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## Piercing the Corporate Veil in Louisiana

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# Piercing the Corporate Veil in Louisiana

Glenn G. Morris\*

## INTRODUCTION

"Veil-piercing" is a term used to refer to a court's refusal to give legal effect to the normally separate legal personality of a corporation. Veil-piercing is most commonly used as a justification for imposing personal liability on corporate shareholders for corporate debts (contrary to the normal rule of limited liability), but it is a flexible doctrine that can be used in any situation in which the separate personality of the corporation appears to be blocking a just result. The doctrine is so flexible, in fact, that it seldom offers any real guidance about how a given dispute should be resolved. The black letter law consists of a set of vague and inconsistent platitudes that are adaptable to virtually any situation. By emphasizing one platitude rather than another, a court can either respect or reject a corporation's separate personality, depending on the result that the court considers to be fair, without really explaining what it is doing, and why.

Faced with this type of law, most academic writing on veil-piercing follows essentially the same format. It first criticizes existing doctrine as conclusory, vacuous and "enveloped in the mists of metaphor,"<sup>1</sup> and it then offers an explanation of what is "really" going on, behind all the conclusory metaphors.<sup>2</sup> Most writers seem to agree that the existing doctrine is useless, whether as a description of what actually does happen

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1. The "mists of metaphor" description originated in a 1926 decision by Judge Benjamin Cardozo, *Berkey v. Third Ave. Ry. Co.*, 244 N.Y. 84, 94-95, 155 N.E. 58, 61 (1926). Harry Henn and John Alexander have listed the various metaphors as follows: "mere adjunct," "agent," "alias," "alter ego," "alter idem," "arm," "blind," "branch," "cloak," "coat," "corporate double," "cover," "creature," "curious reminiscence," "delusion," "department," "dry shell," "dummy," "fiction," "form," "formality," "fraud on the law," "instrumentality," "mouthpiece," "name," "nominal identity," "phrase," "puppet," "screen," "sham," "simulacrum," "snare," "stooge," "subterfuge," and "tool." H. Henn & J. Alexander, *Laws of Corporations* 344 n.2 (1983).

2. See, e.g., Easterbrook & Fischel, *Limited Liability and the Corporation*, 52 U. Chi. L. Rev. 89 (1985); Clark, *The Duties of a Corporate Debtor to its Creditors*, 90 Harv. L. Rev. 505, 540-53 (1977); Hamilton, *The Corporate Entity*, 49 Tex. L. Rev. 979 (1971); Latty, *The Corporate Entity as a Solvent of Legal Problems*, 34 Mich. L. Rev. 597 (1936).

in real cases, or as a prescription of what should.<sup>3</sup> Yet regardless of their varying explanations of the actual results that they see,<sup>4</sup> most commentators also seem to share the faith that what actually does happen in these cases is, for the most part,<sup>5</sup> what ought to happen.<sup>6</sup>

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3. E.g., Easterbrook & Fischel, *Limited Liability and the Corporation*, 52 U. Chi. L. Rev. 89 (1985) ("Piercing' seems to happen freakishly. Like lightning, it is rare, severe, and unprincipled. There is a consensus that the whole area of limited liability, and conversely of piercing the corporate veil, is among the most confusing in corporate law."); Hamilton, *The Corporate Entity*, 49 Tex. L. Rev. 979, 979-82 (1971) (characterizing entity-based corporate veil analysis as fallacious, "at best a make-weight and at worst conclusion-oriented"); Latty, *The Corporate Entity as a Solvent of Legal Problems*, 34 Mich. L. Rev. 597, 598 (1936) (whether a corporation's entity status is to be respected is "not a real issue at all but merely a fancied one . . . it serves as a facile rationalization").

4. Some, including this article, use traditional forms of legal analysis to point out differences based on recognized legal categories, such as contracts, torts and statutory interpretation. Hamilton, *The Corporate Entity*, 49 Tex. L. Rev. 979 (1971); Latty, *The Corporate Entity as a Solvent of Legal Problems*, 34 Mich. L. Rev. 597 (1936). Others use economic theory. Easterbrook & Fischel, *Limited Liability and the Corporation*, 52 U. Chi. L. Rev. 89 (1985); Halpern, Trebilcock & Turnbull, *An Economic Analysis of Limited Liability in Corporation Law*, 30 U. Toronto L.J. 117 (1980); Posner, *The Rights of Creditors of Affiliated Corporations*, 43 U. Chi. L. Rev. 499 (1976). One author mixes history and economics, though in this case to criticize part of the limited liability doctrine. Blumberg, *Limited Liability and Corporate Groups*, 11 J. Corp. L. 573 (1986). Another explains veil-piercing as an extension of normal creditor protection law. Clark, *The Duties of a Corporate Debtor to its Creditors*, 90 Harv. L. Rev. 505, 540-53 (1977). Still another considers veil-piercing to be a manifestation of "enterprise entity" theory, the theory that courts look through the formal structure of a business organization to the "reality" of its underlying enterprise. Berle, *The Theory of Enterprise Entity*, 47 Colum. L. Rev. 343 (1947).

5. The two notable exceptions to this general sense of satisfaction arise in the area of tort claims, where some question the general recognition of limited liability, and in claims against affiliated corporations, where some believe the separate identities of the affiliated corporations ought to be disregarded in favor of some sort of larger enterprise liability theory. For an argument against the recognition of limited liability as to some or all tort claimants, see, e.g., Hansmann & Kraakman, *Toward Unlimited Shareholder Liability for Corporate Torts*, 100 Yale L.J. 1879 (1991) (arguing for pro rata shareholder liability); Schwartz, *Products Liability, Corporate Structure, and Bankruptcy: Toxic Substances and the Remote Risk Relationship*, 14 J. Legal Stud. 689, 716-17 (1985) (arguing for liability for knowable tort risks); Note, *Should Shareholders Be Personally Liable for the Torts of Their Corporations?*, 76 Yale L.J. 1190 (1967) (proposing personal liability or mandatory insurance for tort obligations of closely-held corporations). On the question of veil-piercing in affiliated corporate groups, see, e.g., Blumberg, *Limited Liability and Corporate Groups*, 11 J. Corp. L. 573 (1986) (limited liability within affiliated group characterized as historical accident, needing reexamination on policy grounds); Landers, *A Unified Approach to Parent, Subsidiary and Affiliate Questions in Bankruptcy*, 42 U. Chi. L. Rev. 589 (1975) (proposing restrictions on recognition of separate entity status of affiliated corporations); Posner, *The Rights of Creditors of Affiliated Corporations*, 43 U. Chi. L. Rev. 499 (1976) (rejecting Landers' argument and favoring traditional recognition of separate corporate status, as means of facilitating efficient bargaining about credit risks); Landers, *Another Word on Parents, Subsidiaries and Affiliates in Bankruptcy*,

This article will be true to the traditional format. The black letter law of veil-piercing will first be described and criticized, and then the actual outcomes in veil-piercing cases will be organized and explained by reference to various underlying issues that seem to influence what the courts actually do, as distinguished from what they say. Unlike most earlier articles that have done similar things, however, this article will not base its conclusions on selected cases from various states, but on all of the decisions on the subject that have been reported in a single state, Louisiana, since 1944.<sup>7</sup>

The single-state focus of this article should be useful to judges and practitioners in Louisiana. But it should also help overcome one of the weaknesses in much of the writing in this field: a lack of empirical support for the decisional patterns that authors say they see when they examine this area of the law. The sheer number of reported veil-piercing cases has been so overwhelming that commentators have traditionally defended their explanations of veil-piercing law either in purely theoretical terms or, in a more traditional style of legal argumentation, by citing a few supporting decisions as if the cited decisions were actually representative of the pattern of reported decisions generally. Only recently has anyone undertaken the monumental task of surveying the many hundreds of veil-piercing decisions reported throughout the United States. Robert Thompson last year presented his statistical findings from a survey of all the American veil-piercing cases that he found in a Westlaw

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43 U. Chi L. Rev. 527 (1976) (questioning whether bargaining postulated by Posner really does occur, or can occur, as a practical matter).

6. Thompson, *Piercing the Veil: An Empirical Study*, 76 Cornell L. Rev. 1036, 1036-37 (1991).

7. The search for cases covered by this article was conducted on Westlaw, which does not include in its database courts of appeal decisions reported before 1944. The database covers supreme court decisions back to 1887, but the oldest supreme court case recovered in this search was decided in 1936. One hundred seventeen veil-piercing decisions were recovered in this search. Thirty-three other decisions were included in the data considered for this article, as these cases considered the imposition of personal liability on shareholders on some theory other than veil-piercing in situations in which veil-piercing is often used. These cases are mentioned as appropriate in the text.

Veil-piercing cases antedating 1944 do exist in Louisiana, but the law they recite is not materially different from that recited in modern cases. See, e.g., *Lindstrom v. Sauer*, 166 So. 636 (La. App. Orl. 1936); *Lucey Mfg. Corp. v. Oil City Iron Works*, 131 So. 57 (La. App. 2d Cir. 1930). That is not surprising, as veil-piercing doctrine is so flexible that it is capable of accommodating a wide range of policy decisions without any apparent disturbance to the black letter rules. It is possible that a survey of pre-1944 cases would reflect some differences between older and newer cases in the results reached, but that is actually a good reason to exclude those cases from this effort to describe the patterns reached by modern courts. Ninety-six of the 117 veil-piercing cases covered by this article (roughly 82%) were decided in 1970 or later, and 57 (roughly 49%) were decided in 1980 or later.

search covering cases included in Westlaw through 1985—about 1600 cases—and concluded that several of the widely-accepted decisional patterns identified by earlier writers appeared not to exist.<sup>8</sup>

This article tries to do on a much smaller scale (and without statistics) what Professor Thompson's study did with cases nationally: to see what patterns of results can be seen in veil-piercing cases when the cases are not selected for the purpose of defending a postulated pattern, but when an effort is made to gather all of the pertinent cases on the subject. The smaller scale produces information with a narrower scope, but it also allows a closer examination of the cases that are being reviewed.<sup>9</sup> In several respects, this examination has produced different conclusions about Louisiana cases than those that Professor Thompson drew about cases nationally. Whether this is due to real differences in the law as applied in Louisiana<sup>10</sup> or merely to different interpretations of similar cases is difficult to say; it seems likely that both factors have played some role.

#### FUNCTIONS OF THE CORPORATE ENTITY THEORY

The separate legal personality of a business corporation is clearly fictional in nature; the law treats the corporation as a separate person not because it really is a person, but because pretending that it is a person achieves certain desired effects.

The most commonly-recited reason for the recognition of the separate identity of the corporation is the policy of providing limited liability to corporate shareholders, officers and agents.<sup>11</sup> Yet there are many other,

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8. Thompson, *supra* note 6.

9. All of the cases covered by this article could be, and were, read personally by the author, and organized into categories that evolved as the cases were being read. Understandably, Professor Thompson did not personally read all 1600 cases. He relied on information gathered from the cases by seven research assistants. *Id.*, *supra* note 6, at 1044 n.48. Also, he organized his categories not to explain the cases anew, but to test older explanations.

10. If any differences do exist, they are not attributable to Louisiana's status as a "civil law" jurisdiction. Although the Louisiana Civil Code did traditionally contain a few provisions on corporations, the Civil Code rules were so uniformly ignored by the courts that their repeal in 1987 was viewed as nothing more than a technical matter. Louisiana has not yet adopted the revised version of the Model Business Corporation Act, but its corporate statute is in the mainstream of corporation statutes as they existed at the time of its enactment in 1968.

11. Actually, it is only the shareholder who really needs corporation law to shield him from liability. Without the corporate fiction, the shareholder would be treated as the direct owner of the business involved, and therefore would be personally liable as a proprietor or partner for the business debts and liabilities. Because nonshareholding directors, officers, and agents serve in representative capacities only, normal principles of agency law would shield them from personal liability, and impose it strictly on the owner/

equally important objectives. In large organizations with many members, for example, the corporate personality theory helps to simplify the ownership, management, and transfer of property, the conduct of litigation, and the making and execution of collective, usually majoritarian, decisions. Indeed in early law it was actually this simplifying function, and not limited liability, that served as the principal impetus for corporate forms of organization. Corporations were used for municipal, ecclesiastical, and educational purposes long before they began to be used in business,<sup>12</sup> and even in business, the early corporations commonly had limited liability denied to them.<sup>13</sup>

The number and variety of functions served by the corporate entity theory make it impossible to identify any one policy that ought to be controlling in all veil-piercing cases. In practical terms, a court decision about disregarding (or respecting) any given corporation's separate personality will operate not so much as a ruling on personality as such, for divorced from its functional effects no one would care much whether a corporation was a separate person, but rather as an indirect means of stating a legal conclusion about the wisdom of imposing one or more of the *effects* of the separate personality theory in that particular case. Personality might well be rejected in one case in order to achieve a certain legal objective, yet be respected in another, seemingly similar case, in order to achieve some other objective. The balance of underlying policies, not abstract separateness, tends to be the best predictor of results. As the supreme court of the state has explained in *Glazer v. Commission on Ethics for Public Employees*:<sup>14</sup>

the problems involved [in veil-piercing cases] are to be solved not by "disregarding" the corporate personality, but by a study

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principals of the business. All that corporation law does for the officer or agent is to make a fictional person the principal rather than the human beings that actually control and obtain the benefits of the business as owners. However, it is so common in closely-held businesses for the same person to be both a shareholder and agent of the corporation that these fine distinctions are seldom drawn in the cases; upon mention of the imposition of personal liability in a corporate setting, the first thing that comes to the mind of most lawyers is veil-piercing.

12. See R. Seavoy, *The Origins of the American Business Corporation, 1784-1855*, at 9-32 (1982); L. Friedman, *A History of American Law* 188-91 (2d ed. 1973); H. Henn & J. Alexander, *Laws of Corporations* 14-19 (3d ed. 1983); Williston, *History of the Law of Business Corporations Before 1800*, 2 Harv. L. Rev. 105 (1888); Raymond, *The Genesis of the Corporation*, 19 Harv. L. Rev. 350 (1906).

13. L. Friedman, *A History of American Law* 191 (2d ed. 1973); Blumberg, *Limited Liability and Corporate Groups*, 11 J. Corp. Law 573, 577-603 (1986). Modern Louisiana law continues a similar practice with respect to partnerships: it declares them to be separate legal entities, but nevertheless imposes personal liability on partners for partnership debts. La. Civ. Code arts. 2801, 2817.

14. 431 So. 2d 752 (La. 1983).

of the just and reasonable limitations upon the exercise of the privilege of separate capacity under particular circumstances in view of its proper use and functions. The policies behind recognition of a separate corporate existence must be balanced against the policies justifying piercing. . . . Depending upon the various competing policies and interests involved, the same factual scenario may result in recognition of a separate corporate identity for some purposes . . . and a disallowance of the separate corporate entity privilege for others.<sup>15</sup>

#### THE FALSE ASSUMPTIONS OF THE BLACK LETTER LAW

Unfortunately, *Glazer's* functional style of analysis is a rare find in the Louisiana law of veil-piercing. Most decisions are written as if the courts were being asked to engage in some kind of metaphysical inquiry into the true nature of corporate separateness. Judges explain their veil-piercing decisions on the basis of rules and "factors" tending "under the totality of circumstances" either to support or to undermine a finding that this particular corporation really is the type of separate business organization contemplated by the business corporation statute.<sup>16</sup> If adequately separate, the corporation's distinct personality will be respected, while if not, depending on the equities of the case, it may be disregarded. The common metaphors are "alter ego" and "instrumentality"—if a corporation is one of these, the normal effects of the corporate entity theory, such as limited liability, may be lost.

This approach, of resolving all veil-piercing questions by juxtaposing idealized corporations that "truly" have a separate personality against real world "alter egos" that do not, is fundamentally misguided. First of all, it treats many different issues as if they were the same.<sup>17</sup> Commercial debts are not distinguished from personal injury claims, and questions of civil procedure, statutory interpretation, and property own-

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15. *Id.* at 757-58 (citations and explanatory examples omitted).

16. See, e.g., *Riggins v. Dixie Shoring Co.*, No. 91-C-0963 (La. Dec. 2, 1991) (1991 WL 255914, 1991 LEXIS 3373); *Withers v. Timber Products, Inc.*, 574 So. 2d 1291 (La. App. 3d Cir.), writ denied, 580 So. 2d 378 (1991); *Sea Tang Fisheries, Inc. v. You'll See Sea Foods, Inc.*, 569 So. 2d 992 (La. App. 1st Cir. 1990), writ denied, 572 So. 2d 89 (1991).

17. *Hamilton, The Corporate Entity*, 49 *Tex. L. Rev.* 979, 981 (1971); *Latty, The Corporate Entity as a Solvent of Legal Problems*, 34 *Mich. L. Rev.* 597, 621-22 (1936) ("Entity-disregard rules are applied to the solution of various problems which have little in common except that they involve corporations and lend themselves to a common entity terminology.").

ership are all resolved with a single set of rules.<sup>18</sup> Second, many of the rules and factors used to resolve these myriad issues have little or nothing to do with *any* of the functional questions actually being posed.<sup>19</sup> A lack of board meetings may thus be used to impose personal liability on a shareholder for a corporate debt,<sup>20</sup> when it is plain that hundreds of board meetings would have made no difference in the corporation's ability to pay. Finally, and most importantly, veil-piercing doctrine implicitly assumes two things to be true that really are not: that most corporations do have some genuine separate existence, and that it is this genuinely separate existence that justifies the law's separate personality rule. Veil-piercing doctrine forgets that corporate personalities are always fictional. It falsely assumes that when corporations are used for legitimate, lawful purposes, their personalities will somehow be real, and that corporation law simply recognizes legally what is already true in fact.

This assumption does not create any veil-piercing problems for the shareholders of major, publicly-traded corporations.<sup>21</sup> Public corpora-

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18. Compare, *Henry J. Mills Co. v. Crawfish Capitol Seafood, Inc.*, 569 So. 2d 1108 (La. App. 3d Cir. 1990) (commercial debt); *Giuffria v. Red River Barge Lines, Inc.*, 452 So. 2d 793 (La. App. 4th Cir.), writ denied, 458 So. 2d 118 (1984) (personal injury); *Coury v. Coury Moss, Inc.*, 510 So. 2d 1316 (La. App. 3d Cir. 1987) (civil procedure—shareholder derivative action); *Robertson Tank Lines, Inc. v. La. Public Serv. Comm.*, 349 So. 2d 1262 (La. 1977) (statutory interpretation—prohibition of one person's holding both common carrier and contract carrier certificates); and *Keller v. Haas*, 12 So. 2d 238 (La. 1943) (property ownership, interpretation of recordation requirements, public records doctrine).

19. *Hamilton, The Corporate Entity*, 49 Tex. L. Rev. 979, 981 (1971); *Latty, The Corporate Entity as a Solvent of Legal Problems*, 34 Mich. L. Rev. 597, 634-35 (1936) (in answering questions posed in veil-piercing cases "interests have to be balanced and issues determined; but the regard or disregard of the corporate entity is not one of those issues").

20. E.g., *Giuffria v. Red River Barge Lines, Inc.*, 452 So. 2d 793 (La. App. 4th Cir.), writ denied, 458 So. 2d 118 (1984); *Smith-Hearron v. Frazier, Inc.*, 352 So. 2d 263 (La. App. 2d Cir. 1977), writ denied, 353 So. 2d 1337 (1978); *Dillman v. Nobles*, 351 So. 2d 210 (La. App. 4th Cir. 1977). In all of these cases, the defendant engaged in financial misdealings that justified the veil-piercing, but exactly the same transactions could have occurred with or without board meetings.

21. It can create problems for subsidiaries, especially wholly-owned subsidiaries, of public corporations. See *Abraham v. Lake Forest, Inc.*, 377 So. 2d 465 (La. App. 4th Cir. 1979), writ denied, 380 So. 2d 99, 100 (1980). But wholly-owned subsidiaries, like one-owner small business corporations, are rarely anything other than instrumentalities through which the controlling shareholder conducts some part of its overall business; many of the factors that would support veil-piercing in a one-owner small business corporation will also be present in a wholly-owned subsidiary of a public corporation. Indeed, some commentators have suggested that courts ought to be more willing to pierce within an affiliated group of corporations than they are in piercing to noncontrolling shareholders in the ultimate parent corporation. See *supra* note 5. Moreover, apart from



tions do seem to fit - indeed to be the model for - the idealized "separate entity" that the veil-piercing doctrine assumes to be the norm. But this kind of corporation is virtually irrelevant to veil-piercing law, except as a false model of what a "true" corporation looks like. Publicly-traded corporations comprise a tiny percentage of all business corporations chartered in the United States,<sup>22</sup> and judging from the cases reported in Westlaw's database, no American court, in Louisiana or elsewhere, has ever pierced the veil of a publicly-traded corporation.<sup>23</sup>

It is only the closely-held corporation<sup>24</sup> that has a realistic chance of having its separate corporate personality disregarded, and even among closely-held corporations, the danger is limited almost entirely to corporations that have just one shareholder or, if more than one shareholder, a single shareholder that clearly predominates in control and profit participation.<sup>25</sup> For those kinds of companies, more numerous by

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veil-piercing, the separate personality theory can be used in connection with public corporations to gloss over the very real internal conflicts that can arise among different parts of the theoretically unified, single personality of the corporation.

22. Precise data on this point is difficult to find, but one survey published in 1976 provided these estimates:

Over 90% of corporations have 10 or fewer shareholders;

Less than 1% have more than 100; and

Less than 0.5% have more than 1,000;

A. Conard, *Corporations in Perspective* 118 (1976).

23. Thompson, *supra* note 6, at 1047.

24. Included among closely held corporations would be subsidiaries of other corporations.

25. Although the Thompson study, *supra* note 6, at 1054-55, suggests that veil-piercing is nearly as common in corporations with two or three shareholders as it is in one-owner companies (piercing occurred 46% of the time in the two- or three-owner corporations, as compared to 50% in one-owner corporations), the Thompson data does not disclose the roles played by the "extra" shareholders in the multiple-owner companies. It seems likely that many of the extra shareholders played passive, even nominee, roles (nominee owners were often used in early practice to circumvent the "three-shareholder" requirements common in early corporation statutes), and Professor Thompson does observe that courts almost never pierce to shareholders whom they have described as passive investors. Thompson, *supra* note 6, at 1056-57. In any case, except where married couples have been involved, no case reported in Louisiana since 1944 (see *supra* note 7) has ever used veil-piercing doctrine to impose personal liability on anyone other than a sole or dominant shareholder. Even where other shareholders have held significant interests in the "pierced" corporations, the courts have limited their veil-piercing judgments to the dominant shareholder. Compare *George A. Hormel & Co. v. Ford*, 486 So. 2d 927 (La. App. 1st Cir. 1986) (veil pierced to husband and wife who owned all stock) with *Sea Tang Fisheries, Inc. v. You'll See Sea Foods, Inc.*, 569 So. 2d 992 (La. App. 1st Cir. 1990), writ denied, 572 So. 2d 89 (1991) (trial court pierced to 75% shareholder, refused to pierce to three other shareholders owning 15%, 5%, and 5% of stock, respectively; all veil-piercing reversed on appeal); *Giuffria v. Red River Barge Lines, Inc.*, 452 So. 2d 793 (La. App. 4th Cir.), writ denied, 458 So. 2d 118 (1984) (veil pierced to 72% parent corporation); *LeBlanc v. Opt, Inc.*, 421 So. 2d 984 (La. App. 3d Cir. 1982), writ denied, 427 So. 2d

far than publicly-traded corporations, veil-piercing doctrine makes it appear that the courts are deciding many different and important issues by engaging in beyond-the-looking-glass debates about whether a solely-owned (or solely-dominated) small business corporation really has a separate existence or is instead just an "instrumentality" or "alter ego" of its principal owner. This in turn forces the principal owner of the corporation into defending some *effect* of the separate entity fiction by trying to prove to the court that the fiction is really true, that contrary to all common sense, his corporation really is something more than an instrumentality through which he conducts his business.

Of course it's an instrumentality. What else would it be?

One-owner business corporations are going to do precisely what their owners want them to do, when they want them to do it, and for whatever reasons the owners consider to be sufficient. Incorporated one-owner businesses will differ from unincorporated sole proprietorships in strictly formal ways that have little to do with the nature of the issues posed in the typical veil-piercing case.<sup>26</sup> Even if all the "corporate" formalities<sup>27</sup> are followed, these formalities will function mainly as impediments to more direct, sensible methods of management.<sup>28</sup> They will not separate the "personality" of the corporation—its policies and prac-

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438 and 429 So. 2d 132 (1983) (veil pierced to individual who was 80% shareholder of parent corporation of fifteen subsidiary corporations).

26. The degree to which business and personal assets are segregated from one another will usually be important in deciding whether to respect the limited liability of a shareholder, and the commingling of "corporate" and personal assets is frequently recited as a factor supporting veil-piercing. However, both asset segregation and some forms of limited liability (i.e., nonrecourse credit) can occur with or without incorporation.

27. It is something of a misnomer to call these formalities "corporate" formalities. The chief characteristic of "corporate" management, and the foundation of "corporate" formalities, is the board of directors. The board functions, in theory, as a group of business supervisors who engage in or monitor management on behalf of shareholders. This type of centralized, representative management is more a function of the size of a business, and the number of owners, than it is a characteristic of any particular type of organization from a legal standpoint. Small corporations and partnerships tend in practice to be operated informally and directly by their owners, while large, publicly-traded organizations tend to have indirect, representative management regardless of whether they are corporations or partnerships.

28. The very requirement of management formalities in a small, closely-held corporation is open to considerable criticism. Most reported veil-piercing decisions deal with corporations owned or controlled entirely by one person. Yet under existing rules this one person is supposed to hold a shareholder's meeting with himself at least once a year or, in lieu of the meeting, to sign a "unanimous written consent." La. R.S. 12:73 A, 76 (1969). He is supposed to use this meeting to elect at least one director, which will almost always be himself. La. R.S. 12:81 A (1969). Then, as the company's sole director, the shareholder is supposed to hold meetings with himself (or sign written consents), through which he adopts resolutions authorizing someone, almost always himself, to take certain actions in the name and on behalf of the corporation. La. R.S. 12:81 A, C (9),

tices—from complete dominance by the principal shareholder.<sup>29</sup> With or without the formalities, the sole shareholder is still going to use the corporation as an instrument or alter ego to carry out precisely the same transactions, creating the same benefits and subject to the same control, as he would be carrying out personally if he owned the business directly and could limit his liability in some other way.

#### ACCOMMODATING REALITY—VEIL-PIERCING “TESTS”

Judging from actual results in the reported cases, there seems little doubt that Louisiana courts do realize that one-owner corporations are almost always operated as instrumentalities or alter egos of their owners; not a single case covered by this article<sup>30</sup> has imposed personal liability on a corporate shareholder strictly on “alter ego or instrumentality” grounds, where some form of misrepresentation, financial impropriety

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82 D (1969 and Supp. 1991).

What actually happens in many, if not most, one-person corporations is much more sensible: the sole shareholder will keep separate financial and tax-reporting records for the incorporated business, but will end up *managing* the company informally, as if it he owned the business directly. Accord, *Riggins v. Dixie Shoring Co.*, No. 91-C-0963 (La. Dec. 2, 1991) (1991 WL 255914, 1991 LEXIS 3373) (noting the filing of tax returns, but observing that close corporations are often managed by majority or sole shareholder, without many formal board meetings). The only resolutions that will appear in the corporate minute books are those required to formalize transactions involving financial institutions and/or immovable property. Cf., *Tedesco v. Gentry Development, Inc.*, 540 So. 2d 960 (La. 1989) (written authorization required to empower agent to bind principal to a contract to sell immovable property; “written resolution” apparently contemplated).

The latest model act for close corporations pays little attention to corporate formalities. It explicitly authorizes the abolition of the board of directors, and the direct management of a closely held corporation by its shareholders. It also provides that the failure of a statutory close corporation to observe the usual corporate formalities is not to be treated as a ground for the imposition of personal liability on shareholders for the debts of the corporation. Model Statutory Close Corporation Supplement §§ 21, 25.

29. Just as it is difficult to see why a mere failure to observe corporate formalities ought to lead to a piercing of the corporate veil, so is it difficult to see why the mere *observance* of corporate formalities, no matter how scrupulous, ought to immunize a shareholder from personal liability to creditors where he has used his control power over the corporation to cause it—with all kinds of meetings, minutes, seals, and ribbons—to transfer assets to him or his relatives or affiliates in a way that does cause harm the legally-protected interests of those creditors. See *LeBlanc v. Opt, Inc.*, 421 So. 2d 984 (La. App. 3d Cir. 1982), writ denied, 427 So. 2d 438 and 429 So. 2d 132 (1983) (despite formal—though general—corporate authorizations, frequent inter-company transactions among fifteen affiliated corporations considered to be a factor justifying veil-piercing to the controlling shareholder); cf., *Green v. Champion Ins. Co.*, 577 So. 2d 249 (La. App. 1st Cir.), writ denied, 580 So. 2d 668 (1991) (complicated structure of affiliated corporate dealings disregarded, affiliates treated as “single business enterprise”).

30. See *supra* note 7.

or inequity was not also present.<sup>31</sup> Indeed, what shapes much of the black letter law of veil-piercing in Louisiana is the effort by the courts to reconcile the alter ego theory they say they are following with their apparent conclusion that most one-owner corporations are, in any realistic sense, alter egos whose separate identities nevertheless ought to be respected for most purposes.

To avoid piercing the veil of most small business corporations, the jurisprudence has developed several defense-favoring rules that tend to suggest that many of the characteristics of alter-ego corporations are really not so bad. Thus, it is well-established that the veil may not be pierced due solely to the following facts:

1. that the shareholder owns a majority<sup>32</sup> of the stock, most of the stock,<sup>33</sup> or even all of the stock of the corporation;<sup>34</sup>
2. that the corporation was minimally capitalized;<sup>35</sup> or

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31. There is one category of case in which instrumentality status will, by itself, result in veil-piercing: where the shareholder is using the corporation to circumvent some legal restriction on his own, personal behavior. See *infra* text accompanying notes 109-21.

32. *Riggins v. Dixie Shoring Co.*, No. 91-C-0963 (La. Dec. 2, 1991) (1991 WL 255914, 1991 LEXIS 3373); *Landry v. St. Charles Inn, Inc.*, 446 So. 2d 1246 (La. App. 4th Cir. 1984); *Peters v. Crochet Homes, Inc.*, 370 So. 2d 651 (La. App. 4th Cir. 1979); *Matassa v. Temple*, 346 So. 2d 803 (La. App. 1st Cir.), writ denied, 349 So. 2d 332 (1977); *Kingsman Enterprises, Inc. v. Bakerfield Elec. Co.*, 339 So. 2d 1280 (La. App. 1st Cir. 1976); *Texas Indus., Inc. v. Dupuy & Dupuy Developers, Inc.*, 227 So. 2d 265 (La. App. 2d Cir. 1969).

33. *Riggins*, No. 91-C-0963 (La. Dec. 2, 1991); *Sea Tang Fisheries, Inc. v. You'll See Sea Foods, Inc.*, 569 So. 2d 992 (La. App. 1st Cir. 1990), writ denied, 572 So. 2d 89 (1991); *Kingsman Enterprises, Inc. v. Bakerfield Elec. Co.*, 339 So. 2d 1280 (La. App. 1st Cir. 1976); *Johnson v. H. W. Parson Motors, Inc.*, 231 So. 2d 73 (La. App. 1st Cir. 1970); *National Surety Corp. v. Pope*, 147 So. 2d 239 (La. App. 4th Cir. 1962).

34. *Central Business Forms, Inc. v. N-Sure Systems, Inc.*, 540 So. 2d 1029 (La. App. 2d Cir. 1989); *Chin v. Roussel*, 456 So. 2d 673 (La. App. 5th Cir.), writ denied, 459 So. 2d 540 (1984); *Cahn Elec. Appliance Co. v. Harper*, 430 So. 2d 143 (La. App. 2d Cir. 1983); *Hock v. Sea Camper of New Orleans, Inc.*, 419 So. 2d 1315 (La. App. 4th Cir.), writ denied, 423 So. 2d 1182 (1982); *Peters v. Crochet Homes, Inc.*, 370 So. 2d 651 (La. App. 4th Cir. 1979); *Johansen v. Port Jewell, Inc.*, 351 So. 2d 184 (La. App. 4th Cir.), writ denied, 352 So. 2d 705 (1977); *Sampay v. Davis*, 342 So. 2d 1186 (La. App. 1st Cir. 1977); *Kingsman Enterprises, Inc. v. Bakerfield Elec. Co.*, 339 So. 2d 1280 (La. App. 1st Cir. 1976); *Camp v. Gibbs*, 331 So. 2d 517 (La. App. 2d Cir. 1976); *Cole v. Golemi*, 271 So. 2d 65 (La. App. 4th Cir. 1972); *Hughes Realty Co. v. Pfister*, 245 So. 2d 757 (La. App. 4th Cir. 1971). Cf. *Riggins*, No. 91-C-0963 (La. Dec. 2, 1991) (citing statutory authorization of one shareholder corporations, and characterizing corporate management by majority or sole stockholder as common among closely held corporations).

35. *Sea Tang Fisheries, Inc. v. You'll See Sea Foods, Inc.*, 569 So. 2d 992 (La. App. 1st Cir. 1990), writ denied, 572 So. 2d 89 (1991); *Harris v. Best of Am., Inc.*, 466 So. 2d 1309 (La. App. 1st Cir.), writ denied, 470 So. 2d 121 (1985); *McGregor v. United Film Corp.*, 351 So. 2d 1224 (La. App. 1st Cir. 1977), writ denied, 353 So. 2d 1335, 1341 (1978); *Johansen v. Port Jewell, Inc.*, 351 So. 2d 184 (La. App. 4th Cir.), writ

3. that the corporation was incorporated by the shareholder for the very purpose of avoiding personal liability.<sup>36</sup>

Moreover, it is declared to be the strong policy of Louisiana to favor the recognition of the corporation's separate existence, so that veil-piercing is an extraordinary remedy, to be granted only rarely.<sup>37</sup>

In effect, therefore, Louisiana courts have endorsed some seemingly inconsistent propositions: that while it is wrong to use a corporation as an "alter ego" or "instrumentality" in some unexplained improper sense of the word, it is nevertheless all right for a person to engage in business through a one-owner, minimally-capitalized corporation that was set up by the shareholder for the very purpose of avoiding legal responsibility for the obligations incurred by that business. The difficult question left

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denied, 352 So. 2d 705 (1977); *Texas Indus., Inc. v. Dupuy & Dupuy Developers, Inc.*, 227 So. 2d 265 (La. App. 2d Cir. 1969). Cf., *Henry J. Mills Co. v. Crawfish Capitol Seafood, Inc.*, 569 So. 2d 1108 (La. App. 3d Cir. 1990) (capital structure consisting entirely of \$160,000 in debt and some undocumented contributions of labor by the three shareholders, who contributed no money or property, considered not to be inadequate capitalization).

36. *Sea Tang Fisheries, Inc. v. You'll See Sea Foods, Inc.*, 569 So. 2d 992 (La. App. 1st Cir. 1990), writ denied, 572 So. 2d 89 (1991). *Central Business Forms, Inc. v. N-Sure Systems, Inc.*, 540 So. 2d 1029 (La. App. 2d Cir. 1989); *Chaney v. Godfrey*, 535 So. 2d 918 (La. App. 2d Cir. 1988); *Harris v. Best of Am., Inc.*, 466 So. 2d 1309 (La. App. 1st Cir.), writ denied, 470 So. 2d 121 (1985); *Cahn Elec. Appliance Co. v. Harper*, 430 So. 2d 143 (La. App. 2d Cir. 1983); *Peters v. Crochet Homes, Inc.*, 370 So. 2d 651 (La. App. 4th Cir. 1979); *Johansen v. Port Jewell, Inc.*, 351 So. 2d 184 (La. App. 4th Cir.), writ denied, 352 So. 2d 705 (1977); *Matassa v. Temple*, 346 So. 2d 803 (La. App. 1st Cir.), writ denied, 349 So. 2d 332 (1977); *Sampay v. Davis*, 342 So. 2d 1186 (La. App. 1st Cir. 1977); *Hughes Realty Co. v. Pfister*, 245 So. 2d 757 (La. App. 4th Cir. 1971); *L. L. Ridgway Co. v. Marks*, 146 So. 2d 61 (La. App. 4th Cir. 1962). See *Riggins*, No. 91-C-0963 (La. Dec. 2, 1991) (noting with approval the law's provision of limited liability as a means of encouraging investment).

37. *Riggins*, No. 91-C-0963 (La. Dec. 2, 1991). E.g., *Deroche v. P & L Constr. Materials, Inc.*, 554 So. 2d 717 (La. App. 5th Cir. 1989), writ denied, 559 So. 2d 1359 (1990); *Bytes Welding & Tractor Co. v. Butts Sales & Serv., Inc.*, 541 So. 2d 992 (La. App. 3d Cir.), writ denied, 546 So. 2d 1224 (1989), later appeal, 578 So. 2d 106 (La. App. 3d Cir. 1991); *Chaney v. Godfrey*, 535 So. 2d 918 (La. App. 2d Cir. 1988); *Sparks v. Progressive Am. Ins. Co.*, 517 So. 2d 1036 (La. App. 3d Cir.), writ denied, 519 So. 2d 106 (1987); *Hemphill-Kunstler-Buhler, Auctioneers & Appraisers v. Davis Wholesale Elec. Supply Co.*, 516 So. 2d 402 (La. App. 1st Cir. 1987), writ denied, 520 So. 2d 751 (1988), later appeal, 555 So. 2d 4 (La. App. 1st Cir. 1989), writ denied, 558 So. 2d 571 (1990); *GRW Engineers, Inc. v. Elam*, 504 So. 2d 117 (La. App. 2d Cir.), writ denied, 506 So. 2d 1230 (1987); *Sutton's Steel & Supply, Inc. v. Van Stavern*, 496 So. 2d 1360 (La. App. 3d Cir.), writ denied, 498 So. 2d 757 (1986); *Harris v. Best of Am., Inc.*, 466 So. 2d 1309 (La. App. 1st Cir.), writ denied, 470 So. 2d 121 (1985); *Chin v. Roussel*, 456 So. 2d 673 (La. App. 5th Cir.), writ denied, 459 So. 2d 540 (1984); *American Bank of Welch v. Smith Aviation, Inc.*, 433 So. 2d 750 (La. App. 3d Cir. 1983); *Abraham v. Lake Forest, Inc.*, 377 So. 2d 465 (La. App. 4th Cir. 1979), writ denied, 380 So. 2d 99, 100 (1980).

unanswered is which one of these two propositions a given court is likely to emphasize in a particular case—the one prohibiting an alter ego in some bad sense of the term or the one that allows such an arrangement in the ordinary sense that the incorporated business is, not surprisingly, operated pretty much as if the shareholders owned it.

According to black letter doctrine, this difficult choice between acceptable and bad alter egos is made on the basis of a flexible test in which the corporate existence can be respected or disregarded depending on the court's evaluation of a list of unweighted "factors," almost always said to include, but not limited to:

1. commingling of personal and corporate funds;
2. the observance of statutory formalities in the incorporation and operation of the company;<sup>38</sup>

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38. It is impossible in most veil-piercing decisions to find any causal relationship between a failure to observe corporate formalities and the plaintiff's loss; companies rarely fail from an insufficiency of board meetings. It is odd, therefore, that courts put this kind of emphasis on formalities. It is as if courts in automobile accident cases were giving judgments to plaintiffs based on the defendants' failure to pay their parking tickets. (The result in the automobile case only *seems* more absurd than the in the veil-piercing decision because the reasoning in the automobile case is more straightforward and less clouded in metaphors about alter egos and instrumentalities. Without these metaphors, the absurdity is obvious in both cases: a plaintiff is being given a windfall recovery based on conduct by the defendant that, while unlawful, had absolutely nothing to do with plaintiff's loss.)

Indeed, wholly apart from considerations of policy, it seems wrong for courts to act as if they are *enforcing* the positive requirements of corporation law when they choose to pierce the veil based on the shareholders' failure to hold shareholder and director meetings as contemplated by the corporate statute. Yes, the corporation statute does require these meetings to be held, but it most certainly does not condition the recognition of the corporation's separate existence on shareholder compliance with these various procedural requirements. As far as the corporation statute itself is concerned, only one thing is necessary to the creation and existence of the corporation as a separate legal person: the issuance of a certificate of incorporation by the secretary of state. As long as that certificate remains unrevoked, and the state itself brings no action to annul the corporate charter, the statute considers the corporation to exist for all purposes. La. R.S. 12:25 B. Thus, a decision to pierce the veil of a corporation for which a certificate of incorporation has been issued, and remains unrevoked, is not a decision that *enforces* the positive rule of the corporation statute, but one that overrides it. An override of that kind might well be justified on policy grounds *other* than the enforcement of the statute itself, but it is quite wrong to construe the statute to require what it plainly rejects: veil-piercing on grounds of post-incorporation informalities.

As a practical matter, despite the black letter theory, it seems likely that the courts' use of informality as a veil-piercing factor is due more to its usefulness as makeweight than to the courts' genuine belief that such a factor really is important in reaching a fair result in the cases they must decide. Ironically, it is the very commonness of informality that makes it so tempting to cite it in support of the "exceptional" remedy of veil-piercing, for when a court does wish to pierce the veil, it can easily find these sorts of factors to justify its decision. They will exist in most small corporations. Still, the actual pattern of *results* in veil-piercing cases does not bear out the black letter suggestion that corporate formalities really are important in a court's veil-piercing decisions.

3. undercapitalization;
4. whether a separate bank account has been established for the corporation, and whether its financial records are separately maintained; and
5. whether regular meetings of shareholders and directors have been held.<sup>39</sup>

Yet the "five factors" test is not limited to these points alone. Not only is the list of five factors said to be nonexclusive, but another rule requires that they be considered in light of "the totality of circumstances" presented in the case, thus opening up the inquiry into anything the court chooses to consider.<sup>40</sup> Moreover, the court's decision about how these various factors are to be weighted, and about the other factors that the court cares to consider (whether or not those factors are actually mentioned) is subject to the further protection of a rule that declares that such decisions are "primarily questions of fact, best decided by the trial court,"<sup>41</sup> and sometimes, that such questions of fact are subject to reversal only in the case of manifest error.<sup>42</sup>

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39. *Riggins v. Dixie Shoring Co.*, No. 91-C-0963 (La. Dec. 2, 1991) (1991 WL 255914, 1991 LEXIS 3373). E.g., *Henry J. Mills Co. v. Crawfish Capitol Seafood, Inc.*, 569 So. 2d 1108 (La. App. 3d Cir. 1990); *Sea Tang Fisheries, Inc. v. You'll See Sea Foods, Inc.*, 569 So. 2d 992 (La. App. 1st Cir. 1990), writ denied, 572 So. 2d 89 (1991); *T. L. James & Co. v. Kenner Landing, Inc.*, 550 So. 2d 1378 (La. App. 5th Cir. 1989), aff'd, 562 So. 2d 914 (1990); *Cohn v. Heymann*, 544 So. 2d 1242 (La. App. 3d Cir.), writ denied, 548 So. 2d 1233 (1989); *Central Business Forms, Inc. v. N-Sure Systems, Inc.*, 540 So. 2d 1029 (La. App. 2d Cir. 1989); *Chaney v. Godfrey*, 535 So. 2d 918 (La. App. 2d Cir. 1988); *Cardinale v. Lindheim*, 512 So. 2d 1232 (La. App. 5th Cir. 1987); *Coury v. Coury Moss, Inc.*, 510 So. 2d 1316 (La. App. 3d Cir. 1987); *G.I.'s Club of Slidell, Inc. v. American Legion Post No. 374*, 504 So. 2d 967 (La. App. 1st Cir. 1987); *GRW Engineers, Inc. v. Elam*, 504 So. 2d 117 (La. App. 2d Cir.), writ denied, 506 So. 2d 1230 (1987); *Sutton's Steel & Supply, Inc. v. Van Stavern*, 496 So. 2d 1360 (La. App. 3d Cir.), writ denied, 498 So. 2d 757 (1986); *George A. Hormel & Co. v. Ford*, 486 So. 2d 927 (La. App. 1st Cir. 1986); *West Bldg. Materials, Inc. v. Daley*, 476 So. 2d 554 (La. App. 3d Cir. 1985); *Harris v. Best of Am., Inc.*, 466 So. 2d 1309 (La. App. 1st Cir.), writ denied, 470 So. 2d 121 (1985); *Entech Systems Corp. v. Gaffney*, 466 So. 2d 788 (La. App. 4th Cir. 1985); *Holley v. Palermo*, 461 So. 2d 539 (La. App. 3d Cir. 1984); *Giuffria v. Red River Barge Lines, Inc.*, 452 So. 2d 793 (La. App. 4th Cir.), writ denied, 458 So. 2d 118 (1984); *Landry v. St Charles Inn, Inc.*, 446 So. 2d 1247 (La. App. 4th Cir. 1984); *American Bank of Welch v. Smith Aviation, Inc.*, 433 So. 2d 750 (La. App. 3d Cir. 1983); *Kingsman Enterprises, Inc. v. Bakerfield Elec. Co.*, 339 So. 2d 1280 (La. App. 1st Cir. 1976).

40. *Riggins*, No. 91-C-0963 (La. Dec. 2, 1991). In one case, the court considered eighteen factors, yet still emphasized that the list was illustrative only, and did not exhaust all the factors that might be considered. *Green v. Champion Ins. Co.*, 577 So. 2d 249, 257-58 (La. App. 1st Cir.), writ denied, 580 So. 2d 668 (1991).

41. E.g., *Byles Welding & Tractor Co. v. Butts Sales & Service, Inc.*, 541 So. 2d 992 (La. App. 3d Cir.), writ denied, 546 So. 2d 1224 (1989), latter app., 578 So. 2d 246 (La. App. 3d Cir. 1991); *Terry v. Guillory*, 538 So. 2d 317 (La. App. 3d Cir. 1989);

Besides the five factors approach, Louisiana courts have also developed a parallel "two-part" test based on *Kingsman Enterprises, Inc. v. Bakerfield Electric Co.*,<sup>43</sup> a test that is sometimes used by itself, and sometimes used in conjunction with some or all of the "five factors/totality of circumstances/exceptional remedy" rules. Under the *Kingsman* test the veil may be pierced if:

the corporation is an alter ego *and* has been used by the shareholder to carry out some sort of fraud *or*  
*even in the absence of fraud*, the shareholder has failed to

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Chaney v. Godfrey, 535 So. 2d 918 (La. App. 2d Cir. 1988); Coury v. Coury Moss, Inc., 510 So. 2d 1316 (La. App. 3d Cir. 1987); George A. Hormel & Co. v. Ford, 486 So. 2d 927 (La. App. 1st Cir. 1986); Elnaggar v. Fred Moran Constr. Corp., 468 So. 2d 803 (La. App. 1st Cir. 1985); Entech Systems Corp. v. Gaffney, 466 So. 2d 788 (La. App. 4th Cir. 1985); Holley v. Palermo, 461 So. 2d 539 (La. App. 3d Cir. 1984); Chin v. Roussel, 456 So. 2d 673 (La. App. 5th Cir.), writ denied, 459 So. 2d 540 (1984). But cf. *Riggins*, No. 91-C-0963 (La. Dec. 2, 1991) (standard of review unclear; no apparent deference to trial court's veil piercing decisions, but reversal based in part on conclusion that key factual findings not supported by the record).

42. E.g., *Green v. Champion Ins. Co.*, 577 So. 2d 249 (La. App. 1st Cir.), writ denied, 580 So. 2d 668 (1991); *Laporte, Sehrt, Romig & Hand, CPA's v. Gulf Island Operations, Inc.*, 557 So. 2d 359 (La. App. 4th Cir.), writ denied, 561 So. 2d 120 (1990); *Terry v. Guillory*, 538 So. 2d 317 (La. App. 3d Cir. 1989); *Quaglino Tobacco & Candy Co. v. Barr*, 519 So. 2d 200 (La. App. 4th Cir. 1987); *Coury v. Coury Moss, Inc.*, 510 So. 2d 1316 (La. App. 3d Cir. 1987); *George A. Hormel & Co. v. Ford*, 486 So. 2d 927 (La. App. 1st Cir. 1986); *Cahn Elec. Appliance Co. v. Harper*, 430 So. 2d 143 (La. App. 2d Cir. 1983); *Majestic Floor Coverings, Inc. v. Lawson*, 424 So. 2d 504 (La. App. 5th Cir. 1982); *First Nat'l Bank of Commerce v. Davis*, 365 So. 2d 8 (La. App. 4th Cir. 1978). Although there are exceptions, the manifest error rule tends to be cited in those cases in which the trial court is affirmed. Where the decision is to be reversed, the court usually ignores the manifest error rule, and instead recites the rule that limited liability for shareholders is the firmly-established rule in Louisiana, and that veil-piercing is an exceptional remedy, to be granted only rarely. See, e.g., *Riggins*, No. 91-C-0963 (La. Dec. 2, 1991); *Deroche v. P & L Constr. Materials, Inc.*, 554 So. 2d 717 (La. App. 5th Cir. 1989), writ denied, 559 So. 2d 1359 (1990); *Byles Welding & Tractor Co. v. Butts Sales & Service, Inc.*, 541 So. 2d 992 (La. App. 3d Cir.), writ denied, 546 So. 2d 1224 (1989), later app., 528 So. 2d 246 (La. App. 3d Cir. 1991); *Harris v. Best of Am., Inc.*, 466 So. 2d 1309 (La. App. 1st Cir.), writ denied, 470 So. 2d 121 (1985) (trial court reversed, without mentioning of manifest error rule, on grounds that plaintiff had not satisfied his "heavy burden of producing clear and convincing evidence" that corporation was shareholder's alter ego); *Chin v. Roussel*, 456 So. 2d 673 (La. App. 5th Cir.), writ denied, 459 So. 2d 540 (1984).

43. 339 So. 2d 1280 (La. App. 1st Cir. 1976). For cases applying the *Kingsman* test, see, e.g., *Riggins*, No. 91-C-0963 (La. Dec. 2, 1991); *Henry J. Mills Co. v. Crawfish Capitol Seafood, Inc.*, 569 So. 2d 1108 (La. App. 3d Cir. 1990); *T.L. James & Co. v. Kenner Landing, Inc.*, 550 So. 2d 1378 (La. App. 5th Cir. 1989), aff., 562 So. 2d 914 (1990); *Chaney v. Godfrey*, 535 So. 2d 918 (La. App. 2d Cir. 1988); *Harris v. Best of Am., Inc.*, 466 So. 2d 1309 (La. App. 1st Cir.), writ denied, 470 So. 2d 121 (1985); *Abraham v. Lake Forest, Inc.*, 377 So. 2d 465 (La. App. 4th Cir. 1979), writ denied, 380 So. 2d 99 (1980).



conduct business on a "corporate footing" to such an extent that the corporation has become indistinguishable from the shareholder.<sup>44</sup>

In effect, the *Kingsman* test (if it is applied by itself) lets a court tolerate a great deal of informality on the part of a shareholder, as long as "fraud" is not present, but threatens the shareholder with liability at some point—seemingly based purely on the lack of corporate formalities—even if no fraudulent behavior occurred.<sup>45</sup>

#### FLEXIBILITY AND UNCERTAINTY

The bottom line on the black letter law is that the courts have not identified any one factor, by itself, that would result in veil-piercing, and indeed have said explicitly that a number of common practices, for example, sole shareholding and low capitalization, will *not* in and of themselves justify veil-piercing. However, it remains true that most of the factors that a court will consider "under the totality of circumstances" in a veil-piercing case are things that are common in most small business corporations: low capitalization and informality in management. Thus, depending on whether a court wishes to pierce the veil, it can emphasize either the claimant-oriented side of the rules (for example, that undercapitalization is a factor that supports veil-piercing) or the defense-oriented side (that minimal capitalization is acceptable, and that shareholders are entitled to form a corporation for the very purpose of avoiding personal liability). Using this technique throughout their decisions, courts are able to make whatever decision they consider to be fair, without explaining what they are doing and why. The only thing they must show is that they have considered an unweighted list of "factors" under the "totality of circumstances" in what is "pri-

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44. 339 So. 2d at 1282.

45. The second half of the *Kingsman* test is strange indeed; it seems to call for the loss of limited liability based solely on technical transgressions without regard to any causal connection between the lack of formalities and any losses suffered by the parties in the case. Although most courts recite *Kingsman* without paying much attention to the extraordinary implications of the second part of the test, at least one court has openly expressed doubt about it, and no reported decision has actually *used* it as a means of imposing liability in the absence of fraud or inequity of some kind. See, *Abraham v. Lake Forest, Inc.*, 377 So. 2d 465, 469 (La. App. 4th Cir. 1979), writ denied, 380 So. 2d 99, 100 (1980) ("While we understand from the jurisprudence that it is not necessary to establish fraud in order to support the alter ego theory we are satisfied that the doctrine contains equitable features which require that the type of claim and the relative positions of the parties be considered before applying the doctrine."); Comment, *Piercing the Corporate Veil in Louisiana Absent Fraud or Deceit*, 48 La. L. Rev. 1229, 1234-36 (1988) (finding a few cases in which actual fraud or deceit did not occur, but still finding reasons for piercing other than mere lack of corporate formalities).

marily" a factual inquiry. Practically any result can be reconciled with that sort of law.<sup>46</sup>

Flexibility has its advantages, of course, but it has costs as well. Limited liability is supposed to be dependable, as veil-piercing is supposed to be an exceptional remedy only rarely granted. However, the law is so vague and so disconnected from any nonmetaphorical explanation of policy that substantial settlements based on the *risk* of veil-piercing must be fairly common. Summary judgments on this issue are difficult to sustain because it is rare for a closely-held small business corporation not to display at least some of the factors that might be used to support veil-piercing.<sup>47</sup> Thus, despite the nominal rarity of veil-piercing, the vagueness of the law makes shareholder liability a serious consideration in many, if not most, lawsuits in which the plaintiff is seeking to collect on the debt of a small, closely held business corporation.

#### ACTUAL RESULTS—INTRODUCTION

The actual results in veil-piercing cases are not nearly so difficult to predict, understand and explain as the black letter doctrine might lead one to think. It is possible to see a pattern of decisions that explains quite well the types of factors that truly are important in these veil-

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46. This does not necessarily mean that a trial court decision on veil-piercing is difficult to reverse; judging from reported cases, trial courts are considerably more likely to pierce than are the appellate courts. The point here is that the "law" that is applied at *both* the trial and appellate levels is so vague that it is difficult to point to any particular feature in the law that dictates one result rather than another. This is as true concerning the standard of review as it is for the substantive question itself. When appellate courts wish to uphold a trial court decision, they may simply defer to the "primarily" factual finding of the trial court, and when they wish to reverse, they may emphasize the legal policy that veil-piercing be treated as an extraordinary remedy, only rarely granted. Compare *Henry J. Mills Co. v. Crawfish Capitol Seafood, Inc.*, 569 So. 2d 1108 (La. App. 3d Cir. 1990); *Quaglino Tobacco & Candy Co. v. Barr*, 519 So. 2d 200 (La. App. 4th Cir. 1987); *George A. Hormel & Co. v. Ford*, 486 So. 2d 927 (La. App. 1st Cir. 1986); *Cahn Elec. Appliance Co. v. Harper*, 430 So. 2d 143 (La. App. 2d Cir. 1983) (affirming, deferring to trial court "factual" finding) with *Riggins v. Dixie Shoring Co.*, No. 91-C-0963 (La. Dec. 2, 1991) (1991 WL 255914, 1991 LEXIS 3373); *Sea Tang Fisheries, Inc. v. You'll See Sea Foods, Inc.* 569 So. 2d 992 (La. App. 1st Cir. 1990), writ denied, 572 So. 2d 89 (1991); *Deroche v. P & L Constr. Materials, Inc.*, 554 So. 2d 717 (La. App. 5th Cir. 1989), writ denied, 559 So. 2d 1359 (1990); *Byles Welding & Tractor Co. v. Butts Sales & Serv., Inc.*, 541 So. 2d 992 (La. App. 3d Cir.), writ denied, 546 So. 2d 1224 (1989), later app., 578 So. 2d 246 (La. App. 3d Cir. 1991); *Harris v. Best of Am., Inc.*, 466 So. 2d 1309 (La. App. 1st Cir.), writ denied, 470 So. 2d 121 (1985); *Chin v. Roussel*, 456 So. 2d 673 (La. App. 5th Cir.), writ denied, 459 So. 2d 540 (1984) (reversing, citing legal policy that veil-piercing an exceptional remedy).

47. See *Entech Systems Corp. v. Gaffney*, 466 So. 2d 788 (La. App. 4th Cir. 1985) (reversing summary judgment for the defendant based solely on a C.P.A.'s affidavit to the effect that some affiliated, closely-held corporations had not kept adequate separate accounts and had not observed certain corporate formalities).

piercing cases, and those that are not. But to see this pattern, it is first necessary to see the point made at the outset of this discussion: that the separate personality of a corporation is not a *reason* for reaching any particular result, but simply a metaphorical means of stating the result itself. Shareholders do not have limited liability because a corporation is *really* a separate entity. Rather, the law *pretends* that a corporation is a separate entity as a means of conferring this limited liability on shareholders.

Despite the black letter doctrine, the single most important question to ask in a veil-piercing case is really not *whether* the corporation has in some sense maintained some *genuine* separateness, but instead *why* its purely *fictional* separateness is being attacked in that particular case. It seems rather obvious, for example, that an attempt to pierce a corporate veil to allow a bank to collect from shareholders on a corporate loan not guaranteed by those shareholders is something quite different from a veil-piercing effort by a personal injury victim against the shareholders of an uninsured, thinly capitalized corporation. By asking "why" a veil is to be pierced, rather than "whether," a practitioner is much closer to predicting actual results: he will be much more likely to see that the claim of the tort victim is stronger than that of the bank, even if the purported veil-piercing "factors" in the two cases are in all other respects exactly the same. The remainder of this article, therefore, is organized along those lines. Veil-piercing cases are organized by functional type—depending on the nature of the issue involved—and are discussed from different policy perspectives depending upon the types of cases involved.

#### THE ENTITY AND LIMITED LIABILITY

The connection in corporation law between limited liability and the separate entity theory is as much an accident of history as anything else. Certainly, there is nothing logically unavoidable about the current relationship of the two concepts. As indicated in Louisiana's corporate statute itself, it is quite possible simply to declare as a matter of positive law that shareholders are not to be considered personally liable for the debts of their incorporated businesses,<sup>48</sup> and as indicated in Louisiana's partnership law, it is equally possible to treat a business organization as an entity for many purposes,<sup>49</sup> yet continue to insist that its owners remain personally liable for its debts.<sup>50</sup> Corporations were treated as entities for durational and ownership transfer purposes long before their

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48. La. R.S. 12:93 B (1969).

49. La. Civ. Code art. 2801.

50. La. Civ. Code art. 2817.

entity status was thought to have anything to do with limited liability,<sup>51</sup> and early forms of "limited" liability still required shareholders to be responsible for double or triple the amount of their shares' purchase prices, or even for their pro rata share of corporate obligations.<sup>52</sup> For banks, double liability provisions continued until they were proven ineffective in the Great Depression.<sup>53</sup>

It really is unfortunate that corporation law, despite its early history, has chosen to rationalize limited liability as it has, not as a means of implementing a policy decision about the allocation of business risks, but as a logical corollary of separateness.<sup>54</sup> This has done nothing but confuse things, for it has led lawyers and judges to think that the key question in a limited liability case is not about limited liability, as such, but about the purely fictional and formal separation of a corporation from its owners. Despite the weaknesses in the black letter theory, however, the results in the reported cases suggest that Louisiana courts exercise sound judgment in deciding these types of disputes. Although little is said explicitly about distinctions among various kinds of limited liability problems, the courts seem intuitively capable of giving them effect.

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51. Blumberg, *Limited Liability and Corporate Groups*, 11 J. Corp. L. 573, 588 (1986).

52. *Id.* at 597-601.

53. *Id.* at 601.

54. Although the corporation statute declares explicitly that shareholders are not to be held personally liable for the debts of the corporation, La. R.S. 12:93 B (1969), there is no doubt that this declaration of limited liability is thought by the courts to be based on the corporation having a legal personality separate and distinct from that of its shareholders. E.g., *Riggins v. Dixie Shoring Co.*, No. 91-C-0963 (La. Dec. 2, 1991) (1991 WL 255914, 1991 LEXIS 3373); *Smith v. Cotton's Fleet Serv., Inc.*, 500 So. 2d 759 (La. 1987); *Glazer v. Comm'n on Ethics for Pub. Empl.*, 431 So. 2d 752 (La. 1983); *Green v. Champion Ins. Co.*, 577 So. 2d 249 (La. App. 1st Cir.), writ denied, 580 So. 2d 668 (1991); *Withers v. Timber Products, Inc.*, 574 So. 2d 1291 (La. App. 3d Cir.), writ denied, 580 So. 2d 378 (1991); *Henry J. Mills Co. v. Crawfish Capitol Seafood, Inc.*, 569 So. 2d 1108 (La. App. 3d Cir. 1990); *Deroche v. P & L Constr. Materials, Inc.*, 554 So. 2d 717 (La. App. 5th Cir. 1989), writ denied, 559 So. 2d 1359 (1990); *T.L. James & Co. v. Kenner Landing, Inc.*, 550 So. 2d 1378 (La. App. 5th Cir. 1989), *aff'd*, 562 So. 2d 914 (1990); *Casson v. Hartford Fire Ins. Co.*, 548 So. 2d 66 (La. App. 3d Cir. 1989); *Chaney v. Godfrey*, 535 So. 2d 918 (La. App. 2d Cir. 1988); *Quaglino Tobacco & Candy Co. v. Barr*, 519 So. 2d 200 (La. App. 4th Cir. 1987); *Sparks v. Progressive Am. Ins. Co.*, 517 So. 2d 1036 (La. App. 3d Cir.), writ denied, 519 So. 2d 106 (1987); *G.I.'s Club of Slidell, Inc. v. American Legion Post No. 374*, 504 So. 2d 967 (La. App. 1st Cir. 1987); *Sutton's Steel & Supply, Inc. v. Van Stavern*, 496 So. 2d 1360 (La. App. 3d Cir.), writ denied, 498 So. 2d 757 (1986); *George A. Hormel & Co. v. Ford*, 486 So. 2d 927 (La. App. 1st Cir. 1986); *Harris v. Best of Am., Inc.*, 466 So. 2d 1309 (La. App. 1st Cir.), writ denied, 470 So. 2d 121 (1985); *Cahn Elec. Appliance Co. v. Harper*, 430 So. 2d 143 (La. App. 2d Cir. 1983).

## CONSENSUAL CREDITORS AND LIMITED LIABILITY

The most common form of limited liability case, and the one easiest to explain from a policy standpoint, is one in which a consensual creditor of the corporation is seeking to disregard the separate corporate personality as a means of making a corporate shareholder personally liable for a debt of the corporation. An excellent example of this type of case is *Abraham v. Lake Forest, Inc.*<sup>55</sup>

The plaintiff in *Abraham* was a real estate investor who had sold a real estate option to NEI Corporation, Alabama, a \$1,000 subsidiary of Lake Forest, Inc., which in turn was a subsidiary of NEI Corporation, a large, publicly-traded real estate development company. Abraham had purchased the option for \$21,000, and resold it to the subsidiary of Lake Forest for \$175,000 in cash and \$201,000 in an unsecured promissory note of the subsidiary.<sup>56</sup>

The subsidiary exercised the option, and mortgaged the property involved in order to borrow the money needed to buy the property. It began its improvements on the property, and paid \$50,000 to Abraham under the terms of the promissory note, but later decided to terminate the project and to sell the property involved. Enough was received on the resale to repay the mortgage on the property, and to have \$33,000 left over. Those funds were paid to the parent corporation in partial satisfaction of the amounts earlier advanced by the parent company on the subsidiary's behalf.

No further amounts were paid to Abraham under the note, and he sued to collect the unpaid amount. He sought to pierce the subsidiary's veil and to hold its 100% parent, and that company's 100% parent (the ultimate parent company), liable for the unpaid balance of the note.

The facts were undisputed: the subsidiary did observe some corporate formalities—authorizations occurred through unanimous consents from its sole shareholder, represented by the shareholder's officers, and it did keep good inter-company financial records. However, it was also true that the subsidiary was dominated entirely by officers and employees of the ultimate parent corporation. It did not receive funds or pay bills through its own bank account. When bills needed to be paid, the ultimate parent company paid them. The company had been organized with only \$1,000 in capital and had no other separate funds from which it could have paid its expenses and obligations, which totaled \$790,000. Plainly, the subsidiary was simply a shell corporation—an instrumentality—through which the ultimate parent corporation chose to develop this piece of property. It met its obligations only at the sufferance of the parent

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55. 377 So. 2d 465 (La. App. 4th Cir. 1979), writ denied, 380 So. 2d 99, 100 (1980).

56. *Id.* at 466-67. All monetary figures are rounded for simplicity's sake.

corporation, and its capitalization was woefully inadequate to pay its bills, including the note to Abraham.

If the true test of veil-piercing was whether this corporation "really" existed as an independent economic entity, then the veil would surely have been pierced in this case—but it wasn't. The court did rescind the \$33,000 payment to the parent corporation as an unlawful preference—an abuse of the parent's control power (and a violation of its fiduciary duties) to cause the subsidiary to pay its debt before it paid the debt of an independent third party—and ordered that amount paid to Abraham. But it did *not* pierce the veil.

In a well-reasoned decision (despite the standard recitation of the black letter law), the court pointed out that Abraham was a sophisticated real estate investor who understood perfectly well what risk he was taking in extending credit to a \$1,000 subsidiary corporation, without getting any parent company guarantees. The court said that he had engaged in similar financial deals himself, and understood that in extending credit to the subsidiary, he was essentially agreeing to rely on the success of the project itself, rather than on the credit-worthiness of the lender, as the source of repayment. Had the project succeeded, Abraham would have been paid as a creditor of the subsidiary, before the parent corporation was entitled to take out any money in the form of profit. But because the project failed, he, like the parent company, did not make as much as hoped.<sup>57</sup> The parent company had done nothing to violate the terms of their deal, except to take out the \$33,000 in funds remaining after the property involved had been sold.<sup>58</sup>

These types of cases are easy to explain because they involve the use of the corporation simply as a convenient vehicle for non-recourse financing—as a means of identifying and segregating those assets from which the debt is to be collected. The very same thing could be done without corporation law (and indeed, it *is* done without corporation law where the transaction is relatively simple—mortgaging a single tract of

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57. The court surely was influenced by the fact that Abraham had already done quite well for himself—getting \$172,000 in cash up front, representing a \$150,000 cash profit on the option, and had also been paid \$50,000 of the remaining \$200,000 he had been promised out of the future revenues of the project.

58. It was understandable that the court would order the return of this amount, for just as Abraham had agreed to take the risk that he would not be repaid if the project itself was unsuccessful, so had the parent company, by making him a creditor rather than an owner of the subsidiary, promised to give him a priority in payment over the equity interest of the parent. Arguably, that deal was being violated as a result of the parent taking out the last \$33,000 in the corporation. On the other hand, the parent could have argued that it too was a creditor of the subsidiary, that its extensions of credit were fair and in good faith, and therefore that its claim should not have been subordinated to Abraham's as it was.

land, for example) except for the difficulties associated with "pinning down" the assets from which the debt will be paid.<sup>59</sup>

The corporation in these cases acts as a sort of fictional "box" or "holding tank" for the assets that are to be subjected to the debt. If a creditor understands that he is to be paid only out of corporate assets, and not out of the personal assets of the corporate shareholders, and he agrees to extend credit on that basis, then there is absolutely no reason why a court should allow him out of the terms of his contract simply because the corporation is in some sense not a truly independent and free-standing economic organization, or because the shareholders and directors have failed to hold enough meetings.

This is simple contract law—enforcing the terms as agreed to by the parties. One of the important uses of corporations is in financial arrangements in which one or more different corporations are deliberately and openly used as simple devices for segregating one pool of assets and claims from another within a larger business enterprise. Of the many dozens of reported veil-piercing cases covered by this article,<sup>60</sup> not one of them involving a claim by a consensual creditor has pierced the veil simply because the obligor corporation was a controlled shell or instrumentality.

#### PIERCING IN CONSENSUAL CREDITOR CASES

The results in the reported cases strongly support the "implied nonrecourse clause" theory of veil piercing in contract cases. Regardless of how informally managed or how thinly capitalized a corporation may be, the last half-century of reported cases in Louisiana<sup>61</sup> suggest that the appellate courts in this state normally do not allow veil-piercing to be used as a device for imposing personal liability on corporate shareholders for consensual corporate debts. Piercing does sometimes occur, but only where one or more of the following four characteristics are present:

1. The creditor is less sophisticated than Abraham<sup>62</sup>—is a trade creditor or consumer, for example, or is *relatively* less sophisticated than the corporate shareholder in terms of corporate

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59. See Posner, *The Rights of Creditors of Affiliate Corporations*, 43 U. Chi. L. Rev. 499, 501-07 (1976).

60. See *supra* note 7.

61. See *supra* note 7.

62. See *supra* text accompanying notes 55-58, concerning *Abraham v. Lake Forest, Inc.*, 377 So. 2d 465 (La. App. 4th Cir. 1979), writ denied, 380 So. 2d 99, 100 (1980).

finance;<sup>63</sup>

2. A single shareholder controls a number of different corporations, and moves assets back and forth between the various corporations;<sup>64</sup>

3. The shareholder has deliberately stripped the corporation of assets, knowing that it is about to face liability, or has deliberately placed a particular contract or obligation in a shell corporation because he knows that the contract is going to be breached, and does not want to be personally liable (nor lose any substantial assets) as a result of the liability that he knows will arise;<sup>65</sup> and/or

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63. E.g., *Troyer v. Webster Homes, Inc.*, 566 So. 2d 114 (La. App. 5th Cir.), writ denied, 571 So. 2d 650, 651 (1990); *Terry v. Guillory*, 538 So. 2d 317 (La. App. 3d Cir. 1989); *Egudin v. Carriage Court Condominium, Dehrvill Group, Inc.*, 528 So. 2d 1043 (La. App. 5th Cir.), writ denied, 532 So. 2d 136 (1988); *LeBlanc v. Opt, Inc.*, 421 So. 2d 984 (La. App. 3d Cir. 1982), writ denied, 427 So. 2d 438 and 429 So. 2d 132 (1983); *Hebert v. Wiegand*, 207 So. 2d 882 (La. App. 4th Cir. 1968).

64. E.g., *Green v. Champion Ins. Co.* 577 So. 2d 249 (La. App. 1st Cir.), writ denied, 580 So. 2d 668 (1991); *Entech Systems Corp. v. Gaffney*, 466 So. 2d 788 (La. App. 4th Cir. 1985) (summ. judg. rev'd); *LeBlanc v. Opt, Inc.*, 421 So. 2d 984 (La. App. 3d Cir. 1982), writ denied, 427 So. 2d 438 and 429 So. 2d 132 (1983). Cf., *Lucey Mfg. Corp. v. Oil City Iron Works*, 15 La. App. 12, 131 So. 57 (La. App. 2d Cir. 1930) (affiliated corporations with identical names, incorporated in different states and characterized as "branches" on firm stationery, caused third party who was creditor of one corporation and debtor of another to believe that all corporations were a single firm—third party allowed to set off one debt against the other and to hold the affiliate liable for the deficiency). For a further explanation of these cases, and for citations of cases in which multiple corporations have not resulted in piercing, see *infra* note 68. For citations to a debate about the wisdom of respecting separate corporate personalities within a group of affiliated corporations, see *supra* note 5.

65. The importance of unexplained asset transfers is illustrated in *Riggins v. Dixie Shoring Co.*, No. 91-C-0963 (La. Dec. 2, 1991) (1991 WL 255914, 1991 LEXIS 3373) where the supreme court reversed a decision in favor of piercing on grounds, among others, that an alleged "disappearance" of assets appeared not to have occurred. For cases that pierce the veil based on illicit asset transfers, see, e.g., *George A. Hormel & Co. v. Ford*, 486 So. 2d 927 (La. App. 1st Cir. 1986) (shareholders emptied corporate bank account so that check sent in payment for meat would not clear, after learning that employee had stolen the meat); *Watson v. Big T Timber Co.* 382 So. 2d 258 (La. App. 3d Cir. 1980) (knowing that title problems existed, and that prospective purchaser was insisting on warranty deed, shareholder quitclaimed land to shell corporation, and had shell corporation sell through a warranty deed). Cf., *Hebert v. Wiegand*, 207 So. 2d 882 (La. App. 4th Cir. 1968) (shareholder caused corporation to sell house to creditor of corporation after already selling under unrecorded contract for deed to homeowner). But see, *American Bank of Welch v. Smith Aviation, Inc.*, 433 So. 2d 750 (La. App. 3d Cir. 1983) (shareholders issued check in good faith, with sufficient funds in account, but over five months later—as a result of bank's mixup—no longer had enough to pay check as well as other corporate debts, so kept funds in corporate account so low that check would not clear—willing to pay eventually, when the money came in, but unable to pay at the time without cash-flow problems—court refused to pierce).



4. The extension of credit to the corporation has been procured at least partly as the result of some false representation made personally by the defendant shareholder or officer (in some cases, the courts treat these fraudulent representations as personal torts of the shareholders or officers, so that piercing is not seen as necessary, and in other cases, the personal fraud is used to justify the piercing).<sup>66</sup>

These four "exceptions" to the general rule, that the courts will not pierce for the benefit of a consensual creditor, actually help prove the general rule: where a creditor has agreed to look only to the assets of the corporation for his payment, that agreement will be enforced unless, in some rough sense, the creditor should not be expected to understand the nature of his agreement, or the corporate shareholder has either committed fraud or violated the implied contractual obligation of good faith.

Thus, in the usual case, the courts do enforce the terms of the contract between the parties, without much regard to so-called "corporate" formalities. But in cases involving commingling of assets, poor financial record-keeping, or a complicated series of self-dealing transactions among a number of affiliated entities, piercing the veil doctrine serves the courts functionally as a sort of "*res ipsa loquitur*" remedy for corporate creditors who would otherwise be forced to prove the unlawfulness of many separate transactions in the face of poor or nonexistent records. Veil-piercing doctrine allows a court to dispense with the complicated, difficult proof of a series of limited, particularized abuses—with limited remedies—and instead, based on a general pattern of poor records or potentially abusive transactions, simply to impose personal liability for the obligations involved directly on the shareholder who was responsible for the confusion.<sup>67</sup> That may seem at first to be

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66. E.g., *Terry v. Guillory*, 538 So. 2d 317 (La. App. 3d Cir. 1989); *Egudin v. Carriage Court Condominium, Dehrvill Group, Inc.*, 528 So. 2d 1043 (La. App. 5th Cir.), writ denied, 532 So. 2d 136 (1988); *Lone Star Indus., Inc. v. American Chem., Inc.*, 461 So. 2d 1063 (La. App. 4th Cir. 1984), aff'd, 480 So. 2d 730 (1986); *Dolese Concrete Co. v. Tessitore*, 357 So. 2d 869 (La. App. 1st Cir.), writ denied, 359 So. 2d 620, 623 (1978); *Smith-Hearron v. Frazier, Inc.*, 352 So. 2d 263 (La. App. 2d Cir. 1977), writ denied, 353 So. 2d 1337 (1978); *Altex Ready-Mixed Concrete Corp. v. Employers Commercial Union Ins. Co.*, 308 So. 2d 889 (La. App. 1st Cir.), writ denied, 312 So. 2d 872 (1975); *Nat'l Bank of Commerce v. Hughes-Walsh Co.*, 246 So. 2d 872 (La. App. 4th Cir. 1971) (check kiting).

67. See Clark, *The Duties of the Corporate Debtor to Its Creditors*, 90 Harv. L. Rev. 505, 540-53 (1977). Cf., Posner, *The Rights of Creditors of Affiliated Corporations*, 43 U. Chi. L. Rev. 499, 520-22 (1976) (arguing for veil-piercing where controlling person of corporation has organized its affairs in a way that unnecessarily increases information costs to prospective creditors, and who are thereby misled about the assets available for

a rather rough form of justice, but it may be the only kind of justice that a court may realistically be capable of providing if the corporate shareholder has mixed things up by failing to comply with normal standards of record-keeping and asset segregation.

Moreover, despite the relative ease with which a veil-piercing decision might theoretically be justified under the prevailing doctrine, Louisiana courts do indeed seem reluctant to utilize the doctrine in cases that appear to them to involve routine business failures. Where a person has operated his business through a single corporation,<sup>68</sup> and has appeared

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the payment of their claims). For examples of these types of cases in Louisiana, see *Green v. Champion Ins. Co.*, 577 So. 2d 249 (La. App. 1st Cir.), writ denied, 580 So. 2d 668 (1991); *George A. Hormel & Co. v. Ford*, 486 So. 2d 927 (La. App. 1st Cir. 1986); *Entech Sys. Corp. v. Gaffney*, 466 So. 2d 788 (La. App. 4th Cir. 1985) (summ. judg. rev'd); *LeBlanc v. Opt, Inc.*, 421 So. 2d 984 (La. App. 3d Cir. 1982), writ denied, 427 So. 2d 438 and 429 So. 2d 132 (1983). Compare these cases with, e.g., *Amp Serv. Corp. v. Richard*, 419 So. 2d 911 (La. 1982) (preferential transfer of security interest to shareholder/creditors, to prejudice of arms' length unsecured creditors, though subject to attack as unlawful preference, not an unlawful dividend within meaning of La. R.S. 12:93); *Dooley v. Wright*, 501 So. 2d 980 (La. App. 2d Cir.) (liability for unlawful distribution), writ denied, 512 So. 2d 442 (1987); *Peters v. Crochet Homes, Inc.*, 370 So. 2d 651 (La. App. 4th Cir. 1979) (liability for unlawful distribution).

68. Where several affiliated corporations are used in a shareholder's overall business operations, a shareholder should be prepared to explain in a simple, understandable fashion why additional corporations were used, and what types of legitimate, consistent policies governed inter-company transactions. Where it appears that multiple corporations have been used in something of a shell game, with complicated, frequent movements of assets from one company to another, and without any credible and consistent business explanation for these myriad transactions, Louisiana courts have been quite willing to use veil-piercing doctrine to cut through the mess. On the other hand, where some new business venture has been placed in a separate corporation, and consistently treated as a separate business venture from a financial standpoint, Louisiana courts have been willing to recognize the affiliate's limited liability for the debts of that new venture, even if a few isolated examples of wrongful, correctable, self-dealing have occurred. Compare *Green v. Champion Ins. Co.*, 577 So. 2d 249 (La. App. 1st Cir.), writ denied, 580 So. 2d 668 (1991); *LeBlanc v. Opt, Inc.*, 421 So. 2d 984 (La. App. 3d Cir. 1982), writ denied, 427 So. 2d 438 and 429 So. 2d 132 (1983) (shell game cases—veil pierced) with *Stephenson v. List Laundry & Dry Cleaners, Inc.*, 186 La. 11, 171 So. 556 (1936) (tort case; veil not pierced between affiliated corporations operating separate laundry establishments in different cities); *Central Business Forms, Inc. v. N-Sure Systems, Inc.*, 540 So. 2d 1029 (La. App. 2d Cir. 1989) (veil not pierced as a result of private reorganization of financially troubled business, involving transfer of assets from one controlled corporation to another, leaving behind unsecured creditor claims, where assets transferred worth less than amount owed on loan that they secured, and where the first corporation was given a "royalty" interest in profits produced by assets in transferee corporation); *Abraham v. Lake Forest, Inc.*, 377 So. 2d 465 (La. App. 4th Cir. 1979) (veil of undercapitalized second-tier subsidiary, established to develop a tract of land, not pierced where development project itself failed financially, but preferential payment on parent debt was rescinded and parent debt was effectively subordinated to that of third party creditor), writ denied, 380 So. 2d 99 (1980); *Johansen v. Port Jewell, Inc.*, 351 So. 2d 184 (La. App. 4th Cir.) (court refused to pierce to pay

to run the company in good faith, as if he intended to cause it to pay its bills as long as financially feasible, the courts are liberal in protecting him from personal liability to others who are equally or more sophisticated about the financing and operations of small business corporations. That is true even where the corporation is run as most small business corporations are—virtually as proprietorships—with flexibility as to investments and withdrawals by the controlling shareholder and without much attention to corporate formalities, beyond the maintenance of a separate bank account and financial records.<sup>69</sup> Managerial informality, unaccompanied by financial confusion, appears to create relatively low levels of risk as far as consensual creditors are concerned,<sup>70</sup> while corporate formalities alone appear not to protect against veil piercing where a court is convinced that financial misdealings or other inequities have occurred.<sup>71</sup>

#### LIMITED LIABILITY AND TORT VICTIMS

Surprisingly perhaps, there are relatively few Louisiana decisions that discuss the issue of corporate limited liability in the context of a tort suit for the recovery of personal injury damages. Out of the 117 veil-

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salaries of employees of corporation organized to develop marina where marina project itself failed financially), application not considered, 352 So. 2d 705 (1977).

69. See, e.g., *Riggins v. Dixie Shoring Co.*, No. 91-C-0963 (La. Dec. 2, 1991) (1991 WL 255914, 1991 LEXIS 3373); *Sea Tang Fisheries, Inc. v. You'll See Sea Foods, Inc.*, 569 So. 2d 992 (La. App. 1st Cir. 1990), writ denied, 572 So. 2d 89 (1991); *Henry J. Mills Co. v. Crawfish Capitol Seafood, Inc.*, 569 So. 2d 1108 (La. App. 3d Cir. 1990); *West Bldg. Materials, Inc. v. Daley*, 476 So. 2d 554 (La. App. 3d Cir. 1985); *Harris v. Best of Am., Inc.*, 466 So. 2d 1309 (La. App. 1st Cir.), writ denied, 470 So. 2d 121 (1985); *Cahn Elec. Appliance Co. v. Harper*, 430 So. 2d 143 (La. App. 2d Cir. 1983); *Ceco Corp. v. R & M Industries, Inc.*, 416 So. 2d 166 (La. App. 4th Cir.), amended, 425 So. 2d 709 (1982); *Kingsman Enterprises, Inc. v. Bakerfield Elec. Co.*, 339 So. 2d 1280 (La. App. 1st Cir. 1976).

70. See *supra* note 69 and accompanying text. The bigger danger for the owners of small business corporations is that they will neglect to make it clear in their business transactions that they are acting strictly as agents for their corporations. It is tempting for sole shareholders of small business corporations to tell others that "they"—the shareholders—are the owners of the businesses involved, and to make deals without expressly disclosing their status as agents of their corporations. This can result in personal liability under an undisclosed agency theory without any need for the creditor to attack the way in which the corporation is run generally. See, e.g., *Miller v. Thompson*, 542 So. 2d 96 (La. App. 1st Cir.), writ denied, 544 So. 2d 407 (1989); *G.T.M. Carpet Co. v. Richards*, 534 So. 2d 539 (La. App. 5th Cir. 1988).

71. See, e.g., *Green v. Champion Ins. Co.*, 577 So. 2d 249 (La. App. 1st Cir.), writ denied, 580 So. 2d 668 (1991); *LeBlanc v. Opt, Inc.*, 421 So. 2d 984 (La. App. 3d Cir. 1982), writ denied, 427 So. 2d 438 and 429 So. 2d 132 (1983); *Watson v. Big T Timber Co.*, 382 So. 2d 258 (La. App. 3d Cir. 1980); *Smith-Hearron v. Frazier, Inc.*, 352 So. 2d 263 (La. App. 2d Cir. 1977), writ denied, 353 So. 2d 1337 (1978).

piercing cases covered by this article,<sup>72</sup> only nine deal with this issue.<sup>73</sup> Ten more deal with similar issues, in the context of a workers' compensation or Jones Act claim.<sup>74</sup> Two of these remaining ten cases were actually "reverse" veil-piercing cases, in which the *defendant shareholder* sought to have the court disregard the separate existence of controlled corporations, so that he or another corporation could assert the pierced corporation's "employer" status—and immunity—against the plaintiff.<sup>75</sup>

This low number of veil-piercing cases in the personal injury context may reflect a widespread use of liability insurance in business operations,<sup>76</sup> or larger numbers of pre-appeal settlements in tort contexts due to a perceived difficulty in defending corporate limited liability against personal injury claimants. In black letter theory, of course, the nature of the claimant should make no real difference; the "totality of circumstances" is supposed to be considered, but none of the factors commonly recited by the courts mentions the nature of the claimant

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72. See *supra* note 7.

73. *Stephenson v. List Laundry & Dry Cleaners, Inc.*, 186 La. 11, 171 So. 556 (1936); *Sparks v. Progressive Am. Ins. Co.*, 517 So. 2d 1036 (La. App. 3d Cir.), writ denied, 519 So. 2d 106 (1987); *Giuffria v. Red River Barge Lines, Inc.*, 452 So. 2d 793 (La. App. 4th Cir.), writ denied, 458 So. 2d 118 (1984); *Landry v. St. Charles Inn, Inc.*, 446 So. 2d 1246 (La. App. 4th Cir. 1984); *Giddings v. John Hearnberger Co.*, 403 So. 2d 849 (La. App. 2d Cir. 1981); *Dillman v. Nobles*, 351 So. 2d 210 (La. App. 4th Cir. 1977); *Sampay v. Davis*, 342 So. 2d 1186 (La. App. 1st Cir. 1977); *Ogaard v. Wiley*, 325 So. 2d 642 (La. App. 3d Cir. 1975); *Robicheaux v. Frederick*, 257 So. 2d 183 (La. App. 3d Cir. 1972).

74. *Smith v. Cotton's Fleet Service, Inc.*, 500 So. 2d 759 (La. 1987); *Withers v. Timber Products, Inc.*, 574 So. 2d 1291 (La. App. 3d Cir.), writ denied, 580 So. 2d 378 (1991); *Cormier v. Guilbeaux*, 547 So. 2d 17 (La. App. 3d Cir.), writ denied, 551 So. 2d 633 (1989); *Rivers v. Schlumberger Well Surveying Corp.*, 389 So. 2d 807 (La. App. 3d Cir. 1980) (Jones Act); *McGregor v. United Film Corp.*, 351 So. 2d 1224 (La. App. 1st Cir. 1977), writ denied, 353 So. 2d 1335, 1341 (1978); *Lushute v. Diesl*, 343 So. 2d 1132 (La. App. 3d Cir.), rev'd on other grounds, 354 So. 2d 179 (1977); *McClendon v. Security Ins. Co. of Hartford*, 340 So. 2d 426 (La. App. 4th Cir. 1976); *Cole v. Golemi*, 271 So. 2d 65 (La. App. 4th Cir. 1972); *Johnson v. Kinchen*, 160 So. 2d 296 (La. App. 1st Cir. 1964); *Brown v. Benton Creosoting Co.*, 147 So. 2d 89 (La. App. 2d Cir. 1962).

75. *Smith v. Cotton's Fleet Serv., Inc.*, 500 So. 2d 759 (La. 1987) (defendant unsuccessful); *Cormier v. Guilbeaux*, 547 So. 2d 17 (La. App. 3d Cir.) (defendant unsuccessful), writ denied, 551 So. 2d 633 (1989).

76. The fact that the owner of an incorporated business is not personally liable for the debts of his business does not mean that he is indifferent to the losses that his business may suffer. If he has made any substantial investment in the assets of the business (either directly through equity contributions or indirectly through personal guarantees of corporate borrowings), then he is going to care a great deal whether he has adequate insurance coverage to prevent the loss of those assets, whether the loss arises from a fire or from a personal injury lawsuit. It seems likely, therefore, that most owners of businesses that require much in the way of undistributed assets are going to have an adequate incentive to purchase liability insurance for their business regardless of the effects that insurance, or lack of insurance, might have in the area of corporate veil-piercing.

involved. On the surface, at least, the controlling factors are supposed to be the same in a tort case as in a contract case, and the key question is whether the corporation "really" existed as a true, separate business organization in some abstract sense of the term.

But the questions posed by a tort case are quite different from those raised in a contract case. Corporate limited liability in a contract setting may be seen as an implied nonrecourse clause in the creditor's contract with the corporation; the relevant questions, therefore, are:

1. Whether the creditor should be deemed to have understood and consented to this arrangement,
2. Whether the creditor's consent had been vitiated by fraud, and/or
3. Whether the corporate shareholder has complied with the requirements of good faith management of the corporation that may be treated as implicit conditions to the creditor's agreement to look only to the corporation's assets for payment.<sup>77</sup>

The tort victim, in contrast has not agreed to extend credit to the corporation for his personal injuries; he has had the role of corporate creditor thrust upon him involuntarily. If corporate shareholders are to be protected against limited liability in this context, it is not because the creditor has agreed to look only to corporate assets for the payment of his claim. Rather, limited liability in this setting must be seen as being imposed on the creditor, by operation of law, just as the tort duty on which the plaintiff's suit is based in the first place is imposed by society on the defendant(s) in the case.

Why would society choose to impose the costs of corporate limited liability on a nonconsenting personal injury victim? The standard answer is that society wishes to encourage the growth of commerce and industry, through the raising of the necessary corporate capital, by permitting investors to hazard only a limited, predictable portion of their assets.<sup>78</sup> The theory is that the denial of limited liability would not so much result in the full compensation of persons injured by a business, as it would result in the lack of the business operation in the first place: if investors could contribute capital to a business only by risking their entire personal fortune, investments in all but the safest and most predictable of enterprises would dry up. An implicit policy decision apparently has been made to have society as a whole (or, more accurately, to have a few *members* of society, chosen at random) bear at least

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77. See *supra* text accompanying notes 63-71.

78. See, e.g., *Riggins v. Dixie Shoring Co.*, No. 91-C-0963 (La. Dec. 2, 1991) (1991 WL 255914, 1991 LEXIS 3373); *Glazer v. Comm'n on Ethics for Public Employees*, 431 So. 2d 752 (La. 1983).

some of the unexpected risks of an incorporated business enterprise.<sup>79</sup>

The limitation of liability provided by corporation law directly conflicts with general tort law policies which try to prevent the externalization of the true risks and costs of a given business enterprise; limited liability has absolutely no operative effect except to externalize the risks and costs of a business.<sup>80</sup> When a court considers a veil-piercing question in the context of a personal injury case, therefore, it is unavoidably being asked to decide how to balance the law's policy in favor of compensating tort victims—and of making a business enterprise bear the true risks of its operations—against the competing legal policy that favors capital formation in corporations by denying full recovery to the corporation's creditors, and by allowing the externalization of at least some of the personal injury costs associated with that corporation's business.

It is difficult to say in these kinds of cases exactly where the encouragement of capital formation should yield to the injuries of an innocent person, but one thing seems clear: if the purpose of providing limited liability is to encourage business investment, a shareholder's claim to limited liability ought not be respected as against a personal injury claimant where he has invested little or nothing in the risk-producing corporation. Where a shareholder has failed to provide adequately for the personal injury claims that are virtually certain to arise in the ordinary course of the corporation's business<sup>81</sup> it seems nonsensical to say that the balance between the competing policies of internalization of risks, on the one hand, and the encouragement of capital formation, on the other, ought to be struck in favor of limited liability.

This result would serve neither policy well; rather, it would deny recovery to a personal injury claimant in order to protect—indeed to encourage—clearly and predictably *inadequate* levels of capital formation

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79. Some commentators have questioned whether limited liability should be recognized against tort claimants. See *supra* note 5.

80. In one sense, limited liability always externalizes business risks, regardless of whether the creditor who ultimately gets stuck with the unpaid bill is consensual or nonconsensual in nature; either way the creditor, rather than the owner of the business, ends up paying part of the costs of operating that business. However, a consensual creditor always has the ability to deny credit to the corporation unless he is promised a price for his extension of credit that compensates him for the risk that he might not be paid. Thus, when dealing with a consensual creditor, a corporation really is not able to externalize its costs. It pays for the risks of nonpayment.

A tort victim cannot withhold or price his extension of credit in this way; to the extent that a corporate shareholder is permitted to avoid personal liability on a corporate personal injury obligation, the shareholder is clearly being permitted to reap the economic benefits of the business without bearing all its costs. See Posner, *The Rights of Creditors of Affiliated Corporations*, 43 U. Chi. L. Rev. 499, 501-07, 519-20 (1976).

81. See *Minton v. Cavaney*, 56 Cal. 2d 576, 364 P.2d 473, 15 Cal. Rptr. 641 (1961); *Walkovszky v. Carlton*, 18 N.Y.2d 414, 223 N.E.2d 6, 276 N.Y.S.2d 585 (1966) (dissenting opinion of Keating, J.).

for the type of business involved. Taken to an extreme, if limited liability in a personal injury case were not linked to some good faith effort on the part of the shareholder to provide adequate financial protection for the types of injuries that commonly occur in the kind of business involved, then the law's provision of limited liability would depend strictly on empty formalisms, i.e., on the filing of certain documents with the Secretary of State, and the maintenance of separate books, records and corporate decision-making procedures. Regardless of the degree to which a corporation has complied with the law's formality and "separate existence" requirements, therefore, it seems unlikely that most courts would be sympathetic to an assertion of limited liability in a personal injury case by the controlling shareholder of an under-insured, thinly capitalized shell. Conversely, if a shareholder *has* provided reasonable levels of insurance or capital, then in light of the law's policy in favor of capital formation, it seems likely that a court would be willing to protect the shareholder against personal liability for claims that are out of the ordinary, either as to type or size.

If this is true, then corporation law might be seen as providing a rather generous "umbrella" insurance policy against a shareholder's personal liability for business-related personal injury claims. (The corporate assets, of course, would remain subject to the claim, so that the corporation itself—if it owns valuable assets—would normally have an incentive to obtain its own insurance.<sup>82</sup>) The personal liability umbrella would be unlimited in amount and would be provided virtually free of charge,<sup>83</sup> but would be available only if reasonable levels of primary coverage were maintained. The shareholder would bear responsibility for covering the ordinary expenses of his business, including ordinary tort claims, and society's subsidy of the capital formation process would be limited to protecting investors against extraordinary claims.

#### PIERCING RESULTS IN TORT CASES

The few piercing cases that exist in the personal injury area do provide some limited support for the theory that levels of capitalization and insurance in relation to the nature of the injuries suffered are the important factors in predicting whether a court will pierce the veil in a tort case—much more important than corporate formalities. Compare two cases decided in the mid 1980's: *Giuffria v. Red River Barge Lines, Inc.*,<sup>84</sup> and *Sparks v. Progressive American Insurance Co.*<sup>85</sup>

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82. See *supra* note 76.

83. There are some corporate filing fees and franchise taxes to pay, but little or no extra income tax if the corporation is an S corporation.

84. 452 So. 2d 793 (La. App. 4th Cir.), writ denied, 458 So. 2d 118 (1984).

85. 517 So. 2d 1036 (La. App. 3d Cir.), writ denied, 519 So. 2d 106 (1987).

In *Giuffria*, the appellate court affirmed the trial court's piercing of the veil of a 72% subsidiary corporation to its parent company. The court recited a list of "factors" that seemed typical of informally managed, closely-held corporations:

1. 72% stock ownership;
2. same president, who served without additional compensation for his services to the subsidiary;
3. no corporate minutes, and no corporate meetings in the preceding four years;
4. no corporate tax return in one year; and
5. \$200,000 in loans by the parent to the subsidiary.

These factors certainly are of the type typically recited in veil-piercing cases, but there are many cases in which similar, or even greater, levels of informality have not resulted in veil-piercing.<sup>86</sup> It would appear that it was the subsidiary's lack of insurance that made the difference: the parent corporation was operating an uninsured truck through its subsidiary, perhaps hoping that the limited liability of corporation law would substitute for insurance. It didn't.

In the *Sparks* case, on the other hand, both the trial court and the appellate court refused to pierce the veil of a trucking corporation that had been incorporated just days before the driver of the corporation's truck rear-ended the plaintiff. *Sparks* involved a business that was operated as a proprietorship before the accident (the truck was purchased, the driver hired, and an aggregate-hauling business was begun, all before incorporation). Judging from the complete lack of corporate meetings after the accident, and the fact that the lawyer for the sole shareholder of the corporation challenged only the shareholder's liability—never challenging the liability of his client's wholly-owned corporation—apparently little was ever done to give the corporation any real economic or organizational existence. Once the accident occurred, it seems likely that the corporation was "cut loose" and allowed to bear liability without much of a fight, because the real client—the shareholder—had little to lose if the new, completely uncappedalized corporation were to be held liable. Nevertheless, neither the trial court nor the appellate court would pierce the veil. This was a company that died aborning, yet both courts saw in it enough vitality to protect the shareholder from liability.

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86. E.g., *West Bldg. Materials, Inc. v. Daley*, 476 So. 2d 554 (La. App. 3d Cir. 1985); *Harris v. Best of Am., Inc.*, 466 So. 2d 1309 (La. App. 1st Cir.), writ denied, 470 So. 2d 121 (1985); *Cahn Elec. Appliance Co. v. Harper*, 430 So. 2d 143 (La. App. 2d Cir. 1983); *Ceco Corp. v. R & M Indus., Inc.*, 416 So. 2d 166 (La. App. 4th Cir.), amended, 425 So. 2d 709 (1982); *Kingsman Enterprises, Inc. v. Bakerfield Elec. Co.*, 339 So. 2d 1280 (La. App. 1st Cir. 1976).



The difference between *Sparks* and *Giuffria* seemed to be that the owner of the trucking business in *Sparks* had acquired a \$100,000 liability policy for the truck when he owned it personally, and that the insurer had stipulated coverage for the truck notwithstanding the later incorporation. This insurance was adequate to compensate the plaintiff fully for about \$17,200 in medical expenses and \$2,300 in property damages, plus \$79,500 or so out of the \$150,000 awarded to him as general damages. Moreover, this was the amount of insurance that the shareholder had purchased when he was operating the business personally, as a proprietorship; he did not seem to be using the corporation as a substitute for insurance, but as extra protection, on top of the amount of insurance he thought it necessary to have when he knew that he could face personal liability.

There are other explanations for these two cases, of course:

1. *Giuffria* pierced to another corporation, not an individual, while *Sparks* would have resulted in personal liability for an individual;
2. The corporation in *Sparks* had not been operating long enough to "ignore" corporate formalities (it simply hadn't had time to observe them), while the parent corporation in *Giuffria* had virtually ignored formalities for at least four years; and
3. In both cases, the appellate court was simply deferring to the finding of the trial court; one just happened to be different from the other.

Still, one must explain why the *trial* court would be more sympathetic in one case than in another, and why it would matter much to a court whether corporate formalities—whose observance or nonobservance had nothing to do in either case with the plaintiff's ability to collect his damages—were ignored because of a lack of time or a lack of interest, and, finally, why a court should be less concerned with an individual who was operating an uninsured truck than with a corporation that was doing the same thing.

It certainly cannot be proven that insurance made the difference, but that seems the best explanation (other than random chance or the personal predilections of the judges involved). In one case the defendant had made no effort to make its corporation financially responsible to tort claimants—and indeed had chosen to characterize its capital contributions as loans, rather than equity contributions, so that it actually would have competed as a creditor with the tort claimant for any remaining assets of the corporation. In the other case, *before* he had incorporated his business, when he was personally at risk, the defendant had purchased what most laypersons would probably consider to be a reasonable amount of insurance. It seems clear that the former type of arrangement is not the type that corporation law is designed to promote—

an externalization of all personal injury costs, with little or no equity investment—while the latter type of situation is exactly the sort of good faith entrepreneurship that corporate limited liability is designed to encourage.<sup>87</sup>

Two other cases that have pierced the veil in a personal injury setting are *Dillman v. Nobles*<sup>88</sup>, and *Ogaard v. Wiley*.<sup>89</sup> The piercing in *Dillman* was consistent with the black letter theory of indistinguishability, but it also fits with the patterns suggested in this discussion of undercapitalization and lack of insurance, coupled with a failure to maintain a separate set of *financial* (as distinguished from corporate) records for the business.

It seems probable that the separate identity of a reasonably-insured corporation, with decent books and records, would have been respected in *Dillman* despite the lack of corporate formalities, for the presence or absence of these formalities would have had no bearing on either the personal injury risks or the corporate insolvency risks posed to the patrons of the lounge. The plaintiff in *Dillman* had suffered \$3,500 in personal injury damages as a result of the collapse of a chair in the defendant's lounge/dancehall. The defendant argued that his corporation, rather than he personally, owned and operated the dancehall, but both the trial and appellate courts pierced the veil, citing the following factors:

1. The lack of shareholder and director meetings—the shareholder could not name the directors of the corporation, and when he testified that 290 board meetings had been held, it turned out that he was referring to weekly meetings between himself and the employees of the lounge.
2. The lack of a corporate bank account—when asked to produce documentation of corporate transactions, the defendant shareholder produced only cancelled checks from his personal account.
3. The use of a cash accounting system, operated primarily through the lounge cash register over which the defendant had unfettered control, and from which he said that he withdrew \$200 weekly, as his sole source of support; the bookkeeper used whatever figures the defendant gave him as to business receipts; and the acquisition of the lease for the lounge, and some of the lounge's licenses and permits in the name of the shareholder personally.

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87. It also seems likely that a court would be willing to be fairly lenient with nonexpert assessments of the amount of insurance that would be required, but more demanding of persons who know or should know more about the types of risks that they are likely to face. The *Sparks* court might have been less tolerant had a multi-million dollar trucking firm purchased only a \$100,000 policy for a subsidiary trucking corporation.

88. 351 So. 2d 210 (La. App. 4th Cir. 1977).

89. 325 So. 2d 642 (La. App. 3d Cir. 1975).

The reported decision does not cite the lack of insurance as a factor in the decision, but it appears that no insurance coverage existed: only "ABC Insurance Co." is named in the caption of the case, the text of the decision does not mention any insurance coverage or the rendering of any judgment for or against an insurer, and it seems unlikely that the veil-piercing issue would have been pursued through an appeal to recover on a \$3,500 claim, surely within the coverage limits of even the most modest of liability policies.

The other case, *Ogaard*, was an especially tragic personal injury case in which the court treated one corporation as the alter ego of a sister corporation as a means of gaining access to the sister corporation's umbrella liability policy. The "pierced" corporation was the employer of a driver who, in the course and scope of his employment as a driver of a tandem truck, had negligently struck the back of a pickup truck, crushing it into a tree and killing twelve persons, at least ten of them children, who were riding in the pickup on their way to a swimming party. The court noted that the "[b]odies of some of the occupants were found crushed at the scene and others were along the vehicles' route."<sup>90</sup>

The two corporations involved were owned and managed by the same individuals, one as a farming business and the other as a related mill operation that did business principally with the farm and with the farm's tenants. The pierced corporation did maintain a \$300,000 general liability policy, as well as a \$40,000 policy on the truck, but the sister corporation not only had its own general liability policy, but also an umbrella policy. The court recited the following factors in affirming the trial court's piercing of the veil:

1. capitalization of \$1,000;
2. common shareholders and officers;
3. the conduct of business principally with the sister corporation;
4. the same post office box;
5. use by one corporation of funds borrowed in the name of the other corporation;
6. the mill corporation—the pierced corporation—was said not to be expected to make a profit.

These do not seem to be factors indicating that the shareholders had in any way "abused" the corporate form of business, and it does not appear that the shareholders had been financially irresponsible in their insurance arrangements. Indeed, it appears that the disputes in the case involved strictly questions among the various insurers; it does not

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90. *Id.* at 646.

appear that the corporation that was held liable was actually going to find it necessary to pay a judgment not covered by insurance. Functionally, therefore, the effect of piercing in this case was to provide insurance coverage that the contract of insurance might not otherwise have provided. This was more a question of the interpretation of insurance contracts than the imposition of personal liability on a corporate shareholder.

It would not have been difficult to predict the result in this case, but one must wonder whether the result would have been the same had the sister corporation *not* had sufficient insurance to cover the liability; if, in effect, the shareholders of this corporation would indirectly have become poorer (through their corporation's payment of the tort claim) as a result of the veil-piercing.

#### INSURANCE AND AFFILIATES

The *Ogaard* case raises two important questions about the factors that ought to be considered important in veil-piercing cases, particularly those involving tort claimants: the relationship of insurance and capitalization, and the relevance of shared facilities among affiliated companies.

As indicated earlier,<sup>91</sup> it is difficult to see why mere formal compliance with the corporation statute should shield a shareholder from personal liability to a personal injury victim where the shareholder has set up a thinly-capitalized, uninsured shell company whose operations will obviously pose risks of personal injury to third parties. That sort of protection for shareholders would eliminate most incentives to operate their businesses in a way that minimized risks of personal injury, and it would allow the owners and profit-takers in the business to shift virtually all risks of loss from their enterprise to innocent third persons.

On the other hand, however, it seems difficult to justify a *nonrecognition* of limited liability, no matter how low the capitalization and no matter how many other of the traditional veil-piercing factors are present, if adequate levels of insurance are maintained by the responsible corporations. As far as a tort claimant is concerned, a company's insurance coverage acts as an especially desirable form of capitalization, independent of management formalities or the capital or earnings retained by the company for other purposes, and the incentive to maintain and/or reduce the costs of this insurance will create an incentive for the reduction of the risks of injury posed by the operation of the insured business.<sup>92</sup>

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91. See *supra* text accompanying notes 78-83.

92. If it does not seem obvious how insurance is actually superior to other forms

Certainly, a court ought not consider it relevant, as *Ogaard* did, that the affiliated companies have shared the same post office box; separate post office boxes could not conceivably make any difference in whether a personal injury claimant is going to recover his damages.<sup>93</sup> It is hardly surprising, or sinister in implication, that two or more commonly-owned businesses might share common business resources, such as post office boxes, office facilities, clerical or professional staffing, or even bank accounts. Such practices are common in business and actually ought to be encouraged to the extent that the sharing results in operational efficiencies rather than in disguised revenue diversions from one affiliate to another.

The real danger posed to creditors of affiliated organizations is that the controlling persons of the affiliated entities will cause assets to be diverted from one company to another through self-dealing transactions that harm the interests of the transferor company's creditors.<sup>94</sup> In the *Ogaard* case, for example, the court found that the common owners of the two companies operated the mill on virtually a non-profit basis,

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of capitalization from the standpoint of the tort claimant, consider the situation in *Ogaard v. Wiley*, 325 So. 2d 642 (La. App. 3d Cir. 1975). Compare the value of a \$300,000 tort claim against a company with a net worth of \$340,000, but with no insurance coverage for the claim, as compared with the same size claim against a company with zero net worth, but covered by a \$340,000 insurance policy with a reputable, solvent insurer.

Surely the latter claim is more valuable than the former: the payment of the claim is a routine matter for the insurance company, which will have the cash resources to do so, while a payment by the uninsured company out of its own capital threatens its very existence. The owners of the company are likely to resist such a claim even more vigorously than they might normally, both on the merits and through attempted transfers of assets out of the company. Even though the claim may eventually be proven, and unlawful transfers reversed, at its very best the process of securing and enforcing the judgment in this case is going to be much more time-consuming and expensive than the collection of the claim from the insurer. The tort claimant might well end up with considerably less than \$300,000 for his claim, even though, in theory, the company had assets sufficient to cover such a claim. Thus, even in a case such as *Ogaard*, where the veil-piercing factors certainly supported a conclusion that the two companies had been operated essentially as separately-incorporated divisions of a single, commonly-owned enterprise, the separate identities of the two companies ought not be disregarded if each of them has maintained liability insurance appropriate to the type of business being operated by each.

93. This is a particularly striking example of one of the weaknesses of the "factors" approach in the black letter law. Factors are listed without any attention being paid to their importance relative to other factors, and without any concern for any causal connection between the factor listed and the loss suffered by the plaintiff. The causal element only *appears* to be satisfied through the theoretical relationship between veil-piercing and corporate separateness, liability being imposed if the corporations are not truly separate. But since separateness is fictional to begin with, it makes no sense to make a liability decision based in part on the rather unsurprising discovery that affiliated companies often share common facilities.

94. See Landers, A Unified Approach to Parent, Subsidiary, and Affiliate Questions in Bankruptcy, 42 U. Chi. L. Rev. 589, 591-97 (1975).

"choosing" to sell its services to the farming operation at prices too low to produce any profits to the mill. That would clearly harm the interests of creditors of the mill, for it would mean that the farm was getting all of the economic benefit of the mill operation, without the mill's building up any retained earnings that might have been available to creditors, simply by causing the mill to supply its services at an unprofitable price. Obviously, that would not have occurred had the mill and the farm been independent companies, selling their products and services strictly in arms-length transactions.<sup>95</sup> Similar concerns seem to have prompted the *Champion Insurance* and *LeBlanc* courts to pierce the veil even where the claim of a consensual creditor was concerned.<sup>96</sup>

Nevertheless, as long as adequate liability insurance is maintained by the responsible corporations, it does not seem wrongful—as far as a tort claimant is concerned—to shift revenues through affiliate self-dealing. If the owners of affiliated corporations wish to meet their tort obligations by hiring an insurance company to expose its capital, rather than by leaving their own capital at risk in the company, that should be of no concern to the tort claimant; the owners have made adequate financial arrangements as far as he is concerned.

If it turns out that self-dealing between affiliates has injured some other creditor (such as a consensual creditor whose claim is not covered by insurance), then that creditor might well be entitled to challenge the practice in his own suit.<sup>97</sup> But neither the affiliation itself nor the self-dealing ought to be considered relevant to the tort claimant's effort to pierce, as long as those factors have not resulted in a failure by the owners to keep their companies capable (through insurance arrangements or otherwise) of paying the size and kind of tort claims that ordinarily arise in those types of businesses. If adequate insurance has not been maintained, of course, then inter-company self-dealing poses as much danger to the tort claimant as it does to any other creditor of the corporation.

#### WORKERS' COMPENSATION CASES

As with personal injury cases generally, there are few Louisiana cases that discuss the issue of disregarding the limited liability of share-

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95. However, even if the firms had dealt with each other on an arm's length basis, the fact that each would be attempting to maximize its profits would not necessarily mean that either of them would be inclined to retain those profits in the business, putting them at risk for the benefit of creditors, rather than distributing them to the extent they could lawfully do so.

96. *Green v. Champion Ins. Co.*, 577 So. 2d 259 (La. App. 1st Cir.), writ denied, 580 So. 2d 668 (1991); *LeBlanc v. Opt, Inc.*, 421 So. 2d 984 (La. App. 3d Cir. 1982), writ denied, 427 So. 2d 438 and 429 So. 2d 132 (1983). See *supra* text accompanying note 64.

97. See *supra* text accompanying notes 62-71.

holders in workers' compensation cases;<sup>98</sup> most employers appear to purchase the necessary insurance. Where that does not occur, however, and the question is whether to impose personal liability on the shareholder for the workers' compensation claim, there would appear to be no reason to distinguish a normal personal injury claim from a claim arising under workers' compensation law. In neither case should a court allow a shareholder to externalize the risks of his business without providing in some reasonable way for those liabilities that commonly arise in the type of business involved. Two cases have pierced the veil in that type of situation.<sup>99</sup> Three others have refused to pierce the veil, one where personal liability was imposed under a personal negligence theory anyway,<sup>100</sup> another where some form of insurance did seem to be available,<sup>101</sup> and the third without providing information on capitalization or insurance.<sup>102</sup>

Veil-piercing theory has occasionally been used in workers' compensation cases for purposes other than imposing personal liability on a shareholder for a corporate debt. In these cases, the courts pierce the veil as a means of treating one company as the "employer" of a worker that is formally employed by someone else.<sup>103</sup> Most courts find it unnecessary to take this approach, however, as the jurisprudence in the workers' compensation field is flexible enough to find "statutory employers" outside of formal employment relationships. Where veil-piercing is discussed at all, it tends to be treated rather summarily, as a secondary question, and tends to be decided in a way that is consistent with the court's view on the main issue being posed, namely, the treatment of

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98. *Withers v. Timber Products, Inc.*, 574 So. 2d 1291 (La. App. 3d Cir.), writ denied, 580 So. 2d 378 (1991); *McGregor v. United Film Corp.*, 351 So. 2d 1224 (La. App. 1st Cir. 1977), writ denied, 353 So. 2d 1335, 1341 (1978); *Lushute v. Diesi*, 343 So. 2d 1132 (La. App. 3d Cir.), rev'd on other grounds, 354 So. 2d 179 (1977); *McClendon v. Security Ins. Co. of Hartford*, 340 So. 2d 426 (La. App. 4th Cir. 1976); *Cole v. Golemi*, 271 So. 2d 65 (La. App. 4th Cir. 1972); *Johnson v. Kinchen*, 160 So. 2d 296 (La. App. 1st Cir. 1964); *Brown v. Benton Creosoting Co.*, 147 So. 2d 89 (La. App. 2d Cir. 1962).

99. *Withers*, 574 So. 2d at 1291; *Brown*, 147 So. 2d at 89.

100. *Cole v. Golemi*, 271 So. 2d 65 (La. App. 4th Cir. 1972).

101. *Johnson v. Kinchen*, 160 So. 2d 296 (La. App. 1st Cir. 1964) (employee's insurance policy providing \$25.00 per week for 100 weeks).

102. *Lushute v. Diesi*, 343 So. 2d 1132 (La. App. 3d Cir.), rev'd on other grounds, 354 So. 2d 179 (1977).

103. *McGregor v. United Film Corp.*, 351 So. 2d 1224 (La. App. 1st Cir. 1977), writ denied, 353 So. 2d 1335, 1341 (1978) (joint employers); *Brown v. Benton Creosoting Co.*, 147 So. 2d 89 (La. App. 2d Cir. 1962) (major creditor that had taken over management, and received most the economic benefit of the business operation treated as employer as result of piercing).

a particular person or company as a "statutory employer."<sup>104</sup> The courts have done here what they ought to do in most veil-piercing cases: they have seen the true policy issues being posed, and have refused to be distracted by abstract questions of corporate separateness.

In an interesting twist on this "statutory employer" problem, a parent corporation in *Smith v. Cotton's Fleet Service, Inc.*<sup>105</sup> sought to pierce its own subsidiary's corporate veil in order to give the subsidiary access to the parent company's status as a statutory employer. The parent corporation in *Cotton's Fleet* owned all of the stock of two different corporations, one of which employed a driver injured on the job in an automobile accident, and the other of which owned and supplied an allegedly defective truck being driven by the worker at the time of his accident. The employee collected his workers' compensation benefits under the insurance maintained by the parent company, but also sought to recover from the truck-owning subsidiary under tort law.

The supreme court held in *Cotton's Fleet* that the truck-owning subsidiary was not entitled to the tort immunity of a statutory employer, and that, as far as the injured employee of the other corporation was concerned, it may as well have been an unrelated third party tortfeasor.<sup>106</sup> The court rejected the defendant's veil-piercing argument, choosing to treat the sibling corporation, wholly owned by the principal/statutory employer, as if it were a separate "contractor"—as if the fact that the contractor and principal were nothing but separately incorporated divisions of the same business enterprise had no legal relevance.<sup>107</sup> The court insisted on respecting the separate identities of the corporations involved, except to the extent that one could be treated as a statutory employer under workers' compensation law. Veil-piercing, as such, was not allowed.

Ironically, this is one case in which the policies of corporation law would have been better served by disregarding, not respecting, the separate existence of the corporations involved. By respecting the corporation's separate identity—despite the wishes of the shareholders not to do so—the supreme court decision in *Cotton's Fleet* used the corporate fiction to increase, rather than to reduce, the risks posed to shareholders in operating this separately-incorporated aspect of the overall business enterprise. Had the trucks and other assets of the "contractor" subsidiary

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104. E.g., *Smith v. Cotton's Fleet Service, Inc.*, 500 So. 2d 759 (La. 1987); *Cormier v. Guilbeaux*, 547 So. 2d 17 (La. App. 3d Cir.), writ denied, 551 So. 2d 633 (1989); *Certain v. Equitable Equip. Co.* 453 So. 2d 292 (La. App. 4th Cir.), writ denied, 459 So. 2d 535, reconsid. denied, 461 So. 2d 304 (1984); *Cole v. Golemi*, 271 So. 2d 65 (La. App. 4th Cir. 1972).

105. 500 So. 2d 759 (La. 1987).

106. *Id.* at 761.

107. *Id.* at 760-63.



been owned directly by the parent corporation in *Cotton's Fleet*, workers' compensation law would have protected those assets against the tort claims of the employee. The court chose to lift that protection for the simple reason that the parent company had chosen to place those normally protected assets in a separate subsidiary. The court did argue, correctly, that separate incorporation might *sometimes*, in a hypothetical case, be used to avoid liability for legal obligations that might otherwise be owed,<sup>108</sup> but it never suggested that anything of the kind had actually occurred in the case before it. The parent corporation in *Cotton's Fleet* thus lost part of its tort immunity for no better reason than having held some of its assets in the wrong sort of way. Moreover, an employee who received exactly what he was supposed to under the workers' compensation system was given a windfall recovery because of hypothetical claims that might have been asserted by other persons, in very different circumstances, where entirely different principles of law should have been controlling.

The *Cotton's Fleet* court did not see that separate incorporation might be used for a variety of legitimate reasons having nothing to do with an effort to circumvent an employer's workers' compensation obligations: to facilitate tax planning, to accommodate creditors who are financing that particular part of the overall business, or even to limit the parent company's risks to other creditors in connection with the separate subsidiary's operations. *Cotton's Fleet* therefore discourages business arrangements that might otherwise make perfectly good sense, without increasing one whit the workers' compensation benefits enjoyed by the parent company's workers. By relying on the corporate fiction itself, without any analysis of the reasons for which the fiction is normally recognized, the *Cotton's Fleet* decision has created an unnecessary dilemma for business planners: they must give up either the normal benefits of separate incorporation or the normal benefits of tort immunity under workers' compensation law.

#### CIRCUMVENTION CASES

Cases in the "circumvention" category of veil-piercing jurisprudence are strikingly different from any of the cases discussed so far; they have nothing whatever to do with the collection of a debt owed by the corporation. Rather, in the circumvention type of case the court is being

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108. If the parent company had become insolvent, the separate incorporation would effectively have subordinated the worker's claim against the assets of the subsidiary to the debts owed by the subsidiary to its own, separate creditors; the employee would have an interest only as a creditor of the parent company, and the parent company's interest as the 100% shareholder would have been junior in right of payment to the claims of the subsidiary's creditors.

asked to disregard the separate existence of a corporation in order to prevent the *shareholder* of the corporation from getting around some restriction on his *own* freedom of action. The veil is pierced in these cases to stop the shareholder from doing indirectly through a corporation what he could not do directly as an individual, or viewed in a slightly different way, to impute to a corporation some legal disability or characteristic that, as a formal matter, is actually held by the shareholder rather than by the corporation itself. Thus, the circumvention cases do not involve issues of corporation law, as such. Rather, they raise questions about the proper interpretation of a particular statute or contract, i.e., whether the particular statute or contract in question ought to be interpreted to reach only those actions taken by the parties directly, or instead ought to be seen as reaching indirect actions as well.

The leading example of this type of case is *Glazer v. Commission on Ethics for Public Employees*.<sup>109</sup> *Glazer* addressed the question whether a member of the state's mineral board, who was legally prohibited from selling steel to oil companies, could avoid the unlawful conflict of interest by selling the same steel to the same companies, only indirectly—through a wholly owned corporation. In a decision considerably better-reasoned than most veil-piercing opinions, the Louisiana Supreme Court held “no.” The court said that insofar as the statutory prohibition against conflicts of interest was concerned, the corporate veil could be pierced, and transactions by the board member's wholly-owned corporation could be treated as if they were transactions by the board member himself.

In effect, the court may be said either to have prohibited the board member from circumventing the legal restriction on his own, direct, business dealings through the use of a wholly-owned corporation, or to have imputed the corporation's transactions to the shareholder for purposes of determining whether the shareholder had violated the law's prohibition of conflicts of interest on the part of board members. Either way, the result is the same. The court was careful to point out, however, that it was *not* necessarily holding that the separate identity of the board member's corporation ought not be respected for other purposes, or that the board member/shareholder was subject to personal liability for the corporation's debts.<sup>110</sup> This decision thus explicitly acknowledged what most veil-piercing cases miss: that the same corporation may be subject to veil-piercing for some purposes, but not for others, even though the veil-piercing “factors” might otherwise be identical.<sup>111</sup>

The real question in a veil-piercing case, said the *Glazer* court, was how to strike the correct balance between the policies underlying the

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109. 431 So. 2d 752 (La. 1983).

110. *Id.* at 757-58.

111. *Id.* at 758.

law's normal respect for the separate personality of a corporation (e.g., to encourage business investment) and those supporting the disregarding of that separate personality under the circumstances of that particular case. In this case, the court reasoned, the recognition of the separate personality of the corporation would thwart the legislative policy underlying the statutory prohibition of conflicts of interest on the part of public employees, without furthering in any way the positive goals sought to be advanced by the law's normal respect for the separate personality, e.g., limited liability for shareholders. Thus, it was appropriate to pierce the veil.

A later first circuit court of appeal case extended the *Glazer* ruling to pierce the veil of a corporation wholly owned by the children, and later by the siblings, of the public employee. It too recognized that the corporate veil may be pierced for some purposes, even though the same corporation's separate existence would be recognized for other purposes.<sup>112</sup>

There are several types of cases outside the ethics field that involve the "circumvention" or "imputing" issue, and, for the most part, courts are considerably more liberal in piercing the veil in these cases than they are in the limited liability type of case discussed earlier in this article. Courts have pierced the veil in the following types of cases:

1. Where a seller of a business, having entered into a non-compete agreement, has engaged in a competing business through a corporation that he owns or effectively controls. The courts in these cases will enjoin the competition through the controlled corporation.<sup>113</sup>
2. Where a common carrier attempts to circumvent some of the legal requirements applicable to it, or to avoid legal restrictions on its own actions, through the use of subsidiaries or affiliates; the companies have not been successful.<sup>114</sup>
3. Where an affiliate company was used in an attempt to avoid

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112. *In re Sea Shell, Inc.*, 509 So. 2d 90 (La. App. 1st Cir. 1987).

113. See *Desselle v. Petrossi*, 207 So. 2d 190 (La. App. 4th Cir.), writ denied, 209 So. 2d 39 (1968); *Hirsh v. Miller*, 181 So. 2d 310 (La. App. 4th Cir. 1965), rev'd on other grounds, veil-piercing questioned, 187 So. 2d 709 (1966); *Hirsh v. Miller*, 167 So. 2d 539 (La. App. 4th Cir.), writ denied, 168 So. 2d 821 (1964); *S&R Gas Co. v. Stephens*, 90 So. 2d 487 (La. App. 2d Cir. 1956), judgment annulled and case dismissed as moot, 99 So. 2d 5 (1958).

114. *Robertson Tank Lines, Inc. v. La. Public Serv. Comm'n*, 349 So. 2d 1262 (La. 1977); *American Courier Corp. v. La. Public Serv. Comm'n*, 256 La. 464, 236 So. 2d 802 (1970); But cf., *Collins Pipeline Co. v. New Orleans East, Inc.*, 250 So. 2d 29 (La. App. 4th Cir.) (upholding common carrier classification—and resultant expropriation power—against argument that carrier was mere alter ego of its 80% and 20% parent corporations, which were not themselves common carriers), writ denied, 252 So. 2d 669, 670 (1971).

restrictions on cross-parish branch banking.<sup>115</sup>

4. Where a controlled corporation was used in an effort to avoid a contractual obligation that purportedly existed only as long as the obligor remained in business—the business was taken over by a controlled corporation, so the obligor argued he was no longer bound to perform; veil pierced and argument rejected.<sup>116</sup>

5. Where a foreign parent corporation has directed the internal affairs of a subsidiary, the in-state acts of the subsidiary may be imputed to the out-of-state parent for purposes of exercising long-arm jurisdiction over the parent.<sup>117</sup>

6. Where the parties to an unrecorded transaction affecting the clear title to immovable property seek to avoid the effects of the transaction by transferring the property to a purported third party—a corporation owned by the parties themselves; in these cases, the courts pierce the veil and treat the corporation as if it were a party to the transaction involved, thus denying the third party status needed to take title free of the unrecorded interests.<sup>118</sup>

7. Where a seller has a claim for rescission on grounds of lesion beyond moiety, but for buyer's transfer of property to "alter ego" corporation; in these cases, rescission is permissible despite the normal separate identity of the corporation.<sup>119</sup>

Courts have refused to pierce the veil in "imputing/circumvention" type cases where:

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115. *Whitney Nat'l Bank in Jefferson Parish v. James*, 189 So. 2d 430 (La. App. 1st Cir.), writ denied, 191 So. 2d 140 (1966).

116. *Quaglino Tobacco & Candy Co. v. Barr*, 519 So. 2d 200 (La. App. 4th Cir. 1987). But see, *Chef's Fried Chicken, Inc. v. Bull McWood, Inc.*, 459 So. 2d 1371 (La. App. 3d Cir. 1984) (franchisees held not to have breached their obligation to give right of first refusal in connection with good faith offers to buy the franchised business when they allowed competitor of franchisor to acquire the franchised business by first causing a corporation controlled by the franchisees to make an offer that the franchisor saw no need to match).

117. *Copeland v. Gordon Jewelry Corp.*, 288 So. 2d 404 (La. App. 4th Cir.), writ denied, 290 So. 2d 911 (1974).

118. *Meraux v. R.R. Barrow, Inc.*, 219 La. 309, 52 So. 2d 863 (1951); *Keller v. Haas*, 202 La. 486, 12 So. 2d 238 (1943); *Evergreen Plantation, Inc. v. Zunamon*, 319 So. 2d 543 (La. App. 2d Cir. 1975) (veil not pierced); *Cattle Farms, Inc. v. Abercrombie*, 211 So. 2d 354 (La. App. 4th Cir. 1968).

119. *Warriner v. Russo*, 308 So. 2d 499, 501 (La. App. 4th Cir. 1975) ("corporation, which is alter ego of the original vendee, stands in the same position as the original vendee in a vendor's action for lesion beyond moiety." Case remanded for factual findings.), appeal after remand, 367 So. 2d 571 (La. App. 4th Cir. 1979), writ denied, 380 So. 2d 71 (1980).

1. A garnishment order has been issued against the shareholder of the employing corporation, rather than the employing corporation itself. The result is the same—no piercing—regardless of whether the shareholder is an individual or a parent corporation, and regardless of whether the shareholder had initially employed the subject employee, or the garnishment had been sought against the wrong person from the outset.<sup>120</sup>
2. The person seeking to disregard the separate identities of the corporations and other persons involved has consented to their separate treatment.<sup>121</sup>

#### DISTINGUISHING CIRCUMVENTION CASES

It is important to recognize that the circumvention cases comprise a distinct type of veil-piercing case, for this is the one type of case in which it often *does* make sense to pierce the veil based solely on the fact that the corporation is the "instrumentality" or "alter ego" of the corporate shareholder, and it is in this type of case that the courts' statements of the law are going to most favor veil-piercing based on this simple ground alone. *Keller v. Haas*,<sup>122</sup> for example, contains a passage that is widely quoted in veil-piercing cases, almost always out of context. According to *Keller*,

It is well settled that where an individual forms a corporation of which he is the sole and only stockholder or owns such control of the stock that the act of the corporation is his own, then he may not use the screen of corporate entity to absolve himself from responsibility.<sup>123</sup>

The first point to make about this statement is that it reflects an early hostility in the law to one-person corporations, a hostility that no longer exists. When Louisiana's corporation statute was updated some twenty-five years after *Keller* was decided, the old requirement that every corporation have at least three shareholders was repealed. There is no longer any reason to speak, as the *Keller* court did, as if there were something inherently illicit about a corporation's being controlled by just one person.<sup>124</sup> It is clear under modern law that the sole ownership

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120. *Farrell v. Farrell*, 446 So. 2d 790 (La. App. 4th Cir. 1984) (parent corporation, initially the direct employer); *Camp v. Gibbs*, 331 So. 2d 517 (La. App. 2d Cir. 1976) (individual, never the direct employer).

121. *Roy A. Schnebelen & Assoc. v. American Bank & Trust Co.*, 349 So. 2d 1020 (La. App. 2d Cir. 1977).

122. 202 La. 486, 12 So. 2d 238 (1943).

123. *Id.* at 491, 12 So. 2d at 240.

124. See Comment, *Piercing the Corporate Veil in Louisiana Absent Fraud or Deceit*, 48 La. L. Rev. 1229, 1237 (1988).

of a corporation by one person does not provide a basis upon which to pierce the veil of the corporation.<sup>125</sup>

But the more important point is that *Keller* was talking about piercing the veil strictly in the context of a transfer of property by an individual to his virtual one-person corporation, as a means of cutting off the unrecorded rights of redemption held by his co-owners; the court was *not* considering whether a creditor of the corporation could have held the shareholder of the corporation personally liable on a corporate debt. Similarly, in the *Glazer* case, no one was suggesting that the corporation involved was not a creditworthy, well-capitalized, well-run business corporation that would be sufficient to shield its sole shareholder from personal liability for a corporate debt. Yet the fact that the corporation's fictional personality might be respected for purposes of the limited liability rule did not mean, and should not mean, that the fictional personality had to be respected for all other purposes as well. The corporations may well have been separate persons in the sense contemplated by the limited liability rule, yet still not be separate persons in the senses contemplated by the public records doctrine and by the state ethics statute, respectively.

Where a corporation really is nothing but an instrumentality of its dominant shareholder—and that will almost always be the case in one-owner companies<sup>126</sup>—it will normally not make sense<sup>127</sup> to interpret a

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125. *Riggins v. Dixie Shoring Co.*, No. 91-C-0963, (La. Dec. 2, 1991) (1991 WL 255914, 1991 LEXIS 3373); *Central Business Forms, Inc. v. N-Sure Systems, Inc.*, 540 So. 2d 1029 (La. App. 2d Cir. 1989); *Chin v. Roussel*, 456 So. 2d 673 (La. App. 5th Cir.), writ denied, 459 So. 2d 540 (1984); *Cahn Elec. Appliance Co. v. Harper*, 430 So. 2d 143 (La. App. 2d Cir. 1983); *Hock v. Sea Camper of New Orleans, Inc.*, 419 So. 2d 1315 (La. App. 4th Cir.), writ denied, 423 So. 2d 1182 (1982); *Peters v. Crochet Homes, Inc.*, 370 So. 2d 651 (La. App. 4th Cir. 1979); *Johansen v. Port Jewell, Inc.*, 351 So. 2d 184 (La. App. 4th Cir.), application not considered, 352 So. 2d 705 (1977); *Sampay v. Davis*, 342 So. 2d 1186 (La. App. 1st Cir. 1977); *Kingsman Enterprises, Inc. v. Bakerfield Elec. Co.*, 339 So. 2d 1280 (La. App. 1st Cir. 1976); *Camp v. Gibbs*, 331 So. 2d 517 (La. App. 2d Cir. 1976); *Cole v. Golemi*, 271 So. 2d 65 (La. App. 4th Cir. 1972); *Hughes Realty Co. v. Pfister*, 245 So. 2d 757 (La. App. 4th Cir. 1971).

126. See *supra* text accompanying notes 25-29.

127. As usual, some exceptions to the normal rule might exist. For example, in a contractual setting, a creditor of a one-owner corporation might well restrict the owner's personal business activities as a means of encouraging him to carry out those activities through the corporation, thus sharing their benefits with the creditor, and in a statutory setting, the state might allow activity by a corporation that met certain specified requirements for taxation, jurisdictional, licensing, or regulatory purposes, even though the shareholder personally might fail to meet those requirements. Unless some such explanation can be offered for distinguishing a corporation from its sole shareholder, however, it seems more likely that most statutes and contracts would endeavor to reach all conduct by an affected person, whether that conduct was carried out directly or indirectly. Where the legislature (in the case of statutes) or contracting parties (in case of contracts) have

statute or contract to restrict a shareholder's own personal conduct, but not the conduct he carries out through a wholly-owned business corporation. If for all practical purposes a shareholder is in complete control of a corporation, and is in a position to enjoy substantially the same economic participation in "corporate" transactions as he would enjoy in direct, personal transactions, then it is difficult to see how the personality of the corporation could be considered separate and distinct from that of the shareholder in any sense that would be relevant to most statutory or contractual restrictions on the shareholder's behavior—even though the corporation's separate personality might well be respected for limited liability purposes.<sup>128</sup> As the supreme court explained in *Glazer*, the same corporation may have its veil pierced for some purposes and not for others, depending on the balancing of underlying policies.<sup>129</sup> The more liberal circumvention decisions should not be relied upon to pierce the veil in a limited liability case, and the more conservative limited liability decisions should not be used to block piercing in a circumvention case.

#### REVERSE OR DEFENSIVE VEIL-PIERCING

In most veil-piercing cases, it is the plaintiff that is seeking to pierce the veil of a corporation. In a handful of cases, however, it is the defendant who seeks to have the separate personality of his own corporation disregarded.<sup>130</sup> Defensive veil-piercing is normally sought as a means of imputing to the corporation some status, characteristic or position held by the shareholder which would provide a defense to the corporation against the plaintiff's claim. For example, as discussed above,<sup>131</sup> a parent corporation might seek to pierce the veil of its own

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deliberately chosen to distinguish between a corporation and its sole shareholder, that distinction should be given effect. Cf., *Roy A. Schnebelen & Assoc. v. American Bank & Trust Co.*, 349 So. 2d 1020 (La. App. 2d Cir. 1977) (separate identities of two different bank corporations respected in accordance with the understanding of the parties). But where a contract or statute is silent on the question, and plausible reasons for such a distinction cannot be ascertained, the failure to specify coverage of both direct and indirect conduct is more likely to be due to inadvertence than to deliberate choice.

128. See supra note 126.

129. *Glazer v. Comm'n on Ethics for Pub. Employees*, 431 So. 2d 752, 757-58 (La. 1983).

130. *Smith v. Cotton's Fleet Service, Inc.*, 500 So. 2d 759 (La. 1987); *Casson v. Hartford Fire Ins. Co.*, 548 So. 2d 66 (La. App. 3d Cir. 1989); *Bonnette v. Langston*, 535 So. 2d 398 (La. App. 3d Cir. 1988); *Hilton Hotels Corp. v. Traigle*, 360 So. 2d 245 (La. App. 1st Cir. 1978); *Owens & Son v. Guastella East, Inc.*, 354 So. 2d 571 (La. App. 4th Cir. 1977), writ denied, 356 So. 2d 1013 (1978); *Afeman v. Insurance Co. of N. Am.*, 307 So. 2d 399 (La. App. 4th Cir. 1975); *Giuffria Realty v. Kathman-Landry, Inc.*, 173 So. 2d 329 (La. App. 4th Cir. 1965).

131. See supra text accompanying notes 103-108.

subsidiary in order to impute to the subsidiary the parent's status as a statutory employer, and so bar tort claims by its employees against the subsidiary company.<sup>132</sup> Occasionally, a shareholder will attempt to pierce the veil of his own corporation not as a defense, but rather as a means of recovering personally for a loss suffered by the corporation.<sup>133</sup>

Louisiana courts have generally been hostile to this "reverse" or "defensive" form of veil-piercing—without explaining in any satisfactory way why they ought to be. Their stated reasons tend to be of two types, the first resembling estoppel, and the second suggesting an application of traditional black letter theory without any apparent awareness of the distinctive nature of the question being posed.

The estoppel-like theory, the one most commonly used, is illustrated in *Smith v. Cotton's Fleet Service, Inc.*,<sup>134</sup> where the supreme court explained that it was difficult even to take the defendant's veil-piercing argument seriously because

it attacks a basic policy decision of the legislature that is generally favorable to corporate investors and which defendant without a doubt would have defended strongly had this been a tort suit by a third party seeking to pierce the corporate entities.<sup>135</sup>

In other words, you can't have it both ways: if you want the *generally* favorable effects of a separate corporate personality, then you are free to incorporate, but if you choose to incorporate, don't expect the courts to let you attack your own corporate existence when it suits your purposes to do so. The courts are not going to let you attack the very corporate structure that you yourself established; you are estopped to deny your own corporation's separate existence.

This reasoning is superficially appealing, but it is not consistent with the supreme court's own announced principle that veil-piercing cases are to be decided by reference to underlying policies in a particular case, and not based on the rather simplistic notion that a corporation either

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132. *Smith v. Cotton's Fleet Service, Inc.*, 500 So. 2d 759 (La. 1987).

133. *Hinchman v. Oubre*, 445 So. 2d 1313 (La. App. 5th Cir. 1984); *Mahfouz v. Ogden*, 380 So. 2d 646 (La. App. 1st Cir. 1979).

134. 500 So. 2d 759 (La. 1987).

135. *Id.* at 763. For a similar statement by the first circuit, see *Hilton Hotels Corp. v. Traigle*, 360 So. 2d 245, 246 (La. App. 1st Cir. 1978) ("It ill behooves Hilton to attempt to disregard the corporateness of its own subsidiary when it is in its interest so to do, while still obtaining whatever benefits flow from conducting business as separate corporations."). See also *Hinchman v. Oubre*, 445 So. 2d 1313, 1317 (La. App. 5th Cir. 1984); *Mahfouz v. Ogden*, 380 So. 2d 646, 649 (La. App. 1st Cir. 1979) (in these latter two cases, sole shareholder was attempting to sue individually for damages allegedly sustained by the corporation).



does or does not have a separate personality.<sup>136</sup> As the court itself has noted, the separate personality of a corporation (or of any other form of human organization) is purely fictional; it doesn't really exist, the law simply pretends that it exists in order to achieve certain policy objectives. If the legislature really intended for the corporate personality to have generally favorable effects, it seems most unlikely that the legislature would also have intended to extract some randomly-distributed penalties in exchange for those benefits in the rare case in which—without violating any discernable policy other than the fictional personality itself—it happens to be to the benefit of the shareholders to *deny* the corporation's separate status. Unless that denial of status interferes with some genuine, nonfictional policy of law (e.g., to prevent tax avoidance, to protect shareholders, creditors or others dealing with the corporation,<sup>137</sup> or to provide for certainty of ownership in property law), then it is most difficult to see why a shareholder ought not be permitted to deny his own corporation's separate status. Indeed, as suggested earlier in the workers' compensation discussion, that sort of defensive piercing might actually end up advancing, rather than impeding, legislative policy.<sup>138</sup>

Some defensive veil-piercing cases do not rely solely on the estoppel argument. Either separately or together with that argument, these decisions apply the same standards and rules in a defensive veil-piercing case that they do in the more common type of case, as if it made absolutely no difference that it was the defendant rather than the plaintiff seeking to pierce the veil.<sup>139</sup> Courts end up applying rules in the defensive cases that were designed to be used in precisely the opposite type of situation, cases in which the plaintiff was seeking to deny legal protections to defendants who had violated the legal standards imposed as a condition to the recognition of their corporation's separate personality.

Where the plaintiff seeks piercing, it is understandable that the courts would make their veil-piercing decisions based in part on factors such

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136. The *Cotton's Fleet* court reaffirmed this principle even though it rejected the defendant's reverse-piercing arguments. 500 So. 2d at 762. That was possible because the court was convinced, contrary to the arguments presented in this text, that workers' compensation policy was being served in that case by denying the veil-piercing. *Id.* Although the court's conclusion on this issue seems wrong, it did focus on the real question. It is unfortunate that its opinion included the "estoppel" observation quoted in the text, for that language was not consistent with the general tenor of the court's argument.

137. In the case of shareholders seeking to pierce as a means of recovering personally for corporate claims, the reverse piercing would allow the shareholder to circumvent the rights of creditors and other shareholders. This type of reverse piercing should normally not be allowed.

138. See *supra* text accompanying notes 105-08.

139. See *Casson v. Hartford Fire Ins. Co.*, 548 So. 2d 66 (La. App. 3d Cir. 1989); *Hilton Hotels Corp. v. Traigle*, 360 So. 2d 245 (La. App. 1st Cir. 1978).

as the commingling of personal and corporate funds. But where it is the *defendant* seeking to disregard his own corporation's separate personality, it seems nonsensical to suggest that the same tests should be applied. A standard application of the normal rules would result in a court's denying benefits sought by a defendant who had managed his corporation lawfully and honestly, and granting such protections where piercing was "justified" by commingling and other forms of managerial chicanery. Under this approach, the defendant would be better off violating the law than following it.

As always, the central question in these cases ought not be "does" a corporation "really" exist—for certainly it does not exist except as a legal fiction. Instead, courts should consider whether, based on a balancing of the legal policies involved, the recognition of a corporation's separate personality over the objections of the corporation's shareholders really does serve, rather than frustrate, the purposes for which the corporate fiction is normally recognized. Where shareholders are seeking a personal recovery on a claim that should be shared through the corporation with creditors and other shareholders, reverse piercing should not be allowed. But where the fictional personality of the corporation is being used by the other party in the case to circumvent some defense that should normally be available, courts should not be any less inclined to pierce the veil as a means of blocking this effort at circumvention just because it is the shareholder seeking the piercing rather than some other party.

Courts have denied defensive or reverse veil-piercing where it has been sought to achieve the following effects:

1. To impute a parent corporation's statutory employer status to a subsidiary;<sup>140</sup>
2. To avoid sales tax on transactions between parent and subsidiary;<sup>141</sup>
3. To permit a professional corporation to claim coverage under a malpractice settlement agreement to which its shareholder/physician was a party;<sup>142</sup> and
4. To permit a shareholder to recover personally for losses suffered by his corporation.<sup>143</sup>

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140. *Smith v. Cotton's Fleet Service, Inc.*, 500 So. 2d 759 (La. 1987).

141. *Associated Hosp. Servs., Inc. v. State Department of Revenue*, 588 So. 2d 356 (La. 1991); *Hilton Hotels Corp. v. Traigle*, 360 So. 2d 245 (La. App. 1st Cir. 1978). But see *United Companies Printing Co. v. Baton Rouge*, 569 So. 2d 186 (La. App. 1st Cir. 1990), writ denied, 572 So. 2d 73 (1991) (intercompany transfers not treated as "sales" for tax purposes); *Cajun Contractors, Inc. v. State Dept. of Revenue*, 515 So. 2d 625 (La. App. 1st Cir. 1987).

142. *Casson v. Hartford Fire Ins. Co.*, 548 So. 2d 66 (La. App. 3d Cir. 1989).

143. E.g., *State, Dept. of Transp. & Dev. v. Clark*, 548 So. 2d 365 (La. App. 2d

One case has permitted reverse piercing as a means of creating consideration for a contract with the corporation, though the veil-piercing seemed unnecessary to the result in the case.<sup>144</sup>

#### OTHER TYPES OF VEIL-PIERCING

As indicated at the outset of this article, the separate personality of a corporation serves a variety of different functions, and so may be respected, or disregarded, to achieve a variety of different policy objectives.<sup>145</sup> Most of the reported veil-piercing cases in Louisiana fit into one of the categories already discussed, but there are several other decisions that do not fall into any of these categories, and so are noted in this section of essentially "miscellaneous" types of cases.

The single most common sort of miscellaneous case involves questions about the ownership of property. Occasionally, despite the fact that a corporation has been named in some transaction as the owner of a particular item of property, the shareholders or other participants in the incorporated organization will seek to say that the property involved, though titled in the corporation's name, is "really" owned by some other person.<sup>146</sup> Courts are hostile to such claims, probably due to the importance of certainty of ownership in facilitating property transactions. Related to these property ownership cases, but more associated with civil procedure, are the "claim" ownership cases. In these cases the courts consider whether to allow corporate claims to be enforced by shareholders acting for themselves, rather than as agents of the corporation. In general, the answer has been "no."<sup>147</sup>

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Cir.), writ denied, 552 So. 2d 395 (1989); *Hinchman v. Oubre*, 445 So. 2d 1313 (La. App. 5th Cir. 1984); *Mahfouz v. Ogden*, 380 So. 2d 646 (La. App. 1st Cir. 1979); *Afeman v. Insurance Co. of N. Am.*, 307 So. 2d 399 (La. App. 4th Cir. 1975). These cases do not involve a defensive use of veil-piercing, for it is the plaintiff rather than the defendant seeking to have the corporation disregarded, but they do involve "reverse" piercing in the sense that it is the shareholder of the corporation seeking to disregard his own corporation's separate personality, and not a third party trying to pierce the veil over the objection of shareholders. But cf., *Coury v. Coury Moss, Inc.*, 510 So. 2d 1316 (La. App. 3d Cir. 1987) (veil pierced to allow shareholder to bring suit personally for wrongs suffered by corporation as result of alleged managerial misconduct), disagreed with by *Bordelon v. Cochrane*, 533 So. 2d 82 (La. App. 3d Cir. 1988), writ denied, 531 So. 2d 1255 (1989).

144. *Giuffria Realty, Inc. v. Kathman-Landry, Inc.*, 173 So. 2d 329 (La. App. 4th Cir. 1965).

145. See *supra* text accompanying notes 11-15.

146. *Cohn v. Heymann*, 544 So. 2d 1242 (La. App. 3d Cir.), writ denied, 548 So. 2d 1233 (1989); *G.I.'s Club of Slidell v. American Legion Post 374*, 504 So. 2d 967 (La. App. 1st Cir. 1987); *Union Local P-1476 of Amalgamated Meatcutters v. Union Citizens Club of Terrebonne Parish*, 408 So. 2d 371 (La. App. 1st Cir. 1981).

147. E.g., *TransGlobal Alloy Limited v. First Nat'l Bank of Jefferson Parish*, 564

Also in the procedure area, one Louisiana case has used a veil-piercing theory as a means of avoiding the requirement that shareholders seeking to enforce corporate claims for breaches of fiduciary duty bring such actions as derivative lawsuits.<sup>148</sup> Another panel of the same circuit, however, has declined to follow that decision.<sup>149</sup> Another decision has permitted veil-piercing as a means of asserting personal jurisdiction over a foreign parent corporation based on a subsidiary company's connections with the state of Louisiana.<sup>150</sup>

#### CONCLUSION

The factors that truly are important in veil-piercing decisions vary from case to case, depending on the nature of the issues being posed. In pure circumvention cases, the mere fact that the corporation is an alter ego or instrumentality will normally be enough to disregard the corporation's fictional personality, even if the company is well-run and financially sound. In contrast, in limited liability cases, alter ego status by itself will almost never result in veil-piercing; if it did, few small business owners would enjoy limited liability. In these cases, courts tend to concentrate on financial misdealings that result in confusion between the assets that belong to the shareholder personally, and those that should lawfully belong to the corporation. Inadequate capitalization and insurance are also relevant in limited liability cases, but are much more important in tort cases than in those involving contractual claims, as the contractual creditor will have been capable of negotiating about the credit risks involved. Indeed, in cases of contractual claimants, the single most common form of reported veil-piercing case in Louisiana, the courts consistently limit veil-piercing to those situations in which the corporation's financial status is highly complicated or confused, or in which the contracting creditor has been misled in some way, or could not reasonably have been expected to understand the risk he was taking in extending credit to the corporation.

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So. 2d 697 (La. App. 5th Cir. 1990), rev. on other grounds, 583 So. 2d 443 (1991); *State, Dept. of Transp. v. Clark*, 548 So. 2d 365 (La. App. 2d Cir.), writ denied, 552 So. 2d 395 (1989); *Hinchman v. Oubre*, 445 So. 2d 1313 (La. App. 5th Cir. 1984); *Mahfouz v. Ogden*, 380 So. 2d 646 (La. App. 1st Cir. 1979); *Afeman v. Insurance Co. of N. Am.*, 307 So. 2d 399 (La. App. 4th Cir. 1975). But cf., *Coury v. Coury Moss, Inc.*, 510 So. 2d 1316 (La. App. 3d Cir. 1987) (veil pierced to allow shareholder to bring suit personally for wrongs suffered by corporation as result of alleged managerial misconduct), disagreed with by *Bordelon v. Cochrane*, 533 So. 2d 82 (La. App. 3d Cir. 1988), writ denied, 536 So. 2d 1255 (1989).

148. *Coury v. Coury Moss, Inc.*, 510 So. 2d 1316 (La. App. 3d Cir. 1987).

149. *Bordelon v. Cochrane*, 533 So. 2d 82 (La. App. 3d Cir. 1988), writ denied, 536 So. 2d 1255 (1989).

150. *Copeland v. Gordon Jewelry*, 288 So. 2d 404 (La. App. 4th Cir.), writ denied, 290 So. 2d 911 (1974).

Undoubtedly, veil-piercing law would make a great deal more sense if courts stopped denying the obvious, that one-owner corporations are almost always instrumentalities of their owners, and if they justified their veil-piercing decisions more honestly, on other grounds. But it seems unlikely that the time-honored traditions of veil-piercing law are going to be abandoned anytime soon. Judges have no particular incentive to throw away a doctrine that essentially says "you can do whatever you think is fair as long as you recite a standardized set of lines."

For the practicing lawyer, therefore, the Louisiana jurisprudence on veil-piercing actually presents itself on two levels: the functional, policy-oriented *effects* of the decisions involved, and the black letter doctrine that the courts recite in support of their decisions. A good working knowledge of the Louisiana law of veil-piercing thus requires some familiarity with the law on both of these levels, function and doctrine, for while most courts will insist on the recitation of doctrine, the results they reach suggest that they are sensitive to policy and function as well.<sup>151</sup>

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151. Of course, even apart from considerations of courtroom advocacy, it is important for a practitioner to understand the context, limits and uses of veil-piercing doctrine in business planning, for considerations of this kind could influence his decisions about the way in which a given business transaction should be structured in the first place, in order to minimize veil-piercing risks.