

Structuring Your Company

OCTOBER 4, 2022, 7-9PM

SPEAKERS



DAVID POWSNER

Intellectual
Property attorney,
Davis, Malm &
D'Agostine, P.C.,
Boston Harbor
Angels Angel
Investor



ATTORNEY CHARLES C. PASCAL

Angel Investor,
Senior Attorney
in Corporate
Practice Group,
Gesmer
Updegrove LLP



MARY BETH CICERO

MBA, CLP, Co-
Founder & CEO
of 3Daughters,
Inc.



KRISTIN KING

MBA, Vice
President,
Corporate
Development &
Strategy,
Defibtech, LLC



WILLIAM MANSFIELD

Esq., Secretary of
Boston ENET,
Member of Boston
ENET's Executive
Committee and
Managing Attorney
at Mansfield Law

MODERATOR CO-ORGANIZER

Mary Beth Cicero, MBA, CLP Co-Founder & CEO of 3Daughters



3Daughters, *Evolutionary Women's Healthcare for Women*, developing a newly designed nonhormonal intrauterine device (IUD) for contraception.

She has over 40 years of executive leadership skills and was formerly the President of MarketSense Ltd., with prior business development, marketing, pharmaceutical sales at both smaller and large biotech/pharmaceutical firms.

Ms. Cicero has an extensive network of C-suite, high level corporate development professionals and investors, thought leaders, clinicians and patients, as well as patient advocacy groups.

Her educational background includes a BS in Biology cum laude from Boston College and an MBA from Babson College. Ms. Cicero is a Certified Licensing Professional™ (CLP).

CEO Perspective- Structuring a Startup

- **Business entity** LLC versus C Corp
 - Should be decided based on business goals, particularly funding
 - *You need to be serious if you are committing to a C Corp*
- **Location-** Incorporating in Delaware, establishing a business Address
 - If you apply for (local) grants, need to have an address in the state
 - *We have two addresses and have a presence in 2 geographies – double fundraising targets!*
- **Intellectual Property** – ‘Crown jewels’ of organization
 - Hire IP counsel immediately

3Daughters is developing a frameless magnetic nonhormonal intrauterine device (IUD) for contraception that conforms naturally to a woman’s body and will address the 'fear factor', pain and other problems of current IUDs ...with no strings attached!

3Daughters

EVOLUTIONARY HEALTHCARE FOR WOMEN

CEO Perspective- Key Considerations and Learnings

❖ **Legal Counsel and getting the right ‘fit’ is one of the most important decisions you make**

- Decision points- large vs. small
- What you want them to do
- Compliment your strengths
- Time is money- use their time wisely
- Are they willing to ‘work with you’ (and wait for payment!)
- This is a long term partnership and your lawyer can/will be your best friend!

❖ **IP Counsel will be next – you need to protect and grow the assets of your business**

- Get the best and the brightest for your technology
- Not an area to skimp
- If you are licensing from an academic center (like we are), retain your own counsel

Attorney Charles C. Pascal

Sr. Attorney , Corporate Practice Group, Gesmer Updegrave LLP / Angel Investor



Attorney Pascal represents companies in all phases of the corporate life cycle.

Beginning with pre-incorporation planning, choice of entity, and formation, Attorney Pascal's guidance continues through debt and equity financings, day to day corporate matters (as an outside general counsel), and ultimately the execution of an appropriate exit strategy, whether via an acquisition, merger, or other transaction providing liquidity to stockholders.

A complementary component of Attorney Pascal's practice is his representation of venture capital investors in connection with their investments in early-stage companies.

Key tips structuring your company

- Forming a legal entity for your business, whatever type, should be done as soon as possible (much sooner than most assume). This is a no brainer.
- There is no one organization type that works perfectly for all ventures.
- Purpose, product, short and long-term goals must be considered when choosing an entity type.
- Consider early on where company funding will come from.
- Evaluate the tax implications of different entity types – again, both short and long term.
- Most importantly, do not assume that filing basic required paperwork in your chosen state of formation is enough. Depending on your goals, there are critical early steps and missteps that can significantly impact the success or failure of your new company.



David J. Powsner

- Patent and intellectual property attorney with 35+ years of experience. Partner at Davis, Malm D'Agostine, P.C., in Boston.
- Physics degree from MIT and experience as a computer programmer in industry.
- Advises companies with products in tech markets, including medical devices, computer software, networking and consumer electronics.
- Member of Boston Harbor Angels, MIT Enterprise Forum and management council of the Licensing Executive Society. Has coached hundreds of startups preparing for early stages of growth, including through fund-raising, IP acquisition and protection.



DAVIS MALM
ATTORNEYS



BOSTON
HARBOR ANGELS

Intellectual Property

for Boston eNet

October 4, 2022

Presenter: David Powsner, Esq.

<https://www.linkedin.com/in/davidpowsner/>



Forms of IP Protection

- Patent
 - Limited duration protection for any “new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.”
- Trade Secret
 - Potentially endless protection for information (formulas, methods, etc.) that derive value from not being generally known or readily ascertainable and that are subject to reasonable efforts to maintain secrecy.
- Copyright
 - Long-term protection of “expression” (but not ideas).
- Trade Mark
 - Potentially endless protection of words and logos that identify sources of goods or services



Patents

- Must seek protection in each country (or region) separately.
- Must file application
- Many changes in patent law over the past several years
 - Business Methods patents
 - Abstract Idea patents
 - Medical Diagnostics patents
 - Competitors (and others) can now challenge patents in USPTO (cheaper).

Trade Secrets

- Protect secrets
 - Formulas, customer lists, methods, etc.
 - Used in business
 - Not generally known by others
- No need to file application, but ...
 - Need to show secret adequately protected
 - Need to be able to identify secret

Copyrights

- Protect writings, pictures, music and other "works of authorship"
- Independently created
- Embodied on paper, disk storage, or other "tangible medium"
- No application necessary (though can be advisable)
- Notice is a good idea! For example, © David Powsner 2022

Trademarks

- Words, logos and other things that identify the source of the goods/ services.
- Nationwide rights (or less).
- Applications required in most countries. Helpful in US.
- Protects against “confusing similarity.”

Thank you

- David Powsner
<https://www.linkedin.com/in/davidpowsner/>



Q&A – Thank YOU

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Q&A topics

1. At what point do you prefer to engage with entrepreneurs planning to start a company? How much does this matter and what value can you provide at this time?
 - (a) Many entrepreneurs - particularly those creating a company for the first time - are understandably overwhelmed with the prospect of hiring a lawyer and spending a portion of their limited funds. What advice would you give to these founders?
 - (b) Some of the larger law firms offer 100% deferred payment until my company's first financing. Why wouldn't I want to hire one of these firms?
2. An early founding team might understandably view their new venture as 100% owned by them and object to applying vesting restrictions to their respective equity ownership. Would you encourage such founders to self-implement vesting restrictions with respect to their ownership in the company and why?
3. Is it important for founders and early collaborators/team members to sign legal paperwork assigning their development efforts and related intellectual property rights to the legal company entity? If so, why?
4. Often founders seek initial funding support from friends and family. What financing vehicles would recommend and what are the implications of the different types of financing instruments?

Q&A topics

- How did you decide between an LLC and a C Corp? Advantages/disadvantages of each?
- Since you have set up both, what would you recommend to new founders?
- You mentioned 'fit' related to your corporate counsel. What do you mean by 'fit' and what was the right 'fit' for your company?
- How did you go about identifying corporate counsel you wanted to work with and what were your criteria for hiring?
- You mentioned the importance of IP counsel. At what point should you hire IP counsel? Did you consider going to a firm that offers both corporate and IP?
- What were your selection criteria for IP counsel?
- As far as company location, where is your company incorporated and where is it doing business. Do you have multiple locations/addresses and how do you manage?