

Creating an Effective Corporate Strategic Venture Capital Program

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The number of major corporations with specific officers dedicated to sourcing and investing in early stage strategically aligned companies — known as Corporate Venture Capital (CVC) — has seen a dramatic resurgence recently. About a dozen years ago, a number of large corporations tried their hands at CVC investment, with mostly disappointing results. They learned that CVC investing is not the same activity as private venture fund management.

CVC operations have their own unique challenges and dynamics, which must be understood at the outset if the CVC is to fulfill its potential. Here are some tips to making your CVC unit a success:

1. Calibrate Strategic Goals. The success of private venture funds is measured by capital gains, nothing more. But a CVC serves strategic needs as well. It can be a “scout” to find promising technologies and emerging businesses that might otherwise have been overlooked. It provides firsthand knowledge about the direction of current innovation, both individually and as data points for trend analysis. A CVC may find young companies to acquire, invest in or partner with. It may discover technologies to license. It should help the corporation see its sector from a different perspective. But because strategically aligned technologies often are absorbed rather than exited from, it is not usually helpful to measure a CVC’s progress by capital gains alone, so make sure that its true goals permeate and are reflected in the organizational structure.

2. Be Nimble. In order to reap the above benefits, a CVC must present a credible image in the venture capital and entrepreneurial ecosystem. For a CVC, credibility flows not from the number of deals it closes, nor from its win-loss record in terms of exits. It flows from being seen as a viable resource for others in its industry. Some CVCs have the reputation for glacial decisions and Byzantine authorization requirements. No matter how prestigious the parent company, such CVCs are not seen as serious players and will not find themselves easily included in the stream of information. While some safeguards and procedures will always be necessary, burdening a CVC with stifling layers of approvals and reporting before an investment can be made is a sure path to irrelevancy.

3. Degrees of Autonomy. A separate budget, committed in advance with a few C-suite executives on its permanent board, will permit faster investment decisions. Business unit buy-in is important, but requiring absolute approval by risk-averse business unit heads may stifle a CVC’s ability to act autonomously. Striking this balance is critical to a CVC’s success or failure. A CVC should have a separate identity; many are even organized as separate subsidiaries. A venture-specific identity helps insulate the company from liability and conflict issues with strategic applicants, enhances the perception of autonomy, and makes it easier to play an influential role in the start-up community. Autonomy may conflict with one’s corporate

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culture, but without it, a CVC becomes more symbolic than real — and distinguishing the symbolic from the real is something at which the venture community tends to be adept.

4. Establish a Logical Chain of Command. A CVC that reports to the CFO may tend to be measured predominantly by profit; if to the CTO, by strategic benefits. Neither is incorrect, but each carries a distinct message. Make sure it is the message you had in mind. Decide first what the CVC’s goals should be, and let the reporting chain of command follow suit.

5. Other Issues to Consider. Many other issues, including CVC career path/compensation issues, whether to make LP investments or alliances with private venture funds, CVC privacy wall issues, measuring success, data dissemination to internal business units, and investment policies regarding exclusivity, are among the decisions that help determine positive or negative outcomes. Avail yourselves of special CVC subgroups of the National Venture Capital Association (or the European Venture Capital Association), CVC trade publications and good outside professional resources, and consider your options carefully. Build your CVC for the long run, and it can be your valuable scout on the frontier of your industry for many years to come. ■■■

Amazing Clients[®]

A Love Story About the Emotional Cost of War

Victor Del Regno, Producer and Director of “Till Then – A Journey Through WWII Love Letters”



Vic Del Regno

The Rhode Island International Film Festival (RIIFF), an event that launched two films nominated for Oscars in 2012, is the largest film festival in New England. In August 2013, RIIFF celebrated its 17th year with a record-breaking number of submissions, attendees and filmmakers, among them a 66-year-old former Rhode Island resident, Vic Del Regno, who is not even schooled in the art

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A Love Story About the Emotional Cost of War

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of movie-making. His entry was one of over 200 films selected by judges out of a record 5,114 submissions from 65 countries and 36 states across the U.S., and it took home the "Soldiers and Sacrifice Award," which celebrates stories that commemorate America's heroes.

Vic, the former CEO of a reputable Northeastern sales and marketing company, discovered the untold truth about his parents' relationship during World War II from a box of old letters found in a dark, damp garage.

"I never knew this side of my father until I read the letters. Like so many men of his generation, he did not express himself openly, and he never spoke of the war while I was growing up," Vic recalls. He also marvels that his father, who had only an eighth-grade education and spoke Italian fluently, wrote so beautifully and so poignantly about the war and the emotional pain of separation.

Vic was so moved by his parents' correspondence that he felt compelled to retrace his father's footsteps by embarking on what would become a five-year journey halfway around the world to a small island in the South Pacific where his father had served as a WWII Navy Seabee, and then back to his hometown of Nyack, NY. He took cinematographer Chris Simmons with him to film the journey.

"I wanted to tell my parents' story, and I wanted to leave a legacy to them, to our children, to the greatest generation, and to all the people still separated by war today," says Vic, who was so inspired that he invested over \$400,000 of his own money to make the movie.

"I also wanted people to realize the emotional cost of war and the sacrifices made for our freedom, not just by the soldiers, but by their spouses and loved ones at home too," Vic adds. "This story highlights the perspective of the women who stayed at home during World War II, and it also speaks for all those who remain at home today while loved ones fight in today's wars."

The documentary film story of Andy and Helen Del Regno begins shortly after their marriage, which took place on August 24, 1940, when they were just 26 and 18 years old, respectively. Andy, who worked at a local manufacturing plant, enlisted in the newly formed Seabees after the December 7, 1941, bombing of Pearl Harbor. He chose the Seabees because they were members of the U.S. Navy Construction Battalion, or "CB" for short, and they would do much of their legendary original work building bases and airfields in the South Pacific islands.

Then, in the late summer of 1942, Andy was shipped out from his home in Nyack, NY, to Davisville, RI, a village in North Kingstown where the Seabees were born and the first Quonset huts, named after Quonset Point, RI, were designed and built. But he was training to do much more than just build temporary housing, bases and airfields. "They are teaching us how to fight and kill commando-style instead of teaching construction trades," Andy reported to Helen in an early letter.



By late 1942, Andy's training was completed, and on Christmas Day he was passing through the Panama Canal on his way to the South Pacific and the Solomon Islands. From the islands he would write countless letters, painting a vivid picture of the difficulties of a soldier's life in the South Pacific. "There are more flies here than snowflakes at home," the homesick Seabee wrote, for example, adding, "All I want is to be back in plain old Nyack. I would give the world just to hold you in my arms ... but right now there's a job to be done and we have to do it."

For Helen, the war brought only loneliness and separation, and it was hard remaining tethered to Andy's tight-knit family. "My mom was orphaned at 14, raised by her brother, Otto, and quit school at 16," Vic recalls. "When the war separated my parents, she was still a young, beautiful and very independent Irish-German woman who must have felt smothered by the Italian family she married into, with its numerous family functions and weekly Sunday dinners."

Thus, Helen wrote to Andy only sporadically during 1943 and 1944. It was during that time that Camp Shanks, a site that became known as "last stop USA" for soldiers who were staging to go to war in Europe, was opened near Nyack. "Roughly 1.3 million troops and 70 percent of the soldiers in the Normandy Invasion passed through Camp Shanks, and they paid lots of attention to the girls left at home in the USO club and the local bars of Nyack," Vic expounds.

While Helen was spotted out and about with a single woman who had "a reputation," Andy was persistently writing to her, asking why she had not sent letters. The pain for him was amplified by the fact that some of his tent-mates were getting up to a dozen letters in a single day, while some others were getting "Dear John" letters that ended their romances.

"The movie shows how soldiers literally live on these letters from home," Vic explained, adding, "even today this is true, as soldiers in war zones often have wireless or Internet contact blocked out or shut down for security reasons."

The reality of the movie and the conflict is heightened by actual footage of WWII, including testimony and tales from women who lived through the war with loved ones overseas, reenactment

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scenes from a 1940s kitchen (courtesy of the Culinary Arts Museum at Johnson & Wales University in Providence, RI), a WWII tent reenactment (courtesy of the Seabee Museum in North Kingstown, RI), and narrations by professional golf announcer Peter Kessler as well as 93-year-old famous Hall of Fame Sportscaster Bob Wolff, who was stationed in the South Pacific on the same island at the same time as Andy Del Regno.

Fortunately for Vic, his parents reconnected in December 1944, and when his father came home for the holidays that year, they shared romantic evenings in the moonlight of their Norman Rockwell-esque village located on the Hudson River.

When Andy was called to a second tour of duty in the Philippines in 1945, Helen became the prolific and passionate writer, reassuring Andy that “this is one girl that is waiting for her husband,” and sealing her letters with lipstick kisses that kept him going through some very blue periods. Among other things, as described in his letters, Andy was saddened that some men on multiple tours of duty were sacrificing much more for freedom than others who had yet to serve and were frolicking at home.

The pain for Andy was made worse when he learned in April 1945 that his brother Victor (after whom the film producer was named), had been killed in the Battle of the Bulge, a particularly shocking development because the family was initially told in February that Victor was seriously hurt but had survived.

“Till Then – A Journey Through WWII Love Letters” is stirringly told by the filmmaker and punctuated with contemporary scenes of his journey to the South Pacific islands as part of his effort to retrace his father’s steps. It ends with an epilogue mentioning that Helen is now 91 and suffers from Alzheimer’s disease, but still asks every day, “Where is my Andrew?”

In addition to the film being showcased at the Veterans Memorial Auditorium in Providence as part of the RIIFE, there have been showings at the Nyack library on the anniversary of the D-day landing, and at Burns & Levinson, the law firm that represents Vic Del Regno. He says the response to the showings could not have been better. “People are grabbing tissues, their eyes are wet, and some of them have come up and thanked me for sharing this story.”

He thanks his own family for allowing the story to be produced, and he acknowledges the efforts of attorneys at Burns & Levinson, who helped him launch this project by getting appropriate intellectual property clearances, providing good advice on contracts related to the production, and even successfully resolving a dispute related to the film.

Vic particularly credits Attorney George Tobia, chairman of the Firm’s Entertainment & Media Group, as well as Attorney Paul M. Sanford, who oversees the Firm’s Rhode Island Litigation practice, for helping to get the film off the ground.

But he is most effusive about his long-standing relationship with Attorney Brian Bixby, chairman of the Firm’s Probate & Trust Litigation practice. “I have been professionally involved with Brian, and consequently Burns & Levinson, for roughly 30 years, and we have been through company formations, trust formations, estate planning, contract negotiations, litigation, film work, and even personal tragedy together, and I can’t imagine working with anyone else,” Vic says.

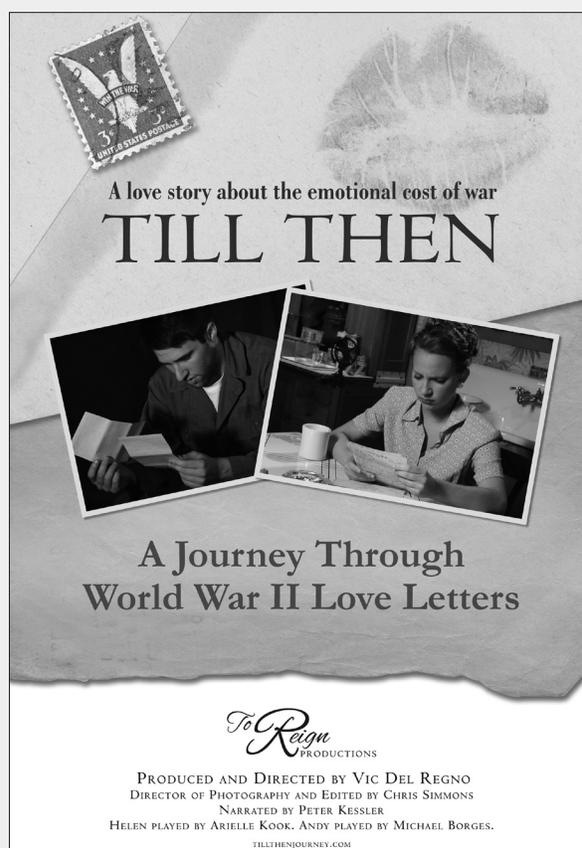
“Brian is the quarterback of my legal team. He always hands off to the right people for every legal need I have, and he helps me understand the accounting, tax and other implications of every move I make,” Vic adds, noting that Attorney Bixby also makes him feel personally valued and respected.

Noting that Attorney Bixby and his team provided particularly strong professional and personal support for him when one of his sons tragically died in college, Vic asserts: “Brian and his team are more than just our lawyers. They are part of our extended family, and we always look to them with confidence and trust.”

For more information about Vic Del Regno’s film and to view the film trailer, visit:

www.TillThenJourney.com

- John O. Cunningham, freelance writer/editor



Protecting a Legacy from a Beneficiary's Ex-Spouse

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Trusts are often components of estate plans and are effective tools to hold assets. Increasingly, however, Murphy's Law is being applied in divorce cases in ways that thwart careful estate planning by parents and grandparents of beneficiaries who are getting divorced. This can have very unfavorable consequences not only for the very wealthy, but also for those of modest means who wish to leave property to children and grandchildren through trusts.

Most often, trusts are designed to ultimately benefit children and grandchildren. Unknown to many people who create trusts, though, depending on how the beneficial interests are defined in the trust instruments, these interests may constitute "property" and be awarded to a former son-in-law or daughter-in-law in a divorce. Because of the broad way "property" is defined under Massachusetts divorce law, for example, people who create trusts may see their property pass in ways they never would imagine or desire.

That a beneficiary does not have access to a trust at the time of divorce may not keep a trust interest from being divided in a divorce. This concept troubles many lawyers. For example, in law school, students are taught that a condition of survivorship – that is, for a child to receive a benefit under a trust, the child must survive the parent – is a "contingent" interest in the trust and not "vested." A vested interest is a legally enforceable right. One might expect that a contingent interest is not "property" that could be divided in a divorce, but the courts treat the interest differently in divorces. This is unique because until an interest vests, the same trust interest could not be reached by creditors, used to secure a loan, or for any other purpose. If the relevant child is divorced, his interest could be awarded to his ex-spouse on the theory that the trust interest is sufficiently certain. This result has created uncertainty for those drafting trusts, and for people placing assets into trust.

The courts' reasoning for creating a seemingly separate definition of "property" for beneficial interests in divorce cases is based on the equitable division statutes existing in many states. Some general rules have evolved, though, that provide guidance in drafting trusts and contesting whether a property division should include trust interests. Generally, if one of the parties to the divorce creates a trust, interests in the property (and possibly setting aside the trust) would most likely be part of an award in a divorce. If a parent sets up a trust in which a child has an immediate right, such as to receive income or occupy real estate, those rights would also likely be divided in the child's divorce. Murphy's Law comes into play in a divorce case when a trust interest is not immediately available to the beneficiary.

There are drafting techniques available to avoid this result, and these very much depend on the nature of the property in trust and the wishes of those creating the trust. The more specifically the beneficiaries are described, the more likely these assets will be exposed in a divorce. For example, if trust interests are specified by naming the beneficiaries, rather than describing how the beneficiaries relate to the settlor of the trust, the trust interest is more exposed in a divorce. If distributions are discretionary by a trustee, the "property"

interest is more uncertain and so less likely to be awarded as part of a property division.

Although spendthrift clauses alone will not keep a beneficial interest from being divided in a divorce, they will prevent trust assets themselves from being reached to pay a property division, alimony or child support. The courts treat these obligations similarly to any creditor's claim, and the spendthrift clause puts the trust out of reach. However, some lawyers and judges are getting around this problem by setting a value of the trust interest and ordering the beneficiary to pay a specific dollar amount attributable to the value of that trust interest, leaving it up to the obligated party to figure out where the money will come from. This can be a real problem, of course, if the payor does not have – and cannot get – the money.

Restrictions or exclusions of rights by beneficiaries to receive benefits from a trust are most helpful to protect a settlor's intent to benefit the people described in the trust, and not their ex-spouses, but these are a two-edged sword. While they will reduce the likelihood that the beneficial interest should be part of a divorce award, they also limit the rights of a beneficiary to receive distributions. Balancing these considerations requires thought and great care in the planning and drafting of trust instruments, and careful consideration of who will serve as trustees.

In this evolving area of the law, Burns & Levinson's Private Client Group provides the expertise to understand the special relationship between divorce cases and estate planning. Our trust and estate attorneys regularly consult with our divorce lawyers, and vice versa, as issues arise in the drafting of trust instruments and when settlors or beneficiaries of trusts are facing divorce. ☒

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