

What is “Succession” and what can we learn from the Roy family machinations?

On Sunday, May 28, 2023, the hit HBO series *Succession* aired its final episode of the five-season saga following the fictional Roy family and WayStar RoyCo., one of the largest family-controlled media and entertainment conglomerates in the world. The show depicts the corporate politics and family conflicts in the struggle to earn the favor of the calculating CEO and family patriarch, Logan Roy (Brian Cox). Logan experiences a decline in health as he ages. His children, Connor (Alan Ruck), Kendall (Jeremy Strong), Shiv (Sarah Snook), and Roman (Kieran Culkin) work to position themselves to inherit the company as their father’s successor. Not only do they have to compete amongst themselves, but they must also outmaneuver the corporate executives hoping to gain control, such as Tom (a corporate executive who is also Shiv’s husband), Greg (a nephew trying to climb the corporate ladder), and Gerri (the longtime general counsel). While the show is fictional, many of the plotlines that unfold in *Succession* are prime examples of the legal challenges that family offices can face and the need to prepare for these challenges to handle them when they arise. By reviewing some of the most significant moments of the show, we have identified ways in which the Roy family could have benefitted from having independent, sophisticated legal advisers closely assisting the family office organization.

Knowledge of goals and how to run a business is not hereditary, family offices need mission statements and user manuals

To help avoid conflict as the result of the demise or incapacitation of the founder or controlling person of a family office, independent legal advisers can help establish a plan and rules for succession to meet the goals of the family, which can vary from case to case. Some family offices often seek capital appreciation while providing current income to some or all of the members. Some family offices simultaneously have charitable or social goals that need to be taken into consideration. Careful consideration needs to be given to the specific goals and priorities of the family office. Often, this requires canvassing the relevant stakeholders and gathering information. Once those goals have been identified and prioritized, the family can create a written charter or mission statement. This should be a living document, like a constitution, which can be amended from time to time. Family charters, or mission statements, are created by some level of consensus on how to operate and flourish. It governs the decisions of the family regarding the operations of the business and the management of wealth.

A provision in a family charter can establish critical values, such as:

- A firm mandate for legal compliance and ethical business operations
- Prioritizing the collective business interests over individual personal interests
- Identifying future business goals, such as diversification
- Identifying charitable and strategic social investment objectives
- Hiring practices and the requirements and obligations of family members acting in leadership roles
- Establishing a formal leadership succession plan
- Specifying the rights and expectations of family members who may hold an interest in the family business but do not participate in day-to-day operations

This type of mandate would have helped prevent the often destructive but entertaining scramble for power and internal conflicts that drove the plot of *Succession*. Once the proper conceptual framework has been agreed to, expert advisers can help assist in developing the most efficient protective structure, carefully considering goals, potential taxes, insulation from corporate liabilities and other relevant legal factors.

Maintaining the independence of the legal function from business pressures is key

Upon starting his new role as the head of the WayStar’s Parks and Cruises division, Tom Wambsgans (Shiv’s husband) is given secret documents confirming a massive cover-up of crimes committed on the company’s cruise line by his predecessor—including theft, sexual assault, rape, and potential murder. (At the funeral of the former cruise line executive, it is revealed through discussion between the Roys and the inner circle of the company that his real name is “Lester.” His nickname “Mo” is a play on the word “molester”; as he was known to be one by other executives and the family.) Tom plans to go public about the scandal, but Gerri, WayStar’s general counsel, advises against it. Instead, she orders Greg to burn the documents.

[\(VIDEO CLIP – Tom tells Greg about the criminal activity of the cruise line\)](#)¹

¹ Tom learns of the crimes committed on Waystar cruises and confides in Greg. Tom Forces Cousin Greg into the Death Pit | *Succession* | HBO, June 28, 2018. Please note that video links may not be accessible in some countries.

His efforts prove futile when New York Magazine publishes their exposé of the scandal, and a former employee blows the whistle, implicating Tom, Gerri and Kendall in the cover-up. Soon after, a congressional investigative committee summons the company's senior officials to testify at a hearing as part of their investigation into the scandal. It is contemplated that criminal charges will be filed, and Tom prepares to take the fall and face jail time. When the family learns that Congress has a witness who will testify, they send Shiv to coerce/bribe the sexual assault victim to take the generous settlement in exchange for silence.²

Why did Gerri provide such corrupt and improper legal advice? Gerri, the longtime general counsel, was appointed interim CEO when Logan Roy was ill. Throughout the show, it was apparent that Gerri had her own ambitions to become the permanent CEO and was driven more by politics and covering for Logan than respect for the law. She clearly had an inappropriate level of involvement in the politics of the company. At one point, Gerri actively competed with the Roy children for the position of permanent CEO. She also had several personal relationships that clouded her judgement. Gerri is Shiv's godmother and treated like a family member. Roman's perverse sexual fascination with her further complicated the dynamic.

[\(VIDEO CLIP – Gerri and Roman discuss their alliance\)](#)³

[The Department of Justice continually stresses the importance of having a strong corporate compliance program.](#)

Any criminal investigation will consider all prior misconduct to determine an appropriate resolution and individual accountability, regardless of the individual's position. Ideally, a company's legal counsel should avoid conflicts of interest and intimate personal relationships with family members.⁴ If legal counsel has political goals to rise in the ranks of the company and personal alliances with family members, this can undermine the independence of the legal function and fundamentally compromise its critical role. The role of a properly independent general counsel can be assisted and reinforced by having impartial outside counsel vetting important decisions. Having transparency and outside counsel up to speed and involved assures the highest level of integrity and helps avoid high risk shortcuts.

“If a deal collapses in the woods and nobody hears it, is it an SEC violation?”⁵

Maintaining the independence of the legal function was even more critical and complicated because WayStar was a public corporation, and its directors and officers had statutory obligations under applicable securities laws and owed fiduciary duties to all of its shareholders, not just to the family. Broadly, duties imposed on its corporate officers and major stockholders required them to:

- Be fully informed and act with care when making decisions for the corporation
- Act in the best interest of the corporation and its shareholders instead of their own personal interest
- Exercise the power of their position honestly and fairly
- Keep shareholders abreast of any material information that could have an impact on share prices

The Securities and Exchange Commission (SEC), under the Securities Exchange Act of 1934, prohibits corporate officers and stockholders from using manipulative, deceptive or otherwise fraudulent practices while engaging in securities transactions, including nondisclosure and misrepresentation, for their own gain.⁶ The relationship between the shareholders of a corporation and corporate officers who have confidential information because of their position is recognized by the SEC as a relationship of trust that gives rise to a “duty to disclose” to prevent a corporate officer from having an unfair advantage over the uninformed stockholders.⁷ Information is material when there is a substantial likelihood that it would affect the investment decisions of a reasonable shareholder.⁸ If a party charged with a duty to disclose omits or misrepresents material information from shareholders, this constitutes fraud and, subsequently, a securities violation.⁹

[\(VIDEO CLIP – Roman sabotages the deal negotiations\)](#)¹⁰

2 First, giving false testimony under oath to Congress is an obstruction of government proceedings, which violates 18 U.S.C. § 1505. In part, a person has obstructed government proceedings if they intentionally impede or influence the due and proper exercise of the power of inquiry by any body or committee of Congress. Second, coercing a witness to remain silent by offering a financial award is witness tampering, violating 18 U.S.C. § 1512. In part, a person commits witness tampering when they intentionally cause a person to withhold testimony from an official proceeding. Under the same statute, destruction of documents with the intent to impair the document's availability in an official proceeding is tampering of evidence. See *US v. Farrell*, 126 F.3d 484, 488 (2d Cir. 1997) (concluding that “both attempting to bribe someone to withhold information and attempting to persuade someone to provide false information to federal investigators constitute ‘corrupt persuasion’ punishable under § 1512(b)).

3 After Gerri's promotion to a more senior role at the company, Roman visits her office to discuss how these changes affect their strategic professional alliance. *Gerri and Roman Have an Understanding | Succession | HBO*, August 19, 2022. Please note that video links may not be accessible in some countries.

4 A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced. A sexual relationship between client and lawyer can lead to the unfair exploitation of the lawyer's fiduciary role, impair the exercise of independent professional judgment, compromise attorney-client privilege, and prevent the client from giving informed consent because of emotional involvement. 1.8 Conflict of Interest: Current Clients: Specific Rules, Ann. Mod. Rules Prof. Cond. § 1.8

5 Roman made this allusion to the ubiquitous philosophical question (“If a tree falls in the forest and no one is around to hear it, does it make a sound?”) after he intentionally sabotaged negotiations for the sale of the company. *Succession: Kill List*, HBO, April 23, 2023.

6 15 U.S.C. § 78j(b) (“It shall be unlawful for any person ... to use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, or any securities-based swap agreement[,], any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.”), 17 C.F.R. § 240.10b-5.

7 *Cady, Roberts & Co., Re*, 40 S.E.C. 907, 911 (1961) (“We, and the courts have consistently held that insiders must disclose material facts which are known to them by virtue of their position but which are not known to persons with whom they deal and which, if known, would affect their investment judgment.”); *Chiarella*, 445 U.S. 222, 227-228 (1980) (citing *Speed v. Transamerica Corp.*, 99 F. Supp. 808, 829 (D.Del. 1951)).

8 *Lewis v. Chrysler Corp.*, 949 F.2d 644, 649 (3d Cir. 1991) (citing *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 499 (1976)).

9 *Chiarella v. United States*, 445 U.S. 222, 230 (1980) (“Application of a duty to disclose prior to trading guarantees that corporate insiders, who have an obligation to place the shareholder's welfare before their own, will not benefit personally through fraudulent use of material, nonpublic information.”).

10 *Roman Roy Confronts Lukas Mattson | Succession | Max*, April 27, 2023. Please note that video links may not be accessible in some countries.

Although the SEC and legislature intentionally do not give an exhaustive list of what actions qualify as a violation under §78j(b) of the Securities Exchange Act, courts have found a duty to disclose has been breached in the following circumstances:

- Artificially inflating free cash flow figures to appear more liquid to shareholders¹¹
- Telling prospective investors that a client has more cash assets than publicly stated¹²
- Falsification of corporate records¹³
- False statements made by individual corporate officers¹⁴

In the show, the siblings commit several borderline and blatant violations of their duties of disclosure. When Shiv learns that Mattson has grossly inflated GoJo's subscriber numbers in India, she counsels him to wait to minimize the impact of the disclosure and uses the information as leverage to become CEO. When the siblings learn that the numbers presented in connection with a recent strategic acquisition, Vaultier, were false, they do not make the necessary curative disclosures. When Logan Roy dies, the siblings delay disclosure as they plot out a credible plan for succession to minimize the negative impact on the company. They even suggest having the corpse stay in the air until they have agreed on a plan.

The SEC requires public companies to file a current report detailing changes to executive corporate governance and other material events that may hold significance to shareholders within three business days of its occurrence.¹⁵ Additionally, if material nonpublic information is selectively disclosed by a corporate officer to enumerated persons, they must publicly disclose¹⁶ it – simultaneously if disclosure is intentional,¹⁷ or promptly¹⁸ within 24 hours if disclosure is unintentional.¹⁹ Competent outside counsel can help to present information in the best possible way without violating the securities laws.

Conclusion

So, would the Roy family benefit from enlisting the services of an independent family office adviser? The short answer is “yes.” The long answer is “absolutely.” Our cross-practice team has extensive knowledge and experience with family office services, the legal needs of wealthy families and their businesses, and the best legal practices for publicly traded corporations. Given how often the family runs afoul of the laws, regulations, and legal duties that apply to them, with proper counsel, the Roy family could have avoided or minimized many of the dramatic pitfalls and dilemmas that occurred.

The purpose of an independent legal adviser is to assist in the efficient organization, preservation, protection, consolidation, diversification and growth of the wealth of large family businesses and high-net-worth individuals across multiple generations. When you combine family and business, it's easy for professional management to give way to family conflicts and individual personal interests. The legal services that we can provide benefit families by providing the necessary framework and controls for the family office to flourish and meet its stated goals. This provides comfort to the founder and/or other members of the family that their interests are being monitored and protected.

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11 See *Rex & Roberta Ling Living Tr. u/a Dec. 6, 1990 v. B Commc'ns Ltd.*, 346 F. Supp. 3d 389 (S.D.N.Y. 2018).

12 See *Lorenzo v. Sec. & Exch. Comm'n*, 203 L. Ed. 2d 484, 139 S. Ct. 1094 (2019).

13 See *United States v. Reyes*, 577 F.3d 1069 (9th Cir. 2009).

14 See *St. Jude Med., Inc. Sec. Litig.*, 836 F. Supp. 2d 878 (D. Minn. 2011).

15 See Form 8-K, Item 5.02; Item 8.01.

16 Public disclosure for purposes of Regulation FD by filing or furnishing a Form 8-K, or by disseminating information by an alternative method, or combination of methods, of disclosure that is reasonably designed to provide broad, nonexclusionary distribution of the information to the public. 17 C.F.R. § 243.101(e).

17 A selective disclosure of material nonpublic information is “intentional” when the person making the disclosure either knows, or is reckless in not knowing, that the information they are communicating is both material and nonpublic. 17 C.F.R. § 243.101(a).

18 “Promptly” means as soon as reasonably practicable (but in no event after the later of 24 hours or the commencement of the next day's trading on the New York Stock Exchange) after a senior official of the issuer (or, in the case of a closed-end investment company, a senior official of the issuer's investment adviser) learns that there has been a nonintentional disclosure by the issuer or person acting on behalf of the issuer of information that the senior official knows, or is reckless in not knowing, is both material and nonpublic. 17 C.F.R. § 243.101(d).

19 17 C.F.R. § 243.100.