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January 6, 2017

Alderman Terry Witkowski
13th District
City Hall, Room 205

Alderman Michael Murphy
10th District
City Hall, Room 205

Re: Communication File #161148

Dear Alderman Witkowski and Alderman Murphy:

In your letter dated December 28, 2016, you inquired about this office's plan to deal with unscrupulous landlords who hide behind limited liability companies ("LLCs"). The city attorney's office has taken steps in the past to deal with the problems caused by LLCs and will continue to do so in the future. Please see the answers to your questions below.

Difficulties in Identifying

The difficulties in identifying the members of an LLC are caused by incomplete publicly-available information and shell companies. The process for discovering the identity of LLC members begins with the Wisconsin Department of Financial Institutions ("DFI"). If the LLC name is spelled correctly and actually exists, the only information that is readily available on the DFI website is the name of the registered agent, that person's address, and (most of the time) the business address of the LLC. We cross-reference any data from the DFI website with other databases that may indicate who owns or occupies a particular address and whether the registered agent's name is related to the LLC. Sometimes the registered agent is another LLC, putting us back at square one. Another database that this office uses is the register of deeds. However, it is only helpful if an LLC has conveyed real estate, and even then it is often only a way to identify one member of an LLC, not all members. The assessor's office, the department of neighborhood services, and Westlaw are all databases that can be searched for more information as well.

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For example, one individual under investigation is involved in at least 60 LLCs. Although he is listed as a registered agent to dozens of LLCs, he may or may not be a member of those LLCs because a registered agent does not need to be a member. He is also believed to be behind several other LLCs that have no apparent relation to him. One company is OC Parrilli LLC, which lists an LLC as registered agent. That LLC lists another LLC as its registered agent, and this process continues until one LLC lists the name of a previous LLC as its registered agent. This creates an endless loop for which no person can be served with a lawsuit. Furthermore, the contact address for this loop of LLCs is a warehouse. Additionally, this LLC has acquired eleven parcels of land, but has sold none, so the register of deeds does not have any records that identify any person behind OC Parrilli LLC. This is one example of how labor-intensive it is to discover ownership interests in LLCs.

Steps Taken

Since 2015, this office has sued at least nine LLCs in contemplation of piercing the corporate veil (see th attached litigation memorandum). A guide for piercing the corporate veil was developed by the office in November 2015 to assist attorneys in identifying fraudulent LLCs, summarizing the legal theory behind the process, and using discovery methods that support a veil-piercing cause of action. (also see attached guide). This guide was helpful in developing the case against Mohammad Choudry. Additionally, several property owners and their LLCs are under active investigation. The city has utilized uncommonly-used state laws such as Chs. 242 & 811, Wis. Stats., as well as civil racketeering charges under Wis. Stat. § 946.87(4) as creative ways to address problem LLCs and will continue to develop unique ways of addressing problem LLCs.

Burden of Proof

In legal terms, the burden of proof for piercing a corporate veil is proving all elements of the cause by a preponderance of the evidence (i.e. proving that the facts supporting each element are more likely than not). However, in more general terms, there are several hurdles to clear before piercing a corporate veil.

First, state statutes explicitly mandate that the "debts, obligations and liabilities of a limited liability company ... shall be solely the debts, obligations and liabilities of the limited liability company." Wis. Stat. 183.0304(1). Further clarifying the distinct status of an LLC, that statute continues to say "a member or manager of a limited liability company is not personally liable for any debt, obligation or liability of the limited liability company, except that a member or manager may become personally liable by his or her acts or conduct other than as a member or manager." Id. The next subsection cautiously allows for a creditor to try piercing a corporate veil: "nothing in this chapter shall preclude a court from ignoring the limited liability company entity under principles of common law of this state that are similar to those applicable to business corporations and shareholders in this state and under circumstances that are not inconsistent with the purposes of this chapter." Wis. Stat. 183.0304(2). With that starting point, the uphill battle is set.

The common law referenced in the statue does not describe piercing a corporate veil as an easy process. Courts remind us that disregarding a corporate entity is not "to be lightly disregarded." Consumer's Co-op. of Walworth Cnty. v. Olsen, 142 Wis. 2d 465, 474, 419 N.W.2d 211, 213 (1988). On top of that, there is no situation in which the City could prove the elements necessary for piercing the corporate veil and have a right to such relief; discretion still lies within the court even if all elements are met. Id.

Due to statutorily imposed limited liability, it is necessary to have sufficient evidence or have a plan to obtain sufficient evidence in advance of filing. In that regard, a practical obstacle for the City in proving up the evidence for piercing a corporate veil is that the debtor is the one who holds all the necessary evidence. Unlike a voluntary debt between private businesses, the City is an involuntary party when it comes to collecting taxes or municipal code forfeitures. There is no ability for the City to perform due diligence or research the other party before deciding to extend credit to that party. Instead, an LLC is free to buy a tax-delinquent property without any prior consent of the city and become a debtor to the city without the city ever knowing. Therefore, the City is in a more difficult position than private entities that can simply choose not to do business with an LLC if they are not confident in that LLC's ability to pay its creditors back. The City *must* deal with them and those who create LLCs to avoid liability take advantage of that fact.

Changes to State Law

This office will continue using existing state law to address problem LLCs. At this time, we are reviewing possible amendments to state law that will assist in that regard without significantly impacting lawful business.

We hope this information is helpful in answering your questions.

Very truly yours,

GRANT F. LANGLEY
City Attorney

ADAM B. STEPHENS
Deputy City Attorney

KJD/cdr

1033-2017-7/235744

CITY OF MILWAUKEE
Office of the City Attorney

MEMORANDUM

TO: The Honorable Common Council and Mayor Tom Barrett

DATE: January 6, 2017

RE: Circuit Court Nuisance Abatement litigation efforts of the Neighborhood Revitalization and Ordinance Enforcement section in 2016.

I. Nuisance Abatement litigation completed or pending in Milwaukee County Circuit Court in 2016:

1. ***COM v. Choudry,* 16CV8057.** This lawsuit seeks judgment against Mr. Choudry for over $1.25 million, which includes $400,000 in delinquent property taxes and $850,000 in damages for criminal racketeering. In addition, the city claims that Mr. Choudry has caused his rental properties to become a public nuisance because he has been convicted 82 times in municipal court of property-related ordinance violations and has been issued almost 700 orders from the Department of Neighborhood Services which identify 3,000 municipal code violations. The complaint further alleges that Mr. Choudry fraudulently concealed his acquisition of 46 parcels of real estate by refusing to record deeds, titling property in fake companies, and titling property in the names of others without their permission. Finally, the city alleges that Mr. Choudry has created real property holding companies for the purpose of defrauding the city.

2. ***COM v. Weeks*, 15CV393.** This litigation successfully abated ongoing zoning code violations at 1819 W. North Ave.

3. ***COM v. John* 15CV4980.** This litigation successfully motivated non-code compliant owner unwilling to fix and convey property to a responsible developer.

4. ***COM v. Golden Marina Causeway*, 15CV7603**. Successfully compelled owner to raze abandoned brownfield industrial buildings subject to chronic police and fire calls for service at owner's cost of approximately $200,000.

5. ***COM v. ELRA 2121 LLC*, 15CV3720.** Compelled owner to raze or fix building at 2405 W. National. Owner has completed 90% of repairs to building.

6. ***COM v. M & R Properties Investment LLC*, 15CV7228.** Building code enforcement case still pending, but court will likely be finding owner in contempt for failure to comply with court order. CAO will continue to litigate until achieving desired result.

7. ***COM v. Tufail, et. al.*, 15CV7550** (27th St. Tobacco). In September 2015, our office filed a drug house complaint against the property and business owners of the tobacco shop. By stipulation, the business agreed to vacate the property and the parties are ordered to engage in good faith negotiations over the future use of the property. The NWSP has since bought the property and they are currently engaging in a Phase II. A status hearing is scheduled February 13, 2017.

8. ***COM v. Mustafa, et. al.*, 16CV5931** (Ashraf Foods). In September 2016, our office filed an injunctive action in circuit court for the convenience store to cease selling food without a food dealer's license (which was non-renewed in December 2015), single cigarettes and cigarettes to minors (which it had been cited for). After the non-renewal, both MPD and the Health Department twice found them selling food (for a total of four violations), resulting in citations and orders to suspend. Although the court ordered the injunction, a follow-up health department inspection revealed that the business was still selling food. In November 2016, the circuit court found the business was in contempt of court and ordered a $1,000 forfeiture to the City. There is another status set for March 2017.

9. ***COM v. NTO, LLC*, 15CV5210** (2408 W Kilbourn). In December 2016, our office filed a "motion to compel" to require the building owner to raze the building at its own cost. If the building owner LLC asserts it is unable to pay, our office will attempt to pierce the corporate veil and pursue personal liability against members. NTO has until March 27, 2017 to complete the raze or face contempt of court.

10. ***COM v. Mennengna*, 16CV2340.** Drug house litigation. Absentee owner permitted house to be used as a flop house, which generated considerable neighborhood unrest. Drug house litigation filed which led to the owner selling to an unrelated third party buyer. Alderman Bohl and I met with the prospective buyer and had no objection to his plan with the property. Therefore, the case was dismissed upon sale. No neighbor complaints under new ownership.

11. ***COM v. Gamez*, 15CV10282** (Palomas Place). In November 2015, our office filed both a license revocation and drug house complaint against the tavern as a result of an 8-month investigation regarding the sale of cocaine. The Common Council revoked its tavern license and, in a court trial, the circuit court found the property to be a drug house. It is currently on appeal with the court of appeals. The parties have briefed the issue and are awaiting the court's decision.

12. ***COM v. Bush*, 15CV8702.** In October 2015, our office filed a drug house complaint against property owner. The property had been used by the owner's

children and grandchildren for active drug activity, resulting in multiple incidents of shots fired. In April 2016, the owner passed away leaving the children and grandchildren in full control of the property. In a June court trial, the court found the property to be a drug house and ordered it sold.

13. ***Sherwin Industries v. COM,* 14CV6804.** Successfully defended case in which property owner tried to blame city for storm water sewer design issues.

14. **F Street Investments, LLC vs. TFN 1 Investments, LLC, COM and NTO, LLC, 16CV6570** (2408 W Kilbourn). Raze appeal/claim against City dismissed with prejudice.

15. ***200 Broadway LLC v. COM*, 14CV6804.** Successfully defended claim by property owner that sued city for lost profits after city employees ordered owner to stop violating zoning laws (on appeal).

16. ***Chandler v. COM*, 16CV3695.** Injunction against raze order. Stipulation entered during pendency of restoration agreement. Status Conference in January 2017.

17. ***ORP v. COM* 16CV10358.** Injunction against raze order. Stipulation entered, awaiting outcome of BOZA special use application.

18. ***Midwest Commercial Funding LLC v.COM,* 16CV1761.** Injunction against raze order. City prevailed.

19. ***Thomas P. Conn v. City of Milwaukee,* 16CV1629.** Injunction against raze order. City prevailed.

20. ***COM v. Badface Development,* 14CV9074.** Defendant created hazardous excavation, city filed suit for public nuisance. Foundation has since been abated; however, building does not meet code. Court is ordering contempt on daily basis until building is at point of final rough-in inspection.

21. ***COM v. Will Sherard,* 16CV6628.** Defendant appealing orders from the municipal court to pay $65,000 in forfeitures. Final hearing and decision scheduled February 2, 2017.

II. Pending and Completed Chronic Offender Abatement Litigation Investigations in 2016

1. **City of Milwaukee v. Property Owner 1.** Compiling data recorded with the register of deeds for litigation prep on a property owner with over 60 LLCs and significant/questionable transfers of property between LLCs.

2. **City of Milwaukee v. Property Owner 2.** Compiling evidence and drafting summons and complaint regarding drug and nuisance activity on property owner with over 40 property holdings; 5 of which rise to level of litigation.

3. **City of Milwaukee v. Property Owner 3.** Compiling evidence on and monitoring property owner with 21 property holdings with significant DNS code violations and alleged illegal rental practices (renting placarded units). Collaboration with DA's office and DNS ongoing.

4. **City of Milwaukee v. Property Owner 4.** Investigating a property owner who uses multiple LLCs to conceal ownership interests while potentially committing crimes and allowing properties to fall into disrepair.

5. **City of Milwaukee v. Property Owner 5.** Investigated nuisance and drug house activity at 12 properties in preparation for civil litigation. Property owner compliant with MPD at this time. Compliance monitoring is ongoing.

6. **City of Milwaukee v. Property Owner 6.** Compiling information on property owner who utilizes multiple LLCs to isolate poor investments and insulate cash flowing investments in preparation for litigation.

7. **City of Milwaukee v. Property Owner 7.** Compiling information on property owner's multiple real estate holdings to determine most valuable holdings for targeted compliance and collection efforts.

8. **City of Milwaukee v. Property Owner 8.** Ongoing investigation into property owners with multiple LLCs and property holdings that are deemed to be DNS and MPD nuisance properties. Affiliated with other property owners under investigation.

III. "Zombie" Property Initiative

In April of 2016, Wis. Stat. § 846.102 was altered by 2015 WI Act 376. In response to the legislative change, the City made it a priority to submit evidence of abandonment in a number of zombie property cases while the old statute was still in effect. In April 2016, there were **289** vacant properties in foreclosure. Zombie properties had been in foreclosure for an average of **426** days and vacant for an average of **507**.

In April 2016, there were **2,035** properties in foreclosure in the City of Milwaukee.

Of the 2,035 foreclosure actions:

1,071 had been in foreclosure one year or less
364 had been in foreclosure more than one year but less than two years
172 had been in foreclosure more than two years, but less than three years
111 had been in foreclosure more than three years, but less than four years
317 had been in foreclosure four years or more

Since April 2016 (effective date of 2015 WI Act 376), the City identified a number of foreclosure cases in which DNS had verified vacancy status where judgment was entered prior to the enactment of the new law effective 4/26/2016. In these cases, the City provided the court with evidence of abandonment.

1. 12CV9312, DNS Vacancy Verification 4/23/2015. 2612 W. Burleigh. COM submits evidence 5/13/2016; Confirmation of sale occurred 6/2016.

2. 12CV178, DNS Vacancy Verification 12/18/2013. 445 S. 68th St. COM submits evidence 5/10/2016. Order signed and filed 5/16/2016. Confirmation of sale 9/2016.

3. 11CV18714. DNS Vacancy Verification 1/30/2012. 6420 W. Disxon. COM submits evidence 5/5/2016. Order signed and filed 5/2016. Confirmation of sale 10/2016.

4. 11CV14997. DNS Vacancy Verification 4/9/2014. 8619 W. Ruby. COM submits evidence 4/11/2016. Motion held in abeyance 9/16, 10/16. Confirmation of Sale 11/2016.

5. 10CV3267. DNS Vacancy Verification 5/18/2011. 2734 N. Maryland. COM submits evidence 5/11/2016. Confirmation of Sale 6/2016.

6. 09CV5473. DNS Vacancy Verification 5/29/2014. 4152 N. 74th. COM submits evidence 5/10/2016. Confirmation of Sale 10/2016.

7. 14CV5380. DNC Vacancy Verification 2/3/2015. 2922 W. Vine St. COM submits evidence 6/27/2016. Confirmation scheduled 1/2017.

8. 14CV1796. DNS Vacancy Verification 7/29/2014. 5744 N. 36th St. COM submits evidence 6/27/2016. Defendant asserted interest in property, withdrew evidence 7/9/2016.

9. 14CV5643. DNS Vacancy Verification 2/24/2016. 2800 W. Lisbon. Evidence submitted 6/27/2016. Plaintiff filed objection 7/18/2016. Hearing and dismissal of case 9/6/2016.

10. 14CV4670. DNS Vacancy Verification 8/20/2014. 3739 N. 19th Pl. Evidence submitted 6/27/2016. Confirmation of Sale 11/2016.

11. 14CV9159. DNS Vacancy Verification 9/20/2012. 620 W. Burleigh. Evidence submitted 6/27/2016. Confirmation of Sale 8/2016.

12. 11CV18511. DNS Vacancy Verification 8/7/2012. 4748 N. 49th St. COM submits evidence 6/27/2016. Confirmation of Sale scheduled 12/2016.

13. 15CV6897. 5818 W. Fountain Ave. COM submits motion to compel sale 6/23/2016. Confirmation of Sale 11/2016.

IV. Prostitution Initiative

In response to significant community and aldermanic concerns regarding increased prostitution activity in MPD District 2:

- Identified 35 residential priority properties to investigate. Identified via community organizations, aldermanic complaints, MPD.
- Of the 35, identified 2 candidates for expedited in rem tax foreclosure.
- Compiled evidence, investigated and drafted summons and complaint on one property owner with 12 property owners. Prior to filing summons and complaint, obtained compliance from property owner who has provided MPD with tenant lists for all property holdings. Knock and talk verification of tenancies conducted on these 12 properties.
- 6 pre-nuisance call-in meetings conducted with property owners.
- 2 properties identified in foreclosure. In both cases, reached out to plaintiffs' counsel to relay information regarding issues at properties. Testified at confirmation hearing on behalf of plaintiff (Fannie Mae).
- Working with financial institutions on 2 properties identified as REO (post-foreclosure, bank-owned).
- Review of all police reports for chronic nuisance premise property to determine if a candidate for litigation. Not a candidate for litigation.
- City Attorney's Office representative at community events, multidisciplinary problem solving teams, etc., to address the issue of prostitution on the south side of Milwaukee.
- Call-ins regarding nuisance activity at 3 licensed establishments; 1 investigation into possible revocation.

V. Six Administrative Appeals Review Board for Nuisance Designations in 2016.

VI. Three Licensing Revocation hearings before Licenses Committee in 2016.

VII. Municipal Court Building and Zoning Prosecutions in 2016 (As of December 1st): 2,430.

CITY OF MILWAUKEE
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PIERCING THE CORPORATE VEIL

Created by: ACA Kail Decker
Last Updated: November 2015

INTRODUCTION

If a corporation does not comply with a legal duty, it may be possible to reach through the corporate entity and impose liability upon the person who operates the company. This concept is known as "piercing the corporate veil" or "disregarding the corporate fiction." Piercing is an equitable remedy that is available when a person hides behind a corporation in order to perpetuate fraud or inequity without incurring direct personal liability. Decades of case law provide general guidelines to determine when a court should pierce a corporate veil. There is no situation in which a court must pierce a corporate veil, but this comprehensive review of the topic in Wisconsin can assist in developing an argument that shareholders should be liable for their corporate debts.

BRIEF HISTORY

American philosopher and educator Nicholas Murray Butler said that the "limited liability corporation is the greatest single invention of modern times." The invention of the corporation is significant for two reasons. First, individuals who would not have risked everything they own to start a business could dedicate a calculated amount of capital for a business venture without risking their entire estate. Second, individuals who could not afford to start a business on their own could pool their assets into an entity with its own legal identity that could afford to start that business. Starting or expanding a business did not require as much capital and did not include as much risk, so business boomed.

Most corporations operate lawfully and are important factors in the viability of our economy. However, they are occasionally used by individuals as a shield from liability with no intention of operating a legitimate business. In response, courts have established standards in which it was appropriate to pierce the corporate veil.

The first Wisconsin case that pierced through a corporate veil held that an individual could not hide behind layers of companies that he wholly controlled by leaving liability with one company and moving all assets to another. Haynes v. Kenosha St. Ry. Co., 119 N.W. 568, 573, 139 Wis. 227 (1909). The court enforced a creditor's right to foreclose on land and noted that the individual's "unhampered authority to dictate was questioned by no one" and he "was simply dealing with his own property through a corporate agency as absolutely as he might deal with it as an individual." Id. at 571.

Haynes case did not impose personal liability upon a person, but instead ensured a person did not get a windfall by shifting assets around. Since Haynes, the piercing theory has been reviewed under many contexts that shaped the law in Wisconsin. A few examples expanded the application of the piercing theory:

1. A corporation was pierced to impose criminal liability on a person benefiting from the criminal actions of a corporation. State v. Milbrath, 138 Wis. 354, 120 N.W. 252, 255 (1909).

2. The corporate fiction was not disregarded when a person who owned a substantial portion of company stock died in a workplace accident and his widow applied for worker's compensation benefits. Milwaukee Toy Co. v. Industrial Comm., 203 Wis. 493, 495, 234 N.W. 748 (1931).

3. A corporation was pierced when a shareholder acting on behalf of the corporation intentionally breached a contract for personal gain to the detriment of her corporation. Sprecher v. Weston's Bar, Inc., 78 Wis. 2d 26, 41, 253 N.W.2d 493, 500 (1977).

LEGAL GROUNDS FOR PIERCING

Generally, piercing is an available remedy when a person uses a corporate entity that has no separate identity solely to avoid personal liability or an affirmative duty.

A company is liable for its own debts and legal duties under normal circumstances because it is a distinct legal entity separate from the corporation's shareholders.[1] Wis. Stat. §§ 180.0622 & 181.0855; Wiebke v. Richardson & Sons, Inc., 83 Wis. 2d 359, 363, 265 N.W.2d 571, 573 (1978). This presumption of separation between a corporation and its shareholders is "not one to be lightly disregarded." Consumer's Co-op. of Walworth Cnty. v. Olsen, 142 Wis. 2d 465, 474, 419 N.W.2d 211, 213 (1988). In addition, the burden to show the equitability of piercing the corporate veil is upon the party seeking to

[1] Although this document focuses on piercing a corporation, state law also makes a piercing theory equally applicable to the members of a limited liability company. Wis. Stat. § 183.0304(2).

pierce. Rasmussen v. Gen. Motors Corp., 2011 WI 52, ¶ 44, 335 Wis. 2d 1, 26-27, 803 N.W.2d 623, 636.

Normally, courts are asked to pierce the corporate veil of a controlled entity to reach the assets of the controlling party, but the doctrine can also be applied in reverse to reach the assets of a controlled entity. Olen v. Phelps, 200 Wis. 2d 155, 163, 546 N.W.2d 176, 181 (Ct. App. 1996) (citing Select Creations, Inc., v. Paliafito America, Inc., 852 F. Supp. 740, 774 (E.D. Wis. 1994)). It is particularly appropriate to apply the alter ego doctrine in reverse when the controlling party uses the controlled entity to hide assets or to secretly conduct business to avoid the pre-existing liability of the controlling party. Id.

A court will generally not pierce a corporate veil if the shareholder of the corporation is the person seeking to pierce. Stebane Nash Co. v. Campbellsport Mut. Ins. Co., 27 Wis. 2d 112, 122, 133 N.W.2d 737, 744 (1965); Jonas v. State, 19 Wis.2d 638, 644, 121 N.W.2d 235, 238 (1963). In almost every situation in which the person who controls a corporation attempts to pierce it, that person is doing so because it is advantageous to him or her. In most situations, piercing a corporate veil would create inequity instead of avoiding it. Id.

Although case law suggests that piercing a corporate veil is a rare and extraordinary equitable remedy, examples of it are not uncommon in Wisconsin case law. The primary Wisconsin case on the topic is Consumer's Co-op, which set forth three elements that must be present before piercing a corporate veil:

> (1) Control, not mere majority or complete stock control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own; and
>
> (2) Such control must have been used by the defendant to commit fraud or wrong, to perpetrate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of plaintiff's legal rights; and
>
> (3) The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.

Consumer's Co-op., 142 Wis. 2d at 484. The elements above are part of the "instrumentality" or "alter ego" doctrine, which is recognized by Wisconsin as a way to impose liability on the individual behind a corporation. Id. Piercing should only occur when "applying the corporate fiction would accomplish some fraudulent purpose, operate as a constructive fraud, or defeat some strong equitable claim...." Milwaukee Toy Co. v. Industrial Comm., 203 Wis. 493, 495, 234 N.W. 748 (1931).

The cause element is self-explanatory, but explanation of the control and inequity elements is helpful. Those elements are set forth in Consumer's Co-op and examined below.

1. CONTROL

Complete domination of the corporation must be shown to the point that the corporation and the individual have no separate identity. To that end, certain factual patterns are more likely to lead a court to find that an individual has complete control over the company. Control is only the first step to piercing a corporate veil and would not on its own justify exception to the general rule.

It's important to note that simply owning 100% of the corporation is not sufficient to show lack of separate identity. Button v. Hoffman, 61 Wis. 20, 20 N.W. 667, 668 (1884).

Courts consider the "disregard of corporate formalities" to be a factor in determining whether a corporation has a separate existence. Consumer's Co-op., 142 Wis. 2d at 483. Any company that does not follow the corporate formalities found in Wis. Stat. Ch. 180 is more susceptible to a piercing argument. However, be careful to observe Wisconsin's close corporation law under Wis. Stat. § 180.1835, which negates the focus on corporate formalities under certain circumstances.[2] Consumer's Co-op., 142 Wis. 2d at 490.

In one instance, the court found that an individual did not maintain a separate identity for his corporation and pierced the corporate veil because

> Richardson's finances and those of the corporation were one and the same. He used the corporate checking account as his personal checking account. He seldom took wages. He did not make regular additions to the corporate account to repay the amounts he withdrew. The trial court chose to believe Wiebke's testimony that she thought she was making the loan to Richardson for use in his business. Her testimony is corroborated by the corporate records which for almost two years show the $6,000 as a loan from Wiebke and which show that the corporation paid the interest on the loan.

Wiebke, 83 Wis. 2d at 364. In another instance, a tavern owner was found personally liable for her corporation's breach of a lease. The court noted that the shareholders

> had complete control and domination of Weston Bar, Inc., and that the individual defendants made no serious attempt to hold corporate meetings or to maintain records of corporate meetings and that presently and for a period of time, Weston Bar, Inc., has had no substantial assets and that the individual defendants have taken out in salary basically all of the corporate profits.

[2] This distinction works in favor of the individual because the "no separate mind" element remains while certain methods of proving that element are not available for close corporations.

Sprecher v. Weston's Bar, Inc., 78 Wis. 2d 26, 38-39, 253 N.W.2d 493, 498 (1977). To the contrary, a parent corporation was not found to be liable for its subsidiary because it did not exercise the complete control necessary to pierce:

> [Plaintiff] has provided no evidence of control by Nissan Japan sufficient to cause us to disregard the separate corporate identities of the subsidiary and parent. There is no evidence that Nissan Japan and Nissan North America were not operated as separate and independent corporations; no evidence that Nissan North America did not independently decide how to operate; and no evidence of fraud or undercapitalization. In sum, Rasmussen has not shown that the activities of Nissan North America can be imputed to Nissan Japan.

Rasmussen v. Gen. Motors Corp., 2011 WI 52, ¶ 44, 335 Wis. 2d 1, 27, 803 N.W.2d 623, 636. On another occasion, a court refused to pierce a corporate veil because the evidence showed that the principal and the corporation maintained separate identities and there was a lack of evidence showing any shared identity:

> In the case at bar, stock was issued, officers were elected, meetings of the board of directors were frequently held, and all business was undertaken in the corporate name. Moreover, there was no indication of improper commingling of personal and corporate assets. Those financial transactions between Chris Olsen and the corporation were approved, though informally, by the board of directors and were undertaken for the purpose of infusing, rather than improperly withdrawing, capital. We do not find the fact that the meetings of the board of directors were informal to be of particular significance.

Consumer's Co-op. of Walworth Cnty. v. Olsen, 142 Wis. 2d 465, 488-89, 419 N.W.2d 211, 219 (1988). In cases that analyzed the control element, courts appear to find that the shareholder of a corporation had no separate identity and had complete control over the entity to the degree that the following facts are present:

Tend to Prove "Control"	Tend to Disprove "Control"
No records separate person and company	Corporation maintains separate records
Personal checkbook used for business	Separate corporate checking account
Corporate assets kept with personal assets	Corporation assets kept separate
Corporate assets benefit only shareholder	Corporate assets benefit business
Withdrawal of capital at will	Dividends issued by board of directors
Personal liability on corporation debts	Only corporate liability for corporate debt
No stock issued	Stock issued
Corporation managed as though no other entity exists independently	Corporation managed like a separate entity with its own interests and mind
Signing corporate documents as self	Signing corporate documents as an officer
No difference in shareholders between corporate boards of directors	Each board of directors made up of different individuals
No corporate board meetings held	Regular corporate board meetings held

In summary, there is no litmus test to determine whether a corporation has no identity separate from a shareholder. Courts immediately look upon an attempt to pierce with suspicion, so it is up to the party attempting to pierce to provide sufficient evidence on the record. This is a fact-intensive inquiry, so it is important to seek out all possible facts that show the shareholder operated the corporation as though it was his/her own.

2. INEQUITY

The second element that must be proved is that the individual in control of the corporation is using the entity to commit fraud, a violation of a positive legal duty, or a dishonest and unjust act in contravention of plaintiff's legal rights. This element is broader than the first, but is not wide open. There are a number of facts that can show how the controlling person has committed an injustice that permits a court to pierce the corporate veil separating the person from the injury caused.

a. Inadequate capitalization

If a shareholder who has complete domination over a corporation does not infuse the corporation with enough capital to operate the business, such a lack of capital suggests that the individual formed the company without giving a reasonable chance to succeed on its own. If a reasonably capitalized corporation loses money over time, that fact is insufficient because "adequacy of capital is to be measured as of the time of formation of the corporation." Consumer's Co-op. of Walworth Cnty. v. Olsen, 142 Wis. 2d 465, 486, 419 N.W.2d 211, 218 (1988). There is no precise test to determine when a corporation is adequately capitalized. Instead, the question is evaluated on a case-by-case basis. Id. at 487-88.

i. Inadequate at corporate inception

A corporation that claims to have insufficient funds to pay a judgment or fee may have been strategically put in that situation by an individual who would otherwise have funds available. If an individual does not put enough capital into a corporation to let it function, it can be inferred that the person did so with the intent to walk away if the business fails and not lose any unnecessary capital. If a person intends to only capitalize a corporation when convenient and the company would not survive without that lifeline, the individual is seeking the benefits of a corporation without taking on a commensurate risk. Courts have identified this lack of capitalization as a factor favoring piercing the corporate veil.

ii. Inadequate during expansion of business

If a corporation was formed with adequate capital to operate, but later expands operations without sufficient capital to operate in its expanded form, the opportunity to pierce the corporate veil is also available. Id. at 486-87 (citing in re Mader's Store for Men, Inc., 77 Wis. 2d 578, 610, 254 N.W.2d 171, 189 (1977)). The legal rationale is similar whether

inadequate capitalization occurs at inception or during business expansion: the person funding the corporation intends to fund the corporation only as long as it creates a return without risking any additional funds.

b. Other types of fraud

This element is intentionally open-ended to allow the victim of fraud to make a case for recovery from the corporation or the person exercising control over it without limitation to a type of fraud. The question is "whether control has been exercised in such a manner as to result in injustice." Consumer's Co-op. of Walworth Cnty. v. Olsen, 142 Wis. 2d at 485. This element relates to how the business operations were wrong, not whether a person was wronged by the business operations. Put another way, courts evaluate the means and not the ends. For example, when the tavern owners in Sprecher transferred a license from their corporation to their personal names, the court looked to the actor's motives for doing so:

> The question remains as to whether the defendants had an improper motive in causing the corporation to transfer the license and thus breach the contract. The trial court held that they did. That motive was the furtherance of their own pecuniary advantage by retaining the license; by housing the corporation tavern business in their own premises; and by causing the corporation to pay them, in their individual capacities, $250 per month rent.

Sprecher, 78 Wis. 2d 26, 41, 253 N.W.2d 493, 500 (1977). It is not possible to create an exhaustive list of fraudulent behavior that justifies piercing a corporate veil. Instead, a case-by-case analysis of the shareholder's intent is required. If a shareholder had improper motives and used a completely controlled corporation to accomplish those motives, a court has a strong incentive to pierce and impose personal liability. Id.

c. Estoppel or waiver

If the type of injustice that occurred was something obvious or known to the other party, courts may find that the party is estopped from piercing a corporate veil or waived the right to assert the piercing theory:

> The volitional nature of a contractual relationship presents a cognizable distinction between contract and tort cases; however, this distinction is more appropriately recognized as one which may justify the application of the doctrines of estoppel and waiver than as to preclude the invocation of the equitable remedy of piercing the corporate veil in a contract case. Stated otherwise, whether a contractual relationship is truly one in which a creditor had the opportunity to investigate the capital structure of a debtor and knowingly failed to exercise the right to investigate before extending credit, such that the creditor should be precluded from piercing the corporate veil, should be decided with respect to the

particular facts of each case rather than by the denial to all contract creditors of resort to this equitable remedy by a presumption of an assumption of risk.

Consumer's Co-op., 142 Wis. 2d at 481-82. Essentially, if a person is knowingly and voluntarily transacting business with a corporation that may commit an injustice against the person, the principles of estoppel or waiver may prevent that person from piercing the corporate veil that the person should have known to be a mere shell.

CONCLUSION

Piercing a corporate veil is a procedure that courts can use in extraordinary circumstances to correct an injustice at the hands of a person using a corporate entity solely to commit that injustice. Courts are hesitant to disregard a corporate fiction, but if facts show that a corporation has no identity separate from its shareholder and the corporation is failing to comply with a legal duty, it is advisable to seek an equitable remedy by piercing the corporate veil and imposing personal liability upon the shareholder.

ADDITIONAL RESOURCES:

Attached to the end of this document are examples that can be used for a complaint, interrogatory, or request for production.

Axe, Kenneth B., et al., *The Wisconsin Business Advisor Series: Business Organizations* (2006), §§ 4.6, 6.2.64, 7.2.26, and 7.3.18.

Hinkston, Mark. *Piercing the Corporate Veil.* Wisconsin Lawyer (2006), Volume 79, Number 2.

O'Neal and Thompson's Close Corp and LLCs: Law and Practice § 8:18 (Rev. 3d ed.)

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