PIERCING THE CORPORATE VEIL:
When Can the Owners Be Held Liable?

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NOTE: Primarily these written materials draw on cases from New York although cases from other jurisdictions are cited for specific points. Counsel should always research the law of the applicable jurisdiction. For cases from other states citing the general rule for piercing the corporate veil, refer to the section at the end of these materials under State Survey.
Application to Limited Liability Companies

The doctrine of piercing the corporate veil applies to both corporations and limited liability companies.


Note, however, the adherence to corporate formalities analysis, discussed at length below, may be different when applied to LLCs. See *Mike Building & Contracting, Inc. v. Just Homes, LLC*, 27 Misc.3d 833 N.Y.S.2d 458 (N.Y. Sup. Ct. 2010) (A limited liability company is not a corporation, and the formalities required for its management, defined in an operating agreement among the members, are far more flexible than the rules applicable to a corporation.).

Other states have also applied the doctrine to LLCs:

**California**: *Misik v. D'Arco*, 197 Cal.App.4th 1065, 130 Cal.Rptr.3d 123 (Cal.App. 2 Dist.,2011) (Reversing the denial of a motion to amend a judgment against an LLC to add the owner of the LLC on the ground the owner was the alter ego of the judgment debtor.)

**Connecticut**: *Morris v. Cee Dee, LLC*, 90 Conn.App. 403, 414, 877 A.2d 899, 907 (Conn.App.,2005) (This state recognizes two theories under which it will permit the protection of the corporate structure to be set aside. Those theories also apply to the protection afforded by a limited liability company.)

**Colorado**: *Sheffield Services Co. v. Trowbridge*, 211 P.3d 714, 719 -720 (Colo.App.,2009) applied Colorado statute, Section 7-80-107(1) C.R.S, that explicitly provided, “In any case in which a party seeks to hold the members of a limited liability company personally responsible for the alleged improper actions of the limited liability company, the court shall apply the case law which interprets the conditions and circumstances under which the corporate veil of a corporation may be pierced under Colorado law.

**Delaware**: *Trustees of Village of Arden v. Unity Const. Co.*, 2000 WL 130627, 3 (Del.Ch.,2000) (A court can pierce the corporate veil of an entity where there is fraud or where a subsidiary is in fact a mere instrumentality or alter ego of its owner.)

**Florida**: *XL Vision, LLC v. Holloway* 856 So.2d 1063, 1066 (Fla.App. 5 Dist.,2003); *Intercoastal Realty, Inc. v. Tracy* 2010 WL 2541876, 3 (S.D.Fla.,2010) (Declining to dismiss a Complaint seeking to pierce the veil of an LLC.)

**Massachusetts**: *Middlesex Retirement System, LLC v. Board of Assessors of Billerica*, 453 Mass. 495, 504, 903 N.E.2d 210, 217 (Mass.,2009) (Although the doctrine [piercing the corporate veil] usually applies to corporations, we see no reason why it should not also apply to limited liability companies.)

New Jersey: Brown-Hill Morgan, LLC v. Lehrer, 2010 WL 3184340, 11 (N.J.Super.A.D., 2010) (Defendants note that their research has not uncovered a reported case in New Jersey which has utilized the doctrine of piercing the corporate veil, developed under the principles of corporate law, to limited liability companies. We can perceive no reason in logic or policy why the principle should not be fully applicable in the context of a limited liability company ...)

Ohio: Ossco Properties, Ltd. v. United Commercial Property Group, L.L.C. 197 Ohio App.3d 623, 630, 968 N.E.2d 535, 540 (Ohio App. 8 Dist., 2011) (Generally, in order to disregard the protections afforded by corporate or limited-liability business forms, one must show ...)

Pennsylvania: In re LMcD, LLC, 405 B.R. 555, 560 (Bkrtcy.M.D.Pa., 2009) ([The LLC] was created under the Pennsylvania Limited Liability Company Law of 1994. 15 Pa.C.S.A. ' 8901 et seq. Under that law, much like corporate stockholders, members are not typically liable for the obligations of the company. 15 Pa.C.S.A. ' 8922. Nevertheless, the Committee Comment to 15 Pa.C.S.A. ' 8904(b) makes clear that the equitable remedy of piercing is available regarding an LLC.)

General rule: Corporation is independent of its owners


Domination by one shareholder is not sufficient to justify piercing the corporate veil

A corporation, even when wholly owned by a single individual, has a separate legal existence from its shareholders . . . and courts are loathe to disregard the corporate form for the benefit of those who have chosen that form to conduct business. Harris v. Stony Clove Lake Acres Inc., 202 A.D.2d 745, 747, 608 N.Y.S.2d 584, 586 (3d Dep’t 1994) (internal citations omitted).

If, standing alone, domination over corporate conduct in a particular transaction were sufficient to support the imposition of personal liability on the corporate owner, virtually every cause of action brought against a corporation either wholly or principally owned by an individual who conducts corporate affairs could also be asserted against that owner personally, rendering the principle of limited liability largely illusory. East Hampton Union Free School Dist. v. Sandpebble Builders, Inc., 66 A.D.3d 122, 126, 884 N.Y.S.2d 94, 98 (2d Dep’t 2009) aff’d 16 N.Y.3d 775 (2011).

The mere fact that the corporation's management was controlled by an officer or controlling shareholder is, by itself, insufficient evidence to warrant piercing the corporate veil so as to impose personal liability on the shareholder. Matter of Estate of Gifford, 144 A.D.2d 742, 535 N.Y.S.2d 154 (3d Dep’t 1988).

**It is permissible for owners to form the corporation expressly to avoid personal liability**


**Veil will not be pierced merely because the corporation does not have sufficient funds to pay its debts**

The corporate form may not be disregarded merely because the assets of the corporation, together with the mandatory insurance coverage of the vehicle which struck the plaintiff, are insufficient to assure him the recovery sought. *Walkovszky v. Carlton*, 18 N.Y.2d 414, 419, 420, 276 N.Y.S.2d 585, 589 (1966). See also Bowles v. Errico, 163 A.D.2d 771, 558 N.Y.S.2d 734 (3d Dep’t 1990).

**Delaware**: Clearly, mere insolvency is not enough to allow piercing of the corporate veil. If creditors could enter judgments against shareholders every time that a corporation becomes unable to pay its debts as they become due, the limited liability characteristic of the corporate form would be meaningless. *Mason v. Network of Wilmington, Inc.* 2005 WL 1653954, 3 (Del.Ch.,2005)

**Veil piercing is an exception to the general rule**

There is no one general rule for when the courts will pierce the corporate veil

Because a decision whether to pierce the corporate veil in a given instance will necessarily depend on the attendant facts and equities, the New York cases may not be reduced to definitive rules governing the varying circumstances when the power may be exercised. . . . See also Matter of Morris v. New York State Dept. of Taxation & Fin., 82 N.Y.2d 135, 623 N.E.2d 1157 (1993).

Wm. Passalacqua Builders, Inc. v. Resnick Developers South, Inc., 933 F.2d 131 (2d Cir. 1991), refers to the infinite variety of situations that might warrant disregarding the corporate form and notes that it is not an easy task because disregarding corporate separateness is a remedy that differs with the circumstances of each case.

Achieving equity is the main consideration


Piercing the corporate veil is an equitable concept that allows a creditor to disregard a corporation and hold its controlling shareholders personally liable for the corporate debt. *Sweeney, Cohn, Stahl & Vaccaro v. Kane*, 6 A.D.3d 72, 75-76, 773 N.Y.S.2d 420, 423-424 (2 Dep’t 2004).


Where a court of equity is seeking to adjust rights between parties it looks at the merits rather than at form and to that end will disregard the fiction of a separate corporate entity where justice requires that it should be done. *Bartle v. Finkelstein* 19 A.D.2d 256, 241 N.Y.S.2d 655 (4th Dep’t 1963).

**Delaware** jurisdictional note: As actions to pierce the corporate veil are equitable in nature, in Delaware, only the Court of Chancery has jurisdiction over such actions, *Sonne v. Sacks* 314 A.2d 194, 197 (Del. 1973); *Edelstein v Achaian* 2014 WL 4935799.

**General principles of piercing the corporate veil**

[A] party seeking to pierce the corporate veil must establish that (1) the owners exercised complete domination of the corporation in respect to the transaction attacked; and (2) that such domination was used to commit a fraud or wrong against the plaintiff which resulted in the plaintiff’s injury *Transcribing Service, LLC v. Paul*, 72 A.D.3d 675, 676, 898 N.Y.S.2d 234, 235-236 (2d Dep’t 2010). See also *Nassau County v. Richard Dattner Architect, P.C.*, 57 A.D.3d 494, 495, 868 N.Y.S.2d 727 (2d Dep’t 2008); *Morris v. New York State Dept. of Taxation and Finance*, 82 N.Y.2d 135, 603 N.Y.S.2d 807 (1993).

The party seeking to pierce the corporate veil must further establish that the controlling corporation abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice against that party such that a court in equity will intervene. *Gateway I Group, Inc. v. Park Ave. Physicians, P.C.*, 62 A.D.3d 141, 145-146, 877 N.Y.S.2d 95, 99-100 (2d Dep’t 2009).

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1 Most states recognize the doctrine of piercing the corporate veil although the weight and consideration of the factors to be considered may vary. For case citations of the general rule from other states, see at the end of these materials under AState Survey.

**Where alter ego is found, plaintiff need not show that the domination was used to commit a wrong against plaintiff**

Under New York law, the corporate veil will be pierced to achieve equity, even absent fraud, when a corporation has been so dominated by an individual or another corporation and its separate entity so ignored that it primarily transacts the dominator's business instead of its own and can be called the other's alter ego. *Island Seafood Co., Inc. v. Golub Corp.* 303 A.D.2d 892, 893, 759 N.Y.S.2d 768, 769 - 770 (3d Dep’t 2003) (internal citations omitted). *See also Williams v. Lovell Safety Management Co., LLC*, 71 A.D.3d 671, 896 N.Y.S.2d 150 (2d Dep’t 2010); *Pebble Cove Homeowners Assn, Inc. v. Fidelity New York FSB*, 153 A.D.2d 843, 545 N.Y.S.2d 362 (2d Dep’t 1989).

Liability therefore may be predicated either upon a showing of fraud or upon complete control by the dominating corporation that leads to a wrong against third parties. *Wm. Passalacqua Builders, Inc. v. Resnick Developers S., Inc.*, 933 F.2d 131, 138 (2d Cir. 1991).

New York law allows the corporate veil to be pierced *either* when there is fraud *or* when the corporation has been used as an alter ego. *Itel Containers Intl Corp. v. Atlanttrafik Exp. Serv. Ltd.*, 909 F.2d 698, 703 (2d Cir.1990).

Because New York courts disregard corporate form reluctantly, they do so only when the form has been used to achieve fraud, or when the corporation has been so dominated by an individual or another corporation ..., and its separate identity so disregarded, that it primarily transacted the dominator's business rather than its own and can be called the other's alter ego. *Gartner v. Snyder*, 607 F.2d 582, 586 (2d Cir.1979).

**Factors to be considered**

Factors to be considered by a court in determining whether to pierce the corporate veil include failure to adhere to corporate formalities, inadequate capitalization, commingling of assets, and use of corporate funds for personal use. *Transcribing Service, LLC v. Paul* 72 A.D.3d 675, 676, 898 N.Y.S.2d 234, 235-236 (2d Dep’t 2010)

*See Wm. Passalacqua Builders, Inc. v. Resnick Developers South, Inc.* 933 F.2d 131 (2d Cir, 1991) a case which is often cited. In *Passalacqua*, 933 F.2d at 139, the court lists ten common factors to weigh under New York law when considering whether or not to pierce the corporate veil. The court noted:

Indicia of a situation warranting veil-piercing include: (1) the absence of the formalities and
paraphernalia that are part and parcel of the corporate existence, i.e., issuance of stock, election of directors, keeping of corporate records and the like, (2) inadequate capitalization, (3) whether funds are put in and taken out of the corporation for personal rather than corporate purposes, (4) overlap in ownership, officers, directors, and personnel, (5) common office space, address and telephone numbers of corporate entities, (6) the amount of business discretion displayed by the allegedly dominated corporation, (7) whether the related corporations deal with the dominated corporation at arms length, (8) whether the corporations are treated as independent profit centers, (9) the payment or guarantee of debts of the dominated corporation by other corporations in the group, and (10) whether the corporation in question had property that was used by other of the corporations as if it were its own’

No one factor is dispositive

No one factor is dispositive


The courts look at the totality of the evidence


Comparison of two cases applying various factors in deciding whether or not to pierce the corporate veil


**Abuse of the corporate form must be used to commit some fraud or wrong that results in plaintiff’s injury**

The party seeking to pierce the corporate veil must establish that the owners, through their domination, abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice against that party such that a court in equity will intervene.

In the following cases, no wrong shown resulting from domination of corporation:


*New York Ass’n for Retarded Children, Inc., Montgomery County Chapter v. Keator*, 199 A.D.2d 921, 606 N.Y.S.2d 784 (3d Dep’t 1993) (Even assuming, arguendo, the lack of corporate formalities, nothing fraudulent or illegal was alleged or shown that defendant used his asserted control to commit any wrongdoing.)

*Island Seafood Co., Inc. v. Golub Corp.*, 303 A.D.2d 892, 759 N.Y.S.2d 768 (3d Dep’t 2003) (Court properly determined that petitioner failed to meet its burden of demonstrating that defendant, through his domination, abused his power over both corporations to commit a wrong or injustice to the detriment of petitioner.)

*TNS Holdings, Inc. v. MKI Securities Corp.*, 92 N.Y.2d 335, 703 N.E.2d 749, 680 N.Y.S.2d 891 (1998) (Veil not pierced where, even if one corporate defendant dominated another corporate
defendant, there was no showing that through its domination MKI misused the corporate form for its personal ends so as to commit a fraud or wrongdoing or avoid any of its obligations. 

*Brunswick Corp. v. Waxman*, 459 F.Supp. 1222, 1230 (D.C.N.Y. 1978), aff’d, 599 F.2d 34 (2d Cir. 1979) (Attempt to pierce corporate veil denied where the evidence before us shows ... there was no causal connection between the fact that the Waxmans conducted business individually and the contract losses suffered by Brunswick. Absent such a causal link, no principle of honesty, equity or fairness would justify shifting those losses to the Waxmans by withdrawing the veil from their corporations.)

In the following cases, a resulting wrong was shown: 

*Rotella v. Derner*, 283 A.D.2d 1026, 723 N.Y.S.2d 801 (4th Dep’t 2001) (undercapitalized corporation unable to pay a judgment debt and there has been a disregard of corporate formalities and personal use of corporate funds was sufficient evidence of wrongdoing to justify piercing the corporate veil.)

*Austin Powder Co. v. McCullough* 216 A.D.2d 825, 628 N.Y.S.2d 855 (3d Dep’t 1995) (Undercapitalized corporation is unable to pay a judgment debt and there has been disregard of corporate formalities and personal use of corporate funds.)

*Hyland Meat Co. v. Tsagarakis*, 202 A.D.2d 552, 609 N.Y.S.2d 625 (2d Dep’t 1994) (Wrong to plaintiff was shown where individual owners of defendant corporation induced plaintiff to advance credit to sister corporation by using their control of sister corporation to induce the plaintiff to continue making deliveries of meat for which it was not paid.)

*Teachers Ins. Annuity Ass’n of America v. Cohen’s Fashion Optical of 485 Lexington Ave. Inc.*, 45 A.D.3d 317, 847 N.Y.S.2d 2 (1st Dep’t 2007) (Claim was stated against corporate parent for lease obligation of subsidiary tenant where parent negotiated lease and held itself out as real tenant and then substituted its subsidiary, a judgment-proof shell, as tenant).

**Corporate Formalities**

*McMullin v. Pelham Bay Riding, Inc.*, 190 A.D.2d 529, 593 N.Y.S.2d 27 (1st Dep’t 1993) (negligence case not dismissed against individual shareholder due to failure to adhere to corporate record keeping).

*Wanich v. Bitter*, 12 Misc. 3d 1165(A), 820 N.Y.S.2d 847 (Sup. Ct. 2006) (. . .consider such factors as the existence of corporate minutes, the existence of a board of directors, the actual issuance of shares, the existence of corporate records or bank accounts and the extent to which corporate formalities were observed.).

*Austin Powder Co. v. McCullough*, 216 A.D.2d 825, 628 N.Y.S.2d 855 (3d Dep’t 1995) (liability against individual shareholder upheld in part because corporation had no board of directors or corporate officers other than the individual shareholder, held no corporate meetings, and kept no corporate records).
In re Oko, 395 B.R. 559 (Bankr. E.D.N.Y. 2008) (Trustee pierced the corporate veil against corporations sole shareholder where individual shareholder was also the sole director and officer of the corporation and did not bother with corporate formalities).

Maggio v. Becca Const. Co., Inc., 229 A.D.2d 426, 644 N.Y.S.2d 802 (2d Dep’t 1996) (affirming dismissal of breach of contract case against individual owners of corporation where plaintiffs failed to provide evidence that there were no corporate minutes, no board of directors, no shareholders, and no corporate books, records, or bank accounts).

Fantazia Intern. Corp. v. CPL Furs New York, Inc., 67 A.D.3d 511, 889 N.Y.S.2d 28 (1st Dep’t 2009) (Veil not pierced where corporations kept separate bank accounts, books and records, were incorporated at different times for legitimate business purposes, filed separate tax returns, there was substantial compliance with corporate formalities, transactions between the two companies were conducted at arms length, and there was no evidence that the corporation in question was undercapitalized).

In most jurisdictions, disregard of corporate formalities is typically one of the factors considered by the court in determining whether to pierce the corporate veil:


Delaware: MacQueen v. Union Carbide Corporation 2014 WL 6809811, 6 (D.Del.2014)

Indiana: Community Care Centers, Inc. v. Hamilton 774 N.E.2d 559, 569 (Ind.App.,2002)


Ohio: Bash v. Textron Financial Corp. 2015 WL 224968, 5 -6 (N.D. Ohio, 2015)

LLC Formalities
Limited liability company is not a corporation, and the formalities required for the management of an LLC, defined in operating agreement among the members, are far more flexible than the rules applicable to a corporation. Mike Building & Contracting, Inc. v. Just Homes, LLC, 27 Misc.3d 833, 901 N.Y.S.2d 458 (Sup. Ct. 2010).

Undercapitalization

Undercapitalization means capitalization very small in relation to the nature of the business of the corporation and the risks ... attendant to such businesses. The adequacy of capital is to be measured as of the time of formation of the corporation. A corporation that was adequately capitalized when formed, but which subsequently suffers financial reverse is not

Cases in which the courts rejected piercing the corporate veil noting, among other things, that there was no showing the corporation was undercapitalized:
Fantazia Intern. Corp. v. CPL Furs New York, Inc., 67 A.D.3d 511, 889 N.Y.S.2d 28 (1st Dep’t 2009) (Court rejected piercing the corporate veil where there was no showing of undercapitalization)

Cases in which the courts upheld piercing the corporate veil noting, among other things, that the corporation was undercapitalized:
Austin Powder Co. v. McCullough, 216 A.D.2d 825, 628 N.Y.S.2d 855 (3d Dep’t 1995) (Where . . . an undercapitalized corporation is unable to pay a judgment debt and there has been disregard of corporate formalities and personal use of corporate funds, . . . [there is] sufficient evidence of wrongdoing to justify piercing the corporate veil.)
Rotella v. Derner, 283 A.D.2d 1026, 723 N.Y.S.2d 801 (4th Dep’t 2001)
In re Oko 395 B.R. 559 (Bankr. E.D.N.Y. 2008) (With regards to capitalization, the record shows that the defendant failed to properly capitalize his business when it was formed.)

BUT NOTE: Corporate veil will not be pierced merely because the assets of the corporation are insufficient to assure the recovery sought. See Walkovszky v. Carlton, 18 N.Y.2d 414, 276 N.Y.S.2d 585 (1966); Gartner v. Snyder, 607 F.2d 582 (2d Cir.1979), quoting ABN AMRO Bank, N.V. v. MBIA Inc., 17 N.Y.3d 208, 952 N.E.2d 463, 928 N.Y.S.2d 647 (2011) ([N]o New York authority . . . disregards corporate form solely because of inadequate capitalization);

See also Casa de Meadows Inc. (Cayman Islands) v. Zaman, 76 A.D.3d 917, 908 N.Y.S.2d 628 (1st Dep’t 2010); Bowles v. Errico 163 A.D.2d 771, 558 N.Y.S.2d 734 (3d Dep’t 1990)

At what point is the adequacy of the corporations capitalization to be measured?
When the corporation was first formed, when the corporation entered into a contract with plaintiff, at the time of trial, or at all times? The courts differ.

At the time of incorporation:
See, Erickson v. Leonard, WL 706278 (N.J. Super.A.D. 2008), a New Jersey case explaining undercapitalization: [T]he determination that a corporation was inadequately capitalized may result in the piercing of the corporate veil and individual shareholder liability. A party entering into a business relationship with a corporation does not assume the risk of grossly inadequate
Inadequate capitalization has been defined as capitalization very small in relation to the nature of the business of the corporation and the risks attendant to such business. Generally, the adequacy of capital is to be measured as of the time of formation of the corporation. However, we are satisfied that one may not sufficiently capitalize a corporation, later withdraw most of its capitalization, and then continue to enter into contracts with third parties who are relying on the corporation being adequately capitalized. It is inequitable to allow the shareholders to escape personal liability where a corporation carries on a business without substantial capital and is likely to have insufficient assets available to meet its debts [internal citations omitted].

*Canter v. Lakewood of Voorhees* 420 N.J.Super. 508, 520, 22 A.3d 68, 76 (N.J.Super.A.D.,2011) (A corporation that was adequately capitalized when formed, but which subsequently suffers financial reverse is not undercapitalized.... Adequate capitalization is a question of fact that turns on the nature of the business of the particular corporation....)

*Christian v. Smith* 276 Neb. 867, 884, 759 N.W.2d 447, 462 (Neb.,2008) (...inadequate capitalization, means capitalization very small in relation to the nature of the business of the corporation and the risks entailed. Inadequate capitalization is measured at the time of incorporation. A corporation which was adequately capitalized when formed but which has suffered losses is not necessarily undercapitalized. Undercapitalization presents a question of fact that turns on the nature of the business of the particular corporation.)

*Bradstreet v. Wong* 161 Cal.App.4th 1440, 1447-1448, 75 Cal.Rptr.3d 253, 259 (Cal.App. 1 Dist.,2008) (...the mere fact that the Wins Corporations ultimately went broke did not establish that the corporations were undercapitalized.... Having operated as successful corporations for well over a decade, meeting the substantive requirements of corporations, the Wins Corporations cannot justly be stripped of corporate status and the principals made personally liable because they failed to survive a hostile business climate.)

*Haynes v. Edgerson* 240 S.W.3d 189, 197 (Mo.App. W.D.,2007) (Inadequate capitalization is generally measured at the time of incorporation.) At the time the corporation entered into the transaction at issue:

*Do Gooer Productions, Inc. v. American Jewish Theatre, Inc.*, 66 A.D.3d 527, 887 N.Y.S.2d 72 (1st Dep’t 2009) declining to pierce corporate veil and the undercapitalization was measured from the time of the underlying breach ( [t]here was no evidence that the corporation was undercapitalized at the time of the license agreement or that it failed to utilize the requisite corporate form).

*ACE Elec. Co. Inc. v. Advance Technologies, Inc.* 2011 WL 8964931, 2 (Va.Cir.Ct.) (Va.Cir.Ct.,2011) (Because Advance was so grossly undercapitalized at the time it entered into the Richmond Boiler Contract with ACE, it would work a profound injustice to allow Mr. Butler to escape liability for repaying this debt.)

At all times:
The obligation to provide adequate capital begins with incorporation and is a continuing obligation thereafter *** during the corporations operations. See DeWitt Truck Brokers v. W. Ray Flemming Fruit Co., 540 F.2d 681, 685 (4th Cir.1976). The Fourth Circuit Court of Appeals continued: (the)

Transferring assets from a corporation to render it judgment proof weighs in favor of piercing the corporate veil

Transferring assets from a corporation to render it judgment proof weighs in favor of piercing the corporate veil

Plaintiff's failure to inquire about or knowledge the corporations lack of assets weighs against piercing the corporate veil

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Alfred P. Sloan Foundation, Inc. v. Atlas, 42 Misc.2d 603, 248 N.Y.S.2d 524 (N.Y. Sup. Ct. 1964) aff’d 23 A.D.2d 820 (2d Dept, 1965) (Plaintiff has not proved that the contract was entered into upon the credit of any person or corporation other than Atex or that it was misled into believing that Atex had assets or that it even asked for a financial statement. The use of straw men, corporate or individual, is a practice long known to the law and a seller who without inquiry
accepts a corporate purchaser with whom he could, absent the guarantee of a person or corporation of substance, have refused to contract, cannot claim to have been defrauded if the corporate purchaser has no substance [internal citations omitted].

Brunswick Corp. v. Waxman, 459 F.Supp. 1222, 1322 (D.C.N.Y. 1978), aff'd, 599 F.2d 34 (2d Cir. 1979) (Brunswick had full knowledge of the lack of capitalization, and consented to it. Brunswick was not misled into doing business with a no-asset corporation and is hardly in a position now to complain that in the absence of any additional assets in that corporation its liability should be shifted to the Waxmans.)

Causal connection is required between the corporate wrong and the injury to plaintiff

New York Assn for Retarded Children, Inc., Montgomery County Chapter v. Keator, 199 A.D.2d 921, 606 N.Y.S.2d 784 (N.Y.A.D. 3 Dept.,1993); Island Seafood Co., Inc. v. Golub Corp., 303 A.D.2d 892, 759 N.Y.S.2d 768 (3d Dep’t 2003); Brunswick Corp. v. Waxman, 459 F.Supp. 1222 (E.D.N.Y. 1978), aff'd, 599 F.2d 34 (2d Cir. 1979) (Failure to observe corporate formalities coupled with inadequate capitalization has frequently been cited as a basis for disregarding the corporate entity and imposing individual liability where such facts are causally connected with the injury.).

No independent cause of action to pierce the corporate veil

Morris v. New York State Dept. of Taxation and Finance, 82 N.Y.2d 135, 603 N.Y.S.2d 807, (1993) (An attempt of a third party to pierce the corporate veil does not constitute a cause of action independent of that against the corporation; rather it is an assertion of facts and circumstances which will persuade the court to impose the corporate obligation on its owners.).

Davis v. Corner Stone Telephone Co., LLC, 2008 WL 2329176 (N.Y. Sup. Ct. 2008) (These are not causes of action at all; rather, they are legal theories under which, in certain circumstances, personal liability may be found despite the erection of corporate or similar barriers by a debtor. As they do not state causes of action, they are dismissed.) (internal citations omitted).

Illinois case: Peetoom v. Swanson, 334 Ill. App.3d 523, 778 N.E.2d 291 (Ill. App. Ct. 2d Dist. 2002) (The doctrine of piercing the corporate veil is an equitable remedy; it is not itself a cause of action but rather is a means of imposing liability on an underlying cause of action, such as a tort or breach of contract.).

Piercing the corporate veil is a remedy

corporate veil is not an independent action but a procedural device to secure separately existing substantive rights owing to the plaintiff.

Wm. Passalacqua Builders, Inc. v. Resnick Developers South, Inc. 933 F.2d 131, 139 (C.A.2 (N.Y.),1991) (disregarding corporate separateness is a remedy that differs with the circumstances of each case.)

In re Cabrini Medical Center, 2012 WL 2254386 (Bankr. S.D.N.Y 2012) (The remedy of piercing the corporate veil is equitable in nature.)

Brown-Hill Morgan, LLC v. Lehrer 2010 WL 3184340, 11 (N.J.Super.A.D., 2010) ([P]iercing the corporate veil is not technically a mechanism for imposing legal liability, but for remedying the fundamental unfairness that will result from a failure to disregard the corporate form.)

Peetoom v. Swanson 334 Ill.App.3d 523, 526, 778 N.E.2d 291, 294-295, 268 Ill.Dec. 305, 308 - 309 (Ill.App. 2 Dist.,2002) (The doctrine of piercing the corporate veil is an equitable remedy; it is not itself a cause of action but rather is a means of imposing liability on an underlying cause of action, such as a tort or breach of contract.)

**Sufficiency of the Complaint**


Complaint should have sufficiently particular(ized) statements of wrongdoing. See Walkowsky v. Carlton, 18 N.Y.2d 414, 420, 276 N.Y.S.2d 585, 590 (1966).

Mere conclusory statements that a corporation is dominated or controlled by a shareholder are insufficient to sustain a cause of action against a shareholder in his individual capacity, AHA Sales, Inc. v. Creative Bath Products, Inc., 58 A.D.3d 6, 867 N.Y.S.2d 169 (2d Dep’t 2008); Itamari v. Giordan Dev. Corp., 298 A.D.2d 559, 748 N.Y.S.2d 678 (2d Dep’t 2002); Andejo Corp. v. South St. Seaport Ltd. Partnership, 40 A.D.3d 407, 836 N.Y.S.2d 571 (1st Dep’t 2008).

**Plaintiff Bears Heavy Burden**

TNS Holdings, Inc. v. MKI Securities Corp., 92 N.Y.2d 335, 680 N.Y.S. 2d 891, 893, 703 N.E.2d
Those seeking to pierce a corporate veil of course bear a heavy burden of showing that the corporation was dominated as to the transaction attacked and that such domination was the instrument of fraud or otherwise resulted in wrongful or inequitable consequences.)

Veil can be pierced in a later action or proceeding after a judgment was obtained in a prior action or proceeding

*Austin Powder Co. v. McCullough*, 216 A.D.2d 825, 628 N.Y.S.2d 855 (3d Dep’t 1995)

It is not necessary that plaintiff must first obtain an unsatisfied judgment in order to pierce the corporate veil. *Island Seafood Co., Inc. v. Golub Corp.*, 303 A.D.2d 892, 759 N.Y.S.2d 768 (3d Dep’t 2003); *ABN AMRO Bank, N.V. v. MBIA Inc.* 81 A.D.3d 237, 254, 916 N.Y.S.2d 12, 24 - 25 (1st Dep’t. 2011).

Statute of Limitations

In New York, the 20 years limitations period for enforcement of judgments applies if a judgment was obtained against the corporation. *See County of Suffolk v. LoveM Sheltering, Inc.*, 27 Misc.3d 1127, 899 N.Y.S.2d 809 (Sup. Ct. 2010) (Actions for enforcement of a judgment against those charged with control and domination of a corporate judgment debtor under corporate veil piercing theories are governed by the twenty year statute of limitations set forth in CPLR 211(b) that runs from the docketing of the judgment.)

**Illinois:** *Peetoom v. Swanson* 334 Ill. App.3d 523, 778 N.E.2d 291 (Ill. App. Ct. 2d Dist. 2002). The seven-year limitations period for enforcing judgments would ordinarily govern actions of this type. However, because the corporation had been dissolved, the five year limitations period against dissolved corporations applied.

**New Hampshire:** *Norwood Group, Inc. v. Phillips*, 149 N.H. 722, 828 A.2d 300 (2003). (... where, as here, a party first obtains a judgment against a corporation and later sues corporate stockholders to cast them in judgment under the doctrine of piercing the corporate veil, the suit against the stockholders is an action on a judgment....the plaintiffs' equitable petition to pierce the corporate veil is governed by the twenty-year statute of limitations for actions to enforce a judgment.)

**Michigan:** *Belleville v. Hanby*, 152 Mich. App. 548, 394 N.W.2d 412 (1986). (... having already obtained a judgment against the corporation on their personal injury claim, plaintiffs sought, through the lawsuit at issue here, to establish that the judgment obtained against the corporation was also a judgment against the defendants in their individual capacities. ... the applicable statute
of limitation is ... ten years from the time of rendition of the judgment.)

Connecticut: Chro ex rel. Doe v. Travel and Tour Services, Inc., 1994 WL 386082 (Conn. Super. 1994) (The court finds that Doe's attempt to pierce the corporate veil to collect on the judgment rendered against Travel and Tour is governed by the twenty year statute of limitations for enforcing judgments.)

Choice of Law

Under the law of New York and most other jurisdictions, the law of the state of incorporation governs the piercing the corporate veil analysis. This follows Restatement (Second) of Conflict of Laws (1971) Section 307 which states: The local law of the state of incorporation will be applied to determine the existence and extent of a shareholder's liability to the corporation for assessments or contributions and to its creditors for corporate debts.

Sweeney, Cohn, Stahl & Vaccaro v. Kane 6 A.D.3d 72, 75, 773 N.Y.S.2d 420, 423 (2d Dept. 2004) (Ordinarily, the State of incorporation has the greatest interest in determining the extent of insulation that will be afforded to shareholders of corporations incorporated under its laws [citations omitted])

Pointer (U.S.A.), Inc. v. H & D Foods Corp. 60 F.Supp.2d 282, 287 (S.D.N.Y.,1999) (The parties agree that because H & D is a Massachusetts corporation, under New York choice of law principles, the question of whether to pierce the corporate veil is governed by Massachusetts law.)

Kalb, Voorhis & Co. v. American Financial Corp. 8 F.3d 130, 132 -133 (C.A.2 (N.Y.),1993) (The law of the state of incorporation determines when the corporate form will be disregarded and liability will be imposed on shareholders: Because a corporation is a creature of state law whose primary purpose is to insulate shareholders from legal liability, the state of incorporation has the greater interest in determining when and if that insulation is to be stripped away. Soviet Pan Am Travel Effort v. Travel Committee, Inc., 756 F.Supp. 126, 131 (S.D.N.Y.1991) (applying New York choice of law principles).)

Accord:


Nebraska: Johnson v. Johnson 272 Neb. 263, 275, 720 N.W.2d 20, 30 (Neb.,2006)


But some states do not follow this choice of law rule:
Massachusetts:
Supply Chain Associates, LLC v. ACT Electronics, Inc. 2012 WL 2381908, 8-9 (Mass.Super., 2012) (The local law of the state of incorporation will be applied to determine the existence and extent of a shareholder's liability to the corporation for assessments or contributions and to its creditors for corporate debts. Lily Transp. Corp. v. Royal Inst. Servs., Inc., 64 Mass.App.Ct. 179, 188 n. 15 (2005), quoting Restatement (Second) Conflict of Laws ' 307 (1971). However, where the place of contracting, the place of contract negotiation, the place of performance, and the location of the contract subject matter were in Massachusetts, the Appeals Court has applied Massachusetts law. See Evans v. Multicon Const. Corp., 30 Mass.App.Ct. 728, 737 n. 7 (1991) (applying Massachusetts law where alleged shell company was incorporated in Ohio and companies to be pierced were incorporated in Ohio).)

Tennessee:
Boles v. National Development Co., Inc. 175 S.W.3d 226, 238 (Tenn.Ct.App., 2005) (The contention that the trial court erred by applying Tennessee law, instead of the law of Texas and Delaware, to determine whether to pierce the corporate veil is without merit. This court previously applied Tennessee law to pierce the corporate veil of a foreign corporation and to hold its principal liable for the debts of the corporation ....)

Summary judgment
Damianos Realty Group, LLC v. Fracchia 35 A.D.3d 344, 344, 825 N.Y.S.2d 274, 276 (2d Dep't 2006) (Veil-piercing is a fact-laden claim that is not well suited for summary judgment resolution (First Bank of Americas v. Motor Car Funding, 257 A.D.2d 287, 294, 690 N.Y.S.2d 17.)
Pebble Cove Homeowners' Ass'n, Inc. v. Fidelity New York FSB 153 A.D.2d 843, 843, 545 N.Y.S.2d 362, 363 (2d Dept. 1989) (Generally, whether a principal-agent relationship exists between two corporations is a question of fact to be decided at trial, rather than on a motion for summary judgment (see, Key Intl. Mfg. v. Morse/Diesel Inc., 142 A.D.2d 448, 455, 536 N.Y.S.2d 792).)
STATE SURVEY
The cases cited below will give counsel a start in finding authority addressing the doctrine of piercing the corporate veil as applied in the respective states.


**Colorado:** *In re Phillips*, 139 P.3d 639, 644 (Colo.2006); *Sheffield Services Co. v. Trowbridge*, 211 P.3d 714, 725-26 (Colo.App.2009).

**Connecticut:** *Naples v. Keystone Bldg. and Development Corp.* 295 Conn. 214, 231-235, 990 A.2d 326, 339 - 341 (Conn.,2010)


**Florida:** *Dania Jai-Alai Palace, Inc. v. Sykes*, 450 So.2d 1114 (Fla.1984)


**North Carolina:** *Strategic Outsourcing, Inc. v. Stacks* 176 N.C.App. 247, 253, 625 S.E.2d 800, 804 (N.C.App.,2006)

**Ohio:** *State ex rel. Petro v. Mercomp, Inc.* 167 Ohio App.3d 64, 70, 853 N.E.2d 1193, 1197 (Ohio App. 8 Dist.,2006)


**Wisconsin:** *Consumer's Co-op. of Walworth County v. Olsen* 142 Wis.2d 465, 484, 419 N.W.2d 211, 217 - 218 (Wis.,1988)

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