JCRI

Journal of Case Research and Inquiry

Case, Notes and Articles

A publication of the Western Casewriters Association

Vol. 8
April 2023

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. 8, 2023.**

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

Journal of Case Research and Inquiry
California State University, Los Angeles
5151 State University Drive, STF 706
Los Angeles, CA 90032 U.S.A.

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

Qualified instructors can receive a 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, editor@jcri.org

Western Casewriters Association

The Western Casewriters Association (WCA) is the Western regional association of business casewriters. It is associated with the North American Case Research Association (NACRA) and the Western Academy of Management (WAM). 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

JCRI Editorial Policy

Approved by the **JCRI** Editorial Board March 9, 2017; updated September 15, 2022.

Aim and Goals

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

Scope and Content of the Journal

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, economics, education, and public policy.

The journal publishes both Teaching Case Studies and Consulting Case Studies. 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.

Teaching Cases are primarily intended to support classroom instruction, including decision-making and the application of theory and best practices, and may or may not require a managerial decision. Teaching case studies have been used in higher instruction for more than 110 years. Teaching cases are necessarily accompanied by detailed Teaching Instructor Manuals (TIMs) that are not published but may be provided to instructors.

Consulting Cases ask the reader to develop solutions to issues faced by managers and organizations, with emphasis on practical solutions; these cases may be appropriate for midterm or final exams or other assignments. Consulting cases are accompanied by a detailed Consulting Instructor Manuals (CIMs).

All cases, IMs, notes, exercises, and articles are double blind peer-reviewed by at least two reviewers. IMs submitted should follow the guidelines provided at www.jcri.org. All cases and IMs are double blind peer-reviewed by at least two reviewers. Case authors are required to obtain signed release forms, when necessary, from the organizations studied.

The journal also publishes peer-reviewed articles, notes, and exercises. **Articles** are scholarly papers on case research, teaching with cases, and related pedagogical issues. **Notes** are industry or theoretical analyses or summaries to accompany cases. Finally, **Exercises** provide a *"case like"* learning experience in the classroom, and may be associated with, or independent from, teaching cases.

JCRI Open-Source Availability Policy

Cases, articles, notes, and exercises are available online at www.jcri.org at no cost. Instructors and students at state and nonprofit educational institutions are granted the right to reproduce JCRI published materials 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, articles, notes, and exercises. For reproductions by for-profit institutions, or for publication 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.

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 reviewers' comments, together with a decision (reject, revise and re-submit, conditionally accept, or 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.

The journal's detailed Publication Ethics policy, including requirements for reviewers and reviews, retractions, corrections, and appeals is available at www.jcri.org.

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 another conference) will undergo the peer review process. No paper - even a WCA award-winning case - shall be guaranteed publication in the journal.

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. A sample release form can be found at www.jcri.org.

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 instructors who request them to editor@jcri.org when such instructors are formally affiliated with a nonprofit or governmental College or University. No fees shall be charged to instructors who receive IMs, nor is membership in the WCA required to receive an IM. After the three-year period, inquiries for IMs should be made directly to the case author.

JCRI Journal of Case Research and Inquiry

JCRI Publication Ethics Policy

Approved by the JCRI Editorial Board March 9, 2017; updated September 15, 2022.

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, exercises, 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, articles, notes, and exercises 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, Associate Editor(s), Special Issue Editors, Editorial Board members, Webmaster, 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, Associate Editor(s), Special Issue Editors, Editorial Board members, Webmaster, reviewers, or any other person associated with JCRI or WCA, 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 thorough and timely reviews. 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, articles, notes, and exercises 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 Authors' 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 signed release forms, when necessary, from the organizations studied, prior to publication of cases. Specifically, signed release forms shall be required when primary data have been used as source of information.

Table of Contents with Case Synopses

CASE RESEARCH

Pedro Martinez, Chief Operating Officer of C&S Investments, pushed back from his desk, looked away from his monitor, and sighed. The newest quarterly numbers for All-Occasion Tees, Inc. (AOT) were in front of him, and they told a story which was uncomfortably familiar. While there were some recent bright spots, the company was still not profitable. The good news was too little and was coming too slowly. Pedro had decided that AOT's only option was to increase custom sales. He had a strategy in place but was not sure that it would generate the results that C&S hoped to obtain. He knew that the ownership group would continue to fund deficits in the near-term, and he believed in his long-term vision for the company. Ultimately, however, AOT needed to grow - or shut down - and it was running out of time.

Key words: Small-business management, decision making, finance, acquisitions, Honduras, international business, sports apparel

ASK WELLNESS SOCIETY: THE UNION QUESTION, p. 43

By Melanie Reed, Kyle Senft, Ankita Sherkane and Swati Sinha

ASK Wellness Society was a grassroots non-profit agency success story. From its humble roots as the AIDS Society of Kamloops, the agency had grown from fewer than seven employees with a single location and one funding source in 1992 to the largest provider of affordable housing and support services in the Interior of British Columbia. In 2022, the agency managed 680 affordable housing units and employed 267 people in three communities with total revenues of just under Can$ $15 million. The agency was also one of the few Community Social Service organizations in the province of British Columbia that did not have any unionized workers. Led by a dynamic CEO, Bob Hughes, the senior management team had always been able to recruit and retain employees by responding quickly to their needs, and by maintaining their tribal culture alongside a Human Resource Management system that offered fair and effective people management. The organization and its leaders were purpose-driven and their passion for supporting and giving hope to the most marginalized members of society attracted many potential employees.

In 2021, challenges with recruiting and retaining workers illuminated a problem. ASK's unionized counterparts offered significantly higher compensation. Realizing the disparity, Hughes and his management team had a tough decision. Could Bob Hughes convince funders to increase budgets to support a wage increase without a union contract? Alternatively, could he convince management to support a union avoidance strategy by accepting significant wage increases? Would the employees even support unionization? If so, would unionization erode the flexible, family-like culture that the organization was known for?

Key words: Nonprofit, Canada, unionization, compensation, service sector

THE LEADER AT THE TOP OF THE MOUNTAIN, p. 64

By Lesil Artista and Anne Camit

Three decades of service would appear to be sufficient for any executive who started a foundation - but perhaps not in the case of its CEO Ms. Marietta Paragas. Ms. Paragas' dedication had led to the Shontoug Foundation, whose vision was working towards the fullness of life. The foundation's mission was to *"partner with marginalized, indigenous communities in wholistic, culturally-appropriate programs and services."* As Ms. Paragas faced her own retirement and an aging workforce, hesitation, anxiety and uncertainty seemed to prevail among the staff. How would succession planning, and financial sustainability be managed? What competencies could be transferred from the current CEO to the next generation of leaders? How would differences in leadership style affect the operations of the foundation?

Key words: Leadership, The Philippines, nonprofit organization, foundation

WOULD THE SHOE FIT? ASSESSING EMPLOYEE AND ORGANIZATIONAL FIT IN THE CONTEXT OF NIKE'S GENDER-BASED LAWSUITS, p. 81

By Julie B. Nelsen

This case followed an undergraduate student, Amelia Johnson, who investigated the local, national, and trade media coverage of harassment and gender discrimination allegations at NIKE's Oregon headquarters. As a self-identified *"sneakerhead,"* Amelia had always imagined working at NIKE and needed to consider the accusations' impact on her perceptions of NIKE as a future employer. She researched the issue to learn more about NIKE's employee problems of equity and harassment and the corresponding class-action lawsuit, as well as a shareholder lawsuit derived from these concerns. While the attorneys anticipated appearing in court sometime in 2022, Amelia expected to graduate and look for a position in spring 2023. The case asks Amelia to use Berthon *et al.*'s value attributes of employee and employer fit criteria to aid her decision-making on whether to pursue NIKE employment upon graduation. This case study is intended for an undergraduate career exploration, human resources, business law, public relations, marketing, leadership, or management course.

Key words: NIKE, career exploration, equity, diversity, gender discrimination, sexual harassment, Berthon value attributes, employee-employer fit

HYUNDAI MOTORS: MAJOR PLAYER IN GLOBAL AUTOMOBILE MANUFACTURING - LUCK OR DELIBERATE MOVES? p. 109

By Arthur Kraft and John Kraft

Hyundai Motors was established in 1975. During 1997 Asian financial crisis, Hyundai acquired Kia Motors and LG Semi-Conductor. Genesis Motors, the luxury vehicle division of Hyundai Motor Company became an independent division in 2015. In 1998, Hyundai started to overhaul its image to be seen as a world-class brand. Hyundai focused on the quality, performance, reliability, and manufacturing. By 2022, Hyundai had spent billions on electric vehicles and future technologies such as hydrogen fuel cells and *"integrated mobility"* (car-sharing, autonomous vehicles, and the like). It had the world's largest integrated production plant dedicated to electric and hydrogen cars. Hyundai manufactured its parts through its subsidiaries. Its vertically integrated supply chain kept costs under control as Hyundai invested billions in driverless cars and solid-state batteries.

Hyundai maintained 12 manufacturing facilities in 10 nations along with assembly plants in other countries. Hyundai sold vehicles in 193 countries through 5,000 dealerships and showrooms. Hyundai with its Kia affiliate was the world's fifth-largest automaker. Hyundai Motor Group took the spot at the first-ever 'Best Cars of the Year' 2021/2022 Awards, and finished 2022 as one of the world's top five makers of EVs. Although Hyundai had experienced some up and down years, it appeared to have a bright future. Assets grew continuously over the previous four years from 1.4 percent to 11.8 percent. Profits went from $1.64 billion to $5.69 billion over the same period.

Key words: Core competencies, diversification, growth, economies of scale, foreign direct investment, joint venture, localization, location economies, operations management, vertical Integration

BEYOND THE PAIL:
HUMAN RESOURCE PROCESSES IN THE DAIRY FARM INDUSTRY, p. 135

By Nathan Moates, Jonathan Krispin and Mary Beth Rousseau

Taylor Coates was the owner of Lucky Churns Dairy Farms. Over the past decade, the dairy had experienced tremendous growth and now had three locations with 7,000 cows and 130 employees. Lucky Churns produced 620,000 pounds of milk each day, roughly equivalent to 72,000 gallons. Taylor knew a lot about dairy farm operations, but human resources had not received much attention. The growth and success of the farm had disguised the lack of attention to H.R. policies and procedures. Lucky Churns was now at the pivotal juncture where the size of the business actually accentuated the absence of, and need for, attention to human resources.

Taylor consulted with the managers and supervisors at Lucky Churns to get their input on opportunities for improvement in management practices. Their input highlighted performance management, job satisfaction, and employee motivation. Taylor felt that the farm could get out ahead of these issues. She knew her employees personally and they trusted her, but she realized that if her company continued to grow as planned, it would soon reach a point where her personal leadership could not substitute for formal, systematic management.

Key words: Dairy, agriculture, human resources, performance management, job satisfaction, motivation

AMERICAN DREAM:
IMMIGRATION THROUGH HIGHER EDUCATION, p. 156

By Franziska M. Renz

After hiring freezes and cancelled position openings at institutions of higher education due to the COVID-19 pandemic, recruiting efforts of universities located in the United States were picking up again. Since high turnover and strong demand for qualified faculty existed, many universities drew from an international talent pool to fill their open positions. International faculty had been a significant source of diversity at many institutions for several decades. However, a long-enduring debate about immigration policies and challenges was going on in the United States, and crossed paths with immigration plans of international faculty and recruiting practices at universities.

In this case, you take the perspective of a Personnel Analyst working for a mid-sized public university located in the United States. Your task is to identify different options to hire international faculty for your institution based on information that you gathered from colleagues at similar institutions, international faculty at your own institution, and an online forum where international faculty members anonymously shared their experiences in the job market, including experiences with different universities' approaches to hiring international faculty. From your perspective, which option is the best to attract, hire, and retain qualified international faculty for your institution? How are the interests of both the university and the international faculty best served?

Key words: Human resource management, recruitment, selection, hiring, faculty, international employees, immigration

SPECIAL EDITION: CASES IN FINANCE AND ACCOUNTING, p. 175

THE COST OF GOING GREENER: DECISION-MAKING TO PROVIDE RECYCLING SERVICES, p. 176

By Dena D. Breece, Scott R. Cohen and Chelsea L. Schrader

When the city of Fayetteville, NC, was notified about a significant cost increase in recycling services, Kelly Olivera, Director of Budget and Evaluation, had to act quickly to evaluate financial and non-financial alternatives and make a responsible, informed recommendation. Olivera and City officials placed the citizens of Fayetteville at the heart of the process. Consistent with the total value contribution approach, Olivera gathered data to work towards a strategic decision on whether to outsource (a “make or buy decision”) recycling services, or instead bring the recycling services in-house. Olivera had to develop a cost-and-benefit analysis to support her recommendation. The decision on the management of recycling services had never been more important. A closer look at the situation revealed that recycling could affect citizens’ fee for services, and posed risks for the City, the mayor and the city council.

Students are asked to determine potential stakeholder implications, evaluate relevant costs and benefits, and make a well-supported recommendation on how the City should respond to its recycling services dilemma.

Key words: Finance, accounting, recycling, cost-benefit analysis, make or buy, sustainability

TAX CONSEQUENCES OF THE BANKRUPTCY OF SEARS HOLDINGS CORPORATION, p. 189

By Gretchen R. Lawrie and John R. Cooper

When Kmart Holding Corporation acquired Sears, Roebuck and Co. in 2005, the resulting new company, Sears Holdings Corporation (Old Sears), became the third largest retailer in the U.S. operating about 3,800 retail stores in the US and Canada with annual revenue of approximately $55 billion. However, by October 2018, Old Sears’ operations had shrunk to 687 retail stores with annual revenue of only 16.7 billion. Burdened with heavy debt, Old Sears filed a voluntary petition for bankruptcy relief on October 15, 2018. Seeking relief, Old Sears filed a motion asking the bankruptcy court to approve global bidding and sale procedures for the auction and sale of its assets. After multiple bids, one of Old Sear’s largest shareholders and creditors acquired substantially all of Old Sears. This case presents an opportunity for exploration of the tax and non-tax consequences of bankruptcy in the public company arena.

Key words: Sears, Roebuck and Co., Kmart, bankruptcy, Type G bankruptcy reorganizations, tax-deferred and taxable bankruptcy reorganizations, tax planning

IS RENEWABLE ENERGY ECONOMICALLY VIABLE? THE CASE OF THE SOLOMON ISLANDS, p 227

By Seung Hee Choi and Mark A. Doughten

The Solomon Islands, in the South Pacific Ocean, consisted of roughly 996 islands. Around 350 islands were inhabited, including the six main islands of Guadalcanal, Malaita, Isabel, Choiseul, and New Georgia. In 2017, the total population of the Solomon Islands was 515,870. Roughly 80% of the population lived in rural communities. The population quickly increased from 1999 to 2009 with an average annual growth of 2.3% per year.

This case study examines the economic viability of renewable energy strategies and explores the inherent challenges that energy providers, policy makers, and regulators face as they address long-term electricity costs to consumers while reducing the carbon footprint of traditional utilities. The case introduces Levelized Cost of Energy (LCOE) to evaluate the economic viability of different renewable energy technologies. Students need to provide quantitative and qualitative evidence for long-term sustainable green energy solutions.

Key words: Solomon Islands, renewable energy, sustainability, utilities, regulations, cost analysis, LCOE, levelized cost of energy

C.R. BARD, INC.: WHEN SHOULD A CONTINGENT LIABILITY ARISING FROM A PRODUCT LIABILITY BE REPORTED IN THE FINANCIAL STATEMENTS?, p. 247

By Steve Hall and Sarah Borchers

Contingent liability reporting requires significant use of accounting judgment. Significant judgment is also required in the audit of the reporting and disclosures of contingent liabilities. The case provides a context to analyze and make judgements about reporting and disclosure. The case addresses a company sued for malfunction of a medical device. Students are required to familiarize themselves with the reporting and disclosure rules for contingencies. They are given excerpts from recent opinions of the Supreme Court of the United States (SCOTUS) that expose them to restrictions on the size of possible punitive damage awards. Students are required to apply what they have learned about contingent liability reporting requirements and the awarding of damages to the facts of the case. Students can determine the amount of any loss and liability to report, and how to compose the contingent liability footnote before comparing their determination with what was reported and disclosed by the company. The case can lead to a discussion of how the rules are applied in practice and the efficacy of the rules.

Key words: Financial accounting, audit, contingent liabilities, reporting, product liability, disclosure, medical lawsuit, compensatory damages, punitive damages, auditing contingent liabilities

THE IRISH APPLE TAX DISASTER, p. 257

By John Paul

On August 30, 2016, the European Commission (EC) concluded that Ireland and Apple, Inc. (Apple) had violated the European Union (EU) State Aid rules when Ireland granted tax advantages to Apple; therefore, the EC ordered the Irish government to collect up to €13 billion euros ($15.3 billion U.S. dollars) in tax underpayments from Apple for the 2003 to 2014 period. The EC did not claim that Apple broke any specific laws, but that Apple's generous deal with Ireland was illegal because the arrangement meant unfair competition. Did the EU have the right to override an agreement that a sovereign nation made with a corporate entity in order to improve the economy of that nation? Did this *"sweet"* deal between Apple and Ireland harm the economies of other nations; had Apple and Ireland greatly benefitted from a deal at the expense of the European community?

On July 15, 2020, the European Union General Court annulled the European Commission's decision, holding that the EC had not proven that the Irish tax rulings gave rise to a selective advantage under the EU State Aid rules. Consequently, Ireland did not have to collect the €13 billion euros of unpaid tax from Apple. What legal and ethical arguments justified the EU General Court's annulment of the European Commission's decision?

Key words: Apple, European Union, EU, Ireland, tax, state aid, selective advantage, tax ethics

CNN+:
EXPANSION OF CNN INTO THE STREAMING INDUSTRY, p. 265

By Evelyn N. Huynh and Julian U.N. Vogel

Cable News Network (CNN) was an international cable news channel founded in 1980 by Ted Turner and Reese Schonfeld. CNN offered 24/7 news in various categories from sports to politics to entertainment, and ranked as the number one online news destination bringing in more than 200 million monthly viewers. Looking to expand CNN into other platforms and provide CNN viewers with more entertainment sources, CNN executives decided to launch CNN+, a streaming subscription service that offered news, interactive programming, shows and movies.

Two weeks before Warner Bros, CNN's then-parent company, merged with Discovery, CEO Jason Kilar launched CNN+ on March 29, 2022. In April, Discovery and Warner Bros merged after closing on a $43 billion deal. Discovery initially wanted CNN+ to launch after the merger so the companies could align their goals, but CNN decided to launch CNN+ before the merger. After the merger, it became clear that CNN and Discovery executives had widely different opinions about the future of CNN+. Therefore, David Zaslav, the CEO of Discovery, wants to ask for your expertise. Based on the numbers presented, and considering the ramifications for CNN's public image, what should be done with CNN+?

Key words: Capital Budgeting, CNN+, discovery, media, merger, NPV, Streaming, Warner Bros

ARTICLES, NOTES, AND EXERCISES, p. 274

By Brian K. Hasson

The Scavenger Hunt requires student teams to use comparative 10-K filings to search for specific accounting amounts and disclosures, analyze differences between firms, make an investment choice, and present the information that led to the investment decision. The assignment and its accompanying teaching note are designed for use in a principles of financial accounting course, in order to expose beginning accounting students to how the outcome of the accounting process can be used to make decisions. Collaboration, critical thinking, and presentation skills are exercised through implementation. Quantitative evidence suggests that student efficacy in accessing and using accounting information to make investment decisions increases by completing the assignment. Qualitative evidence supports improvements in students' awareness of the decision-making possibilities of accounting information. The teaching note includes an instructor's guide for implementation.

Key words: Financial accounting, finance assignment, 10-k filings, investment decision, teaching note

By Dorothy A. Thompson and Tanya Smith

With so many employees working from locations other than the office, employees need to be aware of their state income tax liability. Regardless of where your primary residence is located, it is where you earn your paycheck that is subject to state income tax. The case demonstrates to employees and managers the guidelines associated with owing state income tax, or not, and how to go about filing an amended return and getting a refund. The statute of limitations in the state of New York, our example state, is within three years of the date the original return was due or filed, or within two years of the date the tax was paid, whichever is later, along with a letter of explanation.

New York State has a state income tax, while Florida is an example of a state of residence that does not. The present note can speak to individuals working in other states with a state income tax. The note challenges students to analyze, assess, evaluate, and determine if the situation can be more effectively handled by employees and employers.

Key words: Accounting, tax, state income tax, IRS, New York, Florida

Letter from the Editor

This is the 8th issue of the ***Journal of Case Research and Inquiry***. So far, **JCRI** has published 75 case studies prepared from primary and secondary research by 175 casewriters, as well as several articles, notes, and exercises. Each case was thoroughly reviewed and is accompanied by a peer-reviewed instructor's manual 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. While most of the cases are based in the United States, **JCRI** publications also include cases on truly global companies, as well as organizations operating in Argentina, Belgium, Brazil, Bulgaria, Canada, Chile, China, Colombia, Egypt, Honduras, India, Ireland, Nepal, Niger, The Philippines, The Solomon Islands, S. Korea, and Thailand.

Instructors will find cases that focus on everything from entrepreneurship and small business management to decisions made in major multinational organizations. In addition to case studies, the journal also publishes peer-reviewed scholarly articles or notes concerned with case research, teaching with cases, and case-like pedagogical exercises. Cases, notes, exercises, and articles published in the journal are available online, full text, and free of charge at www.jcri.org. Qualified instructors can receive detailed, peer-reviewed Instructor Manuals upon request to the JCRI editor. The editor is also available to write to authors' tenure and promotion committees.

In the volume, we publish 13 new cases. Six correspond to the special issue Special Edition: Cases in Accounting and Finance, and 7 are regular-length, detailed cases. Topics in the present volume include Acquisitions, Agriculture, Bankruptcy, Career exploration, Compensation, Contingent liabilities, Decision-making, Diversification, Employee-employer fit, Immigration, Job satisfaction, Leadership; Recycling; Renewable energy; Unionization; Vertical integration, and more. JCRI cases are ready for use in the classroom, and all come with detailed peer-reviewed instructor manuals.

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 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 article submissions in 2024.

Steve McGuire
Editor, ***Journal of Case Research and Inquiry***

JCRI Journal of Case Research and Inquiry

CASE RESEARCH

Journal of Case Research and Inquiry

WHEN EVENTS DO NOT TURN OUT AS EXPECTED: THE ACQUISITION OF ALL-OCCASION TEES INC.

YVETTE M. BENDECK
TROY A. VOELKER
University of Houston-Clear Lake

Pedro Martinez, Chief Operating Officer of C&S Investments, pushed back from his desk, looked away from his monitor, and sighed. The newest quarterly numbers for C&S' subsidiary, All-Occasion Tees, Inc. (AOT), were in front of him, and they told a story which was uncomfortably familiar. While there were some bright spots in AOT's recent performance, the company was still not profitable. The good news was too little and was coming too slowly. Pedro had decided that AOT's only option was to increase custom sales. He had a strategy in place but was not sure that it would generate the results that C&S hoped to obtain. He knew that the ownership group would continue to fund deficits in the near-term, and he believed in his long-term vision for the company. Ultimately, AOT needed to grow - or shut down - and it was running out of time.

The Acquisition

Pedro Martinez became aware of an opportunity to acquire All Occasion Tees, Inc. (AOT) in 2015. The company's owner was ready to retire and willing to sell the then 27-year-old Spartanburg, South Carolina, company. As Chief Operating Officer of C&S Investments, based in Honduras, Pedro saw an opportunity to extend operations to the United States and to provide expedited services to its U.S.-based customers. Because of client feedback, Pedro was confident that the acquisition would be profitable.

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. 8, 2023***, a publication of the Western Casewriters Association. Contact: Yvette Bendeck, University of Houston- Clear Lake, 2700 Bay Area Blvd, Houston, TX 77058, bendeck@uhcl.edu.

C&S had been in advanced stages of discussion with two of its sports apparel customers to offer screen-printing and third-party logistics (3PL) services in the United States, services not offered by most small screen printers. These services included inventory management, warehousing, and order fulfillment. C&S Investments, a cut-and-sew family business in Honduras, finalized the $1.7 million deal in July 2016. Following the acquisition, C&S Investments sold AOT's building. Francisco Herrera, AOT's general manager and C&S Investments Finance and IT director who oversaw its operations, stated:

> *"Due to our 3PL plan, we decided to sell the property and rent a facility to incorporate 25,000 sq. ft. of warehouse space in the South Carolina facility. We reinvested the profits from the sale to help finance the upgrades needed in the rented space to fit our needs."*[1]

The square footage of the warehouse space was determined by the expected demand for 3PL services from the sport apparel companies. C&S invested approximately $1.9 million in plant and equipment during the 2017-2018 period.

3PL Services

With 3PL, garments were manufactured to a client's custom fit specifications in Honduras and shipped to South Carolina at the client's expense. The garments were warehoused in the facility until screen-printed and shipped per client instructions. This model was appealing to clients with quick response (hot market) needs where the screen-printed garments needed to be delivered within a narrow window, typically with a 24-hour turnaround time, and for those who needed made-to-order small printing runs in the range of 36 to 48 items for increased inventory management flexibility.[2] Thus, providing these services from Honduras was not feasible. AOT's expected revenue stream was from the screen-printing and 3PL operations. The

[1] The lease agreement was for a period of 5 years. At lease expiration, rent was likely to go up.
[2] The Major League Baseball Championship series is an example of a hot market as fans expect championship T-shirts immediately. The made-to-order business typically required small runs where a client's order comprised of small quantities of the same design printed in assorted color T-shirts and could be printed because they used the same ink colors. For example, a 36 T-shirt order, might call for the printing of 12 T-shirts in three distinct colors but with the same ink setup.

price per item for 3PL services was set at $1 per garment. With a screen-printing annual capacity of 2.25 million units, the revenue potential per year was $2.25 million.

Unexpected Events

As the facility neared completion at the end of 2017 and beginning of 2018, both clients informed C&S that circumstances had changed. In one instance, the Dallas Cowboys, who produced their own licensed sport team apparel, had decided to join the licensing agreement among the National Football League, Nike Inc, and Fanatics (Belson 2018). The other sport apparel client informed C&S that a strategic shift had occurred. The company had decided to shift its focus from sports league and team sponsorship to athlete sponsorships, removing the need for the 3PL service offered through AOT.

Reflecting on the events that transpired, Pedro stated,

> *"We have always been in a business where it is necessary to build the infrastructure before you can attract clients. This is because before a client agrees to sign a contract, we must pass a series of audits, such as environmental and labor audits that can take up to a year to complete. In many respects, we take on a lot of risk because we build with no guarantees that the clients will sign on. That is just the nature of our business."*

The Screen-Printing Industry

Apparel screen printing was the largest segment of the custom screen-printing industry (Rodriguez 2020). The sector generated approximately 50% of the industry's revenue.[3] Industry revenues grew by 9.14% from $8.644 billion in 2015 to $9.434 billion in 2019. By 2020, revenues were expected to decline to $7.7 billion or 18.38% due to the pandemic. Screen

[3] Apparel, stationery, and label screen printing were the principal industry sectors. Excluded from the custom screen-printing reports were manufacturing firms that used in-house screen printing to add their own designs. (Rodriguez 2020).

printing was regarded as a high-quality printing service due to the amount of ink that was transferred through mesh screens to create the desired designs.

Demand for screen printing came from consumers who sought customized products, businesses who needed promotional items for their branding efforts, and manufacturers who outsourced their screen-printing function. Economic activity affected the demand from businesses, consumers, and manufacturers. Purchases of custom print items were regarded as discretionary spending, influenced by the level of consumers' disposable income and corporate profits which influenced promotional and advertising budgets. Custom print sales were also considered seasonal, with the highest demand during the third and fourth quarter of each year that coincided with the back-to-school and holiday seasons (Rodriguez 2020).

Industry profitability, measured as earnings before interest and taxes (EBIT) was 4.7% of revenues in 2015 and remained above 4.2% through 2019.[4] By 2020, profitability was expected to decline to 1.4% of revenue. Profit pressures were driven by the competitive nature of the screen-printing industry and the industry's labor-intensive nature. Due to the lack of a high degree of product differentiation among screen printers, screen-printing companies competed on price, which resulted in downward pressure on prices and profit margins. Labor costs fluctuated between 25% and 27% of revenues over the 5-year period starting in 2015 and was estimated to be 27.1% of revenues by the end of 2020.[5] While the cost of a screen-printing machine ranged $250,000 to $750,000, capital intensity, defined as the amount on plant and equipment compared to the amount spent on labor, was considered low. The capital intensity ratio for the industry was $0.08 of capital per $1 of labor.[6]

Concentration in the industry was low. No screen printer held 5 percent or more of the market share. Most screen printers were small operators that focused on local and regional markets.

[4] Refer to Profits as a Share of Revenue 2015 – 2020 graph (Rodriguez 2020 p. 20)
[5] Refer to Wages as a Share of Revenue 2015 – 2020 graph (Rodriguez 2020 p. 20)
[6] IBISWorld used the ratio of depreciation to wages as a proxy to capital intensity. IBISWorld considered a ratio of $.333 of capital per $1 of labor as high intensity, with a ratio of between $0.125 and $.333 of capital per $1 of labor deemed as medium intensity, and a ratio of below $0.125 considered as low intensity.

Spartanburg-Greenville, South Carolina, Area

The Spartanburg-Greenville, South Carolina area was situated in the I-85 corridor between Charlotte, North Carolina, and Atlanta, Georgia. The area was attractive to businesses as 94 million Americans lived within 500 miles of the location (Greater Greer n.d.). The area attracted both domestic and global companies engaged in the manufacturing, distribution, logistic and technology industries focused on the automotive, aerospace, biotech, and advanced materials manufacturing sectors (Stout 2018). Through Inland Port Greer, businesses had easy overnight access via rail services to the Port of Charleston 212 miles away (Greater Greer n.d.). Located in the area was the state's largest industrial employer, BMW Manufacturing. Co., LLC. and some of its suppliers. Volume-wise, the plant assembled the largest number of BMW cars worldwide (IndustrySelect 2022).

AOT's Challenges

Almost immediately after finalizing the acquisition, AOT's customer services representatives left the company, taking along four of AOT's top 11 clients, which included the largest customer that contributed 17.2% of 2016 revenues.[7] Prior to the acquisition, AOT serviced 338 clients. In the five months following the purchase, 66%, or 220 of 338 of its customers, had stopped doing business with the firm. By 2019, only 24% of the original client base was still an AOT customer. Exhibit 1 summarizes customer retention by revenue category. The 81 clients that stayed with the firm through 2019 generated slightly less than 50% of the 2016 revenues.

[7] According to Francisco Herrera, one of the top clients filed for bankruptcy shortly thereafter.

Exhibit 1. Customer Retention and their Contribution to 2019 Revenues

Source: Create from AOT's Customer Database as of June 2016 and December 2019

	Pre-acquisition		Post-acquisition through 2019	
Yearly Revenue Per Customer	Number of Customers	% Of 2016 Revenue	Customers Retained	% Of 2016 Revenue
> $10,000	11	63.6%	7	33.28%
$1,000 and $10,000	77	25.7%	32	11.76%
< $1,000	250	10.7%	42	2.50%
Total	338	100.0%	81	47.54%

Under previous ownership, AOT focused on servicing their *"house accounts."*[8] The company used customer service representatives to manage the reorder process from these long-standing clients. Management had paid no attention to nurturing new relationships. Consequently, AOT had no employees focused on new business development.

With the rapid exodus of AOT's top clients and the lost opportunity to implement the 3PL business, Pedro worried about the profitability of the venture. Exhibit 2 shows the screen-printing cost and transportation cost for a garment if the service was provided in Honduras versus in South Carolina. Although several clients outside the sport apparel industry were enthusiastic about the speedy delivery of apparel, they were hesitant about the 15.5x increased screen-printing cost of doing business with AOT. The differential in cost was driven by labor costs. The labor cost per hour in Honduras was $2.10 compared to $12 per hour in Spartanburg area.[9]

[8] House accounts refer to accounts that are not managed by salespeople. The accounts are considered as owned by the firm and managed by individuals who provide services and support for repeat orders Forbes (2018).
[9] South Carolina had no state minimum wage law, and therefore federal law stipulated the minimum (U.S. Department of Labor 2022).

Exhibit 2. Screen-Printing Cost, Shipping Cost and Total Cost Per Unit by Location

Source: Pedro Martinez and Francisco Herrera

	Screen-printing Cost per Unit	Per Unit Shipping Cost Puerto Cortes, HN to Spartanburg, SC[10]	Total Cost per Unit
C&S - Honduras	$ 0.10	$ 0.0755	$ 0.1755
AOT – South Carolina	$ 1.55	$ 0.0755	$ 1.6255
AOT to C&S Cost	15.5x	1x	9.2621x

Faced with the collapse of the original business plan, C&S shifted the focus to a business-to-business model in which AOT provided full screen-printing services, including art design services, garment selling and screen printing in the South Carolina market. Consequently, Pedro and Francisco directed their attention to new client acquisition and retention.

Employee turnover also presented challenges for AOT. As shown in Exhibit 3, employee turnover in the production and customer service area was an issue over the three-year period since the acquisition. As of 2019, only 4 employees who worked for the previous ownership remained with the company, none of which were at the management level.[11] Six months after the acquisition, Francisco introduced management stability by hiring Mathew Hansen as the New Business and Technical Manager, while at the same time appointing Cesar Duron, a C&S Investments employee, as AOT's operations manager.

Exhibit 3. Employee Turnover by Functional Area

Source: Created from AOT's Employment Database 2016 through 2019

Area	Number of Voluntary and Involuntary Departures	Number of Positions Available and Filled	Turnover Percentage
Art	2	2	100%
Customer Service	8	2	400%
Production	87	13	663%

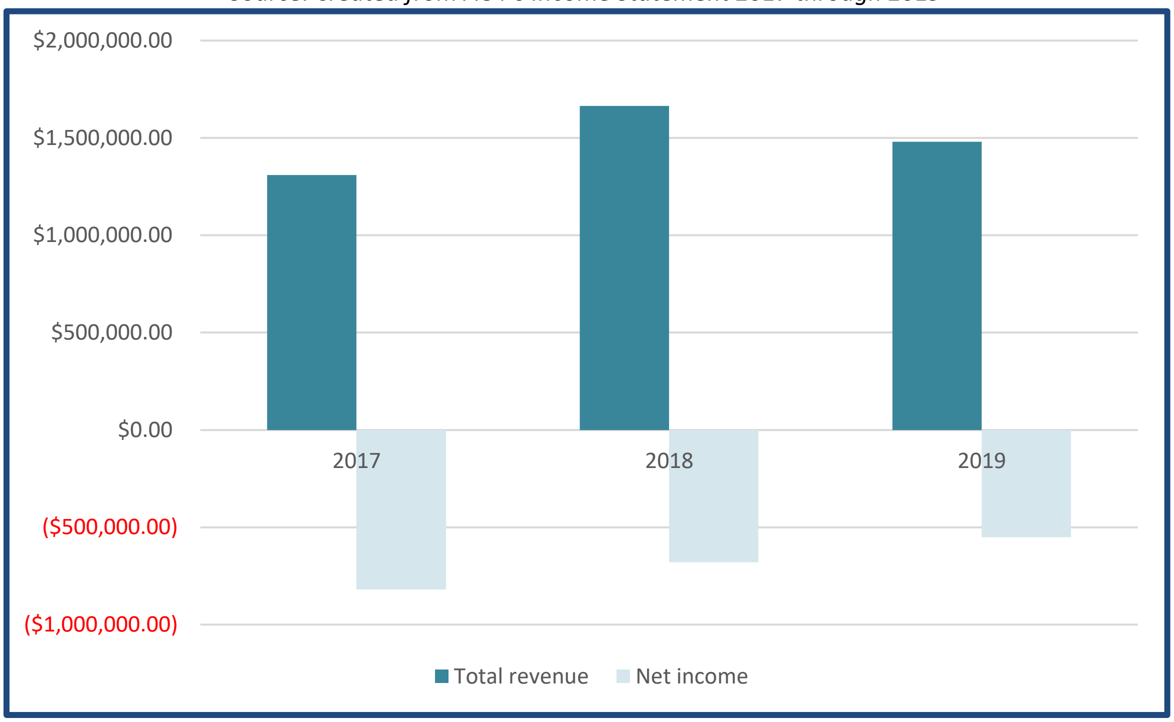
[10] Shipping costs were based on a 40 ft shipping container using 50% of the cost required to ship a similar container on October 14, 2022, to reflect pre-pandemic shipping costs. To facilitate comparison, we assumed the screen-printed items from Honduras were shipped to a client in Spartanburg, but garments screen printed in Honduras were shipped to the port of entry specified by the client which could result in lower shipping costs. (P. Martinez, personal communication, October 14, 2022).

[11] The employees who remained worked in art and design, plant maintenance, production supervision and printing.

Overall, the challenges faced by AOT negatively affected its profitability. AOT experienced a loss of almost $820,000 after its first full year of operations. Process improvements and a focus on new business development improved its fortunes, but not well enough to eliminate the losses. As shown in Exhibit 4, the losses narrowed over the next two years. By the end of 2019, AOT's loss was down to $551,000.

Exhibit 4. Revenues and Profits

Source: Created from AOT's Income Statement 2017 through 2019

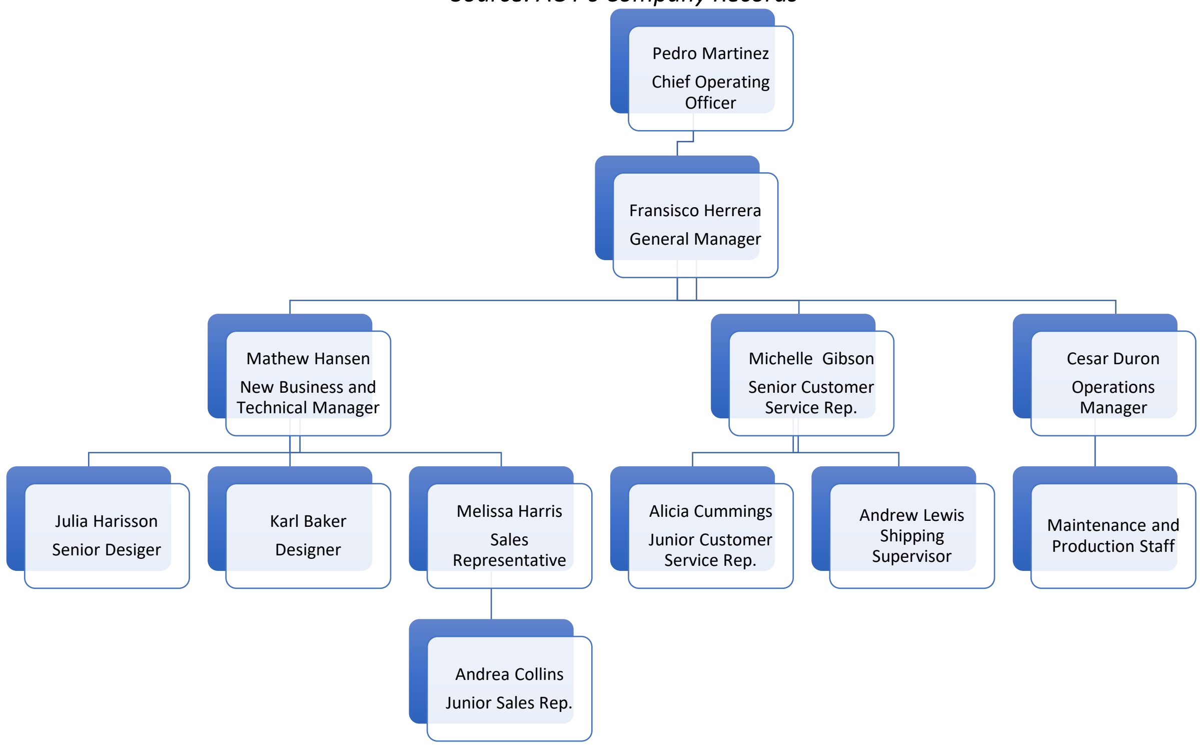


AOT's Employees

Exhibit 5 presents AOT's organizational structure. AOT operated with 22 employees.

Exhibit 5. Organizational Chart

Source: AOT's Company Records



Pedro Martinez, COO of C&S Investments, earned a bachelor's degree in industrial engineering from Georgia Tech in 1987 and an MBA from the Wharton School of Business in 1990. Upon his return to Honduras, he led his family's expansion into the cut and sew apparel industry. His industrial engineering background helped him achieve operational efficiencies required to be profitable in an extremely competitive industry. As of 2019, Pedro's family business ranked among the top 10 largest employers in Honduras.

When discussing C&S's early years, Pedro indicated he was open to assuming risk, but stated:

> *"My risk-taking attitude has diminished over the years as we have achieved economies of scale, and we have become a profitable mature company. I have become more conservative, but I am willing to evaluate investment opportunities as they present themselves and assess the risk-return tradeoff."*

He said that the scale of the AOT project was insignificant compared to their typical investment and had been comfortable moving forward with the project. He stated, *"Now that the next generation of the family is in college, we are seeking to diversify our business to areas unrelated to the apparel industry."*

Pedro appointed Francisco Herrera as AOT's General Manager. Francisco earned a bachelor's degree in computer science from the Tecnológico de Monterrey in Mexico. He had over 20 years of experience in the cut and sew industry in Honduras and had been with C&S Investments for over a decade. In addition to overseeing AOT's operations from Honduras, he also focused his efforts in attracting large clients like the C&S Honduran customer base because as he pointed out, *"We need these large customers to be our fillers in order to utilize our unused production capacity throughout the year."* Francisco said:

> *"My beliefs align with the owners of the company. We are relationship builders. Pedro and I spend a lot of time visiting and communicating with our clients, making sure that we have met their needs. I like that we do not cut corners. We build things the right way from the beginning."*

Cesar Duron was the operation manager for AOT. Like Francisco, he managed daily production operations remotely from Honduras where he also was C&S Investments operations manager, with extensive experience in plant management. He had been with C&S Investments for over 20 years. Cesar earned a bachelor's degree in mechanical engineering from the Universidad Autónoma de Honduras. Cesar worked with Pedro Martinez on the plant layout and design. Leveraging technology available, he was able to remotely communicate with his lead employees through the day and address any issues that needed attention.

One of his first tasks was to modernize AOT operations by adapting C&S technology and processes. As Cesar described,

> *"When we started, there was a bulletin board full of clipboards. Everyone would run to the clipboards to make notes on a specific order and figure out where the order was in the process and needed to go. We adapted the workflow process from C&S to fit the scope of the South Carolina operation and introduced technology that facilitated the tracking of orders from beginning to end."*

Cesar commented that lead times was one of the significant differences between the Honduran and South Carolina operations.[12] He indicated that the lead time in Honduras was between three to three-and-half months from the receipt of the order until the order delivery, but at AOT the lead times were as few as five days. He noted:

> *"If we receive an order on Friday and they want the order next Friday, we must place the order right away and purchase the goods that we are going to screen print. We are going to start receiving the goods on Monday. We will need art approval by Tuesday to burn the screens on Wednesday and start production on Thursday to be able to ship on Friday."*

Melissa Harris became the first sales representative hired by AOT towards the end of 2018. Melissa came from the hospitality industry and built much of her book of business from area bars, microbreweries, and other entertainment venues. Melissa supervised and trained Andrea Collins who became the second salesperson hired by AOT. In describing what she did, Melissa stated,

> *"I work with repeat customers that I acquired since I started here and get a lot of referrals and I reach out to customers that have ordered in the past. Andrea focuses on getting new leads and new customers. Her focus is on schools and athletic programs right now and building other niches."*

Melissa recognized that there are other niche markets in the area, such as manufacturing and warehousing, but to do so, the company had to hire at least one more sales representative.

In the initial months of training, Melissa worked with Bill Vicks, a sales representative from C&S Investments, with over 40 years of industry experience in the screen-printing business. Bill told Melissa that the biggest mistake made by salespeople when they visited prospective clients was to take product samples:

> *"Clients know what T-shirts look like and they have seen caps before. The salesperson needs to learn about the client, not the other way around. Once the salesperson knows the client, he or she can offer timely advice on products that meet the client's needs and assures the sales."*

[12] In Honduras, C&S Investment was a *"full package"* business. It provided all the raw materials to manufacture the garments that were eventually screen printed to client specifications.

He emphasized that a relational selling approach, rather than transactional selling approach, would allow AOT to build a repeat book of business founded on product quality and increased customer satisfaction. As a B2B firm, there was a strong potential for repeat business in both the contract and custom side of AOT's operations. Salespersons needed to establish a relationship with clients, learning their needs and buying patterns, as part of building ongoing sales relationships.

Michelle Gibson, AOT's senior customer service representative who was assigned to work with its largest clients, managed the order fulfillment process from supplies purchasing to order shipping. Michelle also performed AOT's human resources functions. She saw herself more as an office manager than a customer service representative. Michelle identified labor issues as the biggest challenge. With the BMW assembly plant and its suppliers in the area, Michelle commented:

> *"It is really hard to compete in this market for employees and get them to show up and stay with big industry and warehouses that surround us."*

In 2019, Spartanburg had significantly higher employment in production occupations compared to the national average, representing 17.4% of local employment compared to 6.2% nationally. The average hourly wage in the production sector in Spartanburg was $19.90, compared to the national wage of $19.30. However, production occupations in Spartanburg in the textile and garment fields were at the low-end of the pay spectrum, ranging between $10.30 and $12.98 per hour (U.S. Bureau of Labor Statistics 2020). The wage differential made it hard to retain production line employees at AOT.

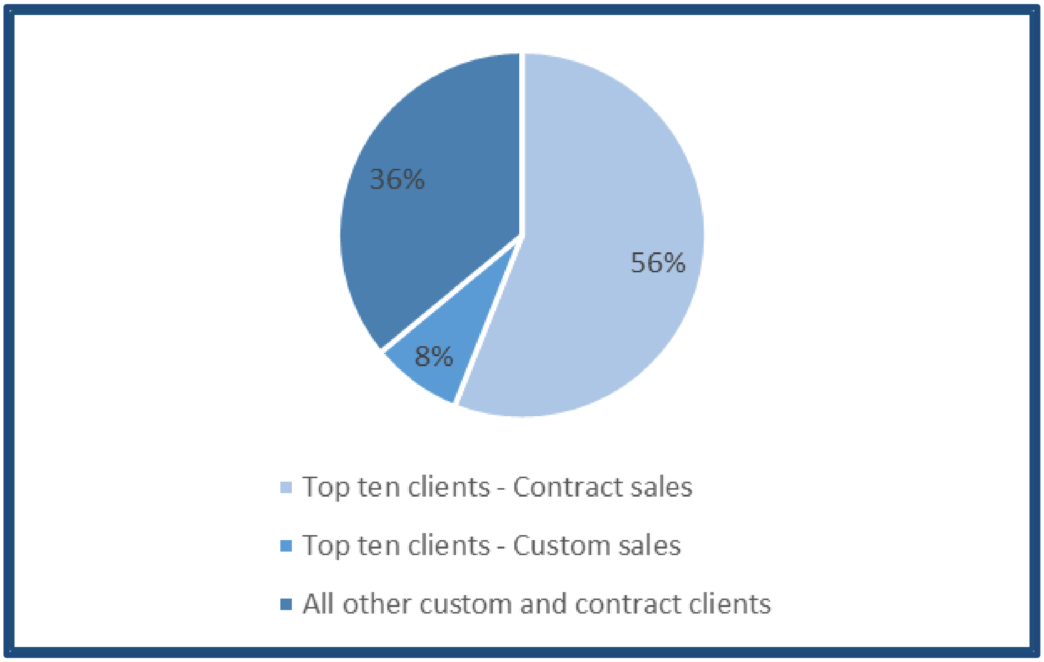
The Customers

After abandoning the 3PL strategy, AOT operated as a traditional screen-printing company focusing on business-to-business (B2B) sales. The company sorted its customers into two categories: contract sales and custom sales. The distinguishing factor between the customer bases revolved around who supplied the item (the blank) to be screen printed. In contract sales, the customer supplied the item. With custom orders, the client bought the item from AOT. Due to this difference, the profit margin from custom sales was higher than for contract orders. Volume-wise, contract orders were typically larger orders while custom orders were typically low volume.[13]

Approximately 64% of all revenue was generated by the top 10 customers, with two clients contributing about 37% of AOT's 2019 revenues. Seven of the top ten clients were contract customers. As shown in Exhibit 6, the top seven contract clients produced 56% of all revenues, seven times the revenue generated by the top three custom clients.

Exhibit 6. Sales Concentration for 2019

Source: Create from AOT's Customer Database



[13] The minimum order quantity for contract orders was 144 items compared to a 36-item minimum for custom orders. Orders above 360 items were considered high volume orders. (F. Herrera, personal communication, July 21, 2021).

Contract customers included clients who remained with the company after the acquisition and new customers from Francisco's client acquisition efforts. Contract clients dealt directly with Michelle, the customer service representative, for all aspects of the transactions as AOT treated the accounts as house accounts. Melissa and Andrea focused on new custom sales and customer retention efforts. Contract sales clients routinely reordered regularly compared with custom clients who frequently ordered once or twice a year. While custom order quantities were typically less than contract orders, custom orders were sometimes sizable. For example, one of Andrea's clients, a daycare, typically placed a custom order once each year, but the order regularly included more than 1,000 shirts and other paraphernalia.

Products and Services

AOT, like most screen printers, offered value-added services to its clients. AOT charged between $0.45 to $0.65 per garment for services. Twenty percent of AOT’s clients took advantage of these services. Exhibit 7 lists the services provided to each client base. For custom clients, AOT offered hosted website services free-of-charge that allowed individuals to place apparel orders around the clock. Companies used these services for branded employee attire and by charitable organizations for fundraising purposes resulting in a streamlined process. Exhibit 8 and 9 depict the process for charitable organizations and for company employee attire, respectively. The largest custom clients with employee order websites ran year-round.

Exhibit 7. List of Service Provided by Customer Category

Source: Created from an Interview with Francisco Herrera

Service	Contract	Custom
Store blanks	✓	
Sale of blanks		✓
Store printed goods	✓	✓
Label	✓	✓
Fold	✓	✓
Hangtag	✓	✓
Package item	✓	✓
Rebrand by changing neck label	✓	✓
Ship directly to client	✓	✓
Ship to client’s retail stores	✓	
Ship directly to client's customers	✓	
Ship directly to fundraising participants*		✓
Hosting order website*		✓

*These services are not standard services provided by small screen printers.

Exhibit 8. Charitable Organization Order Flow

Source: Created from Interview with Mathew Hansen, AOT’s Technical Manager

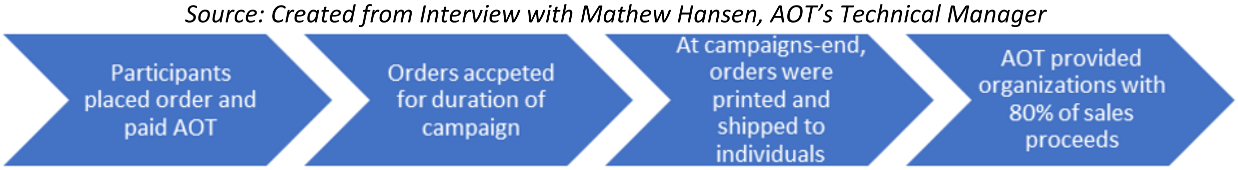
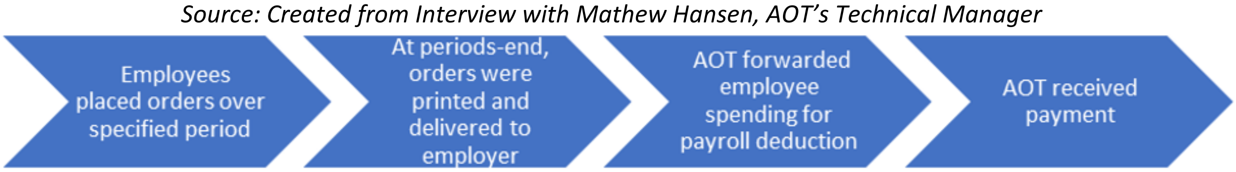


Exhibit 9. Business Organization Order Flow

Source: Created from Interview with Mathew Hansen, AOT’s Technical Manager



The Selling Cycle

While contract sales provided demand stability, AOT's success depended on building its custom sales efforts. Bringing in new custom clients required a great deal of effort. While some new accounts were acquired quickly, with the first order signed within about 2 months of the initial sales contract, most accounts took much longer to develop. Melissa and Andrea considered six months to be typical of client development – in other words, the typical new client made its first order about 6 months from the salesperson's first visit to the client. Some clients took even longer to land, one of the company's largest clients took more than a year to develop the business relationship. But each client acquired added to the revenue base and production demand.

The selling process involved more than just getting new business contracts. Once a client was on board and ordering, Melissa and Andrea needed to maintain regular contact and conversations to develop the client relationship. Andrea and Melissa met with existing clients often, limiting their ability to pursue new leads. These ongoing meetings were critical to building sales. As Bill, Melissa's trainer, pointed out,

> *"This industry is only seasonal if you let it be – most of these large clients have big events coming up every year. A good salesperson cultivates a relationship with the client and gets to know their long-term needs. Knowing their needs lets the salesperson reach out to the client a few months before a major event to solicit an order for the event. Selling in this industry is equal parts acquisition of new accounts and cultivation of existing accounts."*

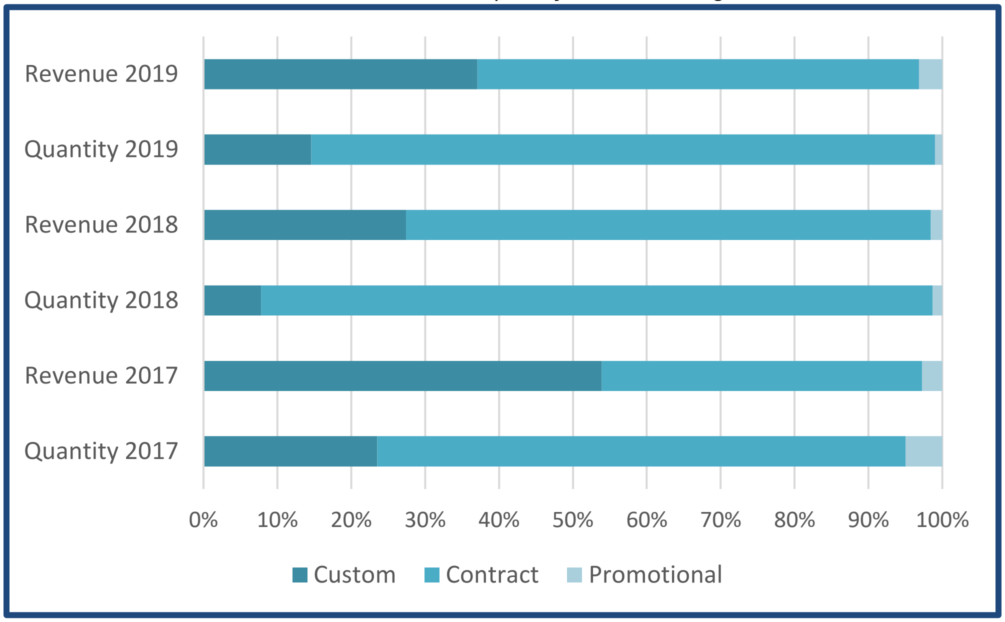
Andrea and Melissa concurred that managing existing accounts was crucial for sales generation. To this end, Melissa pointed out that they were able to actively manage about 20-25 large accounts each at a time. When they had fewer accounts in their portfolio, it was easy to take time to acquire new relationships. When they had more than twenty-five large accounts in their portfolio, it became difficult to get new leads and easy to miss opportunities with existing accounts. Melissa explained that finding new business opportunities is really a function of studying your normal market, observing that *"A good salesperson never stops selling."* Melissa mentioned that she developed a successful contract with an area amusement park while on a vacation with her family. She observed that the park was getting ready to launch a new ride. Follow-up calls to the amusement park confirmed that there was a major marketing campaign that coincided with the opening of the new ride. AOT quickly developed a T-shirt and branded merchandise order for the campaign. Once on board, the amusement park became a consistent, regular source of production orders.

Financial Summary

Contract and custom orders made up 97% of AOT's production and sales. The rest included the sale of promotional items like water bottles, freebies, and banners. AOT outsourced the branding of these items to other vendors. AOT provided these products as a service to their clients. Other items made up too small and too infrequent sales and were not a material part of AOT's plan.

Exhibit 10 reports the percent of revenues and quantity sold by sales category over the period 2017 through 2019. Except for 2017 when the company lost two contract customers (which combined generated 26.6% of overall revenue), contract sales revenue was greater than the revenue generated through custom orders. While the average price per unit for custom sales was at least 3.5 times that of contract sales prices, less than 25% of the units produced were associated with custom orders.

Exhibit 10. Percent of Revenue and Percent Quantity Sold by Sales Category
Source: AOT's Financial Reports for 2017 through 2019



Due to higher sales prices, custom sales had more lucrative gross margins than contract sales. As Cesar explained,

> *"Managing production becomes more challenging as you do not want to have too many low margin orders at the same time. We need contract orders to help pay the bills, but custom clients to make a profit."*

Cesar indicated that AOT spread contract orders across the week, leveling out production capacity, while working in higher margin custom orders as they came in. Refer to Exhibit 11 for the average sale price, cost of goods sold and gross margins by sales category and Exhibit 13 for the income statements. The stability of long-term, predictable, high-volume contract sales helped AOT cover their fixed costs, particularly when compared to the unpredictable nature of custom sales.

Exhibit 11. Average Sale Prices, Cost of Good Sold and Gross Profit Margin by Sales Category

Source: Created from AOT's Financial Reports 2017 through 2019

		2017	2018	2019
Contract	Percent of unit sold	71.50%	90.91%	84.41%
	Average price per unit	$1.75	$1.53	$2.20
	Average cost per unit	$3.25	$2.21	$3.13
	Average gross margin per unit	($1.50)	($0.68)	($0.93)
	Units sold	325,210	770,811	402,010
Custom	Percent of units sold	23.52%	9.09%	14.60%
	Average price per unit	$6.60	$6.91	$7.89
	Average cost per unit	$6.10	$5.24	$6.73
	Average gross margin per unit	$0.50	$1.73	$1.16
	Units sold	106,998	66,070	69,546
Overall	Average price per unit[1]	$2.88	$1.96	$3.11
	Average cost per unit[1]	$4.06	$2.98	$3.69
	Average gross margin per unit	($1.18)	($1.02)	($0.58)
	Units sold[2]	454,840	847,908	476,240

[1]Figures are based on weighted averages.
[2]Overall units sold include promotional sales.

Francisco commented that AOT lost money on 90% of contract clients, breaking even on those that used value-added services. When both product lines were combined, AOT's gross profit margin was -41%, -26%, -19%, for the 2017 through 2019 years, respectively. According to the RMA (Risk Management Association) Statement Studies (2021), the profit margin for screen printers generating $1 million to $3 million in sales averaged 50%.

Exhibit 12 shows the breakeven analysis results for AOT's operations. 'To breakeven in 2017 and 2018, AOT would have needed to use 82% and 90% of its plant capacity, respectively, compared to 32% in 2019. Refer to Exhibit 12 for the details on breakeven analysis over the period.

Exhibit 12. Breakeven Analysis

Source: Created from AOT's Income Statements for 2017- 2019

	2017	2018	2019
Fixed Cost[1]	$1,083,361	$1,176,123	$1,050,058
Contribution Margin[2]	$0.58585	$0.57934	$1.27430
Breakeven Quantity	1,849,213	2,030,101	824,057

1. Figures include fixed costs associated with cost of goods sold, operating expense, interest expense and other expenses not included elsewhere since the analysis is concerned with the breakeven for existing operations (Ross *et al.* 2022, p. 368).
2. The contribution margin is the weighted average of the difference between price and variable cost for each product (Farhat's Accounting Lectures 2014). The contribution margin can also be determined by taking the difference of the weighted average price and weighted average variable cost for the various products.

Exhibit 13. Income Statements

Source: AOT's Financial Statements for 2017- 2019

				Common-sized		
	2017	**2018**	**2019**	**2017**	**2018**	**2019**
Custom Sales	$ 705,560	$ 456,503	$ 548,592	54%	27%	37%
Contract Sales	$ 567,839	$ 1,182,395	$ 884,516	43%	71%	60%
Other Sales	$ 35,618	$ 26,292	$ 47,117	3%	2%	3%
Total Revenue	$ 1,309,017	$ 1,665,190	$ 1,480,226	100%	100%	100%
Direct Materials	$ 505,204	$ 345,161	$ 374,239	39%	21%	25%
Direct Labor	$ 459,549	$ 728,008	$ 507,165	35%	44%	34%
Indirect Labor	$ 401,329	$ 436,823	$ 291,713	31%	26%	20%
Facilities Rent	$ 227,864	$ 219,547	$ 224,448	17%	13%	15%
Depreciation and Amortization-Manufacturing	$ 131,864	$ 232,016	$ 234,118	10%	14%	16%
Other Manufacturing Overhead	$ 120,751	$ 143,311	$ 126,723	9%	9%	9%
Total COGS	$ 1,846,560	$ 2,104,867	$ 1,758,406	141%	126%	119%
Gross Profit	$ (537,543)	$ (439,676)	$ (278,180)	-41%	-26%	-19%
Depreciation and Amortization - Non-Manufacturing	$ 13,552	$ 16,532	$ 19,489	1%	1%	1%
SGA Expenses	$ 229,887	$ 186,603	$ 219,171	18%	11%	15%
Operating Income (EBIT)	$ (780,983)	$ (642,811)	$ (516,839)	-60%	-39%	-35%
Interest	$ 16,975	$ 23,722	$ 16,743	1%	1%	1%
Other Expenses	$ 21,441	$ 13,475	$ 17,341	2%	1%	1%
Earnings Before Taxes	$ (819,399)	$ (680,008)	$ (550,923)	-63%	-41%	-37%
Taxes	$ -	$ -	$ -	0%	0%	0%
Net Income	$ (819,399)	$ (680,008)	$ (550,923)	-63%	-41%	-37%

The Strategy

Promotional goods, as a category, seemed unlikely to generate over 5% of sales and currently accounted for no more than 3% of sales. Because of this, custom and contract sales had to carry the firm to profitability. Francisco and Cesar assumed that, at any given sales level, the share of custom sales volume needed to increase. AOT's target, therefore, was 30% of custom units sold, with the rest coming from contract sales and an incidental amount from promotional sales. They also believed there was room to improve their per unit margins. Prices for both the lower-priced contract business and the higher-priced custom business could be raised while variable costs per unit could be reduced. As part of the strategy, AOT pursued large-volume contract clients who bought valued-added services with simple print runs of 1 to 2 colors. The screen-printing cost per item was estimated at $0.45 per garment. By the end of 2019, AOT acquired a simple-run print client that committed to a weekly production of 4,000 T-shirts per week.

With respect to pricing, Francisco stated,

> *"Our ability to raise prices depends on building strong relationships with clients and our ability to deliver quality products in a timely manner. In this industry, clients are open to paying more for services based on a vendor's performance in terms of on-time deliveries, lower defective percentages, willingness to accept quick turnaround orders, and the willingness to accept more complex printing jobs."*

Francisco indicated that reliability and flexibility were rewarded and that these traits had been at the core of C&S and AOT's operations. In terms of costs control, Francisco stated,

> *"The key is having multiple strategic suppliers for the same type of raw materials, mainly ink and garments."*

Francisco discussed that typically suppliers gave AOT advanced noticed when they were running low on inventory and how much they were able to sell AOT in the next order. This gave AOT the ability to approach other vendors for the needed raw material avoiding shortages that affected AOT's on-time delivery commitments. He also commented that while printers normally had multiple supplier options that allowed them to buy from the lowest cost vendor at any given time, the ability to negotiate pricing was dependent on the strength of the business relationship and becoming a preferred buyer. Francisco commented that Michelle worked closely with the suppliers to foster the working relationship that helped AOT become a preferred buyer.

AOT believed it could improve margins through better pricing, leveraging their reliability and agility, and lower costs achieved by reducing complexity in contract orders and improving relations with AOT suppliers. Once a positive gross margin was realized, the firm could target a volume of business which would finally allow it to reach profitability.

AOT knew it had the machinery necessary to reach its undefined target. Its investment in machinery provided a capacity of 43,000 items per week (about 2,250,000 per year). AOT was running with a reduced production crew and its current labor force could produce about 13,000 units per week (about 675,000 units per year). While labor market conditions had been tight, Pedro believed that AOT could grow its labor force to produce 19,000 items per week (about one million per year) through a mix of hiring, overtime, and productivity gains. Nonetheless, AOT would not increase labor without an increase in custom sales, and to date, the company had not sold more than 107,000 custom units in a single year. AOT's two salespeople successfully added new custom clients and were balancing lead acquisition while developing sales from existing clients.

Francisco's financial analysis indicated that with AOT's current resources and with improvements in gross margins, a push towards 30% custom sales volume would allow AOT to finally generate a profit. Beyond the 30%/70% split between custom and contract sales volume, Francisco understood that pricing and cost controls would also be critical in generating a profit. Exhibit 14 reports the target figures that AOT estimated would help the company earn a profit. The figures in the contract column included the expected impact of increased large-volume contract clients who bought valued-added services with simple print runs of 1 to 2 colors.

Exhibit 14. Target Pricing and Cost Information

Source: Francisco Herrera Interview

	Contract	Custom
Average Pricing	$2.70	$9.80
Average Variable Cost	$0.90	$6.00
Fixed Cost	$1,026,000	

Will the Strategy Work?

AOT needed to turn a profit, and it needed to do so soon. The financial resources needed to support the new strategy were in place, but could the strategy itself succeed? Ultimately, AOT needed to grow or shut down, and it was running out of time.

The questions, which remained unanswered, involved:

(1) How far did AOT need to grow sales to reach profitability under its 30% custom sales volume plan?

(2) Could AOT realize the price and cost targets it had established?

(3) Did AOT have the appropriate physical and human resources necessary to reach a profitable sales volume?

and,

(4) Would Pedro's plan, if realized, lead to profitability?

Yvette M. Bendeck is a Professor of Finance at the University of Houston-Clear. She received her B.S. in industrial management and M.S in financial economics from the Georgia Institute of Technology. She also received her Ph.D. in finance from Arizona State University. Her scholarly work has been published in some of the top-tier, peer-reviewed journals in her field, such as the *Journal of Finance*, *Journal of Banking and Finance*, and the *Journal of Monetary Economics.*

Troy A. Voelker is an associate professor of management at University of Houston-Clear Lake and Associate Dean for the College of Business. Having degrees in both finance and strategic management, he has worked in banking and corporate finance with Fortune 500 firms. Dr. Voelker is a long-time member of the Small Business Institute, where he served 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 nonprofit 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 a member of *Phi Kappa Phi*, *Beta Gamma Sigma*, Decision Science Institute, Academy of Management, the Southwest Case Research Association, and other organizations.

JCRI Journal of Case Research and Inquiry

References

Farhat's Accounting Lectures (2014, March 15). *Multiple Product Break-Even Analysis | Managerial Accounting |CMA Exam* [Video]. YouTube. Retrieved April 25, 2022, from https://www.youtube.com/watch?v=7uDjOc8EoOA

Greater Greer Chamber of Commerce. (n.d.). *Economic Development* [Video]. Retrieved April 30, 2022, from https://www.elocallink.tv/m/v/Redesign4/?pid=w2Q3z1N7p21&fp=scgre20_econ_rv3_iwd#c|scgre20_econ_rv3_iwd

Risk Management Association. (2021). Financial ratio benchmarks for NAICS 323113. Retrieved March 15, 2022, from RMA eStatement Studies database.

Rodriguez, A. (2020, October). Custom Screen Printing: US Industry Report OD4211. *IBISWorld.* Retrieved May 9, 2020**,** from https://my-ibisworld-com.ezproxy.lib.uh.edu/us/en/industry-specialized/od4211/about

Ross, S.A., Westerfield, R.W, and Jordan, B.D. (2022). *Fundamentals of corporate finance* (13th ed.). McGraw Hill Education, pp. 364-370.

Stout, M. (2018, June 28). *Top three growing business industries in South Carolina.* Retrieved May 9, 2022, from https://www.vikingmergers.com/blog/2018/the-top-three-growing-business-industries-in-greenville-south-carolina/

Tadin, J. (2018, January 30). *Take it to the house: How implementing a house account strategy supports profits and growth. Forbes.* Retrieve on February 15, 2022, from https://www.forbes.com/sites/forbesbusinessdevelopmentcouncil/2018/01/30/take-it-to-the-house-how-implementing-a-house-account-strategy-supports-profit-and-growth/?sh=eae135e8dabd

Top ten manufacturing companies in South Carolina. (2022, September 13) IndustrySelect. Retrieved on October 15, 2022, from https://www.industryselect.com/blog/top-10-manufacturing-companies-in-south-carolina#:~:text=About%20the%20Top%2010%20Manufacturers%20in%20South%20Carolina&text=With%2011%2C000%20employees%2C%20BMW%20is%20the%20state's%20largest%20industrial%20employer.

U.S Bureau of Labor Statistics. (2020, May 27). *Occupational employment and wages in Spartanburg — May 2019.* Retrieved October 15, 2022, from https://www.bls.gov/regions/southeast/news-release/2020/occupationalemploymentandwages_spartanburg_20200527.htm

U.S Department of Labor, Wage and Hour Division. (2022). *State minimum wage laws.* Retrieved October 25, 2022, from https://www.dol.gov/agencies/whd/minimum-wage/state#:~:text=minimum%20wage%20law.-,South%20Carolina,wage%20of%20%247.25%20per%20hour

Zoltners, A. A., Sinha, P. & Lorimer, S. E. (2006). Match Your Sales Force Structure to Your Business Life Cycle. (Cover story). *Harvard Business Review*, 84(7/8), 81–89.

ASK WELLNESS SOCIETY: THE UNION QUESTION

MELANIE REED
KYLE SENFT
ANKITA SHERKANE
SWATI SINHA
Thompson Rivers University

Bob Hughes leaned back in his well-worn office chair and let out a big sigh. The temperature for the rest of the week was going to be above 38° Celsius (100° Fahrenheit) and the usually energetic CEO of the ASK Wellness Society (ASK) knew the potential for casualties that this record setting heat wave could cause. Hughes had already met with his senior management team and the group had developed a game plan to address the shelter and health needs of the community's most vulnerable people. On top of that, Hughes knew ASK needed more staff to meet the increasing demand for services.

The agency struggled to fill vacant positions as it was difficult to compete on wages with large government employers for professional roles such as nurses, and with unionized social services agencies for other employees. Hughes wondered if unionization might be the solution. The agency's funders had the final say on salary budgets, but if the agency were unionized, the corresponding wage premium could be what was needed to compete in the war for talent. Hughes wasn't a stranger to trying new approaches or taking risks, but he also worried that the rigidity of a union would erode the agency's ability to respond quickly. Unionization would also affect its unique organizational culture. On top of that, he felt there might be ramifications if he were the one who encouraged his employees to seek union representation.

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. 8, 2023***, a publication of the Western Casewriters Association. Contact: Melanie Reed, Thompson Rivers University, 805 Tru Way, Kamloops, BC V2C 0C8, Canada, mreed@tru.ca

Community Social Services in British Columbia

The ASK Wellness Society provided programs and services that ranged from street outreach to addiction counselling to the operation of a social enterprise (see Exhibit 1 for a description of services), but as an organization it was best described as a Community Social Services Agency. According to B.C.'s Community Social Services Workers website, work in this industry was rooted in caring:

> *"Community social service workers are caring professionals. They help and support the most vulnerable members of our communities, including youth at risk, women, people with disabilities, immigrants, First Nations, and many others."[1]*

According to the Community Social Services Employer Association (CSSEA), the community social service industry accounted for over 21,000 employees (just over 13,000 FTE) across both unionized and non-unionized public and private sector workplaces in 2019.[2] During the same time period, 73% (15,847) of employees were represented by a union, with only 17% (3,683) remaining non-unionized. The other 10% (2,065) of employees held Management roles or exempt positions (see Exhibit 2 for a chart). By comparison, the rate of unionization in Canada was 28.6% in 2019 and 27.8% in the province of British Columbia (B.C.) where ASK operated.[3]

In December, 2021, the province of B.C. experienced low unemployment (4.9%) across all employment categories, which put pressure on employers to compete for a limited pool of available workers. An even tougher challenge was in the community social service sector, where the unemployment rate was 0.6%[4] and average hourly wage rates for most positions were Can$ 6.98 per hour less than the Can$ $31.05 average for all workers in B.C.[5] Like many organizations in Canada, Hughes and the leadership team at ASK were feeling the pain of low unemployment, rising inflation, and an exhausted workforce following almost two years of a pandemic that was particularly challenging for ASK's vulnerable clients.

Exhibit 1. Summary of Services Offered under the Four Pillars

Source: ASK Wellness Society. (2022, January 5). About ASK.
Retrieved from ASK Wellness Society: https://askwellness.ca/about-ask/

STREETS

These services ensure that individuals living without an address or engaging in substance use or sex work had the essentials they needed and resources to be safe. One program is the Community Drug Checking Service which provided free, quick, and anonymous substance testing for substance use. SHOP was a long-running program that worked to provide Social and Health Options for People who worked in sex work, and the Community Transitions Team (CTT) was formed to investigate the service gaps that people transitioning from prison to the community faced.

HOMES

The Housing outreach Team assisted residents who needed help keeping or finding safe and secure housing. Low- and moderate-income people could choose from a variety of inexpensive housing options. The society taught individuals some fundamental life skills and connected them with mental health resources.

HEALTH

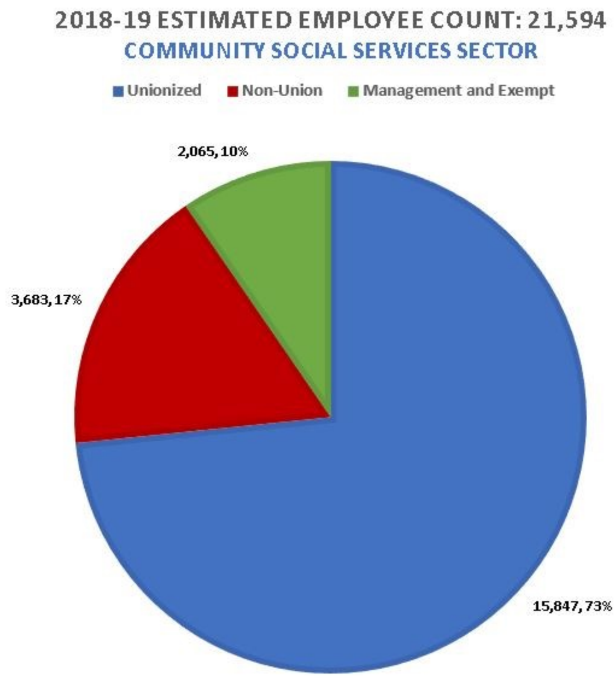
These services helped people improve their health by providing services such as locating a doctor, managing medications, and transporting patients to specialists. Those who had successfully completed detox were provided with resources and housing by the society. The group provided support and resources to persons with developmental disabilities who may also be coping with mental illness. Adults with developmental disabilities were also supported by the society. TiOAT is an alternative to traditional opioid medication for patients who do not respond to them and is relatively new to the agency.

EMPLOYMENT

One of the main employment programs offered by ASK was the City of Kamloops mattress recycling program. The program helped people with challenges to employment find meaningful work in a social enterprise that offered benefits to the community and the environment. Members in the program collected mattresses from local landfills, dismantled them, and recycled or repurposed the materials. The program intended to extend the life of Kamloop's region's landfills while also promoting a local economy through new meaningful jobs for individuals in need of assistance. ASK planned to open a vocational training center in Kamloops in 2022 and has launched a Community Ambassador program in Penticton.

Exhibit 2. 2018-2019 Estimated Employee Count – Union vs. Non-Union

Source: Community Social Services Employer's Association of B.C. (2012). FTE Count. Retrieved from Community Social Services Employer's Association of BC: *https://www.cssea.bc.ca/index.php?option=com_content&view=article&id=164&Itemid=283*



ASK Wellness Society: Grassroots Growth for Social Good

In 2006, when Hughes joined the agency as Executive Director, he became employee number seven in a group that worked out of a small downtown Kamloops office. As the story went, the organization was created when a group of HIV/AIDS advocates met on a basement couch in an effort to support people in the community who were suffering from the illness. In 1992, they formed the AIDS Society of Kamloops with a focus on providing *"health and wellness and to provide education to strengthen the Kamloops community."*[6] In these early days and for many years that followed, the services offered by the organization were directed towards advocacy and education for people living with HIV/AIDS and Hepatitis C.

Shortly after Hughes joined the agency, he saw in the newspaper that a small local hotel was for sale; he had an idea. Financially, the agency was struggling to survive in the long-term, and

Hughes could see the potential for steady income if ASK became a landlord. He also saw an opportunity to support ASK's clients on their road to wellness as so many struggled to find stable, affordable and/or supportive housing, a resource lacking in the community at the time. Supportive housing was "*subsidized housing with on-site supports for single adults, seniors and people with disabilities at risk of or experiencing homelessness.*"[7] The type of support offered varied, but generally included access to 24/7 on site support staff, mental health support, meals, and other health and wellbeing services.

The Whistler Inn was a 28-unit property listed for an asking price of Can$ 1.1 million. Hughes took his idea to the Board of Directors and pitched a plan for financial stability through affordable housing management. With the Board's support, he found an audience with B.C. Housing, a Provincial Government organization that worked with private and public sector partners providing housing to British Columbians who struggled to find and secure housing on their own. B.C. Housing offered a continuum of housing options that ranged from shelters and housing for those who were homeless to assistance for individuals who were securing mortgages for a home.[8]

At the time of Hughes' request, ASK was already offering a pilot housing outreach project that was funded by B.C. Housing, but ASK was not on B.C. Housing's radar. It turned out that Hughes' timing was perfect because B.C. Housing had already been looking for a property and someone to run a supportive housing program. With this knowledge, Hughes submitted his first Request for Proposal (RFP) and secured the first contract for a 24/7 supportive housing program in Kamloops. ASK changed the name of the property to Henry Leland House (who the building was named after). From that moment on, growth was exponential for the small grassroots agency, and B.C. Housing remained ASK's most important funder and partner.

In 2010, ASK purchased The Crossroads, a property blocks away from the Henry Leland House, with funding from a federal funding partner and an operating contract from B.C. Housing. The Crossroads was a much larger property and was better set up for supportive housing, so the leadership team at ASK made a courageous move and shifted the 24/7 supportive housing model from Henry Leland House to The Crossroads so that more individuals with complicated health challenges and addictions could be helped. ASK then turned the Henry Leland House into second stage affordable housing that was suited to individuals who were more independent.

The next housing project was Tina Baptiste in 2012. After sharing a drink with the Vice-President of a successful local property management company, Hughes was offered the opportunity to run 14 affordable housing units in a downtown building the company had just purchased. It was the second floor of the property, which the sentimental Executive Director named after an outspoken advocate. From there, the agency purchased two other Kamloops motels; The Fountain in 2014 and the Maverick in 2016. The Maverick was another unique property as it was situated out of the downtown core, had a pool with a waterslide (that was decommissioned), and had part of the property leased to the owners of a restaurant offering Chinese cuisine. Because of its unique location, the Maverick was an ideal property for clients of the agency who were independent and ready for the fourth pillar of ASK's vision: employment.

Beyond Kamloops

When Hughes started with the agency in 2006, ASK had a small contract to provide housing outreach services one day per week in Merritt, B.C., a small community of just over 7,000 people[9] located 45 minutes south of Kamloops. (See Exhibit 3 for a map of all ASK locations.) The Merritt housing contract was the only one for many years, until B.C. Housing approached Hughes to provide an operating contract for a small property called Trade Winds.

Following that, Hughes attempted to purchase a motel to increase the housing capacity in Merritt, but was unsuccessful. The tenacious Executive Director persisted, and eventually convinced the Development Services Representative from B.C. Housing to support a new build.

From there, Juniper House became the first new build for the agency. It was a remarkable achievement, not only because it was ASK's first building project, but also because it was the first affordable housing project in B.C. to be built to Passive House standards. Passive House standards, when followed, resulted in an energy-efficient building with low operating costs. The agency continued to take on projects to support the community of Merritt and, in 2022 became the most prominent housing operator in the city with 160 affordable housing units under its management.

In 2017, the agency and Board of Directors made a thoughtful but difficult decision to extend services to the City of Penticton; a community that had struggled with providing affordable housing and had an extremely high *per capita* rates of unhoused people. Two hours away from Kamloops, Penticton also happened to be the location of B.C. Housing's head office, and it was the government organization that reached out to see if Hughes and his team were ready for a new challenge in a new community. ASK entered Penticton by taking over an exciting housing project called Fairhaven. In 2018, it opened a new modular housing facility called Burdock house, named after the Board Member who had been instrumental in the decision to expand to the community. In spring 2022, a third housing location opened for a total of 158 units in the city of approximately 33,000 people.[10]

Exhibit 3. Map of ASK Wellness Society Locations in British Columbia

Source: World Atlas. (2022). Maps of British Columbia

Funders and Finances

ASK's revenue was generated from a variety of sources, but primarily from four funders. Funding came from both provincial and municipal sources, as well as a healthy rent roll.

Hughes's instinct to pursue housing as a means of financial security couldn't have been more on point. In his first year with the agency, ASK operated with a total budget of Can$ 540,000. At the end of fiscal 2021, the agency posted an income statement with revenues over Can$ 15M, almost half of which was generated by B.C. Housing contracts. (See Exhibit 4 below for a revenue summary and Exhibit 5 for a complete Statement of Operations for the year ended March 31, 2021.) Typical of most service-focused non-profit organizations, the agency's biggest expenses were wages and employee benefits, accounting for almost Can$ 10M.

Exhibit 4. ASK Wellness Society Revenue 2021

Source: ASK Wellness Society

Revenue Source	2021
BC Housing Management Commission operating and support services	6,725,176
Rents	3,582,008
Community Living BC	1,517,877
Interior Health	1,819,583
Fundraising, donations and other revenue	975,526
City of Kamloops	653,066
BC Housing Management Commission rental support	541,169

Exhibit 5. Statement of Operations Year ended March 31, 2021

Source: KPMG. (2021, October 6). Financial Statements of ASK Wellness Society. Retrieved from ASK Wellness Society: https://askwellness.ca/wp-content/uploads/2021/12/2021-03-31-ASK-Wellness-Society-FS.pdf

Values in Canadian Dollars

Revenue	**2021**
BC Housing Management Commission Operating and Support Services	$6,725,176
Rents	3,582,008
Community Living BC	1,517,877
Interior Health	1,819,583
Fundraising, Donations and Other Revenue	975,526
City of Kamloops	653,066
BC Housing Management Commission Rental Support	541,169
	$15,814,405
Expenses	
Accreditation	2,600
Advertising and Fundraising	19,294
Amortization	441,059
BC Housing Rental Support	395,573
Computer and Technology	122,014
Emergency Response (COVID-19)	91,627
Honorariums	19,245
Insurance	83,107
Interest and Bank Charges	7,086
Interest on Long-Term Debt	198,571
Meetings and Conventions	9,905
Office	57,282
Photocopy and Printing	22,645
Professional Fees	44,526
Program Resources and Supplies	269,402
Program Participation Food	653,752
Property Taxes	36,142
Rent	1,179,737
Repairs and Maintenance	851,809
Telephone and Utilities	922,590
Training	19,700
Travel	98,514
Uncollectable Rents	25,156
Wages and Benefits	9,798,270
	$15,369,606
Other Income (Expenses)	
BC Housing Management Commission-Project Funding	4,245,388
Repairs and Maintenance-Project Funded	(4,245,388)
Amortization of Forgivable Loans	119,785
Amortization of Deferred Capital Contributions	99,155
	218,940
Excess of Revenues Over Expenses	$218,940

Although ASK had a reputation for delivering what was expected in contracts, funding was never guaranteed. Every year or two years, the agency would need to submit updated budget requests for existing projects or renewable contracts. Hughes and his team needed to anticipate future operating costs, salary and benefit increases, and attempt to plan for contingencies.

Although funders were motivated to keep ASK as an operator, they didn't always accept budget increases; as such, Hughes was often in negotiations.

Clarity and Culture Drive Success

As a result of ASK's ability to deliver a variety of housing options, programs and services to the most vulnerable people in three communities, funding agencies trusted Bob Hughes and the ASK management team. Nonetheless, with rapid growth, there was a need for more sophisticated management of people and the growing operation. In 2014, on the heels of Hughes completing his master degree, the ASK Board of Directors realized that the organization needed a clearer strategic direction and greater emphasis on structure, process, and risk management. What was critically important to Hughes was that ASK continued to maintain its grassroots tribal culture.

Under the leadership of then Board Chair, Dr. Andrew Fergus, the organization undertook a visioning and strategic planning process. The result was the *"streets to homes to health to employment"* model of program service delivery, also called the *"Continuum of Care."* (See Exhibit 6 for a table of programs under each of the four pillars in the Continuum of Care.) It was this clarity that helped ASK's employees work toward a common goal and create a much-needed structure.

Exhibit 6. Continuum of Care and Program Delivery by Location

Source: ASK Wellness Society

Pillars	Locations	Services
STREETS	Kamloops	Street Outreach
		Overdose Prevention
		Drug Checking
		Shop
		Community Transition Team
		Naloxone Training
	Merritt	Street Outreach
		Drug Checking
		Naloxone Training
	Penticton	No outreach support
HOMES	Kamloops	Housing Outreach & Crisis Funding
		Supportive Housing
		Transitional Housing
		Affordable &/ or 55+ Housing
		Tenant Development
	Merritt	Housing Outreach & Crisis Funding
		Supportive Housing
		Affordable &/ or 55+ Housing
	Penticton	Supportive Housing
HEALTH	Kamloops	Health Navigation, Blood Borne Infection Management and Harm Reduction
		Adult Addiction and Supportive Housing (AASH)
		Mental Health and Independent Supportive Housing (MHASH)
		Community Integration and Developmental Disabilities Supports
		Tablet Injectable Opioid Agonist Treatment (TiOAT)
		Maverick Supportive Recovery and Career Development Program
	Merritt	Health Navigation, Blood Borne Infection Management and Harm Reduction
		Adult Addiction and Supportive Housing (AASH)
		Community Integration and Developmental Disabilities Supports
	Penticton	No Health services provided
EMPLOYMENT	Kamloops	Mattress Recycling Program
	Merritt	No Employment services as of Jan 2022.
	Penticton	Penticton Ambassador Program

Exhibit 7. Vision, Mission, Values and Guiding Principles of ASK Wellness

Source: ASK Wellness Society

Vision:

The vision of ASK Wellness Society is to work towards a society that recognizes the value and potential of each individual and our mission is to provide outreach, housing, health, education, employment, and emotional support services for the marginalized and persons at risk.

Mission Statement:

To provide those in need with HOUSING, HEALTH SERVICES, and EMPLOYMENT OPPORTUNITIES

Core Values:

- ASK believes **TRUST** is at the heart if community both in Ask Wellness Society and in the communities we serve.
- ASK believes a healthy community is one that is **INCLUSIVE.**
- ASK believes the key to helping people to become self-sufficient is through **HOPE**.
- ASK believes **COMPASSION** ensures no one gets left behind.

Guiding Principles:

- **Housing First**
- **Client Centered**
- **Harm Reduction**
- **Social Justice**

The four pillars soon became the tools that drove the organization's vision, which was to *"to work towards a society that recognizes the value and potential of each individual."*[11] Along with the vision, the organization carved out a clear Mission, Core Values and a set of Guiding Principles (see Exhibit 7 for a summary).

Hughes believed that maintaining ASK's culture while evolving into a more structured organization was a factor for remaining non-unionized in an industry where the majority of employees were represented by unions. Staying true to its founding value of *"remaining kind of quirky, a sense of kind of clan or doing things a little different"*[12] made employees feel special.

Other ways Hughes worked to maintain ASK's culture over the years was through interesting job titles such as *"Special Ops,"* supporting individual employees when they had personal financial challenges, making accommodations for people who wouldn't be possible under a union contract, and truly embracing a Servant Leadership approach. Both Hughes and COO Kim Galloway would take on-call shifts responding to emergencies after hours and on weekends and engaged in some of the most challenging jobs such as operating the Bed Bug removal machine. Every month, Hughes called an all-staff meeting where he discussed what was happening across the organization and what it was trying to accomplish.

Cheryl Doolan, Director of People and Culture joined ASK in September 2008 as an Executive Assistant when her family moved to Kamloops from Calgary. She was hired by Hughes to work three days per week to help organize his papers, schedule and files. Cheryl was quickly in demand and moved up to a full-time role and an Office Manager title. Doolan described the organization's culture as a kind of *"functioning disfunction"*[13] with the flexibility that came with an organization that could get things done. ASK's funders and partners appreciated how the organization could rally people and resources when a crisis or ongoing need presented itself. On one occasion, Doolan recalled a fire breaking out in an apartment building in Kamloops. Although not asked to help, ten people from the agency showed up and started meeting the displaced residents to offer them support with finding somewhere new to live.

A culture of *doing what was needed at any given moment* was also reflected when devastating floods caused the entire City of Merritt to be evacuated in November 2021. With multiple properties in the community housing ASK clients, both Doolan and Hughes jumped into their vehicles, drove to the small community and started knocking on the doors of the buildings to make sure residence were out and safe. *"That's the culture of ASK. We're amazing at crisis management and being the one agency that will show up if nobody else will."*[14]

Hughes believed that staying union-free required two things. First, the agency had to offer employees what a union would without the added bureaucracy. Second, the employees continued to believe that the entire leadership team, particularly Hughes, had their best interests at heart: *"My job exists because of the work that people do, it's not the other way around."*[15]

The second part was well within the agencies control. As the organization grew, both Doolan and Hughes recognized that it was getting more difficult to maintain the unique and responsive culture they had created. Hughes felt strongly that the leadership team's passion for the vision and mission would not diminish, and that ASK could deliver on employee expectations. However, offering the best of collective bargaining agreements negotiated by some of the most powerful unions in the province meant the agency would need the cooperation of funders whose mandates could shift with the winds of politics.

The People and Culture Challenge

In ASK's early days of rapid growth, Doolan indicated that there were few human resource policies and procedures even though the organization was hiring at a frantic pace.

> *"As we grew, Bob was just hiring anybody who would come through the door and anybody who was interested in working for us. There was no process. There was a small little binder with maybe a few policies, but that's kind of it."*[16]

A natural organizer, Doolan set out to implement some structure by preparing policies or procedure documents. But when the agency took on a contract in Merritt, she shifted to spending time in operations planning events such as *World AIDS Day* and *Dining Out for Life*. As the agency continued to grow, human resources needed more attention.

Doolan handed over her event-planning hat and began to focus on Human Resources Management full-time. In the first couple of years that the People and Culture department existed, Doolan had part-time help - often not from the same person. This quickly became untenable, so in 2017 Hughes proposed a full-time, qualified Human Resource Professional be added to the management team. "[And] *since then, it's been amazing! I don't know how I could have done my job without help.*"[17]

In 2019, ASK pursued another organizational challenge by applying for accreditation with the Council of Accreditation (COA). Doolan believed that this gave the People and Culture department some backing to add badly needed processes that previously had not been in place, although these changes came with growing pains. As the organization shifted from approaching human resources management processes in an *ad hoc* way, there was a lot of push back from managers:

> *"At that point, HR was the enemy. They hated us. We were the people creating all these barriers."*[18]

The feedback motivated Doolan and her team to show employees and managers that they remained approachable, flexible people with a common goal. It took a consistent effort, but eventually the tone shifted, and the department was viewed as a trusted partner once again.

One of the practices that the agency had implemented was an annual employee engagement survey. The team set a participation goal of 75%. Although ASK struggled to meet this target, it improved over time. In 2019, participation was 53% and in 2020 this jumped to 63%. In 2021 ASK was on track to hit the goal.

Overall, employees seemed to be engaged with the agency and its purpose. Some of the comments shared by employees in the 2019 engagement survey indicated that employees' core values aligned with the values of the organization; employees felt that they were treated with dignity and respect. Employees also felt satisfied by the work they were doing, and enjoyed the autonomy they had to do their work and make decisions. Employees were somewhat satisfied with their compensation and felt that benefits generally met their needs.

Despite the goodwill the agency had with its employees, ASK struggled to recruit a sufficient number of employees. One of the key factors both Hughes and Doolan identified was the labor market. At the end of 2021, the province of B.C. had an unemployment rate of 5.3%, down from 8.0% at the beginning of the year with labor market participation hovering around 65%.[19] The real effects of the labor market were present in tough job offer negotiations where candidates would walk away if they did not get the salary they were looking for (despite the rate of pay being advertised). In some instances, interviews would be scheduled, and candidates simply didn't show up.

Wage parity with other agencies was a major factor. At the end of 2021, Hughes set out on a mission to understand just how significant the salary discrepancies were. With the help of his team, he looked at union contracts for similar classifications and determined that the agency was behind their union counterparts by 8% in base wages. Hughes then prepared his 2022 annual budgets for his biggest funders with a request for wage parity.

The Union Question

To Hughes and Doolan's knowledge, employees had never actively sought representation from a union, though they often wondered if it was only a matter of time. Employees from unionized counterparts received the benefit of a large bargaining association called the Community Social Services Bargaining Association (CSSBA), which was backed by ten unions, some of which were the largest and most powerful unions in British Columbia. The CCSBA bargaining association included the B.C. Nurses Union (BNU), the B.C. Government Employees Union (BCGEU), and Canada's largest union, the Canadian Union of Public Employees (CUPE).[20] Through this collective bargaining council, unions negotiated three master agreements with the majority of contract terms offering similar wages and benefits to employees across a range of organizations.

The CCSBA would then negotiate local issues to form individual contracts for each organization. On the other side of the table, the employer's bargaining council aided unionized employers with human resource management, contract negotiations with the CSSBA, and setting up systems and processes when employees unionize. While Hughes could access some *'fee for service'* consulting from CSSEA, ASK could not become a full member of the association if it did not manage a unionized workplace.

Doolan saw some benefits if employees were represented by a union. Primarily in the short-term, there was a sense that unionization would address the wage parity issue with funders, and it might give employees a sense of control and greater job security. Employees might also feel that they had a greater understanding of when and how wage increases would be offered. For the People and Culture department, this would remove some of the ongoing negotiations with employees, and simplify processes. On the other hand, without experience in a unionized workplace, Doolan feared the unknown that came with adding a union. If employees were represented by a union, ASK would lose some flexibility to adapt, which could ultimately affect their overall engagement and unique organizational culture. If employees did seek unionization, ASK might be dealing with *multiple unions* due to the variety of roles the agency offered: addictions counsellors, nurses, facilities managers, support workers, and custodial workers.

Before his role at ASK, Hughes served as a shop steward and area representative handling grievances as a member of the BCGEU. He was familiar with union processes and collective agreements and had personal experience with the pros and cons of a unionized workplace. However, Doolan's lack of experience in a unionized setting left her less comfortable with what life would be like if working with a union was part of her role. Both Hughes and Doolan enjoyed the flexibility they had to respond to employees' needs quickly and creatively, which they knew would be diminished if a union were present. On the other hand, they recognized the benefit of having a third party in place to help navigate employee concerns and issues.

The Pressure Was On

In January 2022, ASK employed 270 people across the three communities. In February of the same year, ASK was scheduled to add 37 seniors housing units in Kamloops, 54 units in Penticton, and 46 in Merritt in the fall of 2022. By the end of 2022, the agency would have 817 housing units under its management. With all those units came a need to find qualified, reliable employees to provide much-needed services and support. Hughes knew the pressure was on to position the agency as an employer of choice for those working in the community social service field - and salary was a key factor.

The question was how to secure the funding he needed to compete in an ever-tightening labor market when the need for affordable housing and community social services was not slowing down. As he checked the weather app on his phone one more time, Hughes couldn't help but wonder if there was another way. If the agency was unionized, like so many other community social services organizations in the province of B.C., he would be able to increase wages and benefits and possibly improve their competitive position as an employer of choice. At the very least, it would put him on an even playing field with similar organizations.

What he knew for sure was that as the organization grew, ASK's in-demand programs and services would be at risk. Hughes wondered if he could convince his funders that without matching the salary structure of unionized counterparts, ASK would not be able to continue with its projects. If funders said *"no"* to his proposed 8% salary increase, should his next move be to encourage his employees to seek union representation? Or should he follow through on his threat to wind down the organization and hand in the keys?

Hughes sat at his desk with his mouse hovering over the send icon. Would clicking the button be the catalyst for a complete collapse of the unique culture his team had created, the collapse of the entire organization, or would this move be precisely what the agency needed to address a complex competitive challenge?

Melanie Reed is an Assistant Teaching Professor at Thompson Rivers University where she teaches Human Resource Management and Organizational Behavior. Professor Reed holds an MBA and certifications in Change Leadership, Strategic Workforce Planning, and Compensation Management. As a passionate advocate for equity, diversity and inclusion (EDI), she has led EDI and academic integrity committees within the Gaglardi School of Business and Economics and held a Thompson Rivers EDI Fellowship position. Passionate about case writing, she served as President of the Western Casewriters Association and is currently the Vice-President Programs Elect for the North American Case Research Association (NACRA). She has over 20 years of experience in corporate Human Resource roles in private and public sector organizations and held leadership roles in Workforce Planning, Recruitment and Total Rewards.

Kyle Senft is a graduate of Thompson Rivers University where he obtained a Bachelor degree from the School of Business and Economics with a major in Human Resources. He is passionate about creating safe workspaces that promote open and honest communication between employees and management. He is currently applying his skills at an organization that assists at risk youth all across the province.

Ankita Sherkane graduated from Thompson River University with a post-baccalaureate Diploma in Human Resource Management. Previously, she completed her Master in Pharmaceutical Biotechnology from India. Her master thesis included research on "Mechanism of radiation-induced epithelial to mesenchymal like changes in MCF-7 human Breast carcinoma cells with relevance to tumor invasion and metastasis." She published her first review article on "Pulsatile Drug Delivery System" in her bachelor degree. Currently, she works as a Talent Acquisition Specialist for Maxwell Management Group and has more than two years experience in HR. Ankita has a love and passion for doing "henna"- an Indian traditional art, and she is a part-time voice artist.

Swati Sinha is a graduate of Thompson Rivers University Human Resource post-baccalaureate Diploma program. During her time at Thompson Rivers University, Swati was a member of the TRU HR Club and is currently a member of the CPHR BC & Yukon. She has over eleven years of experience working in union and non-union organizations and has a keen interest in HR, Labor Relations and HR Analytics.

JCRI Journal of Case Research and Inquiry

References

[1] BCGEU. (2012). FAQ. Retrieved from BC's Community Social Service Workers: http://www.cssfairdeal.ca/faq

[2] Community Social Services Employer's Association of BC. (2012). Sector Overview. Retrieved from Community Social Services Employer's Association of BC: https://www.cssea.bc.ca/index.php?option=com_content&view=article&id=167&Itemid=286

[3] Government of Canada, S. C. (2022, November 23). *Unionization in Canada, 1981 to 2022*. www150.Statcan.gc.ca. https://www150.statcan.gc.ca/n1/pub/36-28-0001/2022011/article/00001-eng.htm

[4] Government of Canada, S. C. (2022, December 2). *Labour force characteristics by industry, monthly, unadjusted for seasonality*. Www150.Statcan.gc.ca. https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1410002201

[5] Government of Canada, S. C. (2016, January 26). *Employee wages by occupation, monthly, unadjusted for seasonality*. Www150.Statcan.gc.ca. https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1410030601

[6] ASK Wellness Society. (2022, January 5). *About ASK*. Retrieved from ASK Wellness Society: https://askwellness.ca/about-ask/

[7] *Supportive Housing*. (n.d.). www.bchousing.org. https://www.bchousing.org/housing-assistance/housing-with-support/supportive-housing

[8] BC Housing. (2022, January 12). Our Organization. Retrieved from BC Housing: https://www.bchousing.org/about/our-organization

[9] Townfolio. (2022, January 12). Merritt Demographics. Retrieved from Townfolio: https://townfolio.co/bc/merritt/demographics

[10] City of Penticton. (2022). About Us. Retrieved from City of Penticton: https://www.penticton.ca/our-community/about-us

[11] ASK Wellness Society. (2022, January 5). *About ASK*. Retrieved from ASK Wellness Society: https://askwellness.ca/about-ask/

[12] Hughes, B. (2022, January 7). CEO. (M. Reed, Interviewer)

[13] Doolan, C. (2022, January 7). Director, People & Culture. (M. Reed, Interviewer)

[14] Doolan, C. (2022, January 7). Director, People & Culture. (M. Reed, Interviewer)

[15] Hughes, B. (2022, January 7). CEO. (M. Reed, Interviewer)

[16] Doolan, C. (2022, January 7). Director, People & Culture. (M. Reed, Interviewer)

[17] Doolan, C. (2022, January 7). Director, People & Culture. (M. Reed, Interviewer)

[18] Doolan, C. (2022, January 7). Director, People & Culture. (M. Reed, Interviewer)

[19] Province of British Columbia. (2022). *Labour Market Snapshots*. Retrieved from Work BC: https://www.workbc.ca/Labour-Market-Industry/B-C-s-Economy/Labour-market-snapshots.aspx?month=December&year=2021

[20] BCGEU. (2012). FAQ. Retrieved from BC's Community Social Service Workers: http://www.cssfairdeal.ca/faq

THE LEADER AT THE TOP OF THE MOUNTAIN

LESIL ARTISTA
University of Makati

ANNE CAMIT
De La Salle-College of Saint Benilde

> *"This is my second home, but you have to face reality; I cannot stay. I am no rock. I will turn 74 soon. I will eventually retire. At 74, I should have fully retired. It's just my love for Shontoug that keeps me in touch. God has been good to me and my family. A lot of miracles happened in my life because of God. My work has been my mission* [and] *my way of giving back."*
>
> -Marietta Paragas

Marietta Paragas looked at the time on her watch. It told her that another weekly Monday visit had ended. It was 5 p.m. - a time that most people in the Philippines understood meant that one should head home and spend quality time with the family. Interestingly, the word 'home' was also something that Marietta attributed to her workplace, the Shontoug Foundation, Inc. Her gaze fell at the map of the Cordillera region, tacked to the wall of her office, which she had successfully unified as its first President back in 1998 under the Cordillera foundation network (see Exhibit 1). The Cordillera network provided organized rural development assistance to the Indigenous people of the region, such as the Ibaloi (see Exhibit 2).

The region was known as the CAR (Cordillera Administrative Region). It was found in the northern part of the Philippine Archipelago (see Exhibit 3; Nations Online Project n.d.) and was comprised of 6 provinces: Abra, Apayao, Benguet, Ifugao, Kalinga, and Mountain Province. The capital of the region was Baguio city, also known as the *"Summer Capital"* of The Philippines. From the perspective of the Indigenous Ibaloi Community, however, it was best known as *Shontoug*, meaning *"on top of the mountain."* Since this name was adapted and registered by the foundation since 1989, Shontoug Foundation, Inc. became synonymous with pioneer sustainable development initiatives in the region, marked by local and international recognition.

Exhibit 1. The Cordillera Region/ Network with Marked Community Projects

Source: Shontoug Foundation Inc.

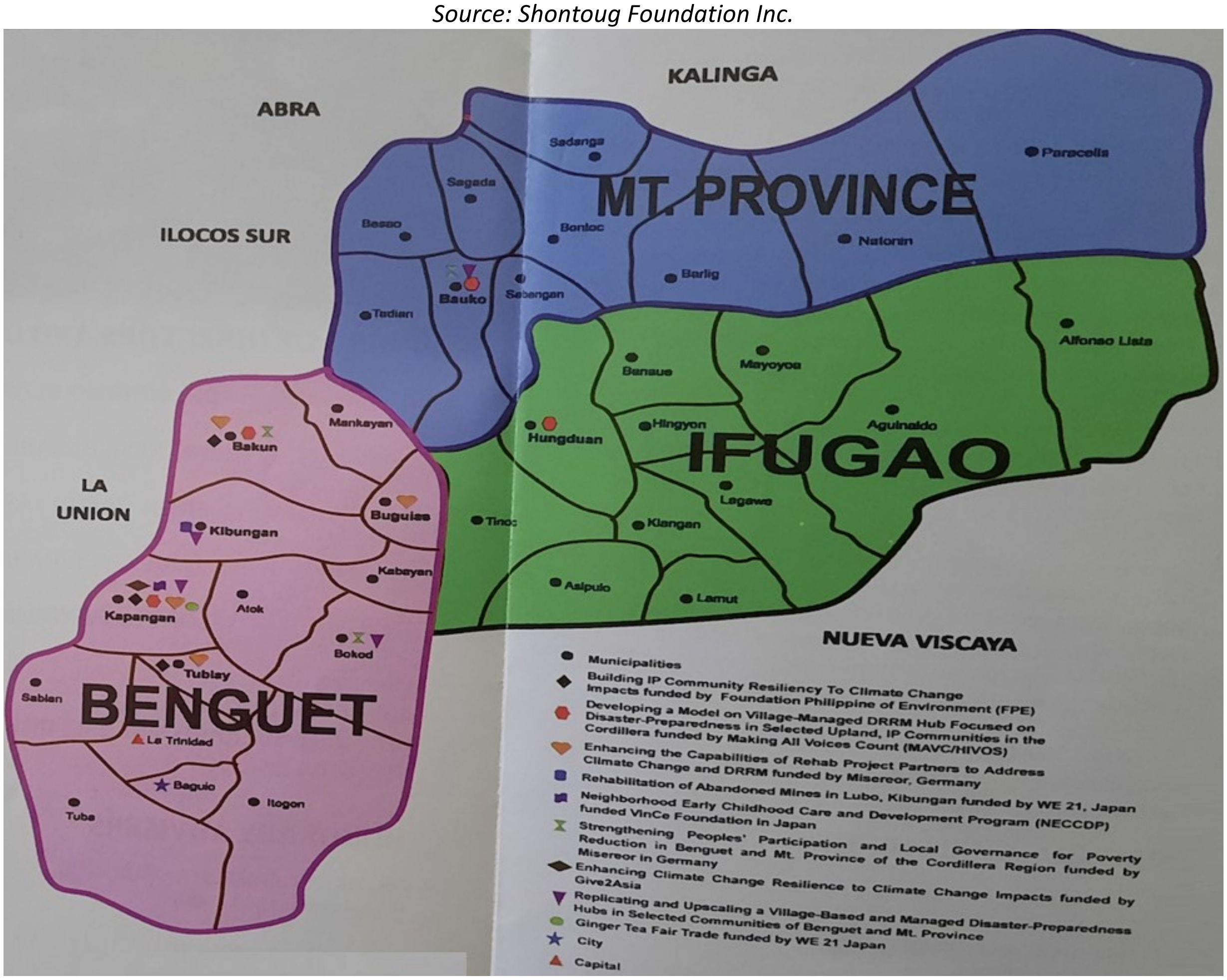
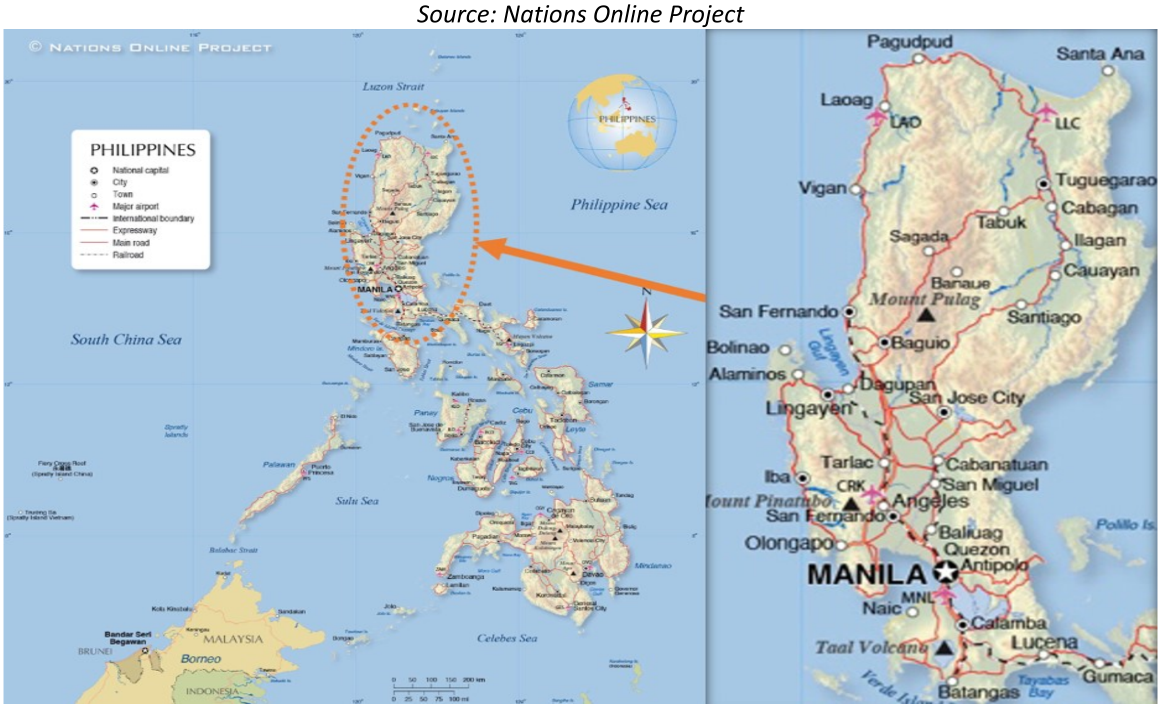


Exhibit 2. Ibaloi Indigenous People

Source: Shontoug Foundation, Inc.

Exhibit 3. Map of the Philippines

Source: Nations Online Project



Note: The Philippines, a country in Southeast Asia composed of 7,640 islands is in the Western Pacific Ocean, composed of three geographical divisions from north to south, Luzon (the largest with its Capital – Manila), Visayas and Mindanao. The Philippines has a diverse ethnicities and culture and there are indigenous people who live in various parts of the land (Nations Online Project n.d.).

Shontoug Foundation, Inc. at a Glance

Shontoug Foundation, Inc. started as an outreach institution of the Good Shepherd Sisters and was first called the Good Shepherd Social Center (GSSC) in 1968 (Religious of the Good Shepherd n.d.). In 1972, it became an independent foundation and was renamed as the Shontoug Foundation, Inc - a welcome change that allowed for implementation of holistic, gender-responsive and culturally sensitive projects that integrated sustainable development models for the marginalized sector of Benguet and Ifugao regions (Paragas, Shontoug Interview Part 1 2020).

Shontoug' s mission was centered on the *"liberation from poverty, inequity and marginalization through creative education participatory management of life-giving programs and services"* (Shontoug Foundation Inc. 2002 p.6). The foundation envisioned culturally rooted indigenous communities capable of sustaining life-giving programs and services working towards the fullness of life (Shontoug Foundation, Inc. 2014).

Shontoug' s intentions were put into action in the indigenous communities through its core programs, as seen on Exhibit 4 (Shontoug Foundation Inc. 2014). These programs were:

- Integrated Rural Development Program (IRDP)
- Neighborhood Early Childhood Care and Development (NECCD)
- Community-Managed Health and Nutrition
- Sustainable, Environment-Friendly Livelihood
- Participatory Local Governance
- Community/ Institution Building and Research

The core strategies adopted were Indigenized Program and Appropriate Technologies, Capability Building and Empowerment, and Research Studies (Shontoug Foundation Inc. 2014).

Exhibit 4. Core Programs, Impact and Beneficiaries

Source: Shontoug Foundation Inc.

Projects	Direct Number of Beneficiaries	Impacts
1. Neighborhood Early Childhood Care and Development Program (NECCDP) • Shontog, Datakan • Tuel, Baayan • Togog, Boayan • Lubo, Kibungan • Busoc, Atok • Sayet, Caliking, Atok • Salidet, Caliking, Atok • Catingel, Caliking, Atok • Saddle, Caliking, Atok	• 154 children benefifited	• ECCD curriculum has been indigenized • 4 indigenized story-books and flipcharts were published and copyrighted • 41 children underwent medical check-up • NECCD facilitator enhanced KAS in the adoption of indigenized curriculum and utilization local materials
2. Sustainable Agriculture (SA) • Shontog, Datakan • Sayet, Caliking • Ubod, Apunan • Abiang, Taba-ao • Taloy Norte	• 55 farmers	• Intensified IEC on the benefits of SA • Started support services on SA marketing • Of the 55 trained farmers, 17 committed to practice SA • 5 SA demofarm were developed in 5 villages
3. Community Health Care for Indigenous People (CHCIP) • Ubod/Apunan, Taba-ao, Kapangan • Bileng and Ampongot, Sagubo • Namon-ao • Copias • Gadang	• 51 HHs • 53 HHs • 49 HHs • 21 HHs • 36 HHs	• Presence of 9 trained village health workers who are rendering health services especially on Alternative Health Care modalities in the respective communities twice a month • Installed Health Savings of UBAPAS, DAYUKONG and LAMPADA for the members to availed for any health concern/ problem
4. Anti-Mining Advocacy • Lubo	• 240 HHs	• Enhanced awareness on Mining Issues and laws like IPRA and Mining Act • More vigilant on issues on affecting the community • Unity of community against mining, e.g. petitions, rally • Presence of Community Rehab Project or devastated mining site
5. REHAB Project • Dagao Pongayan	• 47 HHs	• Open avenues for alternative livelihood • Earned income to augment their minimal income for crop production • Promotion of organic farming technologies • Relationship within the family enhanced • Relationship among community members improved especially cooperation and volunteerism
6. Localized Anti-Poverty Project (LAPP) • Datakan • Labueg • Sagubo • Gadang	• 4 barangays	• 4 barangays have organized their BPRATs through an Administrative Order (AO) issued by the Barangay Council • Updated Community-based Monitoring System (CBMS) • Prioritized problems based on the analyzed CBMS that were translated into a Problem Tree that aimed to trace the root causes of the problem and formulated doable objective\ • Finalization of 2014 Annual Investment Plan • The MPRAT is supported by an inter-agency group called Economic Development Team (EDT) • Various livelihood projects supported by DTI, DOST, TESDA, DOLE-CAR, DAR-Benguet, BSU, BENECO increased household income.

The foundation had been consistent with funds raised for the different projects for the communities. Based on its 5-year fundraising performance (see Exhibit 5) and financial statements (see Exhibit 6), it was only during the pandemic that Shontoug had been unable to maintain community projects in the year 2020. By 2021, Shontoug was in recovery as shown by increased community engagements and sources of funds. Nonetheless, Shontoug' s long-term objective included an increase in the number of donors in order to strengthen its sustainability.

Exhibit 5. Fund Raining Performance

Source: Artista, Fundraising Performance 2017-2021

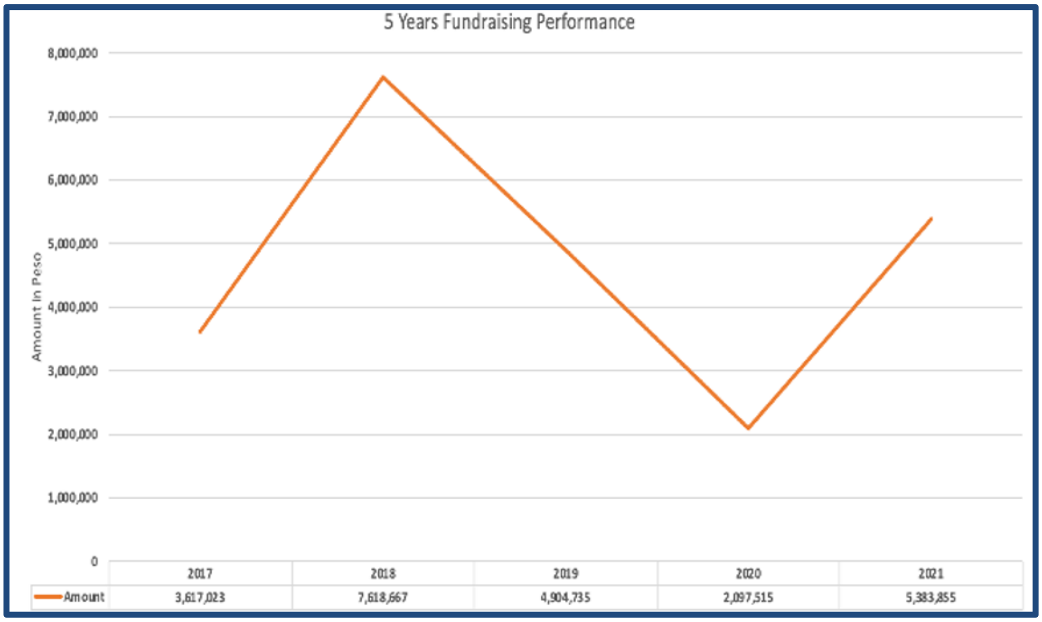


Exhibit 6. Financial Statements

Source: Shontoug Foundation Inc.

Shontoug Foundation, Inc.
15 Gibraltar Road, Baguio City

Statements of CASH FLOWS
For the Years Ended December 31, 2021 and 2020
(in Philippine Peso)

		2021		2020
CASH FLOWS FROM OPERATING ACTIVITIES				
Net Surplus (Deficit) before Tax	P	(39,375)	P	(1,711,560)
Adjustments to reconcile net surplus to				
net cash provided by operating activities				
Prior period adjustments		(2,154,908)		(10,500)
Decrease in Deferred Tax Asset		54,517		-
Dcrease (Increase) in Long-term Investment		(34,693)		-
Provision for Retirement Benefit Obligation		100,188		99,963
Operating Cash Flows Before Working Capital Changes		(2,074,271)		(1,622,097)
Changes in Operating Resources and Liabilities:				
Decrease (Increase) in Current Assests				
Loans and Other Receivables		(116,952)		117,878
Other Assets		474,213		(2,943,912)
Increase (Deacrese) in Current Liabilities:				
Trade and other Payables		(25,713)		176,321
Net Cash Used in Operating Activities		(1,742,723)		(4,271,810)
CASH FLOWS FROM INVESTING ACTIVITIES		-		-
Net cash provided by (Used in) Investing Activities		-		-
CASH FLOWS FROM FINANCING ACTIVITIES				
Net Additions to Funds		2,114,436		232,480
Net cash Provided by Financing Activities		2,114,436		232,480
NET INCREASE IN CASH AND CASH EQUIVALENTS		371,713		(3,979,330)
CASH AND CASH EQUIVALENTS, BEGINNING		554,765		4,534,096
CASH AND CASH EQUIVALENTS, ENDING	P	926,478	P	554,766

Exhibit 6. Financial Statements, cont.

Shontoug Foundation, Inc.
15 Gibraltar Road, Baguio City

Statements of FINANCIAL POSITION
As of December 31, 2021 and 2020
(in Philippine Peso)

		2021		2020
ASSESTS				
Current Assets				
Cash and Cash Equivalents	P	926,477	P	554,765
Loans and Other Receivables		378,920		261,968
Other Current Assests		1,397,420		1,871,633
Total Current Assets		2,702,817		2,688,366
Non-Current Assets				
Property and Equipment, net		-		-
Long-Term Investments		1,106,972		1,072,279
Deferred Tax Asset		0		54,517
Total Non-Current Assets		1,106,972		1,126,796
TOTAL ASSESTS	P	3,809,789	P	3,815,162
LIABILITIES AND FUND BALANCES				
Current Liabilities				
Trade and Other payables	P	175,998	P	201,711
Total Current Liabiilities		175,998		201,711
Non-Current Liabilities				
Retirement Benefit Obligation	P	2,255,096	P	2,154,908
Total Non-Current Liabiilities		2,255,096		2,154,908
TOTAL LIABILITIES		2,431,094		2,356,619
FUND BALANCE				
Unrestricted Fund		(1,924,321)		(1,859,281)
Restricted Fund	P	3,303,017	P	3,317,823
TOTAL FUND BALANCES		1,378,696		1,458,542
TOTAL LIABILITIES AND FUND BALANCES	P	3,809,790	P	3,815,161

Exhibit 6. Financial Statements, cont.

Shontoug Foundation, Inc.
15 Gibraltar Road, Baguio City

Statements of CHANGES IN FUND BALANCES
For the Years Ended December 31, 2021 and 2020
(in Philippine Peso)

		Unrestricted Funds		Restricted Funds		Total Fund Balances
Balance, January 1, 2020	P	674,397	P	4,328,672	P	5,003,069
Net Surplus (Deficit)		(697,203)		(1,014,358)		(1,711,561)
Contribution to Funds		228,970		3,510		232,480
Appropriations to Restricted Fund		-		-		-
Prior Period Adjustments		(2,065,445)		-		(2,065,445)
Balance, December 31, 2020		(1,859,281)		3,317,824		1,458,543
Net Surplus (Deficit)		(24,568)		(14,807)		(39,375)
Contribution to Funds		2,114,436		-		2,114,436
Appropriations to Restricted Fund		-		-		
Prior Period Adjustments		(2,154,908)		-		(2,154,908)
Balance December 31, 2021	P	(1,924,321)	P	3,303,017	P	1,378,696

Shontoug Foundation, Inc.
15 Gibraltar Road, Baguio City

Statements of Activities
For the Years Ended December 31, 2021 and 2020
(in Philippine Peso)

		Total 2021		Total 2020
RECEIPTS				
Grants	P	5,061,563	P	1,387,119
Donations		285,921		663,627
Interest income		36,371		46,768
Total Receipts		5,383,855		2,097,514
Less: Program Expenses		3,828,780		2,283,109
Gross Income		1,555,075		(185,595)
Less: General and Administrative Expenses		1,594,450		1,525,966
NET SURPLUS (DEFICIT) BEFORE TAX		(39,375)		(1,711,561)
LESS: PROVISION FOR INCOME TAX		0		0
NET SURPLUS (DEFICIT) AFTER TAX	P	(39,375)	P	(1,711,561)

CEO by Chance, Leader by Choice:

Marietta's Community Development Journey in Action

In 1976, Ms. Paragas was a promising and upcoming College Dean. At the time, Marietta could hardly believe the words coming out of her mouth directed to the school's president: *"Allow me to perform my tasks as a mother and wife. I'm really sorry."*

She bit her lip to hold back mixed emotions, but she knew this was the best way to live up to her recently realized conviction that family first would matter more than career. This decision did not come easy. She bravely faced the fact that she had to let go of her position as the Acting Dean of the College of Commerce and Secretariat at Baguio Colleges - now called as the University of the Cordilleras (UC) (see Exhibit 7). Had she stayed on in the academe as administrator, she would have taken part in the growth of the school which has Information Technology, Criminology and Teacher Education under the Center for Excellence Status awarded by the Government (University of the Cordilleras n.d.). From a population of 156 graduates in the liberal arts in 1946, UC had grown to a population of 18,00 students, along with ISO 9001 quality certification and a large population of international students represented by 37 nationalities. (University of the Cordilleras n.d.)

Nonetheless, her teaching, coaching and administrative skills were put to good use as life offered her an opportunity to help people in a more direct way. In 1992, the Sisters of the Good Shepherd Social Center, where her husband worked for as an auditor, convinced her to be a *reliever* for a sick staff member working for the center. Her supposed 45-day stint while on maternity leave turned into a 30-year commitment.

The last thirty years was not a walk in the park. Ms. Paragas learned, led, grew and motivated herself and her staff alongside the growth of the foundation. She knew from that start that she would need more than passion to bring people from the NGO to work together.

> *"Coming from a very different field, I don't want to be questioned with regards to the initiatives I created, like my heading the Cordillera Network. I earned my Masters in Community Development at Benguet State University so I could be more credible."*

She also showed strength of purpose where it matters because as she stated:

> *"I needed to show that I am not a* pushover *and politics does not have a place in Shontoug. Early on, I knew transparency and sincerity in this job, my mission would have to be in its core."* (Paragas, Shontoug Interview Part 1 2020).

For every project, the importance of designing culturally appropriate development models, and a social enterprise responsive to the community became the trademark of the foundation.

Her conviction partly came from her being formerly in academe and as a person born in the province of Ilocos (Northern Luzon) – where people were known to be straightforward. Being straightforward served as an asset when Ms. Paragas spoke with people from different walks of life - including politicians and entrepreneurs. In troubleshooting and crises, she operated with openness and listened to those around her. Her staff saw her as a strong leader when it came to work, but also as an endearing mother to all staff members.

As CEO, her typical workday would include submitting proposals to funders, awarding funds to rural communities, and ensuring that community leaders were trained to be accountable on cash flow and profits from agriculture or other means of livelihood. The foundation was big on transparency and accountability.

> *"We developed a manual of operations which encompasses the administrator roles aside from documenting best practices so in the face of missteps the foundation can* 'run' *even without me being directly involved"* (Paragas *et al.*, Shontoug Interview Part 3 2022 p.2).

Aside from this, Ms. Paragas had to mentor her staff on how to train community leaders and allay their fears when times were uncertain. Once in the aftermath of a devastating typhoon, Marietta and her team had to empower the community by encouraging them to be *"creative"* in how they would recover. She asked questions to the community that made members of the community realize their resilience in starting over given that crops were initially destroyed. *"What can you use in your immediate surrounding that could help you?" "What livestock or produce can you sell?"* This led to a formation of cooperatives selling organic eggs, poultry, root crops, etc. (Paragas *et al*., Shontoug Interview Part 3 2022)

> *"You need to look for leaders who are vocal, self-confident, accountable and displays a strong sense of responsibility. Once a community leader is identified, it needs to be clear to them that once trained by me under the foundation, the task to train others would be part of the agreement."* (Paragas *et al*., Shontoug Interview Part 3 2022).

It was a very rewarding experience to see once shy and timid person bloom into a more confident and vocal member of the community. Marietta highlighted that the transition was *not that hard* because by nature the people had honesty as their core value. They wanted to work for the money they earned, and they took pride in their reputation as well:

> *"Exposing them to learning opportunities so they can help themselves is a big factor. They also enjoy the attention when board members visit them as they take pride in their achievements. This serves as something aspirational for the other communities"* (Paragas *et al*., Shontoug Interview Part 3 2022).

All in all, Marietta's strong economic background, commitment to instill pride in all, and dedication created community leaders and gave the Shontoug foundation a reputation not only locally but internationally. Aside from speaking engagements both locally and internationally, she was awarded fellowship program on *"Leadership in a Changed World"* by the Ford Motor Company. Columbia University in New York and ALA Fellowship recognized her for *"Developing an Institutional Mentoring Framework: Benchmarking of Workplace Learning and Development Practices."* She was also recognized in Australia by AIM, Brisbane, Australia (Paragas, Shontoug Interview Part 1 2020). She shared the limelight with her staff by bringing them to these engagements and at times letting them attend on her behalf, knowing that the exposure could empower them as they took on bigger leadership roles.

Over the years, Ms. Paragas' quest for other avenues of funding was still on the top of her list.

> *"I am not satisfied with what we are doing now. I want innovations. I want to focus on financial sustainability apart from marketing the products of the*

> *community and NGO partners. Fund-sourcing is not always easy. That's why you need to work hard, if God does not like what you do, there would be no more funds… However, if God sees promise in what you do, He will provide* (Paragas, Shontoug Interview Part 1 2020).

At 74 years old, Ms. Marietta Paragas still visited as a consultant every Mondays carrying on her mission work in her second home. She gave herself tall orders to plan a smooth transition and pass the baton to a successor. Overcoming the COVID pandemic, the Foundation was standing - but her wish was for her staff of 5 to have a bankable future and secure retirement as well. Her staff showed great resistance just at the thought of her leaving. They thought that they couldn't survive without her. This left Ms. Paragas with no choice but to subtly train her finance/administration officer, Ms. Ligaya Victoria. When Ms. Paragas' husband died, it was Ms. Victoria who took over the entire operation. When a board member inquired about funds, it was Ms. Victoria who answered their questions. Ms. Paragas thought, *"Get ready, I am going to train you to be the next CEO."*

Exhibit 7. University of Cordilleras (formerly Baguio Colleges Foundation)

Source: Artista, University of Cordilleras Campus Digital Image

Call to Step up: Ligaya Victoria's Personal Crossroad

> *"I expect to pass through this world but once. Any good thing therefore that I can do or any kindness I can show to any fellow human being let me do it now. Let me not neglect it, for I shall never pass this way again."*
>
> --Ligaya Victoria, citing Stephen Grellet

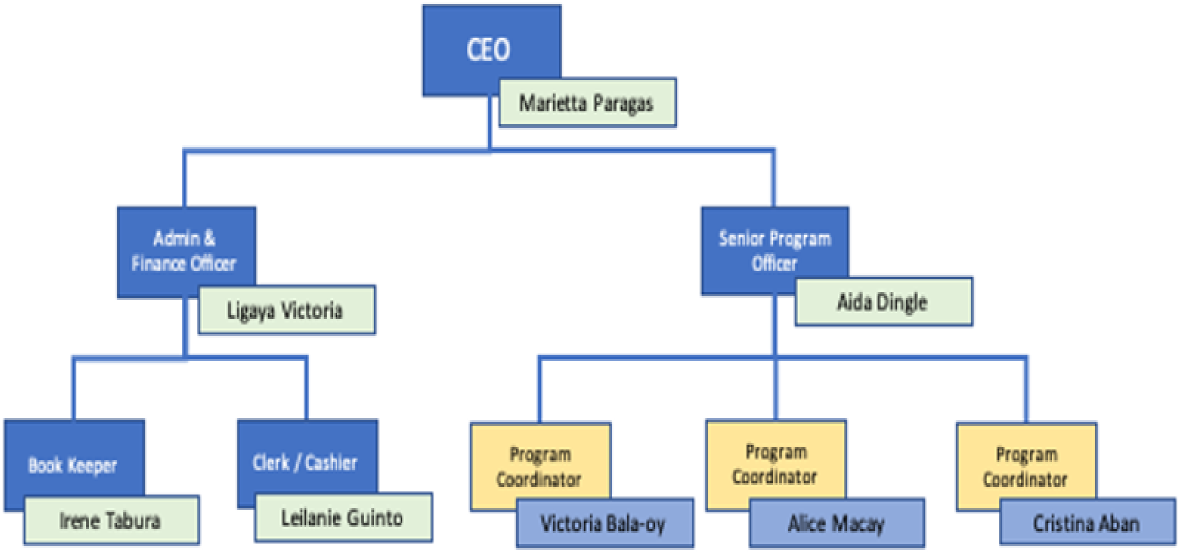
At age 54, Ligaya Victoria believed that it was destiny that led her to the Shontoug Foundation. She had hope for any job after graduation from the University of Cordillera just to help her parents and siblings. It turned out that her first job would be the *work of her heart.* Could it be fortuitous that she was in line to be the next CEO? Had the past 30 years prepared her for this turnover? Ligaya Victoria was described by others as capable, helpful, filial and dependable (Paragas *et al*., Shontoug Interview Part 3 2022). Ligaya seemed contented to be the silent encouragement to all around her as she supported the activities of the foundation.

> *"I do not see myself as a leader. I have grown to love my work and it is very rewarding to see the community members grow with our initiatives. Although I do not work directly in the with the Good Shepherd Sisters, I feel I grow spiritually through my work"* (Paragas *et al*., Shontoug Interview Part 3 2022).

As of January 2020, the foundation had a lean but dedicated staff of five: three administration officers and two direct staff - all proudly from Indigenous origin. The foundation could identify with its target communities - a feat not easily achieved by an outsider.

Exhibit 8. Organization Chart

Source: Shontoug Foundation, Inc.



The two direct staff in administration were Irene, the bookkeeper, and Leilanie, the clerk. The other three were coordinators: Victoria, Alice ,and Cristina under the senior program officer Aida. The rest of the people came from the different NGOs who implemented and monitored progress in the community.

Ligaya Victoria's scope of work grew from documentation and budget control to community training and hands-on immersion. As her responsibilities grew, so too did her concern not only for the communities but also for the administrators themselves, specifically in terms of sustaining operations and their financial security. She understood that proper utilization of funds needed to always be in check. As a result, she saw to it that funds were maximized for projects.

> *"We need to prioritize that the salaries of the project administrators are always funded, however at times, the permanent staff may need to look for alternative sources of funds"* (Paragas *et al*., Shontoug Interview Part 3 2022).

Each successful funding partner project was assured of funds for 3-5 years. *What would happen after that?*

The COVID outbreak in 2022 tested the team's creativity and resiliency. Shontoug conducted virtual training and used mobile phones rather than going to sites. After two years, the Foundation was being tested - yet again -to think of creative ways as the *new normal* posed challenges in reaching customers. Ligaya's fervently hoped that the right people would come to help them. Would she find the strength to step up and formally accept the position as CEO?

Lesil Artista is a faculty member in Human Resource Development Management under the College of Business and Financial Science of the University of Makati. She also taught at the School of Management and Information Technology at De La Salle-College of Saint Benilde. Before joining academia, she was part of Honda Cars Philippines Inc. for 18 years and headed different functions in the business operations from Quality, Engineering, Corporate Planning, and Organizational Development. A Business/HR Consultant since 2011, she provides consultancy in terms of corporate planning, human resource, talent development and process engineering.

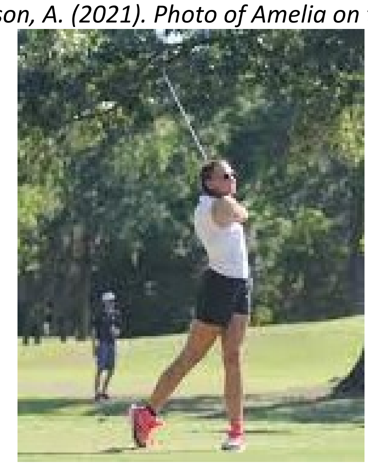
Anne Camit teaches corporate communication, corporate social responsibility, and human behavior in organizations at De La Salle – College of Saint Benilde under the Human Resource Management Program. Her research interests and pursuits include sustainability, positive psychology in organizations, and employee well-being, among others. She applies her background in educational psychology and organizational communication when opportunities present themselves in areas of training, curriculum development and writing.

WOULD THE SHOE FIT? ASSESSING EMPLOYEE AND ORGANIZATIONAL FIT IN THE CONTEXT OF NIKE'S GENDER-BASED LAWSUITS

Julie B. Nelsen
Washington State University-Vancouver

It was a beautiful but chilly spring day in March 2022. Amelia Johnson (See photo Exhibit 1), an undergraduate junior at a Midwest university, was settling into her on-campus residence hall room to complete one of her assignments for her Principles of Marketing course. The task was to search for an entry-level marketing position that attracted her as a future employee, and to bring the job posting to Tuesday's class. According to her professor, this assignment had helped former students determine what type of marketing roles and what potential employers appealed to them. As a part of the assignment, students discussed the job advertisements in class and reviewed the skill and experience the organizations expected of people in the various roles. To complete the project, Amelia pondered what she wanted to do after graduation and for what organization.

Exhibit 1. Amelia Wearing Her NIKEs on the Golf Course
Source: Johnson, A. (2021). Photo of Amelia on the golf course



About Amelia

As a self-described *"sneakerhead"* (Choi 2019), Amelia was passionate about the NIKE brand and envisioned moving to NIKE's corporate headquarters in Beaverton, Oregon when she graduated with a degree in business administration. As a student-athlete on the basketball and golf teams, she appreciated and enjoyed NIKE products and owned a substantial amount of NIKE apparel in her wardrobe. She generally wore NIKE attire every day.

As a junior, Amelia still needed to complete three semesters of coursework, but she was getting closer to knowing what she wanted to do post-graduation. Her goals included qualifying for the Ladies Professional Golf Association (LPGA) Tour, who runs weekly tournaments for the top female professional golfers worldwide. With this goal in mind, she nonetheless wanted to explore other career options that she found appealing and thought this assignment would be insightful to clarify what roles attracted her.

Earlier in the semester, Amelia shared her research with the class on the value proposition of NIKE's Blazer basketball shoe (Crenshaw 2021). For her presentation, she told her classmates about the history of the iconic basketball shoe and disclosed that she owned more than two dozen pairs of Blazers.

Before this assignment, Amelia had not given much thought to her future employment beyond the LPGA, but she knew that she was willing to relocate for the right opportunity. She was interested in all thing's sports-related and sought to find an employer who aligned with her values of trustworthiness, teamwork, responsibility, and fun. Her classroom experiences showed her that she leaned toward analytical and leadership roles. At work, Amelia wanted her voice and accomplishments to be acknowledged, similar to her experiences as an athletic team member.

Interest in NIKE

With her passion for athletic shoes and NIKE in particular, Amelia wanted to look at NIKE job postings to see if a role interested her enough to discuss with her professor and classmates. Amelia conducted a quick internet search for entry-level NIKE marketing jobs in Beaverton, Oregon, where more than 12,000 employees worked (Kish 2017). Her search directed her to a link on the NIKE corporate website, where she found 1,780 open positions (NIKE n.d.-a). Amelia sorted through the job listings, settled on a posting for a North America – NIKE Direct Digital Commerce – Platform Operations Coordinator role, and bookmarked it on her computer to bring up in class. The next day, she had a positive experience reviewing and discussing her and her classmates' selected job postings.

However, she had been surprised when, as part of the discussion, her professor asked her how she felt about working at NIKE, considering its unsettled sexual harassment and gender discrimination-related lawsuits. Amelia had not heard about the legal complaints. Amelia sought to determine if her findings affected her perception of NIKE. Would NIKE still be attractive to her as a potential employer knowing the company had some flaws? How would she evaluate NIKE as a future employer?

Employer Attractiveness Framework

To aid Amelia in assessing NIKE's suitability as an employer, Amelia's professor suggested evaluating it using Berthon *et al*.'s employer attractiveness framework as a guide (Berthon *et al*. 2005). The researchers identified five primary values necessary to make an employer attractive to a prospective employee:

1. **Social Value** – Does the organization offer a fun working environment and potentially constructive colleague relationships? Will the firm provide a positive work environment?
2. **Economic Value** – Will the firm pay me well but offer good economic benefits and job security?

3. **Interest Value** – Am I interested in the products or services provided by the employer? Can I be innovative in my work?
4. **Development Value** – Will I feel proud to work for the firm? Will it be a career-enhancing experience?
5. **Application Value** – Can I apply what I know? Will I learn from others and be able to teach others? Will I feel like I belong?

Amelia kept these values in mind while researching publications documenting gender issues in the workplace and NIKE's situation.

Workplace Gender Issues

Before delving into what happened at NIKE, Amelia searched online to learn more about gender issues in the United States (U.S.) workplaces. Her search led her to the U.S. Employment Opportunity Commission's (EEOC) website, where she discovered that between 2018 and 2021, the EEOC processed 98,411 alleged general harassment charges and 27,291 alleged sexual harassment charges (EEOC 2022).

In addition, she read that the #MeToo Movement, an attempt to effect social change surrounding sexual harassment and assault, was founded in 2006. #MeToo gained widespread attention in October 2017 due to a viral tweet. In the tweet, actress Alyssa Milano urged sexual harassment and assault victims to communicate their stories on social media. Millions did so, and since then, survivors of harassment or assault in the workplace became more vocal (North 2019).

Amelia also found that the EEOC reported a significant increase in sexual harassment charges in the two years following the #MeToo Movement's going viral (see Exhibit 2). However, both 2020 and 2021 saw a drop in filed charges. She wondered if the global pandemic had affected those numbers.

Further investigation found that women filed 62.2 percent of all U.S. harassment cases between 2018 and 2021, and 78.2 percent of U.S. sexual harassment charges during that same timeframe (see Exhibit 3).

Further searches found articles indicating that in 2021, U.S. workplace harassment proliferated the medical industry (Robinson 2021), the military (Calkins 2021), and even the video gaming sector (Browning 2021). Amelia also found that while the #MeToo movement prompted the national conversation about sexual harassment, workplace harassment often went unreported. An EEOC report indicated that nearly three out of four individuals who experienced workplace sexual harassment never reported it to a manager, supervisor, or a union representative (Feldblum *et al.* 2016). According to an article in *Fortune* magazine, some organizations spent USD $8 billion in 2021 on diversity, equity, and inclusion (DEI) efforts but still saw few results (Williams 2021).

Exhibit 2. EEOC Sexual Harassment Charge Receipts, 2014 – 2021

Source: EEOC. (2022). EEOC Data Highlight: Sexual Harassment in Our Nation's Workplaces

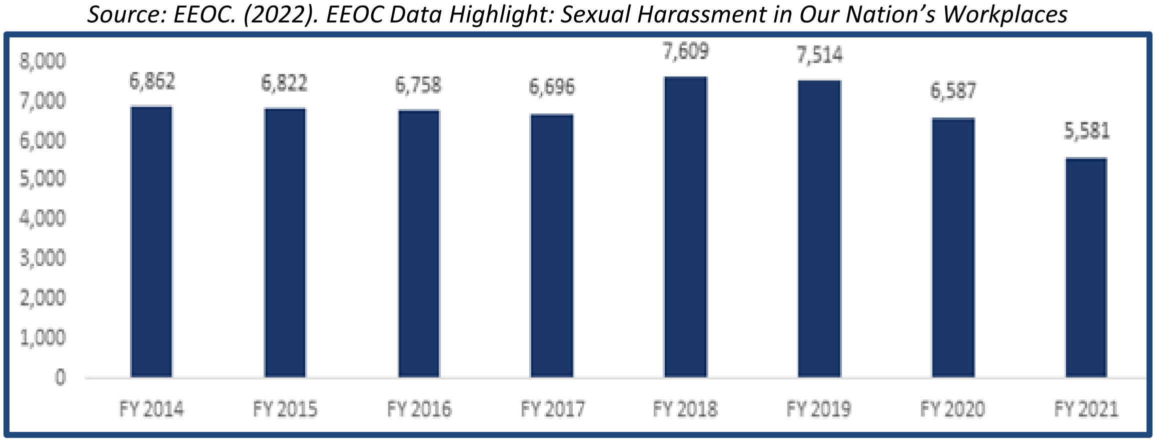
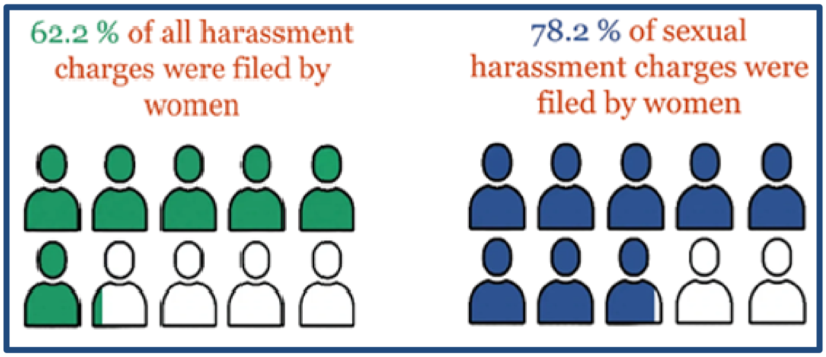


Exhibit 3. Percent of Harassment and Sexual Harassment Charges Filed by Women, FY 2018 – FY 2021

Source: EEOC. (2022). EEOC Data Highlight: Sexual Harassment in Our Nation's Workplaces



Gender Issues at NIKE

Amelia spent an afternoon digging into the NIKE situation's regional, international, and trade publication reports. In addition to many articles, she even found a copy of the lawsuit complaints filed with the court (GBDH Legal 2018).

Before the Lawsuits

The news station coverage of NIKE's gender issues started in March 2018 when a group of female NIKE corporate employees distributed an internal survey, not approved by NIKE management, to gain insight into the women's experience at NIKE (Hess 2018). See Exhibit 4. NIKE's CEO, Mark Parker, received a copy of the survey results on March 5, 2018 (Campbell 2018). According to Amelia's research, the women of NIKE, leading up to the survey, noticed the departure of several high-ranking women.

Among those who left were Patty Ross, Vice President of Workplace Design and Connectivity and founder of NIKE's women's mentoring network, Kerri Hoyt-Pack, a long-term employee who had launched the NIKE women's brand, and Nikki Neuburger, a Global Brand Vice President for Running (Abrams 2018). *Inc.* magazine reported that Neuburger, upon departure, sent a letter to her team and CEO Parker disclosing her reasons for leaving (Zetlin 2018). Central to her message were the harassment and the exclusion of women from organizational decisions

(Creswell *et al.* 2018). Concern over the loss of female leaders prompted a group of NIKE women to distribute the unsanctioned survey that ended up on Parker's desk (Zetlin 2018).

Exhibit 4. CNBC News Clip Discussing NIKE Shake-ups

Source: CNBC (2018). A Survey among Women at NIKE Led Two Top Executives to Resign
https://www.cnbc.com/video/2018/03/20/a-survey-of-female-employees-at-nike-resulted-in-two-executives-resigning-according-to-wsj.html

CEO Parker Responds

Although the survey details were not public, Amelia found that the allegations triggered an internal investigation and a significant shake-up within NIKE's top ranks. According to *Oregon Live*, CEO Parker's formal review of the situation resulted in the resignation of two top-ranking male executives (Rogoway 2018b). In an internal message announcing these departures, Parker disclosed that he received news of *"behavior occurring within our organization that does not reflect our core values of inclusivity, respect, and empowerment"* (Bain 2018, para. 3; see Exhibit 5). The memo reported Parker as stating, "*We've heard from strong and courageous employees"* (Huebsch 2018, para. 7). Parker did not disclose the types of complaints or whom the complaints involved. However, a NIKE spokesperson said there were no allegations against the departing male executives and declined to provide details (Morrison 2018). Later reports suggested that the male executives left because they knew about or enabled inappropriate behaviors without consequences for the perpetrators (Creswell *et al.* 2018).

Exhibit 5. Copy of Parker's Internal Message

Source: Rogoway, M. (2018b). NIKE sheds second top executive amid inquiry into workplace 'behavior.' Oregon Live.

Team,

Over the past few weeks, we've become aware of reports of behavior occurring within our organization that do not reflect our core values of inclusivity, respect and empowerment at a time when we are accelerating our transition to the next stage of growth and advancing our culture. This disturbs and saddens me.

We've heard from strong and courageous employees. This has been a very difficult time and we are still talking to team members to better understand what we need to change. Our culture is one based on mutual respect, inclusion and teamwork and we want Nike to be a place where everyone has an opportunity to play an important role and succeed. Behavior that is inconsistent with our values has no place at Nike and we will continue to look into matters and take appropriate action where we find behavior against our code of conduct.

We are going to be doing a comprehensive review of our HR systems and practices along with elevating our complaint process for matter of respect issues. We will increase and invest more heavily in our diversity and inclusion teams and networks and additionally will immediately put in place an enhanced process to encourage our employees to speak up and make their voices heard. We will also create a mandatory manager training program so that everyone understands what we expect and what they need to do to reinforce our core values. Any employees who wish to request a confidential meeting can send an email to Additionally, employees can access our Matter of Respect hotline at or from an internal Nike phone. You can also call our 24-hour, global hotline to reach a representative connected with our Inside the Lines Alertline.

Restructured Leadership Team

Further, I want to share with you that in light of my desire to accelerate change, I've made the decision to restructure my leadership team into a different alignment that will allow for closer management and a sharper focus on our culture. Elliott Hill is taking on the new role of President of Consumer and Marketplace. He will be responsible for Marketing, Geographies, Nike Direct, Global Sales and Jordan Brand. Michael Spillane will continue to lead all Categories, Design, Product and Merchandising. Both Elliott and Michael will report to me. I also want to communicate that I am committed to serve as Chairman, President and CEO for Nike beyond 2020. Trevor Edwards has decided to resign as Nike Brand President and will retire in August. He will serve as an advisor to me until his retirement as we transition the organization.

I'd like to thank Trevor for his significant contributions to Nike over the last 25 years. He has helped us grow and strengthen our brand on a global scale. Elliott and Michael are both highly accomplished leaders at Nike with strong experience and, along with our leadership team, are ideally suited to steward our culture and help lead our teams forward.

I am determined to make the necessary changes so that our culture and our company can evolve and grow. We all want to create an environment where everyone can thrive and contribute to our shared success.

Sincerely,

Mark Parker Chairman, President and CEO, NIKE Inc.

CEO Parker addressed the issues via a message acquired by a reporter from Portland's National Public Radio (NPR). It stated:

> *"We recognize and acknowledge that there have been behaviors inconsistent with our values that prevented some employees from feeling respected and doing their best work at Nike. We are determined to take the insights that we've gained to build a culture that is truly inclusive and representative of diverse thoughts, backgrounds, and experiences. We're already taking action and will continue to drive change to elevate a culture of inclusion and respect"* (Morrison 2018, para. 26).

Within the memo, CEO Parker also indicated that NIKE was undergoing a review of the company's human-resource systems and practices for elevating internal complaints expressing that *"This has been a very difficult time;" f*ollowing the organizational changes, Parker said the leadership reorganization allowed *"for closer management and a sharper focus on our culture"* (Germano 2018, para. 7). Shortly after the restructuring, Kellie Leonard, a long-term human resources employee, earned NIKE's first-ever Chief Diversity and Inclusion Officer title; she succeeded the former Vice President of Diversity and Inclusion, Antoine Andrews, who left in the fall-out of the situation (Duffy 2018). For a detailed situational timeline, see Exhibit 6.

NIKE's Culture

To understand NIKE's culture, Amelia also looked at its published Mission and Equality Statements (see Exhibit 7). These statements indicated NIKE's commitment to equity, respect, and diversity, which she appreciated.

Exhibit 6. NIKE Situational Timeline

Date	What Happened
March 2017	Patty Ross, Vice President of Workplace Design and Connectivity and Founder of NIKE's Women's Mentoring Network, left NIKE (Abrams 2018).
February 2018	Kerri Hoyt-Pack, a Vice President of Marketing and long-term NIKE employee responsible for launching the Nike women's brand, and Nikki Neuburger, Global Brand Vice President for Running, left NIKE (Abrams 2018).
1st Quarter, 2018	Female NIKE employees distributed a survey to assess harassment and gender discrimination to fellow female employees (Fernández Campbell 2018).
March 5, 2018	Unsanctioned NIKE Female Survey shared with CEO Mark Parker (Fernández Campbell 2018).
March 15, 2018	CEO Parker announces that Edwards, the NIKE brand's president, departed NIKE (Segran,2018).
March 16, 2018	Vice President Jayme Martin leaves NIKE. Reports say NIKE received complaints about Martin's inappropriate workplace behavior amid the investigation (Rogoway 2018b).
March 22, 2018	CEO Parker acknowledged behavioral issues at the workplace but did not comment on the investigation during NIKE's third-quarter earnings call (Reuters 2018).
April 19, 2018	Reports show that NIKE experienced nine director-level or higher male executive departures (Reuters 2018).
April 28, 2018	*The New York Times* reported on NIKE's *"toxic"* work culture and complaints of sexual harassment, job discrimination, and inappropriate workplace behavior (Reuters 2018).
May 3, 2018	*The Wall Street Journal* reported that CEO Parker apologized to employees in an all-staff meeting for the corporate culture and the related departures (Germano 2018).
July 23, 2018	NIKE said it would raise salaries for 10% of its workforce to correct pay-inequity issues for female and minority employees (Cowley 2018).
August 9, 2018	Two former employees filed a lawsuit against NIKE, alleging that it *"intentionally and willfully"* discriminated against women regarding pay and promotions and that its majority-male executives fostered a hostile work environment (Hsu 2018).
August 31, 2018	NIKE shareholders took legal action and sued the firm for failing shareholders concerning the allegations of harassment and discrimination (Butler-Young 2019).
November 18, 2018	Additional aspects of the shareholder lawsuit were released, claiming that NIKE's founder, CEO, and the Board were *"regularly apprised of the nature and volume of allegations"* but failed to address the issue appropriately (Scribd 2018b).
February 26, 2019	NIKE lost its first attempt to prevent the lawsuits from being allowed to be class-action based, opening NIKE up to additional lawsuit claims (Blumberg 2019).
April 15, 2019	The judge granted NIKE's motion to dismiss the shareholders' lawsuit because of filing errors (Kish 2019a).
May 17, 2019	Shareholders refiled a modified lawsuit against NIKE (McDonald 2019).
May 23, 2019	An Oregon federal court judge denied NIKE's motion to dismiss a class-action lawsuit on behalf of its current and former female employees (Phillips 2019).
October 22, 2019	CEO Parker announced his resignation. He became NIKE's Executive Chairman of the Board (Thomas 2019).
December 9, 2019	A protest occurred at NIKE headquarters, where more than 400 workers demanded better treatment for women (Neeley 2019).
January 13, 2020	John Donahoe began as the new President and CEO of NIKE (Ciment 2020).
February 2020	Upper-level diversity representation increased with internal female promotions and female board appointments, resulting in equally gendered internal executive board representation (Manning 2020).
June 2020	In a memo to employees, Donahoe wrote, *"…we must continue to foster and grow a culture where diversity, inclusion, and belonging is valued and is real. NIKE needs to be better than society as a whole…."* (Thomas 2020, para. 3)
September 2020	The plaintiffs asked the court to require NIKE to turn over its internal pay equity and promotions analyses. NIKE declined, and the court agreed that NIKE could protect these documents (JDSupra 2020).

Exhibit 7. NIKE Mission and Equity Statements

Source: NIKE.com

NIKE Mission Statement as of October 2021
Our mission is what drives us to do everything possible to expand human potential. We do that by creating groundbreaking sport innovations, by making our products more sustainably, by building a creative and diverse global team and by making a positive impact in communities where we live and work (NIKE n.d.-a, page 1).
NIKE Equity Statement as of October 2021
Equality isn't a game. But achieving it will be our greatest victory. Until we all win. We believe in the power of sport to unite everyone and to inspire people to take action in their communities. We are committed to creating an inclusive culture at NIKE and breaking down barriers for all athletes. We believe in the power of sport to break down barriers, overcome differences and bring people together. No matter where we come from, a love of sport unites us. It teaches us to be competitive and to value collaboration. Creativity fuels our culture. With our open and global mindset, we're constantly curious about the world. We serve athletes in nearly every country, and we're inspired by every one of them. By listening to the unique voices of every country, culture, and community, we can unleash the potential of every athlete. At NIKE, we are committed to an environment focused on respect, equality, inclusion, and empowerment. For NIKE to grow and evolve, we need the best and the brightest to help us play sports a daily habit and inspire consumers globally. Employees with the necessary skillsets, expertise and qualifications are critical to driving our business forward. Diversity allows for a breadth of perspectives and experiences to develop thoughtful and original ideas; it's a key component of innovation. We value representation across our business and will continue to seek the best talent to help us grow. We will maintain our focus on increasing representation of women globally and underrepresented groups in the U.S. While we're focused on these areas in the near term, we will continue to expand representation across other dimensions of diversity over the long term (NIKE, n.d.-e, page 2).

Note: NIKE. (n.d.-a) About NIKE. https://about.nike.com/ and NIKE. (n.d.-e). Until We All Win. https://www.nike.com/until-we-all-win

New York Times Exposé

Amelia was concerned about *The New York Times* exposé entitled *"At NIKE, Revolt Led by Women Leads to Exodus of Male Executives,"* which described the NIKE culture as *"toxic"* (Creswel *et al.* 2018b, para 1). See Exhibit 8. The interviewees reported NIKE to be a place where *"male bosses felt comfortable discussing the merits of Portland and Los Angeles strip clubs"* (Segran 2018, para. 2). They also indicated it to be a place where a woman reporting sexual harassment was asked to *"discuss the incident with their human resources representative in an on-site outdoor cafe, where others could hear the conversation"* (para. 2). As a part of their grievances, NIKE's female employees reported being passed over for promotions, and they said that females occupied "*only 38% of positions at the director level and 29% of VP roles, even though they made up half the workforce"* (para. 2).

Exhibit 8. New York Times Headline

Source: Creswell, Draper & Abrams. (2018a, April 28).
At NIKE, revolt led by women leads to exodus of male executives. The New York Times


At Nike, Revolt Led by Women Leads to Exodus of Male Executives

NIKE Employees Speak Out

In one interview, Ann Wallace, a former 14-year NIKE employee who left in January 2018, recalled the positive family dynamic when she joined NIKE but said the culture changed when department management shifted. In her NPR interview, she stated, "*Certain individuals within that organization would constantly berate women, talk down to women* [and] *interrupt"* (Morrison 2018, para. 13). Wallace elaborated, stating that female leaders protected her from misogynistic behaviors before their departures. Once these women departed, it got worse, prompting her departure. When she had reported misconduct, Wallace was told that she was too sensitive.

> *"Which, at that point, gave me the feeling like nothing is going to be done. I didn't feel comfortable going to employee relations about this because I'd heard of a lot of people going to them and when they would speak up, it would leak out, and I didn't want any retaliation" (*Morrison 2018, para. 22).

The article elaborated that, over time, NIKE's female employees became skeptical of its human resources department (Creswell *et al.* 2018a). Some said they avoided the department altogether, fearing retribution or convinced that nothing would happen; those who voiced their opinions and grievances reported coming away alienated (Campbell 2018). A former NIKE retail designer, Marie Yates, said, *"I was looking for help, and they just totally shut it down, like 'You're the problem' "* (para. 38). Yates left the company in 2016. According to the legal complaint, other alarming instances occurred, such as a senior manager mentioning a female employee's breasts in an email (Scribd 2018).

Amelia was especially concerned to read about Francesca Krane, a five-year NIKE retail brand design employee who also left in 2016, who said, *"I came to the realization that I, as a female, would not grow in that company"* (Collins, n.d., para. 12). She was surprised that a male employee, former designer for NIKE's Jordan brand, D'Wayne Edwards confirmed, *"that jock kind of mentality kind of does exist, and I guess it spills over into some of the corporate processes at times"* (Morrison 2018, para. 29). He also said that not everyone recognized that *"*[NIKE] *is not the locker room; this is a corporate environment and there is a different way to act and behave"* (para. 30).

A *Yahoo News* article also discussed a NIKE marketing campaign gone wrong. According to internal reports, a women's NIKE shoe launch campaign approved by the former brand president, Trevor Edwards, included a commercial featuring a female athlete rotating on a stripper pole (Gray 2018). *Business Insider* reported that the women's shoe advertisement, developed in the fall of 2017, was scrapped after being perceived as sexist, costing NIKE millions of dollars (Green 2018). The reports of workplace inequalities, biases, and harassment worried Amelia. Even so, she wanted to look further and see how NIKE reacted to the claims of harassment and inequity. She hoped NIKE showed respect for the women questioning the practices and policies.

NIKE's Response

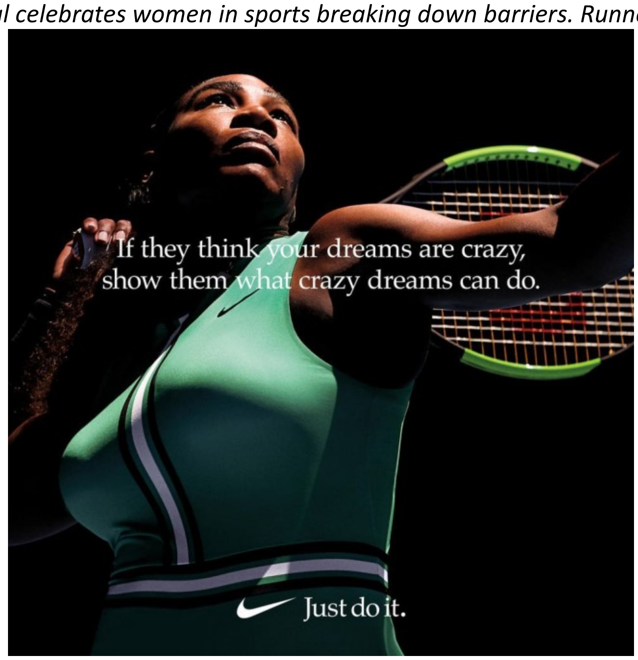
Amelia was relieved to find that following the allegations, NIKE's Director of Global Corporate Communications, Matthew Kneller, acknowledged the company's need to improve: *"There's no doubt that we'll learn from this experience"* (Segran 2018, para. 6). In the same communication, he pointed out that Nike still dominated the marketplace:

> *"Nike is the number one sports brand for girls and women globally. We maintain deep connections with the best athletes all over the world. It's these relationships that give us confidence in our ability to serve these athletes"* (Segran 2018, para. 6; see Exhibit 9 example of Serena Williams advertisement).

Exhibit 9. NIKE Serena William's Advertisement

Source: Smith, J. (2019, February 25).

New Nike commercial celebrates women in sports breaking down barriers. Runner's World Magazine.



In a separate statement about the survey and media coverage, CEO Parker said,

> *"It has pained me to hear that there are pockets of our company where behaviors inconsistent with our values have prevented some employees from feeling respected and doing their best work"* (Creswell *et al*. 2018a, para. 16).

In response to questions about the situation, NIKE spokesperson KeJuan Wilkins depicted its troubles as being confined to *"an insular group of high-level managers"* who *"protected each other and looked the other way"* (para. 14). Amelia asked herself, if this behavior happened at a high level and went unaddressed, did it condone the bad behavior for everyone?

After firing several high-ranking executives, Parker began an extensive human resource review, made management training mandatory, and revised many internal reporting procedures (SBJ 2018). Regarding the complaints to human resources, spokesperson Wilkins said,

> *"We're not going to comment on individual cases, but cases are often more complicated than simply listening to one side of the story. As Mark* [Parker] *has said, we are currently reviewing and improving our practices to re-establish trust where it has been lacking and to guard against this happening in the future"* (Creswell *et al*. 2018a, para. 17).

Amelia considered, If I were a NIKE employee, based on this information, could I trust NIKE?

Opportunity to Change

Further digging showed that NIKE also disputed that its female workers were not involved in the creative and marketing decisions, noting that a female executive leads its women's division. Still, spokesperson Wilkins accepted that, in some areas, *"there was more room and opportunity for the company to increase female representation in its senior positions"* (para. 27). He also indicated that NIKE was focused *"on attracting, developing, and elevating both women and people of color throughout the organization"* (para. 37). Throughout the controversy, NIKE upheld that it

> *"opposes discrimination of any type and has a long-standing commitment to diversity and inclusion. We are committed to competitive pay and benefits for our employees. The vast majority of NIKE employees live by our values of dignity and respect for others"* (Butler-Young 2019).

Deborah Munster, Executive Director at the diversity and inclusion management company, Diversity Best Practices, noted in an interview with ***Retail Dive***, "*In some cases [NIKE has] gotten it very right, and this is an opportunity for them to go down the right path*" (Salpini 2018, para. 22). She elaborated:

> *"Back in May* [of 2018], *they took immediate action to eliminate some of the roles and some of the people who were directly involved in the incidents. They've also apologized — I think that's all in the right direction. They do need to understand systemically how the culture is viewed within the organization. Once they can understand that and get their arms around it, it's making sure that everyone understands now how to make that better."*

Amelia's research also showed that in July 2018 and November 2019, NIKE added two women to its board of directors, Cathleen Benko (NIKE 2018) and Thasunda Brown Duckett (Businesswire 2019). These changes meant that NIKE had 31% representation by women on its board of directors out of thirteen total board members (NIKE 2020).

NIKE's Lawsuits

As Amelia dug further, she learned that in August 2018, two former NIKE employees filed a legal suit, alleging that the company *"intentionally and willfully"* discriminated against women (Knecht 2018, para. 2). The complaint included pay and advancement discrimination allegations. It noted that its majority-male executives adopted what the plaintiffs considered a *"hostile"* headquarters work environment. NIKE stated that it was "*unable to comment on ongoing litigation"* (Salpini 2018, para. 6).

An article in Retail Dive noted,

> *"Nike's entire brand message is that they produce fitness and leisure apparel for everyone, that their brand is universal and appeal[s] to all demographics. Being hit by a class-action lawsuit that details a sexist and threatening culture flies full in the face of that brand"* (para. 12).

Weeks after the initial lawsuit filing, additional former female employees joined the lawsuit as plaintiffs (The Fashion Law 2018b). The women's attorneys focused on earning class-action lawsuit status for the complaint, but NIKE requested the courts to dismiss the class-action pursuit arguing that this was not a systemic issue (Hsu 2018).

Class-action Lawsuit

In May 2019, the courts upheld the collective claims, allowing additional individuals to join the original plaintiffs' complaint in a class-action lawsuit (Phillips 2019). In class-action cases, plaintiffs must prove that a group of individuals sustained harm in a comparable way or suffered financial losses based on the actions of another party. Amelia found it unclear how many plaintiffs had joined the complaint since achieving class-action status, as it indicated that both named and unnamed plaintiffs sought to recover damages in the case (Butler-Young 2019).

In the legal complaint, Amelia learned that the women specified they doubted the company's capacity to regulate itself and improve its practices. They asked the court to force NIKE *"to develop and institute reliable, validated, and job-related standards for evaluating performance, determining pay, and making promotion decisions"* (Fernández Campbell 2018, para. 31). The plaintiffs sought a permanent ruling against NIKE prohibiting systems that lead to gender discrimination (The Fashion Law 2018a). As part of the pre-documentation lawsuit discovery, the plaintiffs asked the court to require NIKE to turn over its internal pay equity and promotions analyses (Russo 2020). NIKE declined to produce the reports because attorney-client and work-product privileges protected it, and in September 2020, the court sided with NIKE that it was not required to release these documents (JDSupra 2020).

A Second, Shareholder Lawsuit

More investigation revealed that a second derivative NIKE lawsuit came in September 2018 when shareholders named Phil Knight, NIKE's founder, Parker, former NIKE Brand President Trevor Edwards, and the entire NIKE Board of Directors individually in the suit (Butler-Young

2019). The investors alleged that NIKE enabled and knowingly overlooked the hostile work environment *"that has now harmed and threatens to further tarnish and impair (Nike's) financial position, as well as its reputation and goodwill"* (Jones 2018, para. 2). A judge dismissed the shareholder lawsuit in April 2019, but it was successfully refiled a few weeks later. The re-filed suit contended that NIKE held a higher percentage of civil rights complaints about sexual harassment than other similar-sized Oregon companies (Kish 2019b).

NIKE's Changes Leadership

In the original *New York Times* exposé, Amelia had found that more than a dozen former and current employees stated they could not see how CEO Parker was unaware of the problems. He and the head of human resources meet regularly to discuss, among other things, any active investigations of suspected employee issues (Creswell *et al.* 2018a). Some wondered whether individuals deliberately kept information from Parker. As one former employee said, if Parker did not know about the problems, *"it negates the times over the years my peers and I sought support and counsel from the people we were told we could trust to bring about change"* (para. 42). She and her co-workers risked or experienced retaliation *"for shining a light on both significant and everyday experiences that left us feeling bullied, uncomfortable, and intimidated"* (para. 42).

In late October 2019, Parker announced plans to step down as CEO (Duffy 2019). Despite the pending changes, NIKE employees were still frustrated, and more than 400 NIKE workers held an on-site protest to demand better treatment for women in early December (Neeley 2019). See a photo of the NIKE campus protest in Exhibit 10.

Exhibit 10. Protest at NIKE's Beaverton, Oregon Headquarters

Source: Neeley, L. (2019, December 18). Nike: 'Do the right thing.' Workers.org.

John Donahoe became NIKE's new CEO in mid-January 2020 (Duffy 2019). Parker, however, remained with NIKE as Executive Chairman of the Board (Debter 2019). For several years prior, Donahoe served on the NIKE Board of Directors; he joined NIKE as its new CEO after being president and CEO for two other publicly traded firms, ServiceNow and eBay (NIKE n.d.-b).

Amelia was unsure why Parker changed roles, but she speculated that a change in leadership could signal change to internal and external stakeholders. Upon taking the helm, Donahoe noted, *"It's in the periods of adversity that you can get the most done"* (Gray 2019, para. 7).

> *"Diversity and inclusion are considered core essentials to an innovative culture. And that's something Nike has been working on and focusing on, making progress. And it's something I care deeply about. You know that from my previous experiences, and that's something I'll continue to make a real priority"* (CNBC 2020b; Watch Donahoe's CNBC interview in Exhibit 11).

Exhibit 11. Interview with New NIKE CEO, Donohoe

Source: CNBC. (2020a). Watch CNBC's full interview with Nike CEO John Donahoe
https://www.youtube.com/watch?v=i6oXZQX8EdU

Donahoe Becomes NIKE's CEO

Donahoe took rapid moves toward better upper-level diversity representation when he took the helm on January 13, 2020 (Ciment 2020). In February 2020, he promoted Heidi O'Neill, a 21-year NIKE employee, to the president of NIKE's consumer and marketplace; this change resulted in an internal executive board evenly representing men and women (Manning 2020). In a June 2020 memo to employees, Donahoe wrote:

> *"While we strive to help shape a better society, our most important priority is to get our own house in order… Simply put, we must continue to foster and grow a culture where diversity, inclusion, and belonging is valued and is real. NIKE needs to be better than society as a whole. Our aspiration is to be a leader. While we have made some progress over the past couple of years, we have a long way to go"* (Thomas 2020, para. 3).

Additional NIKE organizational changes came in July 2020, including promoting three women to Vice President and General Manager roles. When asked about these changes, Donahoe acknowledged, *"Now is the right time to build on NIKE's strengths and elevate a group of experienced, talented leaders who can help drive the next phase of our growth"* (Businesswire 2020, para. 2). July 2020 brought more change as Kellie Leonard, Chief Diversity and Inclusion Officer, resigned to "pursue other interests" (Germano 2020, para. 3). After a title change to Chief Talent, Diversity, and Culture Officer, Felicia Mayo, who joined NIKE in 2019 as human resources vice president, succeeded her in that role. Analysts thought the title change signaled a new way of advancing diversity and inclusion at NIKE by associating culture, talent, diversity, and inclusion under one leader as a deliberate structural change to impact the hiring process (Salpini 2020).

Words and Actions in Conflict

Amelia also noticed that in October 2021, NIKE successfully blocked a vote by activist shareholders, who asked them to disclose its diversity, equity, and inclusion practices to shareholders; still, NIKE reiterated its commitment to diversity despite pushing against it (Palmieri 2021). At the same time, Donahoe communicated a goal of 45 percent female representation at the vice president level and higher by 2025 and 30 percent of director level and above filled by racial and ethnic minorities in NIKE's U.S. workforce (Florsheim 2021).

More negative press coverage came in October 2021 when Mary Cain, a distance runner, filed a $20 million lawsuit against the company and her former coach, Alberto Salazar; she alleged abuse suffered while training at the NIKE program led by Salazar (McLaughlin 2021). She stated, *"I joined Nike because I wanted to be the best female athlete ever. Instead, I was emotionally and physically abused by a system designed by Alberto and endorsed by Nike"* (Chavez 2019, para. 2). Meanwhile, NIKE's harassment and discrimination lawsuits lurked and would likely not appear in a courtroom until sometime later in 2022 (Manning 2020).

Assessing Employer Attractiveness

After completing her research, Amelia contemplated how she felt about being a NIKE employee and whether she would want to work there. She thought it essential to earn a position where her values of achievement, competition, honesty, responsibility, and learning were a good fit. Amelia remained passionate about the NIKE brand but felt let down by what had happened at NIKE. She questioned how she should interpret the allegations in the media coverage and the lawsuits and what it meant to her as a potential future NIKE employee.

She recognized that the plaintiffs, the attorneys, and the media might all have biased interests in getting their opinions heard; at the same time, she also thought there had to be some truth in the allegations against NIKE. How should Amelia interpret the allegations in the media and the lawsuits? How might Amelia assess the likelihood of NIKE being able to make positive change? What should she do in the future – apply to work at NIKE or avoid it as a prospective employer?

Julie B. Nelsen is an Assistant Professor of Marketing and Director of the Sales Center at Washington State University. She earned her MBA at Arizona State University and her Ph.D. in Strategic Business Communication from Marquette University. Prior to her academic career, Nelsen enjoyed a 20-plus year career working in entrepreneurial, corporate, and non-profit organizations in sales, marketing, and management roles. Nelsen served as the Marketing Educators' Association 2021-2022 President. Her research focuses on business ethics, sales, and marketing and the pedagogy of those functions.

Appendix. Case Vocabulary

Source: Author's notes

Class-action lawsuit	A class-action lawsuit is a legal practice that allows one or more complainants to file and prosecute a suit on behalf of a bigger group or *"class"* of complainants (Cornell n.d.-a).
Complaint (legal)	A legal complaint is typically the first document filed with a court in a lawsuit. It establishes a lawful request for a court to make a legal decision and judgment about a situation. It identifies the parties involved, suggests what court has jurisdiction over the case, states the plaintiff's claims, states the facts, and asks for a judgment (Molitor 2021).
Discrimination (illegal)	*"Discrimination is the unfair or prejudicial treatment of people and groups based on characteristics such as race, gender, age or sexual orientation"* (APA 2019, para. 1). Not all types of discrimination are against the law.
Discrimination (legal)	Discrimination means identifying and distinguishing based on the individualities of people or things. We all discriminate in some ways, such as intelligence, attitude, and work performance. These forms of discrimination are legal. It is not typically unlawful if discrimination is not associated with disability, race, gender, etc. (Hentze & Tyus 2021).
Diversity	In North America, "*diversity"* is often associated with race; however, that is just one dimension of human difference, which include gender, language, culture, manners, social roles, education, sexual orientation, income, skills, neurodiversity, and innumerable other domains (Berkley n.d.).
Equality	Equality implies that each group or individual is given the same resources or opportunities (GWU 2020).
Equity	*"Equity recognizes that each person has different circumstances and allocates the exact resources and opportunities needed to reach an equal outcome"* (GWU 2020, para. 2).
Inclusion	Inclusion explains how everyone in an organization thinks they are respected, welcomed, valued, and supported as team members (SHRM n.d.).
Harassment	Harassment is a type of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (ADEA), or the Americans with Disabilities Act of 1990 (EEOC n.d.). It is defined as *"unwelcome conduct that is based on race, color, religion, sex (including sexual orientation, gender identity, or pregnancy), national origin, older age (beginning at age 40), disability, or genetic information (including family medical history). Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive"* (para. 2).
Hostile Work Environment	A hostile situation can result from the unwanted conduct of anyone with whom individuals interact on the job. The conduct renders the workplace environment intimidating, unfriendly, or offensive (DOL 2012).
Plaintiff(s)	The individual(s) who initiate(s) a lawsuit (Cornell n.d.-b.).

References

Abrams, R., Creswell, J. & Draper, K. (2018, April 28). At NIKE, revolt led by women leads to exodus of male executives. *Seattle Times*. https://www.seattletimes.com/nation-world/at-nike-revolt-led-by-women-leads-to-exodus-of-male-executives/

APA. (2019, October 31). Discrimination: What it is, and how to cope. *American Psychological Association.* https://www.apa.org/topics/racism-bias-discrimination/types-stress

Bain, M. (2018, March 16). Nike's No. 2 is out as the company addresses complaints of inappropriate workplace behavior. *Yahoo Sports.* https://sports.yahoo.com/nike-no-2-company-addresses-150918749.html

Berkley. (n.d.). What is diversity? *Greater Good Magazine.* University of California, Berkley. https://greatergood.berkeley.edu/topic/diversity/definition

Berthon, P., Ewing, M. & Hah, L. L. (2005). Captivating company: dimensions of attractiveness in employer branding. *International Journal of Advertising, 24*(2), 151-172.

Blumberg, P. (2019, February 27). Nike women clear first hurdle in lawsuit over gender pay gap. *Bloomberg.* https://www.bloomberg.com/news/articles/2019-02-27/nike-loses-initial-challenge-to-gender-bias-class-action-lawsuit

Browning, K. (2021, December 28). Riot Games to pay $100 million in gender discrimination case. *New York Times.* https://www.nytimes.com/2021/12/28/business/riot-games-gender-discrimination-case.html.

Businesswire. (2019, November 14). Thasunda Brown Duckett Joins NIKE Board of Directors. https://www.businesswire.com/news/home/20191114005883/en/Thasunda-Brown-Duckett-Joins-NIKE-Inc.-Board-of-Directors

Businesswire. (2020, July 22). Nike announces senior leadership changes to unlock future growth through the consumer direct acceleration. https://www.businesswire.com/news/home/20200722005305/en/Nike-Announces-Senior-Leadership-Changes-to-Unlock-Future-Growth-Through-the-Consumer-Direct-Acceleration

Butler-Young, S. (2019, February 28). NIKE hits roadblock in lawsuit over gender discrimination a fashion attorney breaks down what's next for the brand. *Footwear News*. https://footwearnews.com/2019/business/retail/nike-sued-gender-discrimination-lawsuit-class-action-1202753998/

Calkins, A. (2021, August 2). Sexual harassment, gender discrimination look different for men and women in Army, but experiences similar across locations. *RAND*. https://www.rand.org/news/press/2021/08/02.html

Campbell, A. F. (2018, April 30). Report: human resource managers at NIKE ignored complaints from women employees for years. *Vox.* https://www.vox.com/policy-and-politics/2018/4/30/17302130/nike-women-harassment-discrimination-survey

Campbell, A.F. (2018b, August 15). Why the gender discrimination lawsuit against NIKE is significant. *Vox*. https://www.vox.com/2018/8/15/17683484/nike-women-gender pay-discrimination-lawsuit

Choi, J. W. & Kim, M. (2019). Sneakerhead brand community netnography: An exploratory research. *Fashion, Style & Popular Culture, 6*(2), 141-158. https://doi.org/10.1386/fspc.6.2.141_1

Chavez, C. (2019, October 13). Mary Cain speaks out against NIKE and Coach Alberto Salazar over emotional, physical abuse. *Sports Illustrated*. https://www.si.com/olympics/2019/11/07/mary-cain-alberto-salazar-abuse-verbal-physical-nike-oregon-project.

Ciment, S. (2020, February 9). Nike's new CEO reveals how the company decides when to take a stand on social issues — and when to stay quiet. *Business Insider.* https://www.businessinsider.com/nike-ceo-john-donahoe-how-company-responds-colin-kaepernick-controversy-2020-2

CNBC (2018, March 20). A survey among women at NIKE led two top executives to resign. https://www.cnbc.com/2018/03/20/a-survey-among-women-at-nike-led-two-top-executives-to-resign.html

CNBC. (2020a, February 5). Watch CNBC's full interview with Nike CEO John Donahoe. https://www.cnbc.com/video/2020/02/05/watch-cnbcs-full-interview-with-nike-ceo-john-donahoe.html

CNBC. (2020b, February 5). Closing Bell. CNBC Exclusive: CNBC Media transcript: NIKE CEO John Donahoe speaks with CNBC's Sara Eisen on "Closing Bell" today. https://www.cnbc.com/2020/02/05/cnbc-exclusive-cnbc-media-transcript-nike-ceo-john-donahoe-speaks-with-cnbcs-sara-eisen-on-closing-bell-today.html.

Collins, D. (n.d.). At NIKE, revolt led by women leads to exodus of male executives. *Denis Collins Consulting*. https://deniscollins.tumblr.com/post/173414844798/at-nike-revolt-led-by-women-leads-to-exodus-of
Cornell. (n.d.-a). Class action. *Legal Information Institute.* https://www.law.cornell.edu/wex/class_action
Cornell. (n.d.-b). Plaintiff. Legal Information Institute. https://www.law.cornell.edu/wex/plaintiff
Cowley, S. (2018, July 23). Nike will raise wages for thousands after outcry over inequality. *Seattle Times.* https://www.seattletimes.com/business/nike-will-raise-wages-for-thousands-after-outcry-over-inequality/
Crenshaw, M. (2021, February 5). The History of the NIKE Blazer sneaker. *Footwear News*. https://footwearnews.com/feature/history-of-the-nike-blazer-sneaker-1203101513/
Creswell, J., Draper, K. & Abrams, R. (2018a, April 28). At NIKE, revolt led by women leads to exodus of male executives. *The New York Times*. https://www.nytimes.com/2018/04/28/business/nike-women.html
Creswell, J. Draper, K. & Adams, R. (2018b, April 30). At Nike, revolt led by women leads to exodus of male executives. The Daily. https://www.sfgate.com/business/article/At-Nike-revolt-led-by-women-leads-to-exodus-of-12875905.php
Debter, L. (2019, October 22). NIKE's CEO Mark Parker is stepping down. *Forbes.* https://www.forbes.com/sites/laurendebter/2019/10/22/nikes-ceo-mark-parker-is-stepping-down/?sh=7c0dc1475b11
DOL. (2012). Workplace Harassment. Department of Labor. https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/internal/policies/workplace-harassment/2012
Duffy, C. (2018, April 27). NIKE leadership shuffle: Company names first-ever chief diversity and inclusion officer. *Portland Business Journal.* https://www.bizjournals.com/portland/news/2018/04/27/nike-leadership-shuffle-company-names-first-ever.html
Duffy, C. (2019, Oct 23). Mark Parker to step down as NIKE CEO after 13 years. *CNN Business.* https://www.cnn.com/2019/10/22/tech/mark-parker-nike-ceo/index.html
EEOC. (n.d.). Harassment. Equal Employment Opportunity Commission. https://www.eeoc.gov/harassment
EEOC. (2022). Sexual harassment in our nation's workplaces. https://www.eeoc.gov/data/sexual-harassment-our-nations-workplaces
The Fashion Law. (2018, August 10). NIKE Slapped with Gender Discrimination, Hostile Workplace Lawsuit. *The Fashion Law.* https://www.thefashionlaw.com/nike-slapped-with-gender-discrimination-hostile-workplace-lawsuit/
The Fashion Law. (2018b, October 30). 3 More women join NIKE gender discrimination, hostile workplace lawsuit. https://www.thefashionlaw.com/3-more-women-join-nike-gender-discrimination-hostile-workplace-lawsuit/
Feldblum, C. & Lipnic, V. (2016, June). Select Task Force on the Study of Harassment in the Workplace. *EEOC.* https://www.eeoc.gov/select-task-force-study-harassment-workplace
Fernández Campbell, A. (2018, August 15). Why the gender discrimination lawsuit against NIKE is so significant. *Vox.* https://www.vox.com/2018/8/15/17683484/nike-women-gender-pay-discrimination-lawsuit
Florsheim, L. (2021, August 30). The Surprising way NIKE CEO John Donahoe starts his day. *Wall Street Journal Magazine.* https://www.wsj.com/articles/the-surprising-way-nike-ceo-john-donahoe-starts-his-day-11630326553
GBDH Legal. (2018, August 9). Cahill *et al*. v. NIKE, Inc. https://gbdhlegal.com/wp-content/uploads/Class-and-Collective-Action-Allegation-Complaint_Nike_Dkt-1.pdf
Germano, S. (2018, March 15). NIKE investigates workplace complaints, says No. 2 executive resigns. *Wall Street Journal*. https://www.wsj.com/articles/nike-investigates-workplace-complaints-says-no-2-executive-resigns-1521153597
Germano, S. (2020, July 27). NIKE diversity chief leaves after two years in role. *Financial Times.* https://www.ft.com/content/d294e62e-21e1-40af-8774-0ff354fbf4a5
Gray, A. (2019, October 25). John Donahoe, the tech chief aiming to revamp NIKE. *The Financial Times*. https://www.ft.com/content/350b03a0-f6fd-11e9-a79c-bc9acae3b654
Gray, J. (2018, April 29). FKA Twigs' VaporMax commercial was too much for NIKE. *Yahoo News.* https://ca.news.yahoo.com/fka-twigs-vapormax-commercial-too-205254006.html
Green, D. (2018, April 30). NIKE reportedly spent millions on a canceled ad that featured men in sports bras and a woman pole dancing. *Business Insider.* https://www.businessinsider.com/nike-cancels-racy-fka-twigs-ad-report-2018-4

GWU. (2020, November 5). Equity vs. Equality: What's the Difference? Online Public Health. *George Washington University*. https://onlinepublichealth.gwu.edu/resources/equity-vs-equality/.
Hentze, I. & Tyus, R. (2021, August 12). Discrimination and harassment in the workplace. *National Conference on State Legislators.* https://www.ncsl.org/research/labor-and-employment/employment-discrimination.aspx
Hess, A. (2018, March 20). How an informal survey of women at NIKE led two top executives to resign. *CNBC*. https://www.cnbc.com/2018/03/20/a-survey-among-women-at-nike-led-two-top-executives-to-resign.html
Huebsch, T. (2018, March 20). Longtime Nike executives exit amid workplace complaints. *Running Magazine.* https://runningmagazine.ca/the-scene/nike-veteran-executives-departures/
Hsu, T. (2018, August 10). Ex-employees sue NIKE, alleging gender discrimination. *New York Times*. https://www.nytimes.com/2018/08/10/business/nike-discrimination-class-action-lawsuit.html
JDSupra. (2020, October 30). Federal court provides 5-step roadmap for ensuring your pay equity audits are confidential. https://www.jdsupra.com/legalnews/federal-court-provides-5-step-roadmap-70106/
Johnson, A. (2021). Amelia on the golf course. Personal photo.
Jones, R. (2018, September 5). Nike sued by shareholders over sexual harassment allegations. *Sole Collector.* https://solecollector.com/news/2018/09/nike-sued-sharholders-sexual-harrassment-allegations
Kish, M. (2017, May 24). NIKE Oregon employment climbs above 12,000. *Portland Business Journal.* https://www.bizjournals.com/portland/news/2017/05/24/nike-oregon-employment-climbs-above-12000.html
Kish, M. (2019a, April 17). 'Boys' club' lawsuit against Nike's board of directors dismissed. *Portland Business Journal.* https://www.bizjournals.com/bizwomen/news/latest-news/2019/04/boys-club-lawsuit-against-nikes-board-of-directors.html?page=all
Kish, M. (2019b, May 16). Shareholders refile lawsuit against NIKE's board of directors. *Portland Business Journal.* https://www.bizjournals.com/portland/news/2019/05/16/shareholders-refile-lawsuit-against-nikes-board-of.html
Knecht, B. (2018, September 5). How the Lawsuit against Nike represents women's fight for equality in the sports industry. *Front Office Sports.* https://frontofficesports.com/nike-equality-sports-industry/
Manning, J. (2020, February 18). NIKE's new CEO launches executive shake-up: Who's in and who's out? *The Oregonian.* https://www.oregonlive.com/business/2020/02/new-nike-ceo-shakes-up-executive-suite.html
Manning, J. (2020b, November 18). Courts reject NIKE's effort to keep executives' info secret in discrimination suit. *The Oregonian.* https://www.oregonlive.com/business/2020/11/courts-reject-nikes-effort-to-keep-executives-info-secret-in-discrimination-suit.html
MarketWatch. (2020, July 22). NIKE announces senior leadership changes to unlock future growth through the consumer direct acceleration. https://www.marketwatch.com/press-release/nike-announces-senior-leadership-changes-to-unlock-future-growth-through-the-consumer-direct-acceleration-2020-07-22
McDonald, S. (2019, May 17). Nike shareholders refile lawsuit alleging top execs knew about 'Hostile Work Environment'. *Footwear News.* https://footwearnews.com/2019/business/legal-news/nike-shareholder-lawsuit-1202783016/
McLaughlin, K. (2021, October 13). Runner Mary Cain is suing NIKE and her former coach for $20 million over her claims she was abused at a now-closed running program. *Insider*. https://www.insider.com/runner-mary-cain-suing-nike-former-coach-alberto-salazar-2021-10
Molitor, B. (2021). Complaint. *FindLaw*. https://dictionary.findlaw.com/definition/complaint.html
Morrison, E. (2018, May 15). NIKE sees executive departures in harassment reckoning. *National Public Radio*. https://www.npr.org/2018/05/15/610445057/nike-sees-executive-departures-in-harassment-**reckoning**
Neeley, L. (2019, December 18). Nike: 'Do the right thing.' Workers.org. https://www.workers.org/2019/12/44976/
NIKE. (n.d.-a) About NIKE. https://about.nike.com/
NIKE. (n.d.-b). Executives. https://about.nike.com/pages/executives
NIKE. (n.d.-c). Jobs. https://jobs.nike.com
NIKE. (n.d.-d) Investors. https://investors.nike.com/investors/corporate-governance/default.aspx
NIKE. (n.d.-e). Until We All Win. https://www.nike.com/until-we-all-win
NIKE. (2018). *Investor News.* https://investors.nike.com/investors/news-events-and-reports/investor-news/investor-news-details/2018/Cathleen-Benko-Joins-NIKE-Inc-Board-of-Directors/default.aspx
North, A. (2019, October 4). 7 positive changes that have come from the #MeToo movement. *Vox.* https://www.vox.com/identities/2019/10/4/20852639/me-too-movement-sexual-harassment-law-2019

Palmieri, J.E. (2021, October 6). NIKE says it's doubling down on internal racial, gender goals as it votes down shareholder proposals on diversity. *Women's Wear Daily.* https://wwd.com/fashion-news/activewear/nike-annual-shareholders-meeting-diversity-1234967560/

Phillips, F. (2019, May 22). NIKE Workers May Pursue Class Sex Discrimination Claims, Court Confirms. *Lexology*. https://www.lexology.com/library/detail.aspx?g=f155d834-c2f2-482a-9bea-77bc95e4950e

Reuters. (2018, May 11). TIMELINE-Nike's high-profile executive departures amid probe. https://www.reuters.com/article/idUKL3N1SH63S

Robinson, B. (2021, February 15). Gender discrimination is still alive and well in the workplace in 2021. *Forbes.* https://www.forbes.com/sites/bryanrobinson/2021/02/15/gender-discrimination-is-still-alive-and-well-in-the-workplace-in-2021/?sh=6c0b0a357f1c

Rogoway, M. (2018, March 15). NIKE shakeup follows 'conduct inconsistent with Nike's core values. *Oregon Live*. https://www.oregonlive.com/business/2018/03/nike_shakeup_amid_conduct_inco.html#incart_river_index

Rogoway, M. (2018b, March 16). NIKE sheds second top executive amid inquiry into workplace 'behavior.' *Oregon Live*. https://www.oregonlive.com/business/2018/03/nike_sheds_second_top_executiv.html

Russo, J. (2020, October 9). Cahill v. NIKE, Inc. https://casetext.com/case/cahill-v-nike-inc-3

Salpini, C. (2020, July 29). NIKE names new diversity chief. *Retail Dive.* https://www.retaildive.com/news/nike-names-new-diversity-chief/582508/

Salpini, C. (2018, August 15). Why a lawsuit against NIKE could change everything — or nothing. *Retail Dive.* https://www.retaildive.com/news/why-a-lawsuit-against-nike-could-change-everything-or-nothing/530100/.

SBJ. (2018, April 29). NIKE reviewing HR operations, policies amid workplace complaints. *Sports Business Journal.* https://www.sportsbusinessjournal.com/Daily/Issues/2018/04/30/Sports-in-Society/Nike.aspx

Scribd. (2018a, August 9). Cahill *et al* v. NIKE, Inc. https://www.scribd.com/document/385901280/cahill-et-al-v-nike-inc#from_embed

Scribd. (2018b, November 30) Nike unredacted shareholder lawsuit. https://www.scribd.com/document/394504216/Nike-unredacted-shareholder-lawsuit

Segran, E. (2018, April 30) How NIKE's toxic workplace hurts its bottom line. *Fast Company.* https://www.fastcompany.com/40565581/nikes-sexist-workplace-was-bad-for-customers-too.

Smith, J. (2019, February 25). New Nike commercial celebrates women in sports breaking down barriers. *Runner's World Magazine.* https://www.runnersworld.com/news/a26514295/nike-commercial-dream-crazier-just-do-it/

SHRM. (n.d.) Introduction to the human resources discipline of diversity, equity and inclusion. https://www.shrm.org/resourcesandtools/tools-and-samples/toolkits/pages/introdiversity.aspx

Thomas, L. (2019, October 22). Nike CEO Mark Parker to step down—ex-eBay CEO John Donahoe to replace him. CNBC. https://www.cnbc.com/2019/10/22/nike-ceo-mark-parker-to-step-down-john-donahoe-to-replace-him-in-2020.html

Thomas, L. (2020, June 5). Read NIKE CEO John Donahoe's note to employees on racism: We must 'get our own house in order. *CNBC*. https://www.cnbc.com/2020/06/05/nike-ceo-note-to-workers-on-racism-must-get-our-own-house-in-order.html

Williams, J. (2021, December 7). We need real metrics, not heartfelt conversations, to tackle workplace diversity. *Fortune Magazine*. https://fortune.com/2021/12/07/metrics-diversity-inclusion-workplace-careers-joan-williams/

Zetlin, M. (2018, April 30). Women at NIKE fight hostile culture with a simple but effective tool that you can use too. *Inc. Magazine*. https://www.inc.com/minda-zetlin/nike-sexual-harassment-survey-gender-bias-executives-fired-trevor-edwards.html

HYUNDAI MOTORS: MAJOR PLAYER IN GLOBAL AUTOMOBILE MANUFACTURING - LUCK OR DELIBERATE MOVES?

ARTHUR KRAFT
Chapman University

JOHN KRAFT
University of Florida

In 1970, South Korea's GDP per capita was $260 and Ghana's GDP per capita was $250. Fast forward to fifty years later: South Korea's GDP per capita was $32,000 and Ghana's GDP per capita was $1,786. South Korea's approach to encourage participation in international trade turned the country into the world's eleventh largest economy. Ghana followed a policy of self-sufficiency discouraging imports and exports (Hill & Hult 2020).

Not only had Hyundai Motors benefitted from the policies of its country of origin, but like German and Japanese automobile manufactures after World War II, it benefitted from an environment with significant impact on the company's global competitiveness. Four attributes were present: a skilled labor pool, local demand conditions, related and supporting industries, and capable competitors. These attributes contributed to the eventual growth of Hyundai into a global competitor (Porter 1990).

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. 8, 2023***, a publication of the Western Casewriters Association. Contact Arthur Kraft, Chapman University, One University Drive, Orange, CA, 92866, akraft@chapman.edu.

Introduction

In 1967, Hyundai Motors was established (Chung 2001). Hyundai branded vehicles were manufactured by Hyundai Motor Company, which along with Kia formed the Hyundai Kia Automotive Group. Headquartered in Seoul, South Korea, Hyundai operated the world's largest integrated automobile manufacturing facility in Ulsan with the capability of producing 1.6 million units annually (Taylor III 2010). The company's global workforce included 75,000 employees. Hyundai Motor Company maintained manufacturing facilities in 10 countries, along vehicles assembly plants owned by local companies in several countries. Hyundai vehicles were sold in 193 countries through 6,000 dealerships and showrooms. Hyundai, together with Kia, was the world's fifth-largest automaker. In 2012, Hyundai had global sales of over 4.4 million vehicles. Popular models included the Sonata and Elantra mid-sized sedans (Hyundai Global News 2013).

Hyundai had continued to improve the quality of its vehicles by improving performance and reliability. Emphasis was placed on design and engineering to achieve the desired results. This effort raised the overall profile of Hyundai relative to other vehicle manufacturers (Exhibit 1).

Exhibit 1. Ward's 2009 10 Best Engines Winner

Source: WARD'S, December 5, 2008, Ward's 2009 10 Best Engines Winners, WARD'S

The Winners for 2008 (Engine and Tested Vehicle):
* Audi AG: 2.0L TFSI turbocharged DOHC I-4 (A4 Avant)
* BMW AG: 3.0L turbocharged DOHC I-6 (135i Coupe)
* BMW AG: 3.0L DOHC I-6 Turbodiesel (335d)
* Chrysler LLC: 5.7L Hemi OHV V-8 (Dodge Ram/Challenger R/T)
* Ford Motor Co.: 2.5L DOHC I-4 HEV (Escape Hybrid)
* General Motors Corp.: 3.6L DOHC V-6 (Cadillac CTS)
* Honda Motor Co. Ltd.: 3.5L SOHC V-6 (Accord Coupe)
* Hyundai Motor Co. Ltd.: 4.6L DOHC V-8 (Genesis)
* Toyota Motor Corp.: 3.5L DOHC V-6 (Lexus IS 350)
* Volkswagen AG: 2.0L SOHC I-4 Turbodiesel (Jetta TDI)

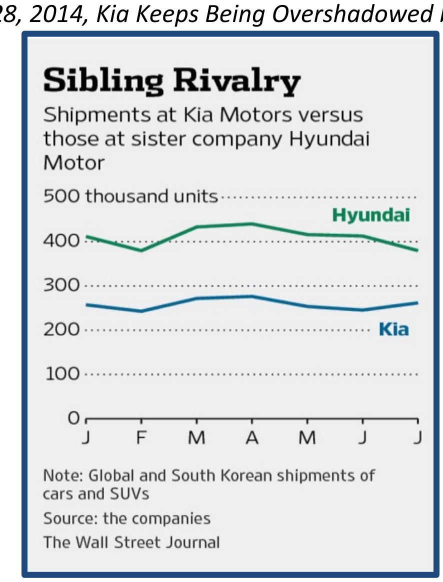
One analyst warned that Hyundai was putting too much pressure on suppliers to cut costs, which could undermine a push to greater quality. Hyundai also faced challenges from the rising value of the S. Korean won against the dollar. Hyundai still produced almost 50 per cent of its vehicles in South Korea and depended on local parts and steel, although only 18 per cent of its final sales were in Korea (Oliver 2011).

Hyundai had begun to emphasize styling; it adopted a new design approach called *"Fluidic Sculpture."* The new design included the current-generation Sonata and the next *Genesis*, launched in 2015. It started competing with exclusive brands such as the *BMW 7-Series* and *Mercedes S-Class*, when it launched an American version of its *Equus* premium-luxury sedan in 2009 (Economist 2013).

There were a variety of reasons why the Koreans moved up market. For one thing, luxury vehicles provided significantly higher margins than did budget models, where there was more competition. There was also the issue of image (Exhibit 2). The original *Genesis* helped change the minds of buyers who had long dismissed the Hyundai brand (Economist 2013).

Exhibit 2. Hyundai and Kia Sales

Source: Nam, In-Soo, August 28, 2014, Kia Keeps Being Overshadowed by Hyundai. Wall Street Journal.



Genesis

Genesis Motor, LLC, was the luxury vehicle division of Hyundai Motor Company (CNET 2015). *Genesis* brand was announced as an independent division on November 4, 2015, with the *Genesis G90* launched on December 9, 2015 (Kim 2015). In 2015, Hyundai made *Genesis* a stand-alone brand (Yahoo! 2015).

Hyundai's marketing emphasized a lower price compared with luxury vehicles made by BMW, Lexus, and others. *Genesis* had a good start (Exhibit 3). The industry was impressed. *Genesis* was named North American Car of the Year, overcoming a crowded field that included the *Audi A4*, *Jaguar XF* and *Cadillac CTS-V* (Economist 2009).

Exhibit 3. Top 8 Hyundai and Genesis Production by Country, 2021

Source: Hyundai Motor Company, October 4, 2020, Sales Performance

Rank	Country	Vehicle production
1	South Korea	1,646,888
2	India	635,413
3	China	360,565
4	United States	288,967
5	Czech Republic	275,620
6	Russia	235,157
7	Brazil	188,349
8	Turkey	161,500

Hyundai's Image

In 1998, Hyundai started to overhaul its image to establish itself as a world-class brand. Hyundai Motor Group invested heavily in the quality, design, and manufacturing. It added a 10-year or 100,000-mile warranty to cars sold in the United States and launched an aggressive marketing campaign. Hyundai consistently ranked among world's top-valued brands (Exhibit 4).

Exhibit 4. 2017 Automotive Top 10 Brands (Interbrand)

Source: Hyundainews.com, September 26, 2017

Rank, Company / Brand Value ($bn)
1. Toyota / 50.3
2. Mercedes-Benz / 47.8
3. BMW / 41.5
4. Honda / 22.7
5. Ford / 13.6
6. Hyundai Motor / 13.2
7. Audi / 12.0
8. Nissan / 11.5
9. Volkswagen / 11.5
10. Porsche / 10.1

Changing Manufacturing

Hyundai had reduced its dependence upon direct labor by raising levels of automation and information technology in the production process. Even though Hyundai had been anxious about building a U.S. plant, the outcome was a success. Hyundai's production model was easily transferable to other countries; because it depended less on production workers than did the Japanese model, it was easier to transfer. To recruit and train American workers was relatively easy for Hyundai, because its production model did not require high skill levels nor active participation (Hyung 2010).

Hyundai's U.S. transplant surpassed the performance of the original plants in South Korea within two years, because it benefitted from the flexibility of automated production facilities and a labor market in Alabama that did not have militant unions. Hyundai had been rapidly increasing overseas production not only in European countries, such as Slovakia and the Czech Republic, but also in developing countries, such as Brazil and Russia. (Hyung 2010).

Hyundai Localization Strategy

Hyundai Motors offered tailored models to meet local needs in markets such as Russia and India (Jung-a 2012). Hyundai's *Solaris* compact car and its *Eon* economy car sold more than 10,000 units per month in Russia and India each. The *Solaris* was Hyundai's strategic model targeted at the Russian market, with many specialized features that suited the long and bitterly cold Russian winter, road conditions, and driving habits. The car became the best-selling imported car in Russia. Hyundai was the second-largest imported carmaker with an 8.9 per cent market share of the Russian market (Jung-a 2012).

In India, Hyundai was the second-biggest seller of cars with a 20 per cent market share as it produced cars at two plants to meet the special needs of Indian drivers. Its entry-level *Eon* model became the country's best-selling car. Hyundai had slashed the price of the car, which was built on a completely new platform made for the Indian market. While Hyundai cut prices, it was also offering design and interior fixtures aimed at attracting customers (Jung-a 2012). Localization became ever more important for the carmaker to achieve its goals as it sought to make up for stalled sales growth in advanced markets with strong sales in emerging markets that still boasted relatively upbeat economic prospects (Jung-a 2012).

Hyundai Enters the United States

Hyundai entered the United States in 1986. It focused on first-time car buyers who were unable to afford value-equipped cars. Hyundai responded with its *Excel* subcompact model. Sales were 168,882 vehicles, an industry record for an import car distributor in its first year. Hyundai sales continued to soar, reaching a record of 263,610 units (Hyundai Motor Company 2020).

Initially, the *Excel* was popular, but its faults became apparent as cost-cutting measures caused reliability to suffer. With an increasingly poor reputation for quality, sales plummeted. In response, Hyundai began investing heavily in the quality, design, manufacturing, and long-term research of its vehicles. The company added free maintenance for the first 2 years or 24,000 miles for all its new cars sold, starting with the 1992 model year. It also added a 10-year or 100,000-mile powertrain warranty (known as the *Hyundai Advantage*) to its vehicles sold in the United States (Hyundai Motor Company 2012).

By 2004, sales had dramatically increased, and the reputation of Hyundai cars improved (Hyundai Motor Company 2012). In 2004, Hyundai tied with Honda for initial brand quality in a survey/study from J.D. Power and Associates. Hyundai was ranked second in the industry, behind Toyota, for initial vehicle quality. Hyundai continued this tradition as it placed third overall in J.D. Power's 2006 Initial Quality Survey, behind Porsche and Lexus (AutoWeek Magazine 2006). Hyundai completed a new manufacturing facility in Montgomery, Alabama in 2004 at a cost of $1.7 billion. Production started in May 2005. It employed more than 3,000 workers in 2012 (Hyundai Motor Company 2012).

The last time the Hyundai Motor Group opened a new plant in the U.S. was in 2009. Hyundai and Kia had the goal to be among the U.S.'s top three EV providers by 2026 (Felton 2022).

Hyundai in China

Hyundai Motor Company (HMC) established a joint venture company with Beijing Automotive to build a car plant in China. HMC spent USD $250 million to build a 50-50 joint venture factory for passenger cars, to be called Beijing-Hyundai Motor Company in China. Production began with Hyundai's *EF Sonata* model and in due course the *Elantra XD* was added. Hyundai Motors and Beijing Automotive expected the Chinese auto market to expand dramatically following China's entry into the World Trade Organization (Hyundainews.com 2002).

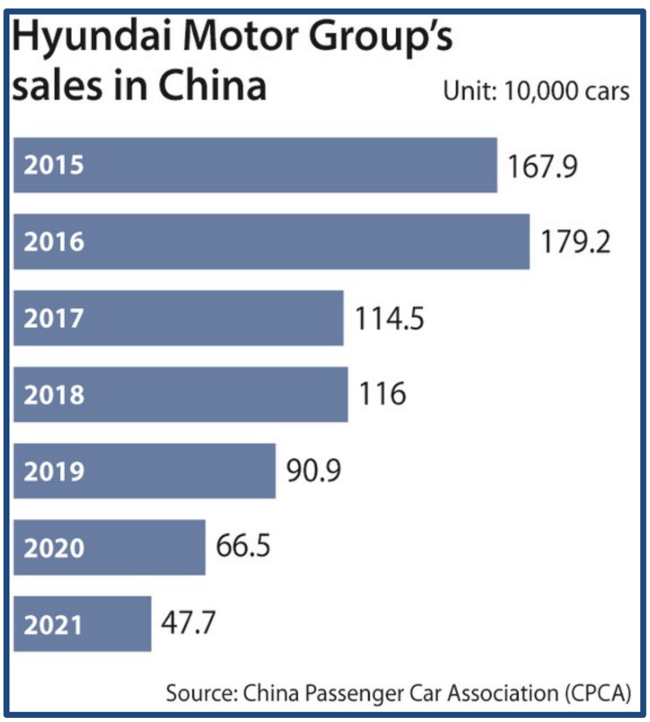
Hyundai Motors and Beijing Automotive operated five plants in China (Business Korea 2019).

In October 2010, Hyundai signed an agreement with Sichuan Nanjun Automobile to set up a commercial vehicle joint venture, Sichuan Hyundai Motor Co. Ltd (ChinaAutoWeb.com 2010). Hyundai Motor Group achieved record-breaking sales in the United States and Europe while floundering in China. Its average monthly sales were 39,700 units, less than a third of its average in 2016 (Exhibit 6). Its market share in China was 2.7 percent, 12th among carmakers. In 2011 it had 6 percent of the market, and it was No. 3 (Korea Joongang Daily 2022).

Hyundai's decline started in 2017 when South Korea decided to deploy the U.S.-led Terminal High Altitude Area Defense (Thaad) antimissile system despite very clear and strong objections from Beijing. China reacted with unabashed economic retaliations against S. Korea and its companies. It encouraged a boycott of Korean products, ranging from cosmetics to cars. Hyundai Motor Group sold 1.8 million units in 2016 and fell by 36 percent the next year (Exhibit 5). Except for a slight rebound in 2018, sales never recovered (Korea Joongang Daily 2022).

Exhibit 5. Hyundai Motor Group's Sales in China

Source: Korea Joongang Daily, January 20, 2022, Hyundai Motor tries U-turn in China strategy



Hyundai has been looking for a strategy to win back Chinese customers (Korea Joongang Daily 2022). After years of weak sales, Hyundai reorganized its Chinese operations in 2019 and suspended plants and production of compact models to enhance profitability. The shrinking sales in China were in contrast to its solid performance in the United States and Europe with its premium brand *Genesis* and its competitive SUV models (Korea Bizwire 2021).

Hyundai vowed to take steps to shift focus from affordable models tailored to the Chinese market to new, luxury models and zero-emission vehicles. It planned to launch more than 20 electric models in China by 2030, up from the current eight, to pit itself against *Tesla* and other established automakers that were speeding up their EV adoption (Korea Bizwire 2021). To tap into the growing high-end Chinese market, Hyundai debuted its luxury brand *Genesis* and prepared to launch the flagship *G80* sedan and *GV80 SUV*. The automotive group pinned high hopes on zero-emission vehicles, as Beijing vowed to phase out the internal combustion engine vehicles by 2035 (Korea Bizwire 2021).

In addition to EVs, Hyundai made inroads into the market for fuel cell electric vehicles (FCEVs) running on hydrogen in China, as the Chinese government aims to provide 1 million hydrogen-powered vehicles by 2035. Hyundai planned to build its first overseas hydrogen fuel-cell systems plant in China to start production in 2023 (Korea Bizwire 2021).

The reasons for Hyundai and Kia's sluggish performance in China were complex. Many critics had pointed out that Hyundai had failed to keep up with rapidly changing Chinese consumers' tastes. (Hyun-bin 2022).

Hyundai in Japan

Hyundai announced on February 9, 2022, that it was re-entering the Japanese market after an absence of more than12 years. Like many foreign automakers, Hyundai had struggled with

Japan's high retail costs which it was unable to offset with sales volume due in part to consumer *"preferences"* for local brands. (Just Auto 2022).

This time around, Hyundai had a radically new strategy. It sold its vehicles online exclusively. This reduced its retail costs dramatically. It was banking on the rising popularity of e-commerce in Japan to grow its presence in the market. *Tesla* already employed a similar strategy. Hyundai used public events and venues such as shopping malls to carry out promotional activities and to help establish customer relationships. It also teamed up with local car-sharing company Anyca to sell its vehicles (Just Auto 2022).

The automaker, through its local subsidiary Hyundai Mobility Japan, focused exclusively on electric vehicles (EVs). This segment had been undersupplied in Japan, with the government yet to provide significant sales incentives to EV buyers (Just Auto 2022).

Hyundai in Russia

In the 2000s, automakers expected Russia to become a major automotive market and hub to boost business in international markets, including Europe. But instability in the country and a stagnant economy, among other factors, led the market to peak at only 2.96-million-unit sales in 2008 (Wayland 2022).

New U.S. sanctions and Moscow's invasion of the Ukraine had a wide-ranging impact on the already constrained automotive global supply chain, but only a few automakers have notable exposure in Russia (Wayland 2022). France-based Renault Group, which has a controlling stake in Russian automaker AvtoVAZ, accounted for 39.5% of the country's vehicle production, followed by Hyundai Group at 27.2%. Volkswagen had a 12.2% share, according to research firm IHS Markit, while Toyota Motor followed at 5.5%. Others were in low single digits (Wayland 2022).

Hyundai Motor Group sales in Russia plunged by 68% to 11,245 units in March from 35,389 units a year earlier. The group suspended operations at its assembly plant in St Petersburg after component supplies were disrupted by Russia's war with Ukraine (Wayland 2022).

Hyundai in India

Hyundai made its first international foreign direct investment in 1996, when Hyundai Motor India Limited (HMIL) was established in India with a production plant in Irungattukottai near Chennai, India (Business.mapsofindia.com 2010).

Once Hyundai entered the Indian market, things changed. Hyundai started focusing on quality, customer care and service. It talked about its technology like multi-point fuel injection (MPFI) which emitted lower emissions and met Euro norms (Telang and Souvik 2016). The Korean giant gained immense popularity in Indian market, making it the second-largest automobile manufacturer in India, within a few months of its inception (Yadav 2021). Hyundai tapped the premium sedan segment with its Hyundai *Sonata*. It managed to attract attention due to its resemblance to *Jaguar* models. In addition, *Sonata Gold* was one of the most luxurious cars on sale in India at the time of its launch. The company has held many firsts in the Indian market, such as the *Kona Electric* being the first zero-emission SUV. Hyundai Motor Co. and its auto-parts suppliers invested as much as $1.47 billion in India for construction of its second car-manufacturing plant and an engine and transmission facility (Choudhury 2006). Hyundai invested $911 million, while the auto parts makers invested the remaining $562 million. The new factory doubled Hyundai's car-manufacturing capacity in India to 600,000 units when it opened in October 2007 (Choudhury 2006).

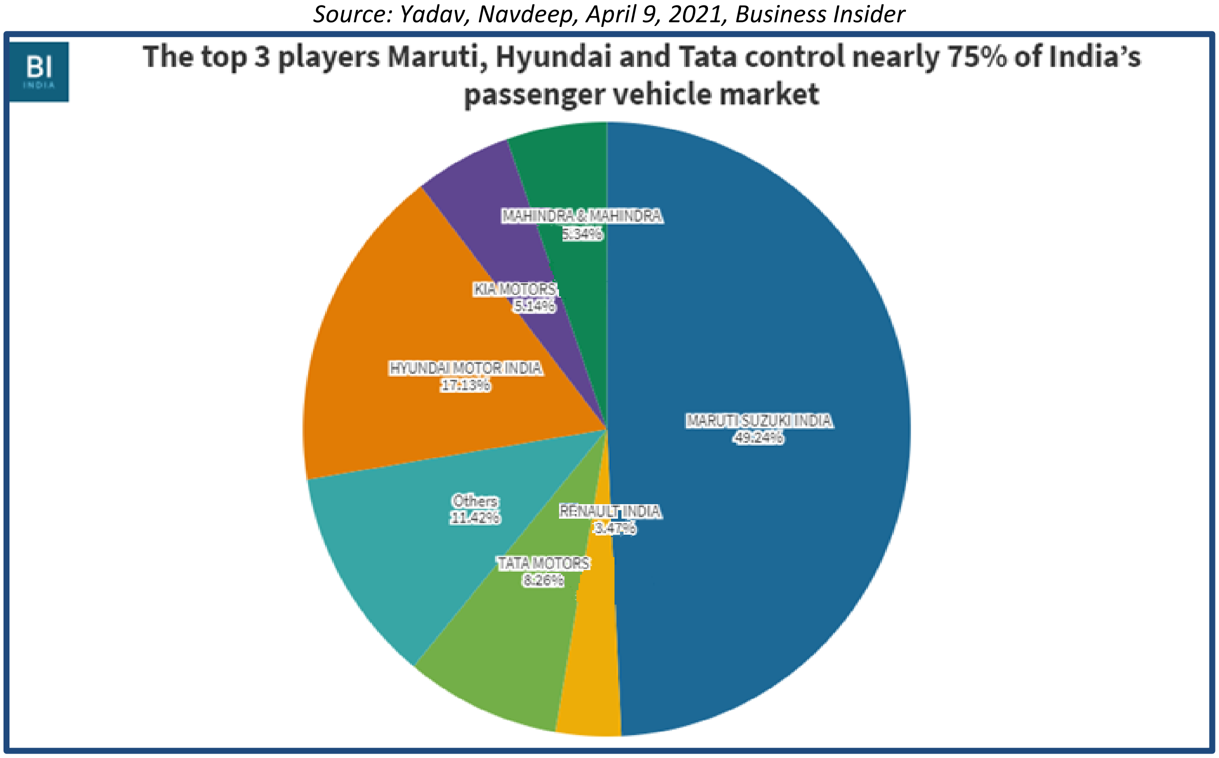
Hyundai entered India because it was the world's fifth-largest automobile market, a step toward becoming a leading global car manufacturer. India continued to be one of the world's most promising markets since an increasing number of families could afford cars as incomes rose. The Indian market remained attractive due to its healthy growth rates (Kala 2017).

Since then, Hyundai has maintained the second-largest share of the pie in India after *Maruti Suzuki*. Hyundai held a 17% market share as of January 2021 in India. It was also the largest car exporter in the country. Hyundai - through its Indian subsidiary - exported to more than 88 countries across Africa, Middle East, Latin America, Australia and the Asia-Pacific (Exhibit 6).

In December 2020, Hyundai recorded its highest production output in a single month of 71,000 units. The company had been strengthening its portfolio in India with the addition of new hatchbacks and SUVs such as *Grand i10 Nios*, *Creta*, *i20*, which posted strong sales volumes (Yadav 2021).

Exhibit 6. Top Players in the Indian Automobile Market

Source: Yadav, Navdeep, April 9, 2021, Business Insider



Hyundai in Europe

Hyundai Motor decided to build a €1bn ($1.2bn) plant in the Czech Republic to accelerate the Korean carmaker's push into Europe. The move underscored Hyundai's ambitions to join the top ranks of global automakers by diversifying its production bases to overseas markets. It also demonstrated the attractiveness of central and eastern Europe as a production location, with *Kia*, Hyundai's low-price affiliate, already building a factory in Slovakia (Jung-a & Krosnar 2006).

The Czech Republic plant would have an annual production capacity of 300,000 units. Hyundai expected the new plant to help reduce production costs, foreign exchange risks, and avoid any trade disputes with Europe. It was estimated that Czech labor costs were just one-tenth of those in South Korea. Hyundai was suffering from a rapid increase in wages because of frequent industrial action. Partial strikes by its militant labor union cost Hyundai Won 591bn ($566m) in lost production this year (Jung-a & Krosnar 2006).

Hyundai and its affiliate Kia Motors grew sales rapidly in Europe, their second-largest overseas market after the U.S. It planned to develop a new model, suitable for its European buyers, at the Czech plant. Central Europe had emerged as a key driving force in the world's automotive sector (Jung-a & Krosnar 2006).

The Korean brands attributed their buoyantly counter cyclical businesses to lean business models and desirable new cars such as the Hyundai *i30 hatchback* and *Kia Sportage crossover* vehicle that matched the preferences of potential customers (Reed 2012).

Hyundai Scandals

Corruption? In 2006, the South Korean government initiated an investigation of Chung Mong Koo's practices as head of Hyundai. The government suspected him of corruption. On April 28, 2006, Chung was arrested and charged for embezzlement of 100 billion South Korean won (USD $106 million) (Sang-hun 2006). As a result, Hyundai Vice Chairman and CEO, Kim Dong-jin, replaced him as head of the company.

Unfair competition? South Korean regulators began procedures in September 2006 to determine whether Hyundai Motors had violated competition rules by allegedly attempting to pressure parts suppliers to cut prices. The Korean Fair-Trade Commission (FTC) had been studying allegations that the country's largest carmaker attempted to unfairly pass the burden of higher raw material prices and the stronger local currency onto its business partners using its strong bargaining power (Jung-a 2006). FTC officials conducted onsite investigations into Hyundai and its parts suppliers in November and February (Jung-a 2006).

To ease such criticism, Hyundai pledged to pay its 1,800 suppliers in cash for the rest of 2022 at a cost of about Won 3,300 bn and to provide Won 2,600 bn in funding for the suppliers' research and development activities over the next four years. Securing support from the parts suppliers was crucial for Hyundai to fulfill its ambition to become one of the world's top five automakers (Jung-a 2006). Prosecutors investigated allegations that Hyundai created *"slush funds"* to lobby politicians for business favors, and that Mr. Chung tried to transfer management control to his son by illegal means (Jung-a 2006).

Overstated Fuel Economy? In 2014, the company was issued $350 million in penalties by the U.S. government. It agreed to pay $395 million in 2013 to resolve claims from vehicles owners, and agreed to pay $41.2 million to cover the *"investigative costs"* of 33 U.S, state Attorneys General (Shepardson 2016).

Hyundai and Kia agreed to settle claims that they had overstated fuel economy statistics for almost 1.2m vehicles sold in the U.S. for a record $300 million (Guthrie 2014). This was the largest civil penalty in the history of the U.S, Clean Air Act; Hyundai also forfeited greenhouse gas emission credits with an estimated value of more than $200 million (Guthrie 2014).

Vehicle Recalls? South Korean prosecutors raided the headquarters of Hyundai Motors to look into the way the South Korean automaker handled vehicle recalls over engine defects (Jung-a 2019). The raid came after a South Korean civic group filed a complaint in 2017 that the company had delayed recalls despite being aware of the engine defects. That year, Hyundai undertook massive recalls in South Korea and the U.S. but denied any wrongdoing. Seoul's transport ministry asked state prosecutors to look into the case amid allegations that Hyundai tried to conceal engine defects. The ministry ordered a recall of 238,000 vehicles in the country in May 2017. The carmaker was also under investigation by U.S. safety regulators over the recall of nearly 1.7 million vehicles for engine defects (Jung-a 2019).

Insider Trading? In another scandal, Hyundai shares rose more than 20% after it confirmed early-stage discussions with Apple in January but subsequently fell back after the group said on February 8, 2021 that it was no longer in talks with the U.S. tech giant. South Korea's financial regulators were examining allegations that Hyundai Motor executives traded on inside information about the company's talks with Apple on developing an autonomous electric car, according to people with knowledge of the situation (Financial Times 2021). After Hyundai announced the initial discussions, 12 Hyundai executives sold about 3,400 shares, worth about Won 833m ($753,000), according to Reuters calculations. The probe came at a critical time for Hyundai, which had been trying to build a presence in the autonomous vehicle market through tie-ups with foreign companies (Financial Times 2021).

Engines on Fire? Hyundai Motors asked the owners of nearly 500,000 vehicles in the U.S. to park their vehicles outside because of malfunctions causing engine compartments to catch on fire. The auto maker recalled the vehicles and warned that malfunctions in their anti-lock brake systems could cause an electrical short, increasing the risk of a fire when driving a car or when it is parked (Calfas 2022). The recall affected about 357,830 vehicles in the U.S. and a further 67,355 in Canada. Kia Motors America's recalled 126,747 vehicles. Dealers inspected and replaced the anti-lock brake system's multi-fuse to solve the issue without any charge to owners (Calfas 2022).

Research and Development

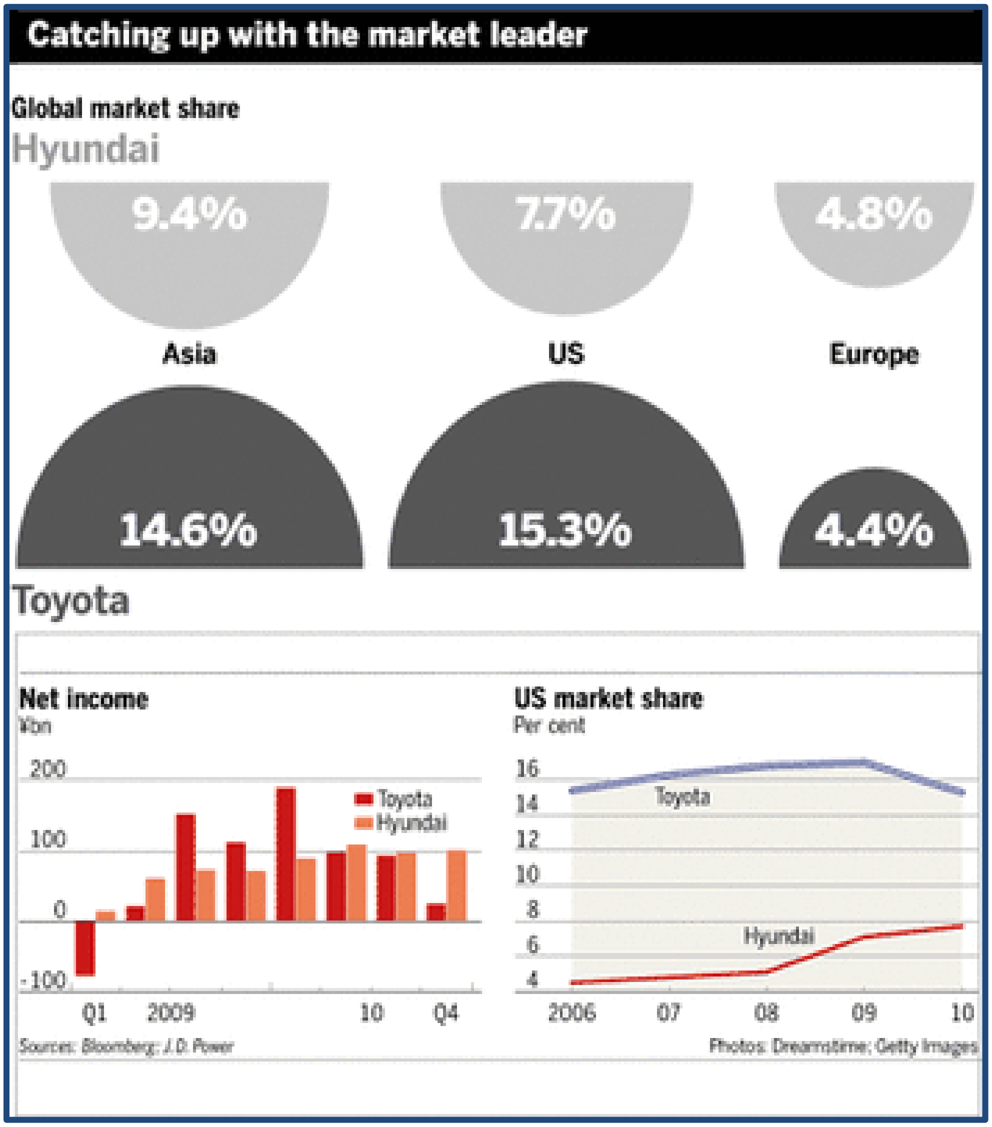
Hyundai had invested in research and development centers South Korea, Germany, Japan and India to improve quality. Additionally, a center in California developed designs for the United States (Worldwide.hyundai.com 2013). Hyundai established the Hyundai Design Center in Fountain Valley, California in 1990. The center moved to a new $30 million facility in Irvine, California in 2003. The facility also housed Hyundai America Technical Center, Inc, (HATC) a subsidiary responsible for all engineering activities in the U.S. for Hyundai. HATC moved to a new 200,000-square-foot (19,000 m2), $117 million headquarters in Superior Township, Michigan in 2005 (Worldwide.hyundai.com 2013).

Russia's technology company Yandex signed a deal with Hyundai Motor Group to develop self-driving car technologies, as the two scramble to make up ground on global rivals (Foy and Jung-a 2019). The race to build fully autonomous cars forced many traditional carmaker to team up with tech groups to share expertise and develop joint platforms. Many analysts saw this technology as the most critical issue that shaped the future of the car industry (Foy and Jung-a 2019). Yandex was looking to develop a self-driving control system that could be marketed to other vehicle manufacturers, taxi companies and car-sharing providers (Foy & Jung-a 2019).

Hyundai Motors needed its rivals to buy its hydrogen fuel cell system to spur global adoption of the technology and help it reach commercial scale as it became the latest group to overhaul its business model to survive rapid changes in the auto sector. The world's fifth-biggest carmaker by sales intended to spend $6.7 bn over 10 years to develop the technology, which it hoped would prove more popular than electric in replacing petrol and diesel vehicles (White & Jung 2019).

Exhibit 7. Hyundai Move to Quality

Source: Oliver, Christian, May 19, 2011, Hyundai accelerates in its move to quality, Financial Times.



Hyundai had poured billions of dollars into electric vehicles, and it was going further: it sold its whole fuel cell system, which converted stored hydrogen into electricity to power the vehicles' motors, rather than licensing its technology (White & Jung 2019).

The strategy seemed right - but the key was how much interest global carmakers showed in the hydrogen technology, and whether the related infrastructure would be built up in time. Critics pointed to the high cost and weak early sales for the first commercial hydrogen models (White & Jung 2019).

Hyundai's move upmarket in the past few years exposed it to fierce competition. It was late to understand the shift towards SUVs in Europe, America, and most recently China. Its *Genesis* brand had lagged in the highest-margin premium segment. Half of its production capacity in China was idle. Rising labor costs at home, where it produced 40% of output, crimped Hyundai's ability to compete on price (Economist 2019).

Mr. Cho, the firm's chief strategist, wanted to spend more on future technologies such as hydrogen fuel cells and loosely defined *"integrated mobility"* (car-sharing, autonomous vehicles and the like). Hyundai channeled only 3% of sales to research and development, compared with 6% at Volkswagen or Toyota's 4%, according to Bloomberg (Economist 2019). Hyundai and Ineos (the chemical company) struck a deal that could lead to the Korean carmaker buying hydrogen from the Ineos. In exchange, Ineos would purchase Hyundai's fuel cell technology for its audacious entry into the car industry, with its debut vehicle the *Grenadier*, an off roader based on the original *Land Rover Defender* (Campbell 2020).

The shift from gasoline engines to batteries and hydrogen power forced carmakers to set up new supply chains. For carmakers who planned to roll out hydrogen models, including Hyundai, Toyota and General Motors, securing a supply of the fuel for their models was key to generating interest in the nascent technology (Campbell 2020).

Hyundai already had several hydrogen cars on the market, including the *Nexo* sport utility vehicle, although sales have been tiny. The company wanted to produce 700,000 hydrogen fuel cell units by 2030. Installing hydrogen stations was more expensive than battery charging points, because of the need to keep the fuel at the right conditions, while producing it through a carbon-intensive process, which also undermined its green credentials (Campbell 2020).

Hyundai Motors planned to introduce its own electric car platform and battery charging systems, as it sought to gain a stronger toehold in vehicles powered by clean energies. Hyundai and Kia said the EV platform would help cut costs and expand the brands' EV line-ups. The automotive would unveil 23 new EV models over the next five years as it aimed to sell 1 million EVs a year (Jung-a 2020). The company said the EV platform would also help it cut the number of required components by 60 per cent and increase the driving range of vehicles by more than 20 per cent to about 500 km on a single charge. EVs made on the new platform would be able to charge up to 80 per cent capacity in 18 minutes (Jung-a 2020).

Carmakers around the world have invested billions of dollars improving their battery technology to improve safety and cut EV prices (Jung-a 2020). In June 2021, Hyundai Motor Group completed its acquisition of a controlling interest in the robotics firm, Boston Dynamics. Hyundai now had an 80% share of the company (CAR Magazine 2021).

Hyundai had almost 6 per cent of the world's electric vehicle market with plans to triple output of EVs to 560,000 by 2025 (Wall Street Journal 2021). Hyundai already sold battery-powered vehicles, but it hedged its low-carbon bets by developing hydrogen ones as well. Hyundai developed its own self-driving technology platform and had invested in more than 20 companies over the past five years, including a $4 bn joint venture with Dublin-based Aptiv. Hyundai planned to become the world's first automaker to power all its commercial vehicle models with fuel cell systems by 2028 as it sought to popularize hydrogen vehicles by cutting the cost of the technology (Jung-a 2021).

Hyundai Plans

Amid growing competition among car makers to position themselves for a low-carbon future, Hyundai Motor Group announced that it planned to invest a total of $16.5 billion over eight years to expand its production of electric vehicles in its home market. The plan was part of the auto group's target to capture 12% of the global EV market, as it planned to sell 3.23 million EVs a year worldwide (Jennings 2022).

Hyundai separately planned to build $5.5 billion electric vehicle and battery manufacturing facilities in the U.S. state of Georgia, part of a broader $10 billion investment in the giant American automotive market aimed at taking a lead over competitors. The factories had plans to start producing commercially in the first half of 2025 with annual capacity of 300,000 units. Hyundai Motor Group said EV sales reached 76,801 units in the first quarter of 2022, 73% higher than the same period in the previous year. The group said it anticipated making vehicles with performance and value that went *"beyond the competition."*

Hyundai took the spot at the first-ever *'Best Cars of the Year' 2021/2022* Awards. The *Hyundai IONIQ 5* and *Kia EV6* were chosen as joint world champions, beating new models from established premium brands including Audi and Porsche (Automotiveworld.com 2022).
The joint world champions were singled out for quality, innovation, design and state-of-the-art tech by a judging panel that featured global industry leaders from across the automotive spectrum.

Hyundai and Kia finished 2022 as one of the world's top five makers of EVs. The duo sold around 200,000 EVS – still well behind market leader Tesla, and also behind Volkswagen (Wilmot 2022).

Much of the Hyundai-Kia's success was due to excellent products at competitive prices available from investments made years ago. The *Hyundai Ioniq 5* and *Kia EV6* were both well-rated family cars with starting U.S. sticker prices around $41,000. (Wilmot 2022).

Hydrogen fuel cell cars, an alternative solution for battery-electric cars, had left everyone skeptical since the early beginning due to a variety of issues. Price of the car, overall energy efficiency, and lack of refueling infrastructure had been the three major issues. However, hydrogen fuel cell achieved new record level sales of 3,341 in 2022 (Exhibit 8), up 257% from the previous year (Lane 2022).

The growth in 2021 was associated mostly with the push from Toyota and Hyundai. The number of open retail hydrogen stations in California reached 48, just 5 more than in 2021. 12 new stations were under construction. Viability of fuel cell vehicles remained doubtful; with the tremendous progress of mainstream electric vehicles, was the race already be over?

Exhibit 8. 2021 U.S. Hydrogen Vehicle Sales

Source: Lane. Mark, February 5, 2022, US: Hydrogen Fuel Cell Car Sales Rebounded In 2021, insideeevs.com.

2021 US Hydrogen Vehicle Sales

(Mirai and NEXO sales as reported by the manufacturers):

Toyota Mirai - 2,629 (up 427% from 499)

Hyundai NEXO - 430 (up 107% from 208)

Other models - 282 (up 23% from 230)

Total: about 3,341 (up 257%, from 937)

Hyundai had experienced some up and down years, as can be seen in its financial statements. Nonetheless, it appeared to have a bright future. Its assets have grown continuously over the past four years from 1.4 percent to 11.8 percent (Exhibit 9). Profits had grown from $1.645 billion to $5.693 billion over the same period (Exhibit 10).

Exhibit 9. Hyundai Motors Financials

Source: Hyundai.com, 2021

Balance Sheet

(Unit: billion KRW)

Classification	2021	2020	2019	2018
Assets	233,946	209,344	194,512	180,656
Current assets	88,565	83,686	76,083	73,008
Non-current assets	145,381	125,658	118,429	107,648
Total liability	151,331	133,003	118,146	106,760
Debt	107,793	91,407	81,372	73,296
Shareholders' equity	82,616	76,341	76,366	73,896
Total asset growth	11.8%	7.6%	7.7%	1.4%

* Consolidated Financial Statements (K-IFRS)

Income Statement

(Unit: billion KRW)

Classification	2021	2020	2019	2018
Sales Revenue	117,611	103,998	105,746	96,813
Operating income	6,679	2,395	3,606	2,422
Income before income tax	7,960	2,093	4,164	2,530
Profit for the year	5,693	1,925	3,186	1,645
Sales growth	13.1%	-1.7%	9.2%	0.5%
Profit growth	195.8%	-39.6%	93.7%	-63.8%

* Consolidated Financial Statements (K-IFRS)

Financial Ratios

(Unit: %, KRW)

Classification	2021	2020	2019	2018
Liability to equity	183.2%	174.2%	154.7%	144.5%
Debt to equity	130.5%	119.7%	106.6%	99.2%
Return on sales	4.8%	1.9%	3.0%	1.7%
Basic EPS	18,979	5,454	11,310	5,632

* Consolidated Financial Statements (K-IFRS)

Exhibit 10. Kia Motors Financials

Source: Kia.com, 2021

Balance Sheet

(Unit: KRW Million)

	2021	2020	2019	2018	2017
Total Assets	66,849,997	60,490,443	55,344,798	51,786,605	52,294,438
· Current Assets	29,205,483	26,093,382	21,555,416	19,711,791	21,642,079
· Non-current Assets	37,644,514	34,397,061	33,789,382	32,074,814	30,652,359
Total Liabilities	31,937,441	30,598,771	26,366,660	24,543,141	25,433,261
Debt	9,343,877	10,166,716	6,465,157	6,681,798	8,749,833
· Short term	4,415,620	5,267,994	2,490,221	2,271,638	3,855,133
· Long term	4,928,257	4,898,722	3,974,936	4,410,160	4,894,700
Total Equity	34,912,556	29,891,672	28,978,138	27,243,464	26,861,177

* Consolidated Financial Statements (K-IFRS)

Income Statement

(Unit: KRW Million)

	2021	2020	2019	2018	2017
Revenue	69,862,366	59,168,096	58,145,959	54,169,813	53,535,680
Gross Profit	12,925,201	9,945,532	9,379,389	7,992,530	8,916,984
Operating Profit	5,065,685	2,066,457	2,009,680	1,157,475	662,226
Recurring Profit	6,393,781	1,841,358	2,531,104	1,468,644	1,140,053
Net Profit	4,760,311	1,487,585	1,826,659	1,155,943	968,018

* Consolidated Financial Statements (K-IFRS)

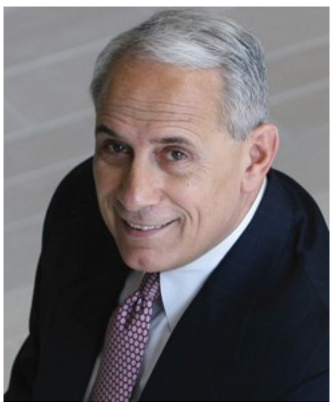
Financial Ratio

(Unit: KRW Won)

	2021	2020	2019	2018	2017
Liabilities to Equity Ratio	91.5	102.4	91.0	90.1	94.7
Debt to Equity Ratio	26.8	34.0	22.3	24.5	32.6
EPS (KRW Won)	11,874	3,710	4,556	2,883	2,414

* Consolidated Financial Statements (K-IFRS)

Arthur Kraft served as the Robert J. and Carolyn A. Waltos, Jr. Dean of the George L. Argyros School of Business and Economics at Chapman University from 2006.to 2012. He received his Ph.D. in economics in 1970 and a master degree in Economics from the State University of New York at Buffalo. He received his Bachelor of Science degree in mathematics *magna cum laude* from St. Bonaventure University. A native of Eden, N.Y., Kraft served as business school dean at Georgia Institute of Technology, Rutgers University, and West Virginia University before he joined DePaul University. He began his career in higher education at Ohio University. He also served as professor and associate Dean of the College of Business Administration at the University of Nebraska-Lincoln.



John Kraft is the John B. Hall Professor of Finance in the Warrington College of Business at the University of Florida. He previously was Dean of Business at the University of Florida and Arizona State University. He served on the Board of Directors of AACSB, Beta Gamma Sigma, GMAC, Greyhound Financial, KROY INC. and Citi Bank of Arizona. He began his career at the University of Florida. He was Associate Dean of Business at Florida, a Brookings Institution Economic Policy Fellow, and a program director at the National Science Foundation. Dr. Kraft has published and edited five books and published numerous articles and cases. He is a Bachelor of Sciences graduate in mathematics from St. Bonaventure University and a master's and Ph.D. graduate in Economics from the University of Pittsburgh.

References

Automotiveworld.com, January 24, 2022, Hyundai IONIQ 5 and Kia EV6 Crowned World Champions at the Inaugural 'Best Cars of the Year' Awards, Automotiveworld.com.

AutoWeek Magazine, August 6, 2006, Porsche, Hyundai score big gains in J.D. Power quality survey, AutoWeek Magazine.

Birmingham Business Journal, March 13, 2006, Kia to build $1.2 billion auto plant in West Point, Ga, Birmingham Business Journal.

Business Korea, July 30, 2019, Hyundai Motor Transforming Chongqing Factory into Electric Vehicle Plant, Business Korea

Calfas, Jennifer, February 9, 2022, Hyundai, Kia Recall Almost 500,000 Vehicles Because of Fire Risk, Wall Street Journal.

Campbell, Peter, November 23, 2020, Ineos and Hyundai strike hydrogen deal, Financial Times.

CAR Magazine. July 16, 2021, Hyundai Motor Group completes acquisition of Boston Dynamics robotics firm. CAR Magazine.

ChinaAutoWeb.com, November 9, 2010, Hyundai Picks Sichuan Nanjun for Commercial Vehicle Joint Venture, ChinaAutoWeb.com.

Choudhury, Santanu, September 25, 2006, Hyundai Aims to Increase Capacity for Autos in India, Wall Street Journal.

Chung, Ju Yung, March 22, 2001, Founder of Hyundai Empire Dies at 85, New York Times.

CNET 2015, Hyundai spins off Genesis luxury brand, promises six new models by 2020, CNET, www.cnet.com.

Economist, February 4, 1999, Hyundai in America The last emperor, Economist.,

Economist, March5, 2009, Sui Genesis Why the South Korean carmaker is doing well in the downturn, Economist.

Economist, April 29, 2013, Running Harder Car making can still be profitable, but manufactures have to work at it, Economist.

Economist, March 28, 2019, Hyundai is Falling Behind its Japanese and Western Rivals, Economist.

Economist, July 4, 2020, After Many False Starts Hydrogen Power might Now Bear Fruit, Economist.

Felton, Ryan, May 20, 2022, Hyundai Plans $5.5 Billion Factory Complex in Georgia for Electric Vehicles, Wall Street Journal.

Financial Times, January 8, 2021, Apple car/Hyundai: Vaulting Ambition, Financial Times.

Fisher, Brian, March 10,1983, Lotus, R-R & Co, Le Moniteur de l'Automobile.

Foy, Henry and Jung-a, Song, March 19, 2019, Hyundai and Yandex sign deal to develop self-driving car tech, Financial Times.

Guthrie, Jonathan, November 3, 2014, Hyundai and Kia settle US mileage claims, Financial Times.

Hill, Charles W. L. and Hult, G. Thomas M., 2020, A Tale of Two Nations: Ghana and South Korea, Global Business Today, Eleventh Edition, McGraw Hill.

Hyun-bin, Kim, February 24, 2022, Hyundai Motor, Kia Continue to struggle in China, Korea Times, https://www.koreatimes.co.kr.

Hyundai Global News, November 18, 2013, Hyundai Global News.

Hyundai Motor Company, September 10, 2012, About HMMA, Hyundai Motor Manufacturing Alabama, Hyundai Motor Company

Hyundai Motor Company, October 4, 2020, Hyundai Motor Company

Hyundai.com, 2021, December 31, 2021, Investor relations webpage from 2021 annual reports. https://www.hyundai.com/worldwide/en/company/ir/financial-information/financial-highlights/annual

Hyundainews.com, February 6, 2002, Hyundai motor establishes joint venture for Chinese car plant, Hyundainews.com, https://www.hyundainews.com.

Hyundainews.com, September 26, 2017, Hyundai Motor consistently ranked among world's top-valued brands by Interbrand, Hyundainews.com, https://www.hyundainews.com.

Hyung, Je Jo, Global Asia, June 2010, Volume 5, Number 2, The Hyundai Way: The Evolution of a Production Model, Global Asia.

Jennings, Ralph, May 29, 2022, Hyundai Does Not Want to be Left Behind': Korea's Car Giant Makes $16.5 Billion EV Push, Forbes.com, https://www.forbes.com.
Jung-a, Song, September 30, 2006, Hyundai Motor to be probed for unfair practices, Financial Times
Jung-a, Song, March 26, 2012, Hyundai: keeping it local, Financial Times
Jung-a, Song, February 20, 2019, South Korean prosecutors raid Hyundai Motor headquarters, Financial Times
Jung-a, Song, December 2, 2020, Hyundai to develop own electric car platform and battery charging systems, Financial Times
Jung-a, Song, April 12, 2021, Hyundai faces regulator probe over alleged insider trading, Financial Times.
Jung-a, Song and Krosnar, Katka September 30, 2006, Hyundai moves to speed up push into Europe, Financial Times
Just Auto, February 9, 2022, Hyundai re-entering Japan with new strategy, Just Auto, https://www.just-auto.com.
Kala, Anant Vijay, April 27, 2017, Kia to Invest $1 Billion on Indian Car Plant, Wall Street Journal.
Kia.com, July 15, 2016, Kia History, Kia.com, https://www.kiaoflagrange.com/verify.
Kia Motors. July 24, 2016, Kia Motors Shareholders, Kia Motors.
Kim, Sohee, November 4, 2015, Hyundai launches Genesis premium car brand in bid to end profit skid, Reuters.
Korea Bizwire, April 20, 2021, After Years of Mounting Losses, Hyundai Motor Recalibrates China Strategy with EV, Luxury Lineup, Korea Bizwire.
Korea Joongang Daily, January 20, 2022, Hyundai Motor tries U-turn in China strategy, Korea Joongang Daily, koreajoongangdaily.joins.com.
Lane. Mark, February 5, 2022, US: Hydrogen Fuel Cell Car Sales Rebounded In 2021, insideeevs.com.
Motor Report International, July 18, 1974
NACOTY, January 11, 2009, North American Car of the Year, NACOTY
Nam, In-Soo, August 28, 2014, Kia Keeps Being Overshadowed by Hyundai. Wall Street Journal.
Oliver, Christian, May 19, 2011, Hyundai accelerates in its move to quality, Financial Times.
Porter, M.E., March-April 1990, The Competitive Advantage of Nations, Harvard Business Review.
PR Newswire, March 26 2007, Hyundai to Unveil Concept Genesis Premium Sports Sedan, PR Newswire.
Reed, John, September 12, 2012, Hyundai and Kia firmly in the driving seat, Financial Times.
Rowley, Chris; and Paik, Yongsun, 2009, The Changing Face of Korean Management, Taylor & Francis.
Saad, September 26, 2013, Eight years & counting, Hyundai India is the 'Top Exporter' of the Year, Motorbash.com, www.motorbash.com.
Sang-hun, Choe, April 28, 2006, South Korea Arrests Head of Hyundai Motor, New York Times.
Steers, Richard M., August 21, 2013, Made in Korea: Chung Ju Yung and the Rise of Hyundai, Routledge.
Sundfeldt, Björn, May 2, 1991, Hyundai Elantra, Tekniken.
Taylor III, Alex, January 5, 2010, Hyundai smokes the competition, CNN Money.
United States International Trade Commission, June 1985, The Internationalization of the Automobile Industry and Its Effects on the U.S. Automobile Industry, United States International Trade Commission, June, p. 103, USITC Publication 1712.
Wall Street Journal, January 8, 2021, Apple car/Hyundai: volting ambition, Wall Street Journal.
WARD'S, December 5,2008, Ward's 2009 10 Best Engines Winners, WARD'S.
Wayland, Michael, February 25, 2022, Renault, Hyundai, and VW have most exposure to Russian car market, Forbes.
White, Edward and Jung-a, Song June 2, 2019, Hyundai urges rivals to buy its fuel cell tech to boost sector, Financial Times
White, Edward and Jung-a, Song, February 9, 2021, Korea Inc seeks to corner global parts market for electric vehicles, Financial Times
Wilmot, Stephen, January 11, 2022, Hyundai and Kia Are Challenging Tesla. Chinese Brands Could Be Next, Wall Street Journal.
Worldwide.hyundai.com, June 10, 2010, Hyundai research & development | Hyundai Motor Company, Worldwide.hyundai.com.
Yadav, Navdeep, April 9, 2021, Hyundai nears 25 years of success in India -here's how this carmaker crossed the 9 million-mark, beating peers like Mahindra and Tata Motors, Business Insider, https://www.businessinsider.in/business/auto/new.
Yahoo!, November 5, 2015, Hyundai Accelerates Genesis into Its Own Luxury Brand, Yahoo.

BEYOND THE PAIL: HUMAN RESOURCE PROCESSES IN THE DAIRY FARM INDUSTRY

NATHAN MOATES
JONATHAN KRISPIN
MARY BETH ROUSSEAU
Valdosta State University

Taylor Coates was the founder of Lucky Churns Dairy Farms. After completing her degree in animal science at Cornell University, she returned home to the rural Southeast. Finding that her family did not share her aspirations for their own small dairy farm, Taylor set her sights on establishing her own Dairy Farm business. In 1999, she purchased a small farm with 750 cows, and retained the 20 employees who were working on the farm. The knowledge Taylor brought to the farm resulted in a healthy and productive herd, as well as a sustainable and profitable business.

By 2017, Taylor had grown Lucky Churns Dairy Farms to three locations with a total of 7,000 cows and 130 employees, producing 620,000 pounds of milk each day. By 2022, Lucky Churns had seven locations with 17,000 cows and 240 employees producing 1.4 million pounds of milk daily (see Exhibits 1 and 2).

Taylor recognized the need to adopt new ways to manage the rapid growth and larger scale of the business. In 2015, she hired a Chief of Operations Officer (COO) to run the day-to-day operations of the Dairy Farm. The COO implemented new procedures that linked directly to dairy operations: feed and nutrition, animal care, efficient milk production and herd management. Nonetheless, essential support functions, specifically human resource management, received less attention from senior management.

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. 8, 2023***, a publication of the Western Casewriters Association. Contact: Mary Beth Rousseau, Valdosta State University, 1500 N. Patterson St. Valdosta, GA 31698 mbrousseau@valdosta.edu

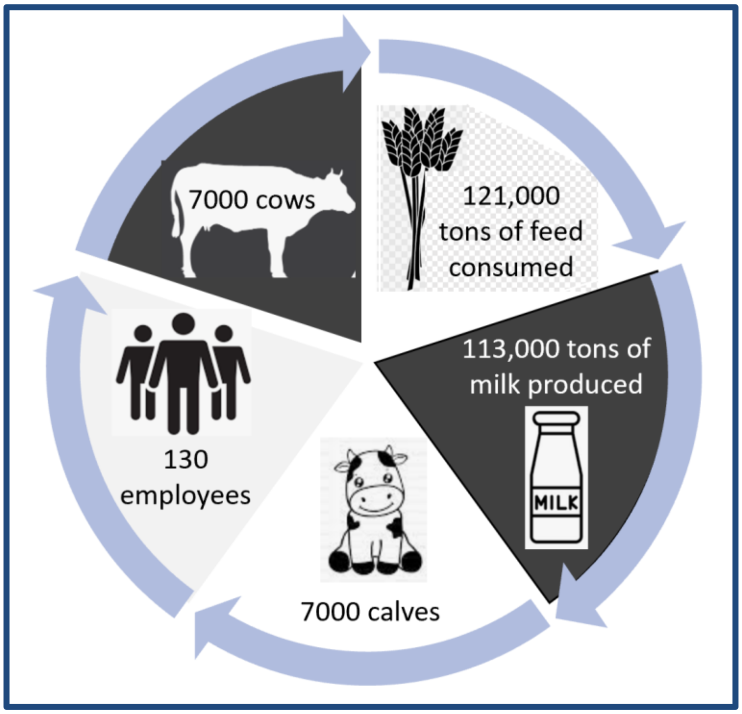
Exhibit 1. Lucky Churns Dairy Farms Growth 1999-2022

Source: Lucky Churns Dairy self-reported data, used with permission

Growth Indicator	1999	2017	2022
Number of farm locations	1	3	7
Number of cows	750	7,000	17,000
Pounds of milk production per day (000)	42	620	1,400
Number of employees	20	130	240

Exhibit 2. Lucky Churns Dairy Farms Scale of Operations

Source: Lucky Churns Dairy self-reported data, used with permission



Taylor and the COO knew a lot about dairy farm operations, but had little knowledge about why human resource management mattered, or how to implement it. The growth and success of the farm had disguised the lack of attention paid to human resource policies and procedures. Lucky Churns was now at the pivotal juncture where the size of the business actually accentuated the absence of HR management. Taylor and the COO agreed that it was time to take the next steps toward adopting HRM practices that met the needs of a dairy farm with 130 employees. Moreover, the dairy farm was poised for further expansion. Although they didn't know how to go about this themselves, Taylor knew exactly who did, and immediately called her friend Sam Boswell, a professor of management at the State University:

> *"Sam, I think it's time the farm started to prioritize and sort out how we manage our employees,"* she said. *"I know you've been talking to me about this motivation and performance management stuff for years, and I think I'm beginning to see how it could be important for us."* She continued, *"the thing is, I have no idea how to go about this, and I would like your help."*

As Sam listened carefully to Taylor's observations and concerns about the farm, he realized the situation was unfolding like many others before it. The ingredients that made someone a subject matter expert, and even a successful entrepreneur, did not necessarily imply good management, especially in the area of human resources. Sam recommended talking to the employees and supervisors at the farm as a first step toward identifying areas of concern and opportunities for improvement.

Over the course of about four days, Sam conducted interviews with all 5 managers and 17 supervisor-level employees. He asked four open-ended questions of each employee.

- Tell me what you do here?
- What do you think is working well for the organization?
- What are some areas for improvement in the organization?
- What would you like to see change within the organization?

The managers and supervisors described everything from the supervision of employees milking the cows, to managing employees maintaining equipment, all the way to training employees to identify and treat damaged or diseased hooves.

When asked about areas for improvement a few topics revealed themselves as common concerns. One topic was employee performance management. Several comments that Sam heard from the managers and supervisors illustrated this theme. One manager said, *"I have experience doing the job I manage, but it can be difficult to explain good versus bad performance to my subordinates."* Further, some supervisors expressed a disconnect between employee performance and the rewards they received for their performance. For example, one supervisor said,

> *"I wish there was more consistency with how we measure performance and give rewards,"* while another said, *"the workers can get really upset if they feel like they are doing a good job, but they are still not getting pay raises or promotions."*

It seemed that although the organization had well-organized day to day operations, human resources had not received much attention. The dairy was experiencing *"growing pains"* in the form of inconsistency and ambiguity surrounding employee feedback, rewards, advancement and dismissal.

Although Taylor was not surprised by the responses of the employees, their input did highlight the bigger questions surrounding performance management.

> *"How might the job satisfaction and motivation of the employees be affected by inconsistent feedback and rewards across supervisors? Could these perceived inequities lead employees to think that they were being treated unjustly or unfairly by the supervisors, or by the company?"*

Taylor felt the farm was at a stage where she could get out ahead of these issues. She knew her employees personally and they trusted her, but she realized that, if her company continued to grow as planned, she would soon reach a point where her personal leadership could not substitute for a systematic approach. Taylor was glad to have Sam's expert help to design and implement a durable performance management system that could be used consistently by all managers and supervisors, and would be sustainable as Lucky Churns Dairy Farms continued to grow.

Background: The Dairy Farm Industry

Dairy farms produced only one product - milk from cows. The raw milk was sold and transported from the farm (shown in Exhibit 3) to dairy processing companies that produced dairy foods such as milk, cheese, butter and yogurt. Demand for milk and other dairy products was relatively stable as it is considered a dietary staple. However, demand shifts within the category reflected changes in consumer dietary habits and preferences. For example, milk consumption was down due to substitutes from plant-based milk products and other beverages, while consumption of cheese continued to increase (MarketLine 2022).

Exhibit 3. Milk Tankers Transport Raw Milk from the Farm for Processing

Source: Lucky Churns Dairy, with permission

More than 35,000 dairy farms across the United States raised cattle for milk production. The industry was highly fragmented, with 97 percent constituted by small, independently owned and operated dairy farms. Together these farms employed more than 132,000 people and generated $41 billion revenue. Annual revenue growth in the dairy industry averaged 1.5% during the five years from 2016-2021, and the average profit margin in 2021 was 5.4%. Nonetheless, the year-to-year pattern of revenue and profit was volatile over the period (IBISWorld 2022).

Exhibit 4. Industry Milk Price and Revenue Volatility

Source: IBIS World 2022

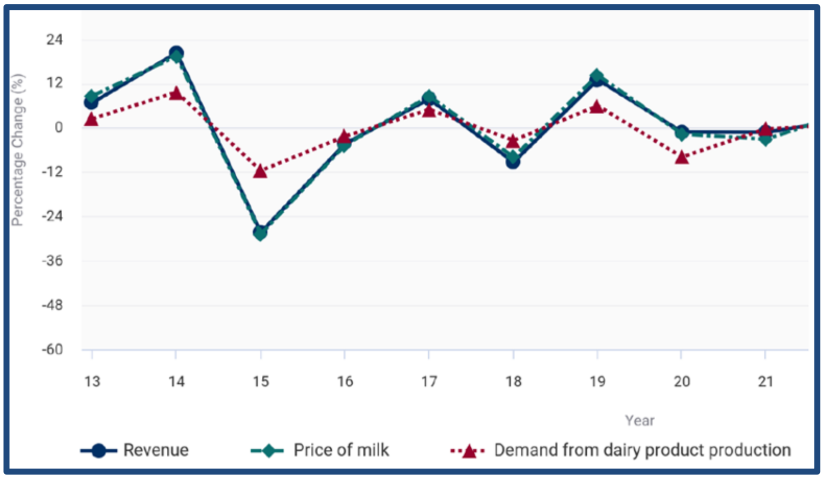
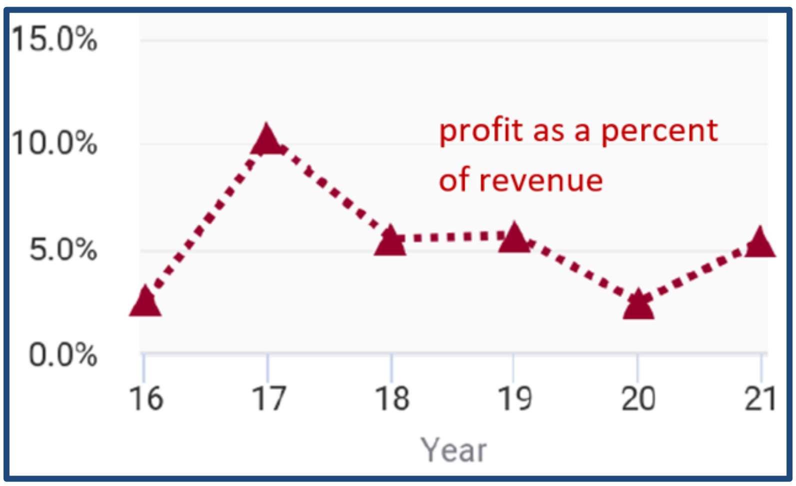


Exhibit 5. Industry Profit Volatility 2016-2021

Source: IBIS World 2022



Revenue and profit margins for dairy farms were largely influenced by the price of milk, which was highly volatile, as shown in Exhibits 4 and 5. Milk prices were dictated by downstream producers and the government, so dairy farms had little control over the price they charged for their product. For example, in 2018 surplus supply triggered a price drop and squeezed profit margins, but in 2019 dairy farms were successful in reducing production and driving milk prices, revenues, and profits higher. The Dairy Producers Margin Protection Program (2018 Farm Bill) offered some risk protection from the volatility in milk prices. This program subsidized the minimum margin coverage between total milk sales and total feed costs. The cost of feed constituted more than 50 percent of the cost of milk production and, like the price of milk, was subject to high volatility. Overall, volatility in revenue and profit led to further consolidation in the industry as struggling farms were taken over by stronger performers seeking economies of scale (Curran 2021).

Although the industry remained highly fragmented, the geographic concentration of small dairy farms that historically characterized regions of the U.S. largely remained intact. California and Wisconsin were the largest producers, together making up about 40% of U.S. milk production (Shahbandeh 2022). Pennsylvania, New York, Texas and Idaho were also known for dairy production. The structure of the industry in the Southeast region of the U.S., where Lucky Churns was located, was representative of the prevailing business model for dairy producers, where low-cost economies of scale had resulted in consolidation into fewer, more automated farms. These farms had larger herds and greater milk production capacity than did traditional small farm operators.

Lucky Churns Dairy Farms

Lucky Churns Dairy Farms generated revenue from only one source, the production of milk from cows. The amount of milk the cows produced, and the quality of that milk, were critical to the success and sustainability of the farm (https://extension.psu.edu/animals-and-livestock/dairy).

Although Lucky Churns produced just one product, the scope of operations encompassed much more than milking cows. Taylor thought it was important to provide Sam with a first-hand view of the farm operations, so he would have a better context for understanding the roles of the employees. As Taylor and Sam embarked on their tour of the main location, the first thing that struck Sam was the … smell; yes, smell was definitely the right word. Even more astounding, however, was the sheer scale and scope of the operation. The aerial view photo in Exhibit 6 shows the large free stall and feed barns, the milking parlor, multiple silage helix and outbuildings. The accompanying schematic in Exhibit 7 also shows equipment, pasture areas (top) and the location of the calf hutches (right).

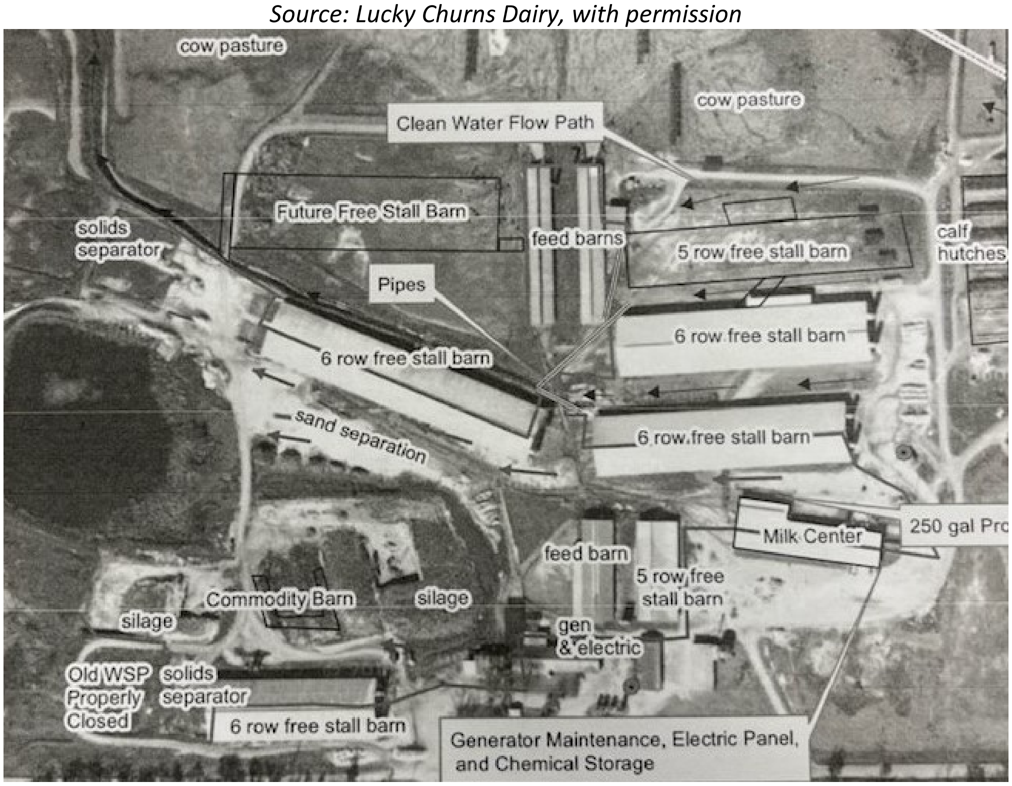
Exhibit 6. Aerial View of a Lucky Churns Farm Location

Source: Lucky Churns Dairy, with permission

Aerial view of one location showing milking parlor (center), free stall and feed barns (perimeter), silage mounds (left), and outbuildings.

Exhibit 7. Lucky Churns Dairy Farms Schematic

Source: Lucky Churns Dairy, with permission



The milking parlor was the heart of the dairy operation. Here, the milkers used sophisticated mechanisms for milking each cow safely and efficiently. Sam observed the orderly fashion in which the cows rotated through the milking parlor (Exhibit 8). In fact, it seemed as if the cows were directing the process more than the herdsman, whose job it was to lead the cows through this part of their lives. The cows walked in placid, ordered lines … which made sense when Taylor explained that cows became physically uncomfortable if they were not milked on a reliable schedule. At Lucky Churns, the cows were milked every 8 hours around the clock, 365 days a year.

Exhibit 8. Cows Line up at the Milking Parlor

Source: Lucky Churns Dairy Farms, used with permission

Taylor explained that managing the lactation cycle of the herd was the most important driver of milk production at the dairy. She then described how feed and nutrition, replenishing the herd, and the health and well-being of the cows all affected the lactation efficacy of the cows.

Lactation Cycle

Lactation is the secretion or production of milk by the mammary glands in female mammals after giving birth (The American Heritage® Science Dictionary 2011). To produce milk, a cow had to give birth to a calf. Generally, a cow was bred to calve every 12 months. The gestation period for a cow was a little more than 9 months. Following the birth of the calf, the cow produced milk for 10 months, then rested for 2 months until the birth of the next calf; and repeated the cycle. Healthy cows produced milk in this cycle for seven to ten years before they were culled from the herd.

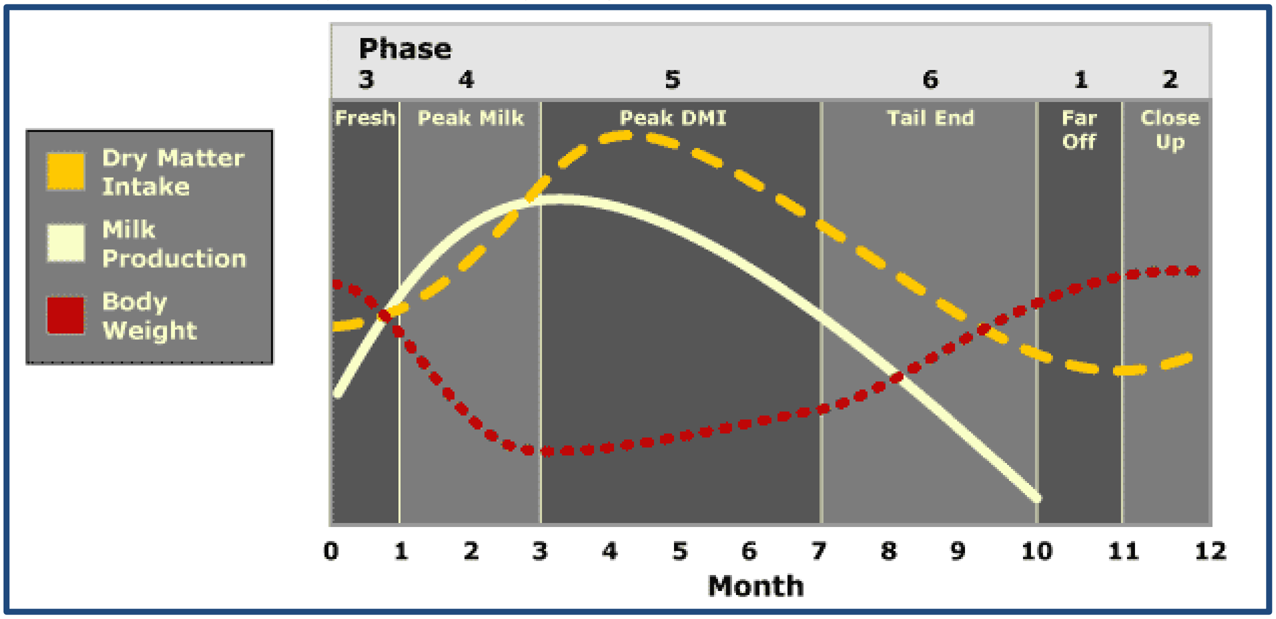
The lactation cycle of a female cow began when its calf was born. The first three days of milk, called colostrum, was fed to the calf. This early milk had extra nutrients and antibodies that the calf needed in its first few days of life. After the calf was separated, the cow was milked in the milking parlor three times a day. Milk production increased steadily to reach peak production three months after the calf was born, and then began to taper off. At this three-month point, the cow was *"bred back,"* a term used to describe breeding a lactating cow for its next calf. The cow was then milked for another seven months while it was pregnant with the next calf. Milk production declined during this period until the farmer stops milking the cow, about ten months after the first calf was born. The cow rests and replenishes for two months to prepare for the birth of the next calf, and the cycle begins again.

Milk production during the lactation cycle is illustrated in Exhibit 9 below. To smooth the peaks and troughs in the lactation cycle and assure consistent milk production, the farmer kept a portion of the herd at each stage of the cycle. For example, some cows were at peak production, while others were resting (French 2022).

Exhibit 9. Lactation Cycle of a Dairy Cow

Source: OSU Extended Campus

https://courses.ecampus.oregonstate.edu/ans312/index.htm



Feed and Nutrition

Taylor explained that a proper diet was essential to the health of the herd and the milk production of the cows. Nothing affected the quantity and quality of milk production - and therefore the sustainability and profitability of the dairy farm - more than what the cows ate. Exhibit 9 shows how the feed intake and nutritional requirements of dairy cows changed during the lactation and gestation cycles. A milking dairy cow ate about 95 pounds of feed each day. The cows' diet included a combination of dry matter such as hay or grass, wet feed called silage, and a grain mix (e.g. corn, soybean) with vitamin and mineral supplements (Fischer & Hutjens 2019, https://dairy-cattle.extension.org/how-many-pounds-of-feed-does-a-cow-eat-in-a-day/). A bovine nutritionist visited Lucky Churns Farms several times a year to review milk production and make recommendations to optimize the cows' diet.

Given the sheer quantity of feed consumed, and the critical role of nutrition in milk production, it was not surprising to learn that feed was the single largest cost component of running a dairy farm (French 2022). Exhibit 10 depicts the relative cost of milk production at Lucky Churns.

Feed constituted 54% of the total cost, more than twice as much as any other input. Like many dairy farms, Lucky Churns grew much of its own feed and produced its own silage (fermented grasses). The farm partnered with local growers for agricultural crop byproducts that provided a low-cost source of high nutrient food for the silage. Controlling the cost of feed without compromising the essential nutritional needs of the herd was a constant challenge for the dairy farmer.

Exhibit 10 also shows the other costs of milk production such as maintenance and animal care (22%), labor costs (12%), and herd replacement costs (12%). Like most businesses, dairy farms strived to attain optimal output, in this case milk, while controlling the cost of inputs. In 2017 the price of milk averaged about $16.00/cwt; where cwt = hundredweight, or 100 pounds of milk (https://tradingeconomics.com/commodity/milk). One gallon of milk weighed 8.6 pounds. Dairy farmers tracked input costs in a comparable metric known as $/cwt produced, which was the actual dollar cost of producing 100 pounds of milk. These costs amounted to about 91% of the revenue received from milk production.

Exhibit 10. Cost of Milk Production

Source: Lucky Churns Dairy self-reported data, used with permission

Feed	54%
Other (maintenance, husbandry, etc.)	22%
Labor	12%
Replacements	12%
Total	100%

Sustaining and Replenishing the Herd

Lucky Churns managed the herd to maintain a constant lactating population and sustain a consistent volume of milk production. Managing the life cycle of a herd with 7,000 cows was no small feat, and depended on several variables.

The cull rate was the percentage of the herd that was retired from milk production each year due to age or health related factors that depleted milk production. The average cull rate at Lucky Churns was typical of most dairy farms at 30-35%. The culled population was replaced by adding new cows to the herd. Ideally, the herd was replenished from the stock of calves born on the farm. A female calf that has been separated from its mother but has not yet given birth to its own calf was called a heifer. Heifers grew for about a year before they were bred. After the heifer has had its first calf, it was considered a mature female and called a cow. The cow was about two years old when it started producing milk and became part of the lactating herd.

Raising heifers was an investment in the future of the farm. Well grown heifers improved milk production and lifetime productivity, and reduced replacement costs https://www.dairynz.co.nz/animal/heifers/). Healthy heifers ensured the future flow of milk and revenue for the dairy, so farmers took care to ensure best practice breeding, birthing, and development of heifers to enter the herd. Herdsmen, as they were called at Lucky Churns, had the primary responsibility for raising the heifers.

Health and Wellbeing

The last stop on the tour was one of the several huge, open sided barns that the cows called home for much of their day (Exhibit 11). Beyond the essential milking and feeding, maintaining high standards of both physical and mental health for the animals was critical. As they walked through the barn, Taylor explained that care was taken to keep the animals' environment as clean and orderly as possible. Sam learned that cows experiencing stressful environmental conditions were not as productive as those in peaceful circumstances. In other words, happy cows were a major focus of the operation.

Exhibit 11. Clean and Orderly Barns Keep the Cows Healthy and Happy

Source: Lucky Churns Dairy, with permission

Stress. The expression *"keep calm and carry on"* is an apt description of dairy cattle. Dairy cows were creatures of habit. Cows were happiest when they followed their three times per day milking schedule. Cows were even observed to line up for the milking parlor on their own when it was time for them to milk (Exhibit 4). When they were not milking, the cows spent most of their time eating or napping. Cows needed a clean, orderly environment. Dairy farmers took care to keep the milking parlor clean and sanitary, and the feed barns clean and orderly. Disruptions or neglected hygiene caused stress for the cows. Stressed cows produced less milk; happy cows produced more milk.

Disease. The most common disease on dairy farms was mastitis. Bovine (cow) mastitis was an inflammation of the mammary gland (udder) caused from trauma or an infection, leading to abnormal and decreased milk production (https://www.vet.cornell.edu/departments-centers-and-institutes/baker-institute/our-research/bovine-mastitis). Penn State Extension estimated that mastitis cost U.S. dairy farmers an average of $110 per cow per year in lost milk production (Yutzy 2019). Dairy farmers managed the impact of mastitis on cow health and milk production through prevention, monitoring, detection and treatment. Prevention was achieved by following published guidelines for best milking practices and establishing standard operating procedures for cleanliness and cow handling (Cheng & Han 2020).

Monitoring and detection of mastitis was done in two ways. The first was simple observation. The milkers checked the cows' udders for any signs that mastitis might be developing. Milkers looked for irregularities in the consistency of the milk as indicators of potential mastitis. The second method was regular testing of the somatic cell count (SCC) in the milk. Somatic cells (SC) were naturally occurring antibodies in cow milk. A low SCC indicated healthy cows, and higher quality milk. High SCC indicated that the cow was producing antibodies to fight infection or inflammation from mastitis. Cows with high SCC were separated from the milking herd with a treatment plan (Sharma, Singh & Bhadwal 2011).

Milk somatic cells (SCs) were a mixture of milk-producing cells and immune cells. These cells were secreted in milk during the normal course of milking and were used to monitor the prevalence of mastitis in dairy herds, as an indicator of raw milk quality to processors, and also as a more general indicator of the hygienic conditions of milk production on farms. Any change in environmental conditions, poor management practices, or stressful conditions could significantly increase the amount of SCC coming in milk. Good hygiene and proper nutrition help reduce milk SCC. Processors paid a premium for low count milk because milk with low SCC meant better quality milk products with a longer shelf life (Alhussien & Dang 2018).

Hoof disease and lameness were other diseases that plagued the dairy industry. Cleanliness, ample space for movement and resting, and preventative hoof care were essential to stave off hoof rot and lameness, which affected not only milk production, but also the overall health of the herd https://extension.psu.edu/prevention-and-control-of-foot-problems-in-dairy-cows. Lucky Churns sponsored an employee for extensive training and certification in bovine foot care. The employee, in turn, trained supervisors at every location.

As Taylor proceeded with the *show-and-tell* at Lucky Churns, Sam was repeatedly surprised at scope and complexity of the dairy farm operations that culminated in the milking of cows. He also realized that the employees at Lucky Churns were not at all the itinerant farm labor that characterized much of the southeastern regions' agricultural sector. Instead, the employees at

Lucky Churns were relied upon to be eyes-on and hands-on for assuring a healthy and productive herd and, ultimately, a sustainable future for the business.

Throughout the farm, Taylor introduced Sam to employees who explained their positions and reflected on their experiences working at Lucky Churns. As they met more people, the conversation turned over and over again to the employee-centered processes that Taylor felt were increasingly in need of attention.

Lucky Churns Employee Roles and Responsibilities

As Sam learned the tasks and responsibilities of these positions, he developed a clearer picture of how different roles fit into the overall ecosystem of farm operations. (Positions are summarized in Exhibit 12.) The heart of the process was the milking parlor, where each cow in the active herd was milked three times a day. Each of the three locations employed three milkers on each of three shifts. The milker was the position where most of the turnover in the operation occurred, and it also happened to be the position that required the most attention to detail and consistency of performance. Employees typically started as milkers, but frequently moved to other positions as openings occurred.

Exhibit 12. Employee Positions and Pay Ranges

Source: Lucky Churns Dairy, with permission

Position	Pay Range*	Hours worked/day
Milker	$90-$105/day	8 hours
Cowboys	$9-$14/hr.	10-11 hours/day
Herdsmen	$9-$14/hr.	10 hours/day
Feeders	$9-$14/hr.	10 hours/day
Sand Guys	$9-$14/hr.	10 hours/day
Maintenance	Negotiated based on skill and tenure	8-10 hours/day

**In addition to hourly or daily wages, employees live in company-provided housing, and are also paid an annual bonus at the discretion of the senior managers of the company.*

While the milkers stayed in the parlor to milk the cows, the cowboys (as they are called at Lucky Churns) brought the cows into the parlor and escorted them back to the barns and corrals before and after the milking process took place. There are three cowboys on duty on each shift at each location. Herders were responsible for watching over and caring for the cows in between milking sessions, tending to needs such as the treatment of damaged or diseased hooves. The herdsmen not only looked after the cows that were actively milking, but they were also responsible for caring for the cows that were resting or preparing to give birth to their next calves. There was one herdsman on duty for each shift at each location. The final positions required for the care of the actively milking herd were the *"sand guys"* who mucked out the areas where the cows rested, and the feeders, who prepared the feed and made sure the cows received proper rations. There were five *"sand guys"* and five feeders, spread across the three locations.

In addition to the employees who were engaged in the milking operation and the care of the milking herd, there were employees who cared for the calves that were being born as well as the calves that would grow into the heifers. There were 11 dedicated herdsmen (3 - 4 at each location) that cared for the calves over the first 60 days of their lives (when care needs were highest), and 6 herdsmen (two per location) who cared for the heifers from the age of 60 days until they give birth to their first calves and moved into the active milking herd. The entire operation was supported by 7 maintenance employees (2 - 3 at each location) who tended to the physical plant and equipment needed to keep the whole operation up and running.

The entire operation was overseen by 5 senior-level managers and 17 supervisors. The senior-level managers were Taylor (owner) and the COO, who both worked across all of the locations, and one general manager at each of the three locations. The 17 supervisors oversaw each of the *"call centers"* (the milking parlor, feed management, and the calving/heifer care centers, etc.).

The supervisors were employees who had come up through the ranks and had been moved into *"lead employees"* then supervisors based on their experience and seniority. Their pay did not fall into any specific range, but rather was negotiated based on skill, experience, and tenure with the organization. At the low end, young tenured supervisors' pay overlapped with longer tenured employees' pay. At the high end, some young supervisors earned significantly more than did longer-tenured employees.

The overwhelming majority of employees at Lucky Churns Farms were male. Many were Latino and spoke Spanish as their first language. Turnover was low, averaging around 10% a year, and more than half of the employees had been with the company 10 years or more. Promotion into management positions had come almost entirely from within, even to the senior management ranks. For example, one of the location general managers began working for the company as a milker, and worked his way up from there. With the expansion of the business, there were continual opportunities for people to move into new positions if they wanted to grow their skill sets or try something new.

The Dilemma

As Taylor thought about the state of her business, she could see progress in standardizing operations and laying the foundations for continued growth. However, the comments from employees and supervisors revealed issues that needed to be addressed. As she reviewed the findings, Taylor realized that the comments coalesced around a few key issues. First, while the practice of promoting-from-within had resulted in a supervisory staff that had operational experience with the practices and standards of the dairy, it had also resulted in a supervisory staff with little or no training in the management of people - and no mechanism in place to develop their ability to do so. There weren't any standard practices to ensure consistency in managing people across the company. Supervisors were left on their own to determine how and when to evaluate employees, and what criteria to use for evaluation.

Second, while employees knew the company promoted from within, they didn't know what they had to do to become a candidate for promotion. They also didn't know what factors were under their control to increase their pay. This created some dissatisfaction within the company since the highest paid employees in any given job were paid up to 50% more than the lowest paid employee in the same job. It also created a sense of competition among the supervisors, as some were more liked by employees than others, based on their individual approaches to evaluating, developing, and compensating their direct reports.

These issues also pointed to the bigger questions surrounding performance management. Taylor considered,

> *"How might the job satisfaction and motivation of the employees be affected by inconsistent feedback and rewards across supervisors? Could these perceived inequities lead employees to think that they were being treated unjustly or unfairly by the supervisors, or by the company?"*

Taylor felt the farm was at a stage where she could get out ahead of these issues. She knew her employees personally. The employees trusted her. Taylor realized that if her company continued to grow as planned, she would soon reach a point where her personal leadership could not substitute for a systematic approach to management. Taylor was glad to have Sam's expertise to design and implement a durable performance management system that could be used consistently by all managers and supervisors, and would be sustainable as Lucky Churns Dairy Farms continued to grow.

K. Nathan Moates is an Associate Professor of management at Valdosta State University, in Valdosta, Georgia. He received his PhD in 2008 from Auburn University, where he studied organizational analysis and change. He teaches a variety of management courses focusing on organizational behavior and human resources. Dr. Moates' research interests include cognitive psychological concepts such as perspective taking and empathy, as well as *"Macro"* concepts, such as organizational development and leadership. He has had the opportunity to participate in organizational development efforts in a variety of industries, including agriculture, healthcare, and the public sector. Dr. Moates is legally blind, and also has a strong interest in both behavioral and technological adaptive approaches at work. He enjoys spending time with his family, and listening to great music and literature.

Jonathan V. Krispin is Associate Professor of Management, joining the Langdale College of Business at Valdosta State University in January, 2013, returning to academics after a 17-year career in the private sector. His research interests are primarily in the areas of organizational culture, business process improvement, organizational change and adaptation, and leadership development. Since returning to academics, Jonathan has focused his writing and research efforts on joining concepts from behavior analysis with concepts from systems analysis, particularly from theory related to self-organizing systems.

Mary Beth Rousseau is an Associate Professor of management at Valdosta State University, Valdosta, Georgia. She holds a PhD in Organizations and Strategy from University of Tennessee, Knoxville. Her research is primarily in the areas of innovation and performance, and family business. Dr. Rousseau has also authored pedagogical studies and case research.

References

Automotiveworld.com, January 24, 2022, Hyundai IONIQ 5 and Kia EV6 Crowned World Champions at the Inaugural 'Best Cars of the Year' Awards, Automotiveworld.com.

AutoWeek Magazine, August 6, 2006, Porsche, Hyundai score big gains in J.D. Power quality survey, AutoWeek Magazine.

Alhussien, M. N. & Dang, A. K. (2018). Milk somatic cells, factors influencing their release, future prospects, and practical utility in dairy animals: An overview. *Veterinary World*, *11*(5), 562–577. https://doi.org/10.14202/vetworld.2018.562-577

The American Heritage® Science Dictionary. (2011). Houghton Mifflin Harcourt.

Bovine mastitis. Cornell University College of Veterinary Medicine. (2021, September 16). Retrieved December 14, 2022, from https://www.vet.cornell.edu/departments-centers-and-institutes/baker-institute/our-research/bovine-mastitis

Cheng, W.N. & Han, S. G. (2020). Bovine mastitis: risk factors, therapeutic strategies, and alternative treatments - A review. *Asian-Australasian Journal of Animal Sciences*, 33(11), 1699–1713. https://doi.org/10.5713/ajas.20.0156

Curran, J. (2021). Dairy Farms in the U.S. Industry Report 11211*, IBIS World.*

Fischer, D. Hutjens, M. (2019, August 16). *How many pounds of feed does a cow eat in a day?* DAIReXNET. Retrieved December 14, 2022, from https://dairy-cattle.extension.org/how-many-pounds-of-feed-does-a-cow-eat-in-a-day/.

French, P. (n.d.). *ANS 312 -- Applied Animal Nutrition Feedstuffs and Ration Formulation* -- OSU Extended Campus - Oregon State University. Retrieved December 14, 2022, from https://courses.ecampus.oregonstate.edu/ans312/index.htm.

Heifers. DairyNZ. (n.d.). Retrieved December 14, 2022, from https://www.dairynz.co.nz/animal/heifers/.

IBIS World. (2022, January). Dairy Farms Industry in the U.S. – iExpert Risk Report.

MarketLine. (2022, October). Dairy in the United States - MarketLine Industry Profile.

Prevention and control of foot problems in dairy cows. Penn State Extension. (n.d.). Retrieved December 14, 2022, from https://extension.psu.edu/prevention-and-control-of-foot-problems-in-dairy-cows.

Shahbandeh, M. (2022). *Top U.S. states based on milk production 2020 & 2021,* Statista. Retrieved December 14, 2022, from https://www.statista.com/statistics/194968/top-10-us-states-by-milk-production/

Sharma N, Singh N.K, Bhadwal M.S. (2011). Relationship of somatic cell count and mastitis: An overview. *Asian Aust. J. Anim. Sci. 24*, 429–438.

Yutzy, A. (2019). What is Mastitis Costing You? Penn State Extension. Retrieved December 14, 2022.

AMERICAN DREAM: IMMIGRATION THROUGH HIGHER EDUCATION

FRANZISKA M. RENZ
California State University, Sacramento

The COVID-19 pandemic led many institutions of higher education to reduce significantly - or freeze - their efforts to hire qualified faculty (Zhang & Renz 2022). Countries around the globe, including the U.S., had started to recover from the pandemic. Students had returned to campus. Universities had resumed their recruiting efforts. Due to high turnover and strong demand for qualified faculty, many universities drew from an international talent pool to fill their open positions. In fact, international faculty, also known as foreign-born faculty, had been a significant source of diversity at many institutions of higher education in the U.S. for several decades (Theobald 2013). At the same time, a long-enduring debate about immigration was going on in the U.S. The debate centered around immigration policies and how to solve challenges of immigration (Council on Foreign Relations 2022). It was only a question of time until this debate and recruiting practices at institutions of higher education crossed their paths.

You are a personnel analyst working for a mid-sized public university located in the U.S. *"What options do we actually have to hire international faculty?"* asked the Dean of your college. Your Dean expects your input and an evaluation of different options by the end of the week!

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. 8, 2023***, a publication of the Western Casewriters Association. Contact: Franziska M. Renz, California State University, Sacramento, 6000 J Street, Sacramento, CA 95819, franziska.renz@csus.edu

Your expertise is in human resource management, and you have some knowledge about your institution's current recruiting practices. However, you have little knowledge about other available options. Therefore, you decide to get in touch with Personnel Analysts at similar institutions to inquire about their practices. But first, to get a better idea of what it means to be an international faculty member, and to be equipped for the discussion with your colleagues at other institutions, you asked several international faculty members at your institution about their immigration experiences. You need to hurry: your Dean expects your input and an evaluation of the different options by the end of the week.

Immigration through Higher Education

You learned about immigration through higher education from the international faculty members at your institution.

Who is an Immigrant?

Thousands of individuals seeking to immigrate arrived in the U.S. every year through different channels. Some individuals arrived as refugees and others arrived as economic migrants. While their motivations and countries of origin varied, they usually had in common a desire for a new and better life – the pursuit of the American Dream. Although aspiring immigrants had already completed a long and oftentimes arduous journey, their arrival on U.S. soil was usually only the proverbial *"first step"* of an even longer journey to become officially recognized as an immigrant (see Exhibit 1), and eventually to become a citizen of the U.S. - welcomed by the President (see Exhibit 2).

Exhibit 1. Immigrant Status

Source: Department of Homeland Security (2022)

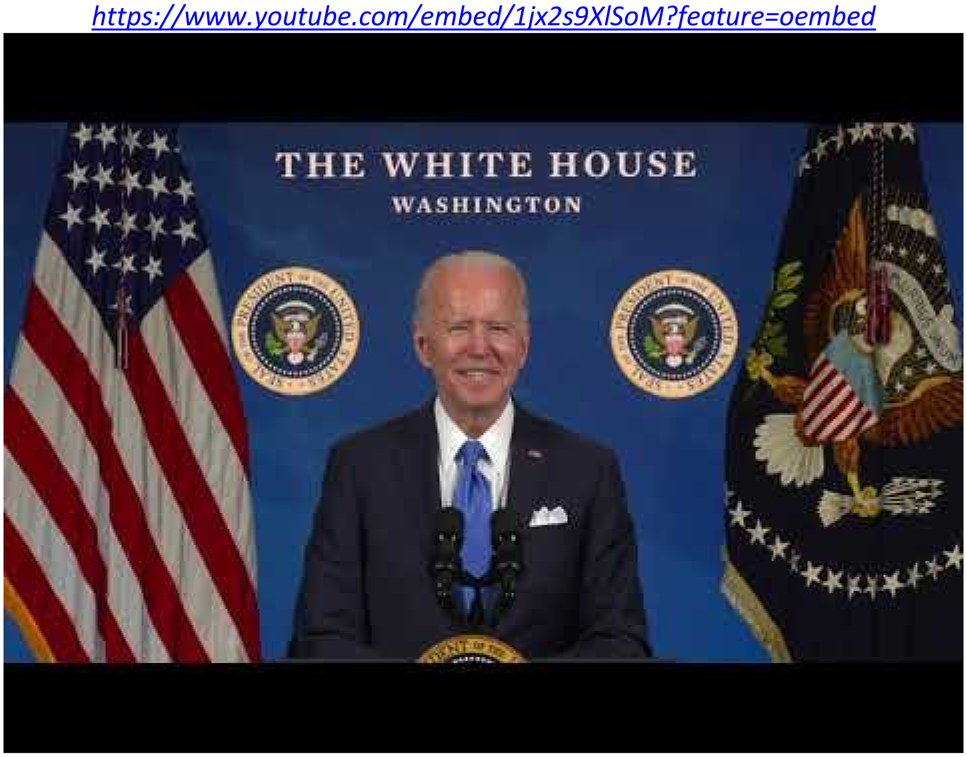
An immigrant is *"any person lawfully in the United States who is not a U.S. citizen, U.S. national, or person admitted under a nonimmigrant category as defined by the INA Section 101(a)(15)"* (Department of Homeland Security 2022, Section I). In contrast, *a* nonimmigrant is *"any person in the United States not a U.S. citizen or U.S. national who is admitted on a temporary basis to the United States for a specific purpose under a nonimmigrant category as defined by the INA Section 101(a)(15)"* (Department of Homeland Security 2022, Section N).

INA refers to the Immigration Nationality Act which is the *"primary law, codified at U.S. Code Title 8, that governs the immigration, temporary admission, naturalization, and removal of persons who are not citizens or nationals of the United States"* (Department of Homeland Security 2022, Section I). INA Section 101(a)(15) can be accessed here.

Exhibit 2. Welcome to the United States

Source: USCIS (2021)

https://www.youtube.com/embed/1jx2s9XlSoM?feature=oembed



The Path of Higher Education

Higher education did not offer a direct path to immigrate to the U.S.; the path was indirect. International students at institutions of higher education usually obtained J-1, M-1, or F-1 Visas to pursue their studies in the U.S. (see Appendix A). To gain professional experience in addition to academic credentials, students could either pursue Curricular Practical Training (CPT; see Appendix B) or Optional Practical Training (OPT; see Appendix C) during or after their studies. After completion of their studies and practical training, students usually were not eligible for an immigrant status and were expected to return to their countries of origin.

Graduates also had the option to find an employer who was willing to sponsor a work authorization through the H-1B visa program (see Appendix D). However, each year only a limited number of H-1B Visas was granted. The number of H-1B Visas was capped and allocated using a lottery system (U.S. Citizenship and Immigration Services 2022b, 2022d). Jim Hacking, an immigration lawyer operating in the U.S., gave an overview of the H-1B visa lottery system (see Exhibit 3). The potential employee and employer had to be lucky to be selected for an H-1B visa. Although there had been improvements, the lottery system and its uncertain waiting time often deterred employers and potential employees.

Therefore, many international graduates decided to pursue a doctoral degree to qualify for visa sponsorship through an institution of higher education. The advantage of these institutions was that they could sponsor H-1B visas separately from the H-1B visa lottery, and could sponsor an unlimited number of work authorizations if their funding for faculty positions permitted. Exhibit 4 shows the number of doctoral degree recipients by field of study and status in the U.S. Exhibit 5 shows the number of doctoral degree recipients on temporary visas who intended to stay in the U.S. after graduation by region of citizenship. As a result, over 22% of faculty members in the U.S. were born outside of the country (Furuya, Nooraddini, Wang & Waslin 2019).

Exhibit 3. How to Apply for the H-1B Visa Lottery

Source: Hacking Immigration Law, LLC (2022)

https://www.youtube.com/embed/H-LrhT2v2EE?feature=oembed

Exhibit 4. Doctoral Degree Recipients by Field of Study and Status in the United States

Source: National Science Foundation (2020a)

Field of Study	All Doctorate Recipients	Temporary Visa Holders	U.S. Citizens or Permanent Residents
Life Sciences	12,561	3,430	8,707
Physical Sciences and Earth Sciences	6,247	2,311	3,741
Mathematics and Computer Sciences	4,392	2,475	1,736
Psychology and Social Sciences	8,946	1,832	6,605
Engineering	10,476	5,955	4,154
Education	4,716	661	3,896
Humanities and Arts	4,939	742	3,915
Other	3,006	1,076	1,738
Total	55,283	18,482	34,492

Note: All doctorate recipients include respondents who did not report citizenship.

Exhibit 5. Doctorate Degree Recipients on Temporary Visas who Intended to Stay in the United States after Graduation by Region of Citizenship

Source: National Science Foundation (2020b)

Note(s):
Counts based on all doctorate recipients on temporary visas who indicated where they intended to stay after graduation (United States vs. foreign location). Asia includes Hong Kong.

Different Approaches to Hiring International Faculty

Personnel Analysts at University A, University B, and University C shared with you their different approaches to hire international faculty.

University A

At University A, newly hired international faculty usually had recently graduated from their doctoral degree programs. These faculty members had F-1 Visas during their doctoral programs and were eligible to apply for OPT after graduation (see Appendix C). University A asked recent graduates to apply for OPT and to use this status for their first year of employment at University A. The one year of OPT allowed faculty and University A to gather all needed documents to apply for the H-1B visa, and provided an additional probationary period to assess fit between the faculty member and the university. University A assured newly hired faculty that once the OPT period had been exhausted, the university would sponsor the H-1B visa for a period of three years (see Appendix D). After these three years, if the international faculty member and University A both wanted to continue the employment relationship, University A would apply for another H-1B visa that allowed employment for another three years. Then University A would submit an application for permanent residency, which is also known as *"green card,"* on behalf of the international faculty member.

University B

At University B, newly hired international faculty usually had recently graduated from their doctoral programs, and were asked to apply for OPT – just like at University A. However, in some cases, new faculty members had already used their OPT for temporary faculty positions. In these cases, University B applied for H-1B Visas on behalf of faculty right from the beginning of the appointments. University B applied for periods of two years because their faculty performance review and evaluation periods took place every two years. The renewed applications for the H-1B visa were contingent on the satisfactory performance of faculty in the respective review and evaluation periods. Additionally, University B usually avoided sponsoring permanent residency.

University C

University C also mostly hired international faculty who had recently graduated from their doctoral programs, and some faculty who had prior appointments at other institutions. University C did not differentiate between both groups of faculty and sponsored H-1B Visas on behalf of all international faculty. At the same time as the H-1B visa applications were submitted, the applications for permanent residency were filed on behalf of faculty.

Experiences of International Faculty With Universities' Approaches

You started to wonder how international faculty perceived those different approaches. One of the international faculty members at your institution referenced an online forum about the management faculty job market where this issue was discussed (see Exhibit 6).

Exhibit 6. Management Faculty Job Market Discussion

Source: 2022-2023 Management PhD Jobs Doc (2022)

https://docs.google.com/spreadsheets/d/1yfzDTxgndA-wkn8Tml5QNjgLAgfbutHLGjYM8bJOYo0/edit#gid=0

Question	Responses
Do U.S. schools sponsor green card application for TT positions? Will higher ranked schools more likely to sponsor and get approval as a result?	Yes. I don't think approval is contingent on the prestige of the school, though. >Thanks for the information!
	Better schools may have better staff for this, but the outcome should be the same regardless (positive). I got a GC in 14 months since starting a job. <- You'd think. Some of the most incompetent staff I've met have been at a top 5 school lol >Thanks for sharing! May I ask whether it is EB1B, do we need journal publications for GC application? > no, it was EB2B, no pubs. But I had to move fast and pay A LOT out of pocket. > Thanks! That is really fast
	No, not all U.S. schools sponsor a green card application. Not all U.S. schools have knowledgeable staff to submit applications. Some schools may have racist staff who actively delay and hinder applications. The green card request is an important issue to ask to be explicitly listed on your offer letter. Otherwise, you'll have to pay 15k out of pocket expenses for immigration lawyers and other fees, and that's only if you're lucky enough to be eligible for NIW and don't need employer sponsorship. (Based on personal experience, tenure track, top school, not Indian not Chinese) (< Be careful throwing around the racist card. It's more likely incompetence rather than motives) >Thank you for your great suggestion. This is indeed my greatest concern when reviewing offer details. If I apply for myself, need a really long lineup I guess (due to my nationality). I heard schools have the benefit to have much quicker processing and no lineup for Indian and Chinese applicants. <- not true, Indian and Chinese applicants need to wait for 4+ years < This is because there are so many Chinese and Indian waiting in line for green cards. > E, again. If you have more than one offer, please prioritize schools with credible commitment to retaining global talent. When a school's hallways whisper horror stories of immigrant faculty whose H1-B and green card applications were mishandled and delayed over decades, be more careful in your choices. My school even mishandled my H1-B renewal, after they had already mishandled my

	green card application. I have told my senior colleagues that I will discourage any immigrant assistant prof from joining my school. --> wow, sorry to know that and I appreciate your advice.
Do U.S. schools sponsor green card application for TT positions? Will higher ranked schools more likely to sponsor and get approval as a result?	I've seen a couple of barely accredited teaching schools state no sponsorship, but these are few and far between. >Thanks! >E, here. My school is very, very accredited. Originally, they claimed that they would sponsor it. But HR staff didn't prepare the paperwork, and the senior leadership didn't hold HR staff accountable. It was 18 months of me going to HR staff, the department head, and the associate dean, begging them. And after the USCIS 18-month deadline is over, no one can do anything.
	So sorry to hear about E's troubles, I have heard similar things before. Having said that, I don't know if any school would actually put that in the letter. I'd be cautious in asking for that - not asking for the sponsorship, but asking for the details to be put in the letter. It would convey a mistrust - in E's case it is certainly earned - but I am not sure if that is a good idea for the majority of schools whose word you can trust. >Overall, make sure you know that they will sponsor you, and most will. After that, make sure to stay on top of everything, first important deadline is PERM which is 18 months from getting your offer. Your school has to apply for this. So, make sure that they do. Don't think, *"Oh, they will do it,"* they might not as in E's case. I have a friend whose school (a flagship state school BTW) missed the PERM deadline, and he had no idea about the process. He ended up moving to another school. >E's school missed the PERM deadline for multiple faculty over the years. The HR staff asked the faculty to resign so that they could rehire them & restart the 18-month clock. Of course, the resignation screamed red flag for the USCIS, so USCIS audited these cases. E's colleague eventually moved to another country, withdrawing the hopeless & now-problematic green card application. Following a lawyer's advice, I insisted to my school that I wouldn't resign. So, as H suggested, please be very proactive and check every HR word & suggestions with a knowledgeable immigration lawyer.
	Best advice: Be VERY proactive about this.
	I have heard some faculty applying through EB1 route. Check that out too.

Do U.S. schools sponsor green card application for TT positions? Will higher ranked schools more likely to sponsor and get approval as a result?	I was at a state flagship and the same bungling of green card application happened to me. I was not aware of the 18-month PERM deadline for EB2 and when I enquired about the sponsorship of my green card, HR noted that this was no longer a possibility - it was EB1 or bust for me. This was complicated by the fact that I had a slow start to my publishing career and the school felt my case was not strong enough to support. I consulted with an external lawyer with a good track record and my plan was to pursue an EB1A application without my school's support since I was nearing the end of my H1B visa. I ended up going on the market again and applied internationally (given the strong likelihood that a green card would not be possible and my H1B clock was ending) with a few U.S. schools. This time around, I was very clear with U.S. schools regarding my urgent sponsorship needs given my visa situation (once they had decided to give me an offer) and asked them to check with their internal legal counsel before I considered accepting. All worked out in the end, but it was a very tough struggle for 7+ years. I also learned after the fact that my first academic home had a long history of making mistakes with timelines and processing green card paperwork for many international faculty - apparently it was a known issue but largely unaddressed. The comments highlighted earlier to be proactive are key. I wish I was more knowledgeable from the get-go - I could have possibly avoided years of stress in this regard. > So sorry to hear all the struggle you've experienced. I will research as soon as I can.
	Although the University's lawyers may be competent, I suggest hiring your own to help process permanent resident paperwork. I've had several friends had their green cards take way too long because the university lawyers were just bad at their job. Just FYI: in some of the seps of getting a green card, you don't have much control. PERM needs to be done by the school, I even don't know whether you can pay for it (you cannot pay for the H1b application, for example) so your lawyers might not be able to do it. Having legal advice and being proactive are very important though. The whole immigration system is over-stressed. So many different categories.
Can universities hire on J1 visa, or do they have to apply for H1B?	Some schools allow you to start on OPT, but this requires an F1 visa. Therefore, the uni would need to apply for H1B. Check if you have a 2YHRR (if this applies to you, you are not eligible for H1B).

Exhibit 6 refers to two types of green card applications – EB1 and EB2. EB2 referred to the green card application that universities submitted on behalf of international faculty (U.S. Citizenship and Immigration Services 2022e). EB1 referred to a green card application that faculty could submit on their own. However, to get an EB1 application approved, faculty needed to demonstrate extraordinary ability or outstanding reputation in their field (see Appendix E; U.S. Citizenship and Immigration Services 2022f). The costs and duration of this alternative process were hard to predict because international faculty who chose this route needed to obtain their own immigration attorney, and provide strong evidence to support their case. All of the associated financial and other costs were carried by the international faculty member.

The Dilemma

As you see, there are different options to hire international faculty. Universities are in the position to decide which option to choose, and, for many international faculty, they become gatekeepers to the American Dream. What do you think about each of the options available to institutions of higher education? Are all of the options fair? Which is the best option for faculty? Which is the best option for the institution? Get ready to provide your evaluation to the Dean!

Franziska M. Renz is an Assistant Professor in the Department of Management and Organizations of the College of Business at California State University, Sacramento. She earned her Ph.D. in Business Administration - Management at The University of Texas at El Paso. She earned her M.B.A. from Murray State University as well as her M.Sc. in Business Administration from the University of Regensburg, Germany, and her B.Sc. in Business Administration and Economics from the University of Passau, Germany. She is a SHRM Senior Certified Professional and teaches a variety of courses in human resource management and organizational behavior. Her research centers around diversity, equity and inclusion, psychological ownership, leadership, and sustainability.

Appendix A. Student Visas and Employment of the United States

Sources: U.S. Citizenship and Immigration Services (2020a, 2020b)

J-1 Visa

The J-1 classification (exchange visitors) is authorized for those who intend to participate in an approved program for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, receiving training, or to receive graduate medical education or training.

In carrying out the responsibilities of the Exchange Visitor Program, the Department of State designates public and private entities to act as exchange sponsors. J-1 nonimmigrants are therefore sponsored by an exchange program that is designated as such by the U.S. Department of State. These programs are designed to promote the interchange of persons, knowledge, and skills, in the fields of education, arts, and science.

Examples of exchange visitors include, but are not limited to professors or scholars, research assistants, students, trainees, teachers, specialists, au pairs and camp counselors.

Some J-1 nonimmigrants enter the U.S. specifically to work while others do not. Employment is authorized for J-1 nonimmigrants only under the terms of the exchange program. Please check with your sponsoring agency for more information on any restrictions that may apply to you working in the U.S.

F-1 Visa and M-1 Visa

The F-1 visa (Academic Student) allows you to enter the U.S. as a full-time student at an accredited college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program. You must be enrolled in a program or course of study that culminates in a degree, diploma, or certificate and your school must be authorized by the U.S. government to accept international students.

The M-1 visa (Vocational Student) category includes students in vocational or other nonacademic programs, other than language training.

F-1 students may not work off-campus during the first academic year, but may accept on-campus employment subject to certain conditions and restrictions. After the first academic year, F-1 students may engage in three types of off-campus employment: Curricular Practical Training (CPT), Optional Practical Training (OPT) (pre-completion or post-completion) in Science, Technology, Engineering, and Mathematics (STEM), as well as Optional Practical Training Extension (OPT).

F-1 students may also be eligible to work off-campus on a case-by-case basis as a result of special situations such as severe economic hardship or special student relief. M-1 students may engage in practical training only after they have completed their studies.

For both F-1 and M-1 students any off-campus training employment must be related to their area of study and must be authorized prior to starting any work by the Designated School Official (the person authorized to maintain the Student and Exchange Visitor Information System (SEVIS)) and USCIS.

Appendix B. Curricular Practical Training (CPT)

Sources: U.S. Citizenship and Immigration Services (2020c)

An F-1 nonimmigrant student may begin CPT after the designated school official (DSO) has authorized CPT on the student's Form I-20, Certificate of Eligibility for Nonimmigrant Student Status. CPT is any alternative work/study, internship, cooperative education, or other type of required internship or practicum offered by sponsoring employers through cooperative agreements with the school. CPT must be an integral part of an established curriculum. These students should enter the CPT employment end date from the employment authorization section of their Form I-20 in Section 1 as the date employment authorization expires.

F-1 students participating in CPT must present the following documents to establish identity and employment authorization for Section 2:

A List A document, including the combination of:

- Unexpired foreign passport;
- Form I-20 with the DSO endorsement for employment; and
- Form I-94 indicating F-1 nonimmigrant status.

or

List B and List C documents:

For example, a state driver's license (List B document) and, under List C #7, a Form I-94 indicating F-1 nonimmigrant status with a properly endorsed Form I-20.

When completing Section 2 with List A documents, you should enter the student's:

- Foreign passport information;
- Form I-94 information; and
- Form I-20 information, including the Student and Exchange Visitor Information System (SEVIS) number and CPT employment authorization end date (not the program expiration date).

Appendix C. Optional Practical Training (OPT)

Sources: U.S. Citizenship and Immigration Services (2020c, 2022a)

OPT provides a practical training experience that directly relates to an F-1 student's major area of study. Foreign students in F-1 nonimmigrant status participating in OPT must obtain an EAD from USCIS before they are authorized to work. The student may not begin employment until the date indicated on the EAD. While still in school, a student authorized for OPT may work:

- For up to 20 hours per week while school is in session; and
- Full-time during the student's annual vacation and at other times when school is not in session.

After finishing a course of study, we may authorize an F-1 student up to 12 months of OPT. Please see the USCIS OPT for F-1 Student's webpage for the types of OPT. Some F-1 students may be eligible for an extension of their OPT.

F-1 students must enter the *"Card Expires"* date from their EAD in the Authorized to Work Until field in Section 1. The EAD establishes their identity and employment authorization for Form I-9 purposes. You should enter the card information including the number and expiration date under List A in Section 2 of Form I-9.

When the EAD expires, you must reverify the F-1 student's employment authorization in Section 3. The employee may choose to present any List A or List C document that shows that he or she continues to be authorized to work in the U.S.

STEM Extension

F-1 students who received a bachelor, master, or doctoral degree in science, technology, engineering or mathematics (STEM) from an accredited Student Exchange Visitor Program-certified school may apply for an extension of their OPT while in a period of post-completion OPT. STEM OPT students must work for an employer that is enrolled and in good standing with E-Verify, the electronic employment eligibility verification program administered by USCIS. While a STEM OPT student may change employers, the new employer must be enrolled and in good standing with E-Verify before the student begins STEM OPT employment. EADs issued to F-1 STEM OPT students state *"STU: STEM OPT ONLY."*

The following documents establish the student's identity and employment authorization for Form I-9 purposes:

- Unexpired EAD (List A); or
- Expired EAD presented with Form I-20 endorsed by the student's designated school official (DSO) (List A). This is acceptable for 180 days from the expiration date on the EAD, after which you must reverify the student's work authorization.

If the student presents an expired EAD and an endorsed Form I-20 as described above, you should enter the following information under List A in Section 2 of Form I-9:

- EAD as the document title;
- DHS as the issuing authority;
- The EAD document number;
- The date the EAD expired in the expiration date space, and
- *"180-day Ext."*

Filing Fee

The filing fee is currently $410. It is paid by the student.

Appendix D. H-1B Specialty Occupations, DOD Cooperative Research and Development Project Workers, and Fashion Models

Sources: U.S. Citizenship and Immigration Services (2018, 2022b, 2022c, 2022d)

This nonimmigrant classification applies to people who wish to perform services in a specialty occupation, services of exceptional merit and ability relating to a Department of Defense (DOD) cooperative research and development project, or services as a fashion model of distinguished merit or ability.

Numerical Limit or Cap

The H-1B classification has an annual numerical limit (cap) of 65,000 new statuses/visas each fiscal year. An additional 20,000 petitions filed on behalf of beneficiaries with a master's degree or higher from a U.S. institution of higher education are exempt from the cap. Additionally, H-1B workers who are petitioned for or employed at an institution of higher education or its affiliated or related nonprofit entities, a nonprofit research organization, or a government research organization, are not subject to this numerical cap.

Period of Stay

As an H-1B specialty occupation worker or fashion model, you may be admitted for a period of up to three years. Your time period may be extended, but generally cannot go beyond a total of six years, though some exceptions do apply under sections 104(c) and 106(a) of the American Competitiveness in the Twenty-First Century Act (AC21), 8 CFR 214.2(h)(13)(iii)(D) and (E).

Your employer will be liable for the reasonable costs of your return transportation if your employer terminates your employment before the end of your period of authorized stay. Your employer is not responsible for the costs of your return transportation if you voluntarily resign from your position.

Registration and Filing Fees

The nonrefundable registration fee for the visa lottery is $10. Either the employer or the potential employee pays this fee.

The filing fee for I-129, Petition for a Nonimmigrant Worker is currently $460. It is paid by the employer.

Additional fees depend on the H1-B classification and size of the employer, and vary between $150 and $4000.

Appendix E. EB1 Eligibility Criteria

Sources: U.S. Citizenship and Immigration Services (2022f)

Categories	Description	Evidence
Extraordinary Ability	You must be able to demonstrate extraordinary ability in the sciences, arts, education, business, or athletics through sustained national or international acclaim.	You must meet at least 3 of the 10 criteria* below, or provide evidence of a one-time achievement (i.e., Pulitzer, Oscar, Olympic Medal) as well as evidence showing that you will be continuing to work in the area of your expertise. No offer of employment or labor certification is required.
Outstanding professors and researchers	You must demonstrate international recognition for your outstanding achievements in a particular academic field. You must have at least 3 years' experience in teaching or research in that academic area. You must be entering the U.S. in order to pursue tenure or tenure track teaching or a comparable research position at a university, institution of higher education, or private employer.	You must meet at least 2 of the 6 criteria listed below** and provide an offer of employment from the prospective U.S. employer. The private employer must show documented accomplishments and that it employs at least 3 full-time researchers. No labor certification is required.
Certain Multinational manager or executive	You must have been employed outside the U.S. for at least 1 year in the 3 years preceding the petition or the most recent lawful nonimmigrant admission if you are already working for the U.S. petitioning employer. The U.S. petitioner must have been doing business for at least 1 year, have a qualifying relationship to the entity you worked for outside the U.S., and intend to employ you in a managerial or executive capacity.	Your petitioning employer must be a U.S. employer and intend to employ you in a managerial or executive capacity. The petitioner must have been doing business in the U.S. for at least 1 year, as a legal entity with a qualifying relationship to the entity that employed you abroad in a managerial or executive capacity. No labor certification is required.

Criteria for Demonstrating Extraordinary Ability

In order to demonstrate you have sustained national or international acclaim and that your achievements have been recognized in your field of expertise, you must either include evidence of a one-time achievement (major internationally recognized award) or 3 of the 10 listed criteria below (or comparable evidence if any of the criteria do not readily apply):

- Evidence of receipt of lesser nationally or internationally recognized prizes or awards for excellence

- Evidence of your membership in associations in the field which demand outstanding achievement of their members
- Evidence of published material about you in professional or major trade publications or other major media
- Evidence that you have been asked to judge the work of others, either individually or on a panel
- Evidence of your original scientific, scholarly, artistic, athletic, or business-related contributions of major significance to the field
- Evidence of your authorship of scholarly articles in professional or major trade publications or other major media
- Evidence that your work has been displayed at artistic exhibitions or showcases
- Evidence of your performance of a leading or critical role in distinguished organizations
- Evidence that you command a high salary or other significantly high remuneration in relation to others in the field
- Evidence of your commercial successes in the performing arts

For more information on Extraordinary Ability, read our policy in Volume 6, Part F, Chapter 2, of the USCIS Policy Manual.

Examples of Documentary Evidence That a Person is an Outstanding Professor or Researcher

In order to demonstrate you are an outstanding professor or researcher, you must include evidence of 2 of the 6 listed criteria below (or comparable evidence if any of the criteria do not readily apply):

- Evidence of receipt of major prizes or awards for outstanding achievement
- Evidence of membership in associations that require their members to demonstrate outstanding achievement
- Evidence of published material in professional publications written by others about the noncitizen's work in the academic field
- Evidence of participation, either on a panel or individually, as a judge of the work of others in the same or allied academic field
- Evidence of original scientific or scholarly research contributions in the field
- Evidence of authorship of scholarly books or articles (in scholarly journals with international circulation) in the field

For more information on Outstanding Professors and Researchers, read our policy in Volume 6, Part F, Chapter 3, of the USCIS Policy Manual.

For more information on Multinational Executives or Managers, read our policy in Volume 6, Part F, Chapter 4, of the USCIS Policy Manual.

References

2022-2023 Management PhD Jobs Doc (2022). General Q&A. https://docs.google.com/spreadsheets/d/1yfzDTxgndA-wkn8Tml5QNjgLAgfbutHLGjYM8bJOYo0/edit#gid=0

Council of Foreign Relations (2022). The U.S. Immigration Debate. https://www.cfr.org/backgrounder/us-immigration-debate-0

Department of Homeland Security (2022). Reporting Terminology and Definitions. https://www.dhs.gov/immigration-statistics/reporting-terminology-definitions#8

Furuya,Y., Nooraddini, M. I., Wang, W. & Waslin, M. 2019. A portrait of foreign-born teachers in the United States. Report published by the Institute for Immigration Research, George Mason University. https://iir.gmu.edu/publications/industries/education

Hacking Immigration Law, LLC (2022). How to Apply for the H1B Lottery. https://www.youtube.com/watch?v=H-LrhT2v2EE

National Science Foundation (2020a). Doctorate recipients, by subfield of study, citizenship status, ethnicity, and race: 2020. https://ncses.nsf.gov/pubs/nsf22300/table/22

National Science Foundation (2020b). Special focus: Temporary visa holder doctorate recipients and postgraduation plans. https://ncses.nsf.gov/pubs/nsf22300/report/temporary-visa-holder-plans

Theobald, R. (2013). International faculty. In Alberts, H.C. & Hazen, H.D. (Eds.), *International Students and Scholars in the United States*. Palgrave Macmillan, New York, NY. https://doi.org/10.1057/9781137024473_6

U.S. Citizenship and Immigration Services (2018). H and L Filing Fees for Form I-129, Petition for a Nonimmigrant Worker. https://www.uscis.gov/forms/all-forms/h-and-l-filing-fees-for-form-i-129-petition-for-a-nonimmigrant-worker

U.S. Citizenship and Immigration Services (2020a). Exchange Visitors. https://www.uscis.gov/working-in-the-united-states/students-and-exchange-visitors/exchange-visitors

U.S. Citizenship and Immigration Services (2020b). Students and Employment. https://www.uscis.gov/working-in-the-united-states/students-and-exchange-visitors/students-and-employment

U.S. Citizenship and Immigration Services (2020c). Foreign Academic Students. https://www.uscis.gov/i-9-central/complete-correct-form-i-9/completing-section-1-employee-information-and-attestation/foreign-academic-students

U.S. Citizenship and Immigration Services (2022a). I-765, Application for Employment Authorization. https://www.uscis.gov/i-765

U.S. Citizenship and Immigration Services (2022b). H-1B Specialty Occupations, DOD Cooperative Research and Development Project Workers, and Fashion Models. https://www.uscis.gov/working-in-the-united-states/h-1b-specialty-occupations

U.S. Citizenship and Immigration Services (2022c). I-129, Petition for a Nonimmigrant Worker. https://www.uscis.gov/i-129

U.S. Citizenship and Immigration Services (2022d). H-1B Electronic Registration Process. https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/h-1b-electronic-registration-process

U.S. Citizenship and Immigration Services (2022e). Employment-Based Immigration: Second Preference EB-2. https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-second-preference-eb-2

U.S. Citizenship and Immigration Services (2022f). Employment-Based Immigration: First Preference EB-1. https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-first-preference-eb-1

USCIS (2021). President Biden USCIS Naturalization Ceremony Video. https://www.youtube.com/watch?v=1jx2s9XlSoM

Zhang, Y. & Renz, F.M. (2022). How far am I away from being an American? *Journal of Case Research and Inquiry*, *7*, 213-224.

SPECIAL EDITION: CASES IN FINANCE AND ACCOUNTING

JCRI Journal of Case Research and Inquiry

THE COST OF GOING GREENER: DECISION-MAKING TO PROVIDE RECYCLING SERVICES

DENA D. BREECE
SCOTT R. COHEN
University of North Carolina at Pembroke

CHELSEA L. SCHRADER
Frostburg State University

Kelly Olivera, Director of Budget and Evaluation of the City of Fayetteville, sat at her desk and scanned through her emails. She was extremely shaken by one email. It was a notification from the recycling service providing city recycling contract services. Olivera was informed that there would be a significant increase in the cost to provide the current level of service to city residents. She knew immediately that any cost increase would have consequences. Would citizens still find value in the recycling services provided? Would the recycling demand be met? Would the city's reputation be at risk if services were not provided? How would costs be covered? Would residential solid waste fees for citizens need to be increased? If so, how would citizens respond to a fee increase?

While she could appreciate that costs had been rising during the pandemic, she was sure from her experience with the City Council that there would be apprehension about fee increases. The City Council was fiscally conservative by nature – unwilling to enforce fee increases unless necessary. With 2020 scheduled as an election year for Mayor and City Council members, any decision held consequences. Olivera was asked to research the situation and provide a recommendation for the City Manager and Council.

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. 8, 2023***, a publication of the Western Casewriters Association. Contact: Dena D. Breece, University of North Carolina at Pembroke, 1 University Drive, Pembroke, NC 28372, dena.breece@uncp.edu.

Undaunted, Olivera knew that she had to act quickly to uphold expectations of recycling services for the citizens, identify any risks, evaluate the alternatives, and make a responsible, informed recommendation. As with any special decision, Olivera and city officials placed the citizens of Fayetteville at the heart of the process. Consistent with the total value contribution (TVC) approach, Olivera purposefully gathered data to work towards a strategic decision on whether to outsource, often referred to as a make-or-buy decision, recycling services, or instead to bring the recycling services in-house. The City's goals and reputation needed to be considered. Furthermore, Olivera had to develop differential costs-and-benefits analyses to support the recommendation. With potential impacts at all stakeholder levels (Mayor and City Council, City of Fayetteville employees, third-party contractors, and the citizens), the decision on the frequency and management of recycling services had never been more critical. Furthermore, a closer look at the situation indicated concerns over recycling can size, solid waste funds and the annual citizen fee for services, City and Mayor/Council risk assessment, and differential analysis.

Introduction to Kelly Olivera – Director of Budget and Evaluation

Born and raised in Fayetteville, North Carolina, Olivera's passion for public service and ties to the City led her to return to the area. Armed with a newly minted Bachelor of Science in Accountancy degree from the University of North Carolina Wilmington, she successfully joined the City of Fayetteville's Finance Department. Her initial post was as a financial analyst. Olivera then worked for the City of Fayetteville for over ten years.

During her time with the City, Olivera and the then-current Budget and Evaluation Director, Tracey Broyles, founded the City's Budget and Evaluation Office in 2014. As Olivera's time and experience with the City grew, she was eventually promoted to the Assistant Director of Budget and Evaluation and worked closely with Director Broyles to organize and direct the city's planning and budget activities for the next seven years.

Upon Director Broyles' retirement in June 2021, Olivera succeeded her long-time mentor and was promoted to the position of Director of Budget and Evaluation. In this role, Olivera assisted and advised the current City Manager, Doug Hewett, in developing the City's more than $240 million annual budget (City of Fayetteville 2022).

Exhibit 1. Photo of Kelly Olivera

Source: City of Fayetteville

Background of the City of Fayetteville

As a city that grew from a small band of Scottish immigrants in the 1730s to the sixth largest city in North Carolina, Fayetteville played a significant role in America's history. Named to honor Marquis de Layfette, a French nobleman who served the Continental Army as a Major General during the Revolutionary War (City of Fayetteville 2022), Fayetteville initially enjoyed great success as a town known for trade and access to a significant number of waterways that were essential for the growth and prosperity of eastern North Carolina (see Exhibit 2). Later, as the significant differences between the northern and southern states emerged, Fayetteville became part of the Civil War, culminating with the burning of large sections of Fayetteville by Union General William Sherman as he marched across the south (Cumberland County 2022).

More recently, Fayetteville had become the home to a large contingent of military personnel at Fort Bragg and Pope Army Airfield, and enjoyed a rich mixture of cultural diversity and a variety of business and industrial opportunities. Known as *"America's Can-Do City,"* Fayetteville's image was laced with history, blessed with heroes, and known for its hometown feel (City of Fayetteville 2022).

Exhibit 2. City of Fayetteville

Source: City of Fayetteville

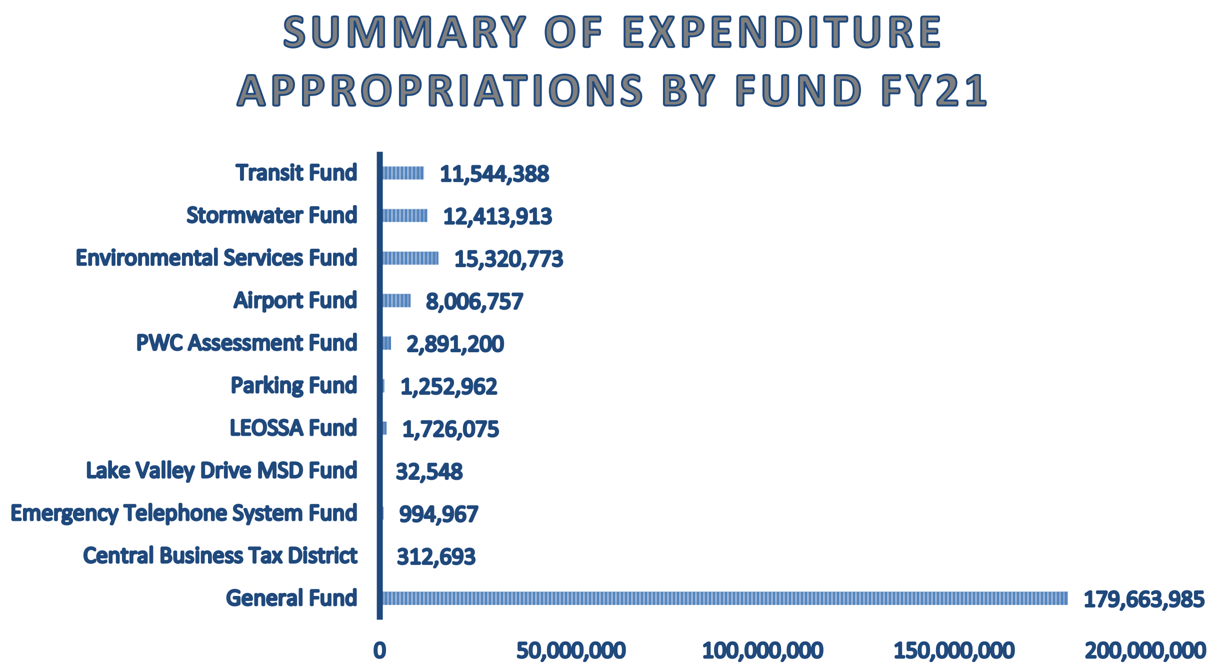
The City branded itself by focusing on its history and current offerings (see Fayetteville, NC - Community Video Tour (elocallink.tv)). Given its significant advantages, Fayetteville grew from a city of 35,000 in 1950 to well over 200,000. As with many cities, Fayetteville faced challenges, including shrinking budgetary allocations, increased taxpayer demand for accountability, and political pressures from elected officials and constituents. Tasked with providing excellent service and controlling costs, the city government was continually being asked to do more with less. The constant over all the years was the City's desire to provide quality services for its citizens while being good stewards of its financial resources.

Background of the Solid Waste Department

Given the size of Fayetteville, considerable deliberation regarding the collection and disposal of solid waste materials were critical for the City to retain its beauty and hometown feel. The City had prioritized beautification and recycling education for many years, as visible in the video City of Fayetteville, NC (2016). Environmental Services Guide. – YouTube Video. To expand understanding of the issues, the City hired Gershman, Brickner & Bratton, a national consulting firm specializing in solid waste issues. The City wanted to understand the value of services and ways to ensure that expectations would be met. The City budgeted $25,000 a year to educate residents about the proper handling and disposal of solid waste materials (NC Department of Environmental Quality 2021). One way was to distribute videos such as the City of Fayetteville, NC (n.d.). Reduce. Reuse. Recycle. What you Need to Know. - YouTube Video. By reducing the recycling volume, the City had more time to gather information and evaluate what was to come next for its recycling services.

Fayetteville's Manager of the Solid Waste Department, David Thompson (NC Department of Environmental Quality 2021), was tasked with ensuring that the process was valuable for the citizens, cost-effective, and environmentally friendly. The City continued to provide a wide range of solid waste services. Collecting household garbage, yard waste, bulky items, and recycling required a significant number of employees and assets. Along with a crew of 61 full-time workers, the City maintained a fleet of automated trash pick-up trucks and different types of vehicles to ensure that services were provided as effectively as possible (City of Fayetteville CAFR 2022). As seen in Exhibit 3 below, the budget for FY21 presented the summary of expenditure appropriations by fund. The environmental service fund included expenditures for operating the City's residential garbage, yard waste, and recycling programs had the second highest expenditure appropriation of $15,320,773 (City of Fayetteville 2020).

Exhibit 3. Summary of Expenditure Appropriations by Fund FY21
Source: City of Fayetteville 2020



City of Fayetteville

Olivera explained how one notification changed everything! In 2020, Olivera was notified that the existing recycling service provider, Waste Management, contacted the City to put it on notice of a substantial cost increase for weekly service of collecting household recycling. While the City had been proactive by contracting Gershman, Brickner & Bratton to gain insight into recycling issues, the Waste Management notification resulted in an immediate sense of urgency. The conversation moved from proactive to consideration to so much more (Olivera 2022).

Olivera explained that the priority was - and continued to be - the citizens. The City's mission and vision reinforced this concept. The City's vision was "*an attractive, culturally diverse, and inclusive city that is safe, prosperous, innovative, and unified*" (City of Fayetteville November 18, 2022). Therefore, an attractive City included one that was free of garbage and debris. The City's mission stated, *"to provide high quality and sustainable public services for communities to* *thrive and our businesses to grow"* (City of Fayetteville November 18, 2022). In turn, the City put a great deal of time, effort, and resources into ensuring that high quality and sustainable public services, such as recycling, were available for citizens. The idea was to promote increased business growth within the community. As expected, the City's FY21 strategic plan was focused on growth within the area. The City's Strategic Operating Plan for FY21 included Goal 4 as a desirable place to live, work, and recreate (City of Fayetteville November 18, 2022). The City committed to a strategic objective to *"provide a clean and beautiful community with increased green spaces"* (City of Fayetteville November 18, 2022).

Olivera realized that change was inevitable and other areas needed to be analyzed. With risk assessment in mind, how would the change affect the City's reputation? The reputation of the Mayor and City Council? The City Council needed to make a decision that was positive for the citizens. Otherwise, the City could face a backlash if inadequate services or high costs were passed on to citizens. With 2020 as a scheduled election year, the Mayor and City Council were at risk of negative voting.

How best to change was the vital and immediate question? The environmental services fund had been a self-supported fund with no support from *ad valorem* tax revenue (property tax revenue). The primary source of funding for environmental services was the annual solid waste fee to citizens of $225, which came into effect in July 2020. The fee had already increased once. Any additional fee would be viewed negatively. There were limits on what expenses the fund could cover. Upon initial review, it was apparent that the City would *not* be able to cover the costs of a significant increase in weekly services.

Changing from weekly to bi-weekly services would require a change in processes. The City's recycling services included a 33-gallon recycling can for each household. The continuation of a weekly recycling pick-up would not require a change of can. However, if bi-weekly services were to be considered, a much larger recycling can would be necessary. A 96-gallon can might meet the demand for biweekly services. However, a coordinated effort would be needed to pick up existing cans and replace them with the larger cans. Olivera estimated that at least 61,000 cans would have to be purchased. The cans would have required the City logo to be applied. Indeed, this would be expensive!

As with any large purchase, the City obtained three quotes from vendors to support the best decision. All three quotes received were over $3 million in costs for the City. Deliberations were held on which vendor to select, how to finance, and whether a fee increase was needed. Of course, it had been the City's long-time preference to provide services at a reasonable fee with avoidance of unnecessary fee increases. Should Olivera purchase the cans, or phase them in over four to five years?

Ultimately, the City decided that for consistency, the best option was to replace all the recycling cans at one time and finance the purchase price through the manufacturer. Here, the City could turn in its existing smaller cans (as the plastic was recyclable) and thereby received a cost reduction for purchasing the larger cans. Regardless of the sourcing decision made, the City would have to replace the existing cans with larger cans for bi-weekly recycling collection. Olivera understood that the savings from weekly to bi-weekly services would provide the debt service capacity to afford the cans' cost.

In the first quarter of 2021, a strategic, collaborative effort was underway to pick up the old cans and replace them with larger ones. The City conducted a media campaign to inform its citizens about the change. The can manufacturer price included the pickup and drop off of cans. The process was recorded by video on the trucks to provide confidence and accountability. Cans were collected by zip code until the process was complete. With the larger 96-gallon cans in place, the City was able to shift its efforts toward a sourcing decision on bi-weekly collection.

The fiscal year 2021, which represented July 2020 through June 2021, included financing costs for the purchase of larger 96-gallon recycling cans, delivery at each household point, and collection of existing smaller cans at $3.3 million - regardless of the sourcing approach (Olivera 2022).

The contract cost per household was $3.39 per month for weekly contracted collection (Olivera 2022). It was estimated that the number of households would be approximately 61,501 during fiscal year 2022 (Olivera 2022). For ease of consideration, Olivera used the same number of households over five fiscal years (FY22 – FY26), assuming a 2% consumer price index increase in the cost per household monthly rate (Olivera 2022).

Alternative 1 – City In-house Sourcing Data

The desired annual solid waste fee for citizens would remain at $225 for the foreseeable fiscal years of FY22 – FY26 (Olivera 2022). Indeed, the City would maintain more control over the recycling process if the services were provided in-house. However, costs would increase. Estimated personnel costs for 13 City staff employees, which included 9 drivers, 1 collector, and 2 supervisors, were projected at a base rate of $810,869.42 for FY22, assuming a 3% cost increase each year (Olivera 2022). Operating costs for fuel, various maintenance charges, uniforms, equipment, and data plans were estimated at approximately $695,323.80 as a base rate for FY22, assuming a 2% cost increase year after year. Financing costs for vehicles such as collection trucks and two new supervisor vehicles were anticipated to cost approximately $819,832.43 across FY22 – FY25, which was in line with the City's desired four-year debt payment schedule (Olivera 2022).

With the in-house sourcing approach, future consideration of replacing twelve vehicles would be needed after eight years or FY29 (Olivera 2022). Based on a seven-year useful life and using the straight-line depreciation method, the annual depreciation cost would have been $448 thousand per year, which would have offset any savings potentially available at the end of FY26 (Olivera 2022).

Alternative 2 – External Sourcing Data

The desired annual solid waste fee for citizens would remain at $225 for the foreseeable fiscal years of FY22 – FY26. Furthermore, for calculation purposes, the number of households would remain constant at 61,501 across FY22 – FY26 (Olivera 2022).

Considering bi-weekly collection services, a proposed Waste Management contract cost per household each month would have entailed a rate of $2.35 for FY22, with a 2% consumer price index increase in the rate each fiscal year (Olivera 2022).

Special Decision-Making: Differential Analysis

Special sourcing decisions, often called make-or-buy decisions, entailed reviewing the details of at least two alternatives to arrive at the best decision for the organization. For decision-makers like Olivera, understanding key terminology and concepts had been vital to understanding a situation, effectively evaluating alternatives, and determining her recommendation.

Several concepts were vital as an initial starting point. According to Brewer, Garrison and Noreen (2022), differential analysis was described as a forward-looking process where costs and benefits that were not the same between alternatives have been deemed relevant to the decision. In comparison, costs or benefits (revenues) that had been the same were considered irrelevant to decision-making. Brewer *et al*. defined differential costs as *"a future cost that differs between any two alternatives"* (2022, p. 41). In turn, differential revenues were known as future revenues or benefits that differed between two alternatives.

Additional terminology was essential in determining when and how to evaluate and determine various costs. For example, a sunk cost was considered irrelevant as it was defined as *"a cost that has already been incurred and cannot change regardless of what a manager decides to do"* (Brewer, Garrison & Noreen 2022, p. 511). When Olivera prepared a differential analysis, she considered the cost behavior - variable or fixed costs - to develop the relevant cost amounts between alternatives. A variable cost varied *"in total, in direct proportion to changes in the level of activity"* (Brewer, Garrison & Noree 2022, p. 33). A fixed cost was *"a cost that remains constant, in total, regardless of the changes in the level of activity"* (Brewer, Garrison & Noreen 2022, p. 35). As a result, a clear understanding of relevant costs and cost behavior served to assist Olivera in developing her recommendations.

The Dilemma

Finding a solution that would avoid an increased cost to the citizens of Fayetteville while maintaining the same quality of service or higher would take a lot of work!

The City had already invested over $3 million to replace existing cans with larger cans to modernize the recycling services to meet the then-current demands. With the change of cans in place, an outsourcing decision needed to be made. Value was the utmost consideration. Olivera knew this decision was critical and that whatever path was chosen would have long-term financial and service implications for years. As Olivera began the task of sourcing, collecting, and considering the financial and non-financial information, she felt the pressure that came with her job. She needed to ensure that the cost of going greener would be an overall success.

Dena D. Breece is an Assistant Professor of Accounting at the University of North Carolina at Pembroke. She earned a Ph.D. in Business Administration with a concentration in Accounting and Finance from Trident University International, and a Master of Business Administration from Campbell University. Dr. Breece is a Certified Public Accountant in North Carolina and a Chartered Global Management Accountant through the AICPA. She teaches a variety of undergraduate and graduate accounting courses. Dr. Breece's research focuses on financial and managerial accounting, fraud examination, pedagogy, and online learning. Her work has been published in the *Southeast Case Research Journal*.

Scott R. Cohen is an Assistant Professor of Accounting at the University of North Carolina at Pembroke. He has a Ph.D. in Business Administration from the University of South Alabama, a Master of Science in Accounting from the University of Connecticut, and a Master of Business Administration from Elon University. Dr. Cohen teaches a variety of accounting courses at the undergraduate and graduate programs. Dr. Cohen's research focuses on student pedagogy and improved outcome. His work has been published in *Personality and Individual Differences, Journal of Managerial Issues, the Journal of Business-to-Business Marketing*, and the *Southeast Case Research Journal*.

Chelsea L. Schrader is an Associate Professor of Accounting at the Frostburg State University in Frostburg, MD. She has a Ph.D. in Accounting from Morgan State University, a Master of Business Administration and a Bachelor's degree in Accounting from Frostburg State University. Dr. Schrader predominately teaches taxation and financial accounting at the undergraduate level. Dr. Schrader's research covers areas of taxation, audit, and financial accounting. Her work has been published in *Advances in Accounting, Accounting & Taxation*, and *The Institute for Business and Finance Research.*

References

Can Do Carolina. (2022, July 12). https://candocarolina.com/

City of Fayetteville, NC Government (2016). Environmental Services Guide. Video located at https://www.youtube.com/watch?v=TkZgMgiUKok.

City of Fayetteville, NC Government (2020). FY21 Adopted Budget. Document located at https://www.fayettevillenc.gov/city-services/budget-evaluation/budget-chronicles/fy-2020-2021-budget-process/-folder-1706

City of Fayetteville, NC Government (2021). Reduce, Reuse, Recycle. What you need to know. Video located at https://www.youtube.com/watch?v=jYnBsb23uK0&t=99s.

City of Fayetteville, NC. (2022, July 9). City Services. https://www.fayettevillenc.gov/city-services/public-services/solid-waste/recycling

City of Fayetteville, NC. (2022, July 9). Staff. https://www.fayettevillenc.gov/Home/Components/StaffDirectory/StaffDirectory/1097/105

City of Fayetteville, NC. (2022, July 10). About Fayetteville. https://www.fayettevillenc.gov/our-city/community/about-fayetteville

City of Fayetteville, NC. (2022, July 10). Public Notices. https://www.fayettevillenc.gov/Home/Components/News/News/10596/

City of Fayetteville, NC. (2022, July 20). Comprehensive Waste Study, 2015. https://www.fayettevillenc.gov/city-services/public-services/solid-waste

City of Fayetteville, NC. (2022, July 21). CAFR. https://www.fayettevillenc.gov/city-services/finance/comprehensive-annual-financial-report-cafr

City of Fayetteville, NC (2022, November 18). Adopted FY21 strategic plan. https://www.fayettevillenc.gov/city-services/city-manager-s-office/strategic-performance-analytics/strategic-planning/fy-2021-strategic-plan

City of Fayetteville, NC (2022, November 18). https://www.fayettevillenc.gov/city-services/city-manager-s-office/strategic-performance-analytics/vision-mission-and-values

Cumberland County, NC. (2022, July 10). County History. https://www.cumberlandcountync.gov/departments/non-departmental-group/county-history

Fayetteville, NC Community Video Tour (n.d.). https://www.elocallink.tv/m/v/Redesign4/?pid=w9QAQQ94&fp=ncfay21_wel_cs_iwd#

Gray, J. V., Helper, S., Osborn, B. (2020). Value first, cost later: Total value contribution as a new approach to sourcing decisions. *Journal of Operations Management, 66*(6), 735-750. doi: 10.1002/joom.1113

NC Department of Environmental Quality, City of Fayetteville Local Government Annual Report, (June 30, 2021). https://deq.nc.gov/media/29655/download?attachment

Olivera, K. (2022). City of Fayetteville, North Carolina Interview with Authors.

TAX CONSEQUENCES OF THE BANKRUPTCY OF SEARS HOLDINGS CORPORATION

GRETCHEN R. LAWRIE
JOHN R. COOPER
California State University, Los Angeles

When Kmart Holding Corporation acquired Sears, Roebuck and Co. in 2005, the resulting new company, Sears Holdings Corporation (Old Sears), became the third largest retailer in the U.S. operating about 3,800 retail stores in the U.S. and Canada with annual revenue of approximately $55 billion. It was *"the leading home appliance retailer and a leader in tools, lawn and garden, home electronics and automotive repair and maintenance."* [1] Old Sears' brands and products included Kenmore, Craftsman, DieHard, Lands' End, Jaclyn Smith, Joe Boxer, and Martha Stewart Everyday (see Exhibit 1). By October 2018, Old Sears operated 687 retail stores and employed about 68,000 individuals. Its total revenue had declined to $16.7 billion.[2] Old Sears had about $7 billion in assets, $11.3 billion in liabilities, and more than 300,000 creditors.[3] On October 15, 2018, Old Sears filed a voluntary petition for relief under Chapter 11 of the U.S. Bankruptcy Code.[4]

Exhibit 1. Sears Storefront
Source: YouTube https://www.youtube.com/watch?v=rcBS-yau0_o

On February 11, 2019, one of Sears' largest creditors and shareholders, the hedge fund ESL Investments, Inc. (ESL), through its affiliate, Transform Holdco, LLC (New Sears), acquired substantially all of Old Sears' go-forward retail footprint and component businesses of Old Sears on a going concern basis. New Sears assumed certain of Old Sears' liabilities for approximately $5.2 billion.[5] What would have been the U.S. tax and non-tax consequences of Old Sears' bankruptcy reorganization for Old Sears, Old Sears' creditors and shareholders, and New Sears?

History of Kmart Holding Corporation

In 1899, Sebastian Spering Kresge founded the S.S. Kresge Company (Kresge) and opened his first five-and-dime store in Detroit, Michigan selling everything for 5 or 10 cents (see Exhibit 2). By 1912, Kresge had expanded to 85 stores with annual sales of over $10 million. Kresge became a publicly traded company on the New York Stock Exchange (NYSE) in 1918. By the mid-1920s, Kresge was opening stores that sold items for $1 or less.

Exhibit 2. S.S. Kresge Variety Store in Madison, Wisconsin

Source: Detroit Free Press

https://www.freep.com/picture-gallery/money/business/2014/10/28/kresge-and-kmart-historical-photos/18062733/

In 1962, Kresge opened its first Kmart discount department store in Garden City, Michigan. A few years later, sales from 162 Kmart stores and 753 Kresge stores were approximately $1 billion.[6] In 1977, Kresge changed its name to Kmart Corporation (Kmart) and began trading on the NYSE under the symbol KM.[7] See Exhibit 3.

After struggling for several years to compete with retailers such as Wal-Mart Stores, Inc. and Target Corp., on January 22, 2002, Kmart filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.[8] After Kmart filed for bankruptcy protection, ESL, founded in 1988 by Chairman and CEO Edward S. Lampert, acquired more than $1 billion worth of Kmart's bonds and $400 million of its bank debt.[9]

Kmart emerged from bankruptcy the next year and became a wholly owned subsidiary of Kmart Holding Corporation (Kmart Holding). ESL and Third Avenue Value Fund (Third Avenue), a mutual fund that held approximately $100 million of Kmart bonds, received approximately 32 million shares of Kmart Holdings' common stock in exchange for their creditor claims against Kmart. As a result of the reorganization, ESL owned over 50 percent of Kmart Holdings' common stock.[10] Mr. Lampert became the chairman of Kmart Holding's board of directors. In June 2003, Kmart Holding began trading on Nasdaq under the symbol KMART.[11]

Exhibit 3. Kmart Storefront

Source: Business Insider

https://www.businessinsider.com/australian-kmart-department-store-chain-wesfarmers-2019-10

History of Sears Holdings Corporation

History of Sears Roebuck and Co.

In 1886, Richard W. Sears, a Minnesota railroad station agent, purchased for $12 each a shipment of watches from a Minnesota jeweler who had refused to sign for them. Mr. Sears resold the watches to his co-workers for $14 each. Later that year, Mr. Sears founded R.W. Sears Watch Co. and began selling watches and jewelry by mail order. Shortly after, he moved his business to Chicago and hired a watchmaker, Alvah C. Roebuck. Mr. Sears sold his watch business in 1889. See Exhibit 4.

Exhibit 4. Early Sears Auto Toolkit circa 1910-1914
Source: Bay State Tool Company http://alloy-artifacts.org/bay-state-tool.html

In 1893, Messrs. Sears and Roebuck founded another mail-order business, Sears, Roebuck and Co. (Sears Roebuck). To reach customers in rural areas, Sears Roebuck started selling watches and jewelry through mail order catalogues. They later expanded to selling a variety of products such as clothes, wagons, stoves, furniture, firearms, and home building kits.[12] In 1906, Sears Roebuck became the first major U.S. retailer to have an initial public offering, raising $40 million in preferred and common stock. Sears Roebuck began trading on the NYSE under the symbol S.[13]

In 1925, Sears Roebuck opened its first retail store in Chicago, Illinois and then built hundreds of stores across the U.S. Product offerings were expanded to include Kenmore brand appliances, DieHard batteries and Craftsman tools. By 1950, Sears Roebuck had 650 stores nationwide.[14] In 1942, Sears Roebuck opened its first international store in Havana, Cuba and later opened stores in Central and South America, Canada, and Europe.

In 1931, for the first time, the sales from Sears Roebuck's retail stores exceeded its mail-order sales. Recognizing a need for low-cost automobile insurance, in 1931, Sears Roebuck founded Allstate Insurance Co. In 1953, Sears Roebuck launched its own credit card. See Exhibit 5.

Exhibit 5. Ad for Sears' DieHard Battery

Source: YouTube https://www.youtube.com/watch?v=7KQTZ0HoSSM

In 1981, Sears Roebuck acquired the securities brokerage firm, Dean Witter Reynolds Organization, Inc. (Dean Witter) and the real estate company, Coldwell Banker & Company (Coldwell Banker). Through Dean Witter, Sears Roebuck introduced the Discover Card, which was the first credit card to offer cash rewards to customers based on the volume of their purchases.

Changes in technology and marketing ultimately resulted in a loss of effectiveness for the catalog. In 1993, the Sears Roebuck catalog was discontinued; brick and mortar and internet shopping had become the primary sales outlets.

Acquisition of Sears Roebuck and Co. by Kmart Holding Corporation

On March 24, 2005, Kmart Holding purchased Sears Roebuck for approximately $11.9 billion with the companies becoming subsidiaries of Sears Holdings Corporation (Old Sears), with each operating separately under their own brand names. As part of the acquisition, Kmart Holding shareholders received one share of Old Sears' common stock for each of their Kmart Holding shares. Approximately 94.9 million shares of Old Sears common stock were issued in exchange for all outstanding Kmart Holdings common stock. Sears Roebuck shareholders received either $50 in cash or 0.5 shares of Old Sears for each Sears Roebuck share. Approximately 62.2 million shares of Old Sears common stock, valued at about $6.5 billion, was issued to Sears Roebuck shareholders. Also, $5.4 billion in cash was paid in consideration for all outstanding Sears Roebuck common stock and stock options.[15]

Sears Roebuck was delisted from the NYSE and began trading on the Nasdaq under the symbol SHLD.[16]

After the acquisition ESL owned approximately 40 percent of Old Sears' stock.[17] Mr. Lampert, who became chairman of Old Sears' board of directors and later its CEO, stated:

> *"This new enterprise will seek to leverage the combined strengths of Sears and Kmart to create a long-term value than either could have generated on a stand-alone basis."*[18]

Prior to Old Sears filing for bankruptcy in 2015, ESL was its largest shareholder owning approximately 49.7 percent of Old Sears' outstanding common stock.[19] Over several years, ESL had loaned $2.4 billion to Old Sears enabling it *"… to continue operations and seek to implement its transformation plan…"*[20]

Old Sears' Business Environment

As a retail department store business, Old Sears participated in *"a highly competitive market segment"* competing with both a variety of brick-and-mortar stores such as Walmart and Target, and online retailers such as Amazon. Like other traditional retailers, due to the growth of e-commerce, Old Sears was forced to reduce its prices to remain competitive. Starting in 2013, it closed 71.7 percent of its store locations.

During the five years prior to the bankruptcy, Old Sears' revenues declined to $19.5 billion representing a 53.8 percent drop. In fiscal year 2017, its revenues decreased to $16.7 billion from $22.1 billion in fiscal year 2016.

By 2018, Old Sears had approximately $5.6 billion of debt, which it mostly incurred to offset declining revenues, honor pension obligations, and purchase inventory. Over $1.7 billion of its debt was due in fiscal years 2018 and 2019. Its annual cash interest expense was approximately $400 million, and it lost approximately $125 million in cash each month.

Most of Old Sears' assets were encumbered, including over 200 real property locations, intellectual property, credit card and pharmacy receivables, and cash. Old Sears had net operating losses (NOLs) in excess of $5 billion and tax credits of approximately $900 million.[21] In fiscal year 2019, Old Sears contributed $459.3 million to its two pension plans, which were underfunded by about $1.5 billion and covered approximately 94,000 current and former employees.[22]

Bankruptcy Timeline

Pre-Chapter 11 Bankruptcy Proceedings

For several years prior to filing for bankruptcy, Old Sears made efforts to reduce its expenses and operating losses. For example, Old Sears simplified its organizational structure and improved its supply chain and logistics. It evaluated store-level performance to rationalize the size of its retail footprint. It also monetized its assets, refinanced its debts, and reduced and managed its legacy liabilities.[23]

In September 2018, ESL submitted to Old Sears a restructuring proposal to reduce its $5.5 billion of debt to $1.24 billion. Under the proposal, Old Sears would sell approximately $1.5 billion worth of assets and $1.5 billion of real estate and some creditors would convert their loans into Old Sears' stock and others would accept a cash payout.[24] ESL president, Kunal S. Kamlani, stated that the proposal was *"… designed to help create sufficient runway for [Old Sears] to continue its transformation and return to profitability for the benefit of its many stakeholders."*[25] Old Sears' board of directors did not approve the proposal. Also, Old Sears did not reach an agreement about the proposal with its creditors.[26]

On October 10, 2018, Old Sears formed a restructuring committee (Restructuring Committee) composed of independent directors to consider, evaluate, and oversee the implementation of strategic alternatives for Old Sears.[27]

Chapter 11 Bankruptcy Proceedings

Events from October 15, 2018 to December 4, 2018.

On October 15, 2018, Old Sears and certain of its direct and indirect subsidiaries filed for Chapter 11 bankruptcy protection. Old Sears stated that it filed for bankruptcy protection in order *"…to establish a sustainable capital structure, continue streamlining its operating model and grow profitably for the long term."* [28] Mr. Lampert stated that the bankruptcy process would give Old Sears the flexibility to strengthen its balance sheet thus enabling Old Sears *"… to accelerate its strategic transformation, continue to right sizing its operating model, and return to profitability."*[29] Upon filing for bankruptcy, Mr. Lampert resigned as CEO of Old Sears, but remained chairman of Old Sears' board of directors.[30]

On October 18, 2018, Old Sears filed a motion asking the Bankruptcy Court to approve global bidding and sale procedures *"for the efficient marketing, auction and sale of [its] assets in an orderly and value maximizing manner."*[31] Old Sears believed that there was *"… a viable path forward for a reorganization around a smaller footprint of profitable stores."* [32] It intended to sell its stores as a going concern because the sale would *"…not only save* [Old] *Sears and Kmart, but also the jobs of thousands of employees that depend on the continued operation…"* of its stores.[33] See Exhibit 6.

Exhibit 6. Announcement of Store Closing

Source: YouTube https://www.youtube.com/watch?v=tQ80EtowzkA

On October 24, 2018, the U.S. Bankruptcy Trustee overseeing the bankruptcy appointed a committee to represent Old Sears unsecured creditors' interests (Unsecured Creditors Committee).[34]

On November 15, 2018, Bankruptcy Court Judge Robert D. Drain approved Old Sears' global bidding and sales procedures and authorized Old Sears to solicit proposals, negotiate transactions, hold auctions, and consummate transactions for the highest or best value. As part of the process, Old Sears would solicit bids and designate a *"stalking horse"* bidder whose bid would set the floor price for other bids. If Old Sears received more than one bid, it would conduct an auction.[35]

On November 20, 2018, Judge Drain approved debtor-in-possession financing (DIP) for Old Sears of $1.83 billion senior secured super priority priming DIP asset-based credit facility (DIP ABL Facility).[36]

On November 21, 2018, Old Sears began soliciting bids for its assets, including its retail stores on a going concern or liquidation basis and for several of its individual businesses, such as Sears Home Services, Sears Auto Centers, and Innovel (Global Assets).[37]

Events from December 5, 2018 to December 27, 2018.

On December 5, 2018, ESL notified Old Sears that it was interested in acquiring substantially all of Old Sears' assets for approximately $4.6 billion (ESL's proposal).

As part of its proposal, ESL would make job offers to approximately 50,000 Old Sears employees. In addition, Old Sears would release ESL, Mr. Lampert, and others from future claims against them over past transactions between ESL and Old Sears (ESL Liability Release).[38] Some of Old Sears' unsecured creditors objected to ESL's proposal because of the credit bid and the ESL Liability Release. See Exhibit 7.

Exhibit 7. Photo of Edward S. Lampert

Source: The Wall Street Journal

https://www.wsj.com/articles/edward-lamperts-non-strategy-to-save-sears-1539403293

Besides ESL's proposal, Old Sears received multiple bids, including bids from liquidation firms to close some or all of Old Sears' stores and bids from others to acquire specific assets and divisions. Instead of selecting a "*stalking horse"* bidder for an auction of Old Sears' assets, in the middle of December 2018, Old Sears decided to *"push"* other bidders to make offers before the December 28, 2018 final bid deadline.[39]

Events from December 28, 2018 to January 8, 2018.

On December 28, 2018, Judge Drain approved a $350 million multiple-draw junior debtor-in-possession term loan (Junior DIP Financing) together with DIP ABL Facility, DIP Financing.[40]

Also on December 28, 2018, ESL submitted a formal bid (ESL's 1st Bid) to acquire for $4.4 billion substantially all of Old Sears' assets including:

1) the go-forward retail footprint of approximately 425 stores.

2) Sears Auto Centers, Shop Your Way, Kenmore, DieHard, Innovel, and Sears Home Services;

3) Old Sears' tax assets, such as NOLs and tax credits; and

4) approximately $1.7 billion of Old Sears' retail inventory and credit card and pharmacy receivables (ESL's 1st Bid).

ESL stated that it believed in Old Sears' *"immense potential to evolve and operate profitably as a going concern with a new capitalization and organizational structure."* [41] ESL described Old Sears *"as an iconic fixture in American retail"* and that it believed that

> *"a future for* [Old] *Sears as a going concern is the only way to preserve tens of thousands of jobs and bring continued economic benefits to the many communities across the United States that are touched by Sears and Kmart Stores."* [42]

The terms of ESL's 1st Bid were similar to its earlier proposal, but the purchase price was reduced from $4.6 billion to $4.4 billion, the credit bid was reduced from $1.8 billion to $1.3 billion, and ESL would pay $35 million as consideration for the ESL Liability Release. If ESL's 1st Bid were not accepted by Old Sears, ESL offered to purchase specific assets including Innovel, Sears Home Service, and Shop Your Way.

About its first bid, the Restructuring Committee rejected ESL's 1st Bid over concerns about the amount of cash, the credit bid, and the ESL Liability Release, but allowed ESL additional time to submit a revised bid. In early January 2019, ESL submitted a second bid (ESL's 2nd Bid), which the Restructuring Committee also rejected. After several weeks of negotiations, on January 8, 2019, Old Sears agreed to consider another revised bid from ESL.[43]

Events from January 9, 2019 to February 10, 2019.

On January 9, 2019, ESL submitted a third bid increasing its offer from $4.4 billion to $5.3 billion (ESL's 3rd Bid). In addition to the terms of ESL's Bids 1 and 2, its 3rd Bid assumed up to an additional $663 million of Old Sears' liabilities, including amounts owed to vendors, severance costs, and property taxes. ESL would acquire additional Old Sears' assets, including 57 real estate properties, more than $300 million in accounts receivables, and more than $300 million worth of inventory. ESL stated that its 3rd Bid would

> *"…provide substantially more value to stakeholders than any other option, in particular a liquidation, and it is the best path forward for Sears, its associates and the many communities across the United States touched by Sears and Kmart stores."* [44]

About the 3rd Bid, Lampert stated,

> *"For as long as I have been involved with Sears, I have cared deeply about the company, its associates and the people they serve. While the opportunity I saw from the start for Sears to benefit from the disruptive changes in retail and technology has not worked out so far, it is still there to be taken…"*

However, Lampert was hopeful that Old Sears could *"execute better and faster on* [a] *smaller platform" and there was "every reason to fight for its future."* [45]

As part of an auction held on January 14, 2019, Old Sears considered ESL's 3rd Bid, which was the only going concern bid, five bids from parties interested in buying Old Sears' individual businesses, and bids from liquidators.[46] On January 16, 2019, Old Sears' Board of Directors accepted ESL's 3rd Bid as the highest and best offer for Old Sears' assets.[47]

On January 17, 2019, Old Sears announced that the auction was closed and ESL was the successful bidder.[48] On the same day, Old Sears and ESL's affiliate, Transform Holdco LLC (New Sears), entered into a sale and purchase agreement (Purchase Agreement) pursuant to which under Section 363 of the U.S. Bankruptcy Code (363 Sale),[49] for approximately $5.3 billion, New Sears would purchase substantially all of Old Sears' global assets and assume certain of Old Sears' liabilities, then Old Sears would liquidate.[50]

Concerning the 363 Sale, the Restructuring Committee stated that it was *"… pleased to have reached a deal that would provide a path for* [Old] *Sears to emerge from the chapter 11 process…."* And *"Importantly, the consummation of the transaction would preserve employment for tens of thousands of associates* [and] *relationships with many vendors and suppliers who provide Sears with goods and services."*[51] ESL stated that it had

> *"… been steadfast in its commitment to* [Old] *Sears because … its emergence from Chapter 11 as a going concern is the best path for the company, its associates and the many communities touched by Sears and Kmart stores."*[52]

On January 17, 2019, the Unsecured Creditors Committee filed a motion with the Bankruptcy Court opposing the sale of Old Sears to New Sears. It claimed that Lampert and ESL operated

Old Sears like a *"private portfolio company that existed solely to provide the greatest returns on their investment"* disregarding the damage to Old Sears and its employees and creditors.[53] Also ESL's bid was *"… nothing but the final fulfillment of a years-long scheme to deprive* [Old] *Sears and its creditors of assets and its employees of jobs while lining Lampert's and ESL's own pockets."*[54] Further, the Unsecured Creditors Committee argued that although Mr. Lampert and ESL *"painted themselves as saviors"* by attempting to keep about 400 Sears stores open, Sears could not survive as a going concern.[55]

On February 6, 2019, Old Sears and the Pension Benefit Guaranty Corp. (PBGC), a federal agency that protected pension benefits in private-sector defined benefit plans, entered into a settlement agreement with PBGC agreeing to withdraw its opposition to the 363 Sale and taking over Old Sears' pensions.[56] Also, PBGC's $1.4 billion unsecured claim against Old Sears for pension funding and unfunded benefit liabilities was reduced to $800 million and PBGC received a senior, secured non-interest bearing $80 million note.[57]

On February 8, 2019, Judge Drain rejected the Unsecured Creditors Committee's and other parties' objections to the 363 Sale and approved it stating that Old Sears had *"… demonstrated good, sufficient, and sound business purposes and justifications…"* for the 363 Sale.[58] Judge Drain stated that one of the business justifications for the 363 Sale was that the purchase price was the highest and best offer and was fair and reasonable considering for Old Sears' assets. Judge Drain stated that another business justification for the 363 Sale was that it was

> *"…the best opportunity to maximize the value of the Acquired Assets, whether on a going concern basis or otherwise, and avoid decline and devaluation of the Acquired Assets that would occur in an immediate liquidation"* of them.[59]

Events from February 11, 2019 to February 12, 2019.

On February 11, 2019, in accordance with Bid #3, New Sears purchased for approximately $5.2 billion substantially all of Old Sears' assets.[60] The purchase price consisted of cash, a credit bid, and the assumption of certain of Old Sears' liabilities.[61] In exchange for its creditor claims against Old Sears, ESL received stock in New Sears. Old Sears' shareholders did not receive any stock, cash, and/or property from New Sears.

Following the 363 Sale, New Sears consisted of 223 Sears and 202 Kmart stores and several brands and operating businesses, including Kenmore DieHard, Craftsman, Sears Home Services, Sears Auto Centers, and Innovel.[62] Upon announcing the completion of the 363 sale, New Sears stated that it was moving forward from bankruptcy and was *"positioned for success"* with a *"footprint of profitable retail stores, a robust digital platform and an integrated ecosystem of businesses that drive franchise value,"* a healthier capital structure, and strong brand recognition and market positions in key segments.[63]

Upon completion of the 363 Sale, Mr. Lampert stated that ESL looked *"…forward to a new era at Sears and Kmart that builds on their proud histories, while finding new ways to innovate and grow to adapt to the forces transforming the retail industry."*[64] Further, ESL was *"…ready for this exciting opportunity to help return* [Old] *Sears to profitability"* and would apply itself *"every day in pursuit of that goal."*[65]

Some of the assets New Sears acquired included:

1. A go-forward retail footprint of 425 Sears and Kmart stores;
2. Several brands, including Sears Auto Centers, Sears Home Services, and Sears Home Improvement;
3. Several business, including Kenmore, Diehard, and Monark Premium Appliance Co.;
4. Shop Your Way membership program;
5. Inventory;
6. Account receivables;
7. Equipment;
8. Intellectual property;
9. Old Sears' goodwill;
   and
10. Tax assets including Old Sears' NOLs and tax credits, refunds, and rebates.[66]

Some of Old Sears' liabilities that New Sears assumed included:

1. Liabilities for warranties and protection agreements or other service contracts for goods and services Old Sears sold or performed.
2. Customer credits related to customer loyalty programs, Shop Your Way, and gifts cards and certificates.
3. Employment related liabilities for employees transferred from Old Sears to New Sears after the 363 Sale;
4. Employee severance reimbursement obligations;
5. Inventory account payables;
6. Property tax liabilities;
   and
7. Certain environmental liabilities.[67]

The $350 million outstanding amount under the Junior DIP Financing was rolled over to New Sears and the DIP ABL Facility was refinanced.[68] On February 12, 2019, Mr. Lampert resigned from Old Sears Board of Directors. While New Sears conducted a search for a CEO, its management team included Chief Financial Officer Robert A. Riecker, Chief Digital Officer Leena Munjal, and President of Softlines Greg Ladley.[69]

Post-363 Sale Events.

In April 2019, Old Sears sued Mr. Lampert, ESL, and others alleging that Mr. Lampert and others *"… caused more than $2 billion of assets to be transferred to himself and Sears' other shareholders and beyond the reach of Sears' creditors."*[70] Further, Old Sears claimed:

> *"As [Mr.] Lampert and the other Defendants stripped* [Old*] Sears of billions of dollars of assets and encumbered its remaining property with new liens,* [Old] *Sears was suffering billions of dollars of losses annually, and had not generated positive cash flow from operations for years…"* [71]

In response to the lawsuit, ESL stated:

> *"ESL Investments, Inc. vigorously disputes the claims in the debtors' complaint against ESL, Mr. Lampert, and Mr. Kamlani, which repeats baseless allegations and fanciful claims…* [Old Sears'] *allegations are misleading or just flat wrong."*[72]

After the 363 Sale, New Sears began to close stores and announced in November 2019 that it would be operating only 189 of the 425 stores it had acquired.[73] Also, in November 2019, New

Sears borrowed $250 million from ESL and other investors.[74] At the same time, New Sears began sold the DieHard batteries business and Innovel. New Sears took on an additional $100 million in debt by borrowing from Brigade Capital Management, a hedge fund.

Old Sears' Liquidation Plan.

On October 1, 2019, Old Sears filed a Chapter 11 Plan (Liquidation Plan) with the Bankruptcy Court. It was projected that Old Sears was short by $36.5 million to $104.5 million in covering the payment of its obligations to its creditors and other before exiting bankruptcy. At the hearing on October 7, 2019, Judge Drain stated that despite Old Sears not having the cash to pay its essential bills, he would approve the Liquidation Plan, which he did on October 15, 2019.

Under the Liquidation Plan, the Old Sears Secured Creditors were to be paid in full and unsecured creditors would be paid 2.5 cents for every dollar they were owed. [75] Old Sears shareholders' common stock and warrants to purchase Old Sears common stock were to be cancelled. Old Sears would liquidate by transferring its remaining assets and liabilities to a trust.[76]

Conclusion

In the 363 Sale, Old Sears sold substantially all of its assets to New Sears with its largest creditor, ESL exchanging its claims against Old Sears for New Sears stock. The 363-sale resulted in U.S. federal income tax consequences for Old Sears, Old Sears' creditors and shareholders, and New Sears. Under U.S. tax laws, what would have been their tax consequences?

Gretchen R. 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.

John R. Cooper is an Assistant Professor of Accounting at California State University, Los Angeles where he teaches accounting, taxation, and MBA courses. He previously taught at San Diego State University. Dr. Cooper received a doctorate from the University of Florida, an MS degree from San Diego State University, and a BS from Illinois State University. Dr. Cooper began his career at Ernst & Young in the emerging business group where he provided consulting services in the areas of audit and taxation. After leaving Ernst & Young, he started an eight-person consulting firm where he provided business valuation, litigation support, financial statement reporting, and tax compliance and planning services. He is a California CPA and is accredited in business valuation and forensic accounting. Dr. Cooper has published articles in both practitioner and academic journals.

Appendix A. U.S. Tax Concepts

Sources: U.S. Code: Title 26: Subtitle A-Income Taxes and Title 26 of the Code of Federal Regulations (26 CFR)

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."* 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 as 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.[77]

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.[78]

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.[79]

The COI doctrine requires that the former shareholders of an acquired corporation must have a substantial equity interest in Acquirer after the reorganization.[80] However, if Debtor Corp shareholders are eliminated in its bankruptcy proceedings (e.g., their Debtor Corp stock is cancelled), there will 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.

Tax Consequences: 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).[81] 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 IRX § 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 its 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.

If a corporation with a net operating loss (NOL) (Loss Corp) undergoes an ownership change, IRC § 382(a) imposes an annual limit on the amount of Loss Corp's NOL carryovers that can be used to offset gains arising after the ownership change (Section 382 Limit). Under IRC § 382(b)(1), the annual limit equals Loss Corp's equity value multiplied by the long-term tax-exempt rate. IRC § 382(g) provides than an ownership change occurs if there is an increase in the stock ownership of five percent shareholders aggregating more than 50 percent during a three-year period.

However, under IRC §§ 382(l)(5)(A) and (l)(6), the Section 382 Limit does not apply if:

1. Loss Corp's ownership change occurs in a title 11 or similar proceeding, such as a Type G reorganization; and
2. Loss Corp's shareholders or creditors before the ownership change own, after the ownership change, at least 50 percent of Loss Corp's stock.

IRC § 382(I)(5)(E) states that the stock received by the creditors will count towards the 50 percent change if: 1) their claims were held for 18 months before the date when the bankruptcy case was filed; or 2) the claims arose in the ordinary course of Loss Corp's trade or business.

Under IRC §§ 382(l)(5)(B) and (D), Loss Corp's NOL carryovers must be reduced by any interest deductions taken by Loss Corp during the taxable year in which the ownership change occurs and the three preceding taxable years with respect to indebtedness that was converted into, or exchanged for, stock pursuant to the bankruptcy reorganization. If there is a second ownership change within two years of a bankruptcy reorganization, the NOL carryovers that arose prior to the bankruptcy reorganization cannot be used to offset future gains arising after the second ownership change.

Under IRC § 382(l)(6), if Loss Corp elects out of the bankruptcy exception or the exception does not apply, Loss Corp's NOL carryforwards will be subject to the Section 382 Limit. However, the Section 382 Limit may be increased to reflect an increase in Loss Corp's value resulting from the surrender or cancellation of Loss Corp creditors' claims as part of a Type G reorganization.

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.[82] 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.[83]

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.[84]

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

Source: Authors' notes

DATE	EVENT
Sept. 2018	Sears Holdings Corporation's (Old Sears) largest shareholder and creditor, hedge fund ESL Investments, Inc. (ESL) submitted a restructuring proposal to reduce Old Sears' $5.5 billion debt to $1.24 billion.
10/10/2018	Old Sears formed a restructuring committee (Restructuring Committee) composed of independent directors to consider, evaluate, and oversee the implementation of strategic alternatives for Old Sears.
10/15/2018	Old Sears and certain of its direct and indirect subsidiaries filed for Chapter 11 bankruptcy protection. Edward Lampert resigned as CEO of Old Sears and remained chairman of Old Sears' board of directors
10/15/2018	Founder and chairman of ESL, Edward Lampert resigned as CEO of Old Sears and remained chairman of Old Sears' board of directors.
Oct. 2018	Old Sears' stock stopped being traded on the Nasdaq and began trading on the over-the-counter market under the trading symbol SHLDQ.
10/18/2018	Old Sears filed a motion asking the Bankruptcy Court to approve global bidding and sale procedures with the intention of selling the company as a going concern.
10/24/2018	The U.S. Trustee overseeing Old Sears' bankruptcy appointed a committee to represent Old Sears unsecured creditors' interests (Unsecured Creditors Committee).
11/15/2018	Bankruptcy Court Judge Robert D. Drain approved Old Sears' global bidding and sales procedures authorizing Old Sears solicit proposals, negotiate transactions, hold auctions, and consummate transactions for the highest or best value.
11/20/2018	Judge Drain approved debtor-in-possession financing (DIP) for Old Sears of $1.83 billion senior secured super priority priming DIP asset-based credit facility (DIP ABL Facility).
11/21/2018	Old Sears began soliciting bids on its assets including its retail stores on a going concern or liquidation basis and individual businesses including Sears Home Services, PartsDirect, Sears Auto Centers, and Innovel (Global Assets).
12/5/2018	ESL submitted a proposal to acquire for approximately $4.6 billion substantially all of Old Sears' assets.
12/2018	Instead of selecting a stalking horse bidder for an auction of Old Sears' assets, Old Sears decided to encourage other bidders to make offers before the December 28, 2018 final bid deadline.
12/28/2018	ELS submitted a formal bid to acquire Old Sears for $4.4 billion with a $1.3 billion financing commitment from several financial institutions (ESL's 1st Bid).
12/28/2018	Judge Drain approved a $350 million multiple-draw junior debtor-in-possession term loan (Junior DIP Financing) (together with DIP ABL Facility, DIP Financing).
12/28/2018 to early January 2019	• Old Sears' Restructuring Committee rejected ESL's 1st bid • ESL submitted a revised bid (ESL's 2nd Bid), which was rejected by Old Sears' Restructuring Committee.
1/8/2019	After several weeks of negotiations, Old Sears agreed to consider another revised bid from ESL.
1/9/2019	ESL submitted a revised bid increasing its offer from $4.4 billion to $5.3 billion (ESL's 3rd Bid).
1/14/2019	As part of an auction, Old Sears considered ESL's 3rd Bid, which was the only going concern bid, five bids from parties interested in buying individual businesses, and bids from buyers who would liquidate it.
1/16/2019	Old Sears board of directors accepted ESL's 3rd Bid as the highest and best offer for Old Sears' assets.
1/17/2019	Old Sears announced that the auction was closed, and ESL was the successful bidder.

DATE	EVENT
1/17/2019	Old Sears and ESL's affiliate, Transform Holdco LLC (New Sears), entered into a sale and purchase agreement (Purchase Agreement).
1/17/2019	The Unsecured Creditors Committee filed a motion with the Bankruptcy Court opposing the sale of Old Sears to New Sears
2/6/2019	• Old Sears and Pension Benefit Guaranty Corp. (PBGC), the federal government's pension insurer, entered into a settlement agreement with PBGC agreeing to withdraw its opposition to the 363 Sale and taking over the Old Sears' pensions. • PBGC's $1.4 billion unsecured claim against Old Sears was reduced to $800 million with the PBGC receiving a senior, secured non-interest bearing $80 million note.
2/8/2019	Judge Drain rejected creditors' and others' objections to the 363 Sale and approved it.
2/11/2019	• New Sears purchased for approximately $5.2 billion substantially all of Old Sears' assets. • The purchase price consisted of cash, a credit bid, and the assumption of certain of Old Sears' liabilities. • ESL forgave approximately $1.4 billion of the debt Old Sears owed it and received New Sears stock in exchange for its creditor claims against Old Sears.
2/12/2019	Edward Lampert resigned from Old Sears Board of Directors
10/1/2019	Old Sears filed a Chapter 11 Plan (Liquidation Plan) with the Bankruptcy Court.
10/15/2019	• Judge Drain approved the Liquidation Plan. • Under the Liquidation Plan: ○ Old Sears Secured Creditors were to be paid in full; ○ Old Sears unsecured creditors would be paid 2.5 cents for every dollar they were owed; ○ PBGC's $1.4 billion unsecured claim against Old Sears would be reduced to $800 million with the PBGC receiving a senior, secured non-interest bearing $80 million note; ○ Old Sears shareholders' common stock and warrants to purchase Old Sears common stock would be cancelled; and ○ Old Sears would liquidate by transferring its remaining assets and liabilities to a trust.
Nov. 2019	New Sears began to close stores and announced that it would be operating 189 of the 425 stores it had acquired.
Nov. 2019	New Sears borrowed $250 million from ESL and other investors.
April 2019	Old Sears sued Edward Lampert, ESL, and others for allegedly wrong actions prior to Old Sears filing for bankruptcy.
Dec. 2019	New Sears sold its DieHard business to Advance Auto Parts for $200 million.
Feb. 2020	New Sears borrowed $100 million from hedge fund, Brigade Capital Management LP.
March 2020	New Sears sold Innovel to Costco Wholesale Corporation for $1 billion.

Appendix C. Old Sears' Pre-bankruptcy Debt Facilities

Sources: Sears Holdings Corporation, Declaration of Robert A. Riecker Pursuant to Rule 1007-2 of Local Bankruptcy Rules for Southern District of New York: Case 18-23538 (October 15, 2018)

Debt Facilities	Principal Outstanding ($ millions)
Revolving Credit Facility	836.0
First Lien Letters of Credit	123.8
First Lien Term Loan A	-
First Lien Term Loan B	570.8
FILO (First In, Last Out) Term Loan	125.0
Total First Lien Debt	1,655.6
Stand-Alone L/C (Letters of Credit) Facility	271.1
Second Lien Term Loan	317.1
Second Lien Line of Credit	525.0
Alternative Tranche Line of Credit Loans	45.0
Second Lien PIK (Paid in Kind) Notes	175.4
Second Lien Notes	89.0
Total Second Lien Debt	1,151.5
IP/Ground Lease Term Loan	231.2
Consolidated Secured Note A	108.1
Consolidated Secured Note B	723.3
Total Secured Loan Debt	1,062.6
Holdings Unsecured PIK (paid in kind) Notes	222.6
Holdings Unsecured Notes	411.0
SRAC Unsecured PIK (paid in kind) Notes	107.9
SRAC Unsecured Notes	185.6
Total Unsecured Debt	927.0
Total Funded Debt	**5,067.8**
Intercompany Notes	
KCD Asset-Backed Notes	900.0
SRAC Medium Term Notes	2,311.8
Total Intercompany Debt	**3,211.8**
Sparrow Structure	
Sparrow Term Loan	111.0
Sparrow Mezzanine Term Loan	513.2
Total Sparrow Structure Debt	**624.2**

Appendix D. Old Sears' Pre-bankruptcy Debt Facilities Held by ESL Investments

Sources: Declaration of Robert A. Riecker Pursuant to Rule 1007-2 of Local Bankruptcy Rules for Southern District of New York: Case 18-23538 (October 15, 2018)

Debt Facility	Total Principal Outstanding ($ millions)	Amount of Total Principal Outstanding Held by ESL (and/or Its Affiliates) ($ millions)	Debt Facility's Term
FILO (First In, First Out) Term Loan	125.0	70.0	7/21/2015 (approximately) – 7/20/2020
Stand-Alone L/C (Letters of Credit) Facility	271.1	105.7	12/28/2016-12/28/2019
Second Lien Credit Facility (consisting of Second Lien Term Loan ($317.1), Second Lien Line of Credit ($525.0) & Alternative Tranche Line of Credit Loans($45))	887.1	819.6	• Second Lien Term Loan (9/1/2016-7/20/2020) • Second Lien Line of Credit (started 9/1/2016, due 270 days from each time amount was borrowed) • Alternative Tranche Line of Credit (9/1/2016-10/15/2018)
Second Lien PIK (paid in kind) Notes	175.4	20.7	3/20/2018-10/15/2019
IP/Ground Lease Term Loan	231.2	152.4	4/4/2018-7/20/2020
Consolidated Secured Note B	723.3	723.3	6/4/18-7/20/2020
Holdings Unsecured PIK (paid in kind) Notes	222.6	195.1	3/20/2018-12/15/2019

Appendix E. Old Sears' 5 Largest Pre-bankruptcy Secured Creditors

Sources: Sears Holdings Corporation, Declaration of Robert A. Riecker Pursuant to Rule 1007-2 of Local Bankruptcy Rules for Southern District of New York: Case 18-23538 (October 15, 2018)

No.	Holder	Amount of Claim ($)	Type of Collateral
1	First Lien Revolving Credit Agreement (Bank of America, N.A., and Wells Fargo Bank, National Association)	836,000,000	Credit card receivables, pharmacy receivables, Inventory, prescription lists, deposit accounts and cash
2	Consolidated Secured Note B (held by JPP, LLC and JPP, II, LLC (ESL Investment affiliates))	723,300,000	Real estate
3	2016 First Lien Term Loan (B) (Bank of America, N.A., and Wells Fargo Bank, National Association)	570,800,000	Credit card receivables, pharmacy receivables, Inventory, prescription lists, deposit accounts and cash
4	Second Lien Line of Credit (JPP, LLC administrative agent (ESL Investments affiliate))	570,000,000	Credit card receivables and inventory
5	Second Lien PIK (paid in kind) Term Loan (6 5/8% Senior Secured Convertible PIK Toggle Notes Due 2019)	317,100,000	Credit card receivables and inventory

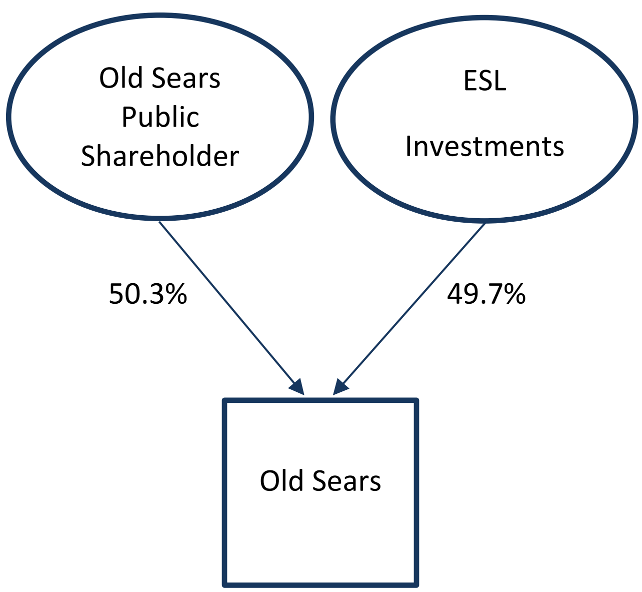
Appendix F. Old Sears' 20 Largest Pre-bankruptcy Unsecured Creditors

Sources: Sears Holdings Corporation, Declaration of Robert A. Riecker Pursuant to Rule 1007-2 of Local Bankruptcy Rules for Southern District of New York: Case 18-23538 (October 15, 2018)

No	Creditor	Nature of Claim	Amount of Claim ($)
1	The Pension Benefit Guaranty Corp (PUBGC)	Pension Benefits	Unknown
2	SRAC Medium Term Notes (8%)	Unsecured Notes	3,211,800,000
3	Holdings Unsecured Notes (8%)	Unsecured Notes	411,000,000
4	Holdings Unsecured PIK (paid in kind) Notes (8%)	Unsecured Notes	222,600,000
5	SRAC Unsecured Notes	Unsecured Notes	185,600,000
6	SRAC Unsecured PIK (paid in kind) Notes	Unsecured Notes	107,900,000
7	Whirlpool Corporation	Trade Debt	23,409,729
8	Frigidaire Company	Trade Debt	18,617,186
9	Winia Daewoo Electronics America	Trade Debt	15,180,156
10	Cardinal Health	Trade Debt	13,877,913
11	Icon Health & Fitness, Inc.	Trade Debt	12,102,200
12	HK Greatstar Int'l Co. Ltd.	Trade Debt	10,354,683
13	Samsung Electronics America HA	Trade Debt	8,054,247
14	Apex Tool International, LLC	Trade Debt	6,605,582
15	Black & Decker US, Inc.	Trade Debt	5,893,734
16	Eastern Prime Textile Limited	Trade Debt	5,761,992
17	Winners Industry Company Limited	Trade Debt	5,359,201
18	Tata Consultancy Services Ltd.	Trade Debt	5,333,545
19	Active Media Services, Inc.	Trade Debt	5,192,874
20	Automotive Rentals, Inc.	Trade Debt	4,830,313

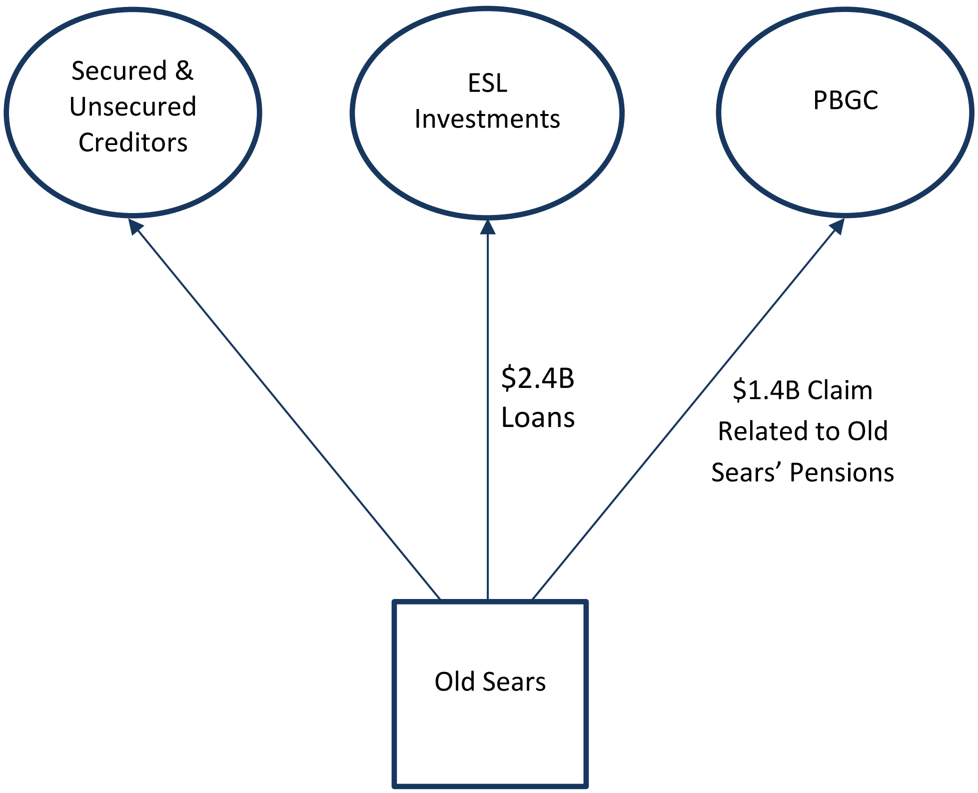
Appendix G. Pre-section 363 Sale: Old Sears' Shareholders

Source: Authors' notes



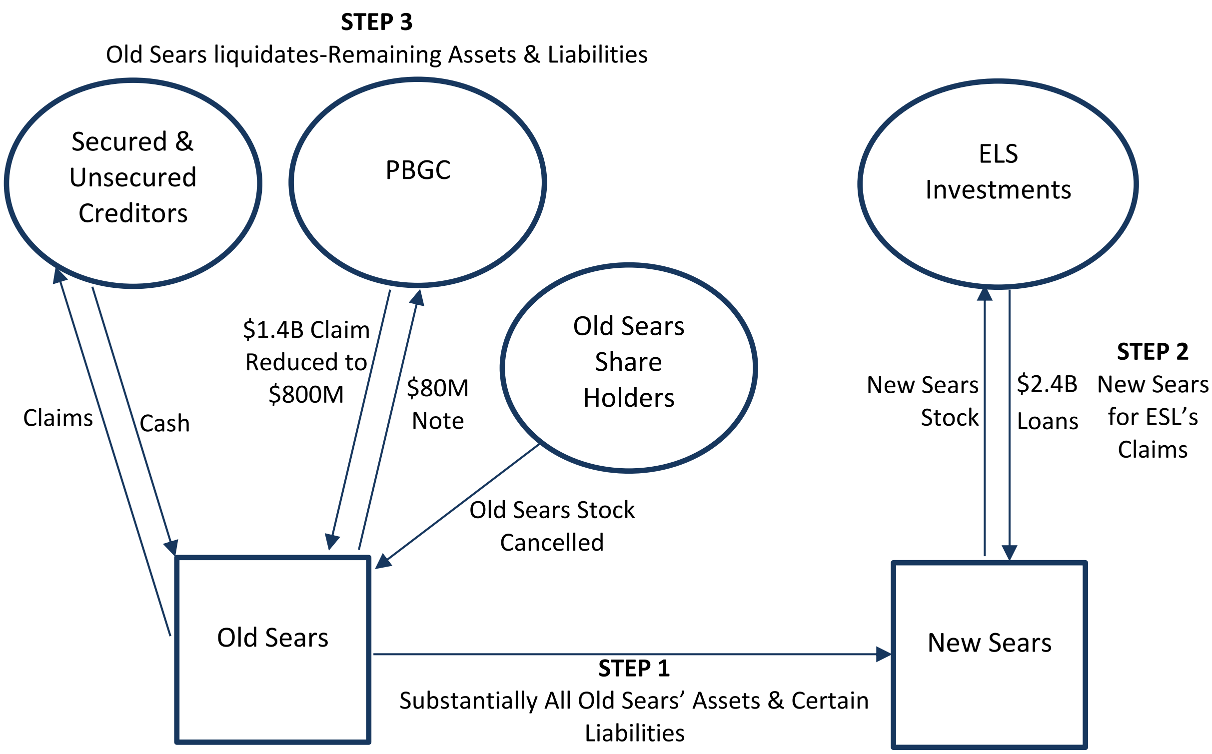
Appendix H. Pre-section 363 Sale: Old Sears' Creditors

Source: Authors' notes



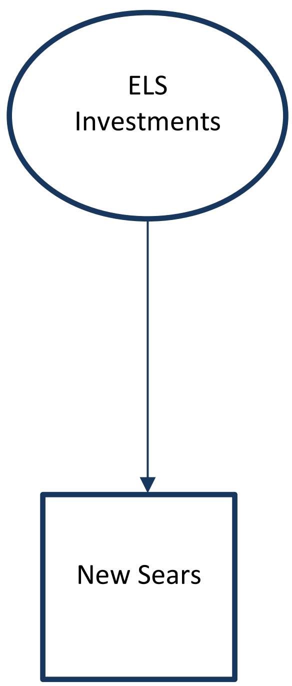
Appendix I. Section 353 Sale

Source: Authors' notes



Appendix J. Post-section 363 Sale Ownership of New Sears

Source: Authors' notes



References

[1] Kmart and Sears Complete Merger to Form Sears Holdings Corporation, Press Release (March 24, 2005) (Kmart and Sears Complete Merger (2005)).

[2] Sears Holdings Corporation, Declaration of Robert A. Riecker Pursuant to Rule 1007-2 of Local Bankruptcy Rules for Southern District of New York: Case 18-23538 (October 15, 2018) (SH Corp. Declaration (2018)).

[3] SH Corp. Declaration (2018).

[4] Sears Holdings initiates processes to accelerate strategic transformation and facilitate financial restructuring, Press Release (October 15, 2018).

[5] ESL Investments Completes Acquisition of Sears Holdings' Assets, Business Wire (February 11, 2019).

[6] Transform Holdco LLC Kmart History. Retrieved on June 28, 2021 from https://transformco.com/about/kmart/kmart-history?/about/kmart/history.htm (Kmart History).

[7] Kmart History; Brent Snavely, Kmart delisted, gets new stock symbol, Crain's Detroit Business (December 19, 2002) (Snavely, Kmart delisted (2002)).

[8] Kmart Holding Corporation United States Securities and Exchange Commission Form 10-Q: Quarterly Report (June 16, 2003). Retrieved from https://sec.report/Document/0000950124-03-002032/ (Kmart 10-Q (June 2003)); Mitchell Pacelle and Amy Merrick, A Kmart Debtholder Pushed Quick Exit From Chapter 11, Wall Street Journal (May 6, 2003).

[9] Mitchell Pacelle and Amy Merrick, Deals & Deal Makers, Kmart Gets Pressure From Two Investors To Hurry a Rebound, Wall Street Journal (September 12, 2002); Gregory Zuckerman and Mitchell Pacelle, Sears Suitor Faces a Tough Bet: Hedge-Fund Operator Lampert Emerges From Street's Shadows, Wall Street Journal (November 18, 2004).

[10] Kmart 10-Q (June 2003).

[11] Kmart History; Snavely, Kmart delisted (2002).

[12] Transform Holdco LLC, A brief chronology of Sears history, Sears Archives. Retrieved on June 28, 2021 from http://www.searsarchives.com/history/index.htm (Sears Archives).

[13] Goldman Sachs, Landmark IPO an American Retailing Icon Achieve the Next Level of Growth, Retrieved from https://www.goldmansachs.com/our-firm/history/moments/1906-sears-roebuck-ipo.html; Erin McDowell, The rise and fall of Sears, once the largest and most powerful retailer in the world, Business Insider (January 24, 2020).

[14] Matthew Nickerson, When Sears, the Facebook of its era, launched its IPO, Chicago Tribune (May 13, 2012).

[15] Sears Holdings Corporation United States Securities and Exchange Commission Form 10-Q: Quarterly Report (June 7, 2005) https://www.sec.gov/Archives/edgar/data/0001310067/000095013405011459/c95846e10vq.htm (SH Corp. 10-Q (June 2019)).

[16] Kmart and Sears Complete Merger (2005).

[17] Gregory Zuckerman and Mitchell Pacelle, Sears Suitor Faces a Tough Bet: Hedge-Fund Operator Lampert Emerges From Street's Shadows With Twin-Turnaround Gamble, Wall Street Journal (November 18, 2004).

[18] Kmart and Sears Complete Merger (2005).

[19] Sears Archives; SH Corp. Declaration (2018).

[20] ESL Investments, Inc., Indicative Bid Letter (December 5, 2018) Retrieved from https://www.sec.gov/Archives/edgar/data/923727/000119312518343049/d666424dex9981.htm. (ESL Bid 1).

[21] SH Corp. Declaration (2018).

[22] Sears Holdings Corporation Disclosure statement for modified second amended joint chapter 11 plan of Sears Holdings Corporation (July 9, 2019), Retrieved from file:///C:/Users/glawrie/Downloads/126020036165-rep-0907045959%20(1).pdf (SH Corp. Plan (July 2019)); Pension Benefit Guaranty Corporation, PBGC Statement on Sears Bankruptcy Filing, Press Release (October 15, 2018), Retrieved from https://www.pbgc.gov/news/press/releases/pbgc-statement-on-sears-bankruptcy-filing PBGC.

[23] SH Corp. Declaration (2018).

[24] ESL Bid 1; Lauren Hirsch and Lauren Thomas, Sears CEO proposes plan to avoid bankruptcy, as options and cash run low, CNBC (September 24, 2018), Retrieved from https://www.cnbc.com/2018/09/24/sears-ceo-proposes-restructuring-plan-to-avoid-bankruptcy.html.

[25] Lauren Hirsch and Lauren Thomas, Sears CEO proposes plan to avoid bankruptcy, as options and cash run low, CNBC (September 24, 2018), Retrieved from https://www.cnbc.com/2018/09/24/sears-ceo-proposes-restructuring-plan-to-avoid-bankruptcy.html.

[26] Lauren Hirsch and Lauren Thomas, Sears files for bankruptcy, and Eddie Lampert steps down as CEO, CNBC (October 15, 2018), Retrieved from https://www.cnbc.com/2018/10/15/sears-files-for-bankruptcy.html#:~:text=Lampert%20also%20expressed%20regret%20he,ESL%20put%20forward%20in%20September.

[27] SH Corp. Plan (July 2019).

[28] Sears Holdings Corporation, Sears Holdings initiates processes to accelerate strategic transformation and facilitate financial restructuring, Press Release (October 15, 2018). Retrieved from https://transformco.com/press-releases/pr/2116.

[29] *Id.*

[30] Sears Holdings Corporation, Sears Holdings Initiates Process to Accelerate Strategic Transformation and Facilitate Financial Restructuring, Press Release (October 15, 2018). Retrieved from https://transformco.com/press-releases/pr/2116.

[31] Sears Holdings Corporation, Debtors' Motion for Approval of Global Bidding Procedures (November 18, 2018), 2 and 3 (SH Corp. Bidding Procedures (November 2018)).

[32] *Id.* at 2.

[33] *Id.*

[34] SH Corp. Plan (2019).

[35] SH Corp. Bidding Procedures (November 2018); Lillian Rizzo, Sears Gets Court Approval to Sell Stores, Wall Street Journal (November 15, 2018).

[36] Sears Holdings Corporation Final Junior DIP Order (I) Authorizing the Debtors to (A) Obtain Post-Petition Financing (December 28, 2018). Retrieved from file:///C:/Users/glawrie/Downloads/M126119490565-rep-2812125112.pdf.

[37] Sears Holdings Corporation, Notice of Successful Bidder and Sale Hearing (January 18, 2019).

[38] ESL Bid 1.

[39] Lillian Rizzo, Sears Pushes for More Offers as ESL Bid Takes Heat, Wall Street Journal (December 18, 2018).

[40] Sears Holdings Corporation Final Junior DIP Order (I) Authorizing the Debtors to (A) Obtain Post-Petition Financing (December 28, 2018), Retrieved from file:///C:/Users/glawrie/Downloads/M126119490565-rep-2812125112.pdf.

[41] ESL Investments, Inc., Bid Letter (December 28, 2018), 1, Retrieved from https://app.reorg.com/print/sec/5c2cce6fbbc0c719718b542f (ESL Bid 2).

[42] *Id.* at 2.

[43] ESL Invs. v. Sears Holdings Corp., 621 B.R. 563 (S.D.N.Y. 2020); Jessica DiNapoli and Mike Spector, Sears chairman submits new roughly $5 billion bid to save retailer, Reuters (January 9, 2019), Retrieved from https://www.reuters.com/article/us-sears-bankruptcy-lampert-exclusive/exclusive-sears-chairman-submits-new-roughly-5-billion-bid-to-save-retailer-sources-idUSKCN1P32R7.

[44] Nathan Bomey, Sears bankruptcy: Sears gets last-minute offer to potentially avert liquidation, USA Today (January 9, 2019).

[45] Anne D'Innocenzio, Sears' chairman stands at the center of fight for company, Associated Press (January 14, 2019), Retrieved from https://apnews.com/article/9ae9d7a3d6e34ea0a6b8e812c2da0027.

[46] Lauren Zumbach and Alexia Elejalde-Ruiz, Sears bankruptcy watch: Showdown in court focuses on jobs, closings, Chicago Tribune (February 5, 2019).

[47] Soma Biswas, Sears Creditors Oppose Sale to Edward Lampert, Wall Street Journal (January 17, 2019); SH Corp. Plan (2019).

[48] Sears Holding Corporation, Sears Holdings announces ESL Investments as winning bidder in bankruptcy court-supervised auction, Press Release (January 17, 2019), Retrieved from https://transformco.com/press-releases/pr/2125.

[49] 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)).

[50] Sears Holdings Corporation United States Securities and Exchange Commission Form 8-K: Current Report (January 17, 2019). Retrieved from https://content.edgar-online.com/ExternalLink/EDGAR/0001193125-19-016016.html?hash=4d6070c0c4fb78a21fe0b28c70501e09eabd35d7919b97c4fd5933d2168c3385&dest=0001193125-19-016016-INDEX_HTM#0001193125-19-016016-INDEX_HTM.

[51] Sears Holdings Announces ESL Investments As Winning Bidder In Bankruptcy Court-Supervised Auction, Press Release (January 17, 2019), Retrieved from https://transformco.com/press-releases/pr/2125.

[52] Lauren Thomas and Lauren Hirsch, Sears announces Lampert's hedge fund, ESL, as winning bid in bankruptcy court auction, CNBC (January 17, 2019), Retrieved from https://www.cnbc.com/2019/01/17/sears-announces-esl-as-winning-bid-in-bankruptcy-auction.html.

[53] Ira S. Dizengoff, Motion of the Official Committee of Unsecured Creditors of Sears Holdings Corporation (January 17, 2019), 4, Retrieved from: ///C:/Users/glawrie/Downloads/126019538018-rep-1701020949%20(1).pdf. (SH Corp. Unsecured Creditors Motion (2019)).

[54] *Id.*

[55] SH Corp. Unsecured Creditors Motion (2019) at 6; Soma Biswas, Sears Creditors Oppose Sale to Edward Lampert, Wall Street Journal (January 17, 2019).

[56] If a pension plan that is insured by the PBGC terminates without sufficient funds to pay benefits, the PBGC pays the benefits up to the limits set by law. PBGC, Retrieved from https://www.pbgc.gov/Questions-and-Answers-for-Sears-Participants#:~:text=On%20February%2011%2C%202019%2C%20the,as%20of%20January%2031%2C%202019.

[57] SH Corp. Plan (2019).

[58] United States Bankruptcy Court Order Approving the Asset Purchase Agreement (February 8, 2019), 5; Sears Holdings Corporation United States Securities and Exchange Commission Form 8-K Report (February 8, 2019).

[59] United States Bankruptcy Court Order Approving the Asset Purchase Agreement (February 8, 2019), 6.

[60] ESL Investments Completes Acquisition of Sears Holdings' Assets, Business Wire (February 11, 2019), Retrieved from https://www.businesswire.com/news/home/20190211005792/en/ESL-Investments-Completes-Acquisition-of-Sears-Holdings%E2%80%99-Assets.

[61] SH Corp. Plan (2019).

[62] ESL Investments Completes Acquisition of Sears Holdings' Assets, Business Wire (February 11, 2019).

[63] ESL Investments Completes Acquisition of Sears Holdings' Assets, Business Wire (February 11, 2019).

[64] ESL Investments Completes Acquisition of Sears Holdings' Assets, Business Wire (February 11, 2019).

[65] ESL Investments Completes Acquisition of Sears Holdings' Assets, Business Wire (February 11, 2019).

[66] SH Corp. Plan (2019).

[67] SH Corp. Plan (2019).

[68] SH Corp. Plan (2019).

[69] ESL Investments Completes Acquisition of Sears Holdings' Assets, Business Wire (February 11, 2019).

[70] Sears Holdings Corporation v. Eddie Lampert, Complaint US Bankruptcy Court, Southern District of New York Case No 19-08250 (April 17, 2019), p. 4, Retrieved from https://www.wsj.com/public/resources/documents/sears_lampert.pdf

[71] Sears Holdings Corporation v. Eddie Lampert, Complaint US Bankruptcy Court, Southern District of New York Case No 19-08250 (April 17, 2019), p. 2, Retrieved from https://www.wsj.com/public/resources/documents/sears_lampert.pdf.

[72] Lauren Hirsch, Sears sues former CEO Eddie Lampert, Treasury Secretary Munchin and others for alleged 'thefts' of billions from retailer, CNBC (April 18, 2019), Retrieved from https://www.cnbc.com/2019/04/18/sears-sues-eddie-lampert-steven-mnuchin-others-for-alleged-thefts.html.

[73] Warren Shoulberg, Total Sears and Kmart Store Count Going Down to Just 95, Forbes (2020, July 12), Retrieved from https://www.forbes.com/sites/warrenshoulberg/2020/07/12/total-sears-and-kmart-store-count-going-down-to-just-95/?sh=53dc2b4460eb.

[74] Mike Spector and Jessica DiNapoli, Sears says it has secured a $250 million lifeline, will close 96 stores, Reuters (November 7, 2019), Retrieved from https://www.reuters.com/article/us-sears-financing-exclusive-idUSKBN1XH2OL.

[75] Soma Biswas, Court approves Sears liquidation plan, Market Watch (October 7, 2019); SH Corp. Plan (2019).

[76] Sears Holdings Corporation Disclosure statement for modified second amended joint chapter 11 plan of Sears Holdings Corporation (July 9, 2019). Retrieved from file:///C:/Users/glawrie/Downloads/126020036165-rep-0907045959%20(1).pdf.FIRST SH Corp. Plan (2019).

[77] 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) (Camp Wolters Enterprise (1954)); Pinellas Ice & Cold Storage Co. v. Comm'r, 287 U.S. 462 (1933)).

[78] IRS Private Letter Ruling 940909037 (December 7, 1993) (Pinellas Ice (1933)).

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

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

[81] 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."

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

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

[84] 26 USC § 1223(1).

IS RENEWABLE ENERGY ECONOMICALLY VIABLE? THE CASE OF THE SOLOMON ISLANDS

SEUNG HEE CHOI
The College of New Jersey

MARK A. DOUGHTEN
Data Evolution, LLC

The renewable energy business challenged conventional utility companies' hold on electricity generation. Francesco Venturini, CEO of Enel Green Power, said:

> *"Renewables are completely a different energy business. Nuclear plants take at least 15 years to plan and commission. Most large-scale power plants require 5 years to commission. On the other hand, wind generation facilities were put up in less than one year, so our renewable energy business requires a very different pace of activity"* (Innovation @ ENEL 2016).

Small-scale hydroelectric plants, solar panels, and wind farms constructed in the developing world were less costly than conventional solutions and enabled quicker self-sufficiency in power. Renewable executives and the World Bank agreed that developing countries were ideal customers of renewables because dependency on oil imports threatened a country's sovereignty (Mitchel & Klassen 2006). Renewables' relatively short turnaround time provided immediate improvement in living standards and commerce for developing nations.

George Baker had served as the Vice President for Community Wind at the Island Institute at the Fox Islands. The Fox Islands were located on Maine's coast in Penobscot Bay, near Rockland. The two largest islands were North Haven and Vinalhaven. The Solomon Islands and Fox Islands were both archipelagos. The scattered geography created similar logistic challenges

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. 8, 2023***, a publication of the Western Casewriters Association. Contact: Seung Hee Choi, The College of New Jersey, 2000 Pennington Rd, Ewing Township, NJ 08618, choi@tcnj.edu.

for providing consistent electricity access for the full-time residents at affordable rates. See Exhibit 1.

Solomon Islands and Fox Islands were both archipelagos. The scattered geography created similar logistic challenges for providing consistent electricity access for the full-time residents at affordable rates. He volunteered for the Fox Islands Wind project, and acknowledged that strong community support was critical for a project's success. Baker's method included first building a healthy relationship with the community, for example by hosting open town hall meetings with the renewable project as the subject. Since Fox Islands were seasonal, both year-round and summer residents were present at the meeting. Residents were concerned with the potential noise generated from large wind turbines. Baker responded with an illustration of a wind turbine and the total distance to a resident. His diagram illustrated the noise sources, propagation paths, and receivers. Baker guaranteed that the details of the project were effectively presented. He reflected that town hall meetings had helped him to build a relationship with Fox Islands' residents and thus to make progress in renewables. Baker established credibility in the community; residents visited him personally to voice their grievances. The relationship allowed Fox Islands Wind to finance $1.5 million from the National Rural Utilities Cooperative Finance Corporation (CFC) for the 20% down payment on wind turbines. In the Fox Islands, a healthy relationship with the community helped facilitate a cost-effective approach to renewable energy.

The Solomon Islands and Renewable Energy

The Solomon Islands faced high fuel import costs associated with conventional energy that limited the developing nation's economic development. The Solomon Islands decided to address the energy challenge through widespread adoption of renewable energy in order to reduce energy costs and increase access to electricity.

In an early phase, independent firms conducted research into different renewable energy techniques and assessed their effectiveness. Fortunately, there was a large potential in the

Solomon Islands for renewable energy, both from mini-grid generation and large-scale supply to the main grids. Solar photovoltaics captured a significant amount of energy during daylight. The estimated solar irradiation was 5.5 to 6.5 kwh/m2/day. The Solomon Islands Electricity Authority (SIEA) decentralized the electrical grid by constructing miniature grids with solar photovoltaics. As a result, widespread outages from technical errors, maintenance, and environmental disasters were minimized. However, the existing solar system was unsustainable. The primary reason was a lack of battery recycling procedures to reuse the material efficiently and reduce purchases of new batteries. Also, there were no guidelines on maintaining solar infrastructure, and no trained technicians.

The technically complex renewable sources were challenging to research and develop because the SIEA and the Ministry of Mines, Energy, and Rural Electrification (MMERE) lacked technical skills to produce cost-effective biofuels. The additional funding provided through the government and the World Bank helped alleviate some issues. The Solomon Islands required comprehensive renewable energy training to mitigate the risk associated with the present infrastructure and to reduce costs. For example, coconut oil as a substitute for diesel was used to power generators; coconut oil slowly reduced dependency on imported fuel. SIEA expanded coconut oil diesel supplements for power generation; however, this required additional funding. The transition to renewable coconut oil was, however, a high upfront cost.

There were limitations to the renewable energy potential of the Solomon Islands. The most daunting issue was inefficient land acquisition and regulation. The SIEA streamlined distribution extensions and miniature grids while simultaneously updating the current regulatory framework. The system planning and project management in SIEA and MMERE needed the capacity to develop appropriate policies and regulations. A streamlined approach reduced costs associated with acquiring land and working with the community at large.

Considering cost efficiency and economic feasibility, the optimal renewable sources for the Solomon Islands were hydro and solar power (Solomon Islands Government 2014). The

Solomon Islands had year-round river flows and consistent exposure to sunlight. The Japanese International Cooperation Agency conducted a study to estimate the total hydroelectric potential, and concluded it was 326 MW (Solomon Islands Government 2014). Comparatively, the existing diesel grid capacity was 28 MW. The largest project Solomon Island had commissioned to generate renewable energy was the Tina River Hydropower Project in Guadalcanal.

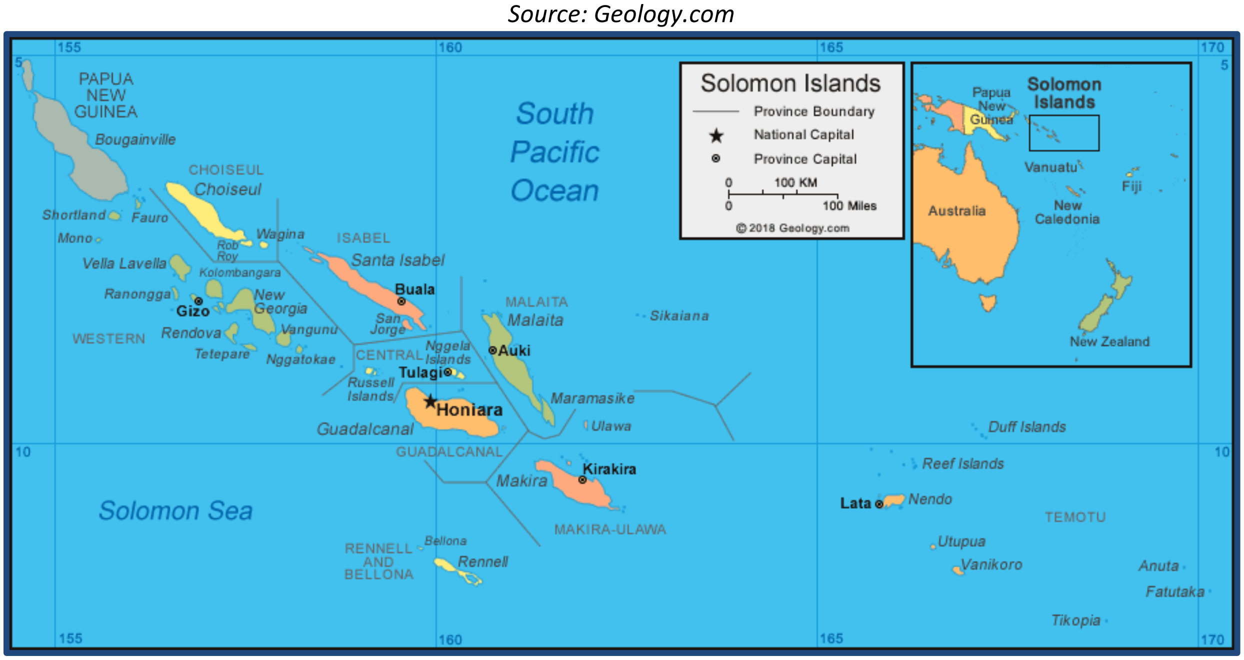
Background Information

Geography

The Solomon Islands were in the South Pacific Ocean and consisted of roughly 996 islands. The six main islands were Guadalcanal, Malaita, Isabel, Choiseul, and New Georgia. The total population of the Solomon Islands was 515,870, and roughly 80% of residents lived in rural communities. The population quickly increased from 1999 to 2009 with an average annual growth of 2.3% per year (Solomon Islands Government 2014). See Exhibit 1.

Exhibit 1. Geography of Solomon Islands

Source: Geology.com



The scattered islands were a logistical challenge because deliveries were decentralized. SIEA transported the equipment and fuel through planes and boats, which was costly for the utility company and ultimately the Solomon Islands people. Infrequently, SIEA used self-sustaining miniature grids to mitigate expensive import costs. The transition from fossil fuel generation to renewable energy generation on the Honiara and Auki grids improved energy affordability and the SIEA's financial performance (Solomon Islands Government 2014).

Economy

The Solomon Islands' economy was a mixed subsistence sector that the population was dependent on for livelihood; the country relied on limited material imports. The large-scale commercial enterprises dominated a limited monetized sector; these sectors straddled rural and urban spaces. The mixed subsistence sector included household production for self-consumption and surpluses were sold to local and urban markets. The monetized sector included commercial enterprises and organizations involved in production, manufacturing, and the service industry.

The Solomon Islands' dollar performed erratically against major currencies for over a decade with a slight appreciation in 2011. In the same year, a strong performance in commodities grew the economy by 10.7% in real terms. The non-forestry and non-mining sectors also contributed to overall growth; the agriculture, telecommunications, transportation, construction, and fisheries sectors boosted the sector. The economy was severely limited because of the small access to affordable energy in the country. A transition to renewable energy from diesel stimulated economic production since small businesses came to obtain reliable electricity and therefore increased production. In 2017, the World Banked published a short film titled *"Powerless: The Challenge Facing Businesses in Solomon Islands."* The film included interviews with local business owners who described firsthand the economic impact of unreliable electricity on their operations (https://youtu.be/xkphTxzhSJY).

Utility Company

The Solomon Islands Electricity Authority (SIEA) was a state-owned enterprise responsible for electric power generation and distribution to all provincial and rural centers. The SIEA had sole authority to provide electricity under the Electricity Act (Solomon Islands Government 2014). In 2014, the Solomon Islands were entirely dependent on imported refined petroleum fuels for energy generation. The grid generation capacity was 28 MW and was entirely diesel generation. The cost of electricity was relatively high, \$0.85/kWh for households and \$0.91/kWh for commercial customers. As a benchmark, the cost for energy in neighboring countries such as Australia was \$0.33/kWh and Fiji was \$0.22/kWh. In addition, the SIEA had a national tariff; in early 2013, the retail tariff was \$0.86/kWh for domestic consumers and \$0.92/kWh for commercial or industrial consumers (Solomon Islands Government 2014). The fuel price was automatically adjusted for the differentiating price of diesel fuel and the frequent fluctuation was dependent on the international oil market. See Exhibit 2.

Exhibit 2. SIEA Tariff April 2013

Source: Investment Plan for Solomon Islands, May 2014, Solomon Islands Government & Ministry of Mines, Energy and Rural Electrification

Category	SI\$/kWh	USD/kWh
Domestic	6.19	0.86
Commercial \$ Industrial	6.65	0.92
High Voltage Tariff	6.47	0.90
Minimum Charge (\$/month)	20.00	2.79

The Solomon Islands Electricity Authority had a Board of Directors responsible for charting the Company's strategic direction, objectives, policy guidelines, and monitoring progress. The Board reviewed corporate objectives and operating budgets. There were three Board Sub-Committees: (1) Audit, Finance, Risk and Governance; (2) Technical; and (3) Human Resources, that were responsible for providing the Board with recommendations.

The Board steered the Solomon Islands Electricity Authority towards renewable electricity generation through infrastructure projects such as solar and hydroelectric. In parallel, the

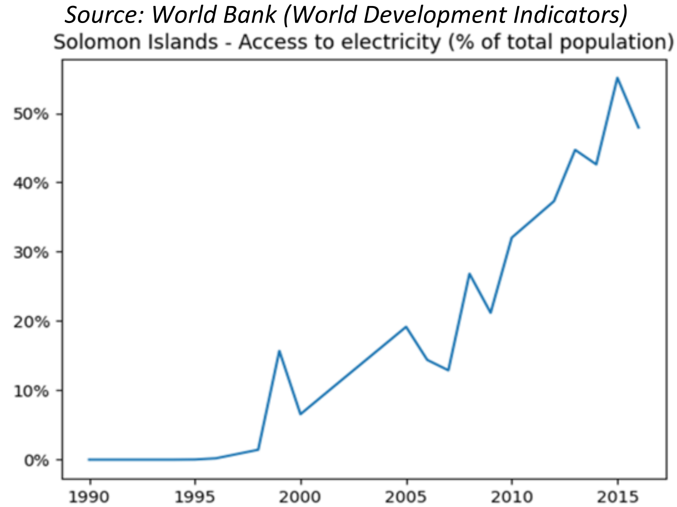
Board screened foreign investments based on the Board's core values. When deciding on a project, the Chairman and Directors were thinking critically about the impact to the country as well as their own fiduciary responsibilities.

Access to Electricity and Future Demand

Most of the households in the Solomon Islands used kerosene lamps as the main power source. The remaining households were connected to the electrical grid or solar. Despite governmental efforts, electricity access in the Solomon Islands remained extremely low. SIEA had a difficult time supporting the high cost of diesel generation and distribution in provincial regions. See Exhibit 3.

Exhibit 3. Percent Access to Electricity Households

Source: World Bank (World Development Indicators)



The Lungga diesel power plant was the main electricity provider in Guadalcanal, whose capital and main city was Honiara. Historically, Honiara suffered from power shortages, especially during peak demand periods. The Solomon Islands needed to increase the power supply to accommodate increasing business and residential demand. The goal was to alleviate the peak SIEA demand on diesel systems and backup diesel generating plants (Exhibit 4). Unfortunately, the need for further investment in diesel power generation was prolonged for more than a decade.

Exhibit 4. Projected Power Demand (kW Peak)

Source: Investment Plan for Solomon Islands, May 2014, Solomon Islands Government & Ministry of Mines, Energy and Rural Electrification

System	2012	2013	2014	2015	2016	2017	2020	2025	2030
Honiara	14,241	14,739	15,254	15,787	16,338	16,908	18,745	22,257	26,427
Noro/Munda	410	424	439	455	470	485	540	641	761
Gizo	450	466	482	499	516	534	592	703	835
Auki	360	373	386	399	413	427	474	563	668
Buala	72	75	77	80	83	86	95	113	134
Kirakira	62	64	66	69	71	73	82	97	115
Lata	88	91	94	98	101	104	116	138	163
Malu'u	30	31	32	33	34	35	39	47	56
Tulagi	92	95	99	102	106	110	121	144	171
Total Demand	15,805	16,358	16,929	17,522	18,132	18,763	20,804	24,703	29,330
Compound Annual Growth Rate	3.49%								

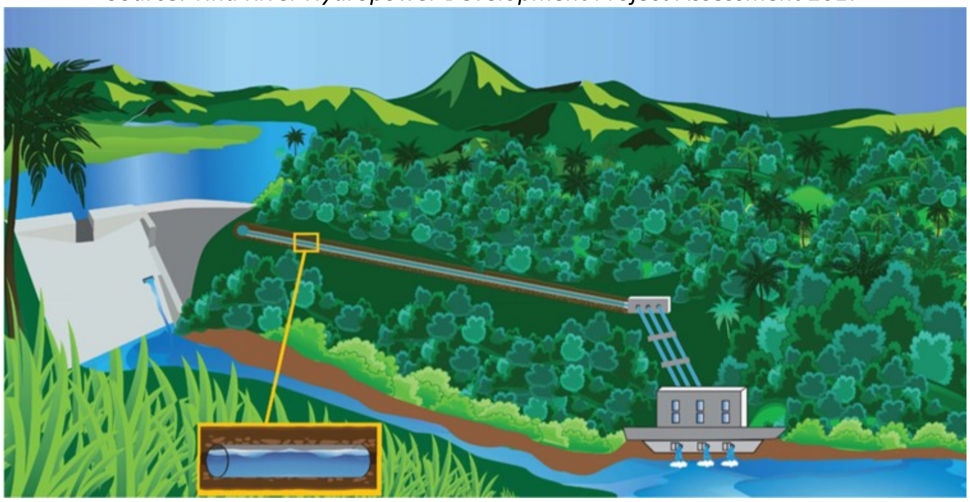
Alternative Energy Sources

Tina River Hydropower

In the Solomon Islands, most villages were located near rivers that supplied drinking and washing water (Lynch 2010). Proximity to rivers provided the residents with a unique opportunity to leverage natural resources for electricity. The Tina River was located 30 km Southeast of Honiara at the upstream end of the Ngalimbiu River Basin in Central Guadalcanal. The feasibility study of the Tina River hydropower scheme started in 2010 and closed in 2014, and several sites were studied for the optimal environment and social factors to determine the location for a hydropower facility along the river (Solomon Island Government 2019). See Exhibit 5.

Exhibit 5. Solomon Islands Tina River Hydropower Development

Source: Tina River Hydropower Development Project Assessment 2017



The Tina River Hydropower Project (TRHDP) sought to develop a 15-20 megawatt run-of-river hydropower plant to generate electricity for the capital, Honiara, through a Public Private Partnership. The project was the first major hydroelectric project in the Solomon Islands and would provide a total annual output of 78.35 GWh (Solomon Island Government 2019). The objective of the project was to supply affordable power to the existing electrical grid in Honiara and the adjacent regions, displacing the existing costly and unreliable oil-fired diesel generators. The electrical supply barely satisfied the demand in Honiara for business and residential consumers. TRHDP would reduce dependency on the current diesel system and the political dependency on fuel. See Exhibit 6.

Exhibit 6. Tina River Hydropower Project Main Characteristics

Source: Environment and Social Impact Assessment, Tina River Hydropower Development Project (TRHP), August 2017, Solomon Islands Government & Ministry of Mines, Energy and Rural Electrification

Project Cost	
Full scheme (extension of the powerhouse)	US$133.3 Million
Unit cost for the Project	US$165 to 185/MWh
Diesel energy unit cost (Lungga power station)	US$330 to 400/MWh
River Hydrology	
Mean flow at dam	$11.5m^{3/s}$
Tina catchment area	$150km^2$
Catchment area above the dam	$125km^2$

The electricity price in Guadalcanal was among the highest in the Pacific region due to the extremely costly diesel fuel used to generate electricity. Fuel costs for conventional energy fluctuated between $0.17 kWh and $0.57 kWh. In fact, Guadalcanal had abundant hydropower potential that could help the country reduce its dependency on oil, manage uncertainties inherent with oil markets, and lower the cost of electricity production.

The Government of the Solomon Islands was planning to fund the TRHDP with the assistance of the World Bank and the European Investment Bank. The hydropower project allowed the Solomon Islands to develop trusted relationships with the international banking community. The government would benefit from learning the process to facilitate future funding efforts for large-scale infrastructure projects. Supplemental funding was necessary for the developing country; the country could not meet the financial requirements itself. The renewable energy project had high upfront costs with low operational costs in the following years. The TRHDP met increasing electricity demand required for existing industry, business, and residential consumers, as well as drawing in new foreign investments to the Solomon Islands.

Solar Power Development Project

Since the Solomon Islands was on the equator, there was considerable opportunity for solar energy. Solar irradiation was estimated at 5.5 to 6.5 kwh/m2/day. At the time, there were no grid-connected solar farms in the Solomon Islands, only several small-scale projects called solar home systems (SHS). The Government had funded small projects in partnership with China, Italy, and Turkey. The focus was providing solar lighting for rural based schools including boarding schools and rural clinics.

In September 2012, the Government launched a 2-year pilot program that installed SHS for 2,000 households in the country. Japan funded the project, and the 2009 national census estimated that 21.2% of the national population had some form of household based solar system. The Asian Development Bank financed $2.24 million for the Solar Power Development Project; its goal was to decrease the cost of generating electricity with diesel fuel and reduce greenhouse gas emissions. The solar and battery systems replaced 66%-87% of diesel generation in five provinces: Kirakira, Lata, Malu'u, Munda, and Tulagi. The batteries were critical for intermittent demand. A key component of the project was training the Solomon power technicians, specifically in operating and maintaining solar systems. See Exhibit 7.

Exhibit 7. Lata Site Location

Source: Asian Development Bank. (April 2016). SOL: Solar Power Development Project

There were several advantages of solar power in the Solomon Islands. The first was that solar energy was available in most provinces, even remote inland areas. Again, the Solomon Islands was on the equator and had access to year-round sunlight. Solar panels were 50% cheaper than they had been in years before, making the decision cost effective. There were, however, some constraints including the difficulty finding a private vendor for maintenance, lead acid battery disposal, and a poorly developed cash economy in some parts leading to difficulties in upfront payments by households.

Quantitative Evaluation - Economic Viability

Renewable energy projects had a 10-year loan payback period. The utility industry had compared fixed and operational costs of alternative and conventional energy to aid strategic decision-making. Wind and hydrogen systems were $23,000 per kW and an average diesel generator at $345 per kW fixed cost. The operational costs were estimated at 1.5% annually for the wind and hydrogen system and 2.5% annually for the diesel system. Furthermore, a renewable energy system could redeem green certificate credits for about 0.017 kWh per year. The higher fixed cost for renewable energy was balanced by the relatively low operational cost and free fuel. The Solomon Islands sourced low-cost debt from the international community to help finance the high upfront costs associated with renewable energy. Financially, the Solomon Islands' conversion from conventional energy to renewable energy was supported through the *"Levelized Cost of Energy"* approach.

In 2017, Lazard supported and financed research into the cost of wind and solar (Lazard 2017). The report showed the decrease in the price per megawatt-hour in renewable energy from 2009 to 2017; renewable energy costs fell below conventional energy methods (Lazard 2017). The price per megawatt-hour for utility-scale solar decreased below conventional energy. Based on Lazard's research, the Solomon Islands would benefit financially from more affordable renewable energy.

Levelized Cost of Energy (LCOE)

Many industry analysts and researchers already acknowledged the *"Levelized Cost of Energy"*(LCOE) as one of the major standard measures for comparative analysis of different energy technologies on a standard $/MWh basis. The measurement encompassed sensitives such as cost of capital, geography, and fuel costs. Furthermore, LCOE considered the usage, characteristics, and applicability of different generation technologies, considering factors such as location requirements and constraints, dispatch capability, and land and water requirements. See Exhibit 8. According to Lazard, the LCOE was efficient to:

- Measure values across the longer term, showing projected life cycle costs;
- Highlight opportunities for tribes to develop different scales of projects (facility, community, or commercial);

- Inform decisions to pursue projects on an economic basis, compared to utility rates;
- Acknowledge most renewable energy projects have zero fuel costs (with biomass being the possible exception).

Exhibit 8. LCOE Formula

Source: Lazard's Levelized Cost of Energy Analysis – Version 11.0, November 2017

$$LCOE = \frac{Sum\ of\ cost\ over\ lifetime}{Sum\ of\ electrical\ energy\ produced\ over\ lifetime}$$

The Solomon Islands government and SIEA provided the relevant information on the Tina River Hydropower Project (TRHDP) including the investment expenditure, electricity generation, and project date in the Environment and Social Impact Assessment in August 2017. The adjustable inputs included the selected discount rate, the Solomon Islands' interest rate on World Bank loans, the operation and maintenance expenditures and the growth rate, the life of the system, and fuel expenditures. A relatively low LCOE would provide supporting evidence that renewable energy in the Solomon Islands was financially efficient.

Qualitative Evaluation

Regulatory Environment

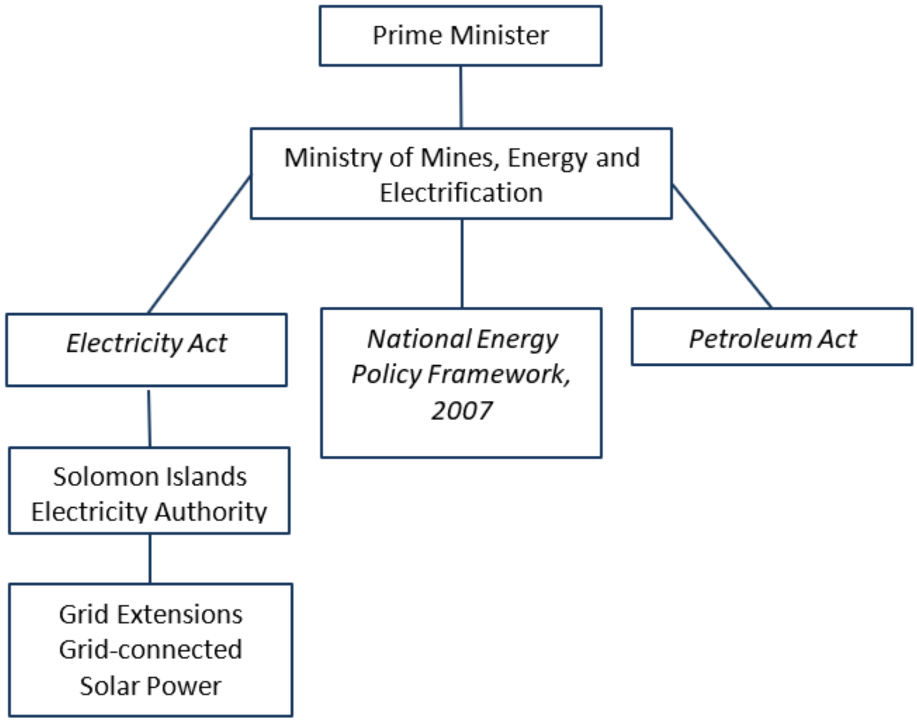
A division in the Ministry of Mines, Energy, and Rural Electrification (MMERE) was responsible for energy policy, renewable energy for development, and project implementation. The Solomon Islands had the National Energy Policy Framework 2007 to outline the broad policy direction for the MMERE (Solomon Islands Government 2014). In 2013 and 2014, the legislation was revised. A relevant clause in the revised draft was a 50% renewable energy target for 2020, and the emphasis to reduce Greenhouse Gas Emissions. The goal was cost-effective renewable energy sources that satisfied the energy demand of the country.

Furthermore, fuel storage and handling were encompassed in the Petroleum Act (Solomon Islands Government 2014). The legislation enforced the annual re-licensing of fuel storage facilities; in reality, there was no regulation for biofuels. According to the Investment Plan for the Solomon Islands, the Energy Division has five core objectives:

1. Formulate and implement national energy policy and monitor and evaluate its impact;
2. Plan, coordinate and assist in the implementation of energy projects across the energy sector and between ministries and related agencies;
3. Provide the government and energy-related agencies with expert advice and analysis on energy matters;
4. Act as the focal point for all petroleum matters;
5. Act as the convener and facilitator of the national energy coordinating.

Most importantly, the Electricity Act provided a legal framework for the establishment of a state-owned, vertically integrated utility to supply the urban and provincial centers with electricity. In 1982, the Act was amended to align with utility practice at the time and permit the SIEA to expand. The jurisdiction expansion provided the SIEA and the MMERE with the authority to direct the utility company toward renewable energy. The regulatory environment was outdated in the Solomon Islands and focused more on regulating fossil fuels than renewable energy. The weak regulatory environment increased uncertainty for businesses and foreign investors alleviating the cost of borrowing to finance projects such as the TRHDP. See Exhibit 9.

Exhibit 9. Ministry of Mines, Energy and Electrification Organization Chart



Communities

The SIEA and MMERE faced difficulties in acquiring land to develop since the clans and tribes owned most of the land. The children inherited rights to the land and the official title to the land was either registered or customary. The Solomon Islands government recognized that all customary land was owned, usually in a lineage group. The registration process was slowly standardized and guaranteed property boundaries through laws. It became more attractive for investors - local and foreign - since it allowed ownership of fixed-term estate in registered land. According to government filings, roughly 88% of the land was customary and 12% was registered (Solomon Islands Government 2014). Solomon Island officials had to persuade the community to forfeit the necessary land for TRHDP through town hall meetings and workshops. The goal was to educate the community on the material, which was a lengthy and costly process for the SIEA.

TRHDP and Solomon Island authorities hosted workshops to meet with the communities in person and present general information on the potential impact of renewable projects. The communities affected by dam construction and operation activities, landowners who had customary rights in the project-affected area, and downstream communities were present at the workshops. Together, the two groups drafted mitigation measures to ease pressure in the area near the construction zone. The objective of the workshops was exchanging information on the TRHDP and receiving feedback on the community's concerns. The mitigation measures were tailored to the local tribes and clans to establish a healthy relationship with the community and transparent communication with the community.

Looking Ahead: Self-Sustaining Grids

In the Solomon Islands, the Tina River Hydro Project and Solar Power Development Project were promising sources of cost-efficient energy. The completion of these projects displaced existing diesel generators. The goals outlined in the 2017 Annual Report for SIEA were the following:

- Increase focus on the development of the Tina River Hydro Project;
- Complete the route survey and options for analysis for the 66kV transmission lines;
- Complete the assessment of the 50-meter easement and its proposed valuation for the above lines;
- Provide input into the drafting of the Power Purchase Agreement and associated schedules.

The Solomon Islands had a bright future with renewable energy and self-sustaining electrical grid construction. The alternative sources of electricity could stimulate economic and societal development through an affordable approach to electrical generation.

Decisions

Learning from the successful case in the Fox Islands led by George Baker, the Solomon Islands needed leadership from decision-makers who had a vision, a healthy relationship with the community, and who could facilitate a cost-effective approach to renewable energy. The individuals were board members, strategic advisors of the SIEA's executive board, and even tribesmen. They partnered to set feasible and strategic directions by identifying opportunities, limits, and risks to the Solomon Islands' energy future. The investigation was based on economic, geographical, regulatory, societal, and environmental perspectives. Some of the selected projects were considered with in-depth comparative analyses. Measuring the economic feasibility of the Tina River Hydropower Project compared to the Solar Power Development Project was a starting point. In addition, the strategic recommendations needed financing to facilitate and complete renewable energy development. Most importantly, there was a clear understanding of the human resource demand on the community. Like George Baker, the decision-makers acknowledged that strong community support was critical for a project's success.

Seung Hee Choi, Ph.D. is a Professor of Finance at The College of New Jersey. Her teaching and research interests include Corporate Finance, ESG, Real Estate Finance, and Investment. She can be reached at choi@tcnj.edu.

Mark A. Doughten is a Principal at Data Evolution, LLC., a research firm focused on improving the well-being of people and communities around the world. He earned a B.Sc. in Business Administration with a concentration in Finance from The College of New Jersey and a B.Sc. in Computer Science from Oregon State University. He is reachable at mark@data-evolution.net.

Appendix A. Glossary

Units	Definition
GWh	Gigawatt-hour
kV	Kilovolt
kW	Kilowatt
kWh	Kilowatt-hour
MWh	Megawatt-hour
MW	Megawatt

Appendix B. Renewable Energy

Advantages	Disadvantages
Solar Panels	
• Portable • Installation • Lightweight	• Cleaning • Sunlight • Batteries
Biomass	
• Recycle plant material • Sourcing fuel • Carbon neutral	• Technical facility • Carbon emissions • Fuel crop production
Turbines	
• Deployable in the ocean • Scalability • Maintenance	• Wind speed fluctuation • Community complaints • Ecosystem implications
Hydroelectric	
• Consistent resource • Design • Easily adopted	• Technical facility • Carbon emissions • Upfront investment

References

Asian Development Bank. (April 2016). SOL: Solar Power Development Project

Asian Development Bank. (December 2020). Pacific Energy Update

Chesbrough, H. (July 1, 2016). Innovation @ ENEL: From Monopoly Power to Open Power. Berkeley Haas Case Series, Haas School of Business, University of California Berkeley

Corcoran, J., & Gazor, M., & Hogarty, D., & Somers, Jr., A. H. (February 2015). The Fox Islands Wind Project, Harvard Business School

DOE Office of Indian Energy. (August 2015). Levelized Cost of Energy. U.S Department of Electricity

Lazard. (November 2017). Levelized Cost of Energy Analysis – Version 11.0

Lynch, P. (October 2010). Micro-hydroelectricity in Solomon Islands, Fiji National University

Mitchel, J., & Klassen, R. (2006). Hydro: From Utsira to Future Energy Solutions, Richard Ivey School of Business, The University of Western Ontario

Nadella, B., & Kramer, M. R. (August 1, 2018). Enel: The Future of Energy, Harvard Business School

Quan, D. (March 2018). Solomon Power 2017 Annual Report, Solomon Islands Electricity Authority

Solomon Islands Government & Ministry of Mines, Energy and Rural Electrification. (August 2017). Environment and Social Impact Assessment, Tina River Hydropower Development Project (TRHP)

Solomon Islands Government & Ministry of Mines, Energy and Rural Electrification. (May 2014). Investment Plan for Solomon Islands

Solomon Islands Map and Satellite Image Geology.com. (n.d.). Retrieved July 29, 2022, from https://geology.com/world/solomon-islands-satellite-image.shtml.

The National Academy of Sciences. (2022). Renewable Sources. http://needtoknow.nas.edu/energy/energy-sources/renewable-sources.

The New York Times Company (June 2006). Retrieved March 13, 2023, from https://archive.nytimes.com/www.nytimes.com/imagepages/2006/06/16/realestate/20060616_HAVENS_MAP.html?action=click&module=RelatedCoverage&pgtype=Article&region=Footer.

Tina Hydropower Limited. (April 2019). Environmental Impact Statement, Solomon Island Government

World Bank. (December 5, 2017). *Powerless: The Challenge Facing Businesses in Solomon Islands.* [Video] YouTube. https://www.youtube.com/watch?v=xkphTxzhSJY

C.R. BARD, INC.: WHEN SHOULD A CONTINGENT LIABILITY ARISING FROM A PRODUCT LIABILITY BE REPORTED IN THE FINANCIAL STATEMENTS?

STEVE HALL
SARAH BORCHERS
University of Nebraska at Kearney

To report or not to report? That was the question. Beginning in 2010, C.R. Bard, Inc. (Bard) was sued by a number of women who had received a surgical mesh implant that the company manufactured; the implant had subsequently led to significant medical complications. By the end of 2011, the number of lawsuits stood at 532. The company had been able to avoid reporting a loss and contingent liability for two years, but by the end of 2012, the number of lawsuits numbered 2,320 and the company had lost one of the lawsuits, with significant damages awarded to the plaintiff (C.R. Bard, Inc. 2013). Such a judgement increased the probability that the company would have to pay out for the other lawsuits that had been filed. It also increased the likelihood that others would come forward and additional lawsuits would be filed. Could Bard continue to avoid reporting a contingent liability and loss on its financial statements? If yes, how long could it continue to do so?

You are one of the accounting interns hired by Bard. To answer these questions, you need to know more about Bard, its product, the problems with its product, the lawsuits, the damages awarded, the accounting rules that govern reporting of contingent liabilities and losses, and how losses from product liability can be estimated. The CFO has tasked you with researching the issue and reporting back to her with your suggestions. Impressing the CFO could help you

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. 8, 2023***, 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 Sarah Borchers, University of Nebraska at Kearney, 1917 W. 24th Street, Kearney, NE 68849, borcherssj@unk.edu.

land a full-time job with Bard after graduation, the company that you've had your eye on since you started college.

Bard Pharmaceuticals

Bard was a manufacturer of medical, surgical, diagnostic and patient care devices (C.R. Bard, Inc. 2013). The company was founded in 1907 by Charles Russell Bard, incorporated in 1923, went public in 1963, and first started trading on the New York Stock Exchange in 1968. Bard's 2013 10-K can be accessed here:
https://www.sec.gov/Archives/edgar/data/9892/000119312513067023/d445844d10k.htm

Bard's specialties included vascular products (e.g., catheters, meshes, stents, vena cava filters, and biopsy devises), urology products (e.g., various catheters, incontinence products, and stone removal devices), oncology products (e.g., vascular access catheters and ports and ultrasound devices), and surgical specialty products (e.g., implanted grafts and fixation devices for hernia and soft tissue repair, surgical continence products for women, and surgical sealant to control bleeding) (C.R. Bard, Inc. 2013).

The Nature and Use of the Surgical Mesh

The surgical mesh was a weblike material used to repair hernias and pelvic organ prolapse. Pelvic organ prolapse was a medical condition in which the uterus, bowel, or bladder slipped down from its normal position and bulged into the vagina. The mesh was made of a non-absorbable material and remained in the body as a permanent implant (Health Service Executive 2022).

The majority of women who received the implant had good outcomes, reporting improvement in symptoms with no side effects. However, some women suffered severe complications, including general pelvic area pain, painful intercourse, pain with urination, bleeding, erosion (movement of the mesh to surrounding tissues and organs) or urinary problems (Health Service Executive 2022).

The Lawsuits

While most implants of the surgical mesh were successful and seventy percent of patients said that they were totally satisfied with the results of their surgeries, several thousand lawsuits were filed against the company. Plaintiffs claimed damages for medical expenses, loss of wages, loss of quality of life, pain and suffering, and punitive damages (C.R. Bard, Inc. 2013). Other cases might still be filed in the future. Plaintiffs argued that the problems with the bands were evident early on, and that the company failed to warn potential patients of problems that had been occurring. The company counter-argued that any problems with the bands had been fixed as they became evident, and that all lawsuits were related to bands implanted in the first two years that the product was available.

The Rule and the Theory

Financial Accounting Concepts Statement #8 defined the objective of financial reporting. The objective of general purpose financial reporting was to provide financial information about the reporting entity that was useful to existing and potential investors, lenders, and other creditors in making decisions about providing resources to the entity (Financial Accounting Standards Board 2021).

The rule governing the reporting of contingent liabilities was found in the Codification of Accounting Standards (Financial Accounting Standards Board 2022):
https://asc.fasb.org/1943274/2147482942

Accounting Standard 450-20-25-2 stated that an estimated loss from a loss contingency should be accrued by a charge to income ***if*** both of the following conditions were met:

1. Information available before the financial statements were issued (or were available to be issued) indicated that it was probable that an asset had been impaired, or a liability had been incurred at the date of the financial statements. It was implicit in this condition that it must be probable that one or more future events would occur confirming the fact of the loss.
2. The amount of loss could be reasonably estimated.

Accounting Standard 450-20-25-5 stated that requirement should not delay accrual of a loss until only a single amount could be reasonably estimated. To the contrary, when the condition in paragraph 450-20-25-2(a) was met and information available indicated that the estimated amount of loss was within a range of amounts, it followed that some amount of loss had occurred and could be reasonably estimated. Thus, when the condition in paragraph 450-20-25-2(a) was met with respect to a particular loss contingency and the reasonable estimate of the loss was a range, the condition in paragraph 450-20-25-2(b) was met and an amount should be accrued for the loss.

It was widely understood that in practice *"probable"* was interpreted to mean about a seventy percent or greater possibility (Deloitte 2019).

First Judgement against the Firm

The first case ended in 2012 with a verdict in favor of the plaintiff, Christine Scott, and an award of $3.6 million in compensatory damages. The jury found that Bard was negligent and that its negligence was a substantial factor in Christine Scott's harm (PR Newswire 2012). https://www.prnewswire.com/news-releases/vaginal-mesh-lawsuits-pick-up-momentum-according-to-pulaski--middleman-llc-164552646.html

Knowing the Events and the Rules: How to Estimate

With the loss of the first lawsuit, requirement 450-20-25-2(a) was met, it was probable that a liability had been incurred. The next question was whether the loss could be reasonably estimated. Inputs into the estimate would include the number of lawsuits filed, the number of lawsuits expected to be filed, the percentage of lawsuits that would be lost, the damages to be awarded in those suits, the suits that could be settled, and the estimated dollar amount for the settlements. 450-20-25-5 required a firm to accrue a loss even when only a range of possible outcomes could be estimated.

Reporting over the Years

In 2012, Bard disclosed the nature and number of the lawsuits, but it did not report a contingent liability related to the lawsuits. In 2013, Bard lost a second case, its first in federal court (C.R. Bard, Inc. 2013). This judgment was for $2 million. The company also settled two cases, one in a state court and one federal multidistrict litigation suit (a suit with many plaintiffs). Bard disclosed that there were 10,395 plaintiffs with pending cases at year end. Bard disclosed the nature of the lawsuits and the number of plaintiffs in its 2014 10-K. https://www.sec.gov/Archives/edgar/data/9892/000119312515052531/d817237d10k.htm

Costs of the litigation and settlements were included in the *"Other Expenses"* category on the income statement, and a liability of $294 million was included in current liabilities as accrued expenses (C.R. Bard, Inc. 2014).

In 2014, the decision in the 2012 case was affirmed on appeal and the company reached an agreement with three plaintiffs' law firms to settle their cases representing more than 500 claims. The company also settled one federal multidistrict litigation case. Bard reported a $238 million charge to other expenses and a $288 million current liability of accrued expenses (C.R. Bard, Inc. 2014).

In 2015, the company reached agreements with various plaintiffs' law firms to settle their respective inventories of cases totaling approximately 6,285 claims. Bard reported expenses of $553 million and a current liability of $730 million (C.R. Bard, Inc. 2015).

In 2016, the company reached agreement with various plaintiffs' law firms to settle their respective inventories of cases totaling approximately 4,155 claims. It reported expenses of $139 million and a current liability of $810 (C.R. Bard, Inc. 2016). The liabilities sections of the 2016, 2015, 2014, and 2013 consolidated balance sheets on Bard's 10-K are presented in Exhibits 1 and 2 as follows:

Exhibit 1. Liabilities Section of Consolidated Balance Sheets for 2016 and 2015

Source: C.R. Bard, Inc. (2016). Form 10-K.

C. R. BARD, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS

(dollars in thousands except share and per share amounts)

	December 31,	
	2016	2015
LIABILITIES AND SHAREHOLDERS' INVESTMENT		
Current liabilities		
Short-term borrowings and current maturities of long-term debt	$ —	$ 250,200
Accounts payable	96,000	70,700
Accrued expenses	809,500	728,900
Accrued compensation and benefits	186,100	187,900
Income taxes payable	17,300	23,000
Total current liabilities	1,108,900	1,260,700
Long-term debt	1,641,700	1,144,100
Other long-term liabilities	861,500	936,700
Deferred tax liabilities	18,900	47,200

Exhibit 2. Liabilities section of consolidated balance sheets for 2014 and 2013

Source: C.R. Bard, Inc. (2014). Form 10-K.

C. R. BARD, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS

(dollars in thousands except share and per share amounts)

	December 31, 2014	December 31, 2013
LIABILITIES AND SHAREHOLDERS' INVESTMENT		
Current liabilities		
Short-term borrowings	$ 78,000	$ —
Accounts payable	81,900	83,000
Accrued expenses	287,700	294,000
Accrued compensation and benefits	162,600	145,300
Income taxes payable	4,400	64,200
Total current liabilities	614,600	586,500
Long-term debt	1,401,900	1,405,700
Other long-term liabilities	1,125,300	798,800
Deferred income taxes	145,900	161,900

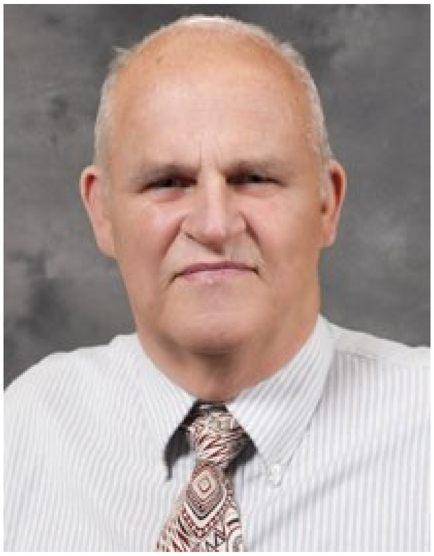
The Purchase

In December 2017, Bard was purchased by Becton, Dickinson and Company (BD). In the valuation of net assets acquired in the purchase, BD included the product liabilities acquired from Bard at a fair value of $2.029 billion (Becton, Dickinson and Company 2018). Not all of the $2 billion would be attributed to the pelvic mesh related product liability. Bard had two other products that were subject to significant product-liability lawsuits, *i.e.,* hernia surgery mesh and interior vena cava filters. However, the accrued expense of $810,000 on Bard's financial statements in 2016 included the liabilities for all of Bard's product liabilities – a significant difference from the amount BD recorded upon acquisition. Upon purchase, BD recorded an additional contingent liability of $1.2 billion.

Conclusion

Using accounting rules applicable to the situation, Bard was able to avoid reporting a contingent liability and loss for several years even when thousands of lawsuits had been filed and multiple lawsuits had been lost. In addition, when Bard did begin reporting the loss, the company spread the loss over four years and the total loss reported was only half of the total loss incurred. Why was Bard able to avoid reporting a contingent loss and liability?

Understanding that the purpose of financial accounting is to provide information that is useful to investors, and understanding that the liability was increased by $1.2 billion in consolidation, when should Bard have reported the $2.4 billion loss? Do the current accounting rules for contingent liabilities provide the most useful information to investors?



Steven C. Hall is a professor of Accounting at the University of Nebraska at Kearney. He got his bachelor degree in Accounting from Weber State College and his Ph.D. in Accounting from the University of Utah. He teaches primarily financial accounting topics, but over the decades has also taught auditing, accounting information systems, cost accounting, and finance. He served for several years as department chair. His primary research interest is in financial reporting quality. His research has appeared in a wide range of journals including *The Accounting Review, Journal of Business Finance and Accounting, Journal of Accounting Education, Journal of Accounting and Finance Research, Journal of Applied Business Research, Journal of Theoretical Accounting Research, Accounting Educators' Journal, Journal of Financial Education,* and the *Mountain Plains Journal of Business and Technology.*

Sarah Borchers is an assistant professor of Accounting at the University of Nebraska at Kearney (UNK). She holds a bachelor degree and MBA in Accounting from UNK, and a DBA in accounting from Creighton University. Before entering academia, Borchers worked for several years as an audit manager where she specialized in audits of governmental and non-profit entities. She teaches the principles of accounting courses, auditing, advanced auditing, and governmental and non-profit accounting. Her research interests include equity crowdfunding, auditing, and governmental accounting.

References

Becton, Dickinson, and Company (2018). *Form 10-K*. Retrieved from https://www.sec.gov/Archives/edgar/data/10795/000001079518000036/bdx2018-09x3010xk.htm

C.R. Bard, Inc. (2013). *Form 10-K.* Retrieved from https://www.sec.gov/Archives/edgar/data/9892/000119312514058921/d624566d10k.htm

C.R. Bard, Inc. (2014). *Form 10-K.* Retrieved from https://www.sec.gov/Archives/edgar/data/9892/000119312515052531/d817237d10k.htm

C.R. Bard, Inc. (2015). *Form 10-K.* Retrieved from https://www.sec.gov/Archives/edgar/data/9892/000119312516461749/d91981d10k.htm

C.R. Bard, Inc. (2016). *Form 10-K.* Retrieved from https://www.sec.gov/Archives/edgar/data/9892/000119312517040742/d298442d10k.htm

Deloitte (2019). *A Roadmap to Accounting for Contingencies and Loss Recoveries.* Deloitte Development LLC. Retrieved from https://www2.deloitte.com/us/en/pages/audit/articles/a-roadmap-to-accounting-for-contingencies-and-loss-recoveries.html

Financial Accounting Standards Board (2021). *Statement of Financial Accounting Concepts No. 8.* Financial Accounting Foundation, Norwalk, Connecticut.

Financial Accounting Standards Board (2022). *Accounting Standards Codification.* Retrieved from http://asc.fasb.org/.

Health Service Executive (2022). Vaginal Mesh Implants. Retrieved from https://www.hse.ie/eng/about/who/acute- hospitals-division/woman-infants/vaginal-mesh-implants/

PR Newswire (2012, August). Transvaginal Mesh $5.5MM Lawsuit Jury Verdict Against C.R. Bard Could Spell Trouble for Mesh Makers. *PR Newswire*. Retrieved from https://www.prnewswire.com/news-releases/vaginal-mesh-lawsuits-pick-up-momentum-according-to-pulaski--middleman-llc-164552646.html

THE IRISH APPLE TAX DISASTER

JOHN PAUL
Brooklyn College

On August 30, 2016, the European Commission (EC) concluded that Ireland and Apple, Inc. (Apple) had violated the European Union (EU) State Aid rules when Ireland granted tax advantages to Apple; therefore, the EC ordered the Irish government to collect up to €13 billion Euros ($15.3 billion USD) in tax underpayments from Apple for the 2003 to 2014 period (EC Press Release 2016). This was the largest sum in history that the EC had ever charged a company; the previous record was set by EDP Energy in 2015 when it was charged €1.4 billion ($1.7 billion USD) (Simon-Lewis 2017).

On October 4, 2017, the EC announced that it was taking Ireland to the European Court of Justice for its failure to collect the €13 billion Euros ($15.3 billion USD) of tax due from Apple as a result of the 2016 EC decision. The EC concluded that Ireland had missed the deadline of January 3, 2017 for collecting the tax, and until the tax was recovered, Apple continued to benefit from an unfair advantage. Ireland's Finance Ministry said that Ireland had never accepted the EC's decision, but was committed to collecting the tax due pending Ireland's own appeal of the ruling. Apple appealed the case (Blenkinsop 2017).

The EU had granted concessions to Ireland in exchange for Ireland accepting the Treaty of Lisbon. One of these concessions was allowing Ireland to retain competence over its own tax laws (Brugha 2009). This meant that Ireland was not required to obtain EC approval in order to grant State Aid to Apple or to any other company. It appeared that the EC was ignoring the protocol it had granted to Ireland in exchange for the latter's vote in favor of the Treaty of Lisbon.

 Contact: John Paul, CUNY Brooklyn College, 2900 Bedford Ave, Brooklyn, NY 11210, john.paul@brooklyn.cuny.edu

Apple was not the only U.S. company that the EC targeted with adverse tax decisions. The EC initiated or finalized decisions adverse to Amazon (State Aid - Luxembourg 2015), Google (EC Press Release Database 2018) and Starbucks (EC Decision 2017/1283) based on the specific pricing methodologies that these U.S. companies had used with the endorsement of tax authorities in several EU member states. In one case, the EC ordered Amazon to pay €250 million Euros in back taxes to Luxembourg (Horobin & White 2019).

On July 10, 2019, U.S. Trade Representative Robert Lighthizer launched an investigation to determine whether France's recent *"digital tax"* was *"discriminatory or unreasonable and burdens or restricts United States commerce."* The investigation was authorized under Section 301 of the U.S. Trade Act of 1974 - the same tool President Donald Trump had used to impose tariffs on Chinese goods due to the country's alleged theft of intellectual property (Horobin & White 2019).

The Court Decision

On July 15, 2020, the European Union General Court (Seventh Chamber, Extended Composition) annulled the European Commission's decision in Ireland and Others v. European Commission, holding that the European Commission had not proven that the Irish tax rulings gave rise to a selective advantage under the European Union State Aid rules. In light of this annulment of the European Commission decision by the European Union General Court, Ireland did not have to collect the €13 billion Euros of unpaid tax from Apple: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=ecli:ECLI:EU:T:2020:338

Background

Apple, the world's largest tech company, was the beneficiary of a deal that enabled it to avoid paying any tax on almost all profits in Europe for more than 20 years. The arrangement between Apple and Ireland dated to a 1991 tax ruling, which was replaced by a 2007 ruling. These rulings were generally *comfort letters* designed to provide clarity on tax issues for a business and were normally kept private; however, the EC found out about them while examining the work of a United States Senate subcommittee (Beesley & Barker 2018).

The issue of the EC case centered on the arrangement Apple had with Ireland. In 1991, Apple created the Irish subsidiary Apple Sales International (ASI), which recorded all of Apple's profits in Europe, Africa, the Middle East and India. If someone bought a phone in Spain, for example, the sale would be recorded by ASI in Ireland, not in Spain. ASI then paid the annual Irish tax rates that were in the range of .005 percent and 1 percent until 2014, according to the agreement between Ireland and Apple. Ireland had one of the lowest corporate tax rates in the European Union: 12.5 percent, while most EU member states had corporate tax rates of over 16 percent; the Belgian tax rate was as high as 33.9 percent. According to the EC, ASI paid much less than the already low Irish corporate tax rate (Bennedsen and Stabile 2017). According to the EC, Ireland allowed Apple to pay a tax rate of 1 percent of its European profits in 2003 - which dropped to 0.005 percent by 2014 (Cook 2016).

According to the EC, the special deal between Ireland and Apple constituted illegal State Aid. See Exhibits 1, 2, and 3.

Exhibit 1. Why State Aid is Considered to be Wrong

Source: European Commission Competition Policy

*A company receiving government support may gain a distortive advantage over its competitors. Therefore, **Article 107 TFEU** generally prohibits State Aid unless exceptionally justified.*

Exhibit 2. Definition of State Aid

Source: European Commission Competition Policy

> *State Aid is defined as an advantage in any form whatsoever conferred by national public authorities to undertakings on a selective basis. Therefore, subsidies granted to individuals or general measures open to all enterprises are not covered by this prohibition and do not constitute State Aid (examples include general taxation measures or employment legislation).*

Exhibit 3. Features of State Aid

Source: European Commission Competition Policy

- *There has been an intervention by the State or through State resources, which can take a variety of forms (e.g., grants, interest and tax reliefs, guarantees, government holdings of all or part of a company, or providing goods and services on preferential terms, etc.):*
- *The intervention gives the recipient an advantage on a selective basis, for example to specific companies or industry sectors, or to companies located in specific regions:*
- *As a result, competition has been or may be distorted;*
- *The intervention is likely to affect trade between Member States.*

The argument could be made that Ireland decided to enter into an agreement with Apple based on Irish values and needs. To the Irish, employment opportunities were more important than were massive taxes. If the Irish felt that the only way to lure a large, global company such as Apple to its borders was by reducing the tax burden, then why would the EC override the Irish belief regarding taxes? Did the EC provide job opportunities to Irish citizens? If not, then who was the EC to decide what Irish agreements should be upheld? What Irish agreements should be overruled? See Exhibit 4.

Exhibit 4. When State Aid is Necessary

Source: European Commission Competition Policy

*Despite the general prohibition of State Aid, in some circumstances government interventions are necessary for a well-functioning and equitable economy. Therefore, the Treaty leaves room for a number of policy objectives for which State Aid can be considered compatible. These exemptions can be found in **legislation** relevant to State Aid.*

The Irish people were not comfortable with the European Union overseeing their national affairs. Following the Irish ***"No"*** vote in the referendum of June 2008 on the Lisbon Treaty, the European Union member states began talks to investigate whether it was possible to reach a compromise that would respect both the Irish vote and the choices of other member states in ratifying the Treaty. The European Union granted Ireland a number of guarantees, and one of those guarantees was on taxation. Nonetheless, there was the argument that even if Ireland did not violate the State Aid rules, it had violated the global tax justice principles by granting special tax concessions to Apple. See Exhibit 5 and 6.

Exhibit 5. Guarantee on Taxation

`Source: Institute of European Affairs

TAXATION - *Nothing in the Treaty of Lisbon makes any change of any kind, for any member state, to the extent or operation of the competence of the European Union in relation to taxation.*

This guarantee is clear in stating that nothing in the Lisbon Treaty makes any change to the EU's competence with respect to taxation and in particular the right of Member States to set their own corporation tax rates. Retention of unanimity in voting on taxation policy matters was a key Irish aim during negotiations on the Treaty. That aim was fully achieved, and unanimity in voting on tax matters remains unchanged.

Exhibit 6. Basic Principles of Global Tax Justice
Source: Dietsch 2015

The Membership Principle	Natural and legal persons must pay tax in the state of which they are a member.
The Transparency Corollary	The payment of tax requires transparency between taxpayers and their tax authorities, as well as between tax authorities.
The Fiscal Policy Constraint	A state's fiscal policy is unjust and should be prohibited if is both strategically motivated and has a negative impact on the aggregate fiscal self-determination of other states.

Conclusion and Decision

Based on the factual and legal analyses, it was clear that the EU General Court decision was a justified decision. The EC did not claim that Apple broke any specific laws of Ireland or the EU; rather, it claimed that Apple's *"sweet"* deal with Ireland was illegal because the arrangement meant unfair competition and was therefore *"State Aid."*

The ***legal*** question was whether or not the EU had the right to override an agreement that a sovereign nation made with a corporate entity in order to improve the economy of that nation. There was also the ***ethical*** question as to whether the generous deal between Apple and Ireland harmed the economies of other nations, and whether Apple and Ireland had benefitted from a deal at the expense of the global community.

What ***legal*** and ***ethical*** arguments justified the European Union General Court's annulment of the European Commission's decision, in which the European Commission stated that Ireland gave Apple a selective advantage under the European Union's State Aid rules?

John Paul is an Associate Professor and Deputy Chair of the Accounting Department in the Koppelman School of Business at Brooklyn College of the City University of New York. After years of professional practice as an attorney and CPA, Dr. Paul teaches courses in accounting, business, legal studies and taxation. Dr. Paul serves as the President of the Midwest Academy of the Legal Studies in Business, the Northeast Academy of Legal Studies in Business, and the Western Academy of Legal Studies in Business. He serves as the Editor-in-Chief of the *North East Journal of Legal Studies*, the Founding Editor-in-Chief of the *Western Law & Business Review*, the Managing Editor of the *Journal of Legal Studies in Education* and the Senior Editor of the *Midwest Law Journal*. Dr. Paul's research interests include earnings management, global accounting /tax/ legal issues, virtual currencies and cyberharrassment. He holds a Doctorate in Accounting and Economics from Pace University, a Juris Doctor from New York Law School, a Master of Laws from Columbia University, a Master of Professional Studies from Cornell University and an MBA from Baruch College of the City University of New York.

References

Beesley, A. and A. Barker (2018), Apple tax deal: How it worked and what the EU ruling means. *Financial Times.* Retrieved from https://www.ft.com/content/cc58c190-6ec3-11e6-a0c9-1365ce54b926.

Bennedsen, M. and M. Stabile (2017, March 10), The implications of the EU vs. Apple case. *Insead.* Retrieved from https://knowledge.insead.edu/economics-finance/implications-eu-vs-apple-case

Beyleveld D. and R. Brownsford. (1994), *Law as a Moral Judgment* (Sheffield, UK: Sheffield Academic Press), 152.

Blenkinsop, P. (2017, October 4), EU takes Ireland to court for not claiming Apple tax windfall. *Reuters.* Retrieved from https://www.reuters.com/article/us-eu-apple-taxavoidance-court-idUSKCN1C913I

Brugha, C.M. (2009), Why Ireland Rejected the Lisbon Treaty, in Rejecting the EU Constitution: From the Constitutional Treaty to the Treaty of Lisbon 127 (Anca M. Pusca ed.).

Consolidated version of the Treaty on the Functioning of the European Union - PART THREE:

UNION POLICIES AND INTERNAL ACTIONS - TITLE VII: COMMON RULES ON COMPETITION, TAXATION AND APPROXIMATION OF LAWS - Chapter 1: Rules on competition - Section 2: Aids granted by States - Article 107 (ex. Article 87 TEC) Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E107&from=EN

Cook, T. (2016), Ireland claims the EU is breaching sovereignty in the Apple tax ruling. *Business Insider*. Retrieved from https://www.businessinsider.com/afp-ireland-claims-eu-breaching-sovereignty-in-apple-tax-ruling-2016-12

Dietsch, P. (2015), *Catching Capital, The Ethics of Tax Competition* (USA: Oxford University Press). Official Journal 115, 09/05/2008 P. 0091 - 0092

EC Competition Policy – State Aid Overview. Retrieved from https://competition-policy.ec.europa.eu/state-aid/state-aid-overview_en

EC Decision 2017/1283 of 30 August 2016 on State Aid SA.38373 implemented by Ireland to Apple, 2017 O.J. (L 187) 1. Both Apple and Ireland have appealed this EC Decision to the European General Court.

EC Press Release (2016, August 30), State aid: Ireland gave illegal tax benefits to Apple worth up to €13 billion. Retrieved from http://europa.eu/rapid/press-release_IP-16-2923_en.htm.

EC Press Release (2018, July 18), Commission fines Google €4.34 billion for illegal practices regarding Android mobile devices to strengthen dominance of Google's search engine. Retrieved from http://europa.eu/rapid/press-release_IP-18-4581_en.htm.

EUR-Lex: Access to European Union Law: Document 62016TJ0778. Judgment of the General Court (Seventh Chamber, Extended Composition) of 15 July 2020; Ireland and Others v European Commission, State aid – Aid implemented by Ireland – Decision declaring the aid incompatible with the internal market and unlawful and ordering recovery of the aid – Advance tax decisions (tax rulings) – Selective tax advantages – Arm's length principle; Cases T-778/16 and T-892/16.

ECLI identifier: ECLI:EU:T:2020:338 Retrieved from https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=ecli:ECLI:EU:T:2020:338

Horobin, W. and White, A. (2019, July 16), How Europe's 'digital tax' plans will hit U.S. tech companies. *The Washington Post*. Retrieved from https://www.washingtonpost.com/?utm_term=.526f92264773

Institute of European Affairs, (2009, June 27) Lisbon – The Irish Guarantees Explained. Retrieved from https://www.iiea.com/publications/lisbonthe-irish-guarantees-explained.

Paul, J. (2019), Global tax governance or national tax discrimination: The case of the EU vs. Apple. *Northeast Journal of Legal Studies* 39 Fall: 15-37. Retrieved from https://digitalcommons.fairfield.edu/nealsb/vol39/iss1/2/

Simon-Lewis, A. (2017, February 21), Apple takes on the European Commission over €13 billion tax charge. *Wired.* Retrieved from http://www.wired.co.uk/article/apple-takes-on-the-european-commission-over-13bn-tax-charge.

State Aid – Luxembourg, 2015 O.J. (C 44) 2.

Vats, Apurva: Tax rulings and EU state aid: lessons to be learnt from the Apple-Ireland case: Ireland v European Commission (T-778/16), European Competition Law Review 2021 p. 80-83 (EN)

CNN+: EXPANSION OF CNN INTO THE STREAMING INDUSTRY

EVELYN N. HUYNH
JULIAN U.N. VOGEL
San José State University

Cable News Network (CNN) was an international cable news channel founded in 1980 by Ted Turner and Reese Schonfeld. CNN offered 24/7 news in various categories from sports to politics to entertainment, and ranked as the number one news destination bringing in more than 200 million monthly viewers (CNN Press Room 2022). Looking to expand CNN into other platforms and provide CNN viewers with more entertainment sources, CNN executives decided to launch CNN+, a streaming subscription service that offered news, interactive programming, and exclusive CNN+ shows and movies (CNN Press Room 2022).

Two weeks before Warner Bros, CNN's then-parent company, merged with Discovery, CNN CEO Jason Kilar launched CNN+ on March 29, 2022. On April 8, 2022, the companies Discovery and Warner Bros merged after closing on a $43 billion deal (Katz 2022). Discovery initially wanted CNN+ to launch after the merger of the companies so that they could align goals as one company, but CNN decided to launch CNN+ before the merger.

After the merger of the two companies, it became clear that CNN and Discovery executives had widely different opinions about the success of the launch and the future of CNN+ (Arriens 2022). Therefore, David Zaslav, CEO of Discovery who also served as the CEO after the merger, wants to pick your brain and asks for your expertise. Based on the numbers presented and considering ramifications for the public image of CNN, what should be done with CNN+?

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. 8, 2023***, a publication of the Western Casewriters Association. Contact: Evelyn N. Huynh, San José State University, One Washington Square, San José, CA 95192, 408-924-5542, evelyn.huynh@sjsu.edu

Different Goals

CNN's Goals

CNN launched CNN+ on March 29, 2022 at a price of $5.99 a month or $59.99 for an entire year (Clara 2022). CNN's goal was to give subscribers access to archived media from the past 40 years, as well as new, innovative content. More than 1,000 hours of on-demand content and 12 live broadcast shows were at subscribers' fingertips (Minor 2022). Subscribers could watch, for example, documentaries about historic events, dynasties, thought leaders, or corporate conglomerates. Lifestyle tips on topics such as parenting and healthy eating were in tune with the times. Interactive programming allowed CNN+ subscribers to communicate their questions and concerns directly to CNN anchors and experts, both live and in advance so that the questions could be answered on air (Hawke & Scorsese 2022; Minor 2022).

Discovery's Goals

Discovery had a different goal. It did not want CNN+ to launch before the merger. Discovery's goal was to combine Discovery's and Warner Bros' (CNN's parent company) media to create a single unified streaming service. Discovery's C-Suite was frustrated with CNN for launching CNN+ before the merger. The directors believed that CNN+ could have been much more successful if its initial launch had been discussed after the merger. Due to CNN+'s initial performance, Discovery believed that the launch was not successful. Discovery laid off CNN's Chief Financial Officer (CFO), Brad Ferrer. He was replaced by Discovery's CFO, Neil Chugani. Discovery also laid off CNN+ employees and suspended external marketing spending for CNN+ within the first two weeks after the merger, due to low subscription and viewer rates (Arriens 2022). Exhibit 1 offers insights into the performance of CNN+ after its launch.

Exhibit 1. CNN+ Initial Daily Viewers
Source: CNBC Television (2022)
https://www.youtube.com/watch?v=GukWWgev5Mw

CNN+ Projections

CNN was frustrated with Discovery for cutting the budget for CNN+. CNN's long-term plan was for CNN+ to break even within four years. The plan foresaw $1 billion in revenue within the first five years, including about $300 million the first year. Exhibit 2 shows CNN's long-term financial projections for CNN+ (Fischer 2022).

CNN+ had approximately 150,000 subscribers within the first two weeks of the launch, even though it did not launch on Roku. CNN saw this number as a success. CNN executives released their financial projections for the next 10 years. These projections claimed that CNN+ could bring in more than 30 million subscribers including both domestic and global viewers (Fischer 2022). Exhibit 3 shows the number of CNN+ subscriptions that CNN projected.

Exhibit 2. Financial Projections for CNN+

Source: Fischer (2022, para. 1)

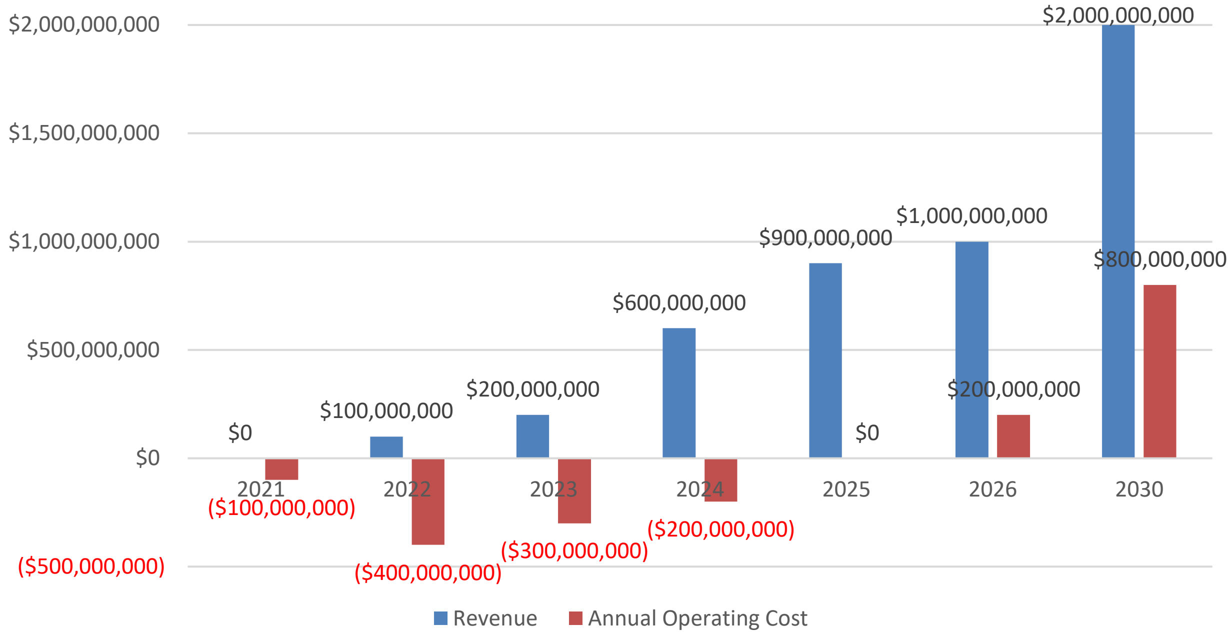
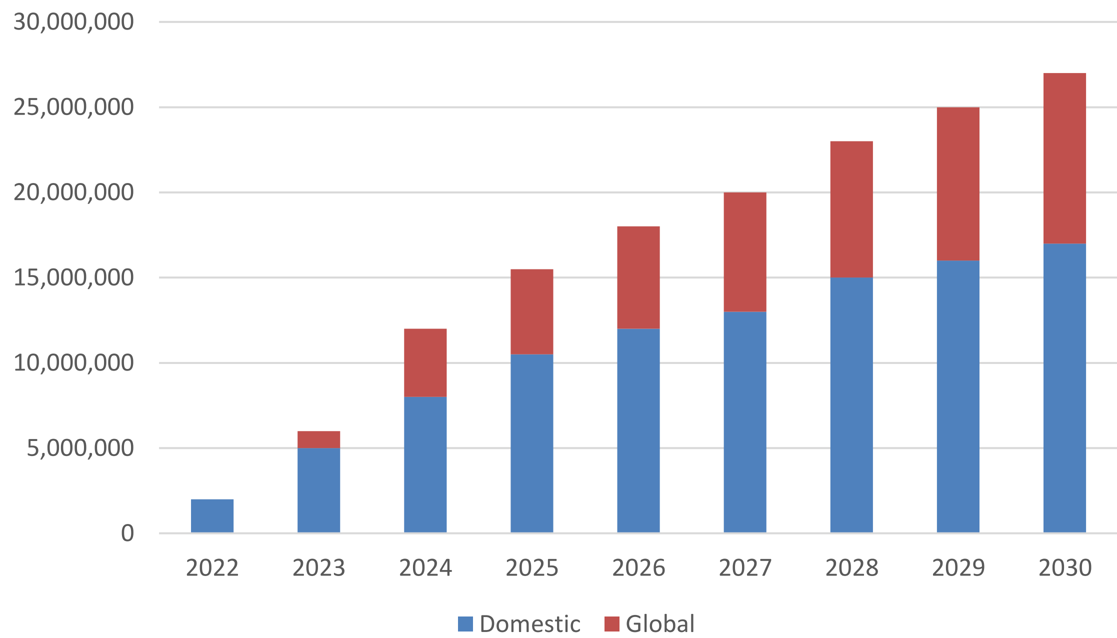


Exhibit 3. Projected Number of CNN+ Subscriptions

Source: Fischer (2022, para. 13)



Discovery executives did not believe that CNN+ would be able to reach the projections because CNN+'s performance at launch was low compared to other streaming services' performance.

For example, Disney+'s marked more than 10 million subscribers on the first day of launch (Sherman 2022). At the same time, CNN+ achieved greater subscription numbers than other streaming services. For example, HBO Max counted 87,000 subscriptions on launch day (Vena 2020), while amassing 36.3 million subscribers at the end of the first six months (Spangler *et al.* 2020).

Difficult Circumstances at CNN

At the time, CNN had to deal with circumstances that hampered the success of CNN+. CNN had many of its news clips uploaded to YouTube where they could be watched for free – potentially a reason for low CNN+ viewership. If CNN instead launched its news onto CNN+'s paid streaming service, viewers would have to pay in order to gain access (Wilson 2022).

In December 2021, Chris Cuomo, an popular anchor and important figure at CNN, was fired. An internal investigation had determined that Chris Cuomo had aided his brother, then-Governor of New York Andrew Cuomo, in drafting a response to allegations of sexual harassment, and thus had violated his journalistic integrity (Lenthang 2021; Stelter 2021). The Cuomo brothers are depicted in Exhibit 4.

Exhibit 4. Chris Cuomo (left) and Andrew Cuomo
Source: Bauder (2021, para. 1)

In the course of the internal investigation into Chris Cuomo, CNN Worldwide President Jeff Zucker was interviewed about his relationship with his colleague of 20 years, CNN's Chief Marketing Officer Allison Gollust (Stelter & Darcy 2022). Both CNN executives are shown in Exhibit 5.

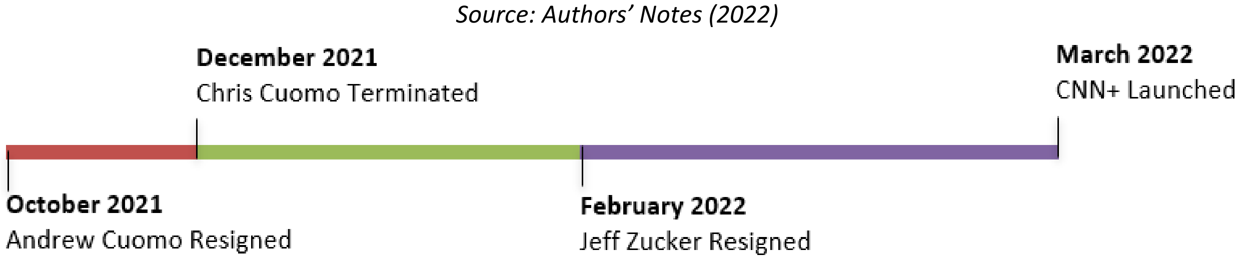
Exhibit 5. Allison Gollust (left) and Jeff Zucker

Source: Trepany (2022, para. 6)

Even though their relationship had evolved into a consensual romantic relationship, neither Jeff Zucker nor Allison Gollust had disclosed their relationship with CNN's human resource department. Thus, at the beginning of February 2022, Jeff Zucker resigned. Zucker had been with the company since 2013. His resignation was significant to CNN+, because he had been a driving force behind CNN's entry into the digital subscription market and launch of CNN+. The timeline of these events is illustrated in Exhibit 6.

Exhibit 6. Timeline of CNN Making Headlines

Source: Authors' Notes (2022)

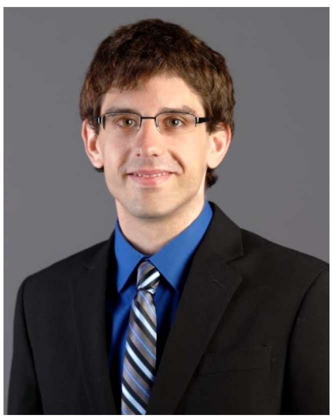


What is Your Recommendation?

Now that you have a better picture of CNN+, what should be done with CNN+? On the one hand, investors are building pressure on CEO David Zaslav to realize efficiency gains and savings after the merger, and closing down CNN+ might appease them. On the other hand, CEO Zaslav definitely would not want to forego a profitable investment, or shut down a viable business segment. If CNN+ were closed, how would this affect CNN's public image?

As you sit in his office, one hour before the next earnings announcement, Zaslav asks you:
"*Taking all of these factors into consideration, what is your recommendation?*"

Evelyn N. Huynh is a student at San José State University working towards her Bachelor degree in Business Administration with a concentration in Corporate Accounting and Finance, and a minor in Economics. She has fintech work experience in various finance teams such as Accounting, Financial Planning and Analysis, as well as Internal Auditing. She will join a finance rotational program at a Silicon Valley tech company upon her graduation in 2023. She conducts research in corporate finance.



Julian U.N. Vogel is an Assistant Professor of Finance at San José State University. He earned his Ph.D. in Business Administration – Finance at The University of Texas at El Paso. He also earned a MBA 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 conducts research in corporate finance and corporate governance.

References

Arriens, J. (2022, April 19). *Scoop: CNN+ looks doomed*. Axios. https://www.axios.com/2022/04/19/discovery-cnnplus-marketing-layoffs-jobs

Bauder, D. (2021, March 1). *CNN's Chris Cuomo says he 'obviously' can't cover brother*. Associated Press. https://apnews.com/article/chris-cuomo-andrew-cuomo-cnn-coveragedc8f9661f53a69790887af17857228d3

Clara, J. (2022, March 2). *CNN+ to cost $2.99 a month at launch*. The Hollywood Reporter. https://www.hollywoodreporter.com/business/digital/cnn-plus-subscription-price-1235103307/

CNBC Television. (2022, April 13). *CNN+ sees disappointing start with fewer than 10,000 daily viewers* [Video]. YouTube. https://www.youtube.com/watch?v=GukWWgev5Mw

CNN Press Room (2022, July 31). *CNN Worldwide fact sheet*. https://cnnpressroom.blogs.cnn.com/cnn-fact-sheet/

Fischer, S. (2022, April 26). *Scoop: The numbers behind CNN+.* Axios. https://www.axios.com/cnn-plus-pitch-decksubscribers-9314bfc5-94ad-4654-bb17-c3b8ea2c725e.html

Hawke, E., & Scorsese, M. (2022, February 23). *CNN+ announces robust content slate for launch*. CNN Press Room. https://cnnpressroom.blogs.cnn.com/2022/02/23/cnn-plus-robust-content-live-on-demand-interactivelaunch/

Katz, A. (2022, April 8). *CNN officially has a new parent company: Warner Bros. Discovery, Inc.* Adweek. https://www.adweek.com/tvnewser/cnn-global-officially-has-a-new-parent-company-warner-brosdiscovery/504971/

Lenthang, M. (2021, October 28). *Governor Cuomo's resignation: A timeline of the sexual harassment allegations*. ABC7 New York. https://abc7ny.com/governor-cuomo-resigns-andrew-step-down-speech-sexualmisconduct-investigalation/10943757/

Minor, J. (2022, April 11). *CNN+ review*. PCMag. https://www.pcmag.com/reviews/cnn-plus

Sherman, A. (2022, April 12). *CNN+ struggles to lure viewers in its early days, drawing fewer than 10000 daily users*.

CNBC. https://www.cnbc.com/2022/04/12/cnn-plus-low-viewership-numbers-warner-brosdiscovery.

Spangler, T., Littleton, C., & Wallenstein, A. (2020, July 23). *HBO Max and HBO Have 36.3 million subscribers, up 5% from end of 2019, AT&T Says*. Variety. https://variety.com/2020/digital/news/hbo-max-subscriberssubscribersq2-att-1234714316/

Stelter, B. (2021, December 5). *CNN fires Chris Cuomo*. CNN. https://www.cnn.com/2021/12/04/media/cnn-fireschris-cuomo/index.html

Stelter, B., & Darcy, O. (2022, February 2). *CNN President Jeff Zucker resigns over consensual relationship with key lieutenant*. CNN. https://www.cnn.com/2022/02/02/media/jeff-zucker-cnn/index.html

Trepany, C. (2022, February 15). *CNN executive Allison Gollust resigns, following Jeff Zucker, after probe finds 'issues' related to Cuomos*. USA Today. https://www.usatoday.com/story/entertainment/tv/2022/02/15/cnn-allison-gollust-resigns-after-jeffzucker-probe/6805872001/

Vena, D. (2020, May 31). *HBO Max added 87,000 new users on launch day*. USA Today. https://www.usatoday.com/story/tech/2020/05/31/hbo-max-added-87000-new-users-on-launchday/111880088/

Wilson, C. (2022, May 19). *CNN+ why did it fail?*. Shark Attack. https://shssharkattack.com/22436/news/cnn-whydid-it-fail/

ARTICLES,

NOTES, and EXERCISES

JCRI Journal of Case Research and Inquiry

SCAVENGER HUNT: AN EXPERIENTIAL LEARNING ASSIGNMENT

BRIAN K. HASSON
Appalachian State University

When students study accounting for the first time in a Principles of Financial Accounting course, they are nascent learners, just as they are when learning a foreign language or a musical instrument. Beginners learn debits and credits, t-accounts, adjusting and closing entries, the basic financial statements, the journal entry process, and the account choices used to record various business transactions. These topics help students learn how accounting happens in response to business transactions. Experiencing why accounting is needed to make decisions and how that process transpires represents an opportunity for accounting information to come to life as decision-making material. The Scavenger Hunt assignment requires student teams to use comparative 10-K filings to search for specific accounting amounts and disclosures, analyze differences between firms, make an investment choice, and present the information that led to the investment. The assignment is designed to be used in a Principles of Financial Accounting course, to expose beginning accounting students to how the outcome of the accounting process can be used to make decisions. In the assignment, collaboration, critical thinking, and presentation skills can be exercised. Quantitative evidence suggests student efficacy in accessing and using accounting information to make investment decisions increases. Qualitative evidence supports improvements in students' awareness of the decision-making possibilities of accounting information. The teaching note includes an instructor's guide for implementation.

 Contact: Brian K. Hasson, Appalachian State University, 416 Howard Street, 3136 Boone, NC 28608, hassonbk@appstate.edu.

Introduction

Learning can be accomplished in many ways, including reading, watching, listening, and experiencing. Evidence suggests that experiential learning can transmit knowledge in ways that sustain the passage of time (Hawtry, K. 2007). Experiential learning typically focuses on the individual learning process. However, some learning in accounting and much learning will in professional life occurs in collaboration with others (Beard 1993; Vera-Muñoz, Ho & Chow 2006). Therefore, an experiential assignment completed in teams can simulate professional practice (Gittings, Taplin & Kerr 2020; Opdecam & Everaert 2012).

Learning *how* the accounting process occurs is part of mastering accounting. Learning *why* the accounting process matters and how the accounting result can be used to make decisions provides an additional layer of understanding. Students can develop confidence in using accounting information to make investment decisions through doing, reflecting, thinking, and applying (Butler, Church & Spencer 2019)

A principles of accounting course exposes students to the basics of accounting: (1) debits and credits, (2) accruals and deferrals, (3) adjusting and closing entries, (4) the basic financial statements, and (5) the journal entry process used to record various economic events in the accounting records. The overarching nature of this learning is in *how* accounting occurs.

This teaching note provides an extension of the *how* by demonstrating a way for teams of beginning accounting students to collaborate on a *"hunt"* for accounting information to make an investment decision. The assignment described in this note requires student teams to use accounting results found in publicly traded companies' 10-K filings to make an investment decision. Data analytics and technology tools are not necessary for this assignment. The assignment is intentionally intended to cause students to read, digest, and thoughtfully consider the accounting data and information in 10-K filings alone.

The assignment has been designed for implementation in introductory accounting courses, but with adjustment, may also be suitable for other courses, including upper-level accounting courses. Using the assignment in introductory financial accounting courses can provide beginning accounting students with an opportunity to use the outcome of the accounting process to make decisions, specifically, a choice of investment in one of two publicly traded companies.

The remainder of this Note is structured as follows: first, a discussion of the motivation for creating and implementing the assignment and the assignment's teaching objectives. The theory-based research question is then presented, followed by a discussion of the methods employed, and the requirements of the assignment. This note concludes with a discussion of both quantitative and qualitative evidence of effectiveness of the assignment, implications for teaching, **learning and curriculum**, and an overall conclusion.

Talent Assignment Motivation and Objective

I created this assignment as an out-of-class exercise (with an in-person presentation as the final deliverable) for principles of financial accounting students. The development came from my desire to demonstrate how the journal entries beginning accounting students were learning in the course could ultimately end up in financial information used to make investment decisions. I also sought to increase students' confidence in both finding and using accounting information to make investment decisions, and with increased confidence from experience, increase students' understanding of the purpose of accounting.

The assignment is not linked to specific chapter topics in an introductory course. Implementation is recommended in the final third of the semester, so that students have been exposed to the basics of the accounting process, along with several asset areas of the balance sheet (e.g., cash, receivables, inventory), so that students can complete the assignment with a working knowledge of the accounting information gathered and analyzed. Certain topics beyond an introductory financial accounting course are included in the assignment, including the auditor's opinion, the risk factors **section of the 10-K**, and certain footnote disclosures, to allow for further exposure to the financial reporting process.

Theory and Research Question

Self-efficacy can be defined as belief in one's capacity to perform certain behaviors to produce certain outcomes (Bandura 1977, 1986, 1997). Confidence, a general cognitive construct, can be thought of as a proxy for task specific self-efficacy. In the context of assessing the assignment's effectiveness, the task for beginning accounting learners is to locate and use accounting information to make investment decisions. In Bandura's model of self-efficacy, efficacy expectations represent *"the conviction that one can successfully execute the behavior required to produce the outcomes"* (Bandura 1977).

Consequently, self-efficacy beliefs provide the foundation for motivation that results in action. Bandura (1977) notes that efficacy expectations moderate the relationship between the person (the beginning accounting student) and his or her behavior (the search for and use of accounting information to make investment decisions). Efficacy expectations are theorized by Bandura (1977) to be derived from four major sources of information or influences potentially available to an individual in a decision context: (a) performance accomplishments, (b) vicarious experience, (c) verbal persuasion, and (d) emotional arousal. Among the four major information sources, performance accomplishments are posited to be the source that is the most influential. This source of efficacy expectations leads to the research question:

> *Will the experience of searching for and using accounting information in this assignment increase students' confidence in using accounting information?*

Method

The assignment was implemented in three semesters across five principles of financial accounting courses. The last semester, covering two classes, was the basis for the assignment, including the evidence of effectiveness outlined below. Two principles of financial accounting classes at a small, private liberal arts institution in the southeastern United States in the Spring of 2020 completed the assignment.[1] I obtained institutional review board approval for the study. Informed consent was obtained from the 46 students (out of 60) who agreed to participate.

A pre-implementation survey was administered during the week the assignment was introduced to the students to capture perceptions of confidence (efficacy) in accessing accounting information on Form 10-K and secondly, in using the information to make an investment decision.[2] The pre-implementation survey questions were:

(1) how often have you used accounting information in a 10-K, filed with the SEC, to make investment decisions?
(2) I am confident in my ability to ***locate*** accounting information in a 10-K filing;
(3) I am confident in my ability to ***use*** accounting information in a 10-K filing to make investment decisions.

Question 1 used a 5-point Likert scale, with 1 being 'Never' and 5 being 'Always.' Questions 2 and 3 used a 7-point Likert scale, with 1 being 'Strongly disagree' and 7 being 'Strongly agree.' The post-implementation survey repeated questions 2 and 3 from the pre-implementation survey to measure differences.

---

[1] Due to the COVID-19 pandemic, on Friday, March 13, 2020, the institution announced the closure of all in-person activities for the week beginning Monday, March 16, 2020, and fully remote instruction began on Monday, March 23, 2020. Therefore, the interaction within the teams and, ultimately, the presentations at the end of the assignment occurred remotely. The impact of completing the assignment remotely is not known. However, despite the jarring change to the students' academic environment, efficacy gains occurred and perhaps would have been higher if the assignment had been researched, prepared, and presented in person.
[2] The pre-implementation survey responses were received between March 5 and March 12, 2020.

The post-implementation survey included a third question to elicit qualitative responses:

> *"Based on your experience with the case, briefly describe how your thinking or understanding may have changed regarding accounting information."*

Completing the pre-and post-implementation surveys were not required as part of the class assignment to mitigate the risk of favorable response bias. Because participation was anonymous, using survey participation to affect assignment grading was not possible. Direction to students noted the pre- and post-implementation surveys were voluntary and designed to assess whether the assignment impacted their confidence level to find and use accounting data in a 10-K filing to make an investment decision. The surveys were anonymized, and codes or other identifiers for respondents were not used, to further anonymity. This decision did not permit a case-by-case measurement of individual differences in perception. However, I chose this approach because I sought the highest level of comfort among the respondents to share their authentic views. Only students in the two classes were provided the survey links. Therefore, it is likely that all 29 respondents to the post-implementation survey also completed the pre-implementation survey.

Assignment Requirements

The assignment required groups of students to identify two publicly traded companies in a common industry and to obtain each company's most recent Form 10-K. A common industry for the two selected companies was required so that there was comparability within the financial statements to facilitate the comparative analysis required in the assignment. A sample of publicly traded companies was provided to the students from which to choose, or the student teams could choose a pair of companies not on the list, subject to my approval to ensure reasonable comparability. The students were directed to access each company's website, search for the Investor Relations page, and then select Annual Filings, to obtain the most recently filed 10-K.[3]

Discussion – Quantitative Evidence of Effectiveness

As noted in Exhibit 1, Panel A, before the assignment, students had little experience using accounting information in Form 10-K filings to make investment decisions. Interestingly, despite this lack of experience, Exhibit 1, Panel B shows that a majority of respondents (24 out of 41) perceived confidence in their ability to locate accounting information in a Form 10-K filing. This perception continued (Exhibit 1, Panel C) when asked about perceived confidence to use accounting information in a Form 10-K filing to make investment decisions. Half of the respondents (21 out of 42) perceived some level of confidence above neutral.

Exhibit 1. Panel A. Responses

How often have you used accounting information in a 10-K, filed with the SEC, to make investment decisions?

	n	%
Never-1	35	87.5
Rarely	2	5
Sometimes	1	2.5
Often	2	5
Always-5	-	-
Total	40	100

[3] Downloading the PDF version of the filing to facilitate ease of searching the document through the Ctrl-F function was recommended. Each group was required to email the two PDF files to me before beginning the assignment to ensure the correct filing was obtained (*i.e.,* not the glossy annual report, not the 10-Q).

Exhibit 1. Panel B. Responses

*I am confident in my ability to **locate** accounting information in a 10-K filing.*

	n	%
Strongly agree-7	2	4.9
Agree	5	12.2
Somewhat agree	17	41.5
Neither agree nor	4	9.8
Somewhat disagree	3	7.3
Disagree	8	19.5
Strongly disagree-1	2	4.9
Total	41	*100

** does not equal 100% due to rounding*

Exhibit 1. Panel C. Responses

*I am confident in my ability to **use** accounting information in a 10-K filing to make investment decisions.*

	n	%
Strongly agree-7	-	-
Agree	6	14.3
Somewhat agree	15	35.7
Neither agree nor	4	9.5
Somewhat disagree	5	11.9
Disagree	8	19
Strongly disagree-1	4	9.5
Total	42	*100

** does not equal 100% due to rounding*

After completion of the assignment, students were surveyed using the same questions to identify any differences in their perceived confidence in accessing and using accounting information to make decisions upon completion of the assignment.[4] Exhibit 2 presents the results.

[4] The post-implementation survey responses were received between April 26 and May 2, 2020.

Exhibit 2. Panel A. Responses

*I am confident in my ability to **locate** accounting information in a 10-K filing.*

	n	%
Strongly agree-7	6	20.7
Agree	11	37.9
Somewhat agree	12	41.4
Neither agree nor	-	-
Somewhat disagree	-	-
Disagree	-	-
Strongly disagree-1	-	-
Total	29	100

Exhibit 2. Panel B. Responses

*I am confident in my ability to **use** accounting information in a 10-K filing to make investment decisions.*

	n	%
Strongly agree-7	3	10.3
Agree	12	41.4
Somewhat agree	14	48.3
Neither agree nor	-	-
Somewhat disagree	-	-
Disagree	-	-
Strongly disagree-1	-	-
Total	29	100

All respondents perceived increased confidence in their ability to ***locate*** accounting information in a Form 10-K filing; over half of the respondents (58.6%) agreeing or strongly agreeing. The average Likert scale response increased from 4.2 (41 respondents) to 5.8 (29 respondents). When the question inquired about confidence in ***using*** the accounting information to make decisions, again, all respondents perceived some level of confidence in their ability to use the accounting information to make decisions; over half of the respondents (51.7%) agreeing or strongly agreeing. The average Likert scale response increased from 3.9 (42 respondents) to 5.6 (29 respondents). As noted in Exhibit 3, the pre- and post-implementation survey question, *"I am confident in my ability to locate accounting information in a 10-K filing"* contained both unequal populations (41; 29) and unequal variance (1.61 s.d.; 0.76 s.d.).

Exhibit 3. Descriptive Statistics

	Pre-test			*Post-test*		
	n	Mean[a]	*s.d.*	*n*	Mean[a]	*s.d.*
I am confident in my ability to ***locate*** accounting information in a 10-K filing.	41	4.20	1.61	29	5.79	0.76
I am confident in my ability to ***use*** accounting information in a 10-K filing to make investment decisions.	42	3.86	1.63	29	5.62	0.67

[a] means scaled 1 – Strongly disagree, 7 – Strongly agree

A Student's *t*-test was not used to assess statistical significance between mean values because of the unequal populations and unequal variances. As a substitute, I used an unequal variances *t*-test (i.e., Welch's *t*-test), which is more robust than the Student's *t*-test and maintains type I error rates close to nominal for unequal variances and unequal sample sizes under normality (Derrick, Toher & White 2016; Ruxton 2006). Exhibit 4, Panel A presents the results which suggest a statistically significant difference in means between the pre- and post-survey questions that investigated self-reported perceptions of confidence in ***locating*** accounting information in a 10-K filing.

Exhibit 4. Inferential Statistics, Panel A

I am confident in my ability to ***locate*** *accounting information in a 10-K filing.*

ANOVA					
DV	Sum of Squares	df	Mean Square	F	Sig.
Between Groups	43.374	1	43.374	23.941	<.001
Within Groups	123.198	68	1.812		
Total	166.571	69			

Robust Tests of Equality of Means				
DV	Statistic [a]	df1	df2	Sig.
Welch	29.852	1	60.714	<.001
[a] Asymptotically F distributed.				

As noted in Exhibit 4, Panel B, the pre- and post-implementation survey question, *"I am confident in my ability to* ***use*** *accounting information in a 10-K filing to make investment decisions"* also contained unequal populations (42; 29) and unequal variances (1.63 s.d.; 0.67

s.d.). An unequal variances *t*-test (i.e., Welch's *t*-test) was again used to assess statistical significance between mean values. The results suggest a statistically significant difference in means between the pre- and post-implementation survey question that investigated self-reported perceptions of confidence in using accounting information in a 10-K filing to make investment decisions.

Exhibit 4. Inferential Statistics, Panel B

*I am confident in my ability to **use** accounting information in a 10-K filing to make investment decisions.*

ANOVA					
DV	Sum of Squares	df	Mean Square	F	Sig.
Between Groups	53.354	1	53.354	29.696	<.001
Within Groups	123.970	69	1.797		
Total	177.324	70			

Robust Tests of Equality of Means				
DV	Statistic [a]	df1	df2	Sig.
Welch	38.711	1	58.403	<.001
[a] Asymptotically F distributed.				

Possible Pre-Implementation Student Overconfidence

As noted earlier, the pre-implementation survey began, *"How often have you used accounting information in a 10-K, filed with the SEC, to make investment decisions?"* The survey included this question to gauge the self-reported frequency of experience using accounting information in a 10-K filing. In Table 1, Panel A, among the forty respondents to this question, 88% reported never having used accounting information in a 10-K filing to make investment decisions. Only 7.5% reported using such information *"sometimes"* or *"often."* Contrary to this lack of experience using accounting information in a 10-K to make investment decisions, respondents reported a relatively high confidence in their ability to find and use accounting information in a 10-K to make investment decisions. Exhibit 1, Panel B, and Panel C present evidence that most respondents agreed that they had the confidence to do so (despite a pronounced lack of experience doing so). What may be considered unwarranted confidence in the pre-implementation survey responses is relevant when evaluating the difference in means between the two questions of interest. It appears the difference in means could have been higher if the respondents completed deeper self-reflection before reporting their confidence to find and use accounting information in 10-K filings to make investment decisions in the pre-implementation survey.

Discussion – Qualitative Evidence of Effectiveness

As part of the post-implementation survey, participants were asked, *"Based on your experience with the project, briefly describe how your thinking or understanding may have changed regarding accounting information."* The goal of capturing qualitative responses to open-ended questions was to gauge the depth of confidence change and overall perceptions of the assignment's ability to improve confidence and learning. Of the 29 respondents to the post-implementation survey, 27 responded to this question. Among the 27 respondents, three indicated no changes:

> *"It kind of stayed the same."*
>
> *"It has not changed."*
>
> *"No changes."*

The remaining 24 respondents (88.9% of respondents to this question) indicated changes to their understanding of accounting information's use in the financial markets, increased awareness of the complexity and scale of information available to make investment decisions, and a positive perception of their awareness and confidence in using accounting information to make decisions. The following quotes highlight the student's perspectives in response to this question (emphasis added):

> *"Before this project I was not aware these kind of financial statements could be viewed, **now I would be much more confident in my investing decisions** (especially if I am investing a large sum of money!) in a company with this knowledge. A very helpful and useful thing to learn about despite the document's length and intricacy! I would have been far too intimidated to read 10k's on my own without some serious guidance and*

encouragement. An intimidating project at first, but very cool and worthwhile by the end!"

*"This project helped me ease up about accounting. I have been so focused on learning terms and such for the course **i completely forgot the whole point until we got to think about investing**."*

"It's one thing to learn about it in class, however, it's another thing to actually put it into practice and take the time to delve into the financial statements of companies. I think it was a beneficial experience and I'll definitely use it in the future to make investment decisions."

*"Prior to this project I thought investments should be done solely on the trend of the market price of a company's stock, but **now I know that I can analyze a company's 10-K financial statement to find out if they would be a worthy investment**."*

*"I definitely feel **I have a better way to assess a company's success**. I also found that the information we learned in class was solidified through the project."*

*"My understanding of the process investors go through to know if a certain business is a good investment has changed. Because we acted like investors and looked at all their numbers and pros and cons of the business, **I now have a much better understanding**."*

I solicited these qualitative responses to both add color to the statistics used to measure change and also to provide additional evidence of students' reactions and perceptions after the assignment. While it cannot be generalized, it can serve to characterize the participants who completed the project in my courses.

Implications for Teaching, Learning and Curriculum

The Scavenger Hunt represents a possible addition to principles of accounting courses to reveal a fundamental purpose of accounting to beginning accounting students – using accounting information to make investment decisions. The assignment does not impose a financial cost on students, nor does it require a technological learning curve for either the instructor or the students. The assignment occurs in the second half of the course and may serve as a capstone project.

AACSB accreditation standards emphasize using technology in the classroom (AACSB 2021). The assignment does not use technology and, as a result, does not provide evidence that would comply with AACSB standards. However, using 10-K information to make a 'manual' decision can complement technology-oriented materials by initially identifying answers that can lead a further inquiry of the respective companies through technology.

Most business (and accounting) students likely recognize the need for investors to use financial information to make capital allocation decisions, even before enrolling in a principles of accounting class. However, we expect a difference between tangentially knowing that reality - and knowing that reality by experiencing how it works.

The supply and demand imbalance in the accounting profession has persisted for years, and enrollment in accounting programs has been in decline (Dawkins *et al.* 2020; Gabbin, Irving & Shifflett 2020; Hood 2016). Introduction of the use of accounting results in a decision-making context may provide an opportunity for business students to *'see'* why accounting information matters to our capital markets and economy. Increased awareness may motivate students to consider the accounting major in ways that may not have previously existed in their minds.

Conclusion

Beginning accounting students can benefit from experiencing the 'end game' of the accounting process. This assignment provides students experiential evidence of *why* accounting matters and how investment decisions can be informed by accounting information. Evidence from administration of the assignment suggests an increase in students' confidence to navigate a Form 10-K to find accounting information and to use the information to improve investment decision making. It is unsurprising that mean responses of confidence to locate and use accounting information in a 10-K increased due to this assignment. Detailed directions to find specific 10-K elements for making an investment decision were provided to the students. After completing the topic, increased confidence would naturally follow.

However, the contribution of this assignment is to suggest a path for faculty to introduce how accounting information can be used to make decisions in an introductory accounting class, through an out-of-class, team-based project. There typically isn't time within a principles course to demonstrate the use of the results of the accounting process with publicly traded companies because such courses focus on debits, credits, and the basics of the accounting process. This assignment offers an option to introduce this reality to beginning accounting students.[5]

This assignment has several limitations, including small sample sizes and the passage of approximately seven weeks between the pre- and post-implementation survey. During this time, classroom learning continued, which may have influenced the confidence reported by students to both find and use accounting information. In addition, emotive or mood differences from the first administration to the last may have influenced the participant's responses. Self-reported measures can suffer from social desirability bias in a power dynamic between student and instructor. However, I believe the anonymity protections and the lack of connection between completing the pre- and post-implementation survey and each student's grade on the assignment mitigate this risk. Finally, since some students completed the pre-implementation but not the post-implementation survey, there is a risk that the mean differences found on the two questions of interest could be different if all students completed both surveys.

My experiences as an instructor indicate that principles of accounting (and the financial accounting curricula overall) courses focus on the *how*. How journal entries are recorded using

[5] A comparison of survey responses from students who completed the assignment, with those who did not, using similar pre- and post-survey timing within a principles class might have been useful to evaluate this efficacy of this assignment. However, I chose not to compare groups using this approach because it stands to reason that a group that uses the assignment would have more confidence than those that have not been exposed to it because using SEC filings to make investment decisions is not a normal part of an introductory course in accounting.

debits and credits, how financial statements are prepared, and how various business transactions are *"accounted for."* This assignment exposes students to *why* accounting matters by experiencing *how* accounting information can be used. Specifically, to understand the relative positions of two firms, use the collected information to make an investment decision, and present *why* the investment decision was made.

Brian K. Hasson is an Assistant Professor of Accounting at Appalachian State University. He is a Certified Public Accountant (NC) and a Certified Internal Auditor. After 8 years of public accounting experience in the audit practice of a Big 4 firm, and 16 years of industry experience accounting and financial reporting leadership roles, he obtained a Master of Accountancy degree at the University of South Florida and a Doctor of Business Administration degree from the University of Florida. He teaches principles of financial accounting, intermediate accounting, introduction to auditing at the undergraduate level and a graduate auditing theory course.

Appendix A. Instructor's Guide

Learning Objectives

The learning objectives are primarily to (1) demonstrate to beginning accounting students how accounting process information in an introductory financial accounting class could ultimately end up in financial information used to make investment decisions, and (2) increase the students' confidence in both finding and using accounting information to make investment decisions, and through this increased confidence from experience, provide a path for increased student clarity of the purpose of accounting.

Discussion Questions

The following are questions that could be used to guide the discussion during the class period where each team presents their results and conclusions. These questions can also be provided prior to the assignment, with a team written deliverable required, so that class time is not taken away from the required presentation discussion.

a. Accounting information presents what has happened in the past, but the risk factors section of the 10-K discusses what may happen in the future.
    i. How did this look at prospective information inform your investment decision?
b. We have studied the journal entries associated with accounting for many types of business transactions. We have also studied three financial statements (i.e., the income statement, the balance sheet, and the statement of stockholder's equity). Many ratios were required to be computed from financial statement information, providing further tools for analysis.
    i. Discuss which ratio or ratios provided the most decision-useful information beyond the financial statements.
c. You were asked to conclude which company the team trusted more and why.
    i. Discuss which specific financial or non-financial items made a difference in the team's conclusion regarding the more trustworthy company.
d. This assignment required you to work with information relatively new to you
    i. Discuss what parts of the obtained information that was most confusing or where you would like further explanation of its meaning.

Teaching with the Assignment

Introduction

The assignment begins with assigning groups of 3-4 students. Each group is then tasked with a 'scavenger hunt' to obtain or calculate decision-useful information, including from (1) the financial statements, (2) the Risk Factors section, (3) the audit opinion, and (4) various footnotes. In addition, students calculate various ratios and other figures (e.g., gross profit, if not presented on the income statement). The requirements were chosen based on the topics discussed in the class before the administration of the assignment, augmented by new topics (e.g., risk factors and the audit opinion) to further learning outcomes.

Team Development

I strongly encourage faculty who use this assignment to build the teams very intentionally. Teams were randomly assigned at the beginning of the semester and communicated at approximately the mid-point of the semester during the first three uses of the assignment. This approach resulted in suboptimal outcomes due to an inequitable allocation of accounting aptitude among the groups. In one instance, a group contained three of the top six students in the class. Not surprisingly, that group performed at a very high level, leaving other groups with an allocation of colleagues that were not sufficiently up to the task of completing the assignment with a reasonable level of quality.

In response to this experience, I changed how the teams were formed, which appeared to result in a substantially better outcome for the students. First, teams were determined at approximately the mid-point of the semester (i.e., once completing at least one exam, and several chapters of homework assignments and quizzes). This approach allowed me to utilize actual performance to allocate the various students to the teams, resulting in each team having a similar blend of class performance (and by extension, a similar blend of combined aptitude for the assignment).

The approach used may be referred to as a ‘snake draft.’ First, the grade book containing the cumulative points for all students was exported and sorted from highest point total to lowest. The first four students were members of four different teams, with the fifth-ranked student joining the team of student #4, the sixth-ranked student joining the team of student #3, the seventh-ranked student joining the team of student #2 and the eighth-ranked student joining the team of student #1. To continue, the ninth-ranked student joins the team with student #1 and student #8 and the tenth-ranked student joins the team with student #2 and student #7, and so on.

I then calculated the average point value among the members of each team, to ensure that the entire team averages were within a narrow margin from each other. The result was a much more uniform and equitable allocation of student skill sets within each team, providing each team with the opportunity to generally have a student performing at an A level, one at a B level, one at a C level, etc. Doing so also provided the students with the experience of working with others who may not have the same abilities as they possess, which can prepare students for the collaboration needed in professional life.

Choosing Firms

The students were told to use only the two companies’ information obtained in the Form 10-K documents. I recognized that I could not prevent the students from accessing other information, such as company websites, social media feeds, Reddit threads, analysts’ reports, and equity trading sites/apps (e.g., Robinhood). I indicated to the students the assignment intended to demonstrate how accounting information available from required filings of publicly traded companies can be used to make investment decisions. Further, I discussed the bias and relative reliability in sources other than the Form 10-K for information on a potential investment’s financial position, profitability, risks, and opportunities. Specific discussion points included the difference between information without independent assurance (e.g., Reddit threads, social media postings) and the value of audited financial statements that possess some inherent assurance through the independent, external audit function. We discussed the credibility and reliability difference between those two information sources and the value of trustworthy information to facilitate investment decisions.

First Stage

The first stage of the assignment requires the groups to prepare a Word document draft of their answers to the scavenger hunt questions. I encouraged the students to resist the urge to ‘divide and conquer’ on the assignment. For example, I discouraged the groups from assigning one person to read the Risk Factors section and comment for the group. This communication to the teams was to ensure all team members worked on all questions and then compared the results with each other so that the group agreed on both the scavenger hunt findings and the team’s analysis and conclusion on the recommended investment. I also encouraged the students to use the assignment as an opportunity to 'explore' the world of accounting and think of being in a position with several thousand dollars to invest on behalf of a family member they did not want to disappoint.

Instructor feedback is then provided, including comments regarding how to improve the accuracy of information the group captured. As this was a draft, I did not look for a finished product, and instead, I sought evidence as to whether there was an earnest attempt to answer the questions. This feedback is then used to prepare the final draft for the next part of the assignment requirements. I reviewed this submission to ensure their analysis documented an accurate summary of the various financial and non-financial items required of the assignment.

Second Stage

The second stage of the assignment preparation requires the groups to prepare a PowerPoint deliverable for presentation to the class to 'tell the story' of what happened over the last three fiscal years for each company. The presentation is based on the accounting data in the respective 10-K filings and the results of their work to answer the scavenger hunt questions. I encouraged the students to avoid a question-by-question response in the presentation; instead, the assignment requires a synthesis of the findings, with input from all team members, using the information gathered from the scavenger hunt. As with the first submission, I also gave the groups feedback on the PowerPoint document.

Third Stage

The third and final stage of the assignment was the group's presentation of their findings to the class. The presentation requires 6 to 8 minutes of discussion, leaving time for comments and questions from the class and me. Each group is required to recommend one company as an investment, including why the team preferred the company of choice.

At the outset of the assignment, I implored the students to use the presentation as an opportunity to prepare well for and confidently deliver an oral presentation. Finally, I suggested sufficient preparation can calm presentation nervousness if they were nervous speaking in front of a group. On presentation day, I reserved the right to ask any team member questions regarding the contents and the team's collective thought process on any of the assignment parts.

I saw my role as an observer first and facilitator of questions second during the assignment presentations. My goal was not to provide a critique of the accuracy of understanding by the presenting team nor to evaluate presentation skills. Nascent accounting students in their first accounting course are not typically fully capable of explaining to others the accounting information used to make the decision. Therefore, I sought evidence of balance in presentation responsibility by the members of the teams and thoughtfulness and earnestness in attempting to communicate the findings in an organized manner.

There were little to no questions from other students after most presentations. I expected more questions, but perhaps the lack of questions was due to the students thinking about their presentation that same day or nervousness about asking a question on a topic that was still relatively new to them.

I typically took a few minutes to complement aspects of the presentation and expand on certain parts to further the discussion among all in attendance, including the overriding reasons financial reporting of accounting information occurs, the critical thinking necessary to interpret management's presentation of financial performance, and the assurance function that auditors provide. My goal was not to *'test'* the knowledge the team obtained from the assignment but to explore the two companies and their accounting information further.

Each team is also required to make a statement, supported by evidence, regarding which company the team trusted more and why. This 'trust' requirement is included in the assignment because I wanted the students to think beyond what was necessary to find the information required in assignment to support the investment decision. During the courses, I discussed the reality of management's bias in financial reporting and the assurance function provided by independent certified public accountants that can serve to mitigate this bias. The trust question required the teams to consider the trustworthiness of the accounts and disclosures in the SEC filings. I allowed the students to make the trust decision independent of a specific guideline for what trust means rather than provide a basis for determining trustworthiness. During the presentations, answers to the trust question allowed me to explore the topics of management's assertions and what makes amounts and disclosures trustworthy.

Point Allocation

The point allocation for this assignment totaled 180 points. The group's development and delivery of the presentation was worth 90 points, with 90 points based on an individually prepared peer evaluation form. The peer evaluation form was incorporated to prevent 'freeloading' by any student within the group. Using this form, the student only rated others in the group, allowed me to gauge each student's effectiveness more transparently. By independently obtaining scores for other team members, without a self-rating as part of the process, the authenticity of the blended rating should exceed that of a self-rating.

Appendix B. Detailed Scavenger Hunt Instructions to Students

Below are the assignment instructions. I uploaded this information into the learning management system when implementing the assignment, and also discussed the instructions in class.

IMPORTANT – Within the submission, all calculations must be shown to document how the team arrived at the ratios and any other calculated amounts.

1. Summarize the following information for each company. In all cases, pay particular attention to the dollar amounts presented (are they in millions or thousands?) and also the years. In some cases, the most recent year is listed first from left to right and in some cases, the oldest year is listed first from left to right.

   a. Net income (loss) for each of the three years presented (income statement)
   b. Gross profit percentage for each of the three years presented (income statement)
      i. See me if a gross profit dollar figure isn't presented on the income statements, which may be the case in certain industries
   c. Cash flows provided by (used in) operating activities for each of the three years presented (statement of cash flows)
   d. Cash flows provided by (used in) investing activities for each of the three years presented (statement of cash flows)
   e. Cash flows provided by (used in) financing activities for each of the three years presented (statement of cash flows)
   f. Basic earnings per share for each of the three years presented (income statement)
   g. Current ratio for both years presented (balance sheet)
   h. Debt ratio for both years presented (balance sheet)
      i. Use total short and long-term debt for the numerator for this calculation, not total liabilities – this is a more precise measure of financial leverage and reliance on debt to finance the business.
   i. Return on assets ratio for the most recent year presented (balance sheet and income statement)
      i. Use net income from item 1a. above as the numerator

2. Read the Risk Factors (Item 1A) section for each company:

   a. For each company, select 3 of the risk factors that the team ranks as most concerning when considering buying the respective company's stock.
   b. Summarize the 3 selected risk factors for each company (describe the risks that management has identified) and present the team's collective thoughts on these risk factors, considering your pending investment decision; specifically, why they are concerning to the team.

3. The Audit Opinion by the Independent Registered Public Accounting Firm:

   a. State which public accounting firm completed the audit.
   b. Was there anything that stood out to you regarding what the auditors said in their opinion on the financial statements?

c. Did they share anything that concerned you as a potential investor?
d. How long has the audit firm served as the company's auditors?
e. What are your thoughts on the length of time the auditor has served the respective companies?

4. Income statements:

 a. What was the largest revenue line item, for the most recent year (exclude subtotals)?
 b. What was the largest expense line item, for the most recent year (exclude subtotals)?
 c. Find the largest <u>change</u> in a ***revenue*** line item (in absolute value terms) between the most recent year presented and the year prior, and describe the change (i.e., which line item; what was the dollar and percentage change from last year to this year; what information was provided in the footnotes or Item 7 – Management's Discussion and Analysis to explain the reason for the change?)
 d. Find the largest <u>change</u> in an ***expense*** line item (in absolute value terms) between the most recent year presented and the year prior, and describe the change (i.e., which line item; what was the dollar and percentage change from last year to this year; what information was provided in the footnotes or Item 7 – Management's Discussion and Analysis to explain the reason for the change?)
 e. When identifying the changes for 4.c. and 4.d above, be sure to use distinct line items, not subtotals within the income statement (e.g., do not select gross profit or operating income). Rather, analyze the individual line items presented on the income statements.

5. Balance sheets:

 a. What was the largest asset, at the most recent balance sheet date?
 b. What was the largest liability, at the most recent balance sheet date?
 c. Find the largest <u>change</u> in an ***asset*** balance sheet line item (in absolute value terms) between the most recent year presented and the prior year, and describe the change (i.e., which line item; what was the dollar and percentage change from last year to this year; what information was provided in the footnotes or Item 7 – Management's Discussion and Analysis to explain the reason for the change?)
 d. Find the largest <u>change</u> in a ***liability*** balance sheet line item (in absolute value terms) between the most recent year presented and the prior year, and describe the change (i.e., which line item; what was the dollar and percentage change from last year to this year; what information was provided in the footnotes or Item 7 – Management's Discussion and Analysis to explain the reason for the change?)
 e. When identifying the changes for 5.c. and 5.d above, be sure to use distinct line items, not subtotals within the balance sheet (e.g., do not select current assets or current liabilities). Rather, analyze the individual line items presented on the balance sheets.

6. Statements of cash flow:

 a. What is the largest operating, largest investing and largest financing cash flow item, for the most recent period (in absolute value terms)?
 b. What were the major reasons for the change in total cash for the year? (Review Item 7 – Management's Discussion and Analysis, for information regarding changes in the statement of cash flows).

i. The line-item descriptions in the statement of cash flows can also be helpful to explain the source of and use of cash flows within the three sections of the statement.

c. What was the net increase or decrease in the cash balance from last year to this year (this will be near the bottom of the statement of cash flows)?

d. When identifying the changes above, be sure to use distinct line items, not subtotals within the statement of cash flows (e.g., do not select operating cash flows). Rather, analyze the individual line items presented on the statements of cash flows.

7. Footnotes:

a. In note 1
   i. What does each company disclose as their inventory costing assumption used (if they are an inventory-based business)?
   ii. What does each company disclose regarding their depreciation method used?
   iii. What does the company say about how their business is managed?
      1. For example, which segments are identified to manage the company's operations?
      2. Use Ctrl + F to search the PDF for 'segments' – there should be a specific footnote in the document.
   iv. In *Description of the Business* (or something to that effect – typically in Note 1), was there anything the company was involved with that the team did not realize, or was surprising?

b. In the Acquisitions and Dispositions note (Note 2 typically, but could also be later in the footnotes):
   i. If any, select the largest acquisition or disposition (buying another company or selling a division or assets) and summarize the transaction.
   ii. In the summary, specifically discuss what was bought (if it was an acquisition) and what was sold (if it was a disposition/divestiture).
   iii. If it was an acquisition, based on what you know about the company, do you think the acquired business fits well or does not fit well, within the existing company?
   iv. If it was a disposition/divestiture, what was the gain or loss on the sale?

c. In the Property, Plant and Equipment footnote:
   i. What is the largest type of plant asset as of the most recent balance sheet date?
   ii. What was the largest change (increasing or decreasing) from the balance sheet date last year to the balance sheet date this year, in any one of the plant asset categories?

d. In the Income Taxes footnote:
   i. What is the effective tax rate for the three years presented?
      1. This will typically be in a table, with a lead in sentence that is something like *"A reconciliation of the statutory U.S. federal tax rate and our effective tax rate is as follows:"*

Appendix C. Allocation of Points

Below are individual steps followed by the students and the associated point values when implemented.

Step	Deliverable Description	Points
1. Assignment of teams	Create teams and communicate who is on each team.	None
2. Choose two publicly traded companies within the same industry, and obtain their most recent annual financial statements.	From the company website, search for the Investor Relations page, and then Annual Filings, to obtain the most recently filed 10-K. I suggest you download the PDFs, as it is easy to search (Ctrl-F). **One member of the team needs to email the PDFs to me by the deadline, including the team number in the email. I will confirm whether the correct documents have been accessed.**	5
3. Answer a series of questions regarding each of the two companies (provided below), and submit the collective results to me via an emailed Word doc.	Work as a unit to answer the questions provided below, on each company. This is a **draft**, so I am not looking for the final version. *I will provide feedback on this draft*. I expect the feedback will be incorporated into your final presentation.	35
4. Feedback on deliverable provided to groups		
5. Prepare a deliverable for presentation to the class to 'tell the story' of what happened over the last 3 fiscal years, based on the accounting data in the financial statements and the results of your work to answer the questions in #3 above. Do not simply regurgitate a question-by-question response to the questions below; rather, develop a synthesis of the findings, with input from all members of the team, using the information you gathered in question #3 above as the basis. Submit the deliverable to me via an emailed PowerPoint doc.	Work as a unit to prepare a deliverable for presentation to the class. This is a **draft**, so I am not looking for the final version. *I will provide feedback on the presentation*. I expect the feedback will be incorporated into your final presentation.	15
6. Feedback on PowerPoint provided to groups		
7. Presentation of findings to the class	Present your findings from #5 above over 6-8 minutes, leaving time for comments and questions. Include in your analysis a recommendation of one company over another as an investment, based on the content in the SEC filings (i.e., the financial statements and supporting materials in the 10-K). Justify the recommendation with reasons the company of choice is preferred by the team. Include in the analysis a statement, supported by the evidence obtained, regarding **which company the team trusts more and why**. Be specific with examples from the SEC filings of the selected company.	35
8. Peer Evaluation Form	Each person will complete the peer evaluation form, allocating a percentage of combined effort, to each other team member. Your peer evaluation form should be emailed directly to me. I will use the ratings provided by your team members of your contributions, and consider the reasons provided for particularly high or low evaluations. Consistency between raters will be evaluated to provide a measure of accuracy of relative contribution for each student.	90
Total points		180

Appendix D. Peer Evaluation Form (Self-excluded)

Use this form to evaluate the contributions of each team member to the group effort. Consider attendance and participation in team meetings, individual contributions to idea generation and research, communication within the group, etc. *This evaluation is completely confidential and will never be shown to your team members. Please respond as honestly as possible.*

Allocate a total of 100 percentage points among your team members, *excluding yourself,* with higher percentages going to those members who contributed most. In the case of equal contribution, points should be divided equally among team members.

Your name: ______________________________

Your team number: ______________________________

		% Points *
Member 1 name:	____________________	__________
Member 2 name:	____________________	__________
Member 3 name:	____________________	__________

* *Sum must equal 100%*

1. Explain any particularly high or low allocations, providing concrete examples to illustrate your reasoning.

2. Describe your involvement in the assignment, including specific areas where you contributed to the team's effort (e.g., organization, research, presentation development, etc.).

Appendix E. Sample List of Publicly Traded Companies

Fashion and Apparel Companies

	Company name	Ticker
1	Abercrombie & Fitch Co.	ANF
2	American Eagle Outfitters, Inc.	AEO
3	Capri Holdings, Ltd (Michael Kors)	CPRI
4	Columbia Sportswear Company	COLM
5	Dicks Sporting Goods, Inc.	DKS
6	Foot Locker, Inc.	FL
7	Fossil Group, Inc.	FOSL
8	Guess? Inc.	GES
9	Hanesbrands, Inc.	HBI
10	Jos. A. Bank Clothiers, Inc.	JOSB
11	Macy's, Inc.	M
12	Nike, Inc.	NKE
13	Nordstrom, Inc.	JWN
14	Ross Stores, Inc	ROST
15	Skechers USA, Inc.	SKX
16	Tapestry, Inc. (Coach, Kate Spade)	TPR
17	The Gap, Inc.	GPS
18	The Marcus Corporation (Neiman Marcus)	MCS
19	Under Armour, Inc.	UAA
20	Urban Outfitters, Inc.	URBN

Restaurant Chains

	Company name	Ticker
1	Bloomin Brands, Inc. (Outback, Carrabba's)	BLMN
2	Chipotle Mexican Grill, Inc.	CMG
3	Chuy's Holdings, Inc.	CHUY
4	Cracker Barrel Old Country Store, Inc.	CBRL
5	Darden Restaurants, Inc. (Olive Garden, LongHorn)	DRI
6	Dave & Buster's Entertainment, Inc.	PLAY
7	Denny's	DENN
8	Domino's Pizza, Inc.	DPZ
9	Jack In The Box, Inc.	JACK
10	McDonald's Corporation	MCD
11	Papa John's International, Inc.	PZZA
12	Red Robin Gourmet Burgers, Inc.	RRGB
13	Restaurant Brands International (Burger King, Popeyes)	QSR
14	Ruth's Hospitality Group (Ruth's Chris Steak House)	RUTH
15	Shake Shack, Inc.	SHAK
16	Texas Roadhouse, Inc.	TXRH
17	The Cheesecake Factory Incorporated	CAKE
18	Wendy's Company	WEN

19	Wingstop, Inc.	WING
20	Yum! Brands, Inc. (KFC, Pizza Hut, Taco Bell)	YUM

Defense Contractors

	Company name	Ticker
1	Boeing Company (The)	BA
2	General Dynamics Corporation	GD
3	L3Harris Technologies, Inc.	LHX
4	Honeywell International, Inc.	HON
5	Lockheed Martin Corporation	LMT
6	Northrop Grumman Corporation	NOC
7	Raytheon Technologies Corporation	RTX

Food and Beverage Companies

Brewing:

	Company name	Ticker
1	Anheuser Busch Inbev S.A.	BUD
2	Diageo Plc.	DEO
3	Molson Coors Beverage Company	TAP

Diversified Food:

	Company name	Ticker
1	Campbell Soup Company	CPB
2	ConAgra Foods, Inc.	CAG
3	General Mills, Inc.	GIS
4	The J M Smucker Company	SJM
5	Kellogg Company	K
6	Kraft Heinz Company	KHC

Candy:

	Company name	Ticker
1	The Hershey Company	HSY
2	Tootsie Roll Industries, Inc.	TR

Grocery Stores:

	Company name	Ticker
1	The Kroger Company	KR
2	Wal Mart Stores, Inc.	WMT

Soft Drinks:

	Company name	Ticker
1	The Coca Cola Company	KO
2	Keurig Dr Pepper	KDP
3	Monster Beverage Corporation	MNST
4	Pepsico, Inc.	PEP

Manufacturing Companies

	Company name	Ticker
1	Tesla, Inc.	TSLA
2	Ford Motor Company	F
3	General Motors Company	GM
4	Caterpillar, Inc.	CAT
5	Deere & Company	DE
6	The Boeing Company	BA
7	Toyota Motor Corporation	TM
8	Honda Motor Company, Ltd.	HMC

References

Association to Advance Collegiate Schools of Business International (AACSB) (2021). AACSB 2020 Guiding Principles and Standards for Business Accreditation. Tampa, FL: AACSB. Available at: https://www.aacsb.edu/-/media/documents/accreditation/2020-aacsb-business-accreditation-standards-july-2021.pdf?rev=7f4c2893dc1e47eb91c472d9fc59b238&hash=833E7A4A1E094BADDACDAAB60CF2CD69

Bandura, A. (1977). Self-efficacy: Toward a unifying theory of behavioral change. *Psychological Review* 84 (2): 191-215.

Bandura, A. (1986). *Social foundations of thought and action: A social cognitive theory*. Englewood Cliffs, NJ: Prentice Hall.

Bandura, A. (1997). *Self-efficacy: The exercise of control*. New York, NY: W.H. Freeman and Company.

Beard, V. K. (1993). Reflections of public accounting interns: a qualitative analysis of experiential learning. The University of North Dakota.

Butler, M. G., Church, K. S. & Spencer, A. W. (2019). Do, reflect, think, apply: Experiential education in accounting. *Journal of accounting education 48*: 12-21.

Dawkins, M. C., Dugan, M., Mezzio, S. & Trapnell, J. E. (2020, October). The Future of Accounting Education: In-Demand Skills, Workplace Readiness, the 150-Hour Requirement, MAcc Programs, and the CPA Exam. *The CPA Journal*. https://www.cpajournal.com/2020/10/12/the-future-of-accounting-education/#:~:text=Approximately%20208%2C000%20students%20were%20enrolled,4%25%20from%202015%2F16

Derrick, B., Toher, D. & White, P. (2016). Why Welch's test is Type I error robust. *The Quantitative Methods for Psychology 12*(1): 30-38.

Gabbin, A. L., Irving, J. H. & Shifflett, E. M. (2020, September). Accounting Education at a Crossroads: Does a Drop in Enrollment Foretell a Decline in the Marketplace? *The CPA Journal*. https://www.cpajournal.com/2020/09/30/accounting-education-at-a-crossroads/

Gittings, L., Taplin, R. & Kerr, R. (2020). Experiential learning activities in university accounting education: A systematic literature review. *Journal of Accounting Education 52*: 100680.

Hawtrey, K. (2007). Using experiential learning techniques. *The Journal of Economic Education 38* (2), 143-152.

Hood, D. (2016, October). Filling the Pipeline. *Accounting Today*. https://www.accountingtoday.com/news/filling-the-pipeline

Opdecam, E. & Everaert, P. (2012). Improving Student Satisfaction in a First-Year Undergraduate Accounting Course by Team Learning. *Issues in Accounting Education 27*(1): 53-82.

Ruxton, G. D. (2006). The unequal variance t-test is an underused alternative to Student's t-test and the Mann–Whitney U test. *Behavioral Ecology 17*(4): 688–690.

Vera-Muñoz, S. C., Ho, J. L. & Chow, C. W. (2006). Enhancing Knowledge Sharing in Public Accounting Firms. *Accounting Horizons 20*(2): 133-155.

STATE INCOME TAX: WHERE DO YOU OWE?

DOROTHY A. THOMPSON
Coastal Carolina University

TANYA SMITH
University of Mount Olive

Of the fifty states in the United States, only nine do not charge a state income tax. State income taxes are used to fund public services such as law enforcement and road maintenance. Instead of having a state income tax, Alaska, Florida, Nevada, New Hampshire, South Dakota, Tennessee, Texas, Washington, and Wyoming have relatively high sales tax and property tax. If you live in a state that does not have a state income tax but work in one that does, you might still have to pay state income tax. This note provides the step-by-step process used by the state of New York to determine if a state income tax can be assessed. If you live in a state with state income tax and work in one without it, you are not obligated to pay in both states. In 2015, Congress passed a law that protected workers from double taxation (Woodall 2015). Only one state can collect income tax on employee earnings.

The number of at-home workers jumped from 56% to a high of 70% in April 2020, averaging 58% in September (Lardieri 2021). Of the employees surveyed, fifty-five percent were not aware that there could be possible tax consequences for changing states while working remotely and not changing their tax withholding to match the location of their remote worksite (Vera 2020).

The authors developed the Note for class discussion rather than to illustrate either effective or ineffective handling of the situation. The Note was anonymously peer reviewed and accepted by the ***Journal of Case Research and Inquiry, Vol. 8, 2023***, a publication of the Western Casewriters Association. Contact: Dorothy A. Thompson, Coastal Carolina University, 100 Chanticleer Dr E, Conway, SC 29528, dthomps4@coastal.edu.

If the state of employment does not recognize the nature of the position as work-from-home and collected state income tax, an employee is faced with additional tasks to recover the funds. Below is a scenario that many employees face due to the complicated state income tax laws. This note seeks to help those in a similar situation to amend prior year tax returns and recover lost wages paid improperly in state income tax.

Prior literature addresses living in one state and working in another. The present note addresses living and earning in a state that does not have a state income tax, while working for a company that is in another state with state income tax, with no expectations of going to the office. New York is used as the example state.

Background and Development

Work-From-Home

A job that does not require attendance in the office can give employees the flexibility to work from anywhere. Eighteen jobs that do not require the employee to be in the office and can be performed anywhere in the world are listed in Exhibit 1. There are tax guidelines that determine if a job can be assessed with a state income tax. To demonstrate this scenario, a fictitious online teacher is used.

Exhibit 1. Work from Anywhere Jobs
Source: Volkner (2020)

Copywriting	Consulting
Virtual Assistance	Online Teaching
Translation	Trading
SEA (Search Engine Advertising)	Sports Betting & Arbitrage Trading
Social Media Marketing	Affiliate Marketing
Web design	Online Poker
SEO (Search Engine Optimization)	E-Commerce
Graphic Design	Blogging
Programming	Data entry

As a college professor, Amy enjoyed teaching in the classroom and online. She accepted a part-time job teaching 100% online for a university in New York state. She did not know that New York taxes out-of-state telecommuters for the days they work at home. However, she was not a telecommuter. Her job was always going to be conducted from her home state of Florida and never required her to be in New York. As a work-from-home employee, Amy did her job at home and not in an office.

Telecommuter

A telecommuter is someone who is physically distant from his or her place of employment and has reduced regular commutes to the primary office (Domanico 2021). Deploying the concept of for the *"convenience of the employer,"* New York's taxation of out-of-state telecommuters can cause telecommuters to be double-taxed or taxed at New York's higher income tax rate (Zelinsky 2015).

The New York Codes, Rules, and Regulations state that *"any allowance claimed for days worked outside New York State must be based upon performance of services which of necessity, as distinguished from convenience, obligate the employee to out-of-state duties in the service of his employee."* For purposes of taxation, if the days are deemed *'not necessity'*, and occur in the home office state, nonresident taxation will be applied (20 NYCRR § 132.18(a) 2021).

Income is taxed by the primary office in New York but if the employee is telecommuting by choice or for the convenience of the employee, and residing in a different state, that state may also inadvertently assess tax on the employee's earnings. A nonresident whose primary office is in New York state will have days telecommuting considered days worked in the state unless the employer has established a *bona fide* employer office at the telecommuting location.

Method

State Income Tax

While at her full-time job, a discussion between Amy and a fellow professor and CPA led to a disagreement about New York state income tax liability. Amy argued that she earned the money from New York and thus owed the state income tax, while her colleague, an expert in tax, argued that it was not earned in New York and should not be subject to the state income tax. Amy first had to determine if she was deemed a resident or nonresident of New York.

If a nonresident, she would be assessed tax on taxable income derived from within the state (Imposition of Tax Act 2022). As a full or part-time resident, she would be eligible for a non-refundable resident credit for taxes paid to another state (Credit for income tax of another state Act 2021).

If Amy were a nonresident who performed services partly in and partly out of the state of New York, New York Title 20 CRR-NY 171.6 statute criteria would need to be followed.

However, if she was a nonresident, the employer must have established a *bona fide* employer office at the telecommuting location, which would be in New York. In general, if the employer specifically acted to establish a *bona fide* employer office at the telecommuting location, the employee will continue to owe New York state income tax on income earned while telecommuting.

Did the school from New York establish a *bona fide* telecommuting location? There are several factors to apply to determine if a home office is a bona fide employer office, in three categories:

a) the primary factor, or
b) at least 4 of the secondary factors and
c) 3 of the other factors.

Results

The Experts Respond

According to the New York State Department of Taxation and Finance (2006), there are several factors to be considered to determine if a home office is a *bona fide* employer office. Amy must meet the primary factor or four of the secondary factors and three of the other factors to determine that she has a home office that is a *bona fide* employer office.

Primary Factor. If the home office contains, or is near, specialized facilities that cannot be made available at the employer's place of business, but if those facilities are available at or near the employee's home, then the home office will meet this factor. For example, if the employee's duties require the use of a test track to test new cars, and a test track is not available at the employer's offices in New York City, but is available near the employee's home, then the home office will meet this factor. Amy's home office does not meet the primary test, because it is not a specialized facility

Secondary Factors. Minimally, four factors need to be met:

1) The home office is a requirement or condition of employment. If the employer requires the employee to work from his or her home office as a condition of employment, the home office will meet this factor. For example, if a written employment contract states that the employee must work from home to perform specific duties for the employer, then the home office will meet this factor. Amy's home office does not meet the secondary factor, as there is no contract that states where she must work.

2) The employer has a *bona fide* business purpose for the employee's home office location. If the employer has a *bona fide* business purpose for establishing an office in the locale where the employee's home is located, then the home office will meet this factor. For example, if the employee is an engineer working on several projects in his or her home state and it is necessary that the employee has an office near these projects to meet

project deadlines, then the home office will meet this factor. Amy's home state does not meet the secondary factor. She does not have any projects that need to be completed in a home office location specifically set in Florida.

3) The employee performs some of the core duties of his or her employment at the home office. If some of the core duties of employment are performed at the home office, then the home office will meet this factor. For example, the core duties of a stockbroker include the purchase and sale of stock. Accordingly, if the stockbroker executes stock purchases and sales from the home office, this will constitute performing some of the core duties at the home office. However, if the stockbroker merely reads business publications on the weekend, this will not constitute performing any core duties at the home office. In such a case, Amy does perform her duties from her home office and meets this secondary factor.

4) The employee meets or deals with clients, patients, or customers on a regular and continuous basis at the home office. If an important part of the employee's duties includes physically meeting with clients, patients, or customers in the normal course of the employer's trade or business, and those meetings are performed on a regular and continuous basis at the home office, then the home office will meet this factor. For example, the employer has clients located near the employee's home office and the employee must meet with the clients once a week to perform the duties of his or her job. If the meetings with clients are on a regular and continuous basis at the employee's home office, then the home office will meet this factor. Being an online professor, Amy's job did not meet this standard, as she would never physically meet with students. Meeting virtually does not meet this requirement.

5) The employer does not provide the employee with designated office space or other regular work accommodations at one of its regular places of business. If the employer does not provide the employee with designated office space or other regular work

accommodations at one of its regular places of business, then the home office will meet this factor. For example, an employer wishes to reduce the size of the office space maintained in New York to decrease rental expenses and, therefore, no longer provides designated office space or other regular work accommodations for one of its employees. Instead, the employer allows the employee to work from the employee's home. If the employee must come to the office, the employee must use the *"visitors"* cubicle, conference room, or other available space that is also used by the other employees of the company. In this instance, the home office would meet this factor. Amy's home office does meet the 5th secondary factor as the employer does not provide any type of office or work accommodations at the school in New York. If she were to come as a visitor, a visitor cubicle, conference room, or other available space would be provided.

6) The employer reimburses expenses for the home office. If the employer reimburses the employee for substantially all expenses (e.g., utility expenses, insurance) related to the home office, or the employer pays the employee a fair rental value for the home office space used and the employer furnishes or reimburses the employee for substantially all the supplies and equipment used by the employee, then the home office will meet this factor. Substantially means 80% or more of the expenses. Amy does not receive reimbursement for her home office expenses and does not meet the sixth secondary factor.

Other Factors

1) The employer maintains a separate telephone line and listing for the home office. Amy does not meet this factor, since a separate telephone line and listing for the home office is not maintained.

2) The employee's home office address and phone number are listed on the business letterhead and/or business cards of the employer. Amy does not meet this factor, since

her home office address and phone number are not listed on business letterhead and/or business cards.

3) The employee uses a specific area of the home exclusively to conduct the business of the employer that is separate from the living area and will not qualify if the area is used for both business and personal purposes. Amy does not meet this factor, because she can complete her tasks anywhere in her home or any other location in the world.

4) The employer's business is selling products at wholesale or retail and the employee keeps an inventory of the products in the home office for use in the employer's business. Amy does not meet this factor, because her position does not sell products and she does not keep inventory.

5) Business records of the employer are stored at the employee's home office. Amy could meet this factor if storing student records on her home computer qualifies as business records.

6) The home office location has a sign indicating the place of business of the employer. Amy does not meet this factor, since a sign for the New York university is not being displayed outside her home office.

7) Advertising for the employer shows the employee's home office as one of the employer's places of business. Amy does not meet this factor, since advertising for the New York university does not show her home office as one of the places of business for the institution.

8) The home office is covered by a business insurance policy or by a business rider to the employee's homeowner insurance policy. Amy does not meet this factor since a separate business insurance policy or rider is not necessary for this type of position.

9) The employee is entitled to and claims a deduction for home office expenses for federal income tax purposes. Amy does not meet this factor because office expenses cannot be deducted from her federal income taxes since she is a W-2 employee.

10) The employee is not an officer of the company. Amy does meet this factor because she is not an officer of the university in New York.

Amy must meet the primary factor or four of the secondary factors and three of the other factors to determine if her home office is a *bona fide* employer office. Amy does not meet the primary factor but meets one of the secondary factors and two of the other factors. Therefore, Amy's home office does not qualify as a *bona fide* employer office.

In the changing work environment, employees need to carefully review their individual situations for the most advantageous tax treatments to not pay more tax than owed.

Kirk Stark, a professor of tax law at UCLA, concluded that the state of primary residence can tax the employee's total income, but any state where income is earned outside of the primary state can also tax the income earned in that state (Gross 2020). Some states have reciprocity agreements with other states, and will give credits for income tax paid, but not all, leading to double state income tax.

Thankfully, Amy lives in a state that does not have a state income tax, so there is no need to worry about an inadvertent double state income tax. However, she needs to determine if her home office was a *bona fide* employer office that would require her to pay New York state income tax, or not.

Conclusion

Amy is in a class of workers who do not fall under the definition of a telecommuter. After teaching at the New York school for four years, she discovered that the school erroneously deducted New York state income taxes from her earnings. She was required to file a New York state non-resident tax return which considered her filing status and included all of the income earned in Florida with her husband as New York earnings. In this case, $2,526 of New York state income taxes were paid over the last four years as can be seen in Exhibit 2.

Exhibit 2. Taxes Paid

Source: IRS.gov 2021

Tax Year	NY wages	Fed wages	NY state income tax
2017	$4,545	$242,904	$237
2018	$8,021	$232,840	$480
2019	$8,020	$222,166	$465
2020	$22,571	$289,275	$1,344

Since Amy does not have a home office that qualified as a *bona fide* home office established by her employer, she is not a telecommuter, nor does she earn her income in New York. Amy will need to file an amended New York state income tax return by completing IT-203-X for the last 3 years. The statute of limitations in the state of New York is within three years of the date the original return was due or filed, or within two years of the date the tax was paid, whichever is later (2019, September), along with a letter of explanation. The letter should state that she does not meet the Department of Taxation and Finance criteria of the state of New York for a telecommuter. As a permanent Florida resident, she has never traveled to New York as part of her employment with the university and her position is and always has been 100% online, not warranting travel to New York.

It is estimated that 25-30% of the workforce work a flexible schedule including work from home (Meyer 2020). Of those surveyed, half want to continue to work remotely. Knowing the tax ramifications related to where employees earn their income is important and should be planned for. Employees need to be aware of their state income tax liability and plan accordingly, no matter which state is being claimed as their primary residence. For Amy, this was a $2,526 discovery that was partially refunded by the state of New York, upon filing her amended return. Any employee working remotely should ask himself or herself important questions: Should I be assessed a state income tax from my employer's state? Should I be assessed a state tax from my state of residence? Do I need to file an amended return to receive a refund?

Dorothy A. Thompson, CPA is an Assistant Professor of Accounting at Costa Carolina University in the Wall College of Business. Her recent research appears in *Accounting & Taxation*, *Journal of Case Research and Inquiry*, and *Higher Education Quarterly*, with articles under review at *International Journal of Knowledge and Learning* and the *Journal of Education for Business*, as well as several working papers. With a base of 10 years of corporate accounting experience before going into academia, she has a broad research focus. She can be reached at dthomps4@coastal.edu.

Tanya Smith, CPA is an Instructor of Accounting at the University of Mount Olive. Her recent research appears in *The Coastal Business Journal*, and the *Journal of Case Research and Inquiry*. As a practicing CPA for almost 20 years, she has a wealth of tax and accounting knowledge and experience to bring to the classroom and contribute to her research. She can be reached at littlerivercpa@gmail.com.

References

Amended Nonresident and Part-Year Resident Income Tax Return. (n.d.). Retrieved from https://www.tax.ny.gov/pdf/current_forms/it/it203x_fill_in.pdf.

Bell-Jacobs, M., McCann, B., & Wlodychak, S. (2021, June 1). *Where individual, corporate, and passthrough entity taxation meet.* The Tax Advisor. Retrieved from https://www.thetaxadviser.com/issues/2021/jun/individual-corporate-passthrough-entity-taxation-meet.html.

Credit for income tax of another state Act, Chapter 60, Article 22, Part 2 § 620 (2021). https://www.nysenate.gov/legislation/laws/TAX/620

Determining New York State personal income tax to be withheld on wages paid to nonresident of New York State. Title 20, Codes of Rules and Regulations of the State of New York Section 171.6 (2021).

Domanico, N. (2021). *Extending organizational culture to drive morale and productivity within a telecommuting workforce* (Order No. 28773062). Available from ProQuest Dissertations & Theses Global. (2610519688). Retrieved from http://login.library.coastal.edu:2048/login?url=https://www.proquest.com/dissertations-theses/extending-organizational-culture-drive-morale/docview/2610519688/se-2

Earnings of nonresident employees and officers. Title 20, Codes of Rules and Regulations of the State of New York Section 132.18(a) (2021).

Erb, K. P. (2021, June 30). *Understanding your tax forms: The W-2*. Forbes. Retrieved from https://www.forbes.com/sites/kellyphillipserb/2014/02/11/understanding-your-tax-forms-the-w-2/?sh=65c2c15a23ac

Gross, J. (2020, August 25). Here's how moving to work remotely could affect your taxes. Retrieved from https://www.nytimes.com/2020/08/25/business/coronavirus-nonresident-state-taxes.html.

Higley, D. (2019, May 28). *What is a pay stub? 2021 guide to employee pay stubs*. QuickBooks. Retrieved from https://quickbooks.intuit.com/r/payroll/what-is-a-pay-stub/

Imposition of Tax Act, Chapter 60, Article 22, Part 1 § 601 (2022). https://www.nysenate.gov/legislation/laws/TAX/601

Lardieri, A. (2021, February 12). *Majority of Americans Work Remotely a Year into Coronavirus Pandemic, Poll Finds National News | US News*. U.S. News & World Report. https://www.usnews.com/news/national-news/articles/2021-02-12/majority-of-americans-work-remotely-a-year-into-coronavirus-pandemic-poll-finds.

Merriam-Webster. (n.d.). Work at/from home. In *Merriam-Webster.com dictionary*. Retrieved from https://www.merriam-webster.com/dictionary/work%20at%2Ffrom%20home

Meyer, Z. (2020, May 22). *Here's an ever-growing list of companies that will let people work from home forever*. Fast Company. https://www.fastcompany.com/90508784/heres-an-ever-growing-list-of-companies-that-will-let-people-work-from-home-forever.

Neilson, W. (2021, October 22). *Living and working in different states can be a tax headache*. Kiplinger. Retrieved from https://www.kiplinger.com/taxes/state-tax/603630/living-and-working-in-different-states-can-be-a-tax-headache.

New York State Department of Taxation and Finance. (2021, December 6). Filing information for New York State nonresidents. Retrieved from https://www.tax.ny.gov/pit/file/nonresidents.htm.

United States, New York State Department of Taxation and Finance, Office of Tax Policy Analysis. (2006). *New York Tax Treatment of Nonresidents and Part-Year Residents Application of the Convenience of the Employer Test to Telecommuters and Others*. TSB-M-06(5)I. Albany, NY.

Your Rights and Obligations Under the Tax Law. (2019, September). Retrieved from https://www.tax.ny.gov/pdf/publications/general/pub131.pdf.

Vera, V. (2020, November 5). *AICPA/Harris Poll Reveals Many Taxpayers Unaware of State Tax Liabilities Related to Working Remotely*. AICPA. https://www.aicpa.org/press/pressreleases/2020/aicpa-harris-poll-reveals-taxpayers-unaware-of-state-tax-liabilities-related-to-working-remotely.html.

Volkner, J. (2020, April 2). *18 jobs & skills that enable you to work from anywhere and travel the world*. WebWorkTravel. Retrieved from https://www.webworktravel.com/jobs-to-work-anywhere/.

Waggoner, J. (2021, April 8). *9 states that don't have an income tax*. AARP. Retrieved from https://www.aarp.org/money/taxes/info-2020/states-without-an-income-tax.html.

Woodall, R. (2015, January 6). *Text - H.R.25 - 114th Congress (2015-2016): FairTax Act of 2015*. Congress.gov. https://www.congress.gov/bill/114th-congress/house-bill/25/text?r=89&s=1.

Zelinsky, E. A. (2020). Coronavirus, Telecommuting, and the 'Employer Convenience 'Rule. https://larc.cardozo.yu.edu/cgi/viewcontent.cgi?article=1439&context=faculty-articles

Zelinsky, E. A. (2015). Hillenmeyer, Convenience of the Employer, and the Taxation of Nonresidents' Incomes. *Clev. St. L. Rev.*, *64*, 303.

Journal of Case Research and Inquiry

Peer-Reviewed Cases, Notes and Articles

A publication of the Western Casewriters Association

Vol. 8
April 2023

ISSN 2377-7389