When, how & why of piercing the corporate veil in Indiana

By Colin E. Flora

Every litigator must discover, often the hard way, that a judgment is not worth the paper it is printed on unless there is a pocket standing behind it. The necessity for finding a source of recovery has meant the development of techniques for disregarding one of the most prevalent legal fictions: corporateness.

The general proposition of corporateness is that "corporate shareholders sustain liability for corporate acts only to the extent of their investment and are not held personally liable for acts attributable to the corporation."[1] But the general proposition only holds true to the extent that benefits of corporateness are held by an entity that respects the obligations of corporate formalities: "(a) Business must be conducted on a corporate and not a personal basis; [and] (b) The enterprise must be established on an adequate financial basis."[2] The ability to circumvent corporateness – traditionally known as "piercing the corporate veil"[3] – permits imposition of liability to an entity's principals regardless of whether the underlying claim sounds in tort, contract or any other cause of action.[4]

As one scholar aptly stated, "Piercing the corporate veil is the most litigated issue in corporate law, and yet it remains among the least understood."[5] The issue remains convoluted despite a seemingly endless supply of authority on the subject.[6] The purpose of this article is to distill the doctrine for practitioners looking to apply veil piercing in its various forms without summiting the mountains of cases, treatises and journals. This article does not, however, delve into the muddied waters of veil piercing in federal labor and employment law. To do so would require a great deal more space than available here, and the topic is well served elsewhere.[7] The same is true for the issue of whether federal common law controls veil piercing for CERCLA.[8] This article also avoids the perils of tax law; as Justice Frank Sullivan noted, "Different considerations apply in the context of tax law where exceptions to the doctrine of separate corporate identity more often arise."[9]

Brief history of veil piercing

The corporation as a fictitious person was first recognized in the 13th-century ecclesiastical writings of Pope Innocent IV.[10] But the origins of limited liability date to ancient times, found in some form in Roman, Islamic and Byzantine law.[11] Although limited liability was not the driving force behind the 17th-century inception of the secular corporate form in England and America, limited liability ultimately proved to be the dominant benefit of incorporation.[12] The first statute providing general protection for shareholders arose in Massachusetts in early 1809.[13] By the end of the 19th century, limited liability was the statutory norm.[14] Indiana followed suit in the late 19th century.[15]

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The exact origin of veil piercing seems lost to history.[16] The first recorded judicial reference to the corporate veil comes from Chief Justice John Marshall: "But it is said that you may raise the veil which the corporate name interposes, and see who stand behind it."[17] By whom "it [wa]s said" seems to have been taken to the grave, a likely casualty of the dearth of American law reporters in the nation's early decades.[18] That case, though laying the bedrock for what would become modern veil piercing, was confined solely to the issue of jurisdiction.[19]

The first instance of applying the concept to allow attachment to the assets of a shareholder appears to be the 1865 New York decision *Booth v. Bunce*, holding: "The effect of this finding ... is that this corporation was a device resorted to by [the copartners] to hinder, delay and defraud their creditors. ... [T]he plaintiff had a right to disregard the corporation as a void thing, and resort to the property of [a copartner] to satisfy his demand."[20] The concept has grown from there, making "the United States[] 'the cradle of piercing the corporate veil doctrines[.]'"[21]

For Indiana, the doctrine as we know it was first examined by the appellate court in 1938.[22] The court summarized: "It is also recognized in principle that the fiction of corporate entity may be disregarded where one corporation is so organized and controlled and its affairs are so conducted that it is, in fact, a mere instrumentality or adjunct of another corporation."[23] The court did not, however, refer to the doctrine as "veil piercing"; that terminology would not enter Indiana case law until 1971,[24] but has dominated ever since.

A peculiarity of this area of law is its nomenclature, which is permeated by verbal characterizations, epithets and metaphors.[25] The most prevalent is "piercing the veil," attributed to a 1912 article by Prof. I. Maurice Wormser.[26] The prevalence of metaphors has drawn the consternation of scholars and judges.[27] The most notable critic was then-Judge Benjamin Cardozo:

> The whole problem of the relation between parent and subsidiary corporations is one that is still enveloped in the mists of metaphor. Metaphors in law are to be narrowly watched, for starting as devices to liberate thought, they end often by enslaving it.[28]

Though, as Judge Richard Posner noted, Judge Cardozo "made no effort to dispel" the mists of metaphor.[29] With judges and scholars yielding to Prof. Wormser's phrasing, the terms "piercing the corporate veil" and "alter ego" now monopolize case law. Some states, however, refrain from metaphor and refer to it as the "doctrine of corporate disregard."[30] But, even this name has drawn critics.[31]

What had been solely a common-law doctrine was codified into Indiana law in 1986: "the shareholder may become personally liable by reason of the shareholder's own acts or conduct."[32] The codification does not spell out circumstances for veil piercing, and this statute addresses only half the doctrine anyway – it does not address reverse piercing. The difficulties in codifying a fundamentally equitable doctrine long ago led Prof. Wormser to proclaim codification "not only impossible but preposterous. Human life and relations in regard to corporate development[,]" he insisted, "are far too complex to permit of any such formulation. ... Those who would codify it fail to understand the spirit and genius which underlie it."[33]

Types of veil piercing

Fundamentally, there are two approaches to disregarding corporateness. The first is to pierce the veil so as to affix liability to a shareholder for the obligations of the corporation. The second is to pass liability from the shareholder into the corporation and its assets – usually called reverse piercing. While this dichotomy is the most basic split, the nomenclature makes another foundational distinction between an individual and a corporate shareholder.

Piercing the corporate veil

For most of the 20th century, Indiana case law provided only a vague sense of considerations for veil piercing.[34] Finally, in *Aronson v. Price,* the Indiana Supreme Court, provided a list of eight factors:

> (1) undercapitalization; (2) absence of corporate records; (3) fraudulent representation by corporation shareholders or directors; (4) use of the corporation to promote fraud, injustice or illegal activities; (5) payment by the corporation of individual obligations; (6) commingling of assets and affairs; (7) failure to observe required corporate formalities; or (8) other shareholder acts or conduct ignoring, controlling or manipulating the corporate form.[35]

Consistent with Prof. Wormser's disdain for codification, the *Aronson* factors are not exclusive.[36] The list applies to the prototypical veil-piercing scenario: looking through a corporation to its individual shareholders.[37] This theory of liability is typically "described simply as piercing the corporate veil[.]"[38]

Alter ego

Like piercing the corporate veil, the term "alter ego" pervades case law. At times, it has been used as a synonym for veil piercing.[39] More typically, "alter ego" – a subset of piercing the corporate veil – is used in a doctrinal sense, when the shareholder is a corporation instead of an individual.[40]

> The corporate alter ego doctrine is a device by which a plaintiff tries to show that two corporations are so closely connected that the plaintiff should be able to sue one for the actions of the other. The purpose of the doctrine is to avoid the inequity that results when one corporation uses another corporation as a shield from liability.[41]

"Justification may exist where innocent third parties have no way of knowing with which entity they are dealing."[42] For alter ego piercing, the *Aronson* factors are augmented by four additional factors:

> (1) similar corporate names were used; (2) the corporations shared common principal corporate officers, directors and employees; (3) the business purposes of the organizations were similar; and (4) the corporations were located in the same offices and used the same telephone numbers and business cards.[43]

As with *Aronson*, the alter ego factors are nonexclusive.[44] Notably, it does not matter that the alter ego is a subsequently formed entity.[45]

Common 'identity,' 'excessive fragmentation' or 'single business enterprise' corporations

The alter ego doctrine is not confined to two corporations, but may also apply where numerous entities are managed as a single enterprise.[46] "These 'single business enterprise' corporations may be identified by characteristics such as 'the intermingling of business transactions, functions, property, employees, funds, records, and corporate names in dealing with the public.'"[47] Other indicia to be considered include:

> the interdependence of the corporations for supply and demand; the failure to observe formalities of separate corporate procedures for each corporation or to document transfers of funds; inadequate financing of one corporation as a separate unit from the point of view of meeting its normal obligations, either because of inadequate financing initially or because its earnings have been drained off to keep it in a condition of financial dependency; and the direction of company policies of one corporation primarily toward the interests of an affiliate.[48]

"[E]xtensive use of intercompany loans, purchases, sales, securities, real estate, mortgages and other investments" has

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also been found to be an important consideration.[49]

Aiding the analysis, the Court of Appeals recognizes a "presumption that large corporations often deliberately structure the parent and wholly-owned subsidiaries of the parent corporation in such a complex and inter-related manner so as to prevent ascertainment of exactly which corporate entity shoulders the responsibility of liability to injured individuals."[50]

Reverse piercing

Although infrequently sought, Indiana law allows the veil to be pierced in either direction, thereby affixing liability to a corporation for the debts of a shareholder.[51] This form of reverse piercing – sometimes called "outside reverse piercing"[52] – applies the same standards as traditional piercing.[53] Indiana case law has made clear that reverse piercing applies to permit attachment to corporate assets for the liability of a shareholder.[54] Whether it applies to bind a subsidiary for the actions of its parent corporation, which at least one district judge has found, remains an open question.[55] Given Indiana's willingness to disregard the corporate form when numerous corporations have been treated as a single enterprise and support from other jurisdictions,[56] it appears Indiana law would permit reverse piercing of a subsidiary.

Defective incorporation

There is a fifth category of veil piercing that is fundamentally not veil piercing at all. This scenario arises when the would-be corporation has failed to satisfy the procedural requirements for incorporation.[57] An example is found in *A.B.C. Home & Real Estate Inspection, Inc. v. Plummer*.[58] There, the Court of Appeals held that A.B.C.'s incorporation was defective because it never issued stock – a requirement since repealed. As a result, A.B.C. was treated as a sole proprietorship, and its members were personally liable.

Applying the factors

No single factor is determinative,[59] and not every factor must be met.[60] "The authority of the courts to disregard corporate identity does not stem from the existence of a specific factual circumstance, but rather from the necessity of preventing fraud or unfairness to third parties."[61] Merely sharing officers and shareholders does not alone justify piercing.[62] Nor does having all of the shares owned by a single or a handful of shareholders.[63] But exactly how to weigh the factors remains an open question. At least one district judge has indicated that a majority of the factors must be met.[64] Nevertheless, with a list of non-exclusive factors, finding a majority may be a Sisyphean task. A factor-by-factor analysis, however, is unnecessary when the relationship as a whole appears to merit disregard of the

corporate form.[65] Regardless of what set of factors is applied, "the fraud or injustice ... must be caused by, or result from, misuse of the corporate form."[66] But the fraud or injustice does not need to stem from the actions of a shareholder; it can come from an agent.[67] And it is not a defense that the creditor is a sophisticated market participant.[68]

There is also a question of whether each factor should be weighed equally and whether that weight should depend on the type of case. The Seventh Circuit recognized that "[a]side from the[] indicia of corporate form and control, undercapitalization is the single most important factor in the . . analysis."[69] Notably, undercapitalization is measured as of the time of formation of the company, unless it subsequently expands the size or nature of the business.[70] Indiana has also recognized the high importance of capitalization: "Recognition of the corporate entity ... has been conditioned on the requirement that the corporation be established on an adequate financial basis."[71] The importance of capitalization might depend on the basis of liability. There is some authority that supports a greater propensity to pierce the veil where the claim rests in tort rather than in contract.[72] Judge Barker for the Southern District of Indiana found: "Capitalization ... is a factor of considerably less significance in a case rooted in contract than in tort, especially where no assertion of fraud has been made."[73] Prof. Galanti, original author of the *Business Organizations* volumes of the Indiana Practice Series, cautioned against de-emphasis of capitalization where "persons actively involved in operating the corporation are responsible for the thin capitalization."[74]

Burden

Indiana law presumes limited liability of shareholders[75] and "distinct corporations, even parent and subsidiary corporations, are [] separate."[76] As a result, "the burden on a party seeking to 'pierce the corporate veil' is severe."[77] Nevertheless, it is still subject only to the preponderance standard.[78] Due to the "highly fact-driven" nature of the inquiry and because it is "highly dependent of the equities of the situation" the decision to pierce the veil is almost never appropriate for summary judgment.[79] Though Indiana appellate law has not spoken to whether summary judgment is more appropriate depending on the side of the *v.*, then-Chief Judge David Hamilton for the Southern District of Indiana concluded that it should be more readily available for a defendant.[80] Of course, the utility of that authority is limited given the marked difference between Indiana and federal summary judgment standards.[81]

In addition to the burden for proving a veil-pierce claim, pleading such an action may be subject to the higher pleading standards of Rule 9(B). Although Indiana state courts have not addressed the issue, numerous Indiana federal courts have.[82] Northern District of Indiana Chief Judge Simon found that "courts are all over the board on the issue."[83] It seems clear that Rule 9 does not apply where piercing is based upon the prevention of injustice and not on fraud.[84] When the action sounds in fraud, it "appears to be an open question."[85]

What happens once the veil is pierced?

The most obvious result of piercing the veil is that it allows direct attachment to the assets of the shareholder, or corporation in a reverse pierce. But that is not the only ramification. Once the corporate form is removed, the shareholder and the corporation "become 'one for all purposes.'"[86] Thus, once the veil is gone, shareholders are subject to common law doctrines imparting liability across related persons such as joint ventures.[87] Indeed, the classical rule has been that once the veil was pierced, "all of the associates were held liable as partners, the theory being that the associated group was either a

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corporation or a partnership with its mutual agency."[88] The modern trend is toward analyzing the specific case to determine whether a partnership has been formed, and if so, who are the partners.[89]

Entities subject to veil piercing

The most obvious entity subject to piercing is a closely held corporation. Applying Indiana law, the Seventh Circuit has also found piercing appropriate even for publicly traded corporations.[90] Veil piercing applies to entities other than corporations; limited liability companies,[91] professional corporations[92] and nonprofit corporations each may be pierced.[93] Application of the doctrine to limited partnerships is not clear. Indiana courts have not addressed the issue, and courts elsewhere are in disagreement.[94] While the statutes of other states specifically call for veil piercing,[95] Indiana statutes provide: "The laws of Indiana or another jurisdiction may not impose personal liability on a partner in a limited liability partnership."[96] A literal reading, however, is ill advised as the same section also states: "A partner of a limited liability partnership may be personally liable for the partner's own acts or omissions."[97] In the general partnership context, veil piercing is unnecessary and, therefore, unavailable.[98]

Whether a trust is subject to veil piercing also remains a topic for debate. One camp recognizes that a trust is "fundamentally a relationship" and does not have an independent legal existence with which to invoke a corporate veil in the first place.[99] Other courts have not hesitated to apply veil piercing to trusts.[100] Whether a trust can be pierced is a question of state law,[101] but Indiana courts have not weighed in. Indeed, the question of whether a trust is an independent legal entity appears to remain unsettled as well, with support for either conclusion.[102]

Procedural timing for veil piercing

A nuance in bringing a claim for veil piercing is choosing whether to bring it as a claim in the case-in-chief or in proceedings supplemental. There are considerations that make either decision appropriate. There is no shortage of cases in which the claim is brought in the initial complaint. But, at least one Indiana district judge has, perhaps, signaled a preference that veil piercing wait for pro supp.[103] After finding a claim for veil piercing failed to meet requisite pleading standards, Judge Magnus-Stinson collected authority recognizing the propriety of veil piercing claims in pro supp and dismissed the claim without prejudice.[104] One commentator interprets the decision as indicating a preference for the post-judgment posture.[105]

Of course, one major consideration pushing it to post-judgment is that a party may not discover a basis for veil piercing until after judgment. Another concern is the burden of pretrial time and resources dedicated to a claim that is worthless on its own. Veil piercing is not a stand-alone claim; rather, "[i]t is a remedy, a 'means of imposing liability on an underlying cause of action[.]'"[106]

Nevertheless, there are benefits to adding veil piercing to the complaint. A strong consideration is whether it is preferable that a jury makes the decision. Veil piercing is an equitable claim and not entitled to trial by jury in either state[107] or federal court,[108] unless the law of another state allowing trial by jury applies.[109]

There is also no right to nonjury trial, and it is not error for the court to submit veil piercing to a jury.[110] While it is highly unlikely that a court faced with the single issue of whether to pierce the corporate veil would summon a jury for a matter properly decided by the bench, it is not unreasonable for a court that has already empaneled a jury to allow all issues to be placed before the jury for determination. There is certainly no guarantee that veil piercing will be decided by a jury, but the only likely opportunity is if brought in the case-in-chief.

Even if a piercing claim has not been brought in the initial complaint, it may be added by amendment. Amendments adding piercing claims "chang[e] the theory of recovery ... and relate back [under Rule 15] if they arise out of the same conduct, transaction or occurrence set out in the original pleading."[111] In fact, it is even possible for the issue to be addressed at trial without appearing in the pleadings, so long as it arises either by express or implied consent.[112]

Piercing for jurisdiction or venue

The origin of veil piercing was to establish a corporation's personal jurisdiction.[113] The necessity for veil piercing to establish jurisdiction over a corporation was supplanted by the adoption of 28 U.S.C. 1332(c) – fixing the citizenship of a corporation.[114] Nevertheless, modern case law continues to carry reference to piercing the veil for jurisdiction or venue.[115] In addressing the issue, the Indiana Supreme Court found: "Piercing the veil is a doctrine of liability, and 'minimum contacts' is a jurisdictional concept. Piercing may, in some instances, be based on facts that also support the assertion of jurisdiction over the parent of a subsidiary."[116]

The Seventh Circuit has indicated that it is more an issue of agency law, the application of which is akin to veil piercing.[117] The Seventh Circuit has, however, left the door open. In applying Illinois law, which permits veil piercing to establish jurisdiction,[118] the court stated, "[A] broader principle may be involved – that a corporation should not be able to insulate itself from the jurisdiction of the states in which it does business by the simple expedient of separately incorporating its sales force and other operations in each state."[119] At least one Indiana district court has interpreted that case as allowing veil piercing for jurisdictional purposes.[120] But another has rejected veil piercing for applying Indiana's long arm statute.[121]

Although the Indiana Supreme Court views personal jurisdiction and veil piercing as wholly separate, there is at least one scenario in which Indiana state courts apply veil piercing for jurisdictional purposes. The corporate shield doctrine – otherwise called the "fiduciary shield doctrine" – "precludes a state from exercising jurisdiction over an individual sued in his or her personal capacity if the only basis for jurisdiction is his or her contacts with the forum in which he or she was acting solely as a fiduciary of a corporation."[122] When the corporation is "nothing more than the alter ego of the individually named defendants," the shield is lifted, and personal jurisdiction can be obtained.[123]

Further aspects of veil piercing

Case law provides further observations, which merit note, but do not lend easily to categorization:

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• Although almost always applied to shareholders, "there is authority for holding a *non-shareholder* who exercises ownership control over a corporation, such that their separate identities do not exist, liable for the corporation's acts."[124] For instance, an Illinois court held a husband personally liable for debts owed by his wife's wholly owned corporation.[125]

• Indiana appellate courts have not weighed in, but Indiana federal courts routinely apply the law of the state of incorporation for veil piercing.[126]

• Indiana appellate courts have also not addressed the applicable statute of limitations for veil piercing. Courts elsewhere routinely apply the applicable period for enforcement of a judgment.[127]

• Veil piercing is an offensive tool only; "where an individual creates a corporation as a means of carrying out his business purposes he may not ignore the existence of the corporation in order to avoid its disadvantages."[128]

• Also, not every legal mechanism that blends multiple entities into one is a form of veil piercing. For example, Rule 65 permits an injunction to be imposed against a corporation, its agents, and anyone else acting in concert with the corporation without need to pierce the veil.[129]

• Lastly, to the extent you must resort to cases from other jurisdictions, Indiana has long looked to federal decisions,[130] treatises[131] and cases from other states for interpreting veil piercing.[132] Additionally, courts elsewhere have found Indiana alter ego law similar to that of Minnesota and New York,[133] and "nearly identical to Illinois law."[134] But not all jurisdictions mirror Indiana.[135]

Conclusion

No matter the name or test, veil piercing remains an equitable tool allowing courts the necessary leeway to disregard the corporate form to avoid injustice. Due to its flexible nature, veil piercing will always be a complicated doctrine. It is hoped this article has helped shine some light into the doctrine's shadowy regions. ⚖

1. *Country Contractors, Inc. v. A Westside Storage of Indianapolis, Inc.,* 4 N.E.3d 677, 687 (Ind. Ct. App. 2014); Ind. Code §23-1-26-3(b).

2. *State v. McKinney*, 508 N.E.2d 1319, 1321 (Ind. Ct. App. 1987) (citation and formatting omitted), *trans. denied.*

3. Harry G. Henn & John R. Alexander, *Laws of Corporations* §146, at 344 (3d ed. 1983); Paul J. Galanti, 19 *Ind. Practice: Business Orgs*. §37.1, at 463 (1991).

4. *United States v. ARG Corp.,* No. 3:10-CV-00311-PPS, 78 ERC (BNA) 1493, 2014 U.S. Dist. LEXIS 2297, at *7, 2014 WL 88928, at *2 (N.D. Ind. Jan. 7, 2014) (quoting 1 *Fletcher Cyc. Corp.* §41.10 at 136 (perm. Ed. Rev. Vol. 2006)); *Pearson v. Component Tech. Corp.,* 247 F.3d 471, 485 (3d Cir. 2001).

5. Robert B. Thompson, "Piercing the Corporate Veil: An Empirical Study," 76 *Cornell L. Rev*. 1036, 1036 (1991).

6. *See, e.g.,* Thomas K. Cheng, "The Corporate Veil Doctrine Revisited: A Comparative Study of the English and the U.S. Corporate Veil Doctrines," 34 *B.C. Int'l & Comp. L. Rev*. 329 (2011); Stephen B. Presser, *Piercing The Corporate Veil* (2015 ed.); Neil A. Helfman, "Establishing Elements for Disregarding Corporate Entity and Piercing Entity's Veil," 114 *Am. Jur. Proof of Facts* 403 (2010).

7. *See Pearson*, 247 F.3d at 484-91; *Papa v. Katy Indus., Inc.*, 166 F.3d 937 (7th Cir. 1999); Mark Crandley, "The Failure of the Integrated Enterprise Test: Why Courts Need to Find New Answers to Multiple-Employer Puzzle in Federal Discrimination Cases," 75 *IND. L.J.* 1041 (2000).

8. *United States v. Bestfoods*, 524 U.S. 51, 64 n.9 (1998); James W. Clark, "Supreme Court Ruling Limits Parent Company Liability Under CERCLA," 8 *Ind. Envtl. Compliance Update* 2 (June 1998); Matthew R. Chandler, "Survival of the Fittest: Federal Law v. State Law in the Context of Successor Liability Under CERCLA," 43 *Val. U. L. Rev*. 147 (2008).

9. *Winkler v. V.G. Reed & Sons, Inc.,* 638 N.E.2d 1228, 1232 n.4 (Ind. 1994); *but see SFN Shareholders Grantor Trust v. Ind. Dep't of State Revenue*, 603 N.E.2d 194, 198-99 (Ind. Tax Ct. 1992).

10. E. Merrick Dodd Jr., "Dogma and Practice in the Law of Associations," 42 *Harv. L. Rev*. 977, 981 (1929); Tom Frost, "The Modern University, Ltd.," 27 *J. Juris* 335, 355-56 (2015); Larry D. Soderquist, "Theory of the Firm: What a Corporation Is," 25 *J. Corp. L.* 375, 375 (2000).

11. Timothy P. Glynn, "Beyond 'Unlimiting' Shareholder Liability: Vicarious Tort Liability for Corporate Officers," 57 *Vand. L. Rev*. 329, 336 & nn. 20-22, 337 & nn. 23-24 (2004).

12. Glynn, *supra* note 11, at 337-38 & 361.

13. Peter B. Oh, "Veil-Piercing," 89 *Tex. L. Rev*. 81, 83 n.3 (2010).

14. Glynn, *supra* note 11, at 338-39.

15. *Cf. Toner v. Fulkerson*, 125 Ind. 224, 225, 25 N.E. 218, 219 (1890); *Meshberger v. Thomas*, 99 Ind. Ct. App. 519, 193 N.E. 392, 392-94 (1935) (in banc).

16. Helfman, *supra* note 6, §4, at 422.

17. *Bank of U.S. v. Deveaux,* 9 U.S. (5 Cranch) 61, 75, 3 L. Ed. 38 (1809); *see Old Town Dev. Co. v. Langford,* 349 N.E.2d 744, 777 (Ind. Ct. App. 1976), *superseded*, 267 Ind. 176, 369 N.E.2d 404 (1977); Oh, *supra* note 13, at 83; Dodd, *supra* note 10, at 1013 n.137; Galanti, *supra* note 3, §37.1 at 463.

18. Randall T. Shepard, "Isaac N. Blackford," in *Justices of the Indiana Supreme Court* 13 (Linda C. Gugin & James E. St. Clair eds., 2010).

19. *Fairfield Cnty. Turnpike Co. v. Thorp,* 13 Conn. 173, 179 (1839).

20. *Booth v. Bunce*, 33 N.Y. (6 Tiffany) 139, 145 (1865).

21. Oh, *supra* note 13, at 83 n.3 (quoting Karen Vandekerckhove, *Piercing the Corporate Veil* 76 (2007)).

22. *Feucht v. Real Silk Hosiery Mills*, 105 Ind. Ct. App. 405, 12 N.E.2d 1019, 1021 (1938) (in banc).

23. *Id.*

24. *Pub. of State of Ind. v. United States*, 325 F. Supp. 1223, 1227 (N.D. Ind. 1971); *Madding v. Ind. Dep't of State Revenue, Gross Income Tax Div.,* 149 Ind. Ct. App. 74, 88, 270 N.E.2d 771, 779 (1971).

25. For list of many metaphors used in case law, *see* William J. Rands, "Domination of a Subsidiary by a Parent," 32 *Ind. L. Rev*. 421, 422 n.3 (1999).

26. Carsten Alting, "Piercing the Corporate Veil in American and German Law – Liability of Individuals and Entities: A Comparative View," 2 *Tulsa J. Comp. & Int'l L.* 187 (1994); *see also* I. Maurice Wormser, *Disregard of the Corporate Fiction and Allied Corporation Problems* 42 (1927).

27. *See, e.g., Old Town Dev. Co.,* 349 N.E.2d at 777; Oh, *supra* note 13, at 83; Henn & Alexander, *supra* note 3, §146, at 344-45 n.2; Galanti, *supra* note 3, §37.1 at 464.

28. *Berkey v. Third Ave. Ry. Co.*, 144 N.E. 58, 61 (N.Y. 1926).

29. Richard A. Posner, *Cardozo: A Study in Reputation* 119-20 (1990).

30. *See, e.g., Kraft Power Corp. v. Merrill,* 981 N.E.2d 671 (Mass. 2013); *Smith ex rel. Smith v. Marchant Enterprises, Inc.,* 791 P.2d 354 (Alaska 1990).

31. *See, e.g., Farmers' Loan & Trust Co. v. Pierson*, 222 N.Y.S. 532, 541 (1927).

32. *Country Contractors*, 4 N.E.3d at 687 (quoting I.C. §23-1-26-3(b)).

33. Wormser, *supra* note 26, at 37-38; *see also* Oh, *supra* note 13, at 85 n.19.

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34. *See, e.g., Henderson v. Sneath Oil Co.,* 638 N.E.2d 798, 802-03 (Ind. Ct. App. 1994); Charles Herbst, "New Business Entity Limits Liability, Taxability," 37 *Res Gestae* 14, 16 (1993).

35. *Aronson v. Price*, 644 N.E.2d 864, 867 (Ind. 1994).

36. *Smith v. McLeod Distrib., Inc*., 744 N.E.2d 459, 463 (Ind. Ct. App. 2000); *Reed v. Reid*, 980 N.E.2d 277, 301-02 (Ind. 2012).

37. Michael Richardson, Comment & Casenote, "The Helter Skelter Application of the Reverse Piercing Doctrine," 79 *U. Cin. L. Rev*. 1605, 1605 (2011).

38. *Pain Ctr. of SE Indiana, LLC v. Origin Healthcare Sols., LLC*, No. 1:13-CV-133-RLY-DKL, 2014 U.S. Dist. LEXIS 10062, at *9 n.3, 2014 WL 309434, at *2 n.3 (S.D. Ind. Jan. 28, 2014).

39. *See, e.g., Apollo Plaza Ltd. v. Antietam Corp*., 751 N.E.2d 336, 338 (Ind. Ct. App. 2001), *trans. granted, dismissed as moot,* 764 N.E.2d 641 (Mem.) (Ind. 2002).

40. *Ziese & Sons Excavating, Inc. v. Boyer Const. Corp.,* 965 N.E.2d 713, 720 (Ind. Ct. App. 2012).

41. *Id.* (quotation marks and citation omitted).

42. *Detrick v. Midwest Pipe & Steel, Inc.,* 598 N.E.2d 1074, 1080 (Ind. Ct. App. 1992).

43. *Reed*, 980 N.E.2d at 302 (quotation marks, citation and alteration omitted).

44. *Id*.; *see also* Rands, *supra* note 25, at 433-36 (collecting various factors recognized nationally).

45. *Ziese & Sons*, 965 N.E.2d at 721.

46. *See generally* Galanti, *supra* note 3, §37.2 at 470-72.

47. *Reed*, 980 N.E.2d at 302 (citations omitted).

48. *Eden United, Inc. v. Short*, 573 N.E.2d 920, 933 (Ind. Ct. App. 1991), *trans. denied*; *accord Smith*, 744 N.E.2d at 463.

49. *Cont'l Cas. Co. v. Symons,* 817 F.3d 979, 995 (7th Cir. 2016) (applying Indiana law).

50. *Merriman v. Standard Grocery Co.,* 143 Ind. Ct. App. 654, 657, 242 N.E.2d 128, 130 (1968).

51. *Ayers v. Marathon Ashland Petroleum LLC*, No. 1:03-CV-1780-RLY-TAB, 2007 U.S. Dist. LEXIS 599, at *12-14, 2007 WL 42975, at *4 (S.D. Ind. Jan. 4, 2007); *Burkemper v. Waite*, No. 2:05 cv 445, 2007 U.S. Dist. LEXIS 18365, at *13-16, 2007 WL 781658, at *4-6 (N.D. Ind. Mar. 12, 2007); *see, e.g., Lambert v. Farmers Bank, Frankfort, Ind.,* 519 N.E.2d 745 (Ind. Ct. App. 1988); *Apollo Plaza*, 751 N.E.2d at 338; *C.F. Trust, Inc. v. First Flight L.P,* 580 S.E.2d 806, 810 (Va. 2003) (citing *Lambert*, 519 N.E.2d at 748-49 as approving reverse veil piercing); *see also* David Williams Russell, 19 *Ind. Practice: Business Orgs.* §37.2 (Supp. 2015-16); Kurtis A. Kemper, "Acceptance and Application of Reverse Veil-Piercing – Third Party Claimant," 2 *A.L.R.* 6th 195 (2012); Gregory S. Crespi, "The Reverse Pierce Doctrine, Applying Appropriate Standards," 16 *J. CORP. L.* 33, 37 (1990); Richardson, *supra* note 37; Helfman, *supra* note 6, §7.

52. *Apollo Plaza*, 751 N.E.2d at 338; *see also C.F. Trust, Inc. v. First Flight Ltd. P'ship*, 111 F. Supp. 2d 734, 740-41 (E.D. Va. 2000).

53. *Burkemper*, 2007 U.S. Dist. LEXIS 18365, at *15, 2007 WL 781658, at *5.

54. *Lambert*, 519 N.E.2d 745.

55. *Ayers*, 2007 U.S. Dist. LEXIS 599, at *13-14, 2007 WL 42975, at *4.

56. *See, e.g., Sec. Inv'r Prot. Corp. v. Stratton Oakmont, Inc.*, 234 B.R. 293, 322-26 (Bankr. S.D.N.Y. 1999).

57. Henn & Alexander, *supra* note 3, §144; Helfman, *supra* note 6, §1, at 414; *Toner*, 125 Ind. at 225, 25 N.E. at 219.

58. *A.B.C. Home & Real Estate Inspection, Inc. v. Plummer*, 500 N.E.2d 1257, 1260 (Ind. Ct. App. 1986).

59. *Reed*, 980 N.E.2d at 301.

60. *Fairfield Dev., Inc. v. Georgetown Woods Sr. Apartments Ltd. P'ship*, 768 N.E.2d 463, 469 (Ind. Ct. App. 2002), *trans. denied*.

61. *Ziese & Sons*, 965 N.E.2d at 721.

62. *Hart, Schaffner & Marx v. Campbell*, 110 Ind. Ct. App. 312, 38 N.E.2d 895, 899 (1942); *but see Merriman*, 143 Ind. Ct. App. at 659, 242 N.E.2d at 131.

63. Henn & Alexander, *supra* note 3, §147, at 353; *cf. Cutshaw v. Fargo*, 8 Ind. Ct. App. 691, 34 N.E. 376, 378 (1893); *Mishawaka Brass Mfg*., 444 N.E.2d at 858; *Benner-Coryell Lumber Co. v. Ind. Unemployment Comp. Bd.*, 218 Ind. 20, 28, 29 N.E.2d 776, 780 (1940), *cert denied*, 312 U.S. 698 (1941).

64. *Bridge v. New Holland Logansport, Inc.,* No. 3:12 CV 360, 2015 U.S. Dist. LEXIS 39858, at *14, 2015 WL 1455203, at *5 (N.D. Ind. Mar. 30, 2015); *see also MFP Eagle Highlands, LLC v. Am. Health Network of Ind., LLC*, No. 1:07-CV-0424-DFH-WGH, 2009 U.S. Dist. LEXIS 1915, at *26-28, 2009 WL 77679, at *9 (S.D. Ind. Jan. 9, 2009) (finding two factors insufficient).

65. *Fairfield Dev., Inc. v. Georgetown Woods Sr. Apartments Ltd. P'ship*, 768 N.E.2d 463, 471 (Ind. Ct. App. 2002); *Wauchop v. Domino's Pizza, Inc.,* 832 F. Supp. 1572, 1575 (N.D. Ind. 1993).

66. *CBR Event Decorators, Inc. v. Gates*, 962 N.E.2d 1276, 1282-83 (Ind. Ct. App. 2012), *trans. denied; see also Greater Hammond Cmty. Servs., Inc. v. Mutka*, 735 N.E.2d 780, 784 (Ind. 2000).

67. *Hart v. Steel Prods., Inc.,* 666 N.E.2d 1270, 1277 (Ind. Ct. App. 1996).

68. *Cont'l Cas. Co.,* 817 F.3d at 994.

69. *Laborers' Pension Fund v. Lay-Com, Inc.,* 580 F.3d 602, 612 (7th Cir. 2009) (applying Illinois law) (citing William P. Hackney & Tracey G. Benson, "Shareholder Liability for Inadequate Capital," 43 *U. Pitt. L. Rev*. 837, 854, 885-86 (1982)).

70. *Longhi v. Mazzoni*, 914 N.E.2d 834, 840 (Ind. Ct. App. 2009).

71. *Hart*, 666 N.E.2d at 1277 (citation omitted).

72. *See, e.g., Theberge v. Darbro, Inc.*, 684 A.2d 1298, 1303 (Me. 1996); Stephen B. Presser, *Piercing the Corporate Veil* §2:15 at 358-59 (2011 ed.); *contra Penn Nat. Gaming, Inc. v. Ratliff,* 954 So.2d 427, 431-32, ¶10 (Miss. 2007).

73. *Williams v. Iowa Pipeline Assoc., Inc.,* No. 3:06-CV-48-SEB-WGH, 2008 U.S. Dist. LEXIS 35679, at *13, 2008 WL 1946016, at *4 (S.D. Ind. Apr. 29, 2008).

74. Galanti, *supra* note 3, §37.2 at 467 n.8.

75. *Aronson*, 644 N.E.2d at 867; *Escobedo v. BHM Health Assocs., Inc.,* 818 N.E.2d 930, 933 (Ind. 2004).

76. *Greater Hammond Cmty. Servs., Inc. v. Mutka*, 735 N.E.2d 780, 784 (Ind. 2000).

77. *Escobedo*, 818 N.E.2d at 933.

78. *Id.*

79. *Reed*, 980 N.E.2d 301-03.

80. *MFP Eagle Highlands*, 2009 U.S. Dist. LEXIS 1915, at *28-29, 2009 WL 77679, at *10.

81. *See Kader v. State, Dep't of Correction*, 1 N.E.3d 717, 726 (Ind. Ct. App. 2013).

82. Indiana courts freely look to authority on the nearly identical Federal Rule 9(B) for guidance in applying the corresponding Indiana rule. *See, e.g., McKinney v. State*, 693 N.E.2d 65, 71 (Ind. 1998).

83. *Chapel Ridge Investments, L.L.C. v. Petland Leaseholding Co.,* No. 1:13-CV-00146-PPS, 2013 U.S. Dist. LEXIS 171345, at *16-19, 2013 WL 6331095, at *6-7 (N.D. Ind. Dec. 4, 2013) (collecting cases).

84. *Ketchem v. Am. Acceptance, Co., LLC*, 641 F. Supp. 2d 782, 787 n.1 (N.D. Ind. 2008).

85. *Cmedia Servs., LLC v. Rogers*, No. 1:15-CV-00435-SEB-MJD, 2015 U.S. Dist. LEXIS 112282, at *65, 2015 WL 5022167, at *24 (S.D. Ind. July 31, 2015); *but see Cox v. Sherman Capital LLC*, No. 1:12-CV-01654-TWP-MJD, 2014 U.S. Dist. LEXIS 43147, at *17-19, 2014 WL 1328147, at *6 (S.D. Ind. Mar. 31, 2014); *Mathioudakis v. Conversational Computing Corp*., No. 1:12-CV-00558-JMS-DKL, 2012 U.S. Dist. LEXIS 130786, at *9-12, 2012 WL 4052316, at *4 (S.D. Ind. Sept.13, 2012).

86. *Kraft Power Corp.,* 981 N.E.2d at 678 (quoting *United States v. Lehigh Valley R.R.,* 220 U.S. 257, 272 (1911)).

87. *See, e.g., Fentress v. Triple Min., Inc.,* 635 N.E.2d 102, 108 (Ill. App. Ct. 1994).

88. Henn & Alexander, *supra* note 3 §145 at 343; *see also Plummer*, 500 N.E.2d at 1260.

89. *Id.*

90. *Cont'l Cas. Co.,* 817 F.3d at 996.

91. *Troutwine Estates Dev. Co., LLC v. Comsub Design & Eng'g, Inc.,* 854 N.E.2d 890, 899 (Ind. Ct. App. 2006), *trans. denied*; *Four Seasons Mfg., Inc. v. 1001 Coliseum, LLC*, 870 N.E.2d 494 (Ind. Ct. App. 2007).

92. *See, e.g., Doyle v. State*, 468 N.E.2d 528 (Ind. Ct. App. 1984), *trans. denied; Meridian N. Inves. LP v. Sondhi*, 26 N.E.3d 1000, 1004 (Ind. Ct. App. 2015).

93. *See, e.g., Greater Hammond Cmty. Servs., Inc. v. Mutka*, 735 N.E.2d 780, 785 (Ind. 2000); *see generally* Jane C. Schlicht, "Piercing the Nonprofit Corporate Veil," 66 *Marq. L. Rev.* 134 (1982).

94. *Compare C.F. Trust, Inc. v. First Flight L.P.,* 580 S.E.2d 806, 266 Va. 3 (Va. 2003), *with Peterson Grp., Inc. v. PLTQ Lotus Grp., L.P.,* 417 S.W.3d 46, 56-57 (Tex. Ct. App. 2013).

95. *See, e.g., Red River Wings, Inc. v. Hoot, Inc.,* 751 N.W.2d 206, 221 ¶34 (N.D. 2008).

96. Ind. Code §23-4-1-15(6).

97. Ind. Code §23-4-1-15(3).

98. *Que Sera Promotions, Inc. v. Poughkeepsie Ford, Inc.,* No. 2:05CV38 PPS, 2005 U.S. Dist. LEXIS 46671, at *12, 2005 WL 2896703, at *4 (N.D. Ind. Nov. 2, 2005).

99. *See, e.g., Bd. of Trs. of the Ken Lusby Clerks & Lumber Handlers Pension Fund v. Piedmont Lumber & Mill Co.,* 132 F. Supp 3d 1175, 1183 (N.D. Cal. 2015), *appeal pending*; *Babitt v. Vebeliunas* (*In re Vebeliunas*), 252 B.R. 878, 886-87 (Bankr. S.D.N.Y. 2000), *rev'd,* 2002 U.S. Dist. LEXIS 1271 (S.D.N.Y. 2002), *agreed with in part*, 332 F.3d 85, 90-91 (2d Cir. 2003).

100. *See, e.g., In re Harman*, 512 B.R. 321, 341 (Bankr. N.D. Ga. 2014); *In re Maghazeh*, 310 B.R. 5, 16 (Bankr. E.D.N.Y. 2004).

101. *Wellness Int'l Network, Ltd. v. Sharif*, 727 F.3d 751, 774 (7th Cir. 2013), *rev'd on other grounds*, 135 S. Ct. 1932 (U.S. 2015); Babitt, 332 F.3d at 90.

102. *See generally Kesling v. Kesling*, 967 N.E.2d 66 (Ind. Ct. App. 2012), *trans. denied*.

103. *G4S Justice Servs., Inc. v. Corr. Program Servs., Inc.,* No. 1:07-CV-00945-JMS-SEB, 2009 U.S. Dist. LEXIS 88689, at *5-6, 2009 WL 3200592, at *2 (S.D. Ind. Sept. 25, 2009).

104. *Id.*

105. John D. Walker, "Veil-Piercing Claim Better Left for Proceedings Supplemental," Ind. Com. Foreclosure L. Blog (May 16, 2010).

106. *ARG Corp*., 2014 U.S. Dist. LEXIS 2297, at *7, 2014 WL 88928, at *2 (citation omitted).

107. *Stacey-Rand, Inc. v. J.J. Holman, Inc.*, 527 N.E.2d 726, 728 (Ind. Ct. App. 1988).

108. *See Int'l Fin. Servs. Corp. v. Chromas Techs. Canada, Inc.*, 356 F.3d 731, 737 (7th Cir. 2004) (applying Illinois law).

109. *See, e.g., NNDYM IN, Inc. v. UV Imports, Inc.,* No. 3:09-CV-00129-TWP, 2013 U.S. Dist. LEXIS 19706, at *16, 2013 WL 596150, at *5 (S.D. Ind. Feb. 14, 2013) (applying North Carolina law).

110. *Stacey-Rand*, 527 N.E.2d at 728; *Hornsby v. St. Louis Sw. Ry. Co.*, 963 F.2d 1130, 1135 (8th Cir. 1992); *see, e.g., Archem, Inc. v. Simo*, 549 N.E.2d 1054, 1058 (Ind. Ct. App. 1990), *trans. denied, cert. dismissed*, 498 U.S. 1076 (1991).

111. *ARG Corp*., 2014 U.S. Dist. LEXIS 2297, at *7-8, 2014 WL 88928, at *2-3.

112. *Plummer*, 500 N.E.2d at 1260; Ind. Trial Rule 15(B).

113. *See Deveaux*, 9 U.S. (5 Cranch) at 75.

114. *See Navarro Sav. Ass'n v. Lee*, 446 U.S. 458, 461 n.7 (1980).

115. *See, e.g., Tiger Trash v. Browning-Ferris Indus., Inc.*, 560 F.2d 818, 824 (7th Cir. 1977); *Burkemper*, 2007 U.S. Dist. LEXIS 18365, at *13-14, 2007 WL 781658, at *5.

116. *LinkAmerica Corp. v. Cox*, 857 N.E.2d 961, 970 (Ind. 2006).

117. *IDS Life Ins. Co. v. SunAmerica Life Ins. Co.*, 136 F.3d 537, 541 (7th Cir. 1998).

118. *Cent. States, S.E. & S.W. Areas Pension Fund v. Reimer Express World Corp*., 230 F.3d 934, 940 (7th Cir. 2000).

119. *IDS Life*, 136 F.3d at 541.

120. *Burkemper*, 2007 U.S. Dist. LEXIS 18365, at *13-14, 2007 WL 781658, at *5.

121. *Woodruff v. S. Cent. Conference of Seventh Day Adventists*, No. IP 1:03-CV-0183 SEB/VSS, 2004 U.S. Dist. LEXIS 5164, at *8-10, 2004 WL 612821, at *3 (S.D. Ind. Mar. 24, 2004).

122. *Bowden v. Agnew,* 2 N.E.3d 743, 748 (Ind. Ct. App. 2014) (citation and quotation marks omitted).

123. *Id.*

124. Russell, *supra* note 51, §37.1 (citing *Fontana v. TLD Builders, Inc.*, 840 N.E.2d 767 (Ill. App. Ct. 2005)) (emphasis in original); see also Helfman, *supra* note 6, §1, at 413.

125. Russell, *supra* note 51, §37.1, at n.8.05.

126. *Garmin Wurzburg GmbH v. Auto. Imagineering & Mfg., LLC*, No. 3:14-cv-02006-PPS-CAN, 2016 U.S. Dist. LEXIS 71106, at *10 (N.D. Ind. June 1, 2016); *Chapel Ridge*, 2013 U.S. Dist. LEXIS 171345, at *4-7; *NNDYM IN, Inc.*, 2013 U.S. Dist. LEXIS 19706, at *9; *see also Secon Serv. Sys. v. St. Joseph Bank & Trust Co.*, 855 F.2d 406, 412-13 (7th Cir. 1988) (applying Indiana law); *Trinity Indus. Leasing Co. v. Midwest Gas Storage, Inc.,* 33 F. Supp. 3d 947, 972 (N.D. Ill. 2014) (applying Indiana choice of law).

127. *See, e.g., Norwood Grp., Inc. v. Phillips*, 149 N.H. 722, 724-25, 828 A.2d 300, 303 (2003); *Madonna v. Francisco*, No. 13-807, 2014 U.S. Dist. LEXIS 32523, at *14-15 (E.D. Pa. Mar. 13, 2014); Ind. Code §34-11-2-11 (10 years).

128. *Benson v. Warble*, 146 Ind. App. 307, 311-12, 255 N.E.2d 230, 233 (1970); *see also Greater Hammond Cmty. Servs., Inc. v. Mutka*, 735 N.E.2d 780, 785 (Ind. 2000).

129. *See* Ind. Trial Rule 65(D); *Wash. Metro. Area Transit Comm'n v. Reliable Limousine Serv., LLC,* 776 F.3d 1, 10 (D.C. Cir. 2015).

130. *See, e.g., Feucht*, 12 N.E.2d at 1021 (citing *Trs. Sys. Co. of Penn. v. Payne*, 65 F.2d 103 (3d Cir. 1933)); *CBR Event Decorators*, 962 N.E.2d at 1283 n.2 (quoting *N.L.R.B. v. Greater Kan. City Roofing*, 2 F.3d 1047, 1053 (10th Cir. 1993)).

131. *See, e.g., Mutka*, 735 N.E.2d at 784 (citing William Meade Fletcher, *Fletcher Cyclopedia of the Law of Private Corporations* (1999)).

132. *Price v. Aronson*, 629 N.E.2d 268, 270 (Ind. Ct. App.) (quoting *Fairbanks v. Chambers*, 665 S.W.2d 33 (Mo. Ct. App. 1984)), *approved*, 644 N.E.2d 864, 868 (Ind. 1994) (citing *Harrelson v. Soles*, 380 S.E.2d 528, 531 (N.C. Ct. App. 1989)).

133. *Dumont v. Litton Loan Servicing, LP*, No. 12-CV-2677-ER-LMS, 2014 U.S. Dist. LEXIS 26880, at *85 n.43, 2014 WL 815244, at *22 n.43 (S.D.N.Y. Mar. 3, 2014).

134. *Lewis Bros. Bakeries v. Bittle*, No. 06-CV-4047-DRH, 2007 U.S. Dist. LEXIS 92460, at *35, 2007 WL 4441225, at *11 (S.D. Ill. Dec. 17, 2007).

135. *See, e.g., Canal Ins. Co. v. Montello, Inc*., 822 F. Supp. 2d 1177, 1181-83 (N.D. Okla. 2011).

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