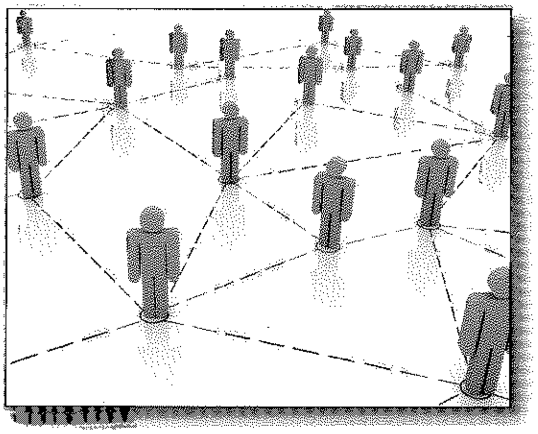

Art Imitates Law: Lessons Business Owners Should Learn from The Social Network *By Brian A. Mills, Esq.*

The 2010 academy award winning docudrama, The Social Network, tells the story of the founding of the social networking website Facebook by Harvard University students in 2004. The real-life inspired story about a few college kids who, in less than 84 months created a $25,000,000,000 internet phenomena subscribed to by one in eleven humans on the planet, inspires the entrepreneur in everyone. In addition to being inspiring and entertaining, the film also teaches business owners a valuable lesson– the importance of documenting the fundamentals of your business in writing.

The protagonist, Jeffrey Zuckerberg, a computer prodigy who scored a perfect 1600 on his SAT, Harvard student and creator of Facebook, is the defendant in multiple lawsuits brought by alleged co-founders over their relative ownership interests in the business. The movie is told through a series of flashbacks from deposition testimony in these lawsuits.

In one lawsuit, Zuckerberg is being sued by the Winklevoss Twins, Cameron and Tyler, who allege he stole their idea after agreeing to be partners with them in the creation of a social networking website very similar to what eventually becomes Facebook. The movie depicts a meeting between the Winklevoss' and Zuckerberg where the twins tell Zuckerberg about their idea for a website where users create their own page, with a bio, interests, friends etc. Zuckerberg agrees to develop the website for the twins. There is no discussion of compensation to Zuckerberg in the form of consulting fees, wages or equity.

Within a few weeks, Zuckerberg, is developing a website which "takes the entire college experience and [puts] it online" with financing from his friend Eduardo Saverin. The movie portrays an exchange between Zuckerberg and Saverin at a party in which Zuckerberg and Saverin agree to a 70-30% split in favor of Zuckerberg. Saverin, who made $300,000 over the summer trading oil futures, provided the initial funding for the company ($1,000) and is given the title of Chief Financial Officer.

As the Zuckerberg/Saverin project progresses, the film shows Zuckerberg putting off the Winklevoss twins with a series of email and text messages saying that his courses have been taking up too much of his time, that he is almost finished with the development of their project and a number of other evasive messages.

Eventually, Zuckerberg is focused exclusively on the Zuckerberg/Saverin project. Clearly, he has no intention of developing anything for the Winklevoss twins. The Zuckerberg/Saverin website enjoys a successful launch and the company relocates to Silicone Valley within a few months. Saverin stays in New York for an internship and to solicit investment and/or advertising partners for the website. In California, Zuckerberg becomes close with Sean Parker, the creator of Napster. Parker introduces Zuckerberg to Silicone Valley venture capitalists who are willing to invest several million dollars in Facebook. Eventually, the venture capitalists, Parker and Zuckerberg dilute Saverin's interest in the company from 34% to .03%– hence the lawsuit by Saverin against Zuckerberg.

While most would probably happily trade places with Saverin who received an estimated settlement in excess of one-billion dollars in exchange for an $18,000 investment and a summer's worth of work, the story provides a good lesson for business owners. Regardless of the choice of entity, there are well-established methods for memorializing ownership interests,

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rights and responsibilities in writing. This is particularly important when the owner's contributions are varied in kind (for instance, cash capital, sweat equity, intellectual property) or in timing.

This is accomplished through proper organizational documents. In a corporation, these documents are corporate bylaws and a shareholder's agreement. Owners of a limited liability company should adopt an Operating Agreement to set forth their relative ownership rights and responsibilities. Owners of a partnership should adopt a partnership agreement.

Regardless of their title, these documents can and should address issues such as distribution of profits, management, how to handle a need for additional capital, whether the estate of a deceased owner must sell his or her interest in the business to the company or if the interest may be inherited by beneficiaries.

It is also important that there be no discrepancy between the ownership percentages set forth in these documents, the actual distribution of profits and the reporting thereof on the company tax returns. Any deviation, can call into question the authoritativeness of the organizational documents and the percentages set forth therein.

Many businesses are born with an idea and a dream. For good reason, the dreamers are budget conscious– especially in the beginning stages. Too often, however, there is no provision in the budget for an agreement setting forth the rights and expectations by and among the owners. This can be a very costly mistake. Without a doubt, had the Winklevoss twins reduced their agreement with Zuckerberg to writing, they would have had a much stronger case. It is best to address these issues on day one; before the company succeeds or fails (this issue cuts both ways when, for instance, there are personal guarantees of company obligations). Once a company is making significant revenues, it is likely too late to agree on ownership percentages and rights to management and profits without someone feeling they've been slighted and that their contributions are not being properly credited. Evident success brings on clouded and blurred

recollection of the informal meetings, phone conversations and handshake agreements which once started out as mere dream of making it big! Unfortunately, reported legal decisions provide volumes of anecdotal evidence of a direct inverse correlation between recollection of unwritten business agreements and the success of the business.

The owners of a new business would be wise to budget for some basic planning and organizational documents when going into a new business venture. And if you've already begun a business without formally documenting the respective ownership interests, rights and responsibilities of the ownership team, don't put your head in the sand and ignore this ticking timebomb. In the ideal scenario, these issues would be resolved on day 1, but it is only too late if you wait until a member dies or becomes disabled, there is an offer to purchase the business or if the business winds down and has to deal with allocating assets and liabilities.

Brian Mills, Esq. focuses his practice on the representation of business entities in the buying and selling of businesses and real estate, corporate and partnership structuring and financing. He also assists business owners in planning for the future by implementing succession plans for their businesses and by assisting them to establish their legal rights and responsibilities with respect to the operation of their business. Brian also has substantial experience drafting and negotiating office and retail leases. To schedule an appointment with Brian call 609-452-8411 ext. 109