

# ST. LOUIS TRUST

& Family Office

## HBO Series Succession: Giving Family Business a Bad Name?

The first season of HBO's series *Succession* appears to be a big hit. It tells the story of the family of Logan Roy, the CEO and founder of Waystar Royco, a publicly traded media and entertainment conglomerate, and the battle for control of his business empire. It is a real pot boiler with both tragic and comic dimensions among a gaggle of relatives, all eager to share in the spoils of Logan's financially successful business career.

Many of the tropes of a highly dysfunctional family business are on full display here. The don-like power of the father who refuses to cede control of his creation, the estranged, emasculated son of the first marriage, three entitled offspring of the second marriage (none of whom measures up to the expectations of their father)—all children starved for love or affection from either their father or mother—and heavy doses of conspicuous consumption and unbecoming condescension towards those economically less fortunate. Porn-grade sex, drugs, and corruption are all mixed in as well. All this, and we are only on the third episode!

How do the HBO writers come up with this stuff? Sadly, it is not that hard if they have been following the almost daily revelations in the national press of the dysfunction within the families of Sumner Redstone (CBS and Viacom) and Rupert Murdoch (21st Century Fox). Both are in the middle of very public take-over battles and CEO succession disputes involving family members. Sumner is 93 years old and Rupert is in his mid-80s.

The base plot line of *Succession* relies heavily on the **actual** (can you believe this?) situation in Sumner Redstone's family business. You have Sumner's domineering, take no prisoner leadership style and over-sexed personal life and the on-going battle for control over his family's media enterprise occasioned by his incapacity and impending death. The Murdoch clan contributes the family intrigue and anxiety that naturally arises from a similarly domineering father who has been married three times and the drama playing out among two sons from an earlier marriage who are vying for the approval/recognition by their father.

Bernie Madoff is channelled in many screen shots of Logan furtively conferring with his relatively better-equipped son, Kendall. Shiv, Logan's only daughter, bears some resemblance to the power-hungry and conniving Shari Redstone of the Redstone clan. The succession dynamics between Kendall and his younger creepy brother, Roman (played convincingly by Kiernan Culkin), and their father harken to Rupert Murdoch's business succession challenges with his sons, Lachlan and James, following the recently announced sale of their media enterprise to Disney. The role of Logan Roy is played by Brian Cox, a noted Scottish Shakespearean actor, who made his career playing King Lear (type casting?).

For family business aficionados, there are quite a few significant family business issues of control and governance highlighted in *Succession* and there will undoubtedly be more. Here is a highlight

# ST. LOUIS TRUST

## & Family Office

reel of the issues which have arisen so far:

### Status of Waystar Corporation

This may surprise many, but quite a few family-controlled businesses in the U.S. and around the world are publicly traded (e.g., The Ford Motor Company, Walmart, *The New York Times*, Comcast, Meredith Corporation, etc.). The control usually stems from ownership of what is referred to as “super majority common stock,” meaning that the family controls enough of the public votes of the stock so they can always outvote the public (non-family) stockholders. This gives the family control of the board of directors and, therefore, the ability to designate the next CEO (and when to replace the current CEO). Often, the voting control by the family is significantly greater than the family’s actual economic interest in the company. Many—if not most—prominent tech companies today also have a similar super majority class of common stock that gives the founder—think Zuckerberg and Bezos—similar control over the board and the destiny of their companies.

We don’t have the technical details yet, but the Waystar stock (now in free-fall) is publicly traded, and the voting control of the company is in the hands of the Roy family. The family fight for control was triggered in the first episode by Logan’s sudden request that his kids (products of the first and second marriage) sign over their voting interest in the company to his third wife, Marcy. The kids all decline to sign the document. Logan goes into cardiac arrest shortly thereafter and has not yet fully recovered.

### Where is the Board of Directors of Waystar?

So far, the Board of this public company seems to be inert. In the second episode there is brief mention of their need to act to designate a successor to Logan, but the board’s role seems to have been overridden by the kids who apparently have sufficient voting power to take control of this decision.

It appears that all three of the kids from the second marriage are on the Waystar board. Since at least two of them are not employed by the company and lack any semblance of expertise in corporate governance or the business of Waystar, the show is an excellent example of bad governance in action. What possible justification is there for putting people like this on the board of a public company?

A well-run family business will have a board of directors that is responsible for CEO succession and will have a plan in place so what is happening here with the Roy family is a non-issue. If a family business board does nothing else, it needs to own the CEO succession issue. In the case of a public company, to not do so is madness and irresponsible to the other shareholders.

# ST. LOUIS TRUST

## *& Family Office*

### How can over \$2 billion of debt secured by the stock of Waystar be a surprise?

This issue becomes prominent in the third episode after Kendall and the company learn for the first time that Logan has secretly borrowed over \$2 billion from a bank and secured the loan with his stock in the company. When news leaks out about Logan's condition and the lack of a competent successor for him, the stock starts to drop below the level stipulated in the loan agreement. How is it possible that this all comes as a surprise to anyone?

As crazy as it sounds, this is not all that unusual. A recent example occurred with Chesapeake Energy where the founder did a similar thing with his stock. When the company got in trouble and the stock tumbled, the loan repayment schedule was accelerated, and a huge percentage of market value of the company was wiped out.

The facts surrounding Logan's borrowing are not made clear, but it may be that the borrowing was one or more steps removed from the direct ownership of Waystar by the Roy family. For example, the Roy's ownership could be through a voting trust or holding company owned exclusively by the Roy family; in this situation, there would be no way for anyone to know about the borrowing until the lender begins foreclosure on the shares. Sumner Redstone's ownership of CBS and Viacom is through a tiered ownership structure like this and, until recently, little attention had been paid to the terms of the voting trust that ultimately controlled CBS and Viacom.

This aspect of the story line, however, does not ring so true in the world of privately-held family business. Most families are extremely reluctant—often to a fault—to incur debt of any kind, especially when the repayment of it could risk loss of control of their business. Logan in this instance is not behaving like your typical family business owner.

### Who has Logan's power of attorney?

This is a huge deal. There is no mention of who has Logan's authority to act in the event of his death or incapacity. Maybe Marcy, the third wife has it. She is certainly acting like it in the third episode when she keeps the kids from Logan's second marriage from seeing their father while they are desperately seeking his approval of their actions to save the company.

In the Redstone family saga, the power of attorney has enormous significance and is the basis for on-going law suits between Shari Redstone and one of her father's most recent paramours/health care providers. If Sumner had been declared incapacitated per the terms of the family's voting trust, Shari would permanently have been excluded from control of the family business. However, she was able to pre-empt this issue by getting a court to agree that the power granted to the paramour/health care provider was procured in bad faith. Sumner remains incapacitated (in fact), and Shari—through her own, previously-granted power of attorney—was able to seize control over the voting trust, and now

# ST. LOUIS TRUST

## & Family Office

is in charge (sort of) of both Viacom and CBS. Not long ago, Sumner had no confidence in Shari's ability to run the family enterprise and worked hard to see that she never would.

Maybe this is just too complicated for an HBO TV series, but word to the wise to family business owners: the power of attorney is a very important document, and who has it and what it says can have major consequences with respect to the ownership and control of your family business. By the way, companies such as Facebook have similar issues as well in the event of the incapacity of the controlling owner.

### How is the Successor CEO Chosen?

*Succession* is quite effective at portraying the dynamics of succession when there is no clear CEO designate. In this case, everyone tries to succeed Logan. They all are against having Marcy take charge, as Logan said he wanted. Connor Roy, the eldest son by the first marriage, opted out of contention, and so the remaining three kids are left to duke it out among themselves. Kendall proves to carry the day but not without first agreeing to give Shiv's ambitious boyfriend a key divisional position in the company, and designating Roman, his completely incompetent and immature younger brother, the position of COO. The good news is that Logan now appears to be recovering from his heart attack and soon will be able to remove these family members as he sees fit. He has already indicated his lack of confidence in Kendall, the most competent of the bunch.

This is a great illustration of why it is almost always a terrible idea to leave the succession question to the kids. It just leads to compromises (or litigation) that will ultimately be detrimental to the success of the company.

### Who the heck is Greg Hirsch and why is he here?

Greg Hirsch is a particularly oily and unsympathetic character, and he has had a conspicuous, albeit non-leading role, in each of the early episodes. He is a nephew of Logan and, therefore, has no claim to being part of the "family" that owns Waystar. Yet this does not stop him from trying to insinuate himself into every discussion and situation involving Logan's current spouse and children. He has no obvious abilities other than whining and glomming on to others who seem to be making progress within the company.

He is undoubtedly a placeholder for something devious that will happen in a future episode. In his role so far, he is good example of what is euphemistically called a "peripheral" family member who may *think* he is entitled to a seat at the decision-making table. Greg's status at the company could change quickly, however, if it turns out that one of his parents has some as yet unidentified power or influence over Logan or if Greg is able to assist one of the real Roy's in the power struggle that is under way. Stay tuned...

# ST. LOUIS TRUST

## & Family Office

### Don't Family Businesses and Private Equity make strange bedfellows?

Kendall's efforts to resolve the stock loan crisis lead him to seek help from a friend from the world of private equity. This is an oxymoron since private equity and friendship seldom have much to do with one another, and this is especially the case with family businesses whose owners fear, most of all, the loss of control. Private equity players are only in it for the money (and control) and the last thing they will do is bail out the equity owners of a company which is struggling to repay a bank loan. This plot line strains credulity but will undoubtedly lead to more difficult challenges for the Roy family. Stay tuned for a hostile take-over bid for Waystar involving Kendall's "friend".

When Kendall finally gets to see his father to tell him about his rescue plan, he hears loud and clear just how naïve he has been. When (not if) Logan returns to better health, there can be little doubt that the deal Kendall has cooked up (half-baked?) will be reversed.

\*\*\*\*\*

*Succession* is a virtual textbook of bad family business practices with stereotypical bad characters in all the leading roles. How else could a made-for-television series about a family business be successful? It has great acting and a plot line that is sure to take us into some surprising and adventurous territory. It will not give family business a bad name—rather, it will serve as a vivid reminder to the many successful family businesses in the world of the bad practices that need to be avoided at all costs.

*St. Louis Trust & Family Office is an independent, multi-family office and trust company that advises clients on more than \$10 billion of investment assets and more than \$12 billion of total wealth. Founded in 2002, St. Louis Trust & Family Office provides holistic, high-touch client service including customized, independent investment management and a full range of family office and fiduciary services. The firm serves a limited number of clients with substantial wealth in order to maintain very low client-to-employee ratios. Visit [stlouistrust.com](http://stlouistrust.com) to explore how the firm manages complexity with unmatched expertise and focuses on Family, Always.*