Piercing the Corporate Veil & Alter Ego Liability

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Piercing Generally

• Doctrine is “enveloped in the mists of metaphor.”

• Two basic inquires:
  – Lack of corporate formalities/separateness
  – Corporation sued to commit fraud, injustice, gain unfair/personal advantage

• Veil protects and can be pierced in two directions
  – Standard piercing: individual liability for corporate wrongs
  – Reverse piercing: corporate liability for individual wrongs

• Typically, analysis similar whether corporation, LLC, etc.
High Bar

• The veil is “a basic provision of statutory and common law and supports a vital economic policy underlying the whole corporate concept.”

• Accordingly, piercing is often referred to as an “extraordinary” exception
Considerations When Making/Defending a Piercing Claim

- Piercing for personal jurisdiction
- What substantive law applies?
- What court do you want to be in?
- Question of law or fact?
- Timing considerations
- Alternatives to piercing
Jurisdictional Piercing

• Piercing is traditionally thought of as a way to impose liability on the true/another responsible party

• Can also pierce to obtain personal jurisdiction over veiled individual/entity
  – *i.e.*, where the corporate defendant is properly subject to jurisdiction, but the veiled shareholder would not be
Substantive Law

• Possibilities:
  – Forum state
  – State of incorporation
  – Choice of law provision
  – Federal common law

• Federal v. State Court
  – Diversity
  – Federal claim
Pleading Standards

• Does your state track federal *Twombly/Iqbal* pleading standards?

• Piercing claims often center on fraud—heightened pleading standards may apply
Law or Fact (or Both)

• How does your jurisdiction frame the piercing inquiry?

• Who gets to decide—judge or jury?

• In Virginia, the Supreme Court has stated that piercing is a mixed question of law and fact
  – Recent lower courts, however, have described piercing as an “equitable remedy”
Timing Considerations

• What is “piercing the corporate veil”?  
  – Claim/count?  
  – Remedial mechanism?

• As a plaintiff, when should/can you raise piercing?  
  – Personal jurisdiction  
  – Underlying action for purposes of liability  
  – Separate action to collect on prior judgment
Timing Considerations—Personal Jurisdiction

• Name both the formal wrongdoer and veiled entity/individual in a single action

• Allege facts to support piercing

• Motion to dismiss can challenge piercing on the front-end, possibly with limited jurisdictional discovery
Timing Considerations—Liability

• A single action to impose liability on formal wrongdoer and veiled entity/individual

• In Virginia, appear to be many different paths:
  – May proceed with piercing theory from outset
  – Can move to add defendant under piercing theory
  – Piercing may not be addressed until/if there is a verdict against formal wrongdoer
Timing Considerations—Separate Action

• Bring a piercing action to impose liability after obtaining a judgment
  – This could be a requirement

• May be in bankruptcy court
Other Potential Paths to Liability/Payment

• Traditionally, piercing is about holding veiled individuals responsible for corporate wrongs, particularly if there are ability-to-pay issues

• As a plaintiff, always investigate direct claims against corporate officers, directors, shareholders

• Corporate agents can have liability, particularly for torts/statutory causes of action