

Zuckerberg's former classmates press on with suit against Facebook

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Cameron and Tyler Winklevoss say they - not Mark Zuckerberg - invented Facebook. And they are willing to risk \$160 million for the chance to prove it.

The ambitious young Olympic rowers made famous in the Oscar-nominated "The Social Network" are taking their last shot at the gold - in London in 2012 and in San Francisco, where they are contesting an out-of-court settlement they reached with Facebook three years ago. If they prevail, their legal appeal would overturn the settlement, now worth in excess of \$160 million because of the soaring value of the privately held company.

The Winklevosses won't say exactly how much they would seek in their high-stakes grudge fest with the billionaire Facebook founder, but by their own calculations they argue they should have received four times the number of Facebook shares. That would make any new settlement worth more than \$600 million based on a recent valuation of Facebook at more than \$50 billion.

The Winklevosses, who have taken a lot of guff for pursuing Facebook after having already negotiated such a hefty payout, say they came close to dropping the appeal but "just couldn't do it."

They insist it's not about the money. They say they are fighting out of moral principle.

"If it was about the money, we would walk away right now," Cameron Winklevoss said during an interview in San Diego, where the brothers have been training for the Olympics. "[Mark Zuckerberg](#) wouldn't be sitting where he is if it weren't for us. They think it's over. We believe there is another chapter to be written."

Facebook doesn't see it that way. "We consider the Winklevoss matter closed," company spokesman Andrew Noyes said.

Zuckerberg, in a recent interview on CBS' "60 Minutes," said he had spent less than two weeks worrying about the Winklevosses' lawsuit. When asked whether he had any regrets, he replied: "After all this time, I feel bad that they still feel bad about it."

For the last six years, the Winklevosses have been brawling with Facebook over their contention that Zuckerberg ripped off his Harvard classmates to build the world's most popular social networking site.

In a sequel that picks up where "The Social Network" leaves off, the Winklevosses in January asked a federal appeals court to overturn the 2008 settlement, saying they were duped about the value of the shares they would receive.

"To me, it looks like it's got everything you would want in a contract," U.S. Court of Appeals Chief Judge Alex Kozinski said during a January hearing where the Winklevosses, dressed in identical dark suits but different-colored ties, watched the legal proceedings from the front row in the courtroom. A decision is expected in the next few weeks.

Facebook has won multiple court rulings, and legal experts say the Winklevosses are likely to lose this one too.

"You always have a shot; it's just a long shot," Brooklyn Law School

securities professor James Fanto said. "The courts are very reluctant to reopen settlements in the absence of significant fraud in the context of the settlement."

Should the appellate court rule against them, it will be another legal setback for the Winklevosses, who are also battling their former lawyers who negotiated the settlement. They fired them, accused them of malpractice and refused to pay them. In November, the New York State Supreme Court in Manhattan upheld a binding arbitration that sided with the lawyers and ordered the Winklevosses to pay the 20 percent contingency fee of \$13 million. The money and stock are being held in an escrow account.

If they win the appeal, the Winklevosses can seek a new settlement or take their chances in court, where they could end up with more or nothing at all. If they lose the appeal, the Winklevosses will keep their current settlement, the stock portion of which has been rising in value.

"My clients are in an unusual and fortunate position," their attorney, San Francisco appellate specialist Jerome Falk, said. "No matter what happens, the outcome is good for them."

The 29-year-old, 6-foot-5-inch identical twins have nothing nice to say about Facebook, its legal team and, most of all, Zuckerberg, their tech-savvy Harvard classmate whom they say they hired to work on their [social networking](#) site but instead surreptitiously launched his own.

The Winklevosses cast Zuckerberg as ruthless and remorseless, themselves as honest and guileless. They have become famous for fighting Facebook, but they shrug off public derision, saying that critics who accuse them of being motivated by greed or opportunism don't understand that they are just looking for a "fair shake."

"Facebook is fighting the appeal because they know they got off for an artificially cheap settlement," Tyler Winklevoss said. "Facebook has fought tooth and nail to put a lid on the settlement agreement and shove it down our throats. All we can do is fight very hard for the truth."

They say they are waging a battle against a deep-pocketed company that has gamed the system, burying them under mountains of legal motions and paperwork. They also accuse Facebook of concealing a series of instant messages that Zuckerberg sent to friends while at Harvard that they say were crucial to proving their case.

The Winklevosses say the documents that came to light after they settled their lawsuit "change a decimal point" in the settlement. Facebook's legal team uncovered the instant-message exchanges while searching Zuckerberg's computer in preparation for the litigation. In one exchange, when a friend asked Zuckerberg how he planned to deal with the Winklevosses, he replied: "I'm going to (expletive) them." Zuckerberg has since said he regretted sending the messages.

The Winklevosses say the message sounds similar to one they received through the contact form on their website ConnectU after reaching a confidential settlement with Facebook. The message, which arrived three days after they settled the case, purported to be from Zuckerberg but misspelled his name. It read: "I just (expletive) you again."

"At that time the only people who knew about the settlement were the people in the room," Cameron Winklevoss said. "The confidential knowledge implicit in the message, along with its pertinent timing, make it nearly impossible for the sender to be anyone other than Mark referring to the way he and his lawyers had defrauded us by failing to disclose the valuation of the stock they gave us."

Facebook declined to comment.

The controversial origins of Facebook - who actually founded it and how - have been the subject of renewed debate since Hollywood offered its dramatization of the conflicting stories from the Winklevosses, both portrayed in "The Social Network" by actor Armie Hammer, and former Zuckerberg friend and Harvard classmate Eduardo Saverin, portrayed by Andrew Garfield. In 2005, Saverin sued Facebook for diluting his stake in the company and reportedly reaped a \$1.1-billion settlement.

Zuckerberg has called the film, which received eight Academy Award nominations including best picture, "fiction." In it, his character tells the Winklevosses: "If you guys were the inventors of Facebook, you'd have invented Facebook."

But that's exactly what the Winklevosses said they did. They accuse Zuckerberg of stringing them along for three months while he had access to their site's source code, which had been in development for more than a year. During that period, they say, they exchanged 52 e-mails and had three meetings with Zuckerberg. They learned from an article in their college newspaper that Zuckerberg had launched Facebook, which they say lifted the concept behind their Harvard Connection, later renamed ConnectU.

"Mark didn't just steal an idea; he sabotaged our business and the partnership we all had," Tyler Winklevoss said.

They argue that ConnectU could have drawn hundreds of millions of users as Facebook has done. The Winklevosses, along with close friend and classmate Divya Narendra, sued Facebook and Zuckerberg in 2004. In 2005, Facebook filed its own lawsuit, claiming ConnectU hacked into Facebook to try to lure millions of users to the competing site.

The two sides settled during a confidential mediation in 2008 for \$20 million in cash and \$45 million in Facebook shares. Because Facebook is

privately held, how much it is worth is open to interpretation, though based on recent private transactions the shares could be worth up to \$160 million. In its legal briefs, [Facebook](#) said the Winklevosses suffer from "settler's remorse." The Palo Alto, Calif., company also says the Winklevosses could have asked for more information about Facebook's valuation during the negotiations.

"It is called due diligence because they are supposed to be diligent," Facebook's lawyer, E. Joshua Rosenkranz, argued before the appeals judges.

"The ConnectU founders struck a deal that made them very, very rich, and it is making them richer by the day," Rosenkranz said. "At some point it is time to move on."

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