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Recommended Citation

Joan M. Heminway, *What the Roys Should Learn from the Demoulas Family (But Probably Won't)*, 73 DePaul L. Rev. 825 (2024)

Available at: <https://via.library.depaul.edu/law-review/vol73/iss3/7>

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WHAT THE ROYS SHOULD LEARN FROM THE DEMOULAS FAMILY (BUT PROBABLY WON'T)

Joan MacLeod Heminway*

“Paradox though it may seem—and paradoxes are always dangerous things—it is none the less true that Life imitates art far more than Art imitates life.”¹

INTRODUCTION

HBO's *Succession* is avowedly a series based in some relevant part on the Rupert Murdoch family, as well as others.² Thus, the art of *Succession* imitates life. Yet, the plot of *Succession* moved faster than the actual succession of the Murdoch media empire. Perhaps, then, life also may have grown a bit to imitate *Succession*'s art. In fact, in response to Rupert Murdoch's retirement, Brian Cox, *Succession*'s Murdoch-like patriarch, reportedly observed: “I think he's been watching too much ‘Succession’”³

This Essay makes a separate point about *Succession* as an illustration of the relationships between life and art as reflections on family business succession. That point? When art chooses to imitate life, it often is quite selective. Content curation means that art's portrayals of life may not always include the lessons learned by those who have experienced parallel—if not inspirational—real-life situations. In these situations, it may be better for all that life does not then imitate art.

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1. OSCAR WILDE, *INTENTIONS* 33 (Floating Press 2009).

2. See, e.g., Lynsey Eidell, *The Murdoch Family: All About the Real-Life People Who Inspired ‘Succession’*, PEOPLE (Sept. 21, 2023), <https://people.com/human-interest/all-about-the-murdoch-family/> [https://perma.cc/N989-C36F]; Margaret Hartmann, *How the Rupert Murdoch Family Drama Inspired Succession*, INTELLIGENCER (Sept. 21, 2023), <https://nymag.com/intelligencer/article/succession-based-on-rupert-murdoch-drama.html> [perma.cc/APR6-9MPQ].

3. Carlos de Loera, *Brian Cox Says Rupert Murdoch—the IRL Logan Roy—Has Been Watching Too Much ‘Succession’*, L.A. TIMES (Sept. 25, 2023), <https://www.latimes.com/entertainment-arts/tv/story/2023-09-25/brian-cox-rupert-murdoch-succession-logan-roy> [https://perma.cc/E7WZ-L3M6].

And so it is that this Essay was born. The following pages offer a comparison of the actions taken by members of two families: the Demoulas family, best known as owner-operators of northeastern regional supermarkets, and the Roy family featured in *Succession*. The comparative appraisal offered in this Essay focuses more on the selfish pursuit of individualized financial, social, and familial status by key members of both the Demoulas and Roy families as they relate to the law of business associations (principally corporate law) than on the business succession challenges faced by the two families (although the two are intertwined). At the heart of the matter is the legal concept of fiduciary duty. A comparison of the two families' exploits reveals that lessons earlier learned by the Demoulas family (and observers of the multi-faceted, multi-year litigation involving them and their business undertakings) fail to positively impact the destiny and legacy of *Succession's* Roy family—at least as far as the Roy family story has been told to date. Although hope may be limited, there is still time for the remaining Roy family members to take heed and make changes.

To execute and comment on the comparison of these two families, the Essay starts by outlining relevant information concerning legally recognized fiduciary duties in the corporate (and, to a lesser degree, partnership) contexts. Next, the Essay offers background information about the Demoulas and Roy families and their respective businesses (both organized as corporations) and selected business dealings and governance, noting actual and potential breaches of fiduciary duty in each case. A brief conclusion offers comparative observations about the actions taken by members of the Demoulas and Roy families that contravene or challenge applicable fiduciary duties and the opportunity for general reflection.

I. BUSINESS ASSOCIATION FIDUCIARY DUTIES

Historically, the management and control of corporations, partnerships, and limited liability companies have been constrained by fiduciary duties.⁴ Fiduciaries occupy legally recognized positions of trust, operating in distinct ways in different contexts, in which they are charged with

4. See, e.g., Joan MacLeod Heminway, *The Fiduciary-ness of Business Associations*, 24 *TRANSACTIONS: TENN. J. BUS. LAW* 255, 255 (2023) (“Fiduciary duties have historically been core elements and values of statutory business associations in the United States.”); Benjamin Means, *The Value of Insider Control*, 60 *WM. & MARY L. REV.* 891, 926 (2019) (“[A]cross all forms of business association, the fiduciary duties of care and loyalty are available to regulate insider control.”); Mary Szto, *Limited Liability Company Morality: Fiduciary Duties in Historical Context*, 23 *QLR* 61, 61 (2004) (“Fiduciary duties are embedded in business associations. Principals of a firm are fiduciaries, and as such, they set aside self-interest.”).

acting in the interests of another and not in their own best interests.⁵ As a general matter, business association fiduciary duties have included duties of care and loyalty.⁶ In some jurisdictions, for some statutory forms of business entity, candor (disclosure) or good faith is labeled as a separate fiduciary duty. And in nonprofit corporations, directors and officers are generally charged with a fiduciary duty of obedience to ensure their actions comply with the corporation's charter, bylaws, and overall charitable mission.⁷ Because the Demoulas and Roy family stories involve partnerships (in a limited circumstance) and corporations, a more detailed picture of fiduciary duties under partnership and corporate law is apt.

Although partnership fiduciary duties once were a matter of common law, they now are largely statutory. Under the Revised Uniform Partnership Act (RUPA), which has been adopted in substantial form in forty-five states and territories,⁸ partners owe each other duties of care and loyalty.⁹ Their duty of care "is to refrain from engaging in grossly negligent or reckless conduct, willful or intentional misconduct, or a

5. See, e.g., RESTATEMENT (THIRD) OF AGENCY § 8.01 (AM. L. INST. 2006) ("An agent has a fiduciary duty to act loyally for the principal's benefit in all matters connected with the agency relationship."); RESTATEMENT (THIRD) OF TRUSTS §§ 77–79 (AM. L. INST. 2007) (identifying prudence, loyalty, and impartiality as three core duties owed by trustees to beneficiaries in trust relationships); *id.* § 70(b) (providing that a trustee's exercise or nonexercise of trust powers "is subject to the fiduciary duties stated and explained hereafter in Chapter 15 and elsewhere in this Restatement," which duties include those in §§ 77–79 of the Restatement); see also Paula J. Dalley, *Shareholder (and Director) Fiduciary Duties and Shareholder Activism*, 8 HOUS. BUS. & TAX L.J. 301, 303 (2008) ("[I]t is generally accepted that what makes a fiduciary a fiduciary is her power to make decisions with regard to another person's property or person. Because of that power, the fiduciary must act in the best interests of the other person.").

6. See, e.g., Paula J. Dalley, *To Whom It May Concern: Fiduciary Duties and Business Associations*, 26 DEL. J. CORP. L. 515, 518 (2001) (noting that, in business associations, "[b]reaches of duty occur when a representative takes an action that is not in the interest of the association. If the act is in the representative's or someone else's interest, rather than in the interest of the association, the act is a breach of the duty of loyalty, whereas if the act is merely negligent, it is a breach of the duty of care"); Alan R. Palmiter, *Duty of Obedience: The Forgotten Duty*, 55 N.Y.L. SCH. L. REV. 457, 458 (2011) ("Directors and officers of for-profit corporations are said to owe two duties to the corporation: care and loyalty.").

7. See Jeremy Benjamin, *Reinvigorating Nonprofit Directors' Duty of Obedience*, 30 CARDOZO L. REV. 1677, 1679 (2009) ("[N]onprofit directors have a legal obligation, a 'duty of obedience,' to act in accordance with the charitable purpose of their organization."); Palmiter, *supra* note 6, at 458 ("An obedience duty has a long-standing and continuing history for fiduciaries of nonprofit corporations. Non-profit trustees must abide by the legal restrictions that apply to their organizations, such as those imposed by the non-profit's constitutive documents, any donor conditions, and restrictive tax law.").

8. See Partnership Act, UNIF. L. COMM'N, <https://www.uniformlaws.org/committees/community-home?CommunityKey=52456941-7883-47a5-91b6-d2f086d0bb44> (last visited Nov. 26, 2023) (providing a map and graphic reporting on the states in which a version of the revised Uniform Partnership Act has been enacted).

9. UNIF. P'SHIP ACT § 409(a) (UNIF. L. COMM'N 1977) ("A partner owes to the partnership and the other partners the duties of loyalty and care stated in subsections (b) and (c).").

knowing violation of law.”¹⁰ A partner’s duty of loyalty essentially prohibits them from three things: taking or using for themselves “any property, profit, or benefit” (including any partnership opportunity) derived by them in the conduct or wind-up of the partnership’s business without accounting to the partnership for that property, profit, or benefit; “dealing with the partnership . . . as or on behalf of a person having an interest adverse to the partnership”; and “competing with the partnership in the conduct of the partnership’s business”¹¹ In addition, partners in a RUPA partnership owe each other a foundational obligation of good faith and fair dealing.¹²

Corporate law fiduciary duties are significantly complex due to the corporation’s more complex entity structure. A commentator generally described core fiduciary duties in the modern corporate context by offering that “corporate directors are not considered trustees or agents. However, case law and various statutes still address their fiduciary duties, including the duties of care and loyalty.”¹³ Under Delaware corporate law, for example, a director’s duty of care currently comprises the director’s duty, in making decisions in the management of the corporation, to fully inform themselves about all material information reasonably available.¹⁴ The Model Business Corporation Act provides that “[t]he members of the board of directors or a board committee, when becoming informed in connection with their decision-making function or devoting attention to their oversight function, shall discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances.”¹⁵ A director’s duty of loyalty generally includes the obligation to act in the best interests of the corporation.¹⁶ This may include avoiding conflicting interest transactions (in which a corporate fiduciary is an actual or effective counterparty to a contract or transaction with the corporation), usurping corporate opportunities (generally, ventures or property in which the corporation may have a realizable interest or expectancy), competing with the corporation, and engaging in bad faith misconduct (including

10. *Id.* § 409(c).

11. *Id.* § 409(b).

12. *Id.* § 409(d) (“A partner shall discharge the duties and obligations under this [act] or under the partnership agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.”).

13. Szto, *supra* note 4, at 111.

14. *See* *Smith v. Van Gorkom*, 488 A.2d 858, 872–73 (Del. 1985) (“[A] director’s duty to exercise an informed business judgment is in the nature of a duty of care, as distinguished from a duty of loyalty.”).

15. MODEL BUS. CORP. ACT § 8.30(b) (AM. BAR ASS’N 2017).

16. *See, e.g., id.* § 8.30 (requiring a director to act in good faith, with due care, and in a manner he reasonably believes to be in the best interests of the corporation”).

without limitation through a failure to provide oversight).¹⁷ Officer fiduciary duties are expressly considered to be coextensive with director fiduciary duties under Delaware common law.¹⁸ The Model Business Corporation Act also provides that officers have substantially similar fiduciary duties to those of directors.¹⁹

Two distinct types of shareholders also may owe fiduciary duties to the firm or each other: controlling shareholders and close corporation shareholders. “Controllers, uniquely, owe the corporation and the minority shareholders a fiduciary duty of loyalty.”²⁰ Delaware law is, perhaps, the most nuanced in addressing controlling shareholder fiduciary duties and liability.²¹ In addition, “[i]nfluenced by partnership law, courts have also held that shareholders of closely-held corporations have partnership-like fiduciary duties.”²² Massachusetts has a well-developed body of decisional law on close corporation shareholder fiduciary duties; Delaware does not generally recognize fiduciary duties among shareholders in closely held corporations absent an express, clear agreement to take on those duties.²³

17. See, e.g., DEL. CODE ANN. tit. 8, § 144(a) (West 2023) (identifying conflicting interest transactions as potentially void or voidable absent disinterested, good faith, fully informed director or shareholder approval or the entire fairness of the transaction); *Burg v. Horn*, 380 F.2d 897, 901 (2d Cir. 1967) (“A director may be barred from competing with his corporation even though he does not by doing so appropriate a corporate opportunity.”); *Loft v. Guth*, 2 A.2d 225, 238–39 (Del. Ch. 1938) (“Such are the fiduciary duties and obligations of an officer and director of a corporation that if a business opportunity comes to him which is in the line of his corporation’s activities and of advantage to it and especially if really intended for it, the law will not allow him to divert the opportunity from the corporation and embrace it as his own.”); *Stone v. Ritter*, 911 A.2d 362, 369–70 (Del. 2006) (“[A] failure to act in good faith is not conduct that results, *ipso facto*, in the direct imposition of fiduciary liability. The failure to act in good faith may result in liability because the requirement to act in good faith ‘is a subsidiary element . . . of the fundamental duty of loyalty.’”); Kelli A. Alces, *Larry Ribstein’s Fiduciary Duties*, 2014 U. ILL. L. REV. 1765, 1772 (“The duty of loyalty prohibits corporate officers and directors from engaging in transactions or pursuing courses of action in which their personal financial interest conflicts with that of the corporation.”); *id.* at 1773 (“The doctrine of corporate opportunity, which prevents a director or officer from taking a business opportunity in the corporation’s line of business that the corporation has the ability to pursue, is another application of the duty of loyalty.”).

18. See *Gantler v. Stephens*, 965 A.2d 695 (Del. 2009).

19. MODEL BUS. CORP. ACT § 8.42(a) (AM. BAR ASS’N 2017) (“An officer, when performing in such capacity, has the duty to act: (1) in good faith; (2) with the care that a person in a like position would reasonably exercise under similar circumstances; and (3) in a manner the officer reasonably believes to be in the best interests of the corporation.”).

20. Ann M. Lipton, *The Three Faces of Control*, 77 BUS. LAW. 801, 805 (2022); see also *Brookfield Asset Mgmt., Inc. v. Rosson*, 261 A.3d 1251, 1274 (Del. 2021) (en banc) (“Controlling stockholders owe fiduciary duties to the minority stockholders, but they also owe fiduciary duties to the corporation.”).

21. See Lipton, *supra* note 20, at 809–21 (explaining in detail the heightened scrutiny of controlling shareholder decision making, relying principally on Delaware law).

22. Szto, *supra* note 4, at 111.

23. See *Blaustein v. Lord Baltimore Cap. Corp.*, No. CIV.A. 6685-VCN, 2013 WL 1810956, at *16 (Del. Ch. Apr. 30, 2013) (“Delaware law does not recognize that a majority stockholder has

It also bears mentioning that, under Delaware common law, specialized fiduciary duty assessments and judicial analyses exist in contexts involving director or officer self-interest short of a conflicting interest (e.g., situations in which directors or officers may have a motive or incentive to serve their own financial interests or entrench themselves in their respective corporate roles), including in the judicial review of inequitable conduct that interferes with stockholder voting rights.²⁴ These assessments and analyses introduce an intermediate tier of judicial scrutiny (effectively more stringent than business judgment rule review—which gives directors great deference—and less stringent than the entire fairness review required in conflicting interest cases). They involve evaluating first whether the board was faced with an actual danger or threat to the corporation’s interests or the achievement of a corporate benefit and next whether the board’s responsive actions (a) neither preclude the exercise of stockholder rights nor coerce stockholder action and (b) are reasonable in response to the threat posed.²⁵

Finally, as a matter of Delaware corporate law, *Revlon* duties also may impact director decision making in the context of unsolicited offers to merge or be acquired. Named after the case in which the concept originated,²⁶ *Revlon* duties exist when a change in corporate control is inevitable. They apply in three circumstances.

First, they apply “when a corporation initiates an active bidding process seeking to sell itself or to effect a business reorganization involving a clear breakup of the company.” Second, they apply “where, in response to a bidder’s offer, a target abandons its long-term strategy and seeks an alternative transaction involving the breakup of the

a special fiduciary duty to minority stockholders in a closely-held corporation. Delaware courts have declined to follow other jurisdictions which have adopted such a doctrine.”), *aff’d*, 84 A.3d 954 (Del. 2014); Ethan Z. Davis & Kurt S. Kusiak, *Gaining the Advantage in Close-Corporation Disputes: Examining Key Differences Between Massachusetts and Delaware Fiduciary Duty Law*, 97 MASS. L. REV. 23 (2015) (describing the fiduciary duties of shareholders of Massachusetts and Delaware closely held corporations); Nicholas Nesgos & Benjamin Greene, *Fiduciary Duties in Massachusetts and Delaware Closely Held Corporations*, 64 BOSTON BAR J. (2020).

24. See, e.g., *Coster v. UIP Cos., Inc.*, 300 A.3d 656, 672 (Del. 2023) (“Experience has shown that *Schnell* and *Blasius* review, as a matter of precedent and practice, have been and can be folded into *Unocal* review to accomplish the same ends—enhanced judicial scrutiny of board action that interferes with a corporate election or a stockholder’s voting rights in contests for control.”); *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946, 954 (Del. 1985) (“Because of the omnipresent specter that a board may be acting primarily in its own interests, rather than those of the corporation and its shareholders, there is an enhanced duty which calls for judicial examination at the threshold before the protections of the business judgment rule may be conferred.”), *holding modified by Coster v. UIP Cos., Inc.*, 300 A.3d 656 (Del. 2023).

25. See *Coster*, 300 A.3d at 672–73.

26. *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173 (Del. 1986).

company.” Third, they apply “when approval of a transaction results in a sale or change of control.”²⁷

The essential role of *Revlon* duties is to signal to the directors that their role has been circumscribed to that of auctioneers of the corporation, charged with securing the highest price for the sale of the firm.²⁸

The described fiduciary duties and obligations (as they may exist under individual state laws applicable in specific circumstances), together with the firm’s organic documents—its charter and bylaws—and policies, guide and frame the decision making and actions of those who manage and control those businesses organized as partnerships and corporations. Breaches of these fiduciary duties may result in legal liability or reputational harm. Competent legal advisors to business firms are aware of these risks and are therefore careful to: advise managers and control persons of their fiduciary responsibilities and obligations under law and relevant contracts (as applicable); explain the standards of review and liability applicable to subsequent judicial challenges to the firm’s decision making and actions; and identify and describe exculpation, indemnification, insurance, and other protections that may be available. Yet, despite the availability of statutory and contractual safeguards and competent legal advice, managers and controllers sometimes find compliance with fiduciary duties difficult. This was the case with certain members of the Demoulas family. . . .

II. THE DEMOULAS FAMILY AND DEMOULAS SUPER MARKETS

As a Massachusetts lawyer in the 1980s and 1990s, I was acutely aware of the Demoulas family and the escapades of the family members. It was almost impossible to be ignorant of the family’s impact on local communities and its involvement in divisive and highly public litigation. Yet, few (if any) may then have expected that family personal and business matters would remain unsettled for over twenty years.

The businesses that eventually became Demoulas Super Markets, Inc., a privately held Massachusetts corporation currently operating under the Market Basket brand name (DSM), were founded by Athanasios (also known as Arthur) and Efrosini Demoulas with the opening of a small food store in 1917.²⁹ The current form of the Demoulas family

27. Zachary Gubler, *What’s the Deal with Revlon?*, 96 IND. L.J. 429, 436 (2021) (footnotes omitted).

28. *Revlon*, 506 A.2d at 182.

29. The brief history of the Demoulas family and DSM related in this Essay is represented in decisional law, including especially *Demoulas v. Demoulas Super Markets, Inc.*, 677 N.E.2d 159, 165–66 (Mass. 1997), and on the Market Basket website, MARKET BASKET, <https://www.shopmarket-basket.com/timeline> [<https://perma.cc/N6NC-QFTP>]. Citations are included to other resources as needed or desired with respect to specific facts.

businesses, however, owes its existence more to the 1954 purchase of the business by Telemachus (also known as “T.A.” and Mike) Demoulas and his brother George, two of Athanasios and Efrosini’s six children. Telemachus and George later merged their then existing business entities (through which a small group of supermarkets then were operating) into a single Delaware corporation. “The two brothers and their families split the company and its profits evenly, and decided in 1964 to make each the executor of the other’s estate and committed to assuming responsibility for the other’s family upon that brother’s death.”³⁰ They operated DSM’s supermarkets and related businesses together for about seven additional years, until George unexpectedly and quite suddenly died in 1971.

As the brothers had previously agreed, Telemachus then took responsibility for handling the administration of George’s estate and certain trusts related to their joint business interests, in each case for the benefit of George’s widow and children. Telemachus also then assumed voting and management control of DSM and its related business entities. In each of these capacities, Telemachus was acting as a fiduciary. In 1982, under Telemachus’s leadership, DSM changed its corporate domicile to Massachusetts through the incorporation of the currently existing Massachusetts corporation and the merger of the predecessor Delaware corporation with and into it.

Both Telemachus’s son Arthur (known as Arthur T.) and George’s son Arthur (known as Arthur S.)—each named after their grandfather—were initially actively employed in the family supermarket business.³¹ Arthur T. has remained with the firm throughout, eventually rising through the ranks to the level of president (a title he still holds at this writing).³² But a series of legal actions and appeals beginning in the 1990s brought against Telemachus, Arthur T., and other members of Telemachus’s side of the family (along with DSM’s accountant and related entities) by George’s widow (Evanthea), Arthur S., and others on George’s side of the family created rifts in both personal

30. Grant Welker, *Why is Market Basket So Popular? The Story Behind Fall River’s Newest Supermarket*, HERALD NEWS (Oct. 1, 2017), <https://www.heraldnews.com/story/business/2017/10/01/why-is-market-basket-so/18690874007/> [https://perma.cc/MT33-MPWM].

31. See Callum Borchers, *Arthur T. Demoulas’ Personal Touch Can Cut Both Ways*, TELEGRAM & GAZETTE (Aug. 22, 2014), <https://www.telegram.com/story/business/2014/08/22/arthur-t-demoulas-personal-touch/36616610007/> [https://perma.cc/UG7F-G4R9] (offering information on Arthur T.’s history with DSM and related businesses); Shirley Leung, *Some See Kinder, Gentler Side of Arthur S. Demoulas*, TELEGRAM & GAZETTE (Aug. 22, 2014), <https://www.telegram.com/story/business/2014/08/22/some-see-kinder-gentler-side/36618574007/> [https://perma.cc/5DN2-FKTW] (relating Arthur S.’s work history with DSM).

32. SEC. OF THE COMMONWEALTH OF MASS., CORPS. DIV., ANN. REP., DEMOULAS SUPER MARKETS, INC. (2024); see also Arthur T Demoulas, BLOOMBERG, <https://www.bloomberg.com/profile/person/18229225> (last visited Mar. 18, 2024).

and business relationships and eventually led to Arthur S. leaving the employ of Demoulas Super Markets.³³ One news source describes a telling watershed moment that precipitated these legal actions.

The company's growth continued past George's early death in 1971. But two decades later, one of George's sons, Evan, got a notice in the mail from the IRS about taxes he owed on company stock he sold. He didn't remember selling any stock. So Evan and his brother, Arthur S. Demoulas, went through documents and discovered something startling: the 50-50 split the two brothers and their families had in the company was now about 80-20. They were on the 20 side.³⁴

The facts ultimately found in the process of the resulting lawsuit³⁵ (based on Telemachus's role as co-executor of George's estate and a trustee of related trusts) and a parallel shareholder derivative action³⁶ represent the gravamen of the comparison of the Demoulas family challenges to the individual and business dealings of the Roy family in HBO's *Succession*. In these legal actions, Telemachus and Arthur T. are found to have committed fraud and breaches of fiduciary duty that led to rescinded stock transfers and Arthur S. and others in George's side of the family assuming voting control over Demoulas Super Markets until 2014.³⁷

The essential findings in the two legal actions are set forth in relevant detail below.

- Telemachus “used wrongful means to acquire a greater share of ownership in DSM and other entities, at the expense of members of George's family,”³⁸ committing “fraud, conversion, and breach of fiduciary duties with respect to substantial estate and trust assets.”³⁹ Specifically,

Telemachus's considerable wrongdoing included the transfer, purchase, and redemption of DSM and other stock belonging to George's widow, Evanthea Demoulas (Evanthea), and Evanthea

33. See Leung, *supra* note 31 (noting that Arthur S. “wanted to stay involved in day-to-day operations, but as the litigation against his uncle became nastier, his uncle sued to fire him . . . The court ruled it would be best for Arthur S. to go on paid leave”).

34. Welker, *supra* note 30.

35. Demoulas v. Demoulas, 703 N.E.2d 1149 (Mass. 1998).

36. Demoulas v. Demoulas Super Markets, Inc., 677 N.E.2d 159 (Mass. 1997).

37. In 2014, after continued troubles between the two families and in the management of DSM, Arthur T. and his sisters bought out the 50.5% DSM shareholdings owned by Arthur S. and the other members of George's family for \$1.5 billion. See Casey Ross, *Arthur T. Demoulas Offers \$1.5 Billion for Market Basket*, Bos. GLOBE (Aug. 23, 2014), <https://www.bostonglobe.com/business/2014/08/22/demoulas/MwC4vzWVHhW73nva23dvHO/story.html>. The labor struggle that preceded and catalyzed the buyout was national news and is the subject of a documentary film. See WatchDoku, *Food Fight: Inside The Battle For Market Basket*, YouTube (Jan. 9, 2022), https://www.youtube.com/watch?v=8-K7G9aA_70.

38. Demoulas, 703 N.E.2d at 1155.

39. *Id.*

and George's children (plaintiff children), the other plaintiffs, as well as wrongdoing in connection with the ownership of real estate. Among other effects, the result of the misdeeds found by the jury was, over a period of time, to increase the proportion of DSM stock in the control of Telemachus's side of the family to 92%, to the almost total exclusion of George's side of the family.⁴⁰

Although these actions were not taken by Telemachus in his capacity as a corporate fiduciary, they represent part of the overall factual background for his breaches of fiduciary duty as a director, officer, and partner in various business entities.

- Telemachus wrongfully took for himself and for business entities owned by his family (Market Basket, Inc., Doric Development Corporation, Inc., Lee Drug, Inc., and 231 Realty Associates) business opportunities that belonged to DSM (for the benefit of Telemachus's and George's families jointly) in the form of supermarkets (operated under a separate corporate name—Market Basket), drug stores, and real estate.⁴¹ Specifically, the Massachusetts Supreme Judicial Court affirmed several conclusions of the trial court judge.
 - “Market Basket represents a corporate opportunity that rightfully belonged to DSM and was diverted from it in a breach of fiduciary duty, and that its assets are derived from that diversion or from additional wrongful self-dealing transactions.”⁴²
 - Arthur T. inaccurately and inadequately disclosed the Lee Drug opportunity to the DSM Board of Directors before taking it for his own benefit, and Lee Drug therefore represented a corporate opportunity wrongfully diverted from DSM.⁴³ The court also noted that, to survive a conflicting interest challenge, DSM's determination to reject the Lee Drug opportunity must have been fair to DSM (because neither disinterested board nor disinterested shareholder approval had been obtained)—a burden of proof borne by Arthur T. that he failed to meet.⁴⁴ Accordingly, “full disclosure of the corporate opportunity was not made to DSM, and . . . the rejection of the venture was unfair to DSM. Lee Drug was

40. *Id.*

41. *Demoulas Super Markets, Inc.*, 677 N.E.2d at 166–67.

42. *Id.* at 182. Details of the relevant transactions are set forth in the court's opinion. *See id.* at 182–85.

43. *See id.* at 185–86.

44. *See id.*

a corporate opportunity that was wrongfully diverted from DSM.”⁴⁵

- Three real estate ventures formed after George’s death for the benefit of Telemachus’s family (Valley Properties, Inc., DSM Realty, Inc., and Delta & Delta Realty Trust) constituted corporate opportunities that were wrongfully diverted from real estate ventures co-owned equally by Telemachus’s and George’s families.⁴⁶ Moreover, “[o]n several occasions, parcels were transferred to the new companies from Valley, DSM Realty, and Delta & Delta at less than fair market value.”⁴⁷ The court affirmed the trial judge’s findings that these conflicting interest transactions were not fair to the co-owned entities through which real estate ventures were conducted.⁴⁸

In sum, the Massachusetts Supreme Judicial Court found that Telemachus and, in some cases, Arthur T., engaged in significant transactions for the benefit of their family at times in which each of them was a fiduciary charged with acting in the best interests of George’s family or business entities (corporations and partnerships) jointly and ostensibly equally owned and controlled by both families.

The aggregate remedies awarded for these transgressions represented stiff penalties for Telemachus and his family. Effectively, to prevent unjust enrichment, wrongful gains (net of, e.g., taxes) were required to be restored to DSM (including the proceeds from the sale of Lee Drugs) and the operations of the various supermarket entities were consolidated into DSM. The DSM stock holdings of Telemachus’s family were reduced to 49.5%, leaving 50.5% of DSM—majority shareholder voting control—in the hands of Arthur S. and the other members of George’s family. The court also ordered the individual defendants—members of Telemachus’s family—to repay any attorneys’ fees and costs paid on their behalf by the defendant companies and to pay the plaintiffs’ attorneys’ fees and costs. In addition, it seems relevant to note that the personal and legal travails of the family—which included Arthur T. throwing a punch at Arthur S. in the courtroom during one court day⁴⁹—were covered extensively in the local media, which certainly was an undesirable outcome.

45. *Id.* at 186.

46. *Id.*

47. *Demoulas Super Markets, Inc.*, 677 N.E.2d at 186.

48. *Id.* at 187 (“We discern ample basis in those findings for a conclusion that real estate activities were carried out in a manner that was unfair to DSM and Valley.”).

49. *See Welker, supra* note 30 (“Arthur T. once punched Arthur S. in the middle of the courtroom.”).

Indeed, the Demoulas family struggles were highly public and offer many learning moments for family businesses and family business venturers. Unfortunately, either the Roy family members and their advisors were unaware of the litigation involving the Demoulas family or chose to disregard the simple lessons that can be learned from those legal actions and their outcomes. As the Roys' story unfolds, we see some of the Demoulas family history repeating itself in different, yet similar, contexts. The common thread: actions taken by family business members in a corporate managerial or control capacity that are motivated not by the best interests of the firm, but rather by personal gain (whether financial, reputational, or status-related).

III. THE ROY FAMILY AND WAYSTAR ROYCO

Waystar Royco, the business entity at the heart of HBO's *Succession*, is a fictional business firm with its headquarters located in New York City.⁵⁰ Its business consists of three principal divisions at the start of the first season of the series: ATN Media (which includes, among other things, a leading cable news channel); Brightstar Parks, Experiences, and Products (which operates amusement parks, resorts, and a cruise line); and Waystar Studios (which produces streamed and theatrical content).⁵¹ It is publicly traded on the New York Stock Exchange under the symbol WAYA. We may assume from these facts that Waystar Royco is a Delaware corporation, but that is unverified information.

The core of *Succession*'s Roy family relevant to the thesis of this Essay consists of four family members, all of whom are (for much of the series) direct or indirect shareholders of Waystar Royco and members of its board of directors:

- Logan Roy, the founder of WaystarRoyco, who also is the CEO of the firm serving in that role—with interruptions—until his death;
- Kendall Roy, Logan's second-oldest child and the initial presumed heir-apparent to his father's executive role, who served as

50. The brief history of the Roy family and Waystar Royco related in this Essay has been culled from several websites that are designed to document facts represented in, or gleaned from, episodes of *Succession*, unless otherwise noted. See SUCCESSION WIKI, https://succession.fandom.com/wiki/Succession_Wiki [perma.cc/6NW3-FXS6] (fan-centered website); WAYSTAR ROYCO, <https://waystarroycompany.com/> [https://perma.cc/8ZAK-48FH] (mock corporate website).

51. This conceptualization of the three divisions is extracted from *Our Brands*, WAYSTAR ROYCO, <https://waystarroycompany.com/our-brands/> [https://perma.cc/F7LD-PURH] (a mock corporate website). See *Navigate the Complex Ownership Structure of Waystar Royco in HBO's Succession*, <https://lexchart.com/succession-waystar-royco-ownership-structure/> [https://perma.cc/EYB6-NEG9] (generated by viewers), for an alternative characterization of Waystar Royco's three operating divisions.

acting CEO and temporary co-CEO (with his brother Roman) in addition to other employment roles;

- Roman Roy, Kendall's younger brother and Shiv's older brother, who served as Waystar Royco's COO and temporary co-CEO (with his brother Kendall) and also was employed by Waystar Royco in Los Angeles (where he was unsuccessfully mentored by Logan's right-hand-man, Frank Vernon) and later at Brightstar; and
- Siobhan "Shiv" Roy, Kendall and Roman's younger sister, who works in the operation of the Waystar Royco business only for a short time (as the ostensible head of its U.S. operations) despite her father's tacit promises that she will succeed him if she shadows key corporate officers to learn the ropes.

Although Logan has a fourth child—Connor, his oldest son—Connor is uninterested in assuming a management role with Waystar Royco. He is generally content with his nonmanagement roles.

The interactions between and among these characters occur in the omnipresent environment of uncertainty about the identity of Logan Roy's successor as CEO of Waystar Royco. As one might expect from a four-season television series, there are more than enough personal and business entanglements that raise legal questions—questions much like those fostered by the personal and business entanglements of members of the Demoulas family. In the interest of brevity, this Essay focuses on a few important incidents in two key areas of Waystar Royco's business operations: merger & acquisition (M&A) activity and the appointment of executive officers.

A. M&A Activity

Waystar Royco, like many large, diversified media and entertainment firms, is acquisition-minded. The very first episode of Season One features Kendall bargaining for Waystar Royco's acquisition of Vaulter, a digital media firm.⁵² His negotiations with Vaulter's principal, Lawrence Yee, do not initially go well. Kendall signals to his team that he needs to conclude the Vaulter acquisition to show his father, Logan (Waystar Royco's CEO), that he can lead Waystar Royco into the future (essentially begging them to support him in offering a higher price—a price outside the original valuation target for the transaction). He does not

52. *Succession: Celebration* (HBO television broadcast June 3, 2018) (Season One, Episode One); see also Scott Tobias, *Succession Series-Premiere Recap: Roys on Deck*, VULTURE (Dec. 12, 2021), <https://www.vulture.com/article/succession-recap-series-premiere-season-1-episode-1-celebration.html> [hereinafter Tobias, *Roys on Deck*].

consult with his father in concluding the transaction. Eventually, Kendall offers Lawrence a price so high he effectively cannot turn it down, together with a seat on the Waystar Royco Board of Directors, and the acquisition deal is sealed (and later consummated).

Were Kendall's actions appropriately informed, consistent with the duty of care he owed to Waystar Royco in negotiating the deal on its behalf? Was his decision to offer Lawrence a much higher price driven by the best interests of Waystar Royco or his own best interests? Did he act in good faith? One commentator describes Kendall at the Vaulter negotiation as "desperate to secure any deal, no matter how terrible, to impress his dad."⁵³ Certainly, we are left with some doubt that Kendall's actions are consistent with his fiduciary responsibilities.

Later in Season One, while Kendall is serving as acting CEO of Waystar Royco, he calls on a college friend and venture capitalist, Stewy Hosseini, to invest in Waystar Royco to avoid a debt repayment showdown.⁵⁴ Stewy's investment firm is backed by a rival media firm CEO, Sandy Furness (and later his daughter Sandi). Stewy determines to make a large capital investment in Waystar Royco through their investment fund. Each also joins the board of directors of Waystar Royco (although Sandy and Sandi only join the board later, in connection with the settlement of a proxy fight related to a hostile tender offer, referenced *infra*). While Logan is unhappy with this transaction (and there is little information about the level of information Kendall or the Waystar Royco board had in its possession when the transaction was approved), the viewer—at least this viewer—is left with a sense that the outside investment option is the most favorable of several unappealing alternatives available at the time.

The relationship among Kendall, Stewy, and Sandy takes a new turn when, at the end of Season One, Kendall (no longer working for Waystar Royco or serving on its board of directors) brainstorms a scheme to join forces with them to attempt a hostile takeover for control of Waystar Royco.⁵⁵ Kendall delivers a bear hug letter (outlining the terms of their unsolicited tender offer) to his father on his sister's wedding day.⁵⁶

53. Tobias, *Roys on Deck*, *supra* note 52.

54. *Succession: Lifeboats* (HBO television broadcast June 17, 2018) (Season One, Episode Three); see also Scott Tobias, *Succession Recap: King for a Day*, VULTURE (Dec. 19, 2021), <https://www.vulture.com/article/succession-season-one-episode-3-recap-lifeboats.html>.

55. *Succession: Prague* (HBO television broadcast July 22, 2018) (Season One, Episode Eight); see also Scott Tobias, *Succession Recap: Closed-Loop System*, VULTURE (Jan. 2, 2022), <https://www.vulture.com/article/succession-season-1-episode-8-recap-prague.html>.

56. *Succession: Nobody Is Ever Missing* (HBO television broadcast Aug. 5, 2018) (Season One, Episode Ten); see also Scott Tobias, *Succession Season-Finale Recap: Bear Hug*, VULTURE (Jan. 9, 2022), <https://www.vulture.com/article/succession-season-1-ep-10-recap-nobody-is-ever-missing.html>.

Kendall later backs away from the troika when personal issues push him back into the arms of Logan for safety and cover. As the hostile deal moves forward, the difficult fiduciary duty line being walked by Stewy (who is still serving on the Waystar Royco Board of Directors) is clear.

Pierce Global Media (PGM) represents a possible merger partner that Logan believes could quell public investor qualms about Waystar Royco's prospects and value and help fend off Stewy and Sandy's takeover attempt. Logan covets PGM, a media outlet with a strong market reputation (and a television news network that his brother Ewan, with whom he has estranged relations, watches).⁵⁷ Others in the family and on the corporate team, however, are not convinced that PGM, a traditional media play, is the right move for Waystar Royco.

We may question whether Logan's actions in promoting the PGM business combination are consistent with his fiduciary duties. Is he acting on a fully informed basis, in the best interests of Waystar Royco and in good faith? If this potential acquisition represents a takeover defense (as it seemingly does), can Logan and the board of directors identify and assess the level of threat to the corporation posed by the takeover? Is the acquisition an appropriately tailored and weighted defense to that threat? One perspective:

The bid to take over PGM, a respected news organization that's also a family business, run by the Pierces, reads like an act of pure vindictiveness. Logan's argument is that the PGM acquisition will make Waystar too big and unappealing for Sandy and Stew[y] to snap up, but the personal reasons can't be overlooked. Logan wants to stick it to his brother Ewan, who watches the network, and ATN would gain further influence as the premier news outlet/propaganda arm on cable.⁵⁸

Perhaps Logan and the Waystar Royco directors are saved from fiduciary duty breaches by the cooling of Waystar Royco's negotiations with PGM after public revelations of sexual misconduct allegations relating to the Brightstar cruise line.

However, Waystar Royco and the Roys are not yet done with acquisitions—or PGM. In Season Four, Episode One, Logan is moving forward toward a business combination between GoJo and Waystar Royco.⁵⁹

57. *Succession: Hunting* (HBO television broadcast Aug. 25, 2019) (Season Two, Episode Three); see also Scott Tobias, *Succession Recap: Esprit de Boar*, VULTURE (Aug. 25, 2019), <https://www.vulture.com/2019/08/succession-recap-season-2-episode-3-hunting.html> [hereinafter Tobias, *Esprit de Boar*].

58. Tobias, *Esprit de Boar*, *supra* note 57.

59. *Succession: The Munsters* (HBO television broadcast Mar. 26, 2023) (Season Four, Episode One); see also Scott Tobias, *Succession Season-Premiere Recap: One Percent*, VULTURE (Mar. 26, 2023), <https://www.vulture.com/article/succession-season-4-premiere-recap-episode-1-the-munsters.html>.

The GoJo transaction is looking more like a sure thing, despite a number of false starts. These include the rough initiation of communications between Logan and GoJo principal Lukas Matsson and Roman and Shiv's unfulfilling hunt for Lukas at Kendall's fortieth birthday bash,⁶⁰ as well as Lukas's later stock-price-enhancing tweets.⁶¹ As a result, in Season Four, Episode One, Kendall, Roman, and Shiv focus again on PGM as an independent play, after considering and rejecting establishing their own new media venture (the Hundred). PGM principal Nan Pierce plays the Roy children against their father in a bidding war, which Kendall, Roman, and Shiv eventually win.

The PGM acquisition raises questions about the corporate status of Kendall, Roman, and Shiv at the time their acquisition bids are being made. Are any of them still Waystar Royco directors, officers, or employees, or are they merely family shareholders? It seems that at least Roman and Shiv are in some way part of Waystar Royco's management and control structures. Their efforts to act on behalf of Waystar Royco are being sought and used by their father and other Waystar Royco officers. To the extent that any of the three of them is a corporate fiduciary, their actions in bidding for PGM may be considered a breach of their duty of loyalty. Specifically, they may be taking a corporate opportunity of Waystar Royco without first having fully and fairly disclosed it to the Waystar Royco Board of Directors and obtained evidence that the directors had rejected the opportunity (or otherwise cleared them to make a bid). This is the same breach of fiduciary duty that Telemachus and Arthur T. Demoulas were found to have committed in acquiring supermarkets, the drugstores, and real property for entities owned by Telemachus and his family members, not for DSM.⁶²

GoJo's acquisition of Waystar Royco is the last M&A transaction the board of directors of Waystar Royco considers in the series, with the board vote in the last episode of Season Four.⁶³ By Season Four, Episode

60. *Succession: Too Much Birthday* (HBO television broadcast Nov. 28, 2021) (Season Three, Episode Seven); see also Scott Tobias, *Succession Recap: All Bangers, All the Time*, VULTURE (Nov. 28, 2021), <https://www.vulture.com/article/succession-season-3-episode-7-recap-too-much-birthday.html>.

61. *Succession: Chiantishire* (HBO television broadcast Dec. 5, 2021) (Season Three, Episode Eight); see also Miles Surrey, *Sucking in Water: Breaking Down Episode 8 of 'Succession'*, RINGER (Dec. 5, 2021, 10:08 PM), <https://www.theringer.com/succession/2021/12/5/22816375/succession-season-3-episode-8-recap-kendall-pool-roman-gerri> [<https://perma.cc/DWN7-9MEM>].

62. See *supra* notes 41–48 and accompanying text.

63. *Succession: With Open Eyes* (HBO television broadcast May 28, 2023) (Season Four, Episode Ten); see also Scott Tobias, *Succession Series-Finale Recap: Serious Issues*, VULTURE (May 29, 2023), <https://www.vulture.com/article/succession-series-finale-recap-season-4-episode-10-with-open-eyes.html> [hereinafter Tobias, *Serious Issues*].

Five, the deal appears to be all but done.⁶⁴ However, hiccups in the plans continue to crop up throughout Season Four, to allow the board vote on the GoJo acquisition its place as the climax scene of the series—deciding who will succeed to the top management of Waystar Royco. The vote centers around Shiv’s decision in the end. Perhaps remarkably, her vote in favor of the transaction appears to be somewhat un-selfish (coming as it does after revelations that Lukas was dishonest to her about his intention to name her as Waystar Royco’s CEO and that her husband Tom was less than candid with her about his discussions with Lukas about serving in that role). The situation is well explained (and justified) in this commentary on the final episode.

When the vote gets around to Shiv, she faces a . . . fascinating dilemma. Voting “no” gives her the opportunity, at a minimum, to rebuff Matsson, a horrible person who has played her and embarrassed her. . . . It’s also a solid “fuck you” to Tom, who’s been shifty about his relationship with Matsson and cool to her proposals for reconciliation. But her “yes” is compelling on two fronts: She can be the one to declare definitively what Logan and everyone else knows about Kendall, which is that he’s unfit for the job—morally, strategically, and temperamentally. . . . She can also reengage a marriage that’s been transactional and full of deep betrayals on both sides but also the most real love she’s ever had.⁶⁵

While some of her motives may have been personal, Shiv’s actions can be seen as primarily in the best interests of Waystar Royco and not primarily for her personal benefit or to detriment the corporation or handicap its management.⁶⁶ In this limited sense, the writers of the series may have created a happy ending.

B. Appointment of Executive Officers

Succession is replete with changes in the personnel serving in the Waystar Royco executive ranks. People come and go (voluntarily and involuntarily) with such rapidity, it is hard to keep track of who holds any individual office or role at any given time. Among other things, Logan creates positions for Kendall, Roman, and Shiv to ostensibly test

64. *Succession: Kill List* (HBO television broadcast Apr. 23, 2023) (Season Four, Episode Five); see also Evan Romano, *Lukas Matsson Is Eating Succession Up Whole*, MEN’S HEALTH (Apr. 24, 2023), <https://www.menshealth.com/entertainment/a43495450/succession-lukas-matsson-alexander-skarsgard/> [<https://perma.cc/PA6W-FVZG>]. *Revlon* duties would apply if a change in corporate control was then inevitable and a competing bid was received. See *supra* note 26–28 and accompanying text.

65. Tobias, *Serious Issues*, *supra* note 63.

66. Moreover, if *Revlon* duties were applicable, it would seem that Shiv’s vote would be consistent with obtaining the best value for all shareholders.

them out in executive roles as needed or desired based on the vicissitudes of the business (and his own mood and desires).⁶⁷

Although there would be too many position changes to address if this Essay tried to cover them all, there are a few key scenes relative to executive office changes that are worth calling out for analysis. They are listed below.

- In Season One, Episode Two, while Logan is in the hospital recovering from a hemorrhagic stroke, the jockeying for the interim CEO position among Kendall, Roman, and Shiv shows little evidence of conduct undertaken on a fully informed basis, in the best interests of Waystar Royco, in good faith.⁶⁸ Roman and Shiv even have a physical interaction that feels more like two children arguing about who the parental favorite is.⁶⁹ This incident parallels the courtroom fisticuffs between Arthur T. and Arthur S. Demoulas.⁷⁰ Bottom line: each of the three children acts more in their own self-interest and to belittle the others than with the best interests of Waystar Royco in mind. Moreover, while Waystar Royco's General Counsel, Gerri Kellman, is there to counsel and listen, we do not have much of a sense of the engagement of the board of directors in the selection of an interim chief executive.
- The unsuccessful effort to mount a no-confidence vote on Logan's management in Season One, Episode Six exemplifies another significant executive appointment matter.⁷¹ While expressly

67. See Cody Bashore, *Succession: Waystar Royco Complete Timeline Explained*, SCREEN RANT (May 30, 2023), <https://screenrant.com/succession-waystar-royco-complete-timeline-explained/> [<https://perma.cc/9XV4-GBEQ>] (“Logan, portrayed by Brian Cox, shuffles between three of his children as potential CEOs once he steps down. Kendall Roy (Jeremy Strong), Siobhan ‘Shiv’ Roy (Sarah Snook), and Roman Roy (Kieran Culkin) all briefly hold the pole position for the role at Waystar Royco, only to watch as Logan snatch it away.”).

68. *Succession: Sh**t Show at the F**k Factory* (HBO television broadcast June 10, 2018) (Season One, Episode Two); see also Scott Tobias, *Succession Recap: Complicated Airflow*, VULTURE (Dec. 12, 2021), <https://www.vulture.com/article/succession-recap-season-1-episode-2-sht-show-at-the-fk-factory.html> [hereinafter Tobias, *Complicated Airflow*].

69. Tobias, *Complicated Airflow*, *supra* note 68 (“When Shiv and Roman break away to quietly confer on the matter, Roman slaps Shiv in the face and she throws him against the wall.”). The parallel between this scene in *Succession* and the courtroom scuffle between Arthur T. and Arthur S. in the Demoulas family exploits, see *supra* note 49 and accompanying text, is striking.

70. See *supra* note 49 and accompanying text.

71. *Succession: Which Side Are You On?* (HBO television broadcast July 8, 2018) (Season One, Episode Six); see also Scott Tobias, *Succession Recap: No Confidence*, VULTURE (Dec. 26, 2021), <https://www.vulture.com/article/succession-season-1-episode-6-recap-which-side-are-you-on.html> [hereinafter Tobias, *No Confidence*]. As a general matter, no-confidence votes are not corporate board activities; they are not of legal effect. The legal recourse of a board of directors that desires to depose the corporation's CEO is to remove the officer. See, e.g., DEL. CODE ANN. tit. 8, § 142(b) (West 2023) (“Each officer shall hold office until such officer's successor is elected and qualified or until such officer's earlier resignation or removal.”); MODEL BUS. CORP. ACT § 8.43(b) (AM. BAR

undertaken in the best interests of Waystar Royco, the case supporting the vote of no confidence was built hastily on limited, anecdotal substantive information about Logan's capacity and, as such, smacks of bad faith.⁷² The effort is so last-minute that Kendall, who spearheaded the initiative, is unable to make it to the board meeting in person. Moreover, it seems fair to note that Logan's refusal to leave the meeting during the discussion and vote, as well as his summary firing of all employees and dismissal from the board of all who voted in favor of the no-confidence motion,⁷³ may be seen as disloyal and in bad faith. It is loyalty to the corporation that matters from a legal standpoint, not fealty to the CEO or any other corporate officer.

- In Season Four, Episode Four, we again find Kendall, Roman, and Shiv jockeying for the interim CEO position at Waystar Royco after Logan's death.⁷⁴ All three would like to keep the management of Waystar Royco in family hands, and each has arguments they can raise in their own favor. For instance, Kendall argues for his suitability for the CEO role based on (among other things) a piece of paper found with Logan's personal and business documents that bears Kendall's name as Logan's chosen successor. (Never mind that Kendall's name was either underlined for emphasis—as Kendall argued—or crossed out—as Shiv suggested.) Roman claims (likely with accuracy) the closest

Ass'n 2017) ("An officer may be removed at any time with or without cause by (i) the board of directors . . ."). Use of the potentially more familiar concept of a vote of no confidence may make the intention of the vote more comprehensible and render the scene more entertaining.

72. Delaware corporate law defines bad faith as a failure to act in good faith.

A failure to act in good faith may be shown, for instance, where the fiduciary intentionally acts with a purpose other than that of advancing the best interests of the corporation, where the fiduciary acts with the intent to violate applicable positive law, or where the fiduciary intentionally fails to act in the face of a known duty to act, demonstrating a conscious disregard for his duties.

In re Walt Disney Co. Deriv. Litig., 906 A.2d 27, 67 (Del. 2006). Kendall's conduct may be characterized as intentional actions undertaken with a purpose other than that of advancing the best interests of the corporation, although reasonable minds may differ. See Tobias, *No Confidence*, *supra* note 71 (characterizing the fundamentals of the no-confidence effort as "strong" and observing that "the combination of his weakening health, falling stock, and uncertainty about his leadership decisions creates the best possible opportunity to knock him off the perch").

73. We must momentarily suspend reality here, however, given that a corporate CEO cannot, acting alone, dismiss the board members of a publicly traded firm under state corporate law norms. See, e.g., DEL. CODE ANN. tit. 8, § 141(k) (2023) (requiring a shareholder vote for director removal); see also MODEL BUS. CORP. ACT §§ 8.08–8.09 (AM. BAR ASS'N 2017).

74. *Succession: Honeymoon States* (HBO television broadcast Apr. 16, 2023) (Season Four, Episode Four); see also Scott Tobias, *Succession Recap: Getting Your Melancholy Everywhere*, VULTURE (Apr. 16, 2023), <https://www.vulture.com/article/succession-season-4-episode-4-recap-honeymoon-states.html>.

relationship with Logan, and Shiv at one time had the nod from Logan to pursue the CEO position. Shiv eventually accedes to supporting the joint team of Kendall and Roman that the board of directors approves. Strikingly—or maybe predictably—the rationales offered by the three relate more to their relationships with Logan than to their competence for the CEO position. Their conduct again reads more like a contest over the child daddy liked best rather than the person best suited for the CEO role.

These three executive office succession scenarios exemplify the same self-interest that exists in M&A and other finance and governance management decisions made over the course of the four seasons of *Succession*. Logan, Kendall, Roman, Shiv, and others in Waystar Royco's corporate management treat the corporation somewhat as their large piggy bank, rather than as a public investment institution worth serving and preserving for its social, financial, or economic merit. Their conduct raises questions about compliance with their fiduciary duties to Waystar Royco. A fiduciary that acts solely or predominantly with self-interest is not acting as a fiduciary at all.

CONCLUSION

Directors and officers of corporations owe fiduciary duties to those corporations. Those fiduciary duties comprise care and loyalty. While corporate directors and officers must comply with their fiduciary duties, their ability to do so may become more difficult and complicated when integrating family dynamics and business succession issues into business decisions in a family business context. “It is now widely accepted that the boundaries between the family and the firm are blurred in family businesses, and that emotions flow back and forth, ultimately affecting how the firm conducts its activities.”⁷⁵

The Demoulas and Roy family members who engaged in the management and control of their respective family businesses live with this complexity on a daily basis and must constantly navigate it. Although DSM is an actual privately held Massachusetts corporation and Waystar Royco is a fictional publicly traded Delaware corporation with shares listed on the New York Stock Exchange, Demoulas and Roy family members both struggle with similar kinds of self-interest (manifested in their conflicted and self-serving conduct, including through their usurpation of corporate opportunities). The seemingly stubborn attachment of Arthur T. Demoulas and Logan Roy to their

75. Luis R. Gomez-Mejia, Christina Cruz, Pascual Berrone & Julio O. De Castro, *The Bind that Ties: Socioemotional Wealth Preservation in Family Firms*, 5 ACAD. MGT. ANNALS 653, 655 (2011).

business leadership roles exemplifies the intransigence of family leadership; these family leaders are unwilling to give up their power and authority easily.⁷⁶ To be sure, family business leaders like Arthur T. and Logan may not be guided primarily by enhancing financial value to all shareholders—especially (but not exclusively) those from outside the family.⁷⁷ These aspects of family business management and control present formidable challenges to fiduciary duty compliance.⁷⁸

In a family business organized as a corporation, the corporation's board of directors should be aware of these challenges and take relevant preventative or corrective action. Their own fiduciary duties require that. Of course, family members who serve on and dominate the corporation's board of directors—whether through equity control or management control or effective control—complicate that task. Yet, “[t]he board's fiduciary duties are not excused when there is a controlling owner, even if the controlling owner is the chair of the board.”⁷⁹ Courts should be willing to enforce the directors' fiduciary duties in these contexts.⁸⁰

It is worth noting as a postscript that the Demoulas family succession story ends with one side of the family (Telemachus's side) keeping the DSM business and Arthur T. continuing to serve as its president after a brief ouster and the subsequent buyout of George's family.⁸¹ The Roy family succession story, however, results in few family members (and none of the founder's children) remaining with the Waystar Royco

76. See, e.g., Benjamin Means, *Solving the “King Lear Problem”*, 12 U.C. IRVINE L. REV. 1241, 1261 (2022) (“[T]he incumbent's individual identity may be entwined with the status that comes from leadership. Surrendering a business position means leaving behind a major part of what has given an individual's life meaning and allowing ‘younger strengths’ to rise in the workplace and at home.” (footnotes omitted)). In summarizing research in this area, a set of researchers notes that

family CEOs remain on the job seven years longer than nonfamily CEOs when the probability of firm failure is high. McConaughy (2000) found that the tenure of family members at the top is almost three times longer than that of nonfamily executives (176 versus 6.43 years). Cruz et al. (2010) reported similar results. Schulze et al. (2003b) blamed this “entrenchment problem” not only on family power but also on the presence of one-way or asymmetrical altruism, which makes the family incapable of effectively disciplining one of its own.

Gomez-Mejia et al., *supra* note 75, at 674.

77. *Id.* (“While both family and nonfamily shareholders financially benefit when the firm does well, the family principal is more likely to be guided by preferences that are not economically motivated.”).

78. Means, *supra* note 76, at 1262 (“[F]amily-business succession requires a separation of personal identity and business status; unless the incumbents are prepared to give up control, the formal clarity of financial and legal arrangements . . . will not matter.”).

79. *Id.* at 1281.

80. *Id.* at 1283; see also Means, *supra* note 4, at 929 (“[I]f the board lacks independence because of a controlling shareholder, then the board can enforce the fiduciary duties against the shareholder if there is self-dealing.”).

81. See *supra* note 37 and accompanying text.

business. Each succession story is the byproduct of the different circumstances in which the businesses exist—privately versus publicly held, third-generation versus second-generation surviving family management, and one-sided fiduciary duty breaches vetted through many years of litigation versus multilateral potential, unproven fiduciary duty breaches, among other differentiating factors.

Nevertheless, the Roys could have learned something about the avoidance or minimization of self-interest by being attentive students of the Demoulas family's fiduciary challenges. Perhaps, then, the art of *Succession* could have intentionally avoided imitating life in undesirable ways. It is easy to see, however, why the writers of *Succession* created characters that had such abundant self-interest emanating from both similar and different life objectives. Art may choose to eschew imitating the whole of life if aspects of life do not have sufficient entertainment value or artistic merit.

Certainly, by pointing out the common tendencies toward self-interest in these two family-business settings, this Essay aspires to help those in family businesses avoid imitating the art of *Succession*. If the Essay achieves that goal, the thought experiment represented on these pages will have been worth the time. Regardless, one would hope that the stories of the two families and their finance and governance dealings have some independent significance or interest for the reader.