

C. BACKGROUND INFORMATION ON THE SHOE BOX

1. The Shoe Box Store

The Shoe Box is a family owned and operated shoe store located in Black Earth, Wisconsin, a small town approximately 25 miles from the university's campus. Steve Schmitt, the owner, acquired the business from his father in the early 1970s. The Shoe Box "complex" includes a retail store of approximately 16,000 square feet that includes a recent 6,000 square feet addition for a Bargain Room. Across the street is a shoe repair facility that also provides an employee parking lot for the retail store. The stores are located on a state highway that intersects with another state highway approximately one-half mile from the store location. The Shoe Box has several warehouses in the area that store merchandise. Schmitt also owns Rookies Restaurant, a sports theme restaurant located approximately two miles from The Shoe Box. The interior of Rookies contains sports memorabilia not only of the University of Wisconsin but professional and amateur teams from the Midwest.

The Shoe Box advertises throughout the central part of Wisconsin and has many customers from various parts of the state. Billboards denoting The Shoe Box are located throughout the region, and the store does extensive advertising in the print media.

The Shoe Box sells many styles of shoes, including dress, athletic and work shoes. Athletic shoe sales comprise approximately 25 percent of its business. Accessory merchandise, like belts or T-shirts, also is available for purchase, but does not comprise much of the business. Due to its location, it is a "destination" for many shoppers, as the majority of customers are not residents of the Black Earth area. Many customers will make a trip to The Shoe Box as the purpose for the trip. As a result, many Shoe Box customers purchase several pairs of shoes.

While The Shoe Box is open seven days a week and for long hours each day, it is usually crowded during the more traditional shopping hours. It is not unusual for 30 to 40 customers to be in the store at any time, with many more customers during peak shopping periods. Gross annual sales for The Shoe Box total around \$11 million dollars. Schmitt has indicated The Shoe Box will sell as many as 500 pairs of shoes on a weekend day. On those days when the store is open late, total store sales may reach \$35,000, while the normal business day sales may total \$30,000.

Sports memorabilia is located throughout The Shoe Box. A "Wall of Fame" is located in the store, and Schmitt will have current or former collegiate and professional athletes from all types of teams sign the wall. Many of the university's student-athletes have signed the wall, as have current or former professional and amateur baseball, hockey, and

basketball team members. Schmitt is an avid St. Louis Cardinals baseball fan and has televisions sets throughout the store continually playing Cardinal baseball games or highlights.

Due to the family nature of the business (i.e., three of Schmitt's daughters are involved in supervisory capacities at the store), the business structure and policies are similar to a small retail operation, as opposed to a significant merchandising outlet. As is discussed in more detail elsewhere in this report, The Shoe Box did not have computerized records until 1998. Customers could open store accounts with as little as showing identification. Receipts are not needed for returns, and Schmitt acknowledged accepting shoe returns when it was very likely they were not purchased at his store.

Being a long-term resident of the Black Earth area, Schmitt is very involved in civic projects. Schmitt and The Shoe Box donate to numerous charities. The Shoe Box is the largest retailer in the Black Earth area, and accordingly is one of the largest employers.

Customer service is a high priority for Schmitt – a trait he instills into his employees. Employees are encouraged to be creative in their sales approach. For example, if an employee recognizes that a customer is interested in a pair of shoes but is hesitant due to the cost, certain employees have the authority to lower the price by 10 percent and they or other employees are encouraged to locate Schmitt, who likely would provide a larger discount. Schmitt emphasizes to his employees that it is important to have customers purchase shoes even at a discounted price in order to make that person a repeat customer. Schmitt indicated that there are few “rules” for the employees and customers. He indicated the store is operated somewhat different, since many of his customers make special trips from far away areas to purchase shoes. He indicated his customers come for service, price and selection.

2. Steve Schmitt

Schmitt is a representative of the university's athletics interests due to his contributions to the university. He has donated approximately \$13,000 to the athletic department since 1988; about 40 percent (\$5400) of these contributions were part of the preferential seating program for men's basketball and hockey. He is not a member of any recognized booster organization. One of his most consistent contributions is to attend an outing that is sponsored by a friend of Schmitt who is also a customer at The Shoe Box, Jim Kalscheur. This is an annual steak fry with monies contributed to a scholarship fund. Schmitt's contributions to attend this event total \$5760 (about 45 percent of his total) over seven years. This outing is the only organized booster outing/activity that Schmitt can recall ever attending. He indicated that his attendance was due more to his friendship with Kalscheur than to an alliance with the university.

Jim Kalscheur reported to the university that he has known Steve Schmitt for over 30 years. Both share a love for baseball and have many mutual friends in the Madison area baseball community. Kalscheur frequently invites Schmitt to attend baseball-related events in the area. Kalscheur purchases his shoes from The Shoe Box. Kalscheur indicated that Schmitt was one of the most generous persons in the Madison area, frequently giving to charities. Kalscheur believed that Schmitt became involved with the steak fry because: (i) he and Schmitt are good friends; and (ii) Schmitt routinely contributes to events, if asked by his friends and customers.

Therefore, about 40% of Schmitt's contributions to the university were required to receive preferential seating for men's basketball and hockey at the Kohl Center which was constructed in 1996. Another 45% were to attend an outing held at his friend's.

The Shoe Box also contributed \$425 to the Our Business Backs The Badgers program. This program was initiated in approximately 1994; the intent is for businesses to receive recognition that they contributed to the university's athletic department. An annual contribution of \$100 is required, and the business receives a plaque, with a statement "Our Business Backs The Badgers." For the contribution, the business receives the yearly placard for display in their business and recognition in the football program. For each home game, the football program contains a small ad that lists the businesses that are in the program.

Absent the contributions for the outing hosted by a Shoe Box customer and friend, his contribution for preferential seating and for Our Business Backs the Badgers Schmitt's contributions to the athletic department over 13 years are minimal (\$1315). Even his preferential seating donations are for tickets in others' names, so technically he is not a season ticket holder, although he acknowledges he receives the basketball tickets from the listed holder. While this does not eliminate his classification as a representative, it accurately portrays him as an individual that is not an avid university fan. Pat Richter, the institution's director of athletics, indicated that he had never heard of Schmitt being characterized as a booster of the school and never heard of people talking about Schmitt as a booster. Richter had never seen Schmitt at any booster events. Richter commented that even after the article appeared, Schmitt did not contact the university, as he was not acquainted with anyone in the athletic department. Richter indicated that he routinely sent letters to individuals who contribute certain amounts to the athletic department; however, given the nature of Schmitt's contributions, Schmitt would not have received any letter from him. Further, most of the contributions were given by The Shoe Box instead of in the name of Steve Schmitt. Of the 30 contributions since 1988, 25 have been in the name of The Shoe Box. A detailed list of all contributions from Schmitt and The Shoe Box are listed in Exhibit 2.

According to Schmitt, he has been to one football game in 25 years. Since he works approximately 90 hours per week, he does not attend many other events. While he has basketball season tickets, he indicated that he usually gives away many of these tickets. He believes he averages only three basketball games per year.

As mentioned previously, Schmitt is a fanatic for sports at all levels. His daily attire is a St. Louis Cardinals baseball jersey, and Cardinal logos and memorabilia are located throughout the store. He indicated that he mails shoes on a regular basis to professional athletes such as Bob Gibson, Harmon Killebrew, Red Schoendienst, John Matlach, Don Zimmer, Maury Wills and Fergie Jenkins. Team buses carrying teams of college or semi-professional athletes routinely stop at The Shoe Box when going through Wisconsin. Schmitt knows background information on athletes in various sports and on various teams.

Schmitt does not have a personal relationship with the head coaches of any of the university's sports, including the most visible. Dick Bennett, the university's head men's basketball coach from 1995 to his retirement in December of 2000, has no recollection of meeting Schmitt and has never been to The Shoe Box. Interim head men's basketball coach Brad Soderberg and Barry Alvarez, the institution's head football coach from 1990 to the present, have no recollection of meeting or seeing Schmitt at any booster or university activities. Alvarez visited The Shoe Box in 1991 or 1992, when he and his wife were passing through the Black Earth area. He had heard about The Shoe Box from advertisements, but he and his wife did not purchase any shoes on this occasion. He has never been back to The Shoe Box. He has no recollection of meeting Schmitt at The Shoe Box on this occasion. The extent of visits by other coaching staff members to The Shoe box will vary by sport and will be discussed later in this report. However, Schmitt does not have a personal relationship with any coaching staff members, and any contacts with staff members would have only been during their visits to The Shoe Box.

It should be noted that Schmitt has been very cooperative in this process. He has been interviewed on numerous occasions. Numerous current employees have been interviewed at The Shoe Box by the university, without Schmitt or others being present. The university has obtained hundreds of pages of invoices, monthly statements and other documents from the store, and over the past months, the university has contacted The Shoe Box on two or three occasions per week to obtain additional information or documentation from its accountant or Schmitt's staff. Schmitt has never declined a request by the university to be interviewed, nor has he declined to answer any questions. Individual account information was provided for all student-athletes, if the information was available.

In summary, Schmitt is an avid sports fan who is familiar with the university's student-athletes, as well as current and former student-

athletes in numerous sports on numerous levels. His most significant contributions to the university have been to ensure preferential seating in men's basketball and hockey. The other major contributions were donations to an outing sponsored by a friend and area resident. Other than occasional basketball and hockey games, he does not attend university-sporting events and does not attend the traditional booster functions. Until this inquiry, he did not realize he would be considered a representative of the university's athletics interest and still questions that classification.

3. Discounts

The store is well known as a "discount" shoe store. Due to its location, its marketing efforts are geared toward developing a reason, or desire, by potential customers to visit The Shoe Box and to buy numerous pairs while visiting due to the discounts. Similar to other discount stores, each pair of shoes has an original, "manufacturer's suggested" retail price and also a discounted "store" price on the box. Schmitt indicated that every shoe has a discounted price, and 10,000 shoes are marked down 50 percent. He makes a profit on every pair of shoes he sells. He emphasized throughout the university's interviews that discounts are so frequent they are difficult to categorize. He gave an example of several pairs of shoes he received that he purchased for \$5 and sold for over \$100. Groups such as economically underprivileged youth, and, church associations as well as indigent individuals routinely receive significant discounts.

Besides offering a standard discounted price that is marked on the box, other discounts also are available when purchasing shoes. As a result of interviews with numerous current and former employees, customers and Schmitt, the university has classified these other discounts into two general categories. The first general category is the discount that customers may receive without Schmitt authorizing the discount. A newspaper advertisement occurs in regional papers on approximately five occasions per month, with a coupon for 10 percent off. A Prime Card from a local bank offers 15 percent off, and area high schools routinely sell discount cards allowing for a 15 percent discount. A consistent promotion is the provision of a 10 percent discount to anyone who enters the store with cow manure on their shoes.

The second type of discount has been labeled the "Steve" discount by the university. The sole criterion for this discount is that Schmitt must be involved in its provision. The employees cannot provide this type of discount without involving Schmitt. The university student-athletes are one of several groups that receive this discount. Others include friends, relatives, frequent customers, customers who purchase multiple pairs, certain church or civic groups, and businesses. The "Steve" discount varied and might exceed 50 percent depending upon the type of shoe.

For those individuals who receive the “Steve” discount, customers may: (i) pay by cash or credit card at the register at the time of purchases; (ii) pay when they receive an invoice that is mailed to them after Schmitt adjusts the price, or (iii) open a store account and pay when billed. Jeff Lauersdorf, The Shoe Box accountant since August of 1999, indicated that those purchases utilizing the 10 percent type of discount, usually are paid by cash or credit card. He believed that for purchases with the “Steve” discount, the majority would have been paid upon the receipt of the invoice or charged to a store account. He estimated that 4.5 percent of the total sales of The Shoe Box were not paid at the register upon receiving the merchandise (i.e., the customer paid after receiving an invoice after Schmitt adjusted it or opened a store account). He estimated that 75 percent of sales placed on a store account received the “Steve” discount. This number does not include regular, bank issued, credit cards or corporate or other sales that were discounted based on a bidding process.

The university believes Schmitt provided the “Steve” discount if he was aware of or knew the customer. Schmitt indicated that the customer had to initiate the request for a discount. However, several student-athletes indicated that Schmitt approached them because he indicated he recognized them. Nevertheless, student-athletes got the “Steve” discount based on their athletics ability, because Schmitt recognized them or knew of them or they asked for it or identified themselves as a student-athlete. It appears that Schmitt sought out the student-athletes or the student-athletes introduced themselves to Schmitt once knowledge spread of the discount opportunities. After the initial acquaintance, the student-athlete either asked Schmitt or told the clerk that he or she received the “Steve” discount. If friends or family accompanied the student-athletes, they also received the discount, and the cost of their merchandise often was included on the student-athlete’s invoice. If Schmitt was not present in the store, an invoice would be prepared, and Schmitt later would indicate a price and mail the invoice to the student-athlete.

Schmitt acknowledged that university student-athletes were given the “Steve” discount on shoes and other merchandise. The student-athletes would pay cash or utilize a credit card at the register at the time of the purchase or they would leave the invoice to be adjusted and paid later. If payment was made in full by cash or credit card at the time of the purchase, no records exist of that purchase in the vast majority of the cases. The only records that may exist for these purchases would be receipts that were submitted by the student-athletes for reimbursement through the Student-Athlete Assistance Fund. Based upon interviews with student-athletes, the university believes the majority of the student-athletes’ purchases were invoiced and paid upon receipt of the invoice or allowed to be placed on a store account.

As indicated above, those individuals receiving the “Steve” discount, including student-athletes, could: (i) pay in cash, by check or by credit card at the time of purchase; (ii) receive an invoice in the mail a few days

after the purchase and pay the amount on the invoice, or; (iii) apply the invoice amount to the store account. (If an invoice is mailed, technically, a store account was opened for a short period of time until that invoice was paid). In general, records exist for The Shoe Box from 1998 for items (ii) and (iii) above. Some invoices date back to late 1997, but computerized store accounts were put on-line during 1998. While some student-athletes indicated that they paid the cost of the invoice upon its receipt a few days after the visit to The Shoe Box, many placed this amount on a store account and a large majority of purchases were on these accounts. Exhibit 8, attached and made a part of this report, is a diagram of the process for discounts and credits for student-athletes based upon the available records at The Shoe Box. It is generally categorized as those individuals that paid by cash or credit card at the time of purchase and those that opened a store account and had an invoice mailed.

For purchases that were made in cash, little information is available from the student-athletes about the number of occasions and the level of discount. In those situations, no written receipt would have been provided that would have indicated the original cost of the merchandise and the price with the "Steve" discount. The majority of the purchases from the Special Assistance Fund have only a cash-register receipt and not the actual invoice to determine what the level of discount might have been. For those purchases written up on invoices and added to a student-athlete's store account to be adjusted and mailed later, the invoice often details the specific discount. Some invoices indicate only the discounted price provided by Schmitt. Exhibit 9, attached and made a part of this report, includes examples of invoices on which the original price is indicated and the discount shown. Exhibit 10, attached and made a part of this report, includes several invoices where only the discounted amount is indicated without any notation of original price and some on which there is no original price or specific discounted price.

4. Credit/ Store Accounts

In nearly all situations, Schmitt is the only person authorized to open a store account for a customer. Schmitt's general policy was that if he knew where the customer could be located, the customer could open a store account and make purchases on store credit to be billed and paid later. Schmitt indicated in order to receive credit, he did not necessarily have to know the person, but he had to know where to locate them. It was not necessary to put any money down, but some type of identification was required. The usual information requested was an address and phone number and this was written on the first invoice that opened the account. That information would begin a store account file for that customer. If Schmitt was acquainted with the individual, he would not ask for a phone number or address. He believed that approximately 70 to 80 percent of all the credit invoices would not have address and telephone numbers, as he would have that on file or he knows the individuals. For a customer who

selects merchandise and wishes to receive the "Steve" discount, the invoice is placed aside, but Schmitt must make the decision to open a store account in order for that invoice to be placed on a person's store account. In essence, the invoice is put on hold until Schmitt reviews the charges, provides a discount, mails the invoice and opens the account. For the university student-athletes, Schmitt indicated that he was either acquainted with them or knew where to locate them.

Exhibit 11, attached and made a part of this report, is a summary of The Shoe Box store accounts as of July 31, 2000. The university is concerned about the number of current or former student-athletes who had significant remaining balances at The Shoe Box at the time of the article; however, based upon interviews with Shoe Box employees and interpretations from the NCAA Membership Services Staff, the student-athletes' disproportionate representation in owing significant amounts of money, as compared to other Shoe Box customers, is not contrary to NCAA legislation.

5. Collection Procedures

When the university began its inquiry and learned that numerous student-athletes had existing accounts, it questioned whether the student-athletes intended to repay these amounts and whether Schmitt made efforts to collect the amounts. Based upon available information, it appears the student-athletes were not treated differently in the collection efforts by The Shoe Box. Similar to other practices of the store, The Shoe Box is very lenient in allowing customers to accumulate a significant bill. Minimal effort by a customer in paying a bill kept the bill from being forwarded to a collection agency.

Schmitt indicated that he reviews the delinquent accounts every two or three months and makes the determination of which accounts should be turned over to a collection agency. He believes that he forwards about 30 or 40 accounts per year to an agency. He indicated that he does not believe he has ever turned a student-athlete over to a collection agency (available records indicate otherwise). He indicated that if a student-athlete left the university and had not paid off the account, he might turn it over to the agency or he might write it off. He indicated that as long as the student-athlete is at the university, he knows where the student-athlete can be located. He indicated that he knows personally 80 to 90 percent of the individuals who have an account that is greater than 90 days delinquent, so he would not turn that person over to a collection agency since he knows them and he knows where they can be located.

Schmitt's accountant, Lauersdorf, indicated that every three months, he and Schmitt will review the delinquent accounts, and Schmitt will decide which ones will be turned over to the collection agency. He believes that on these occasions, five to ten accounts are forwarded to the agency.

Lauersdorf indicated even if the person has not made a payment in 90 days, it would not go to the collection agency if the customer made a payment at some point on the account. As a result, if a person has made any payment on the account, regardless of how long the account is overdue, that account is not forwarded to a collection agency. When it is determined that an account should be forwarded to a collection agency, Lauersdorf sends a letter to the person indicating that the account is being forwarded to a collection agency in the hopes that the person would make a payment. In most cases, the person does make a payment, and the account probably is not sent to a collection agency. Lauersdorf emphasized that the decision to forward an account to the agency rested solely with Schmitt and no written store guidelines existed.

The available documentation substantiates the information provided by Schmitt and Lauersdorf. One student-athlete each in wrestling, women's golf, men's track and football were forwarded to a collection agency since 1997. It appears that all were known to be student-athletes by The Shoe Box due to notations on their invoices, and all received a "Steve" discount. Except for the football player, at the time of referral each had only one purchase ranging from \$85 to \$170. None had made any payments on their accounts. On two of the accounts, less than six months had lapsed between the purchase and the referral to the collection agency. Looking at several random files, several student-athletes made significantly more purchases and had larger account balances. However, in each of these cases, at least one payment had been made on the account.

It should be noted that as a condition of restoration, no current student-athletes have an account balance at The Shoe Box. Several former student-athletes have outstanding balances, and the university has sent letters to these individuals encouraging them to pay their balances. Using the criteria indicated by Schmitt and Lauersdorf, these individuals have made a payment at some point on their account, so they have not been forwarded for collection.

As mentioned previously, The Shoe Box maintains an Aging Account Summary that lists the balance due and a Customer Contact List that contains the customer's address. The Shoe Box mails monthly statements to those individuals on the Aging Account Summary. For several of these former student-athletes, The Shoe Box had an address on the Customer Contact List other than what was the student-athlete's last known campus address, so it appears that efforts are being made (albeit not forcefully) to collect the balances. These efforts are similar for all customers on the Aging Summary, regardless of whether they are former student athletes. Similarly, until the article appeared, current student-athletes on the Aging Summary were receiving monthly statements.

6. Volume of the Involvement

