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Piercing the Corporate Veil in Delaware & Georgia

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Research Guides

Piercing the Corporate Veil in Delaware & Georgia

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Guide Index

Home
Primary Sources
Secondary Sources
Computerized Research
Interest Groups & Associations

Home

Overview

"Piercing the corporate veil" is a metaphor used to describe an exception to the general rule of the limited liability liability protection statutorily provided by states to shareholders of corporations. Under particular circumstances and in the interest of justice and fairness, a court will "pierce" the corporate "veil" of limited liability which separates the corporation and sharehlder to impose liability on a shareholder for a corporate obligation.

Traditionally, courts only pierced a corporation's veil of limited liability when a plaintiff showed that the corporate form was abused to perpetrate a fraud, or similar injustice. In addition to fraud however, courts have struggled defining rules which pierces the corporate veil in circumstances that fall short of fraudulent abuse of the corporatate form. These judicial attempts at imposing liability on shareholders in instances other than fraud are sometimes referred to the alter ego or mere instrumentality doctrines.

About the Author

William Kennedy is a third year law school student at Georgia State University. He received his bachelor of arts degree in Computer Science from the University of Texas at Austin. This web research guide was written for Professor Johnson's Advanced Legal Research Class in the Fall 2009 semester.

Scope

This research guide provides relevant sources to information regarding the doctrine of piercing the corporate veil, the exception to the general rule of limited liabilty protection for shareholders. In particular, this bibliography provides resources to analysis of the doctrine in general and to analysis of how the doctirne is adjudicated in the jurisdictions of Delaware and Georgia.

Back to Top

Primary Sources

Legislation

Delaware

Del. Code Ann. Tit. 8, § 102(b)(6) (2009).

A provision imposing personal liability for the debts of the corporation on its stockholders or members to a specified extent and upon specified conditions; otherwise, the stockholders or members of a corporation shall not be personally liable for the payment of the corporation's debts except as they may be liable by reason of their own conduct or acts;

Georgia

Ga. Code Ann. 14-2-202(b)(4) (West 2009).

A provision eliminating or limiting the liability of a director to the corporation or its shareholders for monetary damages for any action taken, or any failure to take any action, as a director, except liability:

(A) For any appropriation, in violation of his or her duties, of any business opportunity of the corporation;

(B) For acts or omissions which involve intentional misconduct or a knowing violation of law;

(C) For the types of liability set forth in Code Section 14-2-832; or

(D) For any transaction from which the director received an improper personal benefit,

provided that no such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective;

Case Law

Delaware (in reverse chronological order)

- ***Pauley Petroleum Inc. v. Continental Oil Co.***, 239 A.2d 629 (Del. Ch. 1968).

  Leading Delaware case on piercing the corporate veil. The court stated, "that upon a proper showing corporate entities as between parent and subsidiary may be disregarded, and the ultimate party in interest, the parent, be regarded in law and fact as the sole party in a particular transaction. This however may not be done in all cases. It may only be done in the interest of justice, when such matters as fraud, contravention of law or contract, pubic wrong, or where equitable consideration among members of the corporation require it, are involved." Id. at 633.

- ***Irwin & Leighton, Inc. v. W.M. Anderson Co.***, 532 A.2d 983 (Del. Ch. 1987).

  Delaware's court of equity, the Court of Chauncery, explained that in addition to fraud, conduct short of the active intent to ddeceive required to establish fraud "may" be sufficient to pierce the corporate veil. For example, where those "in control" of a corporation have not treated it as a distinct legal entity and instead have used the corporation as thier "intstrumentality", then courts will be less inclined to regard the corporation as an effective limitation on liabilty.

  The court cited a two-part test as the standard to use when determining whether to pierce the corporate veil under a "mere instrumentality" theory: (1) The dominant coporation must have controlled the subservient corporation to such an extent that it could be said to have used it as an instrumentality of its own, and (2) the dominant corporation must have proximately caused the plaintiff harm through misuse of this control.

- ***Harco Nat. Ins. Co. v. Green Farms. Inc.,*** 15 Del. J. Corp. L. 1030, 1989 WL 110537 (Del. Ch. 1989).

  The court noted that "to date, the Delaware courts have not explicitly adopted the alter eqo theory of piercing the corporate veil", but that "the District Court of Delaware . . . did accept such a theory in U.S. v. Golden Acres, Inc. (1988). The court explained the analysis used in Golden Acres: Factors used to determine whether a corporation is the alter ego of another include (1) whether corporation was undercapitalized, (2) whether the corporation was insolvent, (3) whether corporate formalitites were observed, (4) whether the dominant shareholder siphoned corporate funds, and (5) whether the corporation, in general, functioned as a facade for the dominant shareholder.

  Although the court ruled against the plaintiff's summary judgment motion to pierce because of disputed facts, the court stated that this case seemingly presents a good case for piercing the corporate veil.

- ***Mobil Oil Corp. v. Linear Films, Inc.***, 718 F.Supp. 260 (D. Del 1989).

  A plaintiff must show fraud, or something like it, to pierce the corporate veil. "But, Delaware courts have also stated, although not held, that the corporate veil may be pierced where a subsidiary is in fact a mere instrumentality or alter ego of its parent."

- ***Mabon, Nugent & Co. v. Texas Am. Energy Corp.***, 1990 WL 44267 (Del. Ch. 1990).

  "Generally the corporate veil may be pierced where there is fraud, . . . but the Delaware courts have also state, although not held, that the corporate veil may be pierced where a subsidiary is in fact a mere instrumentality or alter ego of its parent . . . where equitable considerations require it."

- ***Harper v. Delaware Valley Broadcasters, Inc.***, 743 F.Supp. 10 (D.Del.,1990).

  The court stated that "applicaation of the alter ego theory is something of a new development in the Delaware courts." The court remarked that the *Harco* court "implicitly" adotpts the alter ego theory, although not Delaware courts to date have "explicitly" adopted the theory.

  The court also stated that the defendants correctly assert that, under Deleware law, a showing of fraud is necessary to persuade a Delaware court to pierce the corporate veil. But, under an alter ego theory, it is not necessary to allege fraude. However, even under an alter ego theory, "a court will not disregard separate legal entities absent a showing that equitable considerations require such action."

  It stated that a mere allegation that a plaintiff "had not been paid" would not be "unfairness or inequity sufficient to persuade this court that the Delaware state courts would" pierce the veil.

- ***Wallace ex rel. Cencom Cable Income Partners II, Inc., L.P. v. Wood***, 752 A.2d 1175 (Del. Ch. 1999).

  "Persuading a Delaware court to disregard the corporate entity is a difficult task." And, Piercing the corporate veil under the alter ego theory "requires

that the corporate structure cause fraud or similar injustice." "Effectively, the corporation must be a sham and exist for no other purpose than as a vehicle for fraud."

- ***Trustees of Arden v. Unity Constr. Co.***, 2002 WL 1466600(Del. Ch. 2002).

  "A court can pierce the corporate veil of an entity where there is fraud or where a subsidiary is in fact a mere instrumentality or alter eto of it's owner." But, "common management of two entities does not, by itself, justify piercing the corporate veil."

Georgia

- ***Bone Const. Co., Inc. v. Lewis***, 250 S.E.2d 851 (Ga. Ct. App. 1978).

  Courts permit "piercing the corporate veil" "in situations where the parties involved have themselves disregarded the separateness of legal entities by a commingling and confusion of properties, records, control, etc." Kaplan's Nadler, Ga. Corporation Law 99, s 3-21; 6 EGL 187.

  It is obvious that if the individual who is the principal shareholder or owner of the corporation conducts his private and corporate business on an interchangeable or joint basis as if they were one, then he is without standing to complain when an injured party does the same. "Under such circumstances, the court may disregard the corporate entity." Kaplan's Nadler, Ga. Corporation Law 100, s 3-21.

- ***Boafo v. Hospital Corp. of America***, 338 S.E.2d 477 (Ga. Ct. App. 1985).

  "One reason that law establishes separate corporate identity is so that a corporation can hold itself independently apart and insulate it from existence of another related corporation even while it uses related corporation or controls it to promote its own end, and separate identity is not disregarded unless it serves to promote injustice or protect fraud, for that would defeat purpose of law."

- ***Amason v. Whitehead***, 367 S.E.2d 107 (Ga. Ct. App. 1988).

  In Georgia, to pierce the corporate veil, there must be evidence of abuse of the corporate form. Ellis v. Edwards, 180 Ga.App. 301, 348 S.E.2d 764 (1986). Plaintiff must show that the defendant "disregarded the separateness of legal entities by commingling on an interchangeable or joint basis or confusing the otherwise separate properties, records or control." Earnest v. Merck, 183 Ga.App. 271, 273, 358 S.E.2d 661 (1987). Accord Northwest Preferred v. Williams, 184 Ga.App. 145, 147(2), 360 S.E.2d 910 (1987).

  In Amason, there is no evidence of fraud, no abuse of the corporate form, no commingling of assets and not even a showing of corporate insolvency at the time of the transaction, but only that at the time of trial the corporation had no assets. Compare Johnson v. Lipton, 254 Ga. 326, 328(1), 328 S.E.2d 533 (1985). "[O]ne who deals with a corporation as such ... cannot, in the absence of fraud, deny the legality of the corporate existence for the purpose of holding the owner liable." Lamas v. Baldwin, 140 Ga.App. 37, 40(1), 230 S.E.2d 13 (1976).

- ***Anderson v. Chatham***, 379 S.E.2d 793 (Ga. Ct. App. 1989).

  The evidence of Anderson's disregard of the separateness of the legal business entities by a commingling and confusion of properties, records, control, etc. was sufficient to permit the jury to pierce the corporate veils.

- ***Humana, Inc. v. Kissun***, 471 S.E.2d 514 (Ga. Ct. App. 1996).

  In order to pierce corporate veil it must be shown that parent's disregard of corporate entity made subsidiary mere instrumentality for transaction of parent's affairs, that there was such unity of interest in ownership that separate personalities of subsidiary and parent no longer exist, and that to adhere to doctrine of corporate entity would promote injustice or protect fraud.

  For issue of piercing corporate veil to be submitted to jury there must be evidence that corporate arrangement was sham, used to defeat justice, to perpetuate fraud or to evade statutory, contractual or tort responsibility.

Back to Top

Secondary Sources

Law Review Articles and Other Periodical Sources

All Jurisdictions

- I. Maurice Wormser, ***Piercing the Veil of Corporate Entity***, 12 Colum. L. Rev. 496 (1912).

  Considered the seminal article on piercing and probably one of the first persons to use the metaphor of piercing the corporate veil. Author I. Maurice Wormser discusses when the courts should frustrate attempts "to commit iniquity, to perpetrate fraud, to achieve monopoly or to accomplish wrongs, under the guse, and hiding behind the veil, of corporate existance."

- Cathy S. Krendl & James R. Krendl, ***Piercing the Corporate Veil: Focusing the Inquiry***, 55 Den. L. J. 1 (1978).
  This article discusses the historical development of piercing the corporate veil as an equitable remedy, discusses the "Powell" rule, and suggests some

considerations and procedures to fortify limited liability and help plaintiffs pierce the veil.

The articles explains, in detail, the three legs of the Powell rule: instrumentality, improper purpose, and proximate cause of harm.

- David H. Barber, ***Piercing the Corporate Veil***, 17 Willamette L. Rev. 371, 373 (1981). This article analyzes: the purpose of limited liability, the general criteria required to pierce the corporate veil, a two-prong test to determine when the veil can be pierced, contract versus tort claim cases, undercapitalization cases, and piercing the corporate veil where a shareholder is a corporation-parent company.

  The two-prong test requires a plaintiff seeking to pierce the corporate veil show (1) that ther be such unity of interest and ownership that the separate personalities of the coroporation and the shareholders no longer exist, and (2) that , if the acts are treated as those of the corporation alone, an inequitable result will follow.

- Frank H. Easterbrook & Daniel R. Fischel, 52 U. Chi. L. Rev. 89, ***Limited Liability and the Corporation***, Winter, (1985).

  The article performs an in-depth analysis of corporate shareholder limited liability by anaylzing the general rules of limited liability and its exceptions, such as piercing the corporate veil. It explains that that piercing the corporate veil of limited liabilty makes sense and should be understood as attempts by the courts to balance the benefits of limited liability against its costs. It acknoweledges that the "piercing" case law is varies from state to state, and it occurs "freakishly;" like lightning, it is rare, severe, and unprincipled.

- Robert Thompson, Piercing the Corporate Veil: An Empirical Study, 76 Cornell L. Rev. 1036, (1991).
  This article claims that although piercing the corporate veil is the most litigated issue in corporate law, it is the most misunderstood issu. The article presents an empirical study based on 1600 cases available on Westlaw up to 1985, where the issue of piercing the corporate veil was determined. The study evaluated the nature of the corporations, the plaintiffs, the courts, and the reasons given by the courts as to why they either pierced or did not pierce the corporate veil.

- David Millon, ***Piercing the Corporate Veil, Financial Responsibility, and the Limits of Limited Liability***, 56 Emory L.J. 1305 (2007).

  In depth article which discusses the justifications of limited liability, the current status of the veil piercing doctrine, the reasons for veil piercing, and a proposition which limits the scope of limited liability to cases of financially responsible behavior.

- Daniel R. Kahan, ***Shareholder Liability for Corporate Torts: A Historical Perspective***, 97 Geo. L.J. 1085 (2009).

  Recent article on the limited liability benefit provided to shareholders and begins by discussing the origins of limited liability in the United States. It specifically analyizes limited liability protection of shareholders from tort lawsuits and compares shareholder protection from tort claims against shareholder protection from contract claims.

Delaware

- Fredric J. Bendremer, ***Delaware LLCs and Veil Piercing: Limited Liability has its Limitations***, 10 Fordham J. Corp. & Fin. L. 385 (2005).

  Although this article discusses veil-piercing in regards to a business associations formed under Delaware's Limited Liability Company Act, as opposed to incorporated business associations, the article contains a nice analysis of piercing the corporate veil law in Delaware, with comparisons to other jurisdictions.

- David Mace Roberts & Rob Pivnick, ***Tale of the Corporate Tape: Delaware, Nevada and Texas***, 52 Baylor L. Rev. 45 (Winter 2000).

  This article compares coporate law among three states, Delaware, Nevada, and Texas regarding many corporate law issues, including piercing the corporate veil. The article cites to many important Delaware cases dealing with different piercing the veil doctrines such as fraud and alter ego; comparing how the courts of each jurisdiction determine whether the court may pierce the limited liability veil between a corporation and a shareholder.

Georgia

- Paul A. Quiros, et al., ***Business Associations***, 55 Mercer L. Rev. 55 (Fall 2003).

  This article surveys noteworthy cases in the areas of corporate, securities, partnership, and banking law decided during the survey period by the Georgia Supreme Court, the Georgia Court of Appeals, the United States Court of Appeals for the Eleventh Circuit, and the United States district courts located in Georgia.

Treatise

- Stephen B. Presser, Piercing the Corporate Veil (West, 2009).

  This treatise helps you interpret the "piercing the corporate veil" doctrine in any state jurisdiction or federal court. It examines differences among piercing doctrines in various state and federal courts and analyzes each state's leading case law. Available on Westlaw.

  All U.S. Jurisdicitions

  §§ 1:1-12

  Discusses the doctrine of limited liability and piercing the corporate veil. Analyzes cases of historical importance and the arguments pro and con for limited liability and piercing, and specifically discusses the situation of a corporation and its subsidiary.

  Delaware

  § 2:8

  In depth analysis of historical evolution of the Delaware's piercing the corporate veil case law. Analysis of relevant cases. Current through March 2009.

  Georgia

  § 2:11

  In depth analysis of historical evolution of the Georgia's piercing the corporate veil case law. Analysis of relevant cases. Current through March 2009.

American Law Reports

- J. A. Bryant, Jr., ***Liability of Corporation for Contracts of Subsidiary***, 38 A.L.R.3d 1102, (2009).
- Ferdinand S. Tinio, Annotation, ***Stockholder's Personal Conduct of Operations or Management of Assets as Factor Justifying Disregard of Corporate Entity***, 46 A.L.R. 3d 428 (2009).
- L. S. Tellier, ***Inadequate Capitalization as Factor in Disregard of Corporate Entity***, 63 A.L.R.2d 1051, (2009).
  - J. C. Vance, ***Disregarding Corporate Entity in Settling Accounts Between Close Corporation and its Stockholder or Stockholders***, 100 A.L.R.2d 385 (2008).

Books

- Harry G. Henn & John R. Alexander, Laws of Corporations, (3rd ed. 1983-1986).

  Chapter 7, Section C, "Disregard of Corporateness". Provides expert analysis of corporate and unincorporated business. Specifically discusses piercing the corporate veil law, and cites to only a few cases. Available on Westlaw and in the GSU College of Law Library.

Legal Encyclopedias

- 1 Fletcher Cyclopedia of the Law of Corporations, ***History and Nature, Corporate Entity, Piercing the corporate Veil, Classification and Kinds***, §§ 41.- 48.

  Multi-volume set treatise that provides comprehensive coverage of federal and state corporate law.

  Available on Westlaw and in the GSU College of Law Library.

- 18 Am. Jur. 2d Corporations §§ 46 - 68.

  American Jurisprudence, Second Edition. Published by West. Excellent breadth of coverage on piercing the veil law. According to the publisher, "The articles in American Jurispurdence collect, examine, and summarize the broad principles of American law and, at the same time, provide direct leads to supporting cases, related annotations, forms, proofs, and trial techniques. Alphabetically arranged in more than 400 topics or chapter."

  Available on Westlaw and in the GSU College of Law Library.

- 18 C.J.S. Corporations §§ 14 - 22.

  Corpus Juris Secundum, publised by West. Wide analysis of piercing the corporate veil law. According to the publisher, C.S.J. contains case law

from regarding all legal federal and state topics.

Available on Westlaw and in the GSU College of Law Library.

- 6 Ga. Jur. Corporations §§ 1:21 - 1:34.

  Georgia Jurisprudence: Corporations, Other Business Organizations, and Securities Regulations, Volume 6. Piercing the Corpoate Veil is in Volume 6, Chapter 1, section IV. According to the West web site, this encyclopedia focused on Georgia business law "is a modern statement of selected substantive law topics including business torts and regulations, contracts, corporations, criminal law, decedents' estates and trusts, employment and labor law, environmental law, family law, insurance law, personal injury and torts, property law, the Uniform Commercial Code, and workers' compensation law."

  Available on Westlaw and in the GSU College of Law Library.

Newsletters and Alerting Services

- Andrews Delaware Corporation Law Update (Andrews Litigation Service)

  Available on Westlaw, this journal provides detailed analysis of all important decisions - published and unpublished - from the Delaware Chancery, Superior and Supreme Courts and the U.S. District Court for the District of Delaware that involve corporate governance issues.

- Andrews Delaware Corporate Litigation Reporter

  This publication offers summaries and reproductions of every important opinion and pleading filed in Delaware-including memoranda, letters-to-counsel, and bench rulings-in the Delaware Supreme, Superior, and Chancery courts and the U.S. District Court for the District of Delaware concerning corporate issues.

Back to Top

Computerized Research

Online Research Systems

i. Westlaw

Westlaw is one of the most powerful legal search engines with tens of thousands of databases covering almost any legal subject. Use the directory tab located at the top of the Westlaw "research" menu to display different legal subjects. Regarding piercing the corporate veil law, click "Topical Practice Areas", and then click "Business Organizations and Relations."

This displays a list of research sources, and a good place to start is clicking "Forms, Treatises, CLEs and Other Practice Material."

Useful search terms include "piercing" "veil" "alter ego" and "limited liability."

ii. LexisNexis

Competitor with Westlaw, LexisNexis is also a powerful and extensive legal search tool with thousands of different databases arranged by topic.

Like Westalw, a good place to start piercing the coporate veil law is by clicking "Areas of Law - By Topic" from the initial research menu. The next screen brings up a list of many different legal topics, click on "Corporate" to bring up selections regarding corporate governance, SEC filings, regulatons and adminstrative law, legal journals, and practice materials.

iii. Free/Low Cost

- Justia.com

  No cost legal database providing access to federal and state law, both caselaw and staturory law. Also, Justicia organizes information, including by "Practice Area." The website also offers access to hundreds of legal blogs, and both state and federal practice information and code.

  Click on "Business Law" to access links to articles, glosary, and other web resources.

  http://www.justia.com/business-operations

lexisONE

A LexisNexis site that provides both free and low cost access to LexisNexis' legal databases. The "Free Case Law" tab allows you to serach for case law by either key words or the citation. Additionally, all content can be accessed for the day, week or month using your credit card.

http://law.lexisnexis.com/webcenters/lexisone/

- Georgia Casemaker Online Library

Powerful legal search engine provided by the State Bar of Georgia. From the Casemaker web site:

"Casemaker is a unique online legal research tool with a powerful search engine providing access to a combination of state and federal materials, which was launched by the Ohio State Bar Association in 1998. Casemaker includes historic to current cases, statutes, and regulations.

Casemaker's comprehensive library includes links to Georgia caselaw, Georgia statutes, state and federal court rules, administrative codes, Attorney General opinions, and much more. Recently, Casemaker added libraries for every state in the country, which include state caselaw, current state statutes, and the state's constitution. Casemaker is currently expanding its federal content to include all U.S. Supreme Court cases and Circuit Court cases going back to 1950. This ever-expanding library makes Casemaker one of the most valuable member benefits the Bar offers."

http://www.gabar.org/casemaker/

Legal Blogs

- Justia Business Law Section Blog List

Justia, the no-cost legal research website, provides links to over two-hundred blogs discussing the practice area of business law.

http://blawgsearch.justia.com/category.aspx?catid=1874

- The Delaware Corporate and Commercial Litigation Blog

Blog run by lawyer Francis Pileggi, founding partner of the law firm Fox Rothschild LLP. The blog summarizes recent Delaware court decisions of import about corporate and commercial law, primarily from the Delaware Chancery Court and Delaware Supreme Court. And, includes seveal article regarding the pracicte area of commercial and corporate law.

http://www.delawarelitigation.com/

- Delaware Business Lawyer Blog

Contains entries regarding many aspects of Delaware business law including piercing the corporate veil in Delaware. Published by the law firm of Charles Snyderman, P.A.

http://www.delawarebusinesslawyerblog.com/

- The Harvard Law School Forum on Corporate Governance and Financial Regulation

This site contains plenty of entries and a wealth of links to other resources concerning coroproate law. The Forum provides updates on working papers, seminars, speakers, and other activities sponsored by the Harvard Law School Program on Cororate Governance.

http://blogs.law.harvard.edu/corpgov/welcome/

Back to Top

Interest Groups & Associations

The Widener Insititute of Delaware Corporate and Business Law

Provides news, cases, and commentaries on Delaware corporate and business law. Links to Delaware state resources and websites dedicated to Delaware law.

http://blogs.law.widener.edu/delcorp/

American Bar Association Business Law Section

The American Bar Association (ABA) provides members access to business law information including various business law publications, newletters, and business law committee meetings.

The newsletter section contains several business law practice area newsletters focused on specific issues, such as business and corporate litigation and middle market and small business companies.

http://www.abanet.org/buslaw/home.shtml

State Bar of Georgia Business Law Section

State Bar of Georgia members can join the business law section, additional dues required. The section contains standing committees on Corporate Code, the UCC, Securities, Partnerships, Legal Opinions and Publications. The business law section states "that these Committees also conduct CLE programs during the year, and the Section annually sponsors a three-day institute on developments in corporate and banking law. The Section also undertakes in-depth studies of various areas of law or practice which affect a broad range of corporate lawyers."

http://www.gabar.org/sections/section_web_pages/business_law/

Back to Top

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