back-to-work processes. In turn, these processes were often administered *ad hoc* and haphazardly by some businesses.

The use of masks as a physical protection equipment (PPE) had a contentious history within the pandemic itself. During early periods of the virus, CDC guidelines suggested masks were not necessary for healthy individuals (Achenbaugh *et al.* 2020). It remained unclear to what extent this early guidance was oriented towards containment of the virus itself, or towards the very pressing concern about lack of PPE available to healthcare professionals (CDC 2020b; WHO 2020a). However, by April 2020, healthcare guidance had shifted unequivocally towards the importance of facemasks in public (CDC 2020c). Facemasks as a necessity for reopening had been built into recommendations even from conservative leaning think tanks (Gottlieb 2020).

The necessity for facemasks in public lied in the asymptomatic transmission of the virus. COVID-19 was often expressed in a non-threatening manner; a significant percentage of those infected experienced no, or very minor symptoms of infection. However, unlike many other infectious diseases, COVID-19 remained highly contagious even in individuals with few or no symptoms (Furukawa *et al.* 2020). The use of facemasks in areas of public interaction was deemed essential to helping an infectious (but possibly asymptomatic or pre-symptomatic) person avoid infecting others.

Resistance to wearing masks in public was broad as states began reopening. The common refrain in the news was that some people felt that they should be able to choose the amount of risk they exposed themselves to, and that masks violated freedom of speech and expression. These expressions suggested that people perceived their wearing of a mask as protecting them personally. That was, however, a misunderstanding of the value of a mask in disease spread. Research suggested that both the wearer and others were more protected when masks were worn than when they were not; in fact, masks were primarily recommended to protect others (CDC 2020d).

Regardless of the reasons for public resistance, physical protection equipment such as masks represented a necessary part of a virus containment strategy for public activity during the COVID-19 outbreak. Countries such as Germany, Iceland, and South Korea that had put in place public responsibilities for virus containment (social distancing, masks, systematic testing and contact tracing) were able to contain the virus faster and with less infection than were countries with limited testing and limited personal risk containment responsiveness. These countries were also able to operate economically at levels much closer to their pre-virus norms than were other countries. In the United States, the states that had adopted stringent public policies were better able to contain outbreaks and control the spread of the virus than were states will less stringent policies (Leatherby & Harris 2020).

COVID-19 and Employment Law

While it received less public discussion, the applicability of employment law to address workplace safety was strained and applied inconsistently across the states. Employers of all sizes were faced with the challenge of balancing employee safety and their business needs. Numerous employment law issues arose because of the COVID-19 pandemic, including employee safety, unemployment payments and leave options, and privacy concerns (State Bar of Texas Journal 2020). Employment regulations and best practices changed periodically as the understanding of the coronavirus improved and the risk assessment in each geographic location changed. Because of this fluidity, businesses had to adapt to the ever-changing COVID-19 employment law guidance as published at local, state, and federal levels.

As businesses faced new categories of employment law issues arising from the pandemic, prudence suggested that they should ensure managerial awareness of certain issues, such as reasonable accommodations. Guidance from the U.S. Equal Employment Opportunity Commission (EEOC) addressed employment law issues likely to occur regarding an employer's obligation to provide reasonable accommodations to their employees during the COVID-19 pandemic. Many employees would not feel safe returning to work, regardless of the safety protocols that their employers had implemented. For some of these employees, the safety concern was related to an issue already protected under federal, state, and/or local employment laws. These issues included mental and physical health, pregnancy, caregiver status, and/or age (Patterson *et al.* 2020b).

The CDC published information about pre-existing health conditions that put certain individuals at a higher risk of developing serious complications from COVID-19 (CDC 2020c). Business operators were supposed to refer to these CDC guidelines when assessing accommodation requests to protect employees within different risk categories (CDC 2020c). The CED recommended implementing protocols to handle the increased number of accommodation requests and training managers on the new COVID-19 safety procedures (CDC 2020c). To comply with the law, it was important for businesses to mandate that accommodation request procedures be centralized to manage the process of granting or denying requests consistently. Businesses were advised not to preemptively require or ban certain classes of employees from returning to the workplace. Instead, it was recommended that employees be provided with the opportunity to self-identify as belonging to a high-risk group as defined by the CDC (Patterson *et al.* 2020b). Some employers chose to initiate an accommodation request discussion with employees already known to be in a high-risk group. Furthermore, businesses needed to remain aware of local and state guidance related to reasonable accommodations and other issues. One common complication was that employment law, usually written to address the needs of employee at work, did not consider the living arrangements of that employee. Therefore, if a child, spouse or roommate of the employee had a condition that made him or her vulnerable, the law would not require the employer to make accommodations.

Both the CDC and the Occupational Safety and Health Administration (OSHA) had created resource centers to provide businesses with safety guidance in response to COVID-19. The CDC resource center included a series of decision trees to help determine whether a business was prepared to reopen and specific guidance to protect high-risk employees from COVID-19 (CDC 2020e). Overall, the guidance recommended that a combination of monitoring and testing employees, worksite and schedule modifications, and operational policy changes were necessary to create a safer workplace environment (CDC 2020e). In adhering to CDC and OSHA guidelines, businesses were advised to make specific modifications to the workplace environment. Businesses were also advised to modify employee work schedules to ensure that safe distances between employees were maintained.

Patterson *et al.* (2020) organized the various business guidance for restaurants and other workplaces. Their advice broadly covered three-topics: change of workflow, change or physical workspace, and adoption of personal protection signage and practices. A summary of each topic follows:

- ***Change of workflow*** – Modification of the workspace to minimize incidental personal contact. This included additions of one-way travel routes, limits to the number of persons in closed spaces like elevators, reduction of capacity to add additional space between workers and customers, and elimination of shared workstations.

- ***Change of physical workspace*** – Modification of the workspace to include physical protection barriers where possible and particularly in areas where physical distancing was difficult. Business were advised to improve ventilation and filtering.

- ***Adoption of signage and protection practices*** – Workplaces should contain signage reminding both workers and patrons of proper safety procedures, all occupants of a workplace should wear physical protection equipment (masks in all cases, masks and visors in others). Those unable to wear face coverings should be moved to remote work posts to minimize the risk of exposure from them to others.

Patterson, Belknap, Webb and Taylor (2020) also discussed how employers should approach a reopening in the event of a mandatory government lockdown. There guidelines were also useful for organizations facing a COVID-19 interruption: staged reopening, staggered shifts, and employee cohorts.

- ***Stage reopening*** – Workplaces were advised to not return all employees to work immediately. In general, the return to the workplace should be driven by the business necessity of the position. Additionally, return to work requirements should consider the risk factors associated with each employee’s health.

- ***Staggered shifts*** – Employers were advised to extend the working day and to spread workers out across a longer operating day. This allowed workplaces to minimize the number of workers present at any time, as well as allowing for cleaning between shifts.

- ***Employee cohorts*** – Finally, businesses were advised that employees should be cohorted, meaning that the workers on site at any given time and day should typically remain working together with no schedule mingling between cohorts. While rotating employees between shifts and work groups might be operationally better outside a global pandemic, during a pandemic compartmentalization of workgroups helped to minimize the likelihood that a single infected employee could spread infection through the entire workforce.

The Dilemma

Sarah had a lot to think about when she left work to go home. What were her options? What should she do to protect herself (her health and her finances) and her family?

Brian was able to read the tension in Sarah when she left work that evening. He knew she was deeply uncomfortable with the *"no mask"* rule and he worried that she was not going to let this go. While she was not the only employee with reservations about the rule, she was the one most likely to act on her concerns. He was not certain how he would approach it if she refused to work without a mask tomorrow. Should he remove her from the schedule for the duration of the pandemic, or even fire her, if she again refused? While he did not enjoy the thought of firing Sarah, he doubted that the restaurant would succeed if he did not listen to his customers.

Troy A. Voelker is an Associate Professor of Management at the University of Houston-Clear Lake. Having degrees in both Finance and Strategic Management, he has worked in banking and corporate finance with Fortune 500 firms. He is a long time member of the Small Business Institute where he serves as the editor in chief of the Small Business Institute Journal. He has led professional development workshops for university faculty and healthcare administrators in critical thinking, strategic thinking, and leadership. In addition to his academic work, he serves as a volunteer for a number of not for profit organizations. He teaches Management Theory and Practice, Strategic Management, Organizational Behavior, and Entrepreneurship. His research is published in *Health Marketing Quarterly*, *Journal of Consumer Behavior*, *Journal of Behavioral and Applied Management*, *Education for Business*, and other peer-reviewed journals. Dr. Voelker is also a member of *Phi Kappa Phi*, *Beta Gamma Sigma,* Decision Science Institute, Academy of Management, the Southwest Case Research Association, and other organizations.

Jonathan Everhart is an Assistant Professor of Business Legal Studies at the University of Houston-Clear Lake. He has research publications in the *Southern Journal of Business and Ethics* and the *Small Business Institute Journal*. He has extensive work with startups and policy in the fintech and digital economy sectors. He has been appointed as a member to leading digital economy advisory boards, including the Green Technology Advisory Board for the United Nations Science-Policy-Business Forum and the Industry Trade Advisory Committee on Digital Economy for the United States Department of Commerce/United States International Trade Administration. For his leadership, he has been nominated as a World Economic Forum–Young Global Leader and a David Rockefeller Fellow for The Trilateral Commission. He has a background as an entrepreneur in international business and policy, and as a corporate attorney.

Laura Guerrero is an Assistant Professor of Management at the University of Houston-Clear Lake. Dr. Guerrero performs research on the careers of immigrants. She has co-authored a textbook called *Cases in Leadership,* now in its fifth edition. In addition, she has published cases in *Small Business Institute Journal*, *Journal of International Business Education*, and through Ivey Publishing. She has published other research articles in *Journal of Global Mobility*, *Career Development international*, *Journal of Managerial Psychology*, *The Career Development Quarterly*, *Applied Psychology: An International Review*, *Organizational Dynamics,* and several others. Her research interests are related to the careers and work experiences of immigrants. She has published studies about skilled immigrants in Canada, low-wage immigrants in the U.S., and Hispanics speaking Spanish at work.

References

Achenbaugh, J., Sun, L.H., and McGinley, L. (2020). CDC considering recommending general public wear face coverings in public. Washington Post, 30-March, 2020. Retrieved 22-May, 2020 from https://www.washingtonpost.com/health/cdc-considering-recommending-general-public-wear-face-coverings-in-public/2020/03/30/6a3e495c-7280-11ea-87da-77a8136c1a6d_story.html.

Bureau of Labor and Statistics (2020). Databases, Tables & Calculators by Subject. Retrieved 11-Nov, 2020 from: https://data.bls.gov/timeseries/LAUMT481110000000004?amp%253bdata_tool=XGtable&output_view=data&include_graphs=true

Bureau of Labor and Statistics (2020a). May 2019 Metropolitan and Nonmetropolitan Area Occupational Employment and Wage Estimates, Amarillo, TX. Retrieved 12-November from https://www.bls.gov/oes/current/oes_11100.htm#35-0000

Center for Disease Control and Prevention (CDC) (2020a). Community and Close Contact Exposures Associated with COVID-19 Among Adults >18 Years in 11 Outpatient Health Care Facilities – United States, July 2020. Published 11-September, 2020. Retrieved 16-November from https://www.cdc.gov/mmwr/volumes/69/wr/mm6936a5.htm?s_cid=mm6936a5_x

Center for Disease Control (2020b). Strategies for Optimizing the Supply of Face Masks. Center for Disease Prevention and Control. Retrieved 22-May, 2020 from https://www.cdc.gov/coronavirus/2019-ncov/hcp/ppe-strategy/face-masks.html

Center for Disease Control (2020c). Recommendation Regarding the Use of Cloth Face Coverings, Especially in Areas of Significant Community-Based Transmission. Retrieved 22-May, 2020 from https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html#:~:text=In%20light%20of%20this%20new,community%2Dbased%20transmission.

Center for Disease Control and Prevention (2020d). Scientific Brief: Community Use of Cloth Masks to Control the Spread of SARS-COV-20. Updated 10-November, 2020. Retrieved 19-November from https://www.cdc.gov/coronavirus/2019-ncov/more/masking-science-sars-cov2.html

Centers for Disease Control and Prevention (CDC) (2020e). Interim Guidance for Businesses and Employers Responding to Coronavirus Disease 2019 (COVID-19). Retrieved 5-September, 2020 from https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html

Chang, S., Pierson, E., Wei Koh, P., Gerardin, J., Redbird, B., Grusky, D., and Leskovec, J. (2020). Mobility network models of COVID-19 explain inequities and inform reopening. Nature. Published online 10-November 2020. Retrieved 16-November from https://www.nature.com/articles/s41586-020-2923-3

Facebook (2020). State of Small Business Report. Retrieved 12-November from https://about.fb.com/wp-content/uploads/2020/05/SMBReport.pdf

Furukawa, N.W., Brooks, J.T., and Sobel, J., 2020. Evidence Supporting Transmission of Severe Acute Respiratory Syndrome Coronavirus 2 While Presymptomatic or Asymptomatic. Emerging Infectious Diseases, vol. 26, num. 7, July, 2020. Retrieved 22-May, 2020 from https://wwwnc.cdc.gov/eid/article/26/7/20-1595_article

Goger, A. and Hadden Loh, T. (2020). ‘A Band-Aid on a gunshot wound’: How the restaurant industry is responding to COVID-19 relief. Brookings Institute. Retrieved 18-November, 2020 from https://www.brookings.edu/research/a-band-aid-on-a-gunshot-wound-how-the-restaurant-industry-is-responding-to-covid-19-relief/

Gottlieb, S. (2020). National coronavirus response: A road map to reopening. American Enterprise Institute, March 29, 2020. Retrieved 22-May, 2020 from https://www.aei.org/research-products/report/national-coronavirus-response-a-road-map-to-reopening/

Leatherby, L. and Harris, R. (2020). States That Imposed Few Restrictions Now Have the Worst Outbreaks. The New York Times, 18-November 2020. Retrieved 19-November from https://www.nytimes.com/interactive/2020/11/18/us/covid-state-restrictions.html

New York Times (2020). Texas COVID Map and Case Count. Retrieved 11-Nov, 2020 from https://www.nytimes.com/interactive/2020/us/texas-coronavirus-cases.html

Patterson, Belknap, Webb & Tyler (June 1, 2020a). The Legal and Practical Considerations of Re-Opening Workplaces in the COVID-19 Era: Part One – Practical Considerations. Retrieved 29-August, 2020 from https://www.pbwt.com/publications/the-legal-and-practical-considerations-of-re-opening-workplaces-in-the-covid-19-era-part-one-practical-considerations/

Patterson, Belknap, Webb & Tyler (June 2, 2020b). The Legal and Practical Considerations of Re-Opening Workplaces in the COVID-19 Era: Part Two – Legal Considerations, FAQS, and Best Practices. Retrieved 29-August, 2020 from https://www.pbwt.com/publications/the-legal-and-practical-considerations-of-re-opening-workplaces-in-the-covid-19-era-part-two-legal-considerations-faqs-and-best-practices/

Payscale (2020). Cost of Living in Amarillo, Texas. Retrieved 12-November, 2020 from https://www.payscale.com/cost-of-living-calculator/Texas-Amarillo.

Texas Comptroller of Public Accounts (2020). Quarterly Sales Tax Report. Retrieved 12-November, 2020 from https://mycpa.cpa.state.tx.us/allocation/QtrSalesReportByResults

Texas Comptroller of Public Accounts (2020a). Texas Comptroller Glenn Hegar Announces Revenue for Fiscal 2020, August State Sales Tax Collection. Retrieved 12-November, 2020 from https://comptroller.texas.gov/about/media-center/news/2020/200901-sales-tax.php

United States Census Bureau (2020). Amarillo city, Texas data. Retrieved 12-November, 2020 from https://data.census.gov/cedsci/profile?g=1600000US4803000

U.S. Department of the Treasury (2020). The CARES Act Works for All Americans. Retrieved 12-November, 2020 from https://home.treasury.gov/policy-issues/cares

Walczak, J. (2020). State Strategies for Closing FY 2020 with a Balanced Budget. Tax Foundation Fiscal Fact, no. 702, Apr. 2020. Retrieved 12-November from https://files.taxfoundation.org/20200402121245/State-Strategies-for-Closing-FY-2020-with-a-Balanced-Budget.pdf

World Health Organization (2020a). Coronavirus (COVID19) advice for the public: When and how to use masks. Retrieved 22-May, 2020 from https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public/when-and-how-to-use-masks

Yelp (2020). Yelp: Local Economic Impact Report, Updated June 25, 2020. Retrieved 12-November 2020 from https://www.yelpeconomicaverage.com/yelp-coronavirus-economic-impact-report.html

TAX CONSEQUENCES OF GENERAL MOTORS' BANKRUPTCY

GRETCHEN R. LAWRIE
California State University, Los Angeles

Introduction

General Motors Corporation (Old GM) was the largest manufacturer in the U.S. of cars, trucks, and other vehicles and the second largest in the world in 2008, with a worldwide market share of 12.4 percent. During 2008, it sold worldwide over 8 million cars, trucks, and other vehicles under several brands names including Chevrolet, Buick, GMC, Cadillac, Pontiac, and Saturn. Worldwide, Old GM employed about 235,000 employees of whom 163,000 were hourly employees and 72,000 were salaried employees. Of its total employees, 91,000 were employed in the U.S. with approximately 62,000 represented by the United Auto Workers (UAW) and other unions. Old GM's stock was publicly traded on the New York Stock Exchange (NYSE) under the symbol "GM." [1]

The 2008 global credit market crisis *"created a substantially difficult business environment,"* which had a *"dramatic effect"* on both Old GM and the automotive industry.[2] In 2008, Old GM's losses were $30.9 billion and it had burned through $19 billion in cash. In 2009, Old GM's consolidated global assets were approximately $82 billion and its liabilities were approximately $172 billion.[3]

By the end of 2008 and into 2009, Old GM had *"suffered a steep erosion in revenues, significant operating losses, and a dramatic loss of liquidity…"* which put *"its future in grave jeopardy."*[4] In

The author developed the case for class discussion rather than to illustrate either effective or ineffective handling of the situation. The case and its accompanying instructor's manual were anonymously peer reviewed and accepted by the ***Journal of Case Research and Inquiry, Vol. 6, 2020***, a publication of the Western Casewriters Association. Contact: Gretchen R. Lawrie, California State University Los Angeles, 5151 State University Drive, Los Angeles, CA 90013, glawrie@calstatela.edu

February 2009, Old GM warned investors that it might not be able to meet its auditor's requirements to continue as a going concern.[5] In late 2008 and early 2009, Old GM received emergency loans from the U.S. Department of Treasury (UST) and the governments of Canada and the province of Ontario, Canada (Canadian Government) and attempted to develop a restructuring plan to sustain its long-term viability without filing for bankruptcy protection.

Because Old GM was not able to carry out the necessary cost reductions and restructuring actions, on June 1, 2009, it and several of its subsidiaries filed for bankruptcy protection under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the Southern District of New York. As part of its bankruptcy reorganization, on July 10, 2009, Old GM sold substantially all of its assets and transferred certain of its liabilities to the General Motors Company (New GM). In satisfaction of their claims against Old GM, New GM issued stock, warrants, and notes to the UST, the Canadian Government, a New United Auto Workers Retiree Medical Trust (New UAW VEBA), and Old GM's Unsecured Creditors. After the sale, the UST owned 60.8 percent of New GM, the Canadian Government 11.7 percent, the New UAW VEBA 17.5 percent, and the Old GM Unsecured Creditors 10 percent.[6]

Upon emerging from bankruptcy, New GM's Chief Executive Officer (CEO), Fritz Henderson, stated, "*Today, we launch the new General Motors, and our promise is simple. We will be profitable, we will repay our loans as soon as possible, and our cars and trucks will be among the best in the world."*[7] Further, he stated, *"We recognize that we've been given a rare second chance at GM, and we are very grateful for that."*[8]

What would have been the U.S. tax and non-tax consequences of Old GM's bankruptcy reorganization for Old GM, Old GM's creditors and shareholders, and New GM?

History of General Motors

The history of Old GM can be traced back to 1897 when David Dunbar Buick founded the Buick Auto-Vim and Power Company (Buick). Between 1899 and 1901, Mr. Buick and his engineer, Walter L. Marr, developed and built the first Buick. When Buick became financially distressed, William Crapo Durant, one of the founders of the horse-drawn vehicle manufacturer, Durant-Dort Carriage Company, assumed control of Buick in 1904. In 1908, Mr. Durant formed a holding company, the General Motors Company (GMC), which acquired Buick and the Cadillac Automobile Company in 1909. In 1916, GMC was renamed the General Motors Corporation (Old GM).[9]

During 1936 and 1937, the UAW led a 44-day sit-down strike at Old GM plants, which ended with Old GM agreeing to pay raises and recognizing the UAW as its workers' exclusive bargaining representative.[10]

In 2007, after a two day walkout, Old GM and the UAW reached an agreement to shift Old GM's obligation to provide health care benefits to 340,000 of its retirees to the UAW Retiree Medical Trust, a voluntary employee beneficiary association administered by the UAW (Old UAW VEBA), which relieved Old GM of approximately $51 billion in unfunded retiree healthcare benefit obligations. To fund the Old UAW VEBA, Old GM agreed to contribute $31.9 billion and in 2008, it issued a $4.37 billion five-year convertible note to the Old UAW VEBA.[11]

Bankruptcy Timeline

Pre-Chapter 11 Bankruptcy Proceedings

In the second half of 2008, the turmoil in the credit markets, especially the lack of financing for buyers or lessees of vehicles, the severe contraction of worldwide vehicle sales, the recessions in the U.S. and Western Europe, and the slowdown of economic growth worldwide, created a substantially difficult business environment for Old GM and the auto industry. As a result of these economic conditions and the rapid decline of vehicle sales, Old GM determined that despite its actions to restructure its U.S. business, its liquidity was potentially going to fall to levels below it needed to operate, and therefore it was *"compelled to turn to the U.S. government for financial assistance."* [12]

In November 2008, Old GM's chief executive officer, Rick Wagoner, and the CEOs of the other Big 3 auto companies, Ford Motor Company CEO Alan R. Mulally and Chrysler LLC CEO Robert Nardelli, testified before the U.S. Congress and requested a $25 billion emergency loan from the U.S. government that would allow the Big 3 to make their wage and supplier payments and avoid bankruptcy and/or liquidation. CEO Wagoner warned that the failure of any of the Big 3 would rapidly bring down the entire U.S. auto industry and *"*[t]*he societal costs would be catastrophic"* with three million jobs lost within the first year and tax losses of more than $156 billion over three years. [13]

In response to a request from U.S. Senate Majority Leader Harry Reid and the Speaker of the U.S. House of Representatives Nancy Pelosi, on December 2, 2008, Old GM submitted a restructuring plan for long-term viability to the Senate Banking Committee and the House of Representatives Services Committee (Restructuring Plan). Old GM described the Restructuring Plan as *"a blueprint for creating a new General Motors, one that is lean, profitable, self-sustaining and fully competitive."* [14] To sustain its operations and implement its restructuring plan, Old GM requested $18 billion in federal financial assistance, consisting of a $12 billion term loan and a $6 billion line of credit.

Under the Restructuring Plan, Old GM intended to:

1. Reduce the number of brands, nameplates, and dealerships;
2. Focus available resources and growth strategies on profitable operations;
3. Reduce manufacturing and structural costs through increased productivity and employment reductions;
4. Shift the U.S. product portfolio to more fuel-efficient cars and crossovers;
5. Fully comply with the Energy Independence and Security Act of 2007 (EISA); and

6. Restructure the balance sheets and supplement its liquidity through temporary federal assistance.

On December 4 and 5, 2008, the CEOs of Old GM, Ford Motor Company, and Chrysler testified before Congress and requested $34 billion in federal government aid. Although on December 10, 2008 the House of Representatives approved a bill authorizing the UST to make direct loans to the Big 3 from the Troubled Asset Relief Program (TARP), on December 11, 2008, the U.S. Senate failed to pass the bill.

On December 19, 2008, President George W. Bush issued an executive order authorizing the UST to make short-term loans from TARP of up to $17.4 billion to each of the Big 3. President Bush stated that given the current state of the auto industry and the economy, Chapter 11 was *"unlikely to work for American automakers at this time"* and that the loans would give the automakers three months to *"put in place plans to restructure into viable companies."*[15] However, President Bush stated that if restructuring of the auto companies could not be accomplished outside of bankruptcy, the loans would allow the Big 3 to prepare *"for an orderly Chapter 11 process that offer[ed] a better prospect of long-term success…"*[16] Further, he stated that under the terms of the loans, the auto companies would be required to demonstrate how they would become viable and show that they could earn a profit and achieve positive net worth. If they failed to come up with viable restructuring plans by March 31, 2009, the loans would become due.

In order to sustain its operations through March 31, 2009, on December 31, 2008, Old GM and the UST entered into a Loan and Security Agreement (UST Loan Agreement) with the UST agreeing to loan to Old GM up to $13.4 billion in short-term financing (UST Loan Facility). From December 2008 to February 2009, Old GM borrowed under the UST Loan Facility $13.4 billion from the UST, which Old GM agreed to repay by December 30, 2011 (UST Loan).
Under the UST Loan Agreement, Old GM agreed to submit to the UST a proposed restructuring plan by February 17, 2009. If by March 31, 2009, the plan had not been certified as viable, the

UST Loan would become due within 30 days (Viability Plan).[17] Under the UST Loan Agreement, Old GM was required to use its best efforts to achieve the following restructuring targets:

1. Reduce its approximately $27 billion in unsecured public debt by at least two-thirds;
2. Reduce U.S. employees' total compensation to be competitive with U.S. Nissan, Toyota, or Honda by December 31, 2009;
3. Eliminate compensation and benefits to employees who had been discharged, furloughed, or idled;
4. Apply work rules for U.S. employees that would be competitive with the work rules for U.S. Nissan, Toyota, or Honda employees by December 31, 2009; and
5. Pay at least half of the $20 billion remaining of Old GM's $33.7 billion promised contribution to the Old UAW VEBA in the form of common stock.

On February 17, 2009, Old GM submitted to the UST its Viability Plan for achieving and sustaining its long-term viability, international competitiveness, and energy efficiency. On March 30, 2009, the Presidential Task Force on the Auto Industry (Auto Task Force), which had been appointed by the Obama Administration on February 16, 2009, announced that Old GM's proposed plan was not viable and needed substantial revisions and extended the certification deadline to June 1, 2009.[18]

On the same day, President Obama announced that the Administration had offered Old GM additional *"working capital"* of up to $6 billion and would *"be working closely with* [Old] *GM to produce a better business plan."*[19] He stated that the U.S. Government had no interest in or intention of running Old GM, but that it was interested in giving Old GM *"… an opportunity to finally make those much-needed changes that will let* [it] *emerge….as a stronger and more competitive company."*[20] However, he acknowledged that Old GM might have to file for bankruptcy protection in order to make it easier to *"quickly clear away old debts"* that were wearing it down and to get back on its *"feet and onto a path to success…"*[21]
From April 2009 to May 2009, Old GM borrowed an additional $6 billion from the UST. In April 2009, Old GM entered into a loan and security agreement with the Canadian Government and borrowed approximately $2.4 billion (Canadian Loan).[22]

On April 27, 2009, Old GM announced that it had revised its Viability Plan and that it would *"speed the reinvention of* [Old] *GM's U.S. operations into a leaner, more customer-focused, and more cost-competitive automaker"* (Revised Viability Plan).[23] The revised plan accelerated the timeline actions, such as reducing the number of plants and making deeper cuts in Old GM's operations. Old GM's new CEO, Fritz Henderson, stated that the Revised Viability Plan reflected the Obama Administration's direction that Old GM *"should go further and faster on [its] restructuring."*[24] Under the Revised Viability Plan, Old GM intended to:

1. Focus on the brands of Chevrolet, Cadillac, Buick, and GMC;
2. Reduce the number of name plates from 48 in 2008 to 34 in 2010;
3. Reduce the number of U.S. hourly employees from about 61,000 in 2008 to 40,000 in 2010 and 38,000 in 2011;
4. Reduce the number of assembly, powertrain, and stamping plants from 47 in 2008 to 34 in 2010 and 31 in 2012; and
5. Reduce the number of dealerships from 6,246 in 2008 to 3,605 in 2010.

Also during this period, Old GM and the UST discussed exchanging the UST Loan for stock in Old GM. In exchange for their claims, Old GM offered its stock to its unsecured creditors (Old GM Unsecured Creditors). Further, Old GM and the UAW discussed modifying the Old UAW VEBA.

Chapter 11 Bankruptcy Proceedings

Old GM was not able to complete the cost reduction and restructuring actions of its Revised Viability Plan, which resulted in extreme liquidity constraints. As a result, on June 1, 2009, Old GM and certain of its direct and indirect subsidiaries filed for Chapter 11 bankruptcy protection. Upon filing for bankruptcy protection, Old GM's stock stopped trading on the NYSE and was removed from the Dow Jones Industrial Average. However, Old GM's stock continued to be traded in the over the counter market under the trading symbol "GMGMQ".

When Old GM filed for bankruptcy, it had borrowed approximately $50 billion from the UST and approximately $9.1 billion from the Canadian Government. It had not paid $20 billion of its promised $33.7 billion contribution to the Old UAW VEBA. Old GM owed $27 billion to the Old GM Unsecured Creditors and $6 billion to its secured creditors (Old GM Secured Creditors).

To provide Old GM with funds to operate during the bankruptcy proceedings, the UST and the Canadian Government agreed to provide debtor-in-possession (DIP) financing to Old GM (DIP Facility). Under the DIP Facility, Old GM borrowed $33.3 billion from the UST and $2.2 billion from the Canadian Government. [25]

Section 363 Sale

On June 1, 2009, Old GM and New GM entered into a sale and purchase agreement (Purchase Agreement) pursuant to which under Section 363 of the U.S. Bankruptcy Code (363 Sale), New GM would purchase substantially all of Old GM's global assets and assume certain of Old GM's liabilities, then Old GM would liquidate.[26] As part of the 363 Sale, the UST, the Canadian Government, a New UAW VEBA, and the Old GM Unsecured Creditors would receive New GM stock, warrants, and/or notes in exchange for their claims against Old GM. After the 363 Sale, the UST, the Canadian Government, the New UAW VEBA, and Old GM's Unsecured Creditors would own 100 percent of New GM. [27]

On July 5, 2009, Bankruptcy Court Judge Robert E. Gerber approved the 363 Sale stating that the sale of Old GM's assets to New GM would: *"….preserve the going concern value; avoid systemic failure; provide continuing employment; protect the many communities dependent upon the continuation of [Old] GM's business, and restore consumer confidence."*[28]

On July 10, 2009, New GM entered into a secured credit agreement with the UST (UST Credit Agreement) and assumed $7.1 billion of the amount Old GM had borrowed under the DIP Facility. New GM entered into a loan agreement with the Canadian Government and assumed a $1.5 billion term loan that Canada had made to Old GM (Canadian Loan).

On July 10, 2009, New GM acquired substantially all of Old GM's assets and assumed certain liabilities of Old GM.[29] For Old GM's assets, New GM made a credit bid equal to the total of:

1. Debt of $19.8 billion under Old GM's UST Loan Agreement plus notes of $1.2 billion issued as additional compensation for the UST Loan Agreement plus interest; and

2. Debt of $33.3 billion under Old GM's DIP Facility plus notes of $2.2 billion issued as additional compensation for the DIP Facility plus interest less debt of $8.2 billion owed under the DIP Facility.[30]

As part of the 363 Sale, New GM issued to Old GM of 50 million shares of New GM common stock and two warrants, each to acquire 45.5 million shares of New GM common stock, and notes. In exchange for their claims, Old GM distributed the 50 million shares of New GM common stock and the warrants to the Old GM Unsecured Creditors.[31]

In exchange for their claims, New GM issued stock, warrants, and/or notes to the UST, the Canadian Government, and the New UAW VEBA. Specifically, New GM issued:

1. To the UST, 304.1 million shares of New GM common stock and 83.9 million shares of New GM preferred stock;
2. To the Canadian Government, 58.4 million shares of New GM common stock and 16.1 million shares New GM preferred stock; and
3. To the New UAW VEBA, 87.5 million shares of New GM common stock, 260 million shares of New GM preferred stock, a $2.5 billion note to mature on July 15, 2017, and a warrant to acquire 15.2 million shares of New GM common stock.

Old GM's shareholders did not receive any stock, cash, and/or property from New GM and in 2011 their Old GM stock was cancelled. The Old GM Secured Creditors were paid in full. On December 15, 2011, Old GM liquidated by transferring its remaining assets and liabilities to a trust, the Motor Liquidation Company GUC Trust (GUC Trust), and then dissolved.[32]

Some of Old GM's assets that New GM acquired in the 363 Sale included the brands Chevrolet, Cadillac, Buick, and GMC, assembly, powertrain and stamping plants, inventory, equipment, machinery, land, buildings, accounts and notes receivables, and intellectual property. New GM succeeded to approximately $18 billion of Old GM's approximately $45 billion of net operating losses (NOLs). Old GM's qualified pension plans for both hourly and salaried employees were transferred to New GM. New GM assumed liabilities related to product liability claims arising directly out of accidents and incidents occurring on or after the 363 Sale and from the operation or performance of both Old GM's and New GM's vehicles. It also assumed Old GM's warranty and recall obligations.

Some of the assets Old GM did not transfer to New GM included the Saturn brand and developed and undeveloped land and manufacturing plants that because of soil and groundwater contamination required environmental clean up. New GM did not assume liability for personal injury and wrongful death claims for damages allegedly caused by the presence of, or exposure to asbestos in vehicles and other products manufactured by Old GM. Additionally, New GM did not assume employment-related obligations arising from employment, potential employment, or termination of any individual prior to or at the 363 Sale. [33]

Post the Section 363 Sale

Following the Section 363 Sale, New GM announced that it had *"… launched a new company with a strong balance sheet, a competitive cost structure, and a strong cash position…"* which would enable it to compete more effectively with its U.S. and foreign-based competitors and have a strong presence in growing global markets.[34] Additionally, New GM was committed to:

1. Building its market share, revenue, earnings, and cash flow;
2. Improving the quality of its cars and trucks;
3. Increasing customer satisfaction and overall perception of its products; and
4. Taking a leadership role in developing advanced energy saving technologies, such as biofuels, fuel cells, and hybrid and electric vehicles.

New GM's Board of Directors had 13 members, with the UST nominating ten members and the Canadian Government and the New UAW VEBA each nominating one member.[35] In November and December 2010, New GM completed the public offering of 550 million shares of its common stock and 100 million shares of its preferred stock, which were listed on the NYSE and on the Toronto Stock Exchange.[36]

In December 2010, New GM purchased all of the UST's shares of New GM preferred stock for $2.1 billion.[37] In December 2012, New GM purchased 200 million shares of its common stock held by the UST for $5.5 billion.[38] By December 2013, the UST had sold all of its remaining shares of New GM common stock.[39] In April 2015, the Canadian Government sold all of its New GM common and preferred stock for $2.61 billion.[40]

Conclusion

In the 363 Sale, Old GM sold substantially all of its assets to New GM and Old GM's creditors exchanged their claims against Old GM for New GM stock, which as Judge Gerber stated enabled Old GM's value to be preserved before it died and created *"a new GM that* [would] *be lean and healthy enough to survive."*[41] The exchange of Old GM's debt for New GM stock resulted in U.S. federal income tax consequences for Old GM, Old GM's creditors and shareholders, and New GM. Under U.S. tax laws, what would have been their tax consequences?

Gretchen Lawrie is an Associate Professor of Accounting at California State University, Los Angeles College of Business and Economics. She graduated in 1989 from Wheaton College in Illinois with a degree in political science and from Wayne State University Law School in 1992 with a J.D. and then in 1997 with an L.L.M. in taxation. Prior to teaching, Gretchen was a senior associate, and then a manager in the federal mergers and acquisition tax group at KPMG LLP. Her research interests include corporate, partnership, and individual federal taxation.

Appendix A
U.S. Tax Concepts

Overview

For U.S. federal tax purposes, Internal Revenue Code (IRC) § 368 provides several different types of corporate tax-free (tax-deferred) reorganizations, including a Type G bankruptcy reorganization, which the U.S. Congress intended to "facilitate the rehabilitation of financially troubled businesses [and] corporate debtors in bankruptcy." [42] In a Type G reorganization, the assets of a corporation in bankruptcy (Debtor Corp) are exchanged for the stock and/or securities of another corporation (Acquirer) with Debtor Corp's creditors receiving Acquirer's stock and/or securities in satisfaction of their claims against Debtor Corp and Debtor Corp's shareholders exchanging their Debtor Corp stock or securities for Acquirer stock and securities.

If a bankruptcy reorganization does not qualify as a Type G reorganization, it may be considered a taxable bankruptcy reorganization and treated as a taxable sale of Debtor Corp's assets.

Tax-Free Type G Bankruptcy Reorganization

Statutory Requirements

For a reorganization to qualify as a Type G reorganization, both statutory and non-statutory requirements must be met. IRC § 368(a)(1)(G) provides that in a Type G reorganization:

1. Debtor Corp transfers all or part of its assets to Acquirer in exchange for Acquirer's stock or securities, such as bonds and notes, in a Title 11 or similar case, such receiverships and foreclosures; and
2. Pursuant to a plan of reorganization, the stock or securities received from Acquirer are distributed in a transaction that qualifies under IRC §§ 354, 355, or 356.

For purposes of IRC § 368(a), securities are defined as stock, warrants, and other rights to acquire stock. Generally, long-term debt instruments, such as bonds and notes, with terms of ten years or more are securities and short-term debt instruments with terms less than five years are not securities. Also, debt instruments are securities if they represent an investment and/or participation in a business, rather than a temporary advance to meet current corporate needs.[43]

If a bankruptcy reorganization meets the requirements of IRC § 354, it is an acquisitive Type G reorganization. To meet the requirements of IRC § 354:

1. Debtor Corp must transfer substantially all of its assets to Acquirer in exchange for Acquirer's stock and securities;
2. Debtor Corp's shareholders and security holders must exchange their Debtor Corp stock and securities for Acquirer's stock or securities; and
3. Debtor Corp must liquidate by distributing all stock, securities, and other properties received from Acquirer and all of the assets that Debtor Corp did not transfer to Acquirer.

The substantially all requirement is met if the assets transferred by Debtor Corp to Acquirer constitute over 70 percent of the fair market value (FMV) Debtor Corp's operating assets and more than 50 percent of the FMV of its gross assets.[44]

If a bankruptcy reorganization meets the requirements of IRC § 355, it is a divisive Type G reorganization. To meet the requirements of IRC § 355:

1. Debtor Corp must control Acquirer;
2. Debtor Corp must distribute Acquirer's stock or securities to its shareholders in exchange for their Debtor Corp stock and securities;
3. Debtor Corp must distribute enough of Acquirer's stock and securities to constitute control;
4. Both Debtor Corp and Acquirer must be engaged in an active trade or business; and
5. The distribution cannot be a device to distribute earnings and profits.

Non-Statutory Requirements

Besides meeting the statutory requirements, Type G reorganizations must also meet the following non-statutory requirements: 1) plan of reorganization; 2) business purpose; 3) continuity of business enterprise (COBE); and 4) continuity of interest (COI). A Type G reorganization must be carried out pursuant to a plan of reorganization that is adopted by each corporation that is a party to the reorganization, but it does not have to be in a particular form or in writing. Other than avoiding federal income taxes, a Type G reorganization must have a valid purpose, such as facilitating the rehabilitation of Debtor Corp, allowing Debtor Corp to continue as a business or transferring Debtor Corp's "wanted" assets and liabilities to Acquirer while retaining its "unwanted" assets and liabilities. To meet the COBE requirement, Acquirer must either continue at least one significant line of a Debtor Corp's historical business or use a significant portion of Debtor Corp's historic business assets in a business.[45]

The COI doctrine requires that the former shareholders of an acquired corporation must have a substantial equity interest in Acquirer after the reorganization.[46] However, if Debtor Corp shareholders are eliminated in its bankruptcy proceedings (e.g., their Debtor Corp stock is cancelled), there will be not be Debtor Corp shareholders to receive an equity interest. For purposes of the COI requirement, in Type G reorganizations, Debtor Corp's creditors are treated as its former shareholders. Under Treas. Reg. § 1.368-1(e)(2)(v) Ex 1, the COI requirement is met in Type G reorganizations if at least 40 percent of the FMV of the total consideration received by Debtor Corp's creditors and any remaining shareholders consists of Acquirer's stock.

<u>Tax Consequences</u>

Debtor Corporation's Tax Consequences

Recognition of Gains and Losses

In Type G reorganizations, under IRC § 361, Debtor Corp will not recognize gain or loss on exchanging its assets for Acquirer's stock, securities, money, and other property (boot).[47] It will also not recognize gain or loss on exchanging Acquirer stock, securities, money, and other property received from Acquirer for its creditors' claims and its shareholders' Debtor Corp stock. However, if Debtor Corp retains any Acquirer stock, securities, money, and property received from Acquirer, or assets it did not transfer to Acquirer, it will recognize gain, but not loss.

Under IRC § 357(c)(1), Debtor Corp may recognize gain if the liabilities assumed by Acquirer exceed the basis of its transferred assets. However, under § 357(c)(2)(B), this rule will not apply if Debtor Corp's former shareholders do not receive any consideration for their Debtor Corp stock.

Cancellation of Debt (COD) Income

In Type G reorganizations, Debtor Corp may realize COD income, if it distributes Acquirer's stock to its creditors in exchange for their claims against Debtor Corp. Under IRC § 108(e)(8), the amount of Debtor Corp's COD income equals the FMV of Acquirer's stock. However, under IRC § 108(a)(1), Debtor Corp's gross income will not include the COD income because the creditors' claims were discharged in a Title 11 case or while insolvent.

Under IRC §§ 108(b)(1) and (2)(A)-(G), Debtor Corp will reduce the tax attributes and the basis of property not transferred to Acquirer by the amount of its COD income in the following order: 1) net operating losses (NOLs) arising in the taxable year of the discharge and NOL carryovers; 2) general business credits carryovers; 3) minimum tax credit carryovers; 4) net capital losses or capital loss carryovers; 5) basis of depreciable and nondepreciable property; 6) passive activity loss and credit carryovers; and 7) foreign tax credit carryovers. Or, under IRC § 108(b)(5), Debtor Corp can elect to first reduce the basis of depreciable property, then reduce any remaining tax attributes in the order listed in IRC § 108(b)(2).

Acquirer Corporation's Tax Consequences

Under IRC §§ 361 and 1032(a), Acquirer will not recognize gain or loss on exchanging its stock, securities, money, and other property (boot) for Debtor Corp's assets. Under IRC § 362(b), Acquirer's basis in the transferred assets will be the same as Debtor Corp's basis in those assets immediately prior to the exchange. Under IRC § 1223(2), Acquirer's holding period in the transferred assets will include Debtor Corp's holding period in those assets immediately prior to the exchange.

Under IRC § 381, Acquirer will succeed to Debtor Corp's tax attributes, such as Debtor Corp's NOLs, earnings and profits, and capital loss carryovers. If Debtor Corp realizes COD income, Acquirer must reduce the tax attributes it succeeded to and the basis of property it acquired from Debtor Corp by the amount of the COD income in the order listed in IRC § 108(b)(2). Or, Acquirer can elect to first reduce the basis of Debtor Corp's depreciable property, then reduce any remaining tax attributes and other property in the order described above.

Debtor Corporation Creditors' Tax Consequences

Debtor Corporation Creditors Who are Security Holders

Under IRC § 354, if a creditor's claim against Debtor Corp is a security, the creditor will not recognize gain or loss on exchanging the claim for Acquirer stock and securities. The creditor's claim is a security if the debt instrument being exchanged is a long-term debt instrument with a term of ten years or more, but not less than five years, and/or represents an investment in or participation in Debtor Corp.

If along with Acquirer's stock and securities, a creditor receives money and other property, under IRC §§ 356(a)(1) and (c), the creditor will recognize gain, not loss, in an amount not in excess of the amount of money and the FMV of the other property. Also, the creditor will recognize ordinary income to the extent that the stock the creditor received was in exchange for interest that accrued, but was not paid, during the period the creditor held the claim.

Under IRC § 358(a)(1), the creditor's adjusted basis in Acquirer stock and securities will equal the adjusted basis of the claim immediately before the exchange less the amount money and the FMV of other property received from Acquirer plus any gain recognized by the creditor (Adjusted basis of creditor's claim – amount of money - FMV of other property + creditor's recognized gain = Acquirer stock and securities basis). Under IRC § 1223(1), if the creditor held the claim as a capital asset, the holding period in Acquirer stock and securities will include the period the creditor held the claim.[48]

Under IRC § 358(a)(2), the basis of money and other property received by a creditor in the exchange will equal the amount of money and the FMV of the other property. The creditor's holding period in the other property will not include Acquirer's holding period in the property.

Debtor Corporation Creditors Who are Not Security Holders

If a creditor's claim against Debtor Corp is not a security, under IRC § 1001, the creditor will recognize gain or loss on exchanging the claim for Acquirer's stock and securities. The creditor's recognized gain or loss will equal the difference between the FMV of Acquirer stock and securities plus the amount of money and the FMV of other property received from Acquirer and the adjusted basis of the claim (FMV of Acquirer stock and securities + amount of money + FMV of other property – adjusted basis of creditor's claim = creditor's recognized gain or loss).

The creditor's basis in Acquirer stock will equal the FMV of the stock and securities and the holding period in Acquirer stock and securities will not include the period the creditor held the claim. Under IRC § 358(a)(2), the basis of money and other property received by the creditor will equal the amount of money and the FMV of the other property. The creditor's holding period in the other property will not include Acquirer's holding period in the property.

Creditors Who Do Not Participate in Debtor Corp's Type G Reorganization

For Debtor Corp creditors, who do not participate in Debtor Corp's Type G reorganization, if their claim becomes worthless and it was a capital asset, under IRC § 165(g), they may be able to claim a worthless securities deduction, or under IRC § 166, claim a bad debt deduction, but not both.

Debtor Corporation Shareholders' Tax Consequences

Shareholders Who Participate in Debtor Corp's Type G Reorganization

If Debtor Corp shareholders participate in Debtor Corp's Type G reorganization, under IRC § 354, they will not recognize gain or loss on exchanging their stock for Acquirer's stock and securities. Under IRC §§ 356(a)(1) and (c), if the shareholders receive money and other property along with Acquirer's stock and securities, they will recognize gain, not loss, in an amount not in excess of the amount of money and the FMV of the other property.[49]

Debtor Corp shareholders' basis in their Acquirer stock and securities equals their Debtor Corp stock basis plus any recognized gain less the amount of money less the FMV of other property received from Acquirer less the amount of liabilities assumed by Acquirer as part of the reorganization (Debtor Corp stock basis + recognized gain – amount of money - FMV of other property –amount of assumed liabilities = Acquirer stock and securities basis). If Debtor Corp shareholders held their Debtor Corp stock as a capital asset, their holding period in their Acquirer stock and securities will include their holding period in their Debtor Corp stock.[50]

Under IRC § 358(a)(2), the basis of money and other property received by Debtor Corp shareholders will equal the amount of money and the FMV of the other property. Their holding period in the other property will not include Acquirer's holding period in them.

Shareholders Who Do Not Participate in Debtor Corp's Type G Reorganization

For Debtor Corp shareholders who do not participate in Debtor Corp's Type G reorganization, if they sell their Debtor Corp stock and it was a capital asset, under IRC §§ 165(f) and 1222, they may realize capital gains or losses. Or, if their Debtor Corp stock becomes worthless and it was a capital asset, under IRC § 165(g), they may be able to claim a worthless stock deduction.

Also, under IRC §§ 302 and 317, if Debtor Corp acquires its stock from its shareholders in exchange for cash or other property, but not Debtor Corp's own stock, the exchange may be characterized as a stock redemption, which depending on the circumstances, may be treated as if the shareholders had sold their stock, thus realizing gain or loss, or it may be treated as if they had received a dividend from Debtor Corp.

Taxable Bankruptcy Reorganization

If a bankruptcy reorganization does not qualify as a tax-free Type G reorganization, it may qualify as a taxable bankruptcy reorganization and treated as a taxable sale of Debtor Corp's assets.

Tax Consequences

Debtor Corporation's Tax Consequences

In a taxable bankruptcy reorganization, Debtor Corp will realize gain, which may be offset by its NOLs, or loss, equal to the difference between FMV of its assets and their adjusted basis (FMV of Debtor Corp's assets – adjusted basis of Debtor Corp's assets = Debtor Corp's realized gain or loss).

If as part of a taxable bankruptcy reorganization, Debtor Corp's debts are discharged, it will realize, but not recognize, COD income because its debts were discharged in a Title 11 case or while insolvent. For tax attributes and property not transferred to Acquirer, Debtor Corp will reduce the tax attributes and the basis of the property by the amount of its COD income in the order described in IRC § 108(b)(2). Or, under IRC § 108(b)(5), Debtor Corp can elect to first reduce the basis of Debtor Corp's depreciable property, then reduce any remaining tax attributes in the above order.

Acquirer Corporation's Tax Consequences

Acquirer's basis in Debtor Corp's assets will equal their FMV. Its holding period in the assets will not include Debtor Corp's holding period in those assets. Acquirer will not succeed to Debtor Corp's tax attributes, such as its NOLs. If Debtor Corp realizes COD income, Acquirer must reduce the basis of the property it acquired from Debtor Corp by the amount of the COD income in the order listed in IRC § 108(b)(2). Or, Acquirer can elect to first reduce the basis of Debtor Corp's depreciable property and then reduce the basis of other property in the order described above.

Debtor Corporation Creditors' Tax Consequences

If as part of a taxable bankruptcy reorganization, Debtor Corp's creditors exchange their claims for Acquirer stock, securities, money, and/or other property, under IRC § 1001, it will be a taxable exchange. The creditors will recognize gain or loss equal to the difference between the FMV of Acquirer stock and securities plus the amount of money and the FMV of other property received from Acquirer and the adjusted basis of their claims against Debtor Corp (FMV of Acquirer stock and securities + amount of money + FMV of other property – adjusted basis of creditors' claim = creditors' recognized gain or loss).

Their basis in Acquirer stock and securities will equal the FMV of the stock and securities and their holding period in their Acquirer stock and securities will not include the period they held their claims. Under IRC § 358(a)(2), the basis of money and other property received by Debtor Corp creditors will equal the amount of money and the FMV of the other property. Their holding period in the other property will not include Acquirer's holding period in the property.

For Debtor Corp creditors, who do not participate in a taxable bankruptcy reorganization, their tax consequences will be the same as discussed above for Debtor Corp creditors, who do not participate in Debtor Corp's Type G reorganization.

Debtor Corporation Shareholders' Tax Consequences

If, as part of a taxable bankruptcy reorganization, Debtor Corp shareholders exchange their stock for Acquirer stock, securities, money, and/or other property, it will be a taxable exchange. The shareholders will recognize gain or loss equal to the difference between the FMV of Acquirer stock and securities plus the amount of money and the FMV of the other property they received from Acquirer and the adjusted basis of their Debtor Corp stock (FMV of Acquirer stock and securities + amount of money + FMV of other property – adjusted basis of Debtor Corp stock = Debtor Corp shareholders' recognized gain or loss). Their holding period in their Acquirer stock and securities will not include the period they held their Debtor Corp stock.

Under IRC § 358(a)(2), the basis of money and other property received by Debtor Corp shareholders will equal the amount of money and the FMV of the other property. Their holding period in the other property will not include Acquirer's holding period in them.

For Debtor Corp shareholders, who do not participate in Debtor Corp's taxable bankruptcy reorganization, their tax consequences will be the same as discussed above for Debtor Corp shareholders, who do not participate in Debtor Corp's Type G reorganization.

Appendix B
Bankruptcy Timeline

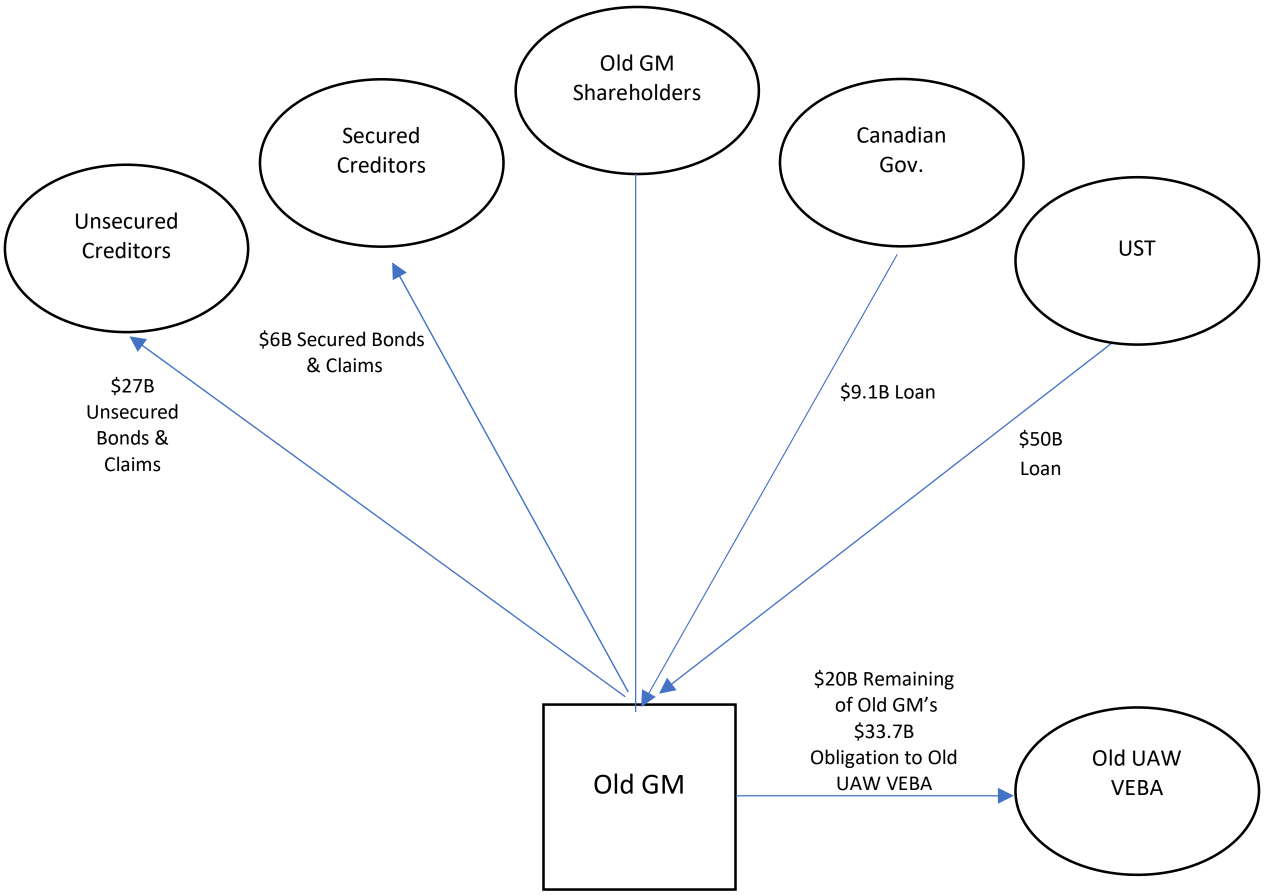
DATE	EVENT
Nov 2008	Old GM CEO Rick Wagoner and the CEOs of Ford Motor Company and Chrysler LLC (Big 3) testified in Congress and requested a $25 billion emergency loan.
12/2/2008	Old GM submitted to Congress its Restructuring Plan and requested $18 billion, consisting of $12 billion loan and $6 billion credit line.
12/4 & 12/5/ 2009	For a second times, CEOs of the Big 3 testified in Congress and requested $34 billion in financial assistance.
12/10/2008	The U.S. House of Representatives passed a bill approving direct loans to the Big 3 from the Troubled Asset Relief Program (TARP).
12/11/2008	The U.S. Senate does not pass the House of Representatives' bill.
12/18/2008	President George W. Bush issued an executive order authorizing the UST to make short-term loans from TARP of $17.4 billion to each of the Big 3 with the requirement that each viability plan had to be submitted by February 17, 2009 and approved by the U.S. government by March 31, 2009.
12/31/2008	Old GM and the UST entered into the UST Loan Agreement with the UST agreeing to loan Old GM up to $13.4 billion (UST Loan).
12/31/2008	Old GM borrowed $4 billion from the UST.
January 2009	Old GM borrowed $5.4 billion from the UST.
February 2009	Old GM borrowed $4 billion from the UST.
2/16/2008	The Obama Administration appointed the Presidential Task Force on the Auto Industry (Auto Task Force).
2/17/2009	Old GM submitted its Viability Plan.
3/30/2009	The Auto Task Force announced that Old GM's Viability Plan was not viable and extended the certification deadline to June 1, 2009.
3/30/2009	The Obama Administration announced that Old GM could borrow an additional $6 billion from the UST while Old GM worked with the Administration on a revised viability plan (Revised Viability Plan).
April 2009	Old GM entered into a loan and security agreement with the Canadian Government and borrowed $2.4 billion (Canadian Loan).
April to May 2009	Old GM borrowed $6 billion from the UST.
4/27/2009	Old GM submitted its Revised Viability Plan.
6/1/2009	Determining it would not be able to complete its Revised Viability Plan, Old GM and certain of its subsidiaries filed for Chapter 11 bankruptcy protection in the U.S. Bankruptcy Court for the Southern District of New York.
6/1/2009	Under a debtor-in-possession (DIP) facility, Old GM borrowed $33.3 billion from the UST and $2.2 billion from the Canadian Government.
6/1/2009	Old GM announced that:

	• Pursuant to Section 363 of the U.S. Bankruptcy Code (363 Sale), Old GM would sell substantially all of its global assets to another corporation (New GM) with New GM assuming certain of Old GM's liabilities (363 Sale); • In exchange for their claims against Old GM, the UST, the Canadian Government, a New UAW VEBA, and Old GM's Unsecured Creditors would receive New GM stock, warrants, and/or notes and together would own 100 percent of New GM; • Old GM shareholders' Old GM stock would be cancelled; and • Following the 363 Sale, Old GM would liquidate.
7/5/2009	U.S. Bankruptcy Court Judge Robert E. Gerber approved the 363 Sale.
2009	To carry out the 363 Sale, the UST formed Vehicle Acquisition Holdings, LLC, which was converted to a corporation, NGMCO, Inc. and re-named the General Motors Company (New GM).
7/10/2009	New GM entered into a secured credit agreement with the UST (UST Credit Agreement) and agreed to pay $7.1 billion of the amount Old GM had borrowed under the DIP Facility.
7/10/2009	New GM entered into a loan agreement with the Canadian Government and agreed to pay the CAD $1.5 billion term loan that Canada had made to Old GM (Canadian Loan).
7/10/2009	New GM entered into an agreement with the UAW to replace the Old UAW VEBA with a New UAW VEBA.

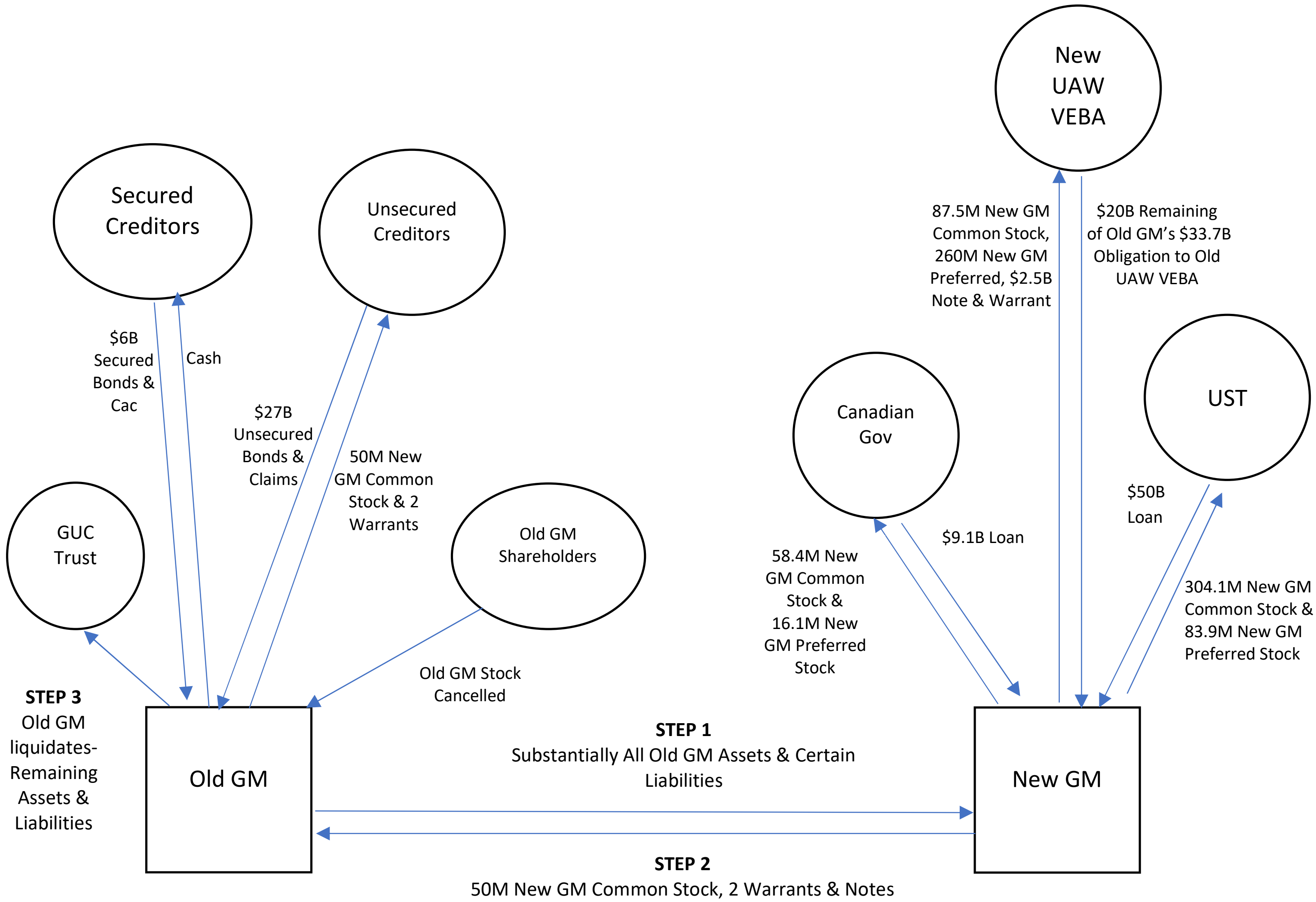
7/10/2009	• In the 363 Sale:
	  o New GM acquired substantially all of Old GM's assets and assumed certain of Old GM's liabilities.
	  o New GM issued to the UST, the Canadian Government, and the New UAW VEBA stock, warrants, and/or notes in exchange for their claims against Old GM.
	  o New GM issued to Old GM, stock, warrants, and a note, with Old GM distributing in 2011 the stock and warrants to its Unsecured Creditors in exchange for their claims.
	• After the 363 Sale, the UST owned 60.8% of New GM, the Canadian Government 11.7%, the New UAW VEBA 17.5%, and the Old GM Unsecured Creditors 10%.

Nov. and Dec, 2010	New GM completed the public offering of 550 million shares of its common stock and 100 million shares of its preferred stock.
Dec. 2010	New GM bought all of the UST's shares of New GM preferred stock for $2.1 billion.
2011	In exchange for their claims, Old GM distributed the New GM stock and warrants received from New GM to its Unsecured Creditors.
2011	Old GM cancelled its shareholders' Old GM stock.
2011	Old GM liquidated by transferring its remaining assets and liabilities to the Motor Liquidation Company GUC Trust, then dissolved.
Dec. 2012	New GM purchased 200 million shares of its common stock held by the UST for $5.5 billion.
Dec. 2013	The UST sold all of its remaining shares of New GM common stock.
April 2015	The Canadian Government sold its 73.4 million shares of New GM common and preferred stock for about $2.61 billion.

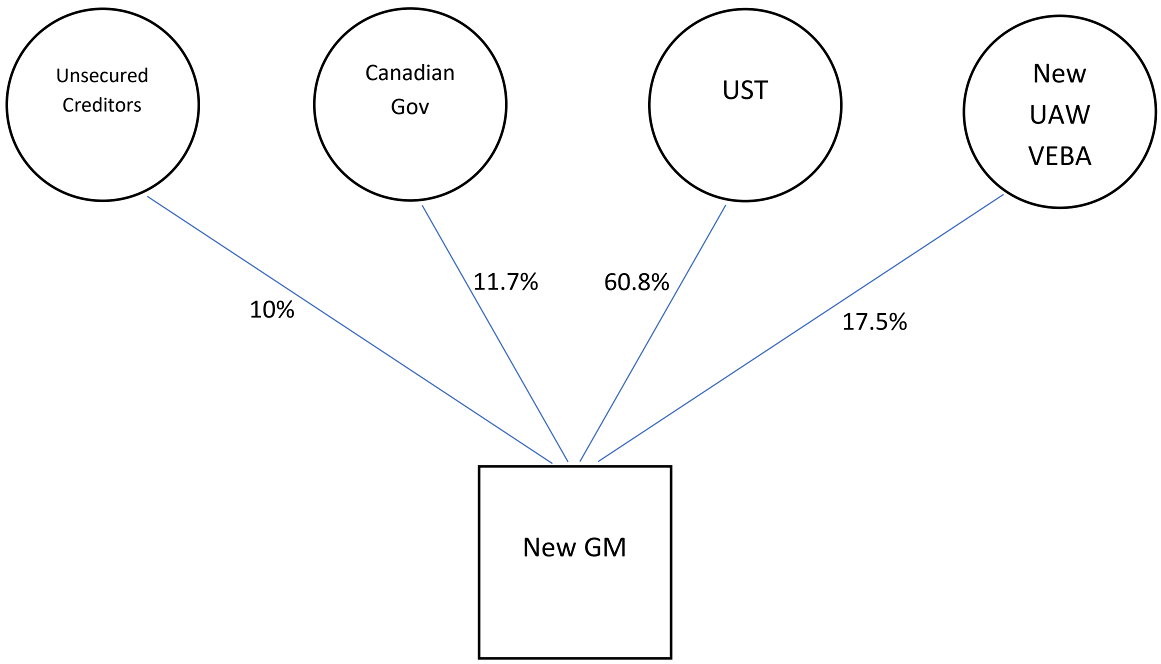
Appendix C.1
Pre-section 363 Sale: Old GM's Shareholders & Creditors



Appendix C.2
Section 363 Sale



Appendix C.3
Post-section 363 Sale: Ownership of New GM



References

[1] In re General Motors Corp., 407 B.R. 463, 474- 476 (Bankr. S.D.N.Y. 2009); General Motors Corp. United States Securities and Exchange Commission Form 10-K: Annual Report (2008) (Old GM 10-K (2008)).

[2] General Motors Company United States Securities and Exchange Commission Form 10-K: Annual Report (2010) p. 41 (New GM 10-K (2010)).

[3] GM, 407 B.R. 474-476; Sharon Terlep, John D. Stoll, and Neil King Jr., GM's Dismal Year: $30.9 Billion Loss, Wall Street Journal (February 27, 2009).

[4] GM, 407 B.R. at 476.

[5] Terlep (2009).

[6] New GM 10-K (2010).

[7] The New General Motors Company Launches Today, Press Release (July 10, 2009).

[8] *Id.*

[9] Lawrence R. Gustin, BMD- A Brief History (1993). Retrieved from https://www.buickclub.org/bmd-a-brief-history; General Motors Fast Facts, CNN (September 16, 2019).

[10] A history of key United Auto Workers strikes against GM, The Associated Press (October 16, 2019).

[11] Susan Kelly, New GM Slogan Viva the VEBA, Workforce (October 18, 2007); Jui Chakravorty and Kevin Krolicki, GM details savings from UAW health care deal, Reuters (October 15, 2007).

[12] Old GM 10-K, p. 57 (2009); New GM 10-K (2010).

[13] Bill Vlasic and David M. Herszenhorn, Chiefs Plead for Aid, New York Times (November 18, 2008).

[14] General Motors Corporation, Restructuring Plan for Long-Term Viability Submitted to Senate Banking Committee & House of Representatives Financial Services Committee (December 2, 2008) p. 4 (Restructuring Plan (2008)); Old GM 10-K (2009).

[15] President Bush Discusses Administration's Plan to Assist Automakers, Press Release (December 19, 2008) Retrieved from https://georgewbush-whitehouse.archives.gov/news/releases/2008/12/20081219.html (Pres. Bush (2008)).

[16] *Id.*

[17] Old GM 10-K (2009); New GM 10-K (2010).

[18] *Id.*

[19] Obama's Remarks on Auto Industry Restructuring (March 30, 2009).Retrieved from https://www.npr.org/templates/story/story.php?storyId=102502639 (Pres. Obama (2009)).

[20] *Id*.

[21] *Id.*

[22] New GM 10-K (2010).

[23] GM Accelerates its Reinvention as a Leaner, More Viable Company, Press Release (April 27, 2009).

[24] *Id.*

[25] New GM 10-K (2010). DIP financing is a form of lending by which banks and other lenders provide funds to companies in Chapter 11 bankruptcy that allows the companies to continue during the bankruptcy proceedings. (Harris B. Winsberg and Brett D. Goodman, A Primer on DIP Financing in the COVID-19 Landscape (April 22, 2020) Retrieved from https://www.troutman.com/insights/a-primer-on-dip-financing-in-the-covid-19-landscape.html).

[26] U.S. Bankruptcy Code Section 363 authorizes the sale of a debtor company's assets out of its ordinary course of business, requires only the bankruptcy court's approval, and can be completed without the voting, disclosure,

and confirmation requirements for bankruptcy reorganization plans (A. Joseph Warburton, Understanding the Bankruptcies of Chrysler and General Motors: A Primer, 60 Syracuse L. Rev. 531 (2010)).

[27] New GM 10-K (2010); Amended and Restated Master Sale and Purchase Agreement By and Among General Motors Corporation, Saturn LLC, Saturn Distribution Corporation and Chevrolet-Saturn of Harlem Inc. and NGMCO, Inc. (June 26, 2009) (Purchase Agreement).

[28] GM, 407 B.R. at 480.

[29] New GM 10-K (2010). Old GM was renamed the Motors Liquidation Company (MLC).

[30] New GM 10-K (2010). A credit bid or credit bidding is a process under Bankruptcy Code § 363(k) that allows "… a secured creditor to use up to the full amount of the debt owed to the secured creditor by the debtor as currency in a bankruptcy auction sale of the collateral securing the debt owed to the secured creditor." (Malani J. Cademartori and Blanka Wolfe, The Nuts And Bolts Of Credit Bidding: A Primer for Traditional Lenders And Distressed Debt Investors, Corporate Counsel Business Journal (February 28, 2011)).

[31]Amended and Restated Master Sale and Purchase Agreement By and Among General Motors Corporation, Saturn LLC, Saturn Distribution Corporation and Chevrolet-Saturn of Harlem Inc. and NGMCO, Inc. (June 26, 2009) (Purchase Agreement); New GM 10-K (2010).

[32] New GM 10-K (2013).

[33] New GM, 10-K (2010); GM, 407 B.R. at 481-482.

[34] New GM 10-K (2010).

[35] *Id.*

[36] General Motors Company, United States Securities and Exchange Commission Form 10-K: Annual Report (2013).

[37] U.S. Department of Treasury, General Motors Repays Taxpayers $2.1 Billion, Completing Repurchase of Treasury Preferred Stock, Press Release (December 15, 2010).

[38] Jeff Bennett and Jeffrey Sparshot, GM to Buy Back $5.5 Billion in Stock from Treasury, Wall Street Journal (December 19, 2012).

[39] U.S. Department of Treasury, Treasury Sells Final Shares of GM Common Stock, Press Release (December 9, 2013).

[40] Melissa Burden, Canada loses $800M Canadian in GM bailout, Detroit News (April 9, 2015).

[41] GM, 407 B.R. at 474 and 475.

[42] United States Senate Report No. 96-1035, 96th Cong., 2nd Sess. (November 25, 1980) pp. 34 and 35 (U.S. Senate Report (1980)).

[43] Treas. Reg. § 1.354-1(e); Camp Wolters Enterprise, Inc. v. Comm'r, 22 T.C. 737 (1954), *aff'd*, 230 F.2d 555 (5th Cir. 1956); Pinellas Ice & Cold Storage Co. v. Comm'r, 287 U.S. 462 (1933)).

[44] IRS Private Letter Ruling 940909037 (December 7, 1993).

[45] Treas. Reg. §§ 1.368-1(c) and 1(d), 1.368-2(g), and 1.368-3(a).

[46] Treas. Reg. §§ 1.368-1(b), (e)(1)(i) and (e)(6).

[47] Proposed Treas. Reg. § 1.1400Z2(b)-1(a)(2)(i) defines boot as "… money or other property that [IRC] section 354 or 355 does not permit to be received without the recognition of gain."

[48] U.S. Senate Report (1980).

[49] IRS Private Letter Ruling 9629016 (April 22, 1995).

[50] 26 USC § 1223(1).

DON WALTERS AND NEXTBLOK: CHANGING THE WAY HOUSES ARE BUILT

STEPHEN J.J. MCGUIRE
California State University, Los Angeles

NextBlok *"will change the way houses are built in the United States and the world,"* claimed Don Walters, the 88-year-old inventor and entrepreneur. Walters, a California businessman with 15 years' experience as a building contractor, received a U.S. patent for an insulated concrete form (ICF) block used for building construction (see Exhibits 1 and 2). Unpatented – but surely as important – were Don's notions of how a house could be efficiently constructed using his block. NextBloks would click together and be held by glue, so that construction would be easy and waste-free. The big advantage, Don claimed, was that his block would be "*easy to build with"* compared with rival non-wood materials for housing construction. But NextBlok offered several other advantages: it was fire-resistant, wind and hurricane resistant, impervious to water, pest and termite-free, and because the material itself served as insulation, it would reduce homeowners' heating and cooling costs significantly. All for a price comparable to a wood house … a wood house that could burn, blow away in a storm and wash away in a flood, become a nest for rodents and termites, and require enormous energy to heat and cool. Who wouldn't want a NextBlok house?

Don called his product *"triple green."* NextBlok promised to reduce waste by using recycled Styrofoam, save trees, and save energy. Don prepared a detailed and ambitious business plan and practiced over and over again his PowerPoint presentation. (Exhibit 3 provides the product description included in his business plan.) After years of pitching his business idea to anybody who would listen, Don had yet to raise any capital. Everybody seemed to love the idea, but nobody wrote a check.

Were Don's ambitions too grandiose? Why was it proving so difficult to raise funds – was the venture simply too risky for potential investors, or had he been knocking on the wrong doors? Should Don Walters (a) continue to seek investors with the current business plan; (b) seek a different source of funding; (c) substantially revise his plan to make it more attractive to 'traditional' investors; or (d) discard his business model, and try to sell or license the patent?

Don established NextBlok, Inc. to manufacture and commercialize the NextBlok product and other associated building materials – some forthcoming from NextBlok, Inc. and others manufactured by other firms. NextBlok, Inc. would compete in the framing and construction materials industry. It would initially target the new home construction markets in the U.S. and Mexico, and later expand to other geographies and other markets such as small commercial and industrial buildings and military applications.

Target Market

All houses were built on a frame – the support structure of the building. The majority of houses built in the U.S. were made with wood frames, but houses could also be made with the more expensive cement, steel, or brick frames. Homebuilders in the United States had historically used lumber as their default framing material because of familiarity and low cost in home construction. To replace wood, NextBlok, Inc. would need to convert traditional house builders to a new material. Happily, a number of factors had led builders to seek alternate framing materials: increasing lumber prices and decreasing availability and quality of wood, new state and federal laws that promoted green alternatives, and wood's vulnerability to pests and toxic mold. Per Don Walter's calculations, the total cost of a NextBlok house would be nearly identical to that of a wood frame house. Moreover, it took ¾ of an acre of trees to produce a single 2,500 square foot house, while NextBlok was made of cement and waste EPS (expanded polystyrene, typically known as Styrofoam). NextBlok, in many ways, was a much superior building material to wood or any existing ICF product. (Exhibits 4 and 5 provide cost and quality comparisons with rival framing materials.)

The target markets for NextBlok, Inc. were U.S. and Mexican builders of new homes. Approximately 1.2 million new homes were built in the U.S. each year, and about 500,000 in Mexico. Per Don's data, the U.S. and Mexican framing materials market together reached about $29 billion. Don estimated that the market was growing annually at about 3%. After all, the population was constantly growing and people needed houses. ICFs were already on the markets, with total sales of $260 million in the U.S., and an average growth rate of over 10% per year for the past several years. Don estimated that the estimated framing market exceeded $13 billion per year in the U.S. market alone. And while the U.S. was the big market, Don was eager to begin marketing in Mexico, where – unlike in the U.S. – wood was not as widely used in framing homes. Mexican houses were typically made of cement or brick. Don thought that Mexican builders would be more open to using an alternative framing material that was not a radical departure from their current building methods. Frosty Canada was also a great potential market, and in fact, some U.S. manufacturers sold ICF products to Canadian builders. Don also identified a number of secondary markets that could be approached in a later phase of development. There were obvious commercial, industrial and military uses for the product. Internationally, the framing materials market was estimated to exceed $51.4 billion annually.

Don believed that NextBlok's product advantage would enable it to dominate the house framing/construction material market – it was just a matter of making the product available to builders. With NextBlok's lower costs and superior product features, Don was confident that, in short order, his pioneering product would be adopted worldwide.

Don Seeks Investors

Don had been shopping the concept and plan to just about anybody who would listen nearly every day for several years. Every morning he got up and did *something* to raise interest in the product or send information to potential investors or parties with influence in the housing construction industry. Just about every afternoon he had a meeting with somebody to exchange ideas or, on a good day, to pitch for investment. Don had spent many hours, with the help of a Los Angeles business school professor, to refine his business plan and practice his *"pitch"* with a set of PowerPoint overheads. He pitched, and pitched, and pitched the business idea to dozens of *"Angels,"* interested parties, and wealthy individuals. He commented that he had *"many nibbles but no bites,"* that is, no serious offer of investment. Don was worried about the people he called *"vulture capitalists"* who wanted majority ownership for non-commensurate input. And while Don was willing to give up – eventually – the majority of the equity in the business, he was loathe to do so before the business was up and running with enough capital to do it right. He believed that his business idea wasn't attractive to traditional investors because it was not a *"sexy dot-com business."* And while everybody was *in theory* interested in green products, in practice it was hard to get investors excited about green construction. Don remained amazed that investors couldn't see the obvious growth potential; after all, the market for his product was huge! He did recognize that the size of investment sought (see Exhibit 6), about $7.5 million to start and a total of $67.4 million over three years, plus the fact that Don himself could provide no cash equity, were factors that made the process more difficult. Don was convinced that he needed to find somebody with high-level credibility who could open doors for him, so he could get access to potential investors. He was also bothered that universities and government agencies could not provide him with *"the list"* of potential financiers/investors who could be of help to entrepreneurs like him.

Knocking on Many Doors

After several unsuccessful pitches, Don realized that investors were wary of making significant investments in a business that would rely entirely upon a man of his age. After much soul searching, he arrived at the conclusion that he would need to find a CEO to run the business. Moreover, he liked the idea of having somebody run the business so that he could concentrate on further product development, process innovations, and filing for patent extensions and new patents. He had a long list of new products he wanted to work on. He approached a few acquaintances and explored the possibility of one of them taking the helm, but none of them seemed able to raise the capital he needed. He then decided to place an ad on Craigslist for a CEO who would find funding and run the business (see Exhibit 15 for Craigslist ad.) At any given time over the past two years, Donald Walters had three to five people assisting him try to raise capital – whoever brought in the money, Don promised, would become CEO of the company. *"You gotta dance with the one who brung ya,"* he liked to say. What Don learned, however, was that few investors were willing to consider the amounts he needed – some seemed to think the project was too big, and a few thought it was too small to consider. (One potential investor from the Middle East and another from Turkey had talks with Don over several months and convinced him that *"too small would kill the project."* However, neither one made the investments they were talking about.)

One or two of the people who showed interest, Don believed, had presented him with funding schemes that might very well have been scams. So in spite of having made dozens of presentations and having corresponded with hundreds of potential investors, Don had not been able to raise any money at all. The people he found to help him raise money – all of whom were initially excited about the prospect of becoming CEO and confident that they could raise the money – gradually turned their attention elsewhere. How would Don raise the capital he needed to launch NextBlok?

Sell or License the Patent?

When Don discussed his business ideas with people, he often heard the suggestion to *"sell the patent"* or *"license the patent."* After all, well-wishers said, given your age, you should be able to enjoy life now with the money you would get. According to Don, one person to whom he pitched the idea *"offered a million dollars"* for outright ownership of the patent, but Don hesitated and the offer evaporated. The offer, however, was vague and not in writing. In another case, a San Francisco firm offered to find a company or companies that would license the use of the patent. When the San Francisco firm sent Don a contract, he balked: apparently, this matchmaker would keep 15% of all revenue generated from the license deal in perpetuity. Don considered himself a *doer* – a person who actually go things done – and it bothered him that so many people he met were merely *talkers* with no capability to make things happen.

Don assumed that existing ICF firms would have no interest at all in licensing his patent. He believed that the composite ICF manufacturers, especially the market leader Rastra, were complacent and without the bold vision needed to enlarge the market beyond the current niche of ICF builders. He approached cement manufacturers, but never got in the door. A major waste management firm, interested in getting rid of Styrofoam, initially showed interest but nothing came of several meetings.

It was also suggested to Don that he arrange for a joint venture with a housing developer. A developer, who could both be a capital investor and a major customer for blocks, could get the business off the ground. Maybe so, Don thought, but where were the developers who might be interested in ICFs? Most ICF homes were built by independents on single plots or small developments. Very large development firms – large enough, that is, to give NextBlok enough business to get started – shied away from new approaches. When Don approached several large development companies, they showed no interest. Moreover, Don noted, *"the big boys like KB Homes"* had an inventory of unsold wood houses they couldn't get rid of at a profit.

Yet he remained convinced: if Don Walters could construct a model NextBlok house, interest would be created. All investors needed was to realize the tremendous advantages that such a home offered, and just how attractive a long-term investment like this one would turn out to be. Nonetheless, he could not build a model NextBlok house without a capital investment. Without the investment, he couldn't show off a model home. Without a model home, he thought he would not be able to get the investment he needed.

NextBlok's Competitive Advantages

Don believed that the attractiveness of his new venture was not only in its financial returns – which would be very good but not exorbitant – but also because NextBlok represented a fundamental shift in the technology of building construction. He envisioned a vast international market for the product. For the U.S. market, and particularly for California, he was proud that NextBlok was *"Triple-Green."* It was green because: 1) the blocks would be made from waste Styrofoam; 2) the blocks were self-insulating so that a dwelling built with the material would require less air-conditioning in warm weather and less heating in cold weather; and 3) no trees were killed to make the blocks.

Product Advantages over Rival ICFs. Insulated concrete forms (ICFs) were heavy frames that addressed the insulation problems associated with steel, cement and brick. ICFs were not new. They had been used in housing construction since the 1970s. Unlike the NextBlok, rival ICFs did not click together. There were two major types of ICF forms on the market: EPS forms (100% EPS that were later filled with cement) and Composite ICFs (which had ingredients similar to NextBlok, a mixture of some insulating material and cement).

While the use of ICFs has grown quickly in the United States, according to Don there were two main obstacles to their widespread acceptance. First, existing ICF products were difficult to build with. Second, builders were reluctant to adopt new materials, particularly if they were not supplemented with plans, cost estimates, samples, training materials, and technical support. Don planned to address both weaknesses with NextBlok, Inc.

Don had prepared an exhaustive study on the limitations of existing ICF products, which he was happy to discuss at length with anyone who would listen, including some of the following:

- ***Existing ICF products were expensive.*** NextBlok would allow builders to make a high quality house at a price nearly identical to that of a house built with wood, and about 1/3 the cost of using other ICFs.
- ***EPS forms were difficult to build with.*** EPS forms (EPS-only forms that were later filled with cement) were difficult to build with and labor intensive, primarily because an extensive

system of bracing needed to be used. Some EPS forms required a labor-intensive process of attaching mechanical clips to ensure alignment. Don said when a builder used EPS forms, he had to *"build a wall in order to build a wall,"* which made no sense. EPS forms required 35% more cement than NextBlok would, and cost 30% more in material and labor. (Exhibit 7 shows the bracing required when using EPS forms.) NextBlok's patented shape created a mechanical seal at each joint, eliminating the need for bracing.

- ***Composite ICFs were cumbersome.*** ICFs from the companies Rastra, Trilogy, and Cempo were large (10 feet long), heavy (110 to 300 pounds), and cumbersome to align and use. Placing the blocks required a crane and a crew of strong laborers. Each NextBlok would weigh only 34 lbs., and could easily be lifted and fitted in place by a single worker, and transported to any building site on standard size pallets. Both rival ICFs and wood were wasteful. Houses made with existing composite forms typically resulted in a large amount of waste, since the huge blocks had to be cut to fit the shape that the architect had planned. (Exhibit 8 shows waste at two building sites, one using wood and the other using one of Don's rival's Composite ICFs.) Because of NextBlok's shape, waste at a NextBlok building site would be minimal.
- ***EPS forms and Composite ICFs had blow-outs.*** Both EPS forms and existing Composite ICFs were susceptible to *"blow-outs that caused significant delays in construction,"* Don noted. Blow-outs occurred when cement leaked out from between the blocks and caused a structure to collapse. (Exhibit 9 shows a blow-out that occurred by a builder using a rival product.)
- ***Rival products offered builders very limited technical support, or none at all.*** NextBlok, Inc. would provide a full array of support services to builders, and would be able to provide approved plans, blueprints, and eventually full *"kits"* for house construction.

Product Advantages over Wood Frames. The NextBlok housing frame had many advantages over a wood housing frame. The labor and material costs for insulation, HVAC, and foundations were reduced without compromising quality. The insulation of a NextBlok home was superior to that typically placed in a wood home. Working with data reported by HUD on ICF houses compared with traditional wood homes, Don estimated that NextBlok homes would save owners 44% on heating and cooling costs. NextBlok homes would also be quieter than wood homes were. Moreover, ICFs were fire resistant; the material did not sustain combustion – a feature that should be particularly appealing to home buyers in places like California where homes were threatened by fires. Unlike wood houses, which provided nooks and crannies for pests to make nests, an ICF home couldn't be gnawed by rodents or eaten by termites.

Moreover, toxic mold – which grew on wet wood and had caused some homeowners to be so sick they had to move out of their new houses – could not survive on cement and Styrofoam.

Again based on the HUD studies, Don estimated that a NextBlok home would be resistant to earthquakes up to a magnitude of 7.5 and could withstand hurricane winds up to a Category 5. He liked to claim that if the houses in New Orleans had been made of NextBlok, Hurricane Katrina would have been only a minor annoyance. To prove his point, he carried a photograph of one lonely house that remained standing while all of its neighbors were swept away by Katrina – a house constructed (by the owner himself) with ICFs (see Exhibit 10).

One potential market-limiting factor was that Don's technology was limited to a maximum height of five (standard) levels. There were, apparently, some engineering characteristics of the material that will not allow it to support taller structures.

Don's concept was through and through innovative. ICF blocks made of about 85% Styrofoam and 15% concrete were not new. After the ICF composition was invented by Warner Gragorie in 1968, the first ICF plant was established in 1972 by Rastra, the current ICF industry leader. What was new? Don's proposed manufacturing process was expected to be more advanced and efficient, and his block design - size and configuration - allowed for greater efficiencies in both manufacturing-distribution and the building construction process. In fact, the technology to combine the ingredients for the blocks would be new also, and Don hoped to get multiple patents on his design for a block making *"machine."* Don's sample NextBloks were crude (see Exhibit 2) but did allow investors to see what the product would look like.

Strategy

NextBlok, Inc.'s strategy for entering the market began with making the machine that would be needed to manufacture the blocks, then establishing one prototype factory (the machine plus peripheral equipment, with silos for water). Doing so would allow Don to produce the first blocks and immediately use them to build a proof of concept house. The first house would be critical to show to investors and builders, as well as necessary to run tests and identify areas for improvement. Don had prepared detailed sketches, blueprints and plans for the factory, and was convinced that he could obtain several additional patents. According to Don's business plan, in a first phase a prototype machine would be designed and constructed, the production process refined and tested, and the initial factory sites selected. In a second phase, NextBlok, Inc. would open plants in the U.S. and Mexico. Following that, NextBlok, Inc. would work on new product development alongside the production and sale of the core product while working on new applications and complementary building materials.

Marketing Plan

Don believed he had a well-crafted marketing plan. With funding, he would hire professionals in marketing, sales, customer service, and public relations. He would have a team of expert craftspeople who could be rushed to a site to solve any technical problem, and provide supplemental training to builders. NextBlok, Inc. would target the key decision makers in the framing materials selection process: developers, general contractors, architects, and local building authorities through direct marketing and public relations. In addition, an advance team of technical salespeople would support each new factory in the locations being targeted.

NextBlok's promotional strategy would focus first on 500-plus builders who already used ICFs. They would be provided with technical documentation, samples, house plans, and training materials. Don spoken with many of them about his new product. Their response was typically something along the lines of, *"When will this stuff be available, Don?"*

Second, architects and local building authorities in certain locations would be contacted through direct marketing and seminars, and provided with technical information and materials describing NextBlok. NextBlok would even train and provide official certification of trained builders. National and local architectural organizations and trade publications would likewise be contacted by NextBlok's marketing team.

Third, promotional efforts would be directed at major developers and general contractors who primarily built with wood. In these cases, the marketing pitch would be to *"convert"* them to NextBlok, and substantial concessions in price would be made for those who were willing to give it a try.

Fourth, potential new homeowners would be informed about NextBlok through public relations actions. Don envisioned his team of experts building a house on a television program like *Extreme Makeover: Home Edition.*

Finances

After many hours working with a spreadsheet, Don arrived at the conclusion that the project wouldn't work if it were undercapitalized. He needed to develop the block-making machine, then construct the prototype factory. He insisted that there be funds available for proper marketing and start-up expenditures (see Exhibit 11). NextBlok, Inc. would then need additional investment for expansion of factories and to go after the U.S. and Mexican markets. His business plan projected gross revenues of $672 in the fifth year of operations, resulting in an operating cash-flow of 207.3 million for that year. (See Exhibits 16 to 18 for financial projections.). The incremental return on each additional factory was estimated to be in excess of 70% over five years and beyond.

Frankly, Don believed, once the pilot factory got worked out and the roll-out started, his business would be very attractive in financial terms. The market was enormous and the product highly profitable. Of course, to achieve these sales volumes meant going beyond the niche of builders already convinced that ICFs were superior. That meant convincing builders accustomed to wood that NextBlok was superior.

Don Walters was absolutely convinced that *"NextBlok will be the best ICF to build with."* In concept, NextBlok was an extraordinary framing material. Compared to other ICFs, it promised to minimize waste, cost less, be easy to use, and come with full technical support. But it seemed house builders resisted change. Would NextBlok, Inc. be successful in convincing builders to choose NextBlok over wood, and for that matter, over rival ICF materials?

Were Don's ambitions too grandiose? Why was it proving so difficult to raise funds – was the venture simply too risky for potential investors, or had Walters knocked on the wrong doors?

Should Don Walters (a) continue to seek investors with the current business plan; (b) seek a different source of funding; (c) substantially revise his plan or to make it more attractive to 'traditional' investors; or (d) discard his business model, and instead try to sell or license the patent?

Exhibit 1. NextBlok Patent

Source: Don Walters

U.S. Patent Jul. 8, 2003 Sheet 11 of 15 US 6,588,168 B2

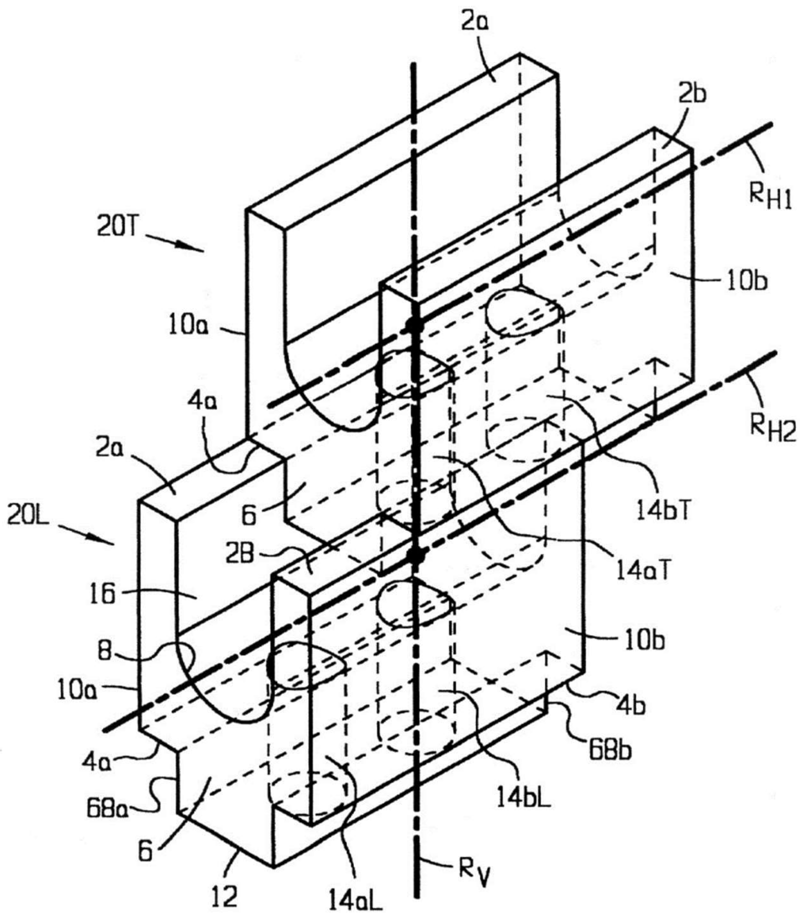


Exhibit 2. Photos of NextBlok

Source: Don Walters

Exhibit 3. Product Description (Excerpt from Don's Business Plan)
Source: Don Walters

What is NextBlok?

NextBlok is a patented insulated concrete form (ICF) made of a composite mixture of 15% cement and 85% recycled EPS (expanded polystyrene), to construct exterior and interior walls (framing) for houses, condominiums, and commercial buildings, of up to five floors. Its patented block shape is 10" x 16" by 32," though blocks can be produced with a variety of dimensions to accommodate differing construction requirements.

Like other ICFs, a NextBlok wall is first assembled, glued, and then reinforced with rebar. The advantage of NextBlok is that unlike competitors, its patented shape clicks together, without the need for time consuming block alignment and costly external bracing. Cement is then injected through channels into the NextBlok wall, where it hardens to form a reinforced concrete frame structure. The forms (or blocks) are left in place to provide the hard wall surface, insulation, and sound buffering. The walls are then sealed using plaster or a proprietary stucco-cement mix.

A standard electrical saw/router can be used to rapidly groove the wall for the installation of the electrical wiring, copper piping, and to cut windows in the structure prior to reinforcement with rebar. Since the NextBlok form provides insulation, there is no need for additional insulation. Moreover, because the internal walls are plastered, there is no need for drywall installation.

NextBloks are light enough for one worker to lift and place easily (approximately 34 lbs.) without cranes or winches. Because the blocks click together, there is minimal of waste of materials. Because of the small size, the product can easily be palletized for transportation.

NextBlok is a green product. EPS has a lifespan of one million years; waste disposal facilities charge fees to bury it in the ground. NextBlok reduces heating/cooling costs by up to 44% in comparison with wood frame construction. Finally, NextBlok eliminates the need for wood as a framing material, preserving our forests, meeting future green construction requirements.

NextBlok is strong. Properly engineered, structures made with NextBlok can be expected to withstand up to a level 7.5 earthquake. NextBlok is resistant to fire, hurricanes, and hurricane speed winds. NextBlok is impervious to water, does not breed toxic mold (as does wood), and does not provide a home for termites or other pests. A house built with NextBlok is a reinforced concrete frame house that will remain sound for more than 500 years, while costing the same as a wood frame house.

Exhibit 4. NextBlok and Wood Frame Houses: Costs of a Typical U.S. New Single Family Residence (2,500 square feet)[1]

Source: Don Walters

	NextBlok House – Costs				Wood Frame House - Costs			
	Materials	Labor	Equipment	Total	Material	Labor	Equipment	Total
Foundation	4,800	9,300	1,800	15,900	4,800	9,300	1,800	15,900
Frame[2]	**17,300**	**22,800**	**1,430**	**41,530**	**16,000**	**22,500**	**120**	**38,620**
Insulation	**960**	**630**		1,590	**2,910**	**1,920**		4,830
Exterior Finish and Trim	9,300	5,800	790	15,890	8,830	5,530	750	15,110
Doors and Windows	4,100	2,900		7,000	4,100	2,900		7,000
Roof	6,500	5,180		11,680	6,500	5,180		11,680
Interior Walls (Wood)	5,000	10,200		15,200	5,000	10,200		15,200
Painting	2,600	5,800		8,400	2,480	5,490		7,970
Electrical	4,400	5,070		9,470	4,400	5,070		9,470
Floor and Carpet	5,530	3,740		9,270	5,530	3,740		9,270
Plumbing, Kitchen and Bathrooms	19,860	12,220	400	32,480	19,860	12,220	400	32,480
Heating and Cooling and Fireplace	**7,260**	11,640		18,900	**7,760**	11,640		19,400
Direct Job Costs	**$87,610**	**$95,280**	**$4,420**	**$187,310**	**$88,170**	**$95,690**	**$3,070**	**$186,930**
Indirect Job Costs (Insurance, Permits, Plans, Cleanup, etc.)	9,000	775		9,775	9,000	775		9,775
Contractor Markup	23,186			23,186	23,321			23,321
Total Cost	**$119,797**	**$96,055**	**$4,420**	**$220,272**	**$120,491**	**$96,465**	**$3,070**	**$220,026**

1 www.building-cost.net

2 Framing materials include ICF blocks, steel rebars, and cement.

Exhibit 5. Comparative Analysis of NextBlok, Wood, and ICF Competitors[3]
Source: Don Walters

	NextBlok	Reddi-Form	Reward Wall System	Rastra	Quad-Lock Building System	ARRX Building Systems Inc.	Wood Frame Home
Cost of Material	$ 18,000	$32,000	$32,000	$34,000	$33,000	$32,000	$24,000
Labor Costs	$ 10,000	$16,000	$16,000	$21,000	$16,000	$16,000	$17,000
Flammability	Excellent	Excellent	Excellent	Excellent	Excellent	Excellent	Very poor
Bracing	Minimal	Excessive	Excessive	Excessive	Excessive	Excessive	Normal
Consolidation of Cement	Excellent	Very poor	Very poor	Very good	Very poor	Very poor	n.a.
Energy Annual Savings	Cool 32 % Heat 44%	32 % to 44%	32 % to 44%	32 % to 44%	32 % to 44%	32 % to 44%	Regular
Insulation (R Values) Thermal performance	R-40	R-40	R-40	R-40	R-40	R-40	R-11
Customer Preference	Excellent	Excellent	Excellent	Excellent	Excellent	Excellent	Regular
Heating, Ventilation & Air Conditioning)	20 % smaller	20 % smaller	20 % smaller	20 % smaller	20 % smaller	20 % smaller	Regular
Block Size (Material)	Excellent 32" x16" x10"	Very poor	Very poor	Very poor	Very poor	Very poor	n.a.
Ease of Use	Excellent	Very poor	Very poor	Very poor	Very poor	Very poor	Excellent
Interconnection	Excellent	Very poor	Very poor	Very poor	Very poor	Very poor	n.a.
Sound Efficiency	Excellent	Excellent	Excellent	Excellent	Excellent	Excellent	Poor
Different Block Shapes	Many	One	One	Three	One	One	n.a.
Drywall	None	Necessary	Necessary	None	Necessary	Necessary	Necessary
Need for Foundation	None	Yes	Yes	Yes	Yes	Yes	Yes
Waste	2 %	8 %	9 %	22%	8 %	7 %	16.6%

3 www.building-cost.net

Exhibit 6. NextBlok, Inc.'s Capital Requirements
Source: Don Walters

	Start-up	Year 1	Year 2	Year 3	Year 4	Year 5
Investor Capital $67.4 M	**$7,443,600**	**$26,354,743**	**$33,608,400**	**0**	**0**	**0**
Internal CF's Re-invested				**$33,608,400**	**$67,216,800**	**$67,216,800**
No. of factories (at year end)	0	**2**	**5**	**8**	**14**	**20**
No. NextBlok double-line machines	0	**2**	**5**	**8**	**14**	**20**

Exhibit 7. Erection of Bracing in Traditional ICF Construction
Source: Don Walters

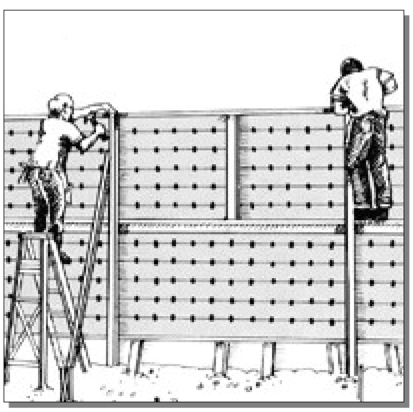


Exhibit 8. Waste Resulting from Construction with Wood Frames or Rival ICFs

Source: photograph by Don Walters

Above: Waste at a Wood Frame Job Site

Below: Waste at a Composite ICF Forms Job Site

Source: photograph by Don Walters

Exhibit 9. Photo of Blowout using a Competitor's Materials

Source: photographs by Don Walters

Exhibit 10. ICF House Standing after Hurricane Katrina

Source: Don Walters

Note: An ICF house (circled) standing amidst the destruction left by hurricane Katrina and its 21-foot storm surge. The houses surrounding it were wood frame.

Exhibit 11. Don's Estimated Start-up Expenses

Source: Don Walters

Proof of Concept	$5,036,000
Facility Rent	$330,000
Indirect Factory Personnel	$40,000
Other Factory Expenses	$250,000
Administrative Expenses	
Indirect Personnel - Sales	$325,000
Indirect Personnel - Design/Admin	$351,000
Licenses/Permits	$50,000
Marketing/Promotion	$200,000
Supplies	$60,000
Legal	$300,000
Consulting	$200,000
Rent/Land	$30,000
Insurance	$71,600
Other Indirect Costs/Recruiting	$200,000
Total Start-up Expenses	**$2,077,600**
Total Start-up Assets/Expenses	**$7,443,600**

Exhibit 12. Pro Forma Profit and Loss Statement

Source: Don Walters

	Year 1	Year 2	Year 3	Year 4	Year 5
Revenue					
Sales NextBlok	$22,176,000	$123,528,000	$235,001,000	$399,910,000	$672,060,000
Less: Discount & Rebates	**($332,640)**	**($1,235,280)**	**($2,350,010)**	**($3,999,100)**	**($6,720,600)**
Total Sales	**$21,843,360**	**$122,292,720**	**$232,650,990**	**$395,910,900**	**$665,339,400**
Cost of Good Sold					
Labor	($1,402,800)	($5,155,290)	($10,052,816)	($17,863,080)	($28,986,907)
Raw Materials	($5,452,800)	($30,376,800)	($56,035,200)	($92,580,000)	($151,052,000)
Total CGS	($6,855,600)	($35,532,090)	($66,088,016)	($110,443,080)	($180,038,907)
Gross Margin	**$14,987,760**	**$86,760,630**	**$166,562,975**	**$285,467,820**	**$485,300,493**
Gross Margin %	68%	70%	71%	71%	72%
Expenses					
Engineering, R & D	$221,760	$1,235,280	$2,350,010	$3,999,100	$6,720,600
Indirect Personnel	$3,851,500	$9,696,100	$18,636,182	$30,181,792	$46,457,837
Cost of Sales					
Sales Commissions	$665,280	$3,705,840	$7,050,030	$11,997,300	$20,161,800
Packaging & Delivery	$1,042,272	$5,805,816	$11,045,047	$18,795,770	$31,586,820
Payment of Royalties	$524,572	$3,036,622	$5,829,704	$9,991,374	$16,985,517
Licenses/Permits	$100,000	$150,000	$150,000	$300,000	$300,000
Marketing/Promotion	$2,993,760	$4,941,120	$9,400,040	$15,996,400	$26,882,400
Supplies	$221,760	$1,235,280	$2,350,010	$3,999,100	$6,720,600
Software & IT Services	$210,880	$767,640	$1,325,005	$2,299,550	$3,660,300
Legal Fees	$450,000	$550,000	$550,000	$850,000	$850,000
Consulting	$156,756	$368,452	$708,175	$1,146,908	$1,765,398
Training and Logistics	$157,629	$445,542	$860,670	$1,441,346	$2,263,342
Rent/Land	$600,000	$600,000	$900,000	$900,000	$900,000
Insurance	$525,430	$1,485,139	$2,868,900	$4,804,487	$7,544,474
Depreciation (Factory)	$125,000	$312,500	$500,000	$875,000	$1,250,000
Depreciation (Machines)	$1,075,000	$2,687,500	$4,300,000	$7,525,000	$10,750,000
Depreciation (other PPE)	$14,286	$35,714	$57,143	$100,000	$142,857
Total Operating Expenses	**$12,714,124**	**$35,823,265**	**$66,530,905**	**$111,204,027**	**$178,221,346**
Income (loss) Before Interest and Taxes	$2,051,876	$49,702,085	$97,682,059	$170,264,693	$300,358,547
Interest Expense	$0	$0	$0	$0	$0
Income before Taxes	$2,051,876	$49,702,085	$97,682,059	$170,264,693	$300,358,547
Income Tax Provision	$718,156	$17,395,730	$34,188,721	$59,592,643	$105,125,492
Net Income (Loss)	**$1,333,719**	**$32,306,355**	**$63,493,339**	**$110,672,050**	**$195,233,056**
Profit Margin	6.01%	26.15%	27.02%	27.67%	29.05%
Operating Cash-Flow	**$2,548,005**	**$35,342,070**	**$68,350,481**	**$119,172,050**	**$207,375,913**

Exhibit 13. Pro Forma Balance Sheet

Source: Don Walters

	Year 1	Year 2	Year 3	Year 4	Year 5
Assets					
Cash	$13,779,159	$55,522,639	$95,676,104	$162,258,202	$309,250,539
Accounts Receivable	$2,214,258	$12,396,796	$23,583,799	$40,133,434	$67,445,364
Inventory	$563,474	$2,920,446	$5,431,892	$9,077,513	$14,797,718
Total Current Assets	$16,556,891	$70,839,881	$124,691,794	$211,469,149	$391,493,622
Long-term Assets					
Factory	$5,000,000	$12,500,000	$20,000,000	$35,000,000	$50,000,000
Machines	$5,500,000	$13,750,000	$22,000,000	$38,500,000	$55,000,000
Furniture and Fixtures	$100,000	$250,000	$400,000	$700,000	$1,000,000
Non-Depreciable Assets (Land)	$3,000,000	$7,500,000	$12,000,000	$21,000,000	$30,000,000
Total Plant Property Equipment	**$13,600,000**	**$34,000,000**	**$54,400,000**	**$95,200,000**	**$136,000,000**
Less: Accumulated Depreciation	$125,000	$437,500	$937,500	$1,812,500	$3,062,500
Less: Accumulated Depreciation	$1,075,000	$3,762,500	$8,062,500	$15,587,500	$26,337,500
Less: Accumulated Depreciation	$14,286	$50,000	$107,143	$207,143	$350,000
Total Long-term Assets	**$12,385,714**	**$29,750,000**	**$45,292,857**	**$77,592,857**	**$106,250,000**
TOTAL ASSETS	**$28,942,606**	**$100,589,881**	**$169,984,652**	**$289,062,006**	**$497,743,622**
Liabilities & Capital					
Accounts Payable	$1,254,144	$6,986,664	$12,888,096	$21,293,400	$34,741,960
Other Current Liabilities	$0	$0	$0	$0	$0
Long Term Liabilities	$0	$0	$0	$0	$0
TOTAL LIABILITIES	$1,254,144	$6,986,664	$12,888,096	$21,293,400	$34,741,960
Paid-in Capital	$33,798,343	$67,406,743	$67,406,743	$67,406,743	$67,406,743
Earnings	$1,333,719	$32,306,355	$63,493,339	$110,672,050	$195,233,056
Retained earnings	($7,443,600)	($6,109,881)	$26,196,475	$89,689,813	$200,361,864
Total Capital	$27,688,462	$93,603,217	$157,096,556	$267,768,606	$463,001,662
LIABILITIES & CAPITAL	**$28,942,606**	**$100,589,881**	**$169,984,652**	**$289,062,006**	**$497,743,622**
Net Worth	$27,688,462	$93,603,217	$157,096,556	$267,768,606	$463,001,662

Exhibit 14. Pro Forma Cash Flow Statement

Source: Don Walters

	Year 1	Year 2	Year 3	Year 4	Year 5
Cash from Operations					
Cash Sales	$21,843,360	$122,292,720	$232,650,990	$395,910,900	$665,339,400
Cash from Receivables	($2,214,258)	($10,182,538)	($11,187,003)	($16,549,635)	($27,311,930)
Cash from Depreciation	$1,214,286	$3,035,714	$4,857,143	$8,500,000	$12,142,857
Cash from Inventory	($563,474)	($2,356,972)	($2,511,446)	($3,645,622)	($5,720,205)
Subtotal Cash from Operations	$20,279,913	$112,788,925	$223,809,684	$384,215,644	$644,450,122
Additional Cash Rec'd					
New Investment Rec'd	$26,354,743	$33,608,400	$0	$0	$0
Subtotal Cash Received	$46,634,656	$146,397,325	$223,809,684	$384,215,644	$644,450,122
Expenditures from Operations					
Operating Expenses	($20,509,641)	($89,986,365)	($169,157,651)	($285,238,850)	($470,106,344)
Change in AP	$1,254,144	$5,732,520	$5,901,432	$8,405,304	$13,448,560
Subtotal Operations	($19,255,497)	($84,253,845)	($163,256,219)	($276,833,546)	($456,657,784)
Additional Cash Spent					
Purchase L-term Assets	($13,600,000)	($20,400,000)	($20,400,000)	($40,800,000)	($40,800,000)
Subtotal Cash Spent	($32,855,497)	($104,653,845)	($183,656,219)	($317,633,546)	($497,457,784)
Net Cash Flow	$13,779,159	$41,743,480	$40,153,465	$66,582,098	$146,992,338
Cash Balance	$13,779,159	$55,522,639	$95,676,104	$162,258,202	$309,250,539

Exhibit 15. Don's Advertisement for CEO in Craigslist

Source: Don Walters

CEO NEEDED FOR A TRIPLE GREEN START UP--- HOUSING INDUSTRY

The time has arrived for us to bring a new PATENTED technology to market; I should mention that it is a new way to build housing, (glues and clicks together), and it is TRIPLE GREEN. When we bring NextBlok to market, it will make a paradigm shift in the way that all housing in the world is built, (a potential multi-billion dollar market).

We have completed the design of the machine and factory to build the block. Unfortunately, we have just one more part to complete the equation; we need the NECESSARY FUNDS to start production and sales of NextBlok.

This is where you come in; we need you to accept the challenge of finding the funds necessary to breathe life into NextBlok. Compensation upon funding, this is an un-paid intern position that will translate into a very formidable position of great responsibility and remuneration for the one who is selected.

ARE YOU QUALIFIED TO BE THE ONE?
CALL 818-xxx-xxxx

- Compensation: Compensation upon funding
- Location: central LA
- Telecommuting is ok.
- This is an internship job
- OK to highlight this job opening for persons with disabilities
- Principals only. Recruiters please don't contact this job poster.
- Phone calls about this job are ok.
- Please do not contact job poster about other services, products or commercial interests.

Stephen J.J. McGuire is Professor of Management at California State University, Los Angeles, where he received the College Outstanding Teacher Award and the University Outstanding Professor Award. Steve is a former partner of the HayGroup, where he worked as a management consultant to major organizations in 23 countries, CEO of Hay Portugal, and Director, Hay International Business Group. He is author of *Managing Organizational Change* as well as several research articles and case studies.

IS THE STRATEGIC PLAN FOR THE KULI KULI FOODS BENEFIT CORPORATION SUSTAINABLE?

GEORGE L. WHALEY
San José State University

Introduction

Lisa Curtis, founder and CEO of the five-year-old superfood firm Kuli Kuli Foods, reflected on her past decisions and strategic plan under development during a November 12, 2019 flight to Palm Springs, California. She was one of thirteen women entrepreneurs selected for the prestigious Ernst & Young LLP (E.Y.) program targeting women who were founding CEOs and owners of U.S. or Canadian privately held firms less than ten years old. Curtis had to give an inductee speech the next day at the 2019 Strategic Growth Forum® U.S. (E.Y. Press Release 2019). Lisa's thoughts moved back and forth regarding past Kuli Kuli decisions and events. Her thoughts centered on her dream of creating Kuli Kuli and her pride for receiving the 2019 Entrepreneurship award, but her mind kept returning to the firm's 4Q 2019 sales decline.

Curtis was pleased that her dream of translating personal experiences with the nutrient-rich moringa plant while serving in the Peace Corps in Africa turned into the promising start-up superfood business after she returned to the U.S. in 2011. She learned that benefit corporations (B Corps) had a broader mission than regular corporations because of their focus on profit, people, and the environment. Instead of focusing only on profits, the B Corp format supported her goal to help women moringa farmers in Africa. When Curtis launched Kuli Kuli in 2014, she told her co-founders: *"I want our social purpose to be embedded into our legal DNA."* The B Corp format allowed Curtis to start Kuli Kuli as a firm with a social purpose; the firm was certified the same year as a B Corp through the third-party B Laboratory organization.

The author developed the case for class discussion rather than to illustrate either effective or ineffective handling of the situation. The case and its accompanying instructor's manual were anonymously peer reviewed and accepted by the ***Journal of Case Research and Inquiry, Vol. 6, 2020***, a publication of the Western Casewriters Association. Contact: George L. Whaley, San José State University, 1 Washington Sq, San Jose, CA 95192, george.whaley@sjsu.edu

In 2016, she incorporated Kuli Kuli in Delaware as a certified B Corp to legally recognize its social goals. Curtis was proud of Kuli Kuli's social impact of planting millions of moringa trees, partnering with local farmers, and providing income to women-led farming cooperatives, non-profits, and family farms.

Curtis contemplated whether the fast growth over the last five years to amass over $14M in sales and employ 13 full-time people was sustainable? As Lisa's plane approached the Palm Springs airport, her thoughts returned to her speech the next day, but her nagging questions about the 4Q sales decline and what it meant for the next Kuli Kuli strategic plan surfaced again.

Curtis pondered: *What product strategies, leadership approaches, and B Corporation plans should I adopt over the next five years to address the current challenges and grow Kuli Kuli?*

Where Did Moringa and Kuli Kuli Fit in the Super Food Industry?

What is a Superfood?

There was no generally accepted medical definition of a superfood; however, the non-medical term for functional foods - so-called *"superfoods"* - was popularized as a way to describe foods that have health-promoting properties (Stöppler 2019). The functional foods industry consensus definition appeared to be foods that had a great likelihood to reduce one's risk of disease or improve any aspect of physical or emotional health. Stöppler (2019) indicated so-called superfoods had an unusually high content of vitamins, antioxidants, or other nutrients. Some examples were soy, blueberries, salmon, green tea, walnuts, broccoli, and spinach. A Hartman Group poll found the number one ingredient that U.S. consumers sought to increase in their diet was vegetables, closely followed by fiber, calcium, plant-based proteins, and iron (Wellness, Sustainability and Where to Eat 2015). One industry source pegged the U.S. energy and nutritional bars market at more than $2 billion and estimated growth between 7% to 9% annually. Laskow (2014) estimated that the global superfood market was even bigger, perhaps in the tens of billions. The U.S. market for *"superfoods"* was estimated at $38 billion and growing at 7% annually (Laskow 2014; Company Records 2019).

What is Moringa?

Moringa as a superfood was rather new, but the plant had been in the daily lives of many people for centuries. People who lived in the areas where it grew gave the moringa tree names such as *"the tree of life"* and *"drumstick tree."* Exhibit 1 shows Moringa spread across the world in tropical and subtropical areas such as Africa, Asia, the Middle East, the Caribbean, and even North America.

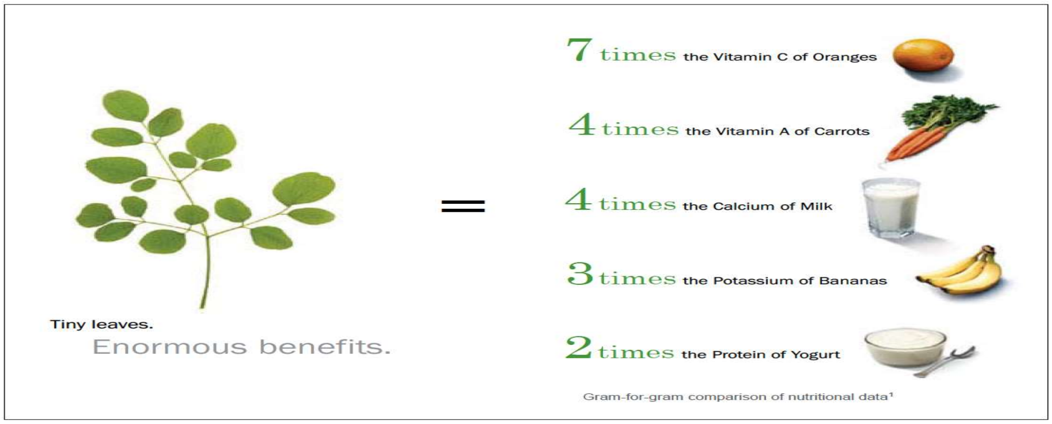
Exhibit 1. Where is Moringa Grown in the World?

Source: Trees for Life https://treesforlife.org/give/landing-pages/moringa-trees 2020)

Research and industry advocates alike indicated that the leaves of the Moringa tree were packed with protein, essential amino acids, 27 vitamins, and 46 antioxidants (Kuli Kuli Press Release 2018). Industry observers such as Oommen (2015) compared the nutritional benefits of moringa to five well-known foods (see Exhibit 2).

Exhibit 2. Nutritional Benefits of Moringa Leaves

Source: Oommen (2015)



Recent research showed that moringa contained many medicinal benefits, including anti-inflammatory properties that rivaled those of turmeric (Amabye & Gebrehiwot 2016; Graf, Jaja-Chimedza & Raskin 2017). Other sources touted Moringa as more nutritious than kale and rivaling the anti-inflammatory benefits of turmeric (McNeilly 2017; WELL+GOOD Editors 2017). Many other comparisons were based on taste, and moringa was often described as having a mild green flavor and tasted like a peppery version of matcha, without being overpowering.

Superfood Industry and Kuli Kuli Moringa Competition

The nutritional benefits of moringa leaves shown in Exhibit 2 met the consensus definition of a superfood (Oommen 2015; Stöppler 2019). Kuli Kuli's management felt from the start that the moringa superfood market was an attractive option for their firm based on the potential market size, growth, and social impact (Company Records 2019). Management also believed moringa was perfectly positioned to fill the growing U.S. market for superfoods in the business to consumer (B-C) space and concluded that achieving only a small percent of the growing superfood market was needed to have a viable company in this competitive industry. Nonetheless, Curtis understood that selling moringa superfoods in the U.S. had its risks. Her decision involved more than simply market entry timing (Zachary, Gianiodis, Payne & Markman 2015). Besides market timing, she would have to determine how to enter, who the players were, where to enter, and what type of entry made the most sense to Kuli Kuli (Zachary et al. 2015).

In the same way that Sambazon had introduced acai, Mama Chia introduced chia seeds, and Guayaki introduced yerba mate, Kuli Kuli introduced moringa to the U.S. (Company Records 2019). The success of quinoa, acai, chia, and more recently kale as a superfood supported the CEO's conclusion that superfoods were not only popular, they also were *"sticky"* and created profitable, durable new product categories. The five-year Kuli Kuli success story attracted direct competitors to the U.S. moringa market, and Sun Foods, MRM, and Organic India were the top three other moringa brands (Company Records 2019). Kuli Kuli competed with the three firms on moringa powder since none of them had ready-to-eat moringa products, and only one was a B Corp (Company Records 2019). Kuli Kuli products also competed indirectly with other powder brands (i.e., Navitas), energy shots (i.e., Guayaki and Red Ace), and bars (i.e., Clif Bar).

Kuli Kuli Moringa as First Market Entry in Superfood Industry

As mentioned, when Kuli Kuli entered the moringa superfood market, management had to decide how to enter, who were the major stakeholders, where to enter the market, and what types of entry made the most sense for the company strategic plan. Kuli Kuli had developed trusted supply chain relationships with moringa farmers in Africa and elsewhere, enjoyed loyalty among some retail customers, and had growing brand name recognition with consumers based on its own work and first-mover advantages. While building these key relationships, Kuli Kuli did not attempt to employ highly competitive low-cost, low-price, high-volume marketing strategies used by many first-to-market movers. Instead, the company sought a value-based differentiation marketing approach (Company Records 2019). For example, Kuli Kuli was one of the few firms to hold an active FDA Generally Recognized as Safe (GRAS) Notice for moringa. Therefore, Kuli Kuli had a unique opportunity to introduce this new superfood to the U.S. market and create an entirely new category. Given the high cost of developing a GRAS Notice, some smaller food companies were deterred from entering the moringa space while larger companies were challenged by the lack of an established supply chain for moringa. Kuli Kuli management found that through strategic marketing, careful pricing, and strong branding, Kuli Kuli was able to assist quick movement of company products off the shelf. Since Kuli Kuli was a B Corp and first to bring moringa superfood products to the U.S. market, management believed Kuli Kuli had a competitive advantage that was supported by research (Zachary et al. 2015; Lieberman & Montgomery 1998; Lieberman & Montgomery 1988). Kuli Kuli planned to maintain its competitive edge by moving quickly on the first-to-market advantage, product differentiation, developing a strong brand, and shelf product presence (Company Records 2019). Curtis indicated: *"Our social mission along with B Corporation certification should give us an additional competitive advantage that would be even larger if the average customer knew more about the value of the B Lab trademark"* (Personal Communication 2019).

Her Dream and the Formation of Kuli Kuli as a Social Enterprise

Origin of the Kuli Kuli Dream

Lisa Curtis first tried moringa while serving as a Peace Corps volunteer in a small village in Niger, West Africa. As a vegetarian, she was eating mostly rice, a diet that left her feeling weak. When she mentioned her fatigue to women at the community health center, they pulled leaves off a nearby moringa tree and mixed them with a popular peanut snack called Kuli Kuli. Lisa ate the Kuli Kuli moringa snack every day and found her energy return. She began working with villagers to encourage them to use moringa, and they asked her to help them sell the moringa leaves. This unplanned series of events led to the dream Curtis had that one day a moringa based business was possible in the U.S. with these African villagers as her primary suppliers. When Curtis returned from the Peace Corp in 2011, she co-founded Kuli Kuli, a mission-driven business, to drive economic growth, women's empowerment, and sustainable agricultural development utilizing moringa as a tool for nutritional security. She retained her full-time job in another industry and worked part-time with childhood friends to launch a crowdfunding campaign on Indiegogo to raise money to manufacture Moringa Superfood Bars. The crowdfunding campaign was the most popular food campaign Indiegogo had ever had, enabling the co-founders to launch Kuli Kuli onto the market in 2014. Lisa quit her day job in 2014 and launched Kuli Kuli as the full-time CEO.

Lisa Curtis' dream in the Peace Corps became the framework for a start-up company where she could take direct action to change a poverty situation in West Africa. She believed it also had the potential for larger-scale societal impact. Curtis knew the definition of entrepreneur from her college studies, and she was introduced to the idea of a multi-purpose benefit corporation (B Corp) while working at a start-up firm, Mosaic. She made the two ideas merge when starting Kuli Kuli. Curtis knew that she was involved in entrepreneurial activity at Kuli Kuli but did her activities fit what some academics called a *"social entrepreneur"* (Kickul & Lyons 2012)? Additionally, would the B Corp idea help her superfood start-up with a dual economic and social purpose to survive long-term in the superfood industry? (Benefit Lab website 2019).

Social Impact of Kuli Kuli Mission and External Recognition

Curtis wanted the company's social impact goals to be measured as closely as its financial and human resource goals. Kuli Kuli's social mission was to use nutrient-rich plants as a tool to improve both nutrition and the livelihood of Africa farmers and others worldwide (see Exhibit 4). The company developed three overarching impact objectives for the communities where it did business: to end malnutrition, empower women to achieve gender equality, and plant a tree for every household.

Kuli Kuli was a full-fledged B Corp, meaning that the social purpose was embedded into the legal structure of the firm (see Appendix A and Appendix G). Certified B Corps were required to file annual impact reports tracking company progress towards these goals, and Kuli Kuli underwent a third-party impact audit through the B Lab using the categories shown in Exhibit 8. In addition to planting over 12 million moringa trees and partnering with over 2,400 farmers, Kuli Kuli provided more than $4M in income to women-led farming cooperatives and family farms as well as invested over $20,000 in supporting non-profits in the communities where it worked (Company Records 2019). As a result, Kuli Kuli was selected as a B Corp Best for the World Honoree for (2017, 2018, and 2019) in several different categories (B Lab 2019).

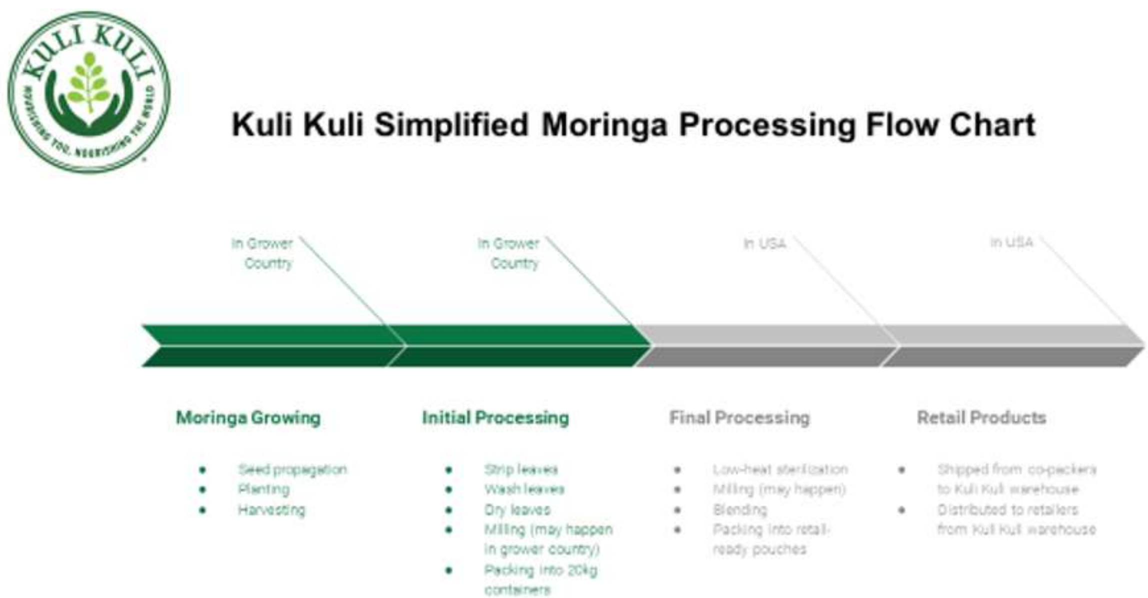
Kuli Kuli was honored for social impact in other forums. Lisa Curtis was awarded the Sixth Annual Muhammad Ali Humanitarian Awards in September, 2018, for individuals around the world who made significant contributions toward the attainment of peace, social justice, and human or social capital (PRNewswire Press release 2018). Her most recent award was the Entrepreneurial Winning Women™ North America award in November 2019 (E.Y. Press Release 2019). Moringa's high levels of protein, calcium, iron, vitamin C, and vitamin A led many international development organizations to advocate the plant as *"natural nutrition for the tropics."* By importing a portion of the moringa to the U.S. for Kuli Kuli products, the company created an international market for moringa and a sustainable livelihood for farming communities. An increase in moringa demand increased production, and consequential consumption occurred in the villages where moringa was grown. Thus, Kuli Kuli incentivized communities that struggled with malnutrition to invest in a plant that nourished their community, nutritionally and economically, and helped to create a global supply chain.

Importance of Global Coordinated Supply Chain

Curtis knew the moringa suppliers in West Africa were important when she started Kuli Kuli; however, as the company grew, management became even more aware how essential the entire global supply chain was to the sustainability of the firm and its social goals. Kuli Kuli's goal was to build strong, collaborative relationships with all suppliers (see Kuli Kuli Global Supply Chain Exhibit 3). The firm sourced all moringa it purchased from small farmers in Ghana, all females, and developed a new moringa supply chain in Haiti through the support of the Clinton Foundation. Kuli Kuli purchased all of the moringa these suppliers exported and developed legal agreements to encourage them to sell to Kuli Kuli. Management sourced all other ingredients such as almonds and dates from small farmers in California. Kuli Kuli utilized co-manufacturing facilities on the West Coast to make all of its food products, thereby lowering start-up costs. Through this social service and the economically coordinated supply chain, Kuli Kuli planted moringa trees, partnered with local farmers, and provided income to women-led farming cooperatives and family farms. As a result, Kuli Kuli grew each year, the moringa suppliers prospered, and Kuli Kuli won industry, entrepreneurship, leadership, and Benefit Lab awards.

Exhibit 3. Kuli Kuli Global Supply Chain

Source: Company Records (2019)



The intricate and integrated supply chain in Exhibit 3 involved several types of risk and required careful management by Kuli Kuli to build trust between stakeholders. Current and future external risk factors such as world hunger, social unrest, political instability, disease, changing climate, disrupting technologies, and economics had the potential to interrupt these delicate relationships. Curtis believed the largest risk in the supply chain was moringa *quality*, and Kuli Kuli built-in quality tests 3-4 times prior to sale. Kuli Kuli management was aware that what academics called the *"bullwhip effect"* showed that small variations at one level in a supply chain could create much larger variations in other parts of the supply chain (Chopra & Meindl 2013; Vitale, Giglierano & Pfoertsch 2010). The raw materials inventory in Exhibit 3 was usually purchased far in advance of sale at the retail level. Curtis stated: *"Kuli Kuli pre-paid contracts* *with the farmers reduced timing and financial risk to farmers, but the small farmers in Africa and the Caribbean had fewer resources to meet large fluctuations than other parts of the supply chain"* (Personal Communication 2019).

Consistent with social benefit ideals, Kuli Kuli partnered with farmers to increase demand for moringa in each African market to help offset this risk. Nonetheless, Curtis was concerned about the size of the 2019 4Q sales decrease because it might overshadow built-in risk protections and move up and down the supply chain creating large changes in the amounts of moringa that small farmers needed to grow, harvest, and sell to Kuli Kuli or the local markets.

Company Background

Kuli Kuli Organizational and Governance Structure

As Kuli Kuli grew, Lisa Curtis formed a Board of Directors and Executive Team that consisted of Lisa Curtis, Founder, CEO, Jordan Moncharmont, Co-Founder & CTO, Emma Giloth, Senior Marketing Manager, David Ray, Director of Operations, and Lynne Wilkie, VP of Sales. In November 2019, the Kuli Kuli Foods organizational chart consisted of 13 full-time employees, including the CEO and her four direct reports that were members of the Executive Team (see Appendix C). Appendix C also contains a brief management and leadership profile of the top management people at Kuli Kuli. The Kuli Kuli's board of directors (BOD) and a group of advisors consisted of people with a combination of food industry background, financial experience, and social awareness (Company Records 2019).

CEO, Lisa Curtis Background

Lisa Curtis grew up in Northern California in close proximity to Silicon Valley, but at an early age, she did not view herself as an entrepreneur or leader. However, Curtis was confident, competitive, and took some risks. For example, at age 10, Lisa co-wrote an essay with her childhood best friend about recycling and won a local competition, taking home the outrageously large sum (for her) of $200. She decided that saving the environment was pretty cool, and in high school, Curtis started a recycling contest with Cans for Habitat that raised thousands of dollars to build low-income homes. Although Curtis called herself a social activist, she wanted to take direct action to improve the lives of others and make a bigger impact on society. While attending college, Curtis was active in the college newspaper and participated in local environmental and social justice causes. She expanded her reach globally in college as the U.N. Environment's U.S. youth representative at international sustainable development conferences.

After graduating from Whitman College with a Bachelor of Arts degree in Politics and Environmental Studies, Curtis worked in the local Walla Walla community as a social activist and community organizer with a focus on humanitarian and environmental issues. When asked about the motivation for her humanitarian instincts, Curtis said:

> *I'm proud of living each day to the absolute fullest and finding joy in creating a better world. Also, I wanted to gain a firsthand understanding of the challenges of living off a dollar a day faced by so many people around the world. This is why I joined the Peace Corps in 2010* (Personal Communication 2019).

Prior to serving in the Peace Corps, Lisa wrote political briefings for President Obama in the White House and served as a United Nations Environment Programme Youth Advisor. While at the Peace Corps, she worked in the health center and taught English at the local school in Niger, West Africa. Additionally, she started a moringa project in Niger but was forced to abandon it when the entire program was evacuated after seven months due to a terrorist attack. Before returning to the U.S., she worked for an impact investment firm in India. Then, once back in America, Curtis joined the private business sector, serving as the Communications Director of a start-up firm, Mosaic, where she managed a team of six to grow the company from zero to over $5M invested in solar energy through Mosaic's online marketplace. Mosaic was a B Corp, and Curtis learned firsthand about growth, risks, and leadership in a start-up culture together with the advantages and disadvantages of B Corps.

Leadership at the Top

When Lisa Curtis co-founded Kuli Kuli, she was aware that many aspects of the company would change as it grew, but she felt that her leadership would be less changeable than other factors. Curtis believed leadership and company culture could be important factors in a firm's strategic competitive advantage. She wanted to continue making these two factors important parts of the future in Kuli Kuli's five-year strategic plan. She knew from her college studies and work experiences that many of the factors mentioned in the internal capabilities of a firm (leadership, organizational culture, and task culture) had a profound effect on the implementation of company strategy (David 2009; Barney 2010; Rothaermel 2015). Curtis also knew it was not unusual for company founders in any industry to have the largest influence on the leadership process and culture of start-up firms (Jones & George 2019; Yukl 2012). When Curtis started Kuli Kuli, she wanted to lead by example and build a collaborative culture to achieve profit and important social goals. In a recent interview with *DotCom Magazine*, Cutis indicated:

> *Leadership is the most powerful word in the English language. The qualities of a good leader are transparency, consistency, and doing the work, and it helps to have compassion, dedication, and humor. The future of work will be led by the servant leaders, the CEOs who listen and adapt their workplaces based on their employees' feedback* (Jacobs 2019).

Curtis indicated that she believed change was important to the success of leaders and stated:

> *I had a ton of energy and was very opportunistic when I first started Kuli Kuli. I've now learned how to take more time to reflect on an opportunity before jumping into it headfirst. I am not a micro-manager, and I try to lead by encouragement and inspiration. My focus on values in the vision/mission statement show the importance of ethics, my focus on team show I try to share leadership, and I try to change my style to match the situation* (Personal Communication 2019).

Curtis wondered about the future and what leadership approach was preferred over the next five years and agreed to take a battery of behavioral style and leadership surveys. Appendix B shows a summary of Lisa's scores on this battery of behavioral style and leadership surveys.

Company Culture

Curtis said in a recent interview: *"Culture doesn't create itself."* (Personal Communication 2019). Building a positive team culture, even at a small start-up like Kuli Kuli, required deliberate thought and structure, she believed. Her co-founders were life-long friends, and Curtis trusted them and sought their expertise and opinions from the start to create a *"family feel"* to the company. Early in the life cycle of Kuli Kuli, Curtis believed that leadership was an integral part of successful teams and thought that leading by example was enough. She modified her earlier belief and became more proactive and transformational about the role of leadership in the team-based company culture. She noted, *"I learned that documenting Kuli Kuli's core values, getting monthly feedback from our team, and putting together a Culture Committee to actively create bonding events has led to an incredible, cohesive team culture that has paid off with a happier and more collaborative team."* (Gould 2017; Personal Communication 2019). Furthermore, Curtis said in a recent industry interview what she did to foster that culture:

> *We're a values-driven company, and those values are embedded into our team culture. Our company values are Discipline, Optimism, Gratitude & Respect, and Learn & Innovate. We are optimistic about the potential within ourselves and our company but temper that optimism with discipline to make sure that we think critically about all the goals that we set. After every meeting, we take a few minutes to do "shout-outs," where we express gratitude for each other's hard work. In all our work, we aim to show the utmost respect to all people and planet, hence why we're now a full-fledged Benefit Corporation. Lastly, we regularly host Lunch & Learns with advisors and other outside experts. We push each other to constantly be learning, and we see failure as an opportunity to learn, not something to be punished. We look forward to finding more people who share these values… I believe that our company culture will continue to change and get even better as we grow and have more resources. We spend a lot of time listening to the viewpoints of everyone in our company, and so I think every new person we bring on will help our culture grow and evolve. Our team comes from many different backgrounds, religions, and races. We celebrate our differences and are united in our mission to use moringa to improve nutrition and livelihoods worldwide. We're currently a relatively young team and are excited to learn from new, more experienced hires*. (Gould 2017; Company Records 2019)

Kuli Kuli core values (Be a Sponge, Gratitude and Respect, Disciplined Optimism, Own & Lead, and Positive Collaboration) were added to the company vision and mission (see Kuli Kuli Vision, Mission, and Core Values Exhibit 4). This value-driven family approach was also reflected in the functional, team-based organizational structure (see Appendix C). Additionally, the *"worker"* component of the independent B Lab Impact Assessment included the employees' positive perception of the Kuli Kuli culture (see Appendix A). External Glassdoor data indicated that employees rated Kuli Kuli as a great place to work and described the Kuli Kuli culture as open, collaborative, team, and family-oriented culture with a supportive management or leadership style yet very budget-conscious (Glassdoor 2018). Employees participated in company culture surveys as part of the H.R. system (Gusto) and said: *"We've seen employee happiness fluctuate over time but generally is pretty high"* (Personal Communication 2020).

Exhibit 4. Kuli Kuli Vision, Mission, and Core Values
Source: Company Records (2019)

Vision	To use nutrient-dense superfoods, starting with moringa, as a tool to improve nutrition and livelihoods worldwide.
Mission:	To get sustainably sourced, nutrient-dense Kuli Kuli superfood products into 1% of U.S. households nationwide.
Core Values	Be a Sponge
	Gratitude and Respect
	Disciplined Optimism
	Own & Lead Positive Collaboration

Kuli Kuli Product Line

Curtis believed high-quality moringa was the key to final product quality. Kuli Kuli committed to source only the freshest moringa leaves with strict quality control standards even in hand-harvested family farms and women's cooperatives in rural areas (Company Records 2019). Good Morning America and the Sterling-Rice Group described moringa as an extremely versatile and nutritious super green that could be blended into smoothies, baked into cookies and cakes, sprinkled over savory dishes, or mixed into sauces and soups (The Sterling-Rice Group 2018 Trend Report 2018). Kuli Kuli found moringa paired best with three types of flavors: citrus/fruit (particularly pineapple), rich nutty or chocolatey flavors (particularly almond butter), and spicy flavors (like ginger).

Exhibit 5. Kuli Kuli Major Products

Source: Company Records (2019)

Notes:

1. **Pure Organic Moringa Powder -** Best-selling 7.4oz powder offers a complete plant protein and the most powerful dose of anti-inflammatory and detoxification benefits of company products. It has a green, earthy flavor that blends well into smoothies, savory dishes like pesto, or even baked goods. Available in the 7.4oz pouch and a 20-count carton of the single-serve 10-gram packets (usually merchandised together).

2. **Organic Moringa Green Smoothie Mix -** Kuli Kuli's Organic Moringa Green Smoothie mixes are a convenient and delicious way to get your greens on-the-go with a blend of the super green moringa plant protein and other high-quality ingredients such as Fair-Trade cocoa. Stir them into your favorite non-dairy beverage or even just water for a plant-powered boost that will keep you energized and satisfied for hours. Available in Vanilla, Chocolate Peanut Butter, Dark Chocolate, and Unsweetened.

3. **Moringa Green Tea Energy Shots -** An energizing green smoothie, these shots provide lots of function-forward superfoods and green tea caffeine equal to a cup of coffee. They are on-the-go energizer and perform best when placed near the checkout or in the cooler. The four varieties include Get Well Soon, Focus Focus Focus, Daily Green Boost, and Stress Be Gone.

4. **Moringa Energy Bars -** Like a "salad in a bar," these tasty, all-natural bars have simple, wholesome ingredients plus half a cup of nourishing moringa greens. More fiber than a bowl of oatmeal and no added sugar (except for chocolate chunks), they are the perfect way to get a satisfying boost of energy and vitamins.

The crowdfunding success enabled Kuli Kuli to launch its first product onto the market in 2014. Kuli Kuli started with one moringa product and grew into four product lines (see Exhibit 5). Whole Foods Market was the first retailer to pick up Kuli Kuli's Moringa Superfood Bars, starting in Northern California. Kuli Kuli then launched the Pure Organic Moringa Powder in 2015 and expanded to over 2,000 retail locations. In 2016, Kuli Kuli partnered with the Clinton Foundation, Whole Foods Market, and a non-profit in Haiti to help reforest Haiti with moringa trees and develop the Moringa Green Energy shots made with Haitian moringa. Kuli Kuli sold Moringa Superfood Bars, Pure Organic Moringa Powder, Moringa Green Energy shots, and new Organic Green Smoothie Mixes in over 7,000 stores nationwide. Management described the in-store target customer as a very active and socially conscious mother in her mid-30s that regularly purchased superfoods at natural food stores. The partnerships with small farming cooperatives in Ghana and Haiti led private foundations like the Clinton Foundation and major retailers such as Whole Foods Market to believe Kuli Kuli had a solid philanthropic business model. Solid, yes, but was it sustainable?

The Kuli Kuli Business Model

At the start, Kuli Kuli management developed goals viewed as simple, measurable, achievable, and realistic that were placed in the five-year plan to attract customers, suppliers, employees, and investors. Management identified strategic objectives they believed were compatible with the vision, mission, and core values of the firm (see Exhibit 4). Kuli Kuli built a five-year plan around growth at the retail level, expansion of strategic partnerships, and continued product innovation (Company Records 2019). As Kuli Kuli scaled up to achieve this ambitious five-year plan, management identified external and internal factors that could either help or hinder the company from reaching the five-year goals. Curtis believed in taking reasonable risks, and financial and social goals should be part of Kuli Kuli's strategic plan and daily use in the firm (see Exhibit 4).

Organization Vision, Mission, and Core Values

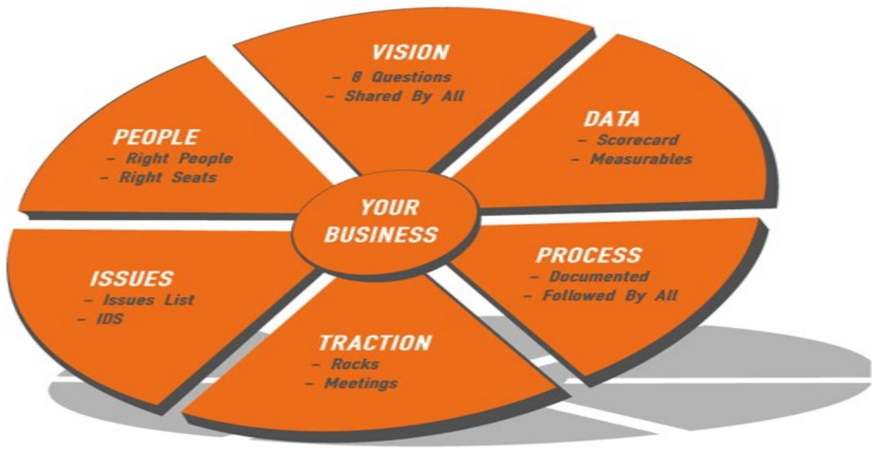
The inspirational goals in Exhibit 4 expressed as vision and mission statements were developed by Kuli Kuli for the first five years, along with supporting values and metrics for operating goals. Thus, the mission-driven moringa business that Curtis co-founded in 2014 had the dual goals of a successful business enterprise and tools to improve nutrition and livelihoods worldwide embedded in its strategic plan. Delaware did not offer benefit corporation status when Kuli Kuli was launched as a B Corp in 2014. Therefore, Curtis was able to get Kuli Kuli certified through the B Lab and re-incorporated Kuli Kuli as a certified benefit corporation in the corporation-friendly state of Delaware in 2016 (see Appendix A and Appendix G). Curtis believed in continuous improvement toward all goals and told her top management team in a 2017 strategic planning meeting, *"A sustainable company must evolve, and this means the mission and vision should be under continuous review"* (Company Records 2019). The team held annual reviews of the strategic plan, and all aspects of the plan were examined for connection to company goals, resources, and metrics. Should these inspirational goals be changed and measured for the next strategic plan cycle?

The Entrepreneurial Operating System (EOS)

The firm stopped creating annual business plans as investors and lenders became less interested in traditional business plan at this stage in Kuli Kuli's life cycle. In 2016, Curtis asked, *"Is there a simple and practical strategic framework beyond the SWOT analysis and B Lab assessment scorecard for a small company like Kuli Kuli where we can plan, capture and measure entrepreneurial success?"* A mentor suggested that Curtis look at the Entrepreneurial Operating System (EOS) described in the book *Traction* (Wickman 2012). Lisa purchased three of Wickman's books and decided to try EOS for the Kuli Kuli strategic framework, planning, and implementation. In 2016, Kuli Kuli stopped the development of traditional business plans and adopted the EOS as its strategic framework (Company Records 2019).

Exhibit 6. Entrepreneurial Operating System (EOS) Model

Source: Company Records (2019)



The Entrepreneurial Operating System (EOS) was presented as a complete set of simple concepts and practical tools that helped thousands of entrepreneurs get what they want from their businesses. (What is EOS? n.d.). EOS was described as composed of a model, toolbox, and process that assisted companies toward success if properly implemented. The focus of the EOS system was helping leadership teams to get better at three things: Vision, Traction®, and Healthy. The model was described in the *Traction* book as composed of six key components: 1. Vision, 2. People, 3. Data, 4. Issues, 5. Process, and 6. Traction® (see Appendix D; Wickman 2012). The EOS Toolbox™ was described as a set of practical tools to strengthen the Six Key Components of a business (What is EOS? n.d.).

Since 2017, Kuli Kuli used an EOS Stop-Start-Continue framework for strategic planning implementation and measurement. EOS planning and assessments were usually conducted twice a year at leadership retreats. After skipping 2018, two retreats (April & October) were held in 2019. The Kuli Kuli management team used an EOS Vision Organizer tool from the Stop-Start-Continue framework to focus on the marketing strategy, core values, core focus, 2, 5, and 10-year targets goals.

However, in these leadership retreats, the company continued with the development of SWOT analysis for each functional area within Kuli Kuli and the company overall, as well as the B Lab assessment process and scorecard (see Appendix A). In the annual SWOT analyses at the leadership meetings, Kuli Kuli identified external and internal factors that could either help or hinder the company from reaching the goals that were fleshed out in the EOS discussions.

External Factors

In the 2019 leadership meetings, Kuli Kuli identified several items that might be viewed as opportunities and threats to its first to market competitive advantage. For example, there appeared to be a clear trend toward healthier lifestyles in the U.S., and this trend increased opportunities for moringa based products. The supply chain risk included external threats unrelated to moringa, such as technology disruption, changing environment, disease and hunger, social unrest, political instability, and economic uncertainty. Although Kuli Kuli had introduced moringa to the U.S. market, over time competition for moringa based products emerged. Low-cost moringa was entering the market from India and several less developed countries that might impact supply chain availability, quality, and cost. This competition could be viewed as either an opportunity for Kuli Kuli (because it could lower product cost) or a threat for the firm (because inferior quality moringa might hurt Kuli Kuli's social mission with farmers that emphasized above-market prices and high-quality moringa).

External economic factors such as low-interest rates helped to make the Bay Area housing market very expensive for buyers and renters. As Kuli Kuli grew its internal infrastructure, wages, salaries, benefits, and other employee-related costs escalated. Often, employees were willing to work for Kuli Kuli at a discount to the prevailing wages in the high living cost in the Oakland, California market because of the company's social mission. However, as the Northern California unemployment rate decreased in 2019, and Kuli Kuli's need for special skills grew, this put upward pressure on employment costs. As technology advanced, digital marketing raised the possibility for new superfood markets inside and outside the U.S. as well as the possibility that technology could reduce Kuli Kuli's operational costs.

Internal Factors

Some company strengths and weaknesses were also reviewed in the 2019 leadership meetings. Some major strengths were: passionate, energetic staff with people skills; subject-matter expertise and willingness to learn and use new technologies; strong local market and supplier relations; a range of unique products; doing work that had a global social impact. These company strengths continued in 2019, and both the strengths and weaknesses were factors such as its employees, the company culture, and the products it developed and marketed where Kuli Kuli has some degree of control. Curtis believed Kuli Kuli became more of a learning organization. The underlying core values that support these strengths were included in its vision and mission statements (see Exhibit 4).

In addition to strong product marketing, Curtis wanted the B Lab trademark to increase company sales and remove any perception that moringa was just another superfood fad. Curtis was convinced that product differentiation was the key to product success. She explored with her management team several differentiation options to change the competitive marketplace, such as product and market specialization, as a way to increase sales. Alternatively, perhaps a weakness was Kuli Kuli's products were very different without a coherent theme. Curtis was concerned that employees were becoming too focused on retailer whims rather than what customers wanted, as shown by marketing and sales research. Staff turnover and rushing new products to market reduced the time spent on brainstorming new ideas and acting on these ideas (Company Records 2019).

Discussion of the B Lab scorecard indicated the average score of over 3,000 firms was 80 (see B Lab Formats, Exhibits 7, and Appendix A). Kuli Kuli espoused core values to support its vision and mission that resulted in scores above 80 on the B Lab assessment impact scorecard composed of governance, workers, community, environment, customers, and changemakers criteria (see Appendix A). Exhibit 7 shows Kuli Kuli total scores grew to 102.6 after a slight dip to 90.1 in 2016.

Exhibit 7. Kuli Kuli B Lab Impact Assessment

Source: Company Records (2019)

Average Company Points	Your Company Points (Kuli Kuli)		
	2014	2016	2019
80	97.3	90.1	102.6

B Lab reports showed that Kuli Kuli employees had high employee motivation and job satisfaction as well as a positive organizational culture. Appendix A shows good Kuli Kuli scores on the B Lab scorecard in other assessment categories (customers, community, and environment) related to good company relationships inside and outside the organization. Even within the certified Benefit corporation community, the high scores that Kuli Kuli achieved were rare. In 2019, Kuli Kuli was selected as a B Corp Best for the World Honoree from among over 3,000 organizations for the *"Community"* category (see Timeline Appendix E). Again, Appendix E shows Curtis was inducted in the Entrepreneurial Winning Women™ North America Class of 2019, and Kuli Kuli received industry awards as a good place to work.

Funding Sources, Financial Performance Indicators, and Metrics

Kuli Kuli was able to use the dual purpose in its mission statement, business model, and management commitment to raise funds. This approach helped management attract grants, loans, and investors who believed in the social mission to keep the firm going until it generated enough money from operations to become profitable in 2023 (Company Records 2019).

Funding Sources

Kuli Kuli had many small investors but raised larger amounts from venture capitalists as the company grew. Some of the Kuli Kuli venture capital (V.C.) funding sources were $1M seed round that closed in 2016, $3.25M Series A that closed in 2017, and $6.34M Series B that closed in 2019. In 2017, Kuli Kuli was one of the first B Corps to receive investment from a Fortune

500 company, Kellogg. Curtis indicated after noting that the Kellogg venture capital fund eighteen94 capital led Kuli Kuli's Series A financing in 2017 had helped Kuli Kuli's retail business to triple: *"We're thrilled to continue to partner with Kellogg to grow our retail business while partnering with Griffith Foods to expand into the foodservice and ingredient space"* (Company Records 2019). Griffith Foods led the series B financing in 2019 for Kuli Kuli, and Brian Griffith, executive chairman, said: *"Griffith Foods' purpose calls us to find innovative solutions to changing needs"* (PRNewswire 2019). He also indicated that Griffith Foods could not do this alone and said: *"Our strategic partnership with Kuli Kuli will help both companies elevate moringa as an exciting new ingredient, and we look forward to bringing this sustainable and healthy offering to the food sector"* (PRNewswire 2019).

Traditionally, V.C.s wanted their money back quickly with a high return on their investment or control over the company through additional equity. Curtis had been very selective in fundraising and attracted funding sources that took a longer-term view toward Kuli Kuli's social mission. As a safety net, Kuli Kuli had the ability to use a line of credit for emergency short-term cash needs. It appeared that Kuli Kuli had covered the need for funding until it was forecasted to become profitable in 2023. Should Kuli Kuli look for additional investor funding sources or rely on its line of credit?

Funding Emphasis on Social Mission

Many Kuli Kuli partnerships and funding sources took the social mission into consideration when providing funds; however, should Kuli Kuli emphasize the social mission to a greater degree with all stakeholders? Should Curtis become a social activist? Traditional and integrative financial indicators of corporate performance were only the starting point management might need to demonstrate the firm's performance and strategic evaluation (Rothaermel 2015; David 2009; Wheelen & Hunger 2006; Kaplan & Norton 1996). The strategic performance interests by firms were often reflected in the balanced scorecard (BSC) approach that had gained widespread interest (Rothaermel 2015; David 2009; Wheelen & Hunger 2006; Kaplan & Norton 1996). Since Kuli Kuli was a certified B Corp with reporting responsibilities, Curtis encouraged management to think about the triple bottom line of people, planet, and profit in everyday activities (see B Corp Overview Appendix A; Elkington 2018; Honeyman 2014). Kuli Kuli was committed to paying a living wage to its suppliers and farmers in underdeveloped countries in Africa and the Caribbean. Would an increase in competition for moringa require Kuli Kuli to reduce cost in its supply chain and erode this commitment? Kuli Kuli was also committed to paying competitive wages and salaries to production and H.Q.s employees in California. Could this small firm continue its social commitments as a B Corp and compete for highly skilled employees in the high wage California locations? Would participation in Kuli Kuli's internal Fair Trade 2.0 ideal hurt the firm long term?

The Kuli Kuli Fair Trade 2.0 Initiative

Kuli Kuli's internal Fair Trade 2.0 Initiative sought a way for consumers in the U.S. to gain access to moringa superfoods while farmers in the developing world increased local nutritious crops. One way was careful management of the Kuli Kuli supply chain to source only a portion of each moringa harvest for Western consumption, while paying fair wages, thus ensuring that moringa benefited those who needed it the most. Could Kuli Kuli realistically continue with a high level of social commitment and become profitable in 2023? Curtis was committed to this social benefit initiative and told her team: *"We're trying to balance our strong social mission with creating a sustainable business, and it's always a balancing act"* (Company Records 2019)

Financial Performance Indicators

A summary of key financial performance indicators and metrics for years 2016-2018 are provided in Appendix F. Detailed financials were not available for year-end 2019. Estimates of some key figures, however, were available in November, and Curtis was aware on her flight to Palm Springs that 2019 revenue was estimated to be significantly below the budgeted figure due to the huge 4Q sales decline. What was the impact of this 4Q sales decline on the sustainability of Kuli Kuli and the next five-year strategic plan?

The initial alert from the Kuli Kuli financial area about the 4Q decrease in sales made Curtis anxious to see all final year-end 2019 numbers and compare them to prior years. Lisa told the CTO, Jordan: *"We need to understand why sales decreased and how we can turn them around."* (Personal Communication Lisa Curtis 2019). CTO Executive Team member, Jordan, who was responsible for the financial area, conveyed to Lisa the initial assessment of the large decline in 4Q sales was that it appeared to be the result of a decrease in orders from one large customer. Jordan told Lisa that the executive team would get together to analyze the impact on other areas in the company and create a plan of action. Some short-term trends in financial metrics and indicators over the last three years (2016-2018) gave Kuli Kuli management cause for concern for year-end 2019 financials, while others were quite encouraging (see Appendix F). The inventory trend was disappointing, but Curtis felt that Kuli Kuli had put a plan in place in the second half of 2019 to address supply chain risk that affected inventory levels. She noted that perhaps the implementation of the plan would prevent any *"bullwhip"* effect from taking place in 2020 and beyond. Curtis also noted that revenue grew rapidly, and both assets and cash flow had recovered, but the firm was not yet profitable. She was aware that most start-up firms did not make a profit in the short-run, but Curtis felt that positive cash flow was especially important in the short-run, and profitability was expected in the long-run. Curtis believed Kuli Kuli had sufficient short -term funding to build the business until it became profitable in a few years.

Curtis reviewed the key financial ratios and the trends through 2018 in Appendix F and estimates for 2019 sales revenue and inventory. She remained uneasy about the 4Q sales decline but did not believe the wheels were falling off the company. She strongly believed that management had taken some pro-active steps since implementing the EOS framework in 2017 to address key areas of concern, and she did not want to overreact prior to receiving the year-end 2019 financials. Curtis took a longer-term view and said: *"We're focused on growth and investing in our team, sales and marketing, and our goal is to become profitable by 2023 at the latest"* (Personal Communication 2019). She was aware that traditional integrative financial tools such as the Altman Z statistic and others existed to provide a complete financial picture of solvency by combining traditional ratios in formulary and multivariate statistical formats (Altman 2013; Wheelen & Hunger 2006). Yet, Curtis was not 100 percent sure these statistical tools were a *"silver bullet"* that would help Kuli Kuli manage the areas of concern, but she indicated a willingness to take a look.

Past and Future Management Challenges

In the five years since Lisa Curtis co-founded Kuli Kuli Foods and incorporated the firm as a B Corp (see Appendix G), things were encouraging but not always smooth. She and her team worked through numerous changes and challenges. (see Appendix E Timeline). On the flight to Palm Springs on November 12, 2019, Curtis looked backward and forwards at her past decisions and events and tried to contemplate whether the past company successes were sustainable. She pondered a number of questions and felt that answers to these questions would help her to manage Kuli Kuli as a sustainable company and achieve the profit, people, and environmental goals over the next five-year plan cycle.

Key Management Questions

As Curtis mulled over the myriad of questions on her mind, the list was reduced to six areas:

1. What is the best way to determine the social impact of a social purpose firm such as Kuli Kuli as it evolved over the next five years?
2. Which strategic approaches would be most effective for Kuli Kuli at this stage of growth and development over the next five years?
3. Should Kuli Kuli substantially modify its mission or vision statement to reflect the company priorities over the next five-year planning cycle?
4. Could Kuli Kuli rely on its first-mover in the moringa superfood market to maintain or improve the firm's competitive advantage?
5. What should be the CEO's leadership style for Kuli Kuli to achieve its goals over the next five-year strategic plan period?
6. Should Kuli Kuli rely on traditional financial evaluation methods or migrate toward methods such as scorecards to measure the impact of the 4Q 2019 decline on the firm and assess the future sustainability of the firm?

These six key forward-looking questions were on the mind of CEO Lisa Curtis during her November 12, 2019 flight to Palm Springs. When Curtis returned home that week, she finally concluded these six specific questions addressed her general concern: What future strategic management, B Corp, and leadership actions should I take now to address the major challenges facing Kuli Kuli Foods and continue our rapid growth while staying true to our social mission over the next five years?

George L. Whaley is Emeritus Professor of Human Resource Management at San José State University. Over the past twenty years, he has authored numerous case studies of companies in the high technology and biotechnology industries. Professor Whaley holds a B.S. in Engineering Mathematics, an M.B.A. from the University of Arizona and a Ph.D. in Organizational Behavior from the University of Colorado. He has forty years of combined management, consulting and teaching experience. Professor Whaley serves on the editorial board of several academic journals and is the co-editor of the *Business Case Journal*. His research focuses on Strategic Human Resource Management, Sustainability, Leadership, Diversity, and Entrepreneurship, and he teaches Organizational Behavior, Human Resource Management and Organizational Change in the Lucas College and Graduate School of Business at San José State University.

Appendix A
The Goals, Responsibilities, and Certification of B Corporations
Source: Author's Notes (2019)

The governance or legal structure of firms had taken on many different forms, such as a single proprietorship, partnerships, and corporations. The popular corporation format had the advantage of many different owners (shareholders) of the firm and was usually called *"C or S Corporations"* for tax purposes (Kickul & Lyons 2012). C and S Corporations were either privately or publicly held and were for-profit or non-profit in terms of the goals of the organization. C and S Corporations had the primary goal and obligation to maximize shareholder wealth (Collins 2018; Kickul & Lyons 2012). Shareholders had the legal right to sue the management of C and S Corporations that did not pursue the maximization of shareholder profit (Collins 2018; Chen 2016). Kuli Kuli Foods was founded as a B Corporation in 2014 because Co-founder and CEO Lisa Curtis wanted the company to be accountable for business and social goals, and the firm evolved into a certified B Corporation with a third-party assessment of performance goals.

B Corporations
The concept of corporate social responsibility (CSR) raised speculation in the management field regarding the legitimate role of multiple stakeholders and multiple goals in a company (Collins 2018; Chen 2016; André 2012; Montgomery 2012). These *"gray sector organizations"* (GSO) or *"social purpose corporations"* (SPC) emerged as a new organizational form dedicated to legitimizing the pursuit of corporate social responsibility (Collins 2018; Chen 2016; André 2012; Montgomery 2012). Hence, the benefit corporation was a hybrid business organization nestled between a non-profit and a for-profit corporation that used revenue and profit to pursue social goals (Horton 2018). Additionally, Benefit Corporations (B Corporation) usually had the same structure as traditional for-profit C and S Corporations but with a different purpose and no tax advantages. Owners of B Corporations usually developed strategies to attract investors that highly valued contributions to social or environmental causes and highly valued profits and employees that valued social missions as well (Collins 2018; Chen 2016; André 2012; Montgomery 2012). Montgomery (2012) indicated that B Corporations were based on a multiple stakeholder model and suggested a *"scorecard report"* that overall assessed company social and environmental performance was important. Outside the U.S., Italy made B Corporations a legal entity in 2015, and the multiple stakeholders and multiple goal format of B Corporation were aligned with the United Nations development goals established in 2015 (Werber 2019; Collins 2018).

Individual states began to pass legislation to recognize the multiple goals of GSO and SPC organizations, and the Benefit Corporation (B.C.) became a legal outgrowth of these GSO and SPC formats. Maryland was the first state to pass B Corporation legislation in 2010, followed by California in 2011 and Delaware in 2013, which is the legal home to approximately fifty percent of all publicly traded corporations in the U. S. (Collins 2018; Bishop 2017; Chen 2016). Recent research showed that laws covering B Corporations varied from state to state, but overall, they were required to have a public benefit purpose stated in its articles of incorporation which allowed its directors to consider the needs of society and the environment in addition to profit (Collins 2018; Bishop 2017; Chen 2016; André 2012; Montgomery 2012). Chen (2016) indicated that B Corporations in California were required to be incorporated under the 2011 California law. He pointed out that California B Corporations varied from C Corporations in terms of a stated public benefit, protection for officers and directors to pursue goals other than shareholder wealth, and the requirement to measure social goals against a third-party standard (Chen 2016). However, Chen (2016) noted that B Corporation's goals and activities were not required to be independently certified by the third-party standards that the company adopted.

Certified B Corporation through B Laboratory

The B Laboratory (B Lab) was established in 2007 as a non-profit organization dedicated to measuring the plans and results of firms that desired to pursue social responsibility as an organizational obligation (Collins 2018; Chen 2016; Montgomery 2012). One method to document a firm's overall social and environmental performance was to use the external B Lab third-party standard. The non-profit B Lab performed independent assessments of organizations for a fee and certified the organizations that *"passed"* as a B Corps. Therefore, the certified B Corp was a higher-level commitment to social goals than the regular B Corp. Hence, a company certified through the non-profit B Lab organization was an added step, higher-level accountability, and like the Good Housekeeping Seal of approval for being ethical, sustainable, and socially responsible (Collins 2018). Many certified companies such as Kuli Kuli Foods placed the B Corp logo and trademark on their products to differentiate their brand from non-certified products and show this level of commitment and dedication to social goals (Company Records 2019). Firms paid an annual tiered fee for the certification process based on company revenue. B Lab (2019) indicated firms with annual sales less than $150,000 paid $1000, while those over $1 Billion paid an annual fee of $50,000 or more depending on the size and complexity of the business. The B Lab certification process also involved completing a scorecard composed of six factors or criteria (Governance, Workers, Community, Environment, Customers, and Change Makers) that evaluated the firm's overall impact on its stakeholders with supporting documentation. For recertification, firms were required to update the assessment every two years and maintain a minimum score of 80 points on the six factors that comprised the B Lab scorecard. Firms that exceeded the minimum threshold of 80 points were publicly recognized, and awards were given annually to firms in each industry that greatly exceeded 80 points (Werber 2019; Collins 2018). Collins (2018) revealed that by 2017, 30 states had passed B Corporation legislation, and 2,026 companies in 50 countries and 30 industries had been certified as B Corps. Typically, B Corp firms were small like Kuli Kuli Foods and middle-size firms, but multinational giant Danone North America became the world's largest certified B Corp in 2018 (Werber 2019). Kuli Kuli was certified in 2014 by the B Lab, and for the last three years (2017, 2018, 2019), the firm was selected as a B Corp Best for the World Honoree in different categories such as "governance and community" from among over 3,000 organizations.

Appendix B
Survey Results

Source: Company Records (2019)

Below are the results of Lisa Curtis' scores on a battery of behavioral style surveys. Several surveys are a mix of management and leadership surveys, and the others relate to leadership and personality style.

Exhibit 8. Lisa Curtis Style Survey Results

Source: Company Records 2019

Survey Name	Lisa Curtis Scores
Supervisory Attitudes Theory X-Y	Self-Score Actual Survey Score X Mixed Y 35 31 10-20 20-30 30-40
T – P Leadership	Task People Shared Leadership 11 13 High, Balanced
Jungian Type Personality Style	Extrovert/Introvert Intuitive/Sensing Thinking/Feeling Perceiving/Judging Extrovert (E) Intuitive (N) Feeling (F) Judging (J)
Ethical Leadership	Actual Score Perfect Score 40 50
Conflict Management	Avoiding Smoothing Bargaining Forcing Problem-Solving 3 6 8 10 7

Notes:

The X score is similar to Authoritarian, and Y is similar to Participative
The T= Task score is similar to Theory X, and P= People score is similar to Theory Y
ENFJ score is usually described as outgoing, friendly, fun, decisive
The range for Ethical Leadership is 10-50; scores above 25 are considered Ethical Leaders
The highest possible score for each conflict management style is 12

Appendix C
Management Backgrounds
Source: Company Records (2019)

Lisa Curtis, Founder, CEO
Lisa began working on the Kuli Kuli framework while in the Peace Corps in Niger, West Africa. As a volunteer in her village's health center, she gained an understanding of nutritional challenges faced in West African villages and how moringa could help address those challenges. Before Kuli Kuli, Lisa served as the Communications Director at Mosaic, wrote political briefings for President Obama in the White House, and worked at an impact investment firm in India. Lisa was recognized as a Forbes 30 Under 30 leader, a Udall Scholar, and a *"dedicated humanitarian"* by the Muhammad Ali Center and received numerous leadership awards.

Emma Giloth, Senior Marketing Manager
Emma had experience in government, NGOs, and non-profits, before joining Kuli Kuli as Senior Marketing Manager. She worked for over seven years in the U.S., West Africa, Israel, and the Caribbean in non-profits and social businesses to promote social entrepreneurship, economic development, and plant medicine. She co-founded and managed social business start-ups to produce and retail all-natural coconut products. Emma built and maintained local and international partnerships with 10 NGOs, 60+ donors, five embassies, and 100+ customers. She built and administered two IndieGoGo campaigns raising $10,500 in 2014 and $5000 in 2015. As a social entrepreneur and marketing professional, Emma dedicated her career to growing businesses that build sustainable supply chains and improved cross-cultural collaboration.

David Ray, Director of Operations
David brought several years of experience working for fast-growth start-ups as well as legacy CPG companies to Kuli Kuli. He was asked to focus on continuous production improvement and developing a productive and efficient supply chain to support growth and innovation within Kuli Kuli. David's previous accomplishments included turning around the snack foods division at ZeroCater and increasing customer retention 90% in 6 months, managing 300% production growth at Hello Fresh, and managing the S.F. Operation for all of S.F. region at Breather during a huge growth phase. David was involved with all of the disciplines of the supply chain in Kuli Kuli and at the same time working for a company whose stated B Corporation mission included improving the lives of others through improved nutrition, providing livelihoods for farmers in different countries as well as making a difference in his community.

Jordan Moncharmont, Co-founder & CTO
Jordan was a software engineer and Co-founder who came to Kuli Kuli by way of Stanford, Facebook, and Tesla Motors. He designed and implemented the online systems for Tesla's cars, one of the largest internet-of-things deployments in the world with over 30 million connected sensors and served as a software engineer at Facebook from 2005 - 2010, where he learned how to scale a company quickly. He had always been interested in how communities and technology interacted to solve the world's problems. Jordan started as the company lead in

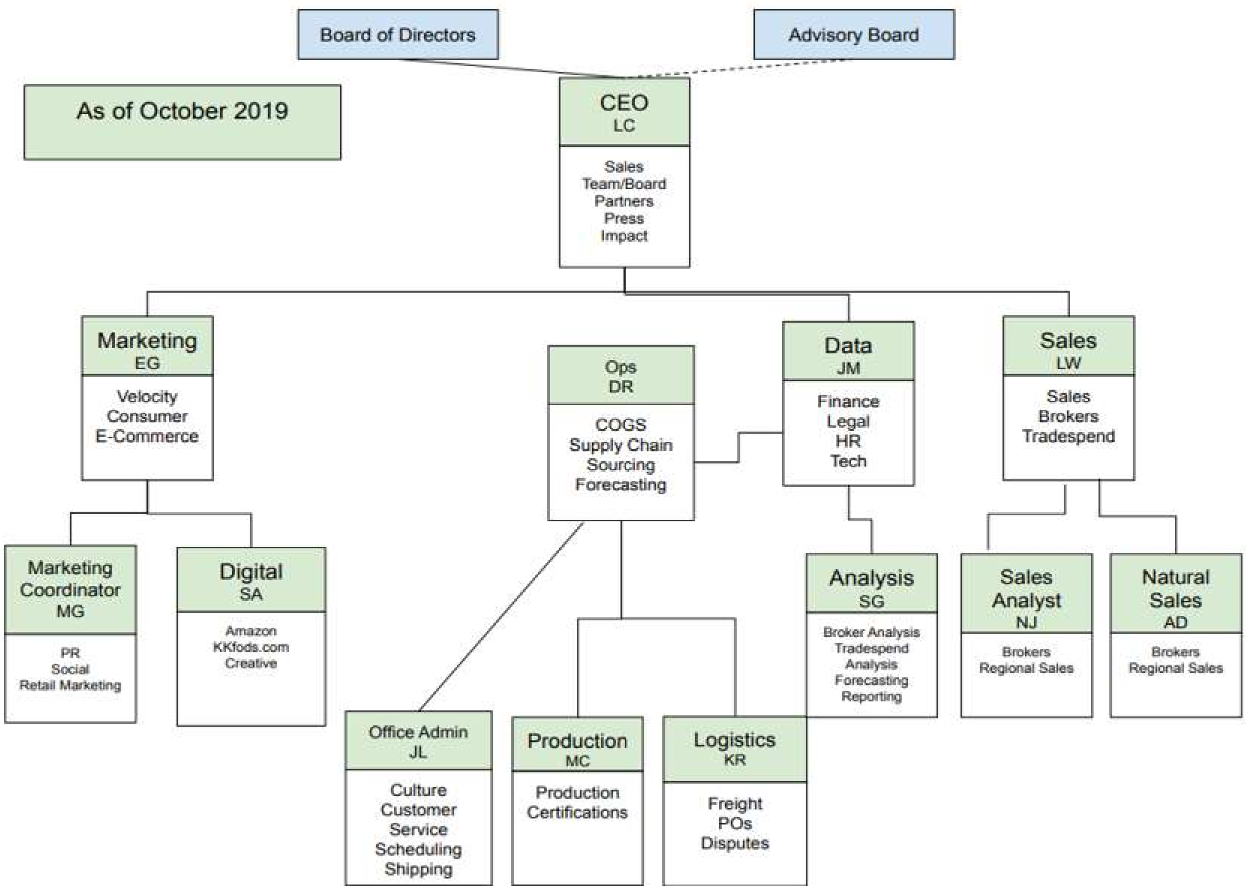
operations and finances while also developing and implementing online sales strategy and online marketplace, which told the stories of the women cultivating moringa.

Lynne Wilkie, VP of Sales

As V.P. of Sales, Lynne brought twenty-five years of experience in the Natural and Organic Food industry to Kuli Kuli. She worked with multiple start-ups and entrepreneurs and helped to pioneer several brands into such retailers as Walmart, Whole Foods, Target, and Publix. Lynne served in the U.S. Peace Corps in Cameroon, West Africa, from 2010-2012, where she first ate Moringa. She was the recipient of the 2004 NASFT Specialty Award for her retail and buying experience, which highlights her commitment to driving the vibrant food industry to more sustainable solutions and empowering women entrepreneurs.

Exhibit 9. Kuli Kuli Foods 2019 Organizational Chart

Source: Company Records 2019



Appendix D
New EOS Strategic Planning System
Source: Company Records (2019)

The Entrepreneurial Operating System (EOS) was described in the book *Traction* (Wickman 2012). An overview of EOS is shown in Exhibit 6. In 2016, Kuli Kuli stopped the development of traditional business plans and adopted EOS as its strategic framework the next year. EOS was presented online as a complete set of simple concepts and practical tools that helped thousands of entrepreneurs get what they wanted from their businesses. (What is EOS? n.d.). EOS was described as composed of a model, toolbox, and process that assisted companies toward success if properly implemented (What is EOS? n.d.). The focus of the EOS system was helping leadership teams to get better at three things: Vision, Traction, ® and Healthy. The six key components of the model were described in the *Traction* book as composed of six key components (Wickman 2012):

1. *Vision*. Strengthening this component means getting everyone in the organization 100 percent on the same page with where you're going and how you're going to get there.
2. *People*. Simply put, we can't do it without great people. This means surrounding yourself with great people, top to bottom, because you can't achieve a great vision without a great team.
3. *Data*. This means cutting through all the feelings, personalities, opinions, and egos and boiling your organization down to a handful of objective numbers that give you an absolute pulse on where things are.
4. *Issues*. Strengthening this component means becoming great at solving problems throughout the organization – setting them up, knocking them down, and making them go away forever.
5. *Process*. This is the secret ingredient in your organization. This means "systemizing" your business by identifying and documenting the core processes that define the way to run your business. You'll need to get everyone on the same page with what the essential procedural steps are and then get everyone to follow them to create consistency and scalability in your organization.
6. *Traction*. ® This means bringing discipline and accountability into the organization – becoming great at execution – taking the vision down to the ground and making it real.

The EOS Toolbox™ was described as a set of practical tools to strengthen the Six Key Components of a business (What is EOS? n.d.).

Appendix E
Company Milestones- Kuli Kuli Company Milestones and Key Events
Source: Company Records (2019)

2011
Lisa Curtis returns from the Peace Corps determined to introduce moringa to the U.S. in a way that fights climate change and empowers women.

2012
(Feb) Lisa recruits co-founders to begin consumer testing at farmers markets.

2013
(June) Indiegogo campaign to launch Kuli Kuli Bars raises $53k.
(Nov) Market launch into the Oakland Whole Foods Market store.
(Dec) Named one of the *"Top Start-ups that Helped Save the World"* by Triple Pundi.

2014
(Feb) Named one of the *"Best New Ways to kick 4pm's Butt"* by *Redbook*.
(March) Editor's Pick for *"Best Energy Bars from Expo West"* by *New Hope*.
(June) $350k crowdfunding equity campaign raise via Agfunder,
(July) $25k grant from shirt maker Ledbury and appearance on Morning Joe,

2015
(May) *Time* covers three Peace Corps inspired businesses, including Kuli Kuli.
(Aug) #Moringa Inspired recipe competition launches with Chef Jose Andres.
(Sept) *"Is Moringa the New Kale?"* asks NPR.
(Oct) Kuli Kuli partners with the Clinton Foundation to reforest Haiti.
(Nov) Indiegogo campaign to launch Moringa Green Energy shots raises $100k.

2016
(Jan) Nationwide launch with Whole Foods Market of Shots and Moringa Powder.
(April) Lisa's TEDx talk on optimism launches and receives thousands of views.
(May) Lisa appears on NBC's Power Pitch, and all three investors go *"in"* on Kuli Kuli.
(July) Kuli Kuli receives a $100k loan from Whole Foods Market.
(Oct) Kuli Kuli launches into Safeway/Albertsons.

2017
(Jan) Kuli Kuli closes a $4.25M Series A.
(April) Kuli Kuli goes viral in *NowThis video* with 3M views.
(May) Key Leadership hires start – V.P. of Sales and Marketing Director.
(Sept) Launch of Kuli Kuli's Moringa Greens & Protein in Whole Foods and Sprouts.

2018
(April) Successful launch into Costco with massive distribution.
(Aug) Lisa goes back to her Peace Corps village as part of a partnership with the U.S. State Department to evaluate moringa potential in Niger.
(Sept) Lisa receives the Muhammad Ali award for dedication.

2019
(Jan) Lisa receives a Citizenship Award from the Specialty Food Association and featured on magazine cover.
(April) Kuli Kuli closes a $6.25M Series B.
(October) Kuli Kuli launches into Walmart.
(November) Lisa receives Ernst & Young LLP Entrepreneurial Winning Women™ North America Award.

Appendix F
Financial Performance Indicators and Metrics

Source: Author's Notes (2019)

Revenue and profit (loss) figures in Exhibit 10 are disguised at the request of the company. However, the financial ratios that are based on the relationship between actual numbers in the company's financial reports. Other financial figures in Appendix F are not disguised, and key financial ratios are based on the relationship between actual numbers in Kuli Kuli's financial report.

Exhibit 10. Kuli Kuli Key Years 2016-2018 Financial Indicators

Source: Author's Notes (2019)

($ Values, 000)	2016	2017	2018
Current assets	3,452	2,706	7,457
Current liabilities	240	130	714
Net Working capital	3,212	2,575	6,743
Total assets	3,455	2,739	7,469
Total liabilities	240	130	772
Revenue*	3,006	3,696	7,126
Profit/(loss) *	(236)	(2,786)	(546)
Book value of equity	3,214	2,608	6,696
FG Inventory	238	391	2,303

* Actual Number Disguised for Privacy Concerns of Company.

Appendix G
Kuli Kuli Incorporation as B Corp
Source: Company Records (2019)

State of Delaware
Secretary of State
Division of Corporations
Delivered 02:04 PM 12/13/2018
FILED 02:04 PM 12/13/2018
SR 20188136887 - File Number 5040725

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
KULI KULI, INC.

(Pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware)

Kuli Kuli, Inc. a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "**General Corporation Law**"),

DOES HEREBY CERTIFY:

1. That the name of this corporation is Kuli Kuli, Inc., and that this corporation was originally incorporated pursuant to the General Corporation Law on September 20, 2011.

2. That the Board of Directors duly adopted resolutions proposing to amend and restate the Certificate of Incorporation of this corporation, declaring said amendment and restatement to be advisable and in the best interests of this corporation and its stockholders, and authorizing the appropriate officers of this corporation to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment and restatement is as follows:

RESOLVED, that the Certificate of Incorporation of this corporation, as amended, be amended and restated in its entirety to read as follows:

FIRST: The name of this corporation is Kuli Kuli, Inc., a Public Benefit Corporation (the "**Corporation**").

SECOND: The address of the registered office of the Corporation in the State of Delaware is

1013 Centre Road Suite 403-A, City of Wilmington, County of New Castle19805. The name of its registered agent at such address is American Incorporators Ltd.

THIRD: The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law. The specific public benefit purpose of the Corporation is to is to use moringa as a tool to improve nutrition and livelihoods worldwide, as the board of directors may from time to time determine to be appropriate and within the Corporation's overall mission.

FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) 24,000,000 shares of Common Stock, $0.00001 par value per share ("**Common Stock**"), and (ii) 9,481,527 shares of Preferred Stock, $0.00001 par value per share ("**Preferred Stock**").

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation.

References

Altman, E.I. (2013). Predicting financial distress of companies: Revising the Z-Score and ZETA models. *Handbook of Research Methods and Applications in Empirical Finance*, 428.

Amabye, T.G. & Gebrehiwot, K. (2016). Chemical compositions and nutritional value of Moringa oleifera available in the market of Mekelle. *Journal of Food and Nutrition Sciences, 3*(5), 187-190.

André, R. (2012). Assessing the accountability of the benefit corporation: Will this new gray sector organization enhance corporate social responsibility? *Journal of Business Ethics, 110*(1), 133-150.

Bishop, C.G. (2017). Fifty State Series: L3C & B Corporation Legislation Table. Suffolk University Law School Research Paper (10-11).

B Lab website. (2019). Retrieved from https://bcorporation.net/about-b-lab

Chen, J. (2016). What is a California Benefit Corporation? Retrieved from http://jeremychenlaw.com/what-is-a-California-benefit-corporation/

Chopra, S, & Meindl, P. (2013). *Supply Chain Management: Strategy, Planning, and Operation.*

Collins, D. (2018). *Business ethics, 2nd Ed*. Newbury Park, CA.: Sage Publishers.

David, F.R. (2009). *Strategic Management: Concepts and Cases, 12th ed*. Upper Saddle River, NJ: Pearson Prentice Hall

Diners' Changing Behaviors. Wellness, Sustainability, and Where to Eat 2015 report (2015). The Hartman Group. Retrieved from https://www.hartman-group.com/acumenPdfs/ingredients-avoid-v-seek-infographic-2015-05-14.pdf

Elkington, J. (2018). 25 years ago, I coined the phrase "triple bottom line." Here's why it's time to rethink it. *Harvard Business Review*. June 25, 2018. Retrieved from https://hbr.org/2018/

E.Y. Press Release (2019). E.Y. Announces 13 Women Founders Selected for the E.Y. Entrepreneurial Winning Women™ Program Class of 2019. Retrieved from https://www.ey.com/en_us/news/2019/11/13-women-founders-selected-for-ey-entrepren.

Glass Door (2018). Retrieved from https://www.glassdoor.com/Reviews/Kuli-Kuli-Oakland-Reviews

Graf, B L., Jaja-Chimedza, A.L. & Raskin, I.L. (2017). Comparative Anti-Inflammatory Effect of Moringa-Derived Isothiocyanate versus Curcumin in vitro and in vivo. *The FASEB Journal, 31*, 972-22.

Gould, D. (2017) How Kuli Kuli is Doubling Its Superfood Sales Year Over Year. Food + Tech Connect. Retrieved from https://foodtechconnect.com/2017/02/21/kuli-kuli-doubling-superfood-sales-year-year/

Honeyman, R. (2014). *The B Corp handbook*. San Francisco, CA: Berrett-Koehler Publisher, Inc.

Horton, B.J. (2018). *Rising to Their Full Potential: How a Uniform Disclosure Regime Will Empower Benefit Corporations*.

Jacob, A. (2019). Lisa Curtis, CEO of Kuli Kuli, A DotCom Magazine Exclusive Interview. Retrieved from https://www.dotcommagazine.com/2019/03/lisa-curtis-ceo-of-kuli-kuli-a-dotcom-magazine-exclusive-interview/

Jones, G. & George, J. (2019). *Essentials of Contemporary Management*. New York, NY: McGraw-Hill Irwin.

Kaplan, R.S., & Norton, D.P. (1996). *Using the Balanced Scorecard as a Strategic Management System*. Boston, MA: Harvard Business School Press.

Kickul, J. & Lyons, T.S. (2012). *Understanding Social Entrepreneurship: The Relentless Pursuit of Mission in an Ever Changing World*. New York, NY: Routledge, Taylor & Francis Group.

Kuli Kuli Press Release (2018). New Study Shows That Moringa Could Contain More Powerful Anti-Inflammatory Properties Than Turmeric. Retrieved from https://www.specialtyfood.com/news/article/new-study-shows-that-moringa-could-contain-more-powerful-anti-inflammatory-properties-than-turmeric-124782/

Laskow, S. (2014). Fast Company. A Distant Voyage, a Powerful Plant, and a Crowd-Backed Quest to Crack. Retrieved from https://www.fastcompany.com/3029485/the-amazing-plant-powering-a-quest-to-crack-the-crowded-snack-market

Lieberman, M.B. & Montgomery, D.B. 1988. First-mover advantages. *Strategic Management Journal, 9*: 41-58

Lieberman, M.B. & Montgomery, D.B. 1998. First-mover (dis)advantages: Retrospective and link with the resources-based view. *Strategic Management Journal, 19*: 1111-1125.

Lieberman, M.B., & Montgomery, D.B. 2013. Conundra and progress: Research on entry order and performance. *Long Range Planning, 44*: 312-324.

McNeilly, C. (2017). Why Moringa Is the New Superfood You Need to Know About. *Vogue*. Retrieved from https://www.vogue.com/article/moringa-new-superfood-to-know

Montgomery, J.B. (2012). *Great from the Start: How Conscious Corporations Attract Success*. Morgan James Publishing.

Oommen, A. (2015). Amazing Moringa: Medicinal, Edible & Easy to Grow. *Permaculture Magazine*. Retrieved from https://www.permaculture.co.uk/articles/amazing-moringa-medicinal-edible-easy-grow

PRNewswire Press release (2018). Sixth Annual Muhammad Ali Humanitarian Awards Showcases International Humanitarians and Ali's Worldwide Impact. Retrieved from https://www.prnewswire.com/news-releases/sixth-annual-muhammad-ali-humanitarian-awards-showcases-international-humanitarians-and-alis-worldwide-impact-300715372.html

PRNewswire (2019). Kuli Kuli Closes $5M Series B with Griffith Foods and Kellogg to Make Moringa a Household Ingredient. CISION. Retrieved from https://www.prnewswire.com/news/kellogg-company%3B-kuli-kuli

Rothaermel, F.T. (2015). *Strategic Management Concepts*. Chicago, IL: McGraw Hill.

Stöppler, M.C. (2019). Medical Definition of Superfoods. Retrieved from https://www.medicinenet.com/script/main/art.asp?articlekey=125459

The Sterling Rice Group 2018 Trend Report (2018). Retrieved from https://www.srg.com/attachments/Culinary_Trendjectories_2018.pdf

Vitale, R.P., Giglierano, J.J. & Pfoertsch, W. (2010). B*usiness to Business Marketing: Analysis and Practice in a Dynamic Environment*. Pearson.

WELL+GOOD (2017). If You Like Turmeric, You're Going to Love Moringa in 2018. Well +Good. Retrieved from https://www.wellandgood.com/good-food/wellness-trends-2018-moringa/

Werber, C. (2019). Danone is showing multinationals the way to a less destructive form of capitalism. Quartzat Work. Retrieved from https://qz.com/work/1739547/danone-ceo-emmanuel-faber-is-building-the-worlds-largest-b-corp/amp/

What is EOS? (n.d.). Retrieved from https://www.eosworldwide.com/what-is-eos

Wheelen, T. & Hunger, D. (2006). *Concepts in Strategic Management & Business Policy, 10th ed*. Upper Saddle River, NJ: Pearson Prentice Hall.

Wickman, G. (2012). *Traction: Get a Grip on your Business*. BenBella Books, Inc.

Yukl, G. (2012). Effective leadership behavior: What we know and what questions need more attention. *The Academy of Management Perspective, 26*(4): 66-85.

Zachary, M., Gianiodis, P., Payne, G. & Markman, G. (2015). Entry Timing: Enduring Lessons and Future Directions. *Journal of Management, 41* (5), 1388–1415.

Articles

HOW DOES COMPASSION SHOW UP IN HEALTHCARE ORGANIZATIONS?

ANDRE S. AVRAMCHUK
XIAOHAN ZHANG
California State University, Los Angeles

This article calls upon case researchers to write case studies about compassion in healthcare organizations and offers several synthesizing vignettes from the current literature in support for doing so. It also provides case teachers and readers with the ideas for what to consider when exploring cases of how compassion presents itself (or does not) in healthcare settings. It aims at addressing the gaps in case research and teaching about the culturally sensitive healthcare compassion, compassion fatigue, leadership, organizational processes, and self-compassion.

Introduction

Despite the intensifying calls for care and compassion in recent political and workplace history (*e.g.*, Lucey 2020), compassion remains a relatively neglected phenomenon in case research. We attempt to address that shortcoming by synthesizing and reviewing some possibilities for writing case studies involving compassion. Specifically, we offer case researchers a set of helpful vignettes in what to consider when writing a teaching case study on compassion in healthcare settings.

It is customary to perceive compassion as being at the core of healthcare training, provision, and organization (*e.g.*, Dougherty & Purtilo 1995; Fotaki 2015; Leget & Olthuis 2007; Lown 2018; Smith 2019). Many case studies about healthcare providers or around healthcare industry and economics routinely default to the assumption that compassion must have a place

The authors developed the case for class discussion rather than to illustrate either effective or ineffective handling of the situation. The case and its accompanying instructor's manual were anonymously peer reviewed and accepted by the ***Journal of Case Research and Inquiry, Vol. 6, 2020***, a publication of the Western Casewriters Association. Contact: Andre S. Avramchuk, California State University, Los Angeles, 5151 State University Drive, Los Angeles, CA 90032, Andre.Avramchuk@calstatela.edu.

in healthcare and its delivery systems (*e.g.*, Chaudhuri *et al*. 2018; Darr 1985; George 2008; Mantel 2013). Yet, little has been systematically examined about a full spectrum of places in which compassion shows up in healthcare generally and healthcare management particularly (Sinclair *et al*. 2016). To refine their analytical assumptions (*e.g.*, in the instructor's manual) and foster richer case discussions and learning outcomes, researchers preparing cases in healthcare management and organization might therefore benefit from understanding of where and in what ways compassion is present. We synthesize some of these ways and places below, after providing a contextual overview of compassion at work.

Compassion in the Workplace

Conceptualizations of compassion are understandably diverse, depending on the context in which compassion is found. Historically, it figured prominently in Buddhism as a core practice, served as a virtue in Islam, and significantly influenced Christian and Judaic beliefs (Lampert 2005). It has been considered an important part of human life in Confucianism (Lau 2004) and described in a rich pallet of virtuous and prescriptive terms in Hinduism (Tripathi & Mullet 2010). As employees bring their whole selves into the workplace, their highly contextualized religious and philosophical traditions play somewhat different roles in how compassion is motivated and exhibited in organizations.

In addition to traditions and upbringing, compassion at work is inevitably influenced by basic human nature. Psychologists and philosophers have long considered compassion a positive social emotion (Goetz *et al*. 2010; Nussbaum 1996), with the associated empathy-driven manifestations of social behavior sometimes curbed or amplified by personality differences, responses to crises, birth related or chemically induced disorders, or other factors. Nevertheless, compassionate or other socially-oriented behavior at work can be learned. Lockwood and colleagues (2016, p. 9763), for example, noted, *"Prosocial behaviors, namely, social behaviors or actions intended to benefit others, are …. essential for social bonding and* *cohesion"* and found that *"people can learn to benefit others and …. More empathic people learn* [that] *faster."*

Definition of Compassion

The organizational literature has centered on a definition of compassion as a process of noticing and empathizing with someone's plight and acting to alleviate it (*e.g.*, Kanov *et al*. 2004). Compassion is therefore distinguished from pure emotions (*e.g.*, empathy) in that compassion, as conceived above, has an observable action component. That action – as a behavioral component – is also distinguished from other caring or prosocial behaviors (*e.g.*, offering a glass of water to every customer in a waiting room) in that compassion is rooted in empathic concern emanating from perceiving or becoming aware of someone's pain, suffering, or other plight. Compassion in the workplace also has been conceptualized as a duality of processes as an emotion or a mindset (*i.e.*, a self-perception manifested in one's attitudes and behaviors [Dweck 2006]), where compassion as emotion primarily manifests in direct, person-to-person actions, while compassion as a mindset more often leads to the design of compassionate solutions that are not necessarily enacted by the solution-designer (Avramchuk & Manning 2014). The latter kind of compassion as a mindset is seen, for example, in collaborations of executive teams trying to alleviate widespread suffering among employees (*e.g.*, during layoffs due to natural disasters), even though these executives do not directly engage in compassionate acts with the intended recipients.

Benefits of Compassion

Two decades after Frost's (1999) prolific call for compassion research in organizations, scholars have accumulated a body of evidence for compassion's positive roles in everyday work lives and the craft of management. Compassion not only positively contributes to the emotional discourses in organizations and enables a shared concern for others (Worline & Dutton 2017), but it may also be a critical driving factor at the root of organizing processes (Dutton *et al*. 2006), develop into a beneficial competence and a powerful capability in work units (Lilius *et al*.

2011), and serve as a catalyst for positive organizational change (Avramchuk *et al*. 2013). Influencing hundreds of millions of employees around the world as part of their faiths or other deeply held convictions (Lampert 2005), and now prominently showing up in the organizational literature as a benefit in the workplace, how does compassion present itself in the management and organization of healthcare – an industry traditionally thought of as a cradle of caring and compassionate behaviors, missions, and policies?

Compassion in Healthcare Organizations

Compassion can be seen from different angles in different management practices and in different sectors of the economy. Manifestations of compassion in military combat would presumably differ from those in banking or education. Nowhere else in the business world would compassion be expected as more ingrained, however, than in the healthcare industry and its daily operations. The expectations for compassion in healthcare provision and processes go back to the core of medical care rooted in the Hippocratic oath and the associated do-no-harm and care-till-the-end ethical maxims (Dougherty & Purtilo 1995). The following synthesis of the recent literature provides some of illustrative vignettes of compassion and its influence in healthcare organizations. We call on case researchers to consider writing teaching cases exploring the themes of these vignettes. We hope that our synthesis of the literature in each helps to foster potentially engaging classroom discussions and to prepare robust, evidence-based notes for instructors.

Vignette 1: Healthcare Compassion Fatigue

The most prominent and longstanding line of research in healthcare settings related to compassion is about compassion fatigue and subsequent burnout. As clinical professionals (*e.g.*, nurses, medical residents) extend their care and associated emotions toward the wellbeing of their patients on a continuous basis, their drive to do so eventually plateaus, and fatigue sets in (Bellolio *et al*. 2014). Healthcare staff and administrative professionals on the front lines may also experience compassion fatigue (*e.g.*, Whitebird *et al*. 2013), as many employees entering the healthcare profession join in the deeply held beliefs or corporate missions related to individual contributions to compassionate care. Exhibit 1 describes some of the conceptualizations and findings around compassion fatigue in the literature.

Strategies for combating compassion fatigue in the healthcare workplace might focus on improving the personal wellbeing of the caregivers and replenishing their capacity for exhibiting empathic concern, as well as following on with a compassionate action (Shanafelt *et al*. 2005). No frontline clinical or administrative healthcare personnel are immune from compassion fatigue. Ensuring reasonable work schedules, rotations, and social support, as well as providing adequate opportunities for exercise and stress management activities, are specific ways in which healthcare managers may help to alleviate some drawbacks of the inevitable compassion fatigue in their workplaces.

Exhibit 1. Healthcare Compassion Fatigue Conceptualizations and Findings

Authors/Studies	Conceptualizations and/or Findings
Meadors *et al.* (2009)	Compassion Fatigue: "The consequence of working with a significant number of traumatized individuals in combination with a strong empathic orientation." (Figley 1995, p. 107)
Wu at al. (2016)	"Compassion fatigue is caused by a natural and intrinsic response to alleviate pain and suffering… [It] has an acute and insidious onset, resulting in long-term consequences that are not easily reversible." (p. E162)
Stamm (2010)	"Compassion fatigue breaks into two parts. The first part concerns things such as exhaustion frustration, anger and depression typical of burnout. Secondary Traumatic Stress is a negative feeling driven by fear and work-related trauma." (p. 12)
Cocker & Joss (2016)	"Compassion fatigue (CF) is stress resulting from exposure to a traumatized individual. CF has been described as the convergence of secondary traumatic stress (STS) and cumulative burnout (BO), a state of physical and mental exhaustion caused by a depleted ability to cope with one's everyday environment." (p. 1)
Upton (2018)	"The effect of [CF] is multifaceted, including physical, emotional, social, spiritual, and intellectual effects. Symptoms of CF include; boredom, cynicism, anxiety, discouragement, intrusive thoughts, irritability, avoidance, numbness, persistent arousal, sleep disturbances, depression, intolerance detachment, apathy, and not least, a loss of compassion." (p. 2)
Whitebird *et al.* (2013)	"Hospice staff reported high levels of stress, with a small but significant proportion reporting moderate-to-severe symptoms of depression, anxiety, compassion fatigue, and burnout. Staff reported managing their stress through physical activity and social support." (p. 1534)
Ortega-Campos *et al*. (2020)	"The results obtained from the 15 studies confirmed that there are levels of risk of suffering burnout and compassion fatigue among nursing professionals, affecting more women and nurses with more years of experience, with nurses from oncology units having one of the highest levels of burnout and compassion fatigue." (p. 1)
Dominquez-Gomez & Rutledge (2009)	"Nurse participation in stress management activities was associated with less prevalence of STS symptoms… Potentially large numbers of emergency nurses may be experiencing the negative effects of STS." (p. 199)
Bellolio *et al.* (2014)	Compassion fatigue is similar across multiple medical and surgical specialties, including emergency medicine residents.
Missouridou (2017)	"Secondary PTSD, compassion fatigue, and vicarious traumatization are the terms that are used almost interchangeably to describe the 'cost of caring.'" (p. 110)

Vignette 2: Healthcare Self-Compassion

Dealing with compassion fatigue and its consequences in healthcare organizations might also be easier while learning and practicing self-compassion (SC) (Upton 2018) – a self-oriented rather than other-oriented type of compassion. From a broader organizational-benefit perspective, this vignette of compassion centers on the self-empowerment of healthcare workforce to heal and promote wellbeing. Exhibit 2 provides a commonly used definition of self-compassion and presents some of the recent research findings about its manifestations in healthcare settings.

Compassion directed toward oneself balances the compassion healthcare workers extend to others and contributes to a healthier workplace overall. Compensating healthcare workers well and paying special attention to less experienced practitioners (*e.g.*, mentoring, boosting self-esteem, giving opportunities to develop better skills) seem like some other good strategies for fostering and harnessing the benefits of self-compassion at work. It is important to note – synthesizing the first two vignettes of compassion – that less experience for some specialists (*e.g.*, healthcare social workers) is associated with a lower ability to derive benefits from self-compassion (Lianekhammy 2018). Some specialists (*e.g.*, nurses) suffer more from compassion fatigue as they gain experience and tenure on the job (Ortega-Campos *et al*. 2020) and might therefore derive more benefits from learning and starting to practice self-compassion earlier in their careers.

Exhibit 2. Healthcare Self-Compassion Conceptualizations and Findings

Authors/Studies	Conceptualizations and/or Findings
Neff (2003a)	"Self-compassion entails three main components: (a) self-kindness—being kind and understanding toward oneself in instances of pain or failure rather than being harshly self-critical, (b) common humanity—perceiving one's experiences as part of the larger human experience rather than seeing them as separating and isolating, and (c) mindfulness—holding painful thoughts and feelings in balanced awareness rather than over-identifying with them." (p.85)
Neff (2003b)	"Self-compassion is significantly correlated with positive mental health outcomes such as less depression and anxiety and greater life satisfaction." (p. 223)
Upton (2018)	"SC can have a moderating effect on CF and an ability to be predictive of CF." (p. 1)
Homan & Sirois (2017)	"… this study was the first to test perceived stress as a mediator of the relationship between self-compassion and physical health" (p. 5), and it found that "a kind, accepting and mindful stance toward one's flaws and failures may have benefits for reducing stress and promoting health behaviors." (p. 1)
Dev *et al*. (2020)	In a cross-sectional study of 1,700 physicians, nurses, and medical students, "greater self-compassion predicted lower burnout and better" satisfaction with one's quality of life (p. 1170)
Lianekhammy *et al*. (2018)	"Less experienced practitioners may be particularly vulnerable to experiencing a lack of self-compassion given a lack in self-efficacy, esteem, or competence in practice skills." (p. 572)
	"Financial resources predicted both overall self-compassion as well as self-kindness, whereas more limited finances were predictive of isolation and over-identification." (p. 573)

Vignette 3: Healthcare Leadership Compassion

Acting upon the evidence and recommendations above takes good leadership, and there is no shortage of compassionate people in healthcare in general and healthcare management in particular. However, the difference between having compassionate people in management roles and having them enact leadership compassion – acts of compassion as perceived by compassion recipients at work – can sometimes be profound. Skillful and targeted, evidence-based application of leadership compassion principles and tasks (*e.g.*, helping employees deal with compassion fatigue) is not always present or even possible; hence a further understanding of specific approaches and contexts of leadership compassion may be helpful in creating healthcare organizational environments where leadership compassion is apparent and effective. Exhibit 3 provides some of the research-based conceptualizations and advice around healthcare leadership compassion.

Exhibit 3. Healthcare Leadership Compassion Conceptualizations and Findings

Authors/Studies	Conceptualizations and/or Findings
Lown (2018)	"Compassion practices that recognize employees for the caring they show to patients and each other, and that provide the support needed to sustain their caring and compassion, are associated with significantly better patient ratings of their care experiences in hospital and ambulatory settings." (p. 217)
de Zulueta (2016)	"In a compassionate health care system, patients and staff would feel listened to, supported, and cared for. Staff would feel empowered to show attentive kindness, to be attuned to their own needs and those of their patients, and to be free to take appropriate actions to relieve suffering." (p. 2)
Avramchuk & Manning (2014)	Healthcare executives exhibiting compassion as emotion usually engage in direct action with the intended recipient of compassion, while those exhibiting compassion as a mindset act as "compassionate solution designers" for the benefit of others without the necessity of direct contact
Hewison *et al*. (2019)	Focus groups of palliative and end-of-life care staff from a range of healthcare organizations reported that challenging and empowering them "to develop solutions to problems and promote their own ideas about how to improve practice … was a crucial element of [compassionate] leadership." (p. 269)
Christiansen *et al*. (2015)	"… there are a number of enabling factors that enhance a culture conducive to providing compassionate care. These include leaders who act as positive role models, good relationships between team members and a focus on staff wellbeing." (p. 833)

Modeling compassionate behaviors, recognizing employees for doing the same, and empowering employees to raise the bar of service at work seem to be the common threads in the practical implications of recent research in healthcare leadership compassion. The cases of lingering employee perceptions of uncompassionate (*e.g.*, *"cold," "uncaring"*) leadership may also be mitigated by transparent communication about what leaders do to design compassionate solutions behind closed doors (*e.g.*, wellbeing programs, childcare facilities, shortened schedules/rotations). Patient satisfaction (Lown 2018), staff wellbeing (Christiansen 2015), and employee-leader relations (Avramchuk & Manning 2014; de Zulueta 2016) could all benefit from the workforce being aware of leadership compassion in the healthcare settings.

Vignette 4: Healthcare Organizational Compassion

In addition to having leaders skillfully exhibit and foster compassion at work, healthcare organizations benefit from embedding and nurturing compassion in their designs, policies, and processes. Even though the research *"investigations of organizational compassion in* *healthcare settings are still in their infancy"* (Simpson *et al*. 2020, p. 340), there are studies that shed a good light on and provide recommendations for how to engrain compassion in such settings. For example, a social worker consultation to attend to a patients' and their relatives' emotional and personal needs may be embedded by policy in every protocol of care for a particular population of hospital patients, as well as a toy provided to every child after surgery as part of postoperative process. A Zen room created by the organization that must be visited – by policy – by all direct-care employees every six or so hours, to help them decompress and recharge and take care of their own emotional needs, could be a compassionate solution designed by executives to prevent compassion fatigue and associated burnout. Exhibit 4 identifies some of the design concepts and findings for workable recommendations in fostering organizational compassion in healthcare settings.

Exhibit 4. Healthcare Organizational Compassion Conceptualizations and Findings

Authors/Studies	Conceptualizations and/or Findings
Simpson *et al*. (2020)	"Compassionate organizations put a high emphasis on articulating and promoting values that prioritize the human wellbeing, respect and dignity of both their healthcare workers and their patients, above considerations of efficiency and profitability." (p. 347)
	Recommendations include to "Identify natural *social networks* and find ways for the organization to foster and strengthen them through the promotion of community events, interest groups and societies. Ensure the organization's espoused values underscore principles supportive of a *culture* of care and compassion. Incorporate compassion practices into new *role* descriptions and support holders of existing positions in reflecting on remaking their roles by integrating more care and compassion. Update recruitment, induction, evaluation and reward *routines*, to emphasize fit with a culture of compassion. Select and promote *leaders* based on the candidate's demonstrated compassion competencies. Broadcast *stories* where members have risen above workplace expectations in responding to the suffering of other colleagues." (p. 351)
	The following questions may help to gauge capabilities of organizational compassion specifically in responding to suffering: "What is the *speed* of your organization's responses to employee suffering? Does the *scope* of your organization's support accommodate a wide variety of personalities and circumstances? Is the *scale* of the resources your organization invests in providing support sufficient? Is the support offered to employees in distress *customizable* to address specific needs?" (p. 351)
Smith (2019)	Policy development for healthcare delivery systems must also embed compassion, to institutionalize it and give guidance and permission to all stakeholders to act compassionately
Shea (2015)	"Sustaining compassion over time, within the healthcare setting, would probably depend on a number of factors: support, refresher courses, discussion groups, workshops, etc. However, a good starting point could be to implement such training … both to student doctors and nurses and to allied health professionals and others working towards careers within healthcare." (p.770)
Rodriguez & Lown (2019)	The Schwartz Center Compassionate Care Scale "could be used to provide more specific, tailored feedback to individual professionals. It could also be used as a patient-reported outcome measure to assess the impact of organizational interventions and initiatives on individual-, unit-, and team- and clinic-level capacity to provide compassionate care." (p. 14)
Sinclair, Russell, *et al*. (2017)	There is still "an unmet need for a psychometrically validated instrument that comprehensively measures the construct of compassion in healthcare settings." (p. 389)

Additional Considerations for Case Research

From a number of important research considerations for writing case studies about compassion in healthcare organizations, we highlight below the two that could apply across all vignettes above. One is about the dimensions and influences of culture of and around compassion in healthcare work and organizing processes. Another is about exploring the opposite side of the story where compassion is not present. Either may serve to inspire ideas for a new case study or be a part of a case research project stemming from one of the previous vignettes.

Cultural Considerations

To draw richer contrasts in case discussions alongside each vignette above, we encourage case writers, teachers, and readers to explore cultural variability in how compassion shows up in healthcare organizations. National, industry-specific, organizational, or other cultural dimensions ought to be examined when evaluating or teaching cases about healthcare compassion or writing new ones. Under what cultural conditions does compassion become an organizational priority in healthcare settings, for example, or how is it sustained over time? What, if anything, a national culture type (*e.g.*, collectivist, individualist) has to do with fostering or undermining compassion in a healthcare case under study? We suggest to ask these or similar questions in case discussions and compose plausible, evidence-based answers in the instructor's manual that are suitable for the dynamics and context of a specific case.

A closer look at complex cultural variables playing out in particular healthcare cases might yield unanticipated results. Along with a commonplace belief that members of tightly-knit, collectivist cultures are more prone to feel empathy and exhibit compassion (*e.g.*, Konrath 2017), there is evidence from Australian and Singaporean cultures that *"tight/collectivist cultural norms may hinder expression of compassion towards others, but may facilitate increased self-compassion as compared to loose* [*i.e.*, more individualist] *cultural norms"* (Steindl *et al*. 2019, p. 208). Personality factors, as another example, are also not equally associated with compassion across national cultures. The degree to which agreeableness, for instance, predicts compassion is significantly higher among Canadians than Spaniards (Sinclair 2020).

Case writers might additionally explore how organizational culture promotes or discourages compassion through work routines and other artifacts (*e.g.*, prescribed language, allowable behavior) in specific healthcare settings. The importance of particular language in communicating empathic concern and compassionate action in acute mental health services – as one of such settings – may be amplified in one organization by routine leadership support of compassion, or dampened in another organization by customary time pressures and *"production-line mentality"* (Crawford *et al*. 2013). Culturally ignored or frowned upon, the expressions of compassion in healthcare organizations may diminish to the point of obsolescence. A thorough treatment and discussion of such compassion's ascension or decline could be the basis for writing an interesting new case or a welcome addition to a teaching case study that would contribute to enriching the students' learning outcomes.

Lack of Compassion in Healthcare Settings

Whether an expression of a leader's pity or sympathy mistaken for compassion (*e.g.*, Sinclair, Beamer *et al*. 2017), or another void in compassion's presence, the lack of compassion in healthcare settings might be as intriguing to write a case about as about its abundance. In response to recent widespread perceptions of lack of compassion in its operations and patient relationships, the National Health System of the United Kingdom, for example, has entertained proposals to enforce compassion in healthcare provision processes as a matter of rules and policy. Wang (2016, p. 7) then noted that *"the contractual nature of the current doctor-patient relationship does not foster"* compassion and that *"rather than improving service, these attempts result in a culture of perfunctoriness and cynicism."*

A study of 440 primary healthcare professionals in Spain by Montero-Marin and colleagues (2016) found that a profound lack of self-compassion was associated with a large-scale burnout and subsequent negative provider-patient relationships – an environment where it was hard for the primary care providers to exhibit compassion toward their patients. In addition, "there is an emerging consensus that caring and compassion are under threat in the frenetic environment of modern healthcare. *"Enabling and sustaining compassionate care requires not only a focus on the needs of the patient, but also on those of the care giver"* (Mannion 2014, p. 115). A U.S. survey of 800 patients and 510 physicians showed that only 53% and 58% of them, respectively, indicated that the U.S. healthcare system provided compassionate care (Lown *et al*. 2011). With a number of recent scandals in the field susceptible to fraud, waste, and employee burnout, we encourage case researchers to explore further the consequences of lack of compassion in healthcare organizations.

Conclusion

Compassion has been recognized as an essential part of wellbeing (Huppert 2017) and provision of care (Sinclair *et al*. 2018). It has also been documented as elusive or inauthentic in healthcare organizational settings. The vignettes of compassion we composed above are not exhaustive for portraying all angles of such a complex phenomenon, but they should assist those researching, writing, teaching, and learning from healthcare management cases in understanding the conceptual richness and practical influences of compassion in the field.

Andre S. Avramchuk
is Associate Professor of Management at California State University, Los Angeles, where he currently leads the graduate program in Healthcare Management. He earned a Ph.D. in Human and Organizational Systems, and his research interests are in compassion and human thriving at work. Prior to academia, Andre worked for a decade in large-scale change management roles at Kaiser Permanente. He has published in the *Journal of Healthcare Management*, *Research in Organizational Change and Development*, and the *Journal of Contemporary Business Issues*, among other outlets; and served on divisional or chapter boards at the Academy of Management and the American College of Healthcare Executives.

Xiaohan Zhang
is Assistant Professor of Economics and Statistics at California State University, Los Angeles. She earned a Ph.D. in Economics, and her research interests are in applied economic problems. She has published in top peer-reviewed journals such as the *Review of Economics and Statistics*, as well as public outlets such as the *New York Federal Reserve's Liberty Street Economics*. She also served as a research affiliate at the Pat Brown Institute for Public Affairs.

JCRI Journal of Case Reasearch and Inquiry

References

Avramchuk, A.S. & Manning, M.R. (2014). Executive compassion: how executives construe compassion at work. *Current Topics in Management*, 17, 129-153.

Avramchuk, A.S., Manning, M.R. & Carpino, R.A. (2013). Compassion for a change: a review of research and theory, In A.B. (Rami) Shani, W.A. Pasmore, R.W. Woodman & D.A. Noumair (Eds.), *Research in Organizational Change and Development, Vol. 21*, Emerald Group Publishing Limited, pp. 201-232. https://doi.org/10.1108/S0897-3016 (2013)0000021010

Bellolio, M.F., Cabrera, D., Sadosty, A.T., Hess, E.P., Campbell, R.L., Lohse, C.M. & Sunga, K.L. (2014). Compassion fatigue is similar in emergency medicine residents compared to other medical and surgical specialties. *Western Journal of Emergency Medicine, 15*(6), 629-635. DOI: 10.5811/westjem.2014.5.21624

Chaudhuri, A., Saddikutti, V. & Prætorius, T. (2018). iKure Techsoft: Providing technology enabled affordable health care in rural India. *Asian Case Research Journal*, *22*(2), 385–411. https://doi org.mimas.calstatela.edu/10.1142/S0218927518500165

Christiansen, A., O'Brien, M.R., Kirton, J.A., Zubairu, K. & Bray, L. (2015). Delivering compassionate care: the enablers and barriers. *British Journal of Nursing, 24*(16), 833-837. https://doi.org/10.12968/bjon.2015.24.16.833

Cocker, F. & Joss, N. (2016). Compassion fatigue among healthcare, emergency, and community service workers: A systematic review. *International Journal of Environmental Research and Public Health, 13*(6), 618. https://doi.org/10.3390/ijerph13060618

Crawford, P., Gilbert, P., Gilbert, J., Gale, C. & Harvey, K. (2013). The language of compassion in acute mental health care. *Qualitative Health Research*, *23*(6), 719–727. https://doi.org/10.1177/1049732313482190

Darr, K. (1985). Ethics for health services managers. *Case Studies in Health Administration*, *4*, 1–148.

De Zulueta, P.C. (2015). Developing compassionate leadership in healthcare: an integrative review. *Journal of Healthcare Leadership, 8*, 1-10. https://doi.org/10.2147/JHL.S93724

Dev, V., Fernando, A.T. & Consedine, N.S. (2020). Self-compassion as a stress moderator: A cross-sectional study of 1700 doctors, nurses, and medical students. *Mindfulness, 11*(5), 1171-1181. https://doi.org/10.1007/s12671-020-01325-6

Dominiguez-Gomez, E. & Rutledge, D.N. (2009). Prevalence of secondary traumatic stress among emergency nurses. *Journal of Emergency Nursing 35*(3), 199-204. https://doi.org/10.1016/j.jen.2008.05.003

Dougherty, C. & Purtilo, R. (1995). Physicians' duty of compassion. *Cambridge Quarterly of Healthcare Ethics, 4*(4), 426-433. Doi: 10.1017/S0963180100006241

Dutton, J.E., Worline, M.C., Frost, P.M. & Lilius, J. (2006). Explaining compassion organizing. *Administrative Science Quarterly, 51*(1), 59-96. https://doi.org/10.2189/asqu.51.1.59

Dweck, C.S. (2006). *Mindset: The new psychology of success*. New York: Ballantine Books.

Figley, C. (1995). *Compassion fatigue: Coping with secondary traumatic stress disorder*. New York: Brunner/Mazel.

Fotaki, M. (2015). Why and how is compassion necessary to provide good quality healthcare? *International Journal of Health Policy and Management, 4*(4), 199–201. doi: 10.15171/ijhpm.2015.66

Frost, P. (1999). Why compassion counts! *Journal of Management Inquiry, 8*(2), 127-133.

George, L.K. (2008). Religion, spirituality, and health: The Duke experience. In F. Kessel, P. L., Rosenfield, & N. B. Anderson (Eds.), *Interdisciplinary research: Case studies from health and social science.* (pp. 255–284). Oxford University Press. https://doi-org.mimas.calstatela.edu/10.1093/acprof:oso/9780195324273.003.0016

Goetz, J.L., Keltner, D., & Simon-Thomas, E. (2010). Compassion: An evolutionary analysis and empirical review. *Psychological Bulletin*, *136*, 351-374.

Hewison, A., Sawbridge, Y. & Tooley, L. (2019). Compassionate leadership in palliative and end-of-life care: A focus group study. *Leadership in Health Service, 32*(2), 264-279. https://doi.org/10.1108/LHS-09-2018-0044

Homan, K.J. & Sirois, F.M. (2017). Self-compassion and physical health: Exploring the roles of perceived stress and health-promoting behaviors. *Health Psychology Open, 4*(2), 1-9. https://doi.org/10.1177/2055102917729542
https://doi.org/10.1186/s12904-016-0080-0

Huppert, F.A. (2017). Mindfulness and compassion as foundations for well-being. In White, M. A., Slemp, G. R., & Murray, A. S. (Eds.), *Future directions in well-being: Education, organizations and policy* (pp. 225–233). Cham, Switzerland: Springer

Kanov, J. M., Maitlis, S., Worline, M.C., Dutton, J.E., Frost, P.J. & Lilius, J.M. (2004). Compassion in organizational life*. American Behavioral Scientist, 47*, 808-827.

Lampert, K. (2005). *Traditions of Compassion: From Religious Duty to Social Activism*. Palgrave-Macmillan.

Lau, D.C. (trans.) (2004). *Mencius.* Penguin Classics.

Leget C. & Olthuis G. (2007). Compassion as a basis for ethics in medical education. *Journal of Medical Ethics, 33*, 617–620. doi: 10.1136/ jme.2006.017772

Lianekhammy, J., Miller, J.J., Lee, J., Pope, N., Barnhat, S. & Grise-Owens, E. (2018). Exploring the self-compassion of health-care social workers: How do they fare? *Social Work in Health Care, 57*(7), 563-580. https://doi.org/10.1080/00981389.2018.1471017

Lockwood, P.L., Apps, M.A.J., Valton, V., Viding, E. & Roiser, J.P. (2016). Neurocomputational mechanisms of prosocial learning and links to empathy. *Proceedings of the National Academy of Sciences of the United States of America, 113*(35), 9763-9768.

Lown, B.A. (2018). Mission critical: Nursing leadership support for compassion to sustain staff well-being. *Nursing Administration Quarterly, 42*(3), 217-222. doi: 10.1097/NAQ.0000000000000302

Lown, B., Rosen, J. & Martilla, J. (2011). An agenda for improving compassionate care: A survey shows about half of patients say such care is missing. *Health Affairs, 30*(9), 1772–1778. DOI: 10.1377/hlthaff.2011.0539

Lucey, M. (2020). Unprecedented times call for unprecedented compassion. *Chief Executive*, April 9, 2020. https://chiefexecutive.net/unprecedented-times-call-for-unprecedented-compassion/

Mannion, R. (2014). Enabling compassionate healthcare: Perils, prospects, and perspectives. *International Journal of Health Policy Management, 2*(3), 115-117. https://doi.org/10.1571/ijhpm.2014.34

Mantel, J. (2013). The myth of the independent physician: Implications for health law, policy, and ethics. *Case Western Reserve Law Review*, *64*(2), 455–520.

Meadors, P., Lamson, A., Swanson, M., White, M. & Sira, N. (2009). Secondary traumatization in pediatric healthcare providers: Compassion, fatigue, burnout, and secondary traumatic stress. *OMEGA – Journal of Death and Dying, 60*(2), 103-128. https://doi.org/10.2190/OM.60.2.a

Missouridou, E. (2017). Secondary posttraumatic stress and nurses' emotional responses to patients' trauma. *Journal of Trauma Nursing, 24*(2), 110-115. https://doi.org/10.1097/JTN.0000000000000274

Montero-Marin, J., Zublaga, F., Cereceda, M., Demarzo, M.M.P., Trenc, P. & Garcia-Campayo, J. (2016). Burnout subtypes and absences of self-compassion in primary healthcare professionals: A cross-sectional study. *PLoS ONE, 11*(6). https://doi.org/10.1371/journal.pone.0157499

Neff, K.D. (2003a). Self-compassion: An alternative conceptualization of a healthy attitude toward oneself. *Self and Identity, 2*(2), 85-101. DOI: 10.1080/15298860309032

Neff, K.D. (2003b). The development and validation of a scale to measure self-compassion. *Self and Identity, 2*(3), 223-250.

Nussbaum, M.C. (1996). Compassion: The basic social emotion. *Social Philosophy and Policy Foundation, 13*, 27-58.

Ortega-Campos, E., Vargas-Roman, K., Velando-Soriano, A., Suleiman-Martos, N., Canadas-de la Fuente, G., Albendin-Garcia, L. & Gomez-Urquiza, J.L. (2020). Compassion fatigue, compassion satisfaction, and burnout in oncology nurses: A systematic review and meta-analysis. *Sustainability, 12*(1), 72. https://doi.org/10.3390/su12010072

Rodriguez, A.M. & Lown, B.A. (2019). Measuring compassionate healthcare with the 12-item Schwartz Center Compassionate Care Scale. *PLoS ONE, 14*(9). https://doi.org/10.1371/journal.pone.0220911

Shanafelt T.D., West C., Zhao X., Novotny P., Kolars J., Habermann T. & Sloan, J. (2005). Relationship between increased personal well-being and enhanced empathy among internal medicine residents. *Journal of General and Internal Medicine, 20*, 559–564. 10.1007/s11606-005-0102-8

Shea, S. (2015). Is it possible to develop a compassion organization? Comment on "Why and how is compassion necessary to provide good quality healthcare?" *International Journal of Health Policy Management, 4*(11), 769-770. https://doi.org/10.15171/ijhpm.2015.119

Simpson, A.V., Farr-Wharton, B. & Reddy, P. (2020). Cultivating organizational compassion in healthcare. *Journal of Management & Organization, 26*(3), 340-354. https://doi.org/10.1017/jmo.2019.54

Sinclair, S., Beamer, K., Hack, T.F., McClement, S., Raffin Bouchal, S., Chochinov, H.M. & Hagen, N.A. (2017). Sympathy, empathy, and compassion: A grounded theory study of palliative care patients' understandings, experiences, and preferences. *Palliative Medicine*, *31*(5), 437–447. https://doi.org/10.1177/0269216316663499

Sinclair, S., Norris, J.M., McConnell, S.J., Chochinov, H.M., Hack, T.F., Hagen, N.A., McClement, S. & Raffin-Bouchal, S. (2016). Compassion: a scoping review of healthcare literature. *BioMed Central Palliative Care, 15*(6).

Sinclair, S., Russell, L.B., Hack, T.G. Kondejewski, J. (2017). Measuring compassion in healthcare: A comprehensive review. *The Patient – Patient-Centered Outcomes Research, 10*, 389-405. https://doi.org/10.1007/s40271-016-0209-5

Sinclair, V.M., Topa, G. & Saklofske, D. (2020). Personality correlates of compassion: A cross-cultural analysis. *Mindfulness, 11*(10), 2423-2432. https://doi.org/10.1007/s12671-020-01459-7

Sinclair, S., Hack, T.F., Raffin-Bouchal, S., McClement, S., Stajduhar, K., Singh, P. & Chochinov, H.M. (2018). What are healthcare providers' understandings and experiences of compassion? The healthcare compassion model: A grounded theory study of healthcare providers in Canada. *BMJ Open*, 8(3), e019701

Smith, M.A. (2019). Developing health policy that drives compassion in a value-driven health care system. *Professional Case Management, 24*(6), 329-332.

Stamm, B.H. (2010). *The Concise ProQOL Manual* (2nd ed.). Pocatello, ID: ProQOL.org.

Steindl, S.R., Yiu, R.X.Q., Bayman, T. & Matos, M. (2019). Comparing compassion across cultures: similarities and differences among Australians and Singaporeans. *Australian Psychologist, 55*(3), 208-219. https://doi.org/10.1111/ap.12433

Tripathi, A. & Mullet, E. (2010). Conceptualizations of forgiveness and forgivingness among Hindus, *International Journal for the Psychology of Religion, 20*(4), 255–266.

Upton, K.V. (2018). An investigation into compassion fatigue and self-compassion in acute medical care hospital nurses: a mixed methods study. *Journal of Compassionate Health Care, 5*(7). https://doi.org/10.1186/s40639-018-0050-x

Wang, Y. (2016). Smiling through clenched teeth: Why compassion cannot be written into the rules. *Journal of Medical Ethics, 42*(1), 7-9. https://jstor.org/stable/44014283

Whitebird, R.R., Asche, S. E., Thompson, G. L., Rossom, R., & Heinrich, R. (2013). Stress, burnout, compassion fatigue, and mental health in hospice workers in Minnesota. *Journal of Palliative Medicine, 16(*12), 1534-1539. https://doi.org/10.1089/jpm.2013.0202

Worline, M.C. & Dutton, J.E. (2017), *Awakening compassion at work: The quiet power that elevates people and organizations.* Oakland, CA: Berrett-Koehler.

Wu, S., Singh-Carlson, S., Odell, A., Reynolds, G. & Su, Y. (2016). Compassion fatigue, burnout, and compassion satisfaction among oncology nurses in the United States and Canada. *Oncology Nursing Forum, 43*(4), E161-E169.

JCRI Journal of Case Reasearch and Inquiry

Journal of Case Research and Inquiry

Peer-Reviewed Cases, Notes and Articles

A publication of the Western Casewriters Association

Vol. 6
December 2020

ISSN 2377-7389