Reverse Corporate Veil Piercing: Is the Equitable Remedy Worth the Risk?

*Victoria Burke**

Abstract. Courts in recent years have become increasingly receptive to the concept of reverse veil piercing, a lesser-known equitable remedy which allows creditors to pierce the corporate veil in the opposite direction to satisfy a judgment or debt against a shareholder with the assets of the corporation (in limited instances). Historically, courts have shied away from permitting this remedy seemingly for fear that it's either too risky or unwieldy due to inconsistencies in states' approaches. As a result, we have seen fewer reverse pierces in our national jurisprudence than perhaps the concept's more notable counterpart, a standard corporate veil pierce. Yet, the considerations underlying either remedy stem from largely the same concepts: alter ego theory, courts' disinclination to perpetuate fraud, perceived abuses of the corporate form, and so on. Is it possible that a reverse-piercing standard can be articulated, by synthesizing different state and federal approaches to the remedy? This Comment will argue that, at a minimum, such a standard might provide some degree of guidance on how courts might approach a reverse pierce and under what circumstances the remedy might be warranted.

* J.D. 2023, George Mason University Antonin Scalia Law School; B.S. 2019, Saint Joseph's University. Senior Forum Editor, George Mason Law Review, 2022–2023. Thank you to Professor Paolo Saguato and all of the George Mason Law Review editors for their assistance with this article.

Introduction

Imagine your friend has recently gone through a divorce but has been unsuccessful in collecting the court-ordered award against her ex-husband. If her ex-husband is a controlling shareholder of a corporation, owning 99.7% of the equity therein, should your friend be able to hold the corporation liable for her ex-husband's dues? If the corporation's assets were commingled with those of her ex-husband so as to create an "alter ego" relationship, she may indeed.[1] This is exactly what the court held in *W. G. Platts, Inc. v. Platts*,[2] a unique but exemplary case displaying the application of *reverse corporate veil piercing*, an equitable remedy at law underutilized by courts to protect the interests of defrauded creditors and individuals alike.[3]

One core principle of corporate law is limited liability.[4] Under this principle, the assets of the corporation and those of the individual shareholder are distinct in the sense that the shareholder's assets may not be used to satisfy the corporation's creditors, and vice versa.[5] This well-established element of modern corporations has been eroded by the development of the theory of "piercing the corporate veil," an equitable remedy which holds a corporation's shareholders personally liable for the debts of the corporation.[6] To apply this remedy is to purposely disregard the protective "veil" that typically exists to separate the corporation's assets and liabilities from those of its shareholders.[7] This veil of limited liability serves to shield shareholder assets from claims by corporate insiders, creditors, or third parties.[8] The concept of piercing the corporate veil, either in the traditional sense or in its reverse form, therefore, acts as

1 *See* W. G. Platts, Inc. v. Platts, 298 P.2d 1107, 1111 (Wash. 1956).

2 *Id.* (noting that when one corporation so dominates and controls another, courts will look beyond the legal fiction of distinct corporate existence, as justice requires).

3 Nicholas Allen, *Reverse Piercing of the Corporate Veil: A Straightforward Path to Justice*, 16 N.Y. BUS. L.J., Summer 2012, at 26. While not the typical case for reverse veil piercing, *W. G. Platts, Inc. v. Platts* shows the utility of reverse piercing as an equitable remedy when applied in the proper contexts. *See id*.

4 STEPHEN M. BAINBRIDGE & M. TODD HENDERSON, LIMITED LIABILITY: A LEGAL AND ECONOMIC ANALYSIS 2 (2016).

5 Henry Hansmann & Reinier Kraakman, *The Essential Role of Organizational Law*, 110 YALE L.J. 387, 394-95 (2000).

6 Sidney Turner, *What You Should Know About Limiting Personal Liability: The Reality of Piercing the Corporate Veil and Reverse Piercing of the Corporate Veil*, 31 WESTCHESTER BAR J., Fall/Winter 2004, at 33.

7 *Id.*

8 *See* Hansmann & Kraakman, *supra* note 5, at 395.

an exception to the limited liability rule, permitting the corporate form to be disregarded so that such claims may proceed.[9]

Under traditional veil piercing, a shareholder may be held personally liable for the debts of a corporation if that corporation has failed to follow corporate formalities, such as commingling its assets with those of its shareholders, or exhibiting fraud, for example.[10] The concept of *reverse veil piercing* works in the inverse, allowing a corporation to be held financially liable for the debts of a shareholder.[11] Similar to traditional veil piercing, reverse piercing is not an independent cause of action but an equitable remedy which, for the sake of satisfying a debt or legal obligation, may justify pooling the assets of technically distinct entities: the corporation and its shareholders.[12] Reverse piercing is just as complex as traditional piercing, and similarly involves a fact-intensive inquiry that considers several aspects of the shareholder-corporation relationship.[13] While presenting an interesting alternative to traditional remedies found in conversion, fraudulent conveyance, and agency suits, reverse piercing is used less frequently in practice because of the perceived difficulty in its application.[14]

State and federal courts have mixed views on whether to allow reverse veil piercing as a remedy for several reasons. Federal courts of appeals that have taken negatively to reverse piercing (e.g., Courts of Appeals for the Ninth and Tenth Circuits) often argue that it may prejudice the rights of innocent shareholders and corporate creditors or that it might "bypass[ ] normal judgment-collection procedures" that yield comparable results.[15] Even federal courts that see the potential benefits of a reverse pierce remedy may not permit its application in a case unless the highest courts

---

9 *See* Turner, *supra* note 6, at 33.

10 *See* Jonathan Macey & Joshua Mitts, *Finding Order in the Morass: The Three Real Justifications for Piercing the Corporate Veil*, 100 CORNELL L. REV. 99, 107–08 (2014).

11 18 C.J.S. *Corporations* § 17 (2023).

12 *See In re* Clark, 525 B.R. 107, 125, 125 n.55 (Bankr. D. Idaho 2014), *aff'd*, 548 B.R. 246 (B.A.P. 9th Cir. 2016), *aff'd*, 692 Fed. Appx. 946 (9th Cir. 2017) (unpublished). *See also* Michael J. Gaertner, Note, *Reverse Piercing the Corporate Veil: Should Corporation Owners Have It Both Ways?*, 30 WM. & MARY L. REV. 667, 681 (1989).

13 *See* Kurtis A. Kemper, Annotation, *Acceptance and Application of Reverse Veil-Piercing—Third-Party Claimant*, 2 A.L.R.6th 195 § 3 (2005).

14 *See, e.g.*, *id.* §§ 2, 5 (summarizing reverse veil piercing); Turner, *supra* note 6, at 33.

15 Cascade Energy & Metals Corp. v. Banks, 896 F.2d 1557, 1577 (10th Cir. 1990) (applying Utah law). The rationale against an outsider reverse pierce described in *Cascade Energy* was then adopted by the Courts of Appeals for the Ninth and Tenth Circuits. Est. of Daily v. Lilipuna Assocs., No. 95-16370, 1996 U.S. App. LEXIS 8391, at *12–13 (9th Cir. 1996) (unpublished table decision) (applying Hawaii law); Floyd v. IRS, 151 F.3d 1295, 1299 (10th Cir. 1998) (applying Kansas law).

in the state in which the dispute originated have accepted the concept.[16] However, this recognition is not necessarily proof of an established test for reverse veil piercing within the given state, so a survey of state-level cases is still necessary to verify the existence of state substantive law on reverse veil piercing. For example, the Supreme Court of Georgia in *Acree v. McMahan*[17] imposed strict limitations on reverse veil piercing.[18] The court in *Acree* explained that applying a reverse pierce remedy may lead to a complete disregard for normal judgment-collection procedures which typically avoid attaching the corporation's assets.[19] Thus, reverse veil piercing may be said to prejudice nonculpable shareholders by direct attachment of the corporation's assets, which may "unsettle the expectations of corporate creditors" who rely on their loans being secured by those assets.[20]

Still, nearly every federal circuit has decided more than one case where the benefits of reverse piercing were perceived to outweigh the potential costs, especially when other remedies were not available.[21] These circuits have recognized reverse veil piercing as a viable concept which may help to prevent abuses of corporate or partnership structures and to provide remedies for delinquent tax liabilities or other debts.[22] In such cases, reverse piercing is often highlighted as an employable remedy which achieves equitable results, so long as unfair prejudice is not likely to result.[23]

The inconsistent judicial attitudes toward reverse veil piercing present an interesting dichotomy nationwide, resulting in much confusion over when and how a reverse pierce may properly be applied in a case. A revised reverse-piercing standard is needed, particularly where federal courts make up for a lack in state standards with an "*Erie* guess"

16 *See Cascade Energy*, 896 F.2d at 1577 (applying Utah law); *In re* Hamilton, 186 B.R. 991, 1000 (Bankr. D. Colo. 1995) (applying Colorado law); Kemper, *supra* note 13, § 5 (explaining when reverse veil-piercing concept is accepted).

17 585 S.E.2d 873 (Ga. 2003).

18 *Id.* at 875 (rejecting "outsider" reverse-piercing claims).

19 *Id.* at 874 (citing *Cascade Energy*, 896 F.2d at 1577).

20 *Id.* (quoting *Floyd*, 151 F.3d at 1299–1300).

21 *See, e.g.*, Goya Foods, Inc. v. Unanue, 233 F.3d 38, 43 (1st Cir. 2000); CGC Holding Co., LLC v. Hutchens, 974 F.3d 1201, 1216 (10th Cir. 2020) (recognizing that reverse veil piercing is an equitable remedy under Colorado law and remanding to the district court to determine the appropriate remedy); McLeskey v. Davis Boat Works, Inc., 225 F.3d 654,*3–4 (4th Cir. 2000) (per curiam) (unpublished table decision); United States v. Scherping, 187 F.3d 796, 803–04 (8th Cir. 1999); Towe Antique Ford Found. v. IRS, 999 F.2d 1387, 1390, 1392–93 (9th Cir. 1993); Century Hotels v. United States, 952 F.2d 107, 112 (5th Cir. 1992); Allied Chem. Corp. v. Randall, 321 F.2d 320, 323 (7th Cir. 1963).

22 *See* 114 AM. JUR. 3D 403 *Proof of Facts* § 7 (2010) (Apr. 2023 update); Kemper, *supra* note 13, § 4 (explaining when the reverse veil-piercing concept is accepted).

23 *See, e.g.*, LiButti v. United States, 107 F.3d 110, 119 (2d Cir. 1997).

that misinterprets substantive law or reflects mere state court dicta.[24] Having a clear approach would dissolve much of the current judicial avoidance and confusion surrounding the doctrine. This Comment explains why reverse veil piercing is a viable equitable remedy worthy of consideration, in part by surveying federal circuit court opinions that synthesize and apply substantive state law on reverse piercing, and then by looking to the first Delaware Court of Chancery case to recognize reverse veil piercing, *Manichaean Capital, LLC v. Exela Technologies, Inc.*[25] This Comment ultimately proposes a revised framework for understanding and approaching reverse piercing, to aid federal courts in their review of similar cases and in their application of state law.

This Comment first explores the history and developing case law on reverse veil piercing as a remedy. Part I explores the history and development of veil-piercing jurisprudence. Part II explains the main concerns and confusion surrounding judicial reservations to reverse veil piercing. Part III discusses the relevant arguments in favor of reverse piercing when it is permitted. Part IV advocates for general acceptance of reverse piercing as an equitable remedy worthy of consideration, and offers a solution in the form of an improved judicial standard for evaluating reverse-piercing cases on appeal. In short, this new standard (1) does not require blind deference to one state court's written recognition of reverse veil piercing, absent any discovery of an established state common-law practice regarding the doctrine, (2) still considers traditional veil-piercing requirements of alter ego theory and a perpetuated wrong, and (3) considers certain equitable principles, limited to whether or not the corporation observed corporate formalities, the degree of harm caused to the claimant and innocent third parties, and whether the claimant has at all contributed to the wrong.

I. The History and Development of Veil Piercing: Traditional and Reverse

A. *Asset Partitioning and the "Veil" We Pierce*

Before considering the implications of "piercing," we must first answer the threshold question: What is the corporate "veil," anyway? This designation often describes the effective barrier separating a corporate entity from claims by the creditors of the entity's owners or managers.[26]

---

[24] *See* 19 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE JURISPRUDENCE § 4507 (3d ed. 2022).

[25] 251 A.3d 694, 710 (Del. Ch. 2021).

[26] Hansmann & Kraakman, *supra* note 5, at 390.

The underlying concept here is *asset partitioning*, which operates, in effect, as the reverse of limited liability,[27] the long-standing concept ensuring that investors' and owners' assets are not at risk in the event of a corporate loss.[28] Asset partitioning has two components: (1) "the designation of a separate pool of assets associated with the firm . . . that are *distinct* from the personal assets of the firm's owners and managers," and (2) "the assignment to creditors of priorities in the distinct pools of assets that result from the formation of a legal entity,"[29] or legal "fiction."[30] The second component is key to understanding why the veil of limited liability exists and can be pierced, and is described in two forms: affirmative and defensive asset partitioning.[31]

Affirmative asset partitioning guarantees that the firm's creditors will be indemnified before the corporation's assets become available to satisfy any claims by the shareholders' personal creditors.[32] This "reduces the cost of credit for legal entities by reducing monitoring costs, protecting against premature liquidation of assets, and permitting efficient allocation of risk."[33] Defensive asset partitioning works in the inverse, granting the personal creditors of the firm's owners (or majority shareholders[34]) a claim on the owners' separate personal assets prior to claims by the firm's creditors.[35] It is called "defensive" because it "serves to shield the owners' assets from the creditors of the firm."[36] It acts much in the same way as affirmative asset partitioning, but with respect to claims by the owners' creditors instead of the firm's creditors; the same benefits of reducing monitoring costs, avoiding premature liquidation, and allocating risk still generally apply.[37] A look at the standard corporation further reveals the strongest type of defensive asset partitioning; creditors have no claim

27 *Id.*

28 Adam Hayes, *Limited Liability*, INVESTOPEDIA (Apr. 24, 2021), https://perma.cc/ZQ4F-KP9M.

29 Hansmann & Kraakman, *supra* note 5, at 393 (emphasis added).

30 *See* Van Dorn Co. v. Future Chem. & Oil Corp., 753 F.2d 565, 569–70 (7th Cir. 1985) (quoting Macaluso v. Jenkins, 420 N.E.2d 251, 255 (Ill. App. Ct. 1981)); Note, *Piercing the Corporate Law Veil: The Alter Ego Doctrine under Federal Common Law*, 95 HARV. L. REV. 853, 862 (1982) [hereinafter *Alter Ego*] (quoting Homan & Crimen, Inc. v. Harris, 626 F.2d 1201, 1208 (5th Cir. 1980)).

31 *See* Hansmann & Kraakman, *supra* note 5, at 393.

32 *See id.* at 394-95.

33 *Id.* at 398.

34 This Comment uses the terms "owner(s)" and "shareholder(s)" interchangeably. Both terms refer to one or more individuals who hold a majority share of stock in a given corporation but are themselves independent from the corporation.

35 Hansmann & Kraakman, *supra* note 5, at 395–96.

36 *Id.* at 393–94.

37 *Id.* at 398.

upon the personal assets of the firm's majority shareholders, inherently shielding or "defending" them under the concept of limited liability.[38]

Limited liability thus acts as a doctrine of *separation*, generally ensuring that owners are not personally liable for the corporate entity's debts and obligations unless they agreed to liability or are personally negligent.[39] Some scholars criticize the established legal doctrine that a corporation is an entity entirely separate from its shareholders, asserting that absolute separation does not follow simply from the fiction that a corporation is its own legal person.[40] The theory of corporate veil piercing follows this line of reasoning, thereby serving as an exception to the limited liability rule.[41]

B. *What is Corporate Veil Piercing?*

Piercing the corporate veil is in essence a metaphoric doctrine, allowing a plaintiff to "puncture the 'veil' of limited liability" to hold a shareholder liable for the corporation's debts or legal obligations.[42] Most commonly used in close corporations, the traditional theory of veil piercing generally refers to situations in which courts permit parties to disregard "limited liability and hold a corporation's shareholders or directors personally liable for the corporation's" debts.[43] Courts will generally allow a veil pierce when it is shown that the corporation is an "alter ego" of the shareholder, or a "mere instrumentality" used in transactions involving the shareholder's own affairs, conducted without adhering to the idea that the corporation is a separate and independent entity.[44]

1. Theory: Corporate Veil Piercing

A traditional veil-piercing claim generally requires two elements: (1) "there must be such *unity of interest and ownership* that the separate personalities of the corporation and the individual [or other corporation]

---

[38] *Id.* at 395.

[39] Turner, *supra* note 6, at 33.

[40] Gaertner, *supra* note 12, at 677.

[41] *See* Hansmann & Kraakman, *supra* note 5, at 400–01.

[42] Nicholas B. Allen, Note, *Reverse Piercing of the Corporate Veil: A Straightforward Path to Justice*, 85 ST. JOHN'S L. REV. 1147, 1147 (2011).

[43] *Piercing the Corporate Veil*, LEGAL INFO. INST., CORNELL L. SCH., https://perma.cc/35CQ-UBFW.

[44] Allen, *supra* note 42, at 1148 (quoting Phillips v. Double B Trading Co., 893 P.2d 1357, 1362 (Colo. App. 1994)).

no longer exist" (also called the "alter ego" test) and (2) circumstances must be such that injustice would result if the court did not disregard the fiction of separate corporate existence.[45] Stated another way, the owners of the firm must have "exercised complete domination of the corporation" with respect to the challenged transaction, and "such domination was used to commit a fraud or wrong against the plaintiff."[46] The first prong (alter ego) can be proven by weighing several evidentiary factors, including: "(1) the absence of corporate formalities; (2) inadequate capitalization; (3) commingling funds (4) overlap in ownership, officers, directors, and personnel; and (5) [a] shared address, office space," bank account, or similar indications of non-separation.[47] To satisfy the second prong and show the causal link between such domination and the alleged wrong, "a plaintiff must show that a [c]ourt's adherence to the corporation's separate existence would further the defendant's fraud or promote injustice."[48]

Corporate law scholars like Professors Jonathan Macey and Joshua Mitts assert that courts which have applied the traditional veil-piercing doctrine generally fall into one of three categories of justification.[49] They feel that given the facts of each case, a veil pierce serves to either (1) achieve the purpose of some existing statute or regulation, (2) prevent shareholders from obtaining credit by misrepresentation, or (3) promote bankruptcy values by achieving the orderly resolution of a bankrupt's estate.[50] It is generally understood that courts are not eager to apply traditional veil-piercing doctrine except in cases of serious misconduct.[51] Thus it is typically required that a corporation engage in fairly egregious activity (like commingling assets or abusing the corporate form) before a veil pierce is justified.[52]

2. Application of Traditional Piercing Doctrine

State courts' applications of traditional veil-piercing theory often affect their receptivity to reverse-piercing claims at both trial and

---

45 *See* Sea-Land Servs., Inc. v. Pepper Source, 941 F.2d 519, 520 (7th Cir. 1991) (emphasis added) (quoting Van Dorn Co. v. Future Chem. & Oil Corp., 753 F.2d 565, 569–70 (7th Cir.1985)).

46 Allen, *supra* note 42, at 1150; *see also* WILLIAM T. ALLEN, REINIER KRAAKMAN & VIKRAMADITYA S. KHANNA, COMMENTARIES AND CASES ON THE LAW OF BUSINESS ORGANIZATION 144 (6th ed. 2021) (referring to this description of the two-part inquiry as the "*Lowendahl* test").

47 Allen, *supra* note 42, at 1152.

48 *Id.*

49 *See* Macey & Mitts, *supra* note 10, at 101–02.

50 *Id*.

51 *Piercing the Corporate Veil*, *supra* note 43.

52 *Id.*

appellate levels.[53] Since federal courts must apply established state substantive law when faced with reverse veil-piercing claims, state recognition of veil-piercing theory, generally, is of key importance in this regard.[54] State courts may differ in their application of traditional corporate veil piercing, though most stick to the two main requirements of (1) unity of interest (alter ego) theory and (2) proof that adherence to the corporate fiction without veil piercing would sanction a fraud or promote injustice.[55] Variations on how these factors are applied may include: a *disjunctive* or *conjunctive* test for excessive control and corporate misconduct, a *three-part test* adding an additional factor to traditional veil-piercing requirements, or an invocation of *respondeat superior* under agency law.[56]

The application of a disjunctive or conjunctive test depends on the court's treatment of cases involving (a) excessive control or (b) corporate misconduct.[57] A court applying a "disjunctive" test will permit a veil pierce if *either* element is proved, whereas a court applying a "conjunctive" test will permit a veil pierce only if *both* elements are proved.[58] State courts that use a *three-part test* for veil piercing seek to add an additional requirement to traditional veil-piercing doctrine by requiring proof of an "influence of corporate governance" before proving unity of interest and showing that maintaining the corporate form would promote fraud or injustice.[59] Lastly, the finding of an agency relationship may warrant the invocation of *respondeat superior* doctrine, if the court has long emphasized agency law in its veil-piercing determinations.[60] Individual state approaches to traditional veil piercing thus set the stage for reverse-piercing claims in each respective jurisdiction.[61]

---

53 *See* Kemper, *supra* note 13, § 3. Mutual receptivity or dislike for both types of veil piercing is common because both rely on the fact-specific inquiry of "alter ego" theory. *See id*.

54 *Id.*

55 This two-part test is referred to as the "*Van Dorn* test", stemming from the Court of Appeals for the Seventh Circuit opinion in *Van Dorn Co. v. Future Chemical and Oil Corp.*, 753 F.2d 565, 569-70 (7th Cir. 1985) (applying Illinois law). The *Van Dorn* test was cemented as the proper veil-piercing test in *Sea-Land Services, Inc. v. Pepper Source*, 941 F.2d 519, 520, 524-25 (7th Cir. 1991) (applying Illinois law and holding that the unity-of-interest prong was proven but remanding to determine whether adherence to a corporate fiction would promote fraud or injustice).

56 *Piercing the Corporate Veil*, *supra* note 43.

57 *Id.* Alaska uses two tests: a "[d]isjunctive" test requiring *either* excessive control or corporate misconduct or a "[c]onjunctive" test requiring *both* elements. *Id.* Texas requires only one of three "strands" be met: alter ego, corporation as a means of avoiding legal limitations, or corporation as a sham to perpetuate a fraud. *Id*.

58 *Id.*

59 *Id.* (summarizing Nevada's three-part test).

60 *Id.* (citing Walkovszky v. Carlton, 223 N.E.2d 6, 8 (N.Y. 1966)).

61 *See* AM. JUR., *supra* note 22, § 1.

3. A Note on Procedure

The procedural misunderstandings surrounding veil-piercing cases also add to the complexity of the doctrine's varying application. Federal courts hear veil-piercing claims primarily in two contexts: (a) cases brought in diversity or supplemental jurisdiction (where state law is applicable) or (b) under federal common law.[62] Since few states have codified tests for veil piercing, federal courts are often left to decide when veil-piercing claims may proceed.[63] This explains the different results in federal court adjudications, as many jurisdictions "allow veil-piercing claims to proceed as independent causes of action," even without discussing "their substantive or procedural origin."[64] The default procedural rule in this context comes from *Erie Railroad Co. v. Tompkins*,[65] "requiring federal courts exercising diversity jurisdiction to apply both the Federal Rules of Civil Procedure (FRCP) and substantive state law."[66] Yet in spite of the *Erie* doctrine, many veil-piercing cases in diversity "have used federal alter ego standards rather than the applicable state law."[67] Other courts have left it unclear which standard they are applying.[68] This lack of conformity is best explained by a brief account of how federal courts are supposed to apply state law in compliance with *Erie*.[69]

Because the *Erie* doctrine requires courts sitting in diversity to apply both the FRCP and state substantive law, federal courts must "make a threshold decision as to whether veil-piercing is 'substantive' or 'procedural' for purposes of identifying applicable law."[70] This alone might explain the practical inconsistencies and why some federal courts apply

62 Sam F. Halabi, *Veil-Piercing's Procedure*, 67 RUTGERS U. L. REV. 1001, 1047 (2015).

63 *Id.* at 1027.

64 *Id.* at 1021.

65 304 U.S. 64 (1938).

66 Halabi, *supra* note 62, at 1017; *Erie*, 304 U.S. at 78.

67 *Alter Ego*, *supra* note 30, at 856 n.18. For an example of such a case, see *CM Corp. v. Oberer Dev. Co.*, 631 F.2d 536, 538–39 (7th Cir. 1980).

68 King Fung Tsang, *The Elephant in the Room: An Empirical Study of Piercing the Corporate Veil in the Jurisdictional Context*, 12 HASTINGS BUS. L.J. 185, 187–88 (2016) As early as 1925, Justice Louis Brandeis declined to ignore the corporate form in a case involving jurisdictional piercing but left it unclear as to whether he was applying federal or state law. *See id*. (citing Cannon Mfg. Co. v. Cudahy Packing Co., 267 U.S. 333, 336 (1925)). Because *Cannon* was decided before the *International Shoe* and *Erie* doctrines were established, here Tsang argues that perhaps *Cannon* has mandated a federal common-law standard for *jurisdictional piercing* (i.e., when piercing the corporate veil serves as a means of acquiring jurisdiction over out-of-state corporations). *See id.* at 187–88.

69 *Erie*, 304 U.S. at 78 ("Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State.").

70 Halabi, *supra* note 62, at 1047–48.

federal common law to the exclusion of state substantive law. Yet, even if it is assumed that a federal court will consider veil piercing to be substantive, discerning and applying the relevant state's law requires additional analysis and drudgery.[71]

Here, the procedural question then becomes: Should the federal court hearing the case look to the state in which the entity is incorporated, or the state in which the claim was originally brought? The corporate citizenship is of importance particularly in diversity jurisdiction, where "with only limited exceptions, state substantive law governs all such suits in federal court."[72] The general rule in such cases is that of the "internal affairs doctrine," urging courts to check the law of the state of incorporation to determine if a veil pierce is appropriate.[73] Still, scholars like Professor Sam Halabi suggest that this is not widely used in practice.[74] Some jurisdictions do apply the substantive law of the state of incorporation, but others apply the substantive law of the original forum state.[75] The difference between these approaches creates an interesting opportunity for veil-piercing plaintiffs looking to forum-shop and file their claims in a states more inclined to allow veil piercing.[76]

After identifying the relevant state, federal courts must apply not only state statutory law, but also common law developed by that state's highest courts.[77] This procedural requirement is often diminished if the federal court superficially accepts a written recognition of veil piercing in a state court opinion as proof of substantive law on the subject.[78] This runs the

---

[71] *See id.* at 1047–56 (discussing the procedural complexity of applying state and federal laws to veil-piercing litigation).

[72] David Aronofsky, *Piercing the Transnational Corporate Veil: Trends, Developments, and the Need for Widespread Adoption of Enterprise Analysis*, 10 N.C. J. INT'L L. 31, 50 (1985).

[73] Halabi, *supra* note 62, at 1045.

[74] *Id.* at 1046.

[75] *See id.*

[76] *See id.* at 1056 ("[K]nowledge of the differences between state approaches will probably be of greater use to prospective plaintiffs, who, given a choice, would rather file in a state whose results are more inclined to piercing." (quoting Robert B. Thompson, *Piercing the Corporate Veil: An Empirical Study*, 76 CORNELL L. REV. 1036, 1054 (1991))).

[77] *See* Erie R.R. Co. v. Tompkins, 304 U.S. 64, 72–73 (1938). If a court is making an "*Erie* guess," they may rely on state appeals court decisions as evidence of the state's standard. 19 WRIGHT & MILLER, *supra* note 24, § 4507 ("[I]f the forum state's highest court has not ruled on a particular issue, the decisions of the state's intermediate appellate court or courts constitute the next best indicia of what state law is and normally should be followed by a federal court.").

[78] *See* 19 WRIGHT & MILLER, *supra* note 24, § 4507. Where a federal court finds it necessary to make an "*Erie* guess" on the state veil-piercing approach because "no decisions by state courts, high or low, or another federal court are available," then "a carefully considered statement by the state court, even though technically dictum," may be considered "persuasive evidence of how the state court might decide the point, and, in the absence of any conflicting indication of what the state's law is, even may

risk of federal courts either confirming or denying veil-piercing applications where the opposite should hold true, making an "*Erie* guess" without first establishing that a standard for veil piercing actually exists under that state's common law.[79] This is why scholars like Halabi advocate for federal courts to conduct a deeper analysis of state veil-piercing law in such scenarios, particularly when faced with procedural items requiring greater attention, like FRCP 12 motions.[80] These procedural implications are relevant in both the traditional and reverse-piercing contexts, even if acceptance of reverse piercing is less common.[81]

C. *What is Reverse Corporate Veil Piercing?*

> Reverse piercing of the corporate veil occurs when a claimant [i.e., personal creditor or judgment-creditor] seeks to hold a corporation liable for the obligations of an individual [controlling] shareholder.[82]

Like traditional veil piercing, reverse piercing is often found to be appropriate only in "limited instances where the particular facts . . . show the existence of an alter ego relationship and require that the corporate fiction be ignored" so as not to sanction fraud or promote injustice.[83] Reverse corporate veil piercing is not an independent cause of action but rather an equitable remedy in which the corporate entity is disregarded.[84]

---

be regarded as conclusive." *Id*. (citations omitted). For a proper example of a federal court applying substantive state law—in the form of a three-part test for veil piercing established under Mississippi common law—see *General Motors Acceptance Corp. v. Bates*, 954 F.2d 1081, 1085 (5th Cir. 1992) ("In this diversity case, as an *Erie* court we apply the substantive law of Mississippi [to the issue of veil piercing].").

79 In making an "*Erie* guess," a federal court applies the rule "that it believes the state's highest court, from all that is known about its methods of reaching decisions" in a particular area of the law is likely to adopt in the coming years. 19 WRIGHT & MILLER, *supra* note 24, § 4507.

80 Halabi, *supra* note 62, at 1051 (rebutting the premise that federal courts "generally conclud[e] that there is no conflict between state and federal pleading requirements and thus no *Erie* problem," and arguing that "federal district courts should at least analyze state law in considering motions brought under FRCP 12").

81 Tsang, *supra* note 68, at 203 n.128 (noting that although "reverse piercing is not accepted in all states in liability piercing contexts," the Supreme Court has at least not rejected it for jurisdictional purposes (citing Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915 (2011))).

82 18 C.J.S. *Corporations* § 17 (2023); *see also* AM. JUR., *supra* note 22, § 1.

83 18 C.J.S. *Corporations* § 17 (2023).

84 Kemper, *supra* note 13, § 3 (explaining the equitable remedy as means of imposing liability on an underlying cause of action); *see* Gregory S. Crespi, *The Reverse Pierce Doctrine: Applying Appropriate Standards*, 16 J. CORP. L. 33, 34 (1990).

1. Theory: Reverse Corporate Veil Piercing

As stated above, "federal courts give deference to state jurisprudence when faced with reverse veil-piercing claims," in which they must apply the law of the state from which the case originates.[85] Federal courts seeking to apply state reverse-piercing law often look for a clear statement from the relevant state's highest court that reverse piercing is an accepted remedy in that jurisdiction.[86] Scholars have noted the trend of courts routinely referencing state law in reverse-piercing cases.[87]

As in traditional piercing cases, a reverse pierce usually requires proof of alter ego theory.[88] Some scholars assert that the corporate veil can be disregarded in reverse-piercing cases when: (1) "a unity of interest and ownership exists such that" there are no longer distinct personalities of the corporation and the individual, and (2) "an inequitable result will follow if the acts giving rise to liability are treated as those of the individual alone."[89] Other scholars, like Professor Gregory Crespi, would instead argue that unity of interest and ownership is irrelevant in the reverse-piercing context because an insider should not be allowed to assert control of a corporate entity or to disregard the requisite corporate formalities as a basis for disregarding the entity.[90] Because alter ego theory is a fact-intensive inquiry (e.g., considering in part whether the corporation is undercapitalized, fails to observe corporate formalities, is insolvent, lacks corporate records, or is merely a façade for fraudulent activity), it is often recognized as a basis for the reverse pierce as well.[91] Still, commentators and scholars may nonetheless dispute the relevance of each equitable factor for consideration and whether they should have the same weight in the reverse context as in the traditional context.[92]

85 Kemper, *supra* note 13, § 3.

86 *Id. See, e.g.*, *In re* Denton, 203 F.3d 834, *4 (10th Cir. 2000) (unpublished table decision) ("In the absence of a clear statement by the Oklahoma courts, [this court] will not assume that Oklahoma would allow an outsider reverse pierce . . . .").

87 *See* Elham Youabian, *Reverse Piercing of the Corporate Veil: The Implications of Bypassing "Ownership" Interest*, 33 SW. U. L. REV. 573, 573–74, 577 (2004) (stating that traditional veil-piercing requirements include (1) alter ego and (2) result of injustice or fraud if the corporate form is not denied, but that the respective state must also recognize reverse piercing as a viable remedy and may have their own limits for its application).

88 *See* Kemper, *supra* note 13, § 3.

89 *Id.*

90 Crespi, *supra* note 84, at 36.

91 *See* AM. JUR., *supra* note 22, § 10.

92 Gaertner, *supra* note 12, at 679.

2. Inside Versus Outside Reverse Veil Piercing

There are two established "types" of reverse piercing: "inside" reverse piercing, which allows a shareholder (i.e., a corporate "insider") to pierce the veil from inside the company to reach the assets of the corporation, and "outside" or "third-party" reverse piercing, which allows a non-affiliated party (i.e., a creditor) to reach a corporation's assets to satisfy a claim against a corporate shareholder.[93] Inside reverse-piercing claims often involve a controlling insider who attempts to disregard the corporate entity of which he or she is a part, to avail oneself of corporate claims against third parties or to protect corporate assets from third-party claims.[94] Outside reverse-piercing claims occur when a third-party plaintiff "seeks to reach the assets of a corporation to satisfy claims against a corporate insider," to prevent abuses of the corporate structure and shield personal assets, or even to recover a delinquent taxpayer liability.[95]

a. *Insider Reverse Veil Piercing*

A court may allow a reverse pierce to reach the assets of a defendant corporation for the obligations of a controlling shareholder or other corporate insiders only when it is shown that "(1) the controlling insider and the corporation are alter egos of each other," (2) justice requires a disregard of the corporate form because it is currently being used to perpetuate a fraud or defeat a rightful claim, and (3) an equitable result would be achieved by piercing in reverse.[96] Some believe this form to be the more typical application of reverse-piercing doctrine.[97] Others assert that allowing this remedy "may unsettle the expectations of corporate creditors who expect their loans to be secured by corporate assets," regardless of claims made by individual shareholders.[98]

Crespi asserts that there are two types of insider reverse piercing.[99] The first involves "claims grounded in an appeal to public convenience," requiring courts to weigh "the social value" of upholding the affected

93 1 WILLIAM MEADE FLETCHER, BASIL JONES & CLARK BOARDMAN CALLAGHAN, FLETCHER CYCLOPEDIA OF THE LAW OF CORPORATIONS § 41.70 (perm. ed., rev. vol. 2022) [hereinafter FLETCHER]; AM. JUR., *supra* note 22, § 7.

94 *See* 18 C.J.S. *Corporations* § 17 (2023); Youabian, *supra* note 87, at 77; AM. JUR., *supra* note 22, § 7; Crespi, *supra* note 84, at 37.

95 AM. JUR., *supra* note 22, § 7; *see* Crespi, *supra* note 84, at 56.

96 18 C.J.S. *Corporations* § 17 (2023).

97 *See* AM. JUR., *supra* note 22, § 7.

98 Crespi, *supra* note 84, at 50.

99 *Id.* at 51.

creditors' or debtors' expectations "against the importance of the policies served by allowing a reverse pierce" in the given circumstance.[100] One such example comes from *Roepke v. Western National Mutual Insurance*,[101] wherein the Minnesota Supreme Court permitted the stacking of no-fault insurance coverages on vehicles owned and insured by a corporation whose president and sole shareholder died in a fatal collision.[102] In doing so, the court indicated that the interests of the shareholder were found to outweigh those of the debtor-insurer.[103]

The second type of insider reverse piercing involves claims *by* affected creditors or debtors grounded in allegations of wrongful conduct, requiring courts to weigh the importance of upholding legitimate creditor or debtor expectations "against the gravity of the injustice experienced by the corporation or insider" if a reverse pierce is avoided.[104] The Illinois case of *Crum v. Krol*[105] is one example of a wrongful conduct situation in which an inside reverse pierce was permitted on the basis that a refusal thereof would have allowed the defendant to avoid paying damages for breach of contract.[106] The court reasoned that to allow the defendant to avoid liability would be to promote injustice, and so a reverse pierce was proper.[107] Lastly, in the event that an insider reverse-piercing claim involves *both* appeals to public convenience and wrongful conduct allegations, Crespi suggests that all of the above considerations be weighed.[108]

Inside reverse piercing has been expressly recognized by courts in Florida, Illinois, Minnesota, and Montana.[109] States that have issued court opinions denying the application of a reverse pierce by a corporate insider include Kentucky, Louisiana, New York, Oklahoma, Tennessee, Texas, and Utah.[110] However, these opinions generally advise that the fact-specific nature of their rulings leaves open the possibility of an inside reverse pierce in future cases.[111]

---

100 *Id.*

101 302 N.W.2d 350 (Minn. 1981).

102 *Id.* at 351–53.

103 Crespi, *supra* note 84, at 39–40 (discussing the *Roepke* holding).

104 *Id.* at 51.

105 425 N.E.2d 1081 (Ill. App. Ct. 1981).

106 *Id.* at 1088–89; Crespi, *supra* note 84, at 53 (discussing the *Crum* holding that the refusal to permit a reverse pierce would have allowed the defendant to invoke a procedural technicality to avoid paying damages owed).

107 Crespi, *supra* note 84, at 53.

108 *Id.* at 51.

109 *Id.* at 38–47.

110 *Id.* at 47.

111 *Id.*

b. *Outsider Reverse Veil Piercing*

Outside reverse-piercing cases involve a third party (outsider) seeking to disregard the corporate entity to subject corporate assets to satisfy a claim against a corporate insider or to satisfy a claim against the corporation itself.[112] Courts are encouraged to review outsider claims for reverse veil piercing by using the same factors relevant for traditional veil piercing.[113] The first noted assertion of an outsider reverse-piercing claim was by the Court of Appeals for the D.C. Circuit in *Valley Finance v. United States*,[114] a case from 1980 in which a corporation was found to be the alter ego of a delinquent taxpayer.[115] In the last few decades, some states have come to recognize the theory of outside reverse piercing,[116] while other states have not, particularly when such claims are brought exclusively by a third party attempting to satisfy personal claims against an individual shareholder.[117]

In general, courts that decline to allow outside reverse piercing cite similar reasons for which courts have disfavored the reverse pierce altogether: that it may "bypass[ ] normal judgment-collection procedures, whereby judgment creditors attach the judgment debtor's shares in the corporation and not the corporation's assets," and that it may prejudice nonculpable shareholders if the corporation's assets can be attached directly.[118] For these reasons, recent scholarship has largely advocated against permitting outside reverse-piercing claims except in highly unusual circumstances.[119]

---

112 18 C.J.S. *Corporations* § 17 (2023); FLETCHER, *supra* note 93, §41.70.

113 *See* C.F. Trust, Inc. v. First Flight Ltd. P'ship, 580 S.E.2d 806, 810 (Va. 2003) (finding no reason to distinguish between a traditional veil-piercing action and outsider reverse-piercing action because both involve a request to disregard the normal corporate structure to prevent abuses of that structure); 18 C.J.S. *Corporations* § 17 (2023).

114 629 F.2d 162 (D.C. Cir. 1980).

115 *Id.* at 172–73 (holding that the corporation was a mere extension of the taxpayer-owner and thus not a distinct entity).

116 *See, e.g.*, *C.F. Trust*, 580 S.E.2d at 810 (recognizing the concept of outside reverse piercing in Virginia).

117 *See In re* Glick, 568 B.R. 634, 661–62 (Bankr. N.D. Ill. 2017) (stating Delaware does not recognize outside reverse-piercing theory). Note that this specific holding regarding Delaware's recognition of outsider claims was recently overturned. Manichaean Cap., LLC v. Exela Techs., Inc., 251 A.3d 694, 714–16 (Del. Ch. 2021) (holding for the first time that Delaware recognizes outside reverse piercing).

118 Cascade Energy & Metals Corp. v. Banks, 896 F.2d 1557, 1577 (10th Cir. 1990) (holding that outsider reverse pierce theory is problematic in that it may bypass normal judgment-collection procedures or prejudice nonculpable shareholders by direct attachment of the corporation's assets).

119 Allen, *supra* note 42, at 1149; Crespi, *supra* note 84, at 69.

D. *Veil-Piercing Controversy and Modern Jurisprudence*

The initial theory of piercing the corporate veil in reverse was first articulated by Judge Learned Hand in *Kingston Dry Dock Co. v. Lake Champlain Transportation Co*.[120] Over time, judges and scholars alike have asserted that reverse piercing should apply only when there is no other adequate remedy at law and when exceptional circumstances require its application in order to prevent fraud, illegality, injustice, or the contravention of public policy.[121]

Like in traditional veil piercing, courts must first defer to the state law on reverse piercing before proceeding with an application of the doctrine.[122] A proper analysis of reverse-piercing jurisprudence would thus require a comparison between states' applications of the theory over time. For the purposes of this Comment (and because discussing individual state court opinions would be more time-consuming than indicative of an overarching rule), this work focuses on federal circuit court decisions in particular.[123] Each circuit court decision referenced herein represents a synthesis of reverse-piercing rulings from the state in which the case originated, allowing for easy comparison across states.

1. Judicial Aversion to Reverse-Piercing Doctrine

Legal scholars like Michael Gaertner have enumerated several reasons for historic "judicial abhorrence" to the doctrine of reverse piercing.[124] These include (1) courts' adherence to the traditional concept of the legal fiction that is corporate entity theory, effectively separating the shareholder from the corporation as distinct entities for all purposes, (2) general confusion surrounding the conventional veil-piercing doctrine,

120 31 F.2d 265, 267 (2d Cir. 1929) (recognizing reverse veil piercing but holding that it was not warranted here because the subsidiary had not interposed in the conduct of the parent company's affairs).

121 Kemper, *supra* note 13, § 3.

122 *Id.*

123 Since several lower-level courts within one state may differ in their respective applications of reverse piercing as applied to each case on the merits, an intrastate evaluation of the doctrine would be nearly impossible to accomplish in one comment if evaluated at trial level. However, because federal circuit courts must apply the law of the state from which the case originates, each federal circuit court decision on reverse piercing represents a summary of the relevant state's approach to the doctrine, synthesized from state court opinions and general treatment of reverse-piercing claims across that state's jurisdictions. A survey of federal circuit court opinions thus allows for a high-level comparison of reverse-piercing applications across state lines without getting lost in the weeds of any one jurisdiction's jurisprudence.

124 Gaertner, *supra* note 12, at 668–69.

and (3) courts' refusal to examine the substance of most shareholder-corporation relationships, instead overlooking the economic realities of a particular case.[125] Writing in 1989, Gaertner believed that traditional entity theory was archaic compared to the origin of the concept, given the fact that the corporate form has since expanded to encompass multinational conglomerates consisting of multiple subsidiaries.[126]

Other scholars like Nicholas Allen have outlined general reasons for judicial disfavor of reverse veil piercing over time, most often found within the judgments of courts denying a reverse pierce.[127] The reasons for rejecting application of reverse piercing include beliefs that the doctrine (1) violates normal judgment-collection procedures, which would otherwise "permit a judgment-creditor to attach an individual defendant's stock in a corporation," (2) may potentially harm both innocent shareholders and corporate creditors, and (3) that "other, more traditional remedies exist to provide plaintiffs with redress without resorting to the drastic remedy of reverse piercing."[128]

2. Modern Veil-Piercing Jurisprudence

Today, no universal veil-piercing test or theory exists on either side of the remedy's application.[129] Courts often differ in their application of the two-part standard for traditional veil piercing, offering little predictability to how a court would apply reverse-piercing doctrine in similar instances, at least until a clearer standard emerges.[130]

a. *Reverse Piercing: Generally*

The most common tests used to determine reverse veil piercing to date involve considerations of either "agency, instrumentality, identity or

[125] *Id.* at 668.

[126] *Id.* Consider how Gaertner might have advocated for reconsideration of corporate entity theory had he written this in 2021, with the technological advances of the 2000s creating a myriad of additional connections between corporations and its key shareholders. One might consider the veil of limited liability to have thinned considerably in this sense because the structure *and* form of the corporation have changed.

[127] Allen, *supra* note 42, at 1163.

[128] *Id.* at 1163–64. These reasons also appear to be prevalent in courts' determinations before rejecting a reverse pierce. *See, e.g.*, Cascade Energy & Metals Corp. v. Banks, 896 F.2d 1557, 1577 (10th Cir. 1990); Floyd v. IRS, 151 F.3d 1295, 1298–1300 (10th Cir. 1998).

[129] *See* Gaertner, *supra* note 12, at 668, 678 ("No universal test or theory to determine the propriety of piercing the corporate veil exists.").

[130] *See id.* at 681.

alter ego theory, [or] inequitable use of the corporate form."[131] All are similar in that they require (1) unity of interest and ownership (alter ego theory) and (2) a showing that an inequitable result will follow if the corporate fiction is left unbothered.[132] Some scholars like Crespi argue that reverse veil-piercing cases "implicate different policies" than traditional piercing cases and advocate for a "different analytical framework from the more routine corporate creditor veil-piercing attempts."[133] In addition to traditional piercing factors, a general set of "equitable principles" is often applied in reverse-piercing cases, thereby turning the two-factor test for traditional piercing into a three-factor test for reverse piercing.[134] Such equitable considerations may include: (1) "the degree to which allowing a reverse pierce would thwart the legitimate expectations of adversely affected parties" or establish a troubling precedent, (2) the degree to which the corporation maintains its legal separateness from the accused party or alternatively reflects a close relationship of dominion and control, (3) the degree to which "public convenience" warrants a reverse pierce (in an insider case) or personal injury results as a result of a controlling relationship (in an outsider case), (4) the degree to which the claimant contributed to the wrong, and (5) "the extent and severity of the wrongful conduct" leading to the reverse pierce claim.[135]

b. *Modern Application of Reverse Piercing*

In 1989, Gaertner summarized three approaches to reverse-piercing law and the scenarios in which courts typically permit its application as a remedy.[136] While his list remains mostly accurate, more recent scholarship and reverse-piercing decisions from the last three decades reflect the need for a revised description of the modern approach. The following thus offers a synthesized explanation of how most courts currently approach reverse veil-piercing claims.

Today, it appears that courts determine the application of a reverse pierce by adhering generally to the following pattern. First, a court looks to the relevant state law on the matter and asks if the state from which the

131 *Id.* at 678-79 (citations omitted).

132 *Id.*

133 Crespi, *supra* note 84, at 37.

134 Gaertner, *supra* note 12, at 680 (explaining that such equitable principles are often broadly applied to *all* scenarios involving reverse piercing, whether relevant to the inquiry or not).

135 Crespi, *supra* note 84, at 54–55, 68.

136 Gaertner, *supra* note 12, at 681–89 (summarizing these approaches as applied to claims by corporation owners attempting to reverse pierce to get to shareholders).

case is appealed or originates has formally recognized reverse piercing.[137] If the state has not recognized reverse piercing, then the court will not apply the doctrine in that case.[138] If the state (often via a state appellate or supreme court decision) has expressly accepted reverse piercing as a remedy, the court will apply a combination of traditional veil-piercing requirements (including alter ego theory)[139] and certain equitable principles or public policy concerns to determine if a reverse pierce is proper.[140] Altogether, these steps describe what is hereinafter referred to as the "modern standard." Few courts still adhere strictly to traditional veil-piercing standards alone in the reverse context.[141]

Several scholars have advocated for courts to apply variations of the modern standard,[142] but the overarching test has remained largely the same in its application.[143] Gaertner called this the "unitary interest test,"[144] and his large emphasis on alter ego theory has been shown in a variety of reverse-piercing cases, including in the Courts of Appeals for the Fourth, Fifth, and Tenth Circuits.[145] Other courts employ an "equitable results"

137 *See, e.g.*, Cascade Energy & Metals Corp. v. Banks, 896 F.2d 1557, 1576–77 (10th Cir. 1990) (applying Utah law); *In re* Hamilton, 186 B.R. 991, 998 (Bankr. D. Colo. 1995) (applying Colorado law); Kemper, *supra* note 13, § 3.

138 Kemper, *supra* note 13, § 2.

139 *See* Gaertner, *supra* note 12, at 681, 695 (applying traditional veil-piercing doctrine in the reverse context might be "a step in the right direction" but is also "void of definite standards" and has unpredictable applications); Allen, *supra* note 42, at 1157 (noting that the "inverse method" uses traditional veil-piercing requirements, including alter ego, as applied in the reverse-piercing context).

140 Gaertner, *supra* note 12, at 687, 695–96 (noting that the use of general equitable principles or invocation of public policy may be inherently standardless and often does not fully consider the relationship between the parent and subsidiary); AM. JUR., *supra* note 22, § 15 (noting that such equitable factors may include the insolvency of the individual or the extent to which the individual's ostensible poverty is supported by corporate assets).

141 *See* State v. Easton, 647 N.Y.S.2d 904, 909 (N.Y. Sup. Ct. 1995) (stating that "'reverse' piercing is not inconsistent with nor antithetical to the salutary purposes of traditional piercing" and the same factors can be applied to both); C.F. Trust, Inc. v. First Flight Ltd. P'ship, 580 S.E. 2d 806, 811 (2003) ("When determining whether *reverse* piercing . . . is appropriate, a court must consider the same factors [that are relevant in] *traditional* veil piercing . . . .").

142 *See* Gaertner, *supra* note 12, at 698; Allen, *supra* note 42, at 1187. Both Gaertner and Allen suggest that courts should apply traditional veil-piercing standards along with equitable principles, but each lists different equitable principles they feel are necessary for courts to consider.

143 For a recent example of a court endorsing the application of reverse veil piercing, see *Manichaean Capital, LLC v. Exela Technologies, Inc.*, 251 A.3d 694, 700 (Del. Ch., 2021), which endorsed reverse veil piercing formally in Delaware for the first time.

144 Gaertner, *supra* note 12, at 696.

145 *See* G.M. Leasing Corp. v. United States, 514 F.2d 935, 940 (10th Cir. 1975), *aff'd in part*, *rev'd in part*, 429 U.S. 338 (1977) (finding appellee's corporation to be the taxpayer's alter ego); Zahra Spiritual Tr. v. United States, 910 F.2d 240, 244 (5th Cir. 1990) (stating that, under Texas law, reverse piercing of corporate veil rests upon finding that individual and corporation should be treated as alter egos);

approach, requiring proof of alter ego theory, a showing that fraud or injustice would result absent a reverse pierce, and that an "equitable result[]" would be achieved by piercing.[146] All variations on the modern standard still leave room for interpretation, particularly regarding which equitable factors to consider before allowing a party to reverse pierce.

"[R]everse piercing of the corporate veil is still rare,"[147] but awareness of the doctrine and the possibility of its invocation is ever-expanding.[148] The key difference between reverse-piercing applications and traditional piercing is that a court considering a reverse pierce must also weigh the possible impact of such action upon innocent investors, shareholders, or corporate creditors.[149] The potential risk of an adverse effect has led many to assert that reverse veil piercing should only apply under highly unusual circumstances, when traditional, less-intrusive remedies would be wholly insufficient.[150]

c. *A New Reverse-Piercing Case in Delaware*

In May 2021, the Delaware Court of Chancery brought new attention to reverse veil piercing when, in *Manichaean Capital, LLC v. Exela Technologies, Inc.*, it newly endorsed the doctrine for the first time in the state's history.[151] Aside from developing state jurisprudence, this case is notable because the chancery court is widely regarded as the nation's "preeminent forum" for resolving disputes involving thousands of Delaware corporations and other business entities that conduct a large percentage of the world's commercial affairs.[152] Given the court's "unique competence in and exposure to issues of business law," Delaware Court of Chancery opinions are held in high regard in the corporate sector.[153] Section III.B of this Comment will thus diverge from reviewing federal

Sky Cable, LLC v. DIRECTV, Inc., 886 F.3d 375, 384–85 (4th Cir. 2018) (stating that outsider reverse piercing of limited liability company's veil was available under Delaware law when the LLC was the alter ego of its sole member).

146 Allen, *supra* note 42, at 1150–51 (observing that the third prong of the equitable results test requires that neither innocent shareholders nor corporate creditors be prejudiced by allowing a reverse pierce).

147 Turner, *supra* note 6, at 35; *see* Allen, *supra* note 42, at 1148.

148 Turner, *supra* note 6, at 33, 35 (explaining that creditors are starting to investigate to see if reverse piercing is an available option, and businesses, particularly small business owners, should be wary and maintain all corporate formalities).

149 18 C.J.S. *Corporations* § 17 (2023); Youabian, *supra* note 87, at 595.

150 Crespi, *supra* note 84, at 69*; see* Allen, *supra* note 42, at 1161.

151 *See* Manichaean Cap., LLC v. Exela Techs. Inc., 251 A.3d 694, 710 (Del. Ch. 2021).

152 *Who We Are*, DELAWARE COURT OF CHANCERY, https://perma.cc/NV8K-TSEU.

153 *Id.*

circuit court cases to discuss *Manichaean Capital*, as its holding will undoubtedly leave a nationwide imprint on future receptivity to the remedy of reverse veil piercing.

Similar to other judges' applications of reverse veil piercing, Vice Chancellor Joseph Slights' opinion in *Manichaean Capital* advocates that the doctrine should only be used in exceptional circumstances once traditional veil-piercing standards and certain equitable principles are met.[154] Given the fact that the Court of Chancery must apply Delaware law before making a determination, this case serves as a prime example not only of the modern standard for a reverse pierce, but also of the potential for a court to recognize reverse piercing as a remedy without unreasoned adherence to a written recognition of the doctrine as proof of settled state substantive law.[155]

II. The Argument Against Reverse Piercing: Confusion and Avoidance

To build on the description of anti-reverse piercing sentiments mentioned above,[156] it is helpful to look through the lens of federal circuit court cases who have denied a reverse pierce in various contexts. These federal cases offer a high-level survey of the attitudes of several states towards the theory of reverse piercing and have been chosen as proper examples of applying state substantive law.

A. *Anti-Reverse Piercing Precedent*

The Courts of Appeals for the Second, Sixth, and Tenth Circuits in particular can be summarized as denying reverse piercing either for lack of state recognition of the doctrine,[157] a preference for traditional remedies,[158] or a belief that inside reverse piercing by a firm owner is unwarranted (that since the veil of limited liability exists for their benefit

154 *See Manichaean Cap.*, 251 A.3d at 710–15. For a full discussion of this case and its holding, see *infra* Section III.B.

155 *See id.* at 714–15.

156 *See supra* Section I.C.

157 *See* Cascade Energy & Metals Corp. v. Banks, 896 F.2d 1557, 1576–77 (10th Cir. 1990) (noting that it was unclear whether Utah had formally adopted the doctrine of reverse piercing).

158 *See* Postal Instant Press, Inc. v. Kaswa Corp., 77 Cal. Rptr. 3d 96, 105 (Cal. Ct. App. 2008) (holding that reverse piercing is an unacceptable method to pursue what would otherwise be conversion and fraudulent conveyance remedies); *Cascade Energy*, 896 F.2d at 1577 (holding that "traditional theories of conversion, fraudulent conveyance of assets, respondeat superior and agency law" were sufficient *not* to warrant application of a reverse pierce).

it should not also be *pierced* for their benefit).[159] Beginning with the 1929 libel case of *Kingston Dry Dock v. Lake Champlain Transportation Co*., the Court of Appeals for the Second Circuit became the first federal circuit to articulate the reverse pierce as a potential remedy available at law.[160] However, the court here declined to grant a reverse pierce for lack of evidence that a relationship of domination and control was present.[161] Without evidence to the contrary, it did not appear to the court that the affairs of either company were directed by the officers of the other and the businesses were found to be sufficiently separate so as not to warrant a reverse pierce.[162]

In 1979, two additional cases denying a reverse pierce arose in the Courts of Appeal for the Second and Sixth Circuits: *Carey v. National Oil Corp.*[163] and *Boggs v. Blue Diamond Coal Co*.[164] *Carey* involved a breach of contract claim by parent company, who along with an assignee of its wholly owned subsidiary, sought to pierce the veil in reverse and hold the subsidiary liable for breach of its contract obligation to deliver refined oil to the United States.[165] Here, the court held that the owners of the parent company, who enjoyed limited liability themselves, were not able to pierce the veil in reverse.[166] The separate corporate existence of the subsidiary could not be adhered to in one sense and disregarded in another simply because a global oil shortage brought struggles for the parent company, particularly when the subsidiary's actions had a negligent effect on the impending outcome.[167] *Boggs*, on the other hand, involved a fatal coal mining accident resulting in a wrongful death action brought by the

159 *See* Tenn. Valley Auth. v. Exxon Nuclear Co., 753 F.2d 493, 497–98 (6th Cir. 1985) (declining to support board's decision to disregard its separate corporate status); Carey v. Nat'l. Oil Corp., 592 F.2d 673, 676 (2d Cir. 1979) (per curiam) (noting that corporation owners should not be able to pierce the veil in reverse especially because they established their firm as a limited liability corporation for a reason); Boggs v. Blue Diamond Coal Co., 590 F.2d 655, 662–63 (6th Cir. 1979) (rejecting the parent corporation's request to disregard the corporate fiction).

160 *See* Kingston Dry Dock v. Lake Champlain Transp. Co., 31 F.2d 265, 267 (2d Cir. 1929).

161 *Id.* ("Although . . . the two companies were very intimately related, the respondent never intended in fact to make Inland Marine Corporation its agent, nor did it interpose in any way in the conduct of its affairs.").

162 *See id.*

163 592 F.2d 673, 676 (2d Cir. 1979).

164 590 F.2d 655, 662–63 (6th Cir. 1979).

165 *See Carey*, 592 F.2d at 675.

166 *Id.* at 676; *cf.* Olivares v. Chevron Phillips Chem. Co., Ltd. P'ship, No. 05-22-00057-CV, 2023 Tex. App. LEXIS 1649 at *10–11 (Tex. App. Mar. 14, 2023) ("We are not persuaded that the legislature ever intended parent corporations, who deliberately chose to establish a subsidiary corporation, to be allowed to assert immunity under the Texas Workers' Compensation Act by reverse piercing of the corporate veil they themselves established." (internal citations omitted)).

167 *See Carey*, 592 F.2d at 675–77.

widows of the deceased coal miners against the coal company.[168] After comparing with other state jurisdictions who had similarly declined to disregard the corporate fiction at the request of a parent company,[169] the Court of Appeals for the Sixth Circuit held that, under Kentucky's Workmen's Compensation Act, a parent corporation "is not immune from tort liability to its subsidiary employees for its own, independent acts of negligence."[170] In the same year, the court denied a reverse pierce in *Tennessee Valley Authority v. Exxon Nuclear Co.,*[171] where it was held that to disregard Exxon's separate corporate status and treat it as an intended third-party beneficiary would be contrary to the plain language of the company's uranium supply contract as well as Tennessee courts' focus on alter ego theory.[172]

Yet more often than not, the main reason for denying a reverse pierce at the federal level is a lack of express recognition of the doctrine by a state appellate or supreme court from the state in which the case originated.[173] Perhaps the most notable case in this context is *Cascade Energy and Metals Corp. v. Banks*,[174] wherein the Court of Appeals for the Tenth Circuit defended traditional remedies of conversion, fraudulent conveyance, and agency law as being sufficient enough to deny a reverse pierce.[175] However, this holding came only after noting that the relevant state law on the subject was underdeveloped, leaving it unclear whether Utah had adopted the doctrine of reverse piercing, particularly for contract-like transactions.[176]

168 *Boggs*, 590 F.2d at 657.

169 *Id*. at 662 (citing Latham v. Technar, Inc., 390 F. Supp. 1031 (E.D. Tenn. 1974)).

170 *Id*. at 663.

171 753 F.2d 493 (6th Cir. 1985).

172 *Id*. at 497–98. The court of appeals applied the corporate veil approach of Tennessee because the case was on appeal from the United States District Court for the Eastern District of Tennessee.

173 *See* Church Joint Venture, L.P. v. Blasingame, 947 F.3d 925, 930–31 (6th Cir. 2020) (explaining that under Tennessee law, there is no basis for a reverse alter ego or reverse veil-piercing claim outside the parent-subsidiary context); *In re* Denton, 203 F.3d 834, at *4 (10th Cir. 2000) (unpublished table decision) (explaining that absent a clear statement by the Oklahoma courts, the court would not assume that Oklahoma would allow an outsider reverse pierce); Cascade Energy & Metals Corp. v. Banks, 896 F.2d 1557, 1576–78 (10th Cir. 1990) (stating that Utah courts are less likely to pierce the veil when a "contract-like transaction is involved," and that traditional theories are adequate to resolve the dispute).

174 896 F.2d 1557 (10th Cir. 1990).

175 *Id*. at 1577.

176 *Id*. at 1576–77.

B. *General Reasons for Denying a Reverse Pierce*

The above examples resemble, among other things, a judicial preference for traditional remedies outside clear evidence of domination and control, strict adherence to the corporate form as its own legal fiction, and fear that disregarding the corporate existence would contradict state law or amount to a breach of contract obligations. The decades of judicial aversion to reverse piercing and devotion to traditional remedies[177] may best be described as a desire by federal judges to leave well enough alone and avoid the confusion caused by the lack of a clear state standard in many cases.[178] Although a reliance on state appellate court recognition of reverse piercing can be accepted as proof of state substantive law,[179] *Cascade Energy* presents an example of what might happen when the state law on the subject is unclear, and a *lack* of express state recognition is treated as a firm denial of the doctrine.[180]

However, general confusion or failure of a state to articulate a firm approach to the doctrine is neither evidence of the doctrine's inapplicability nor proof that adherence to traditional corporate entity theory is the only answer.[181] To assert as much may represent an archaic attitude towards corporate veil piercing both in the traditional context and in reverse,[182] leaving little room for the development of this remedy.

III. The Argument in Favor of Reverse Piercing

To expound on the reasoning behind pro-reverse piercing sentiment, briefly described above,[183] it is necessary to look at federal circuit cases in which a reverse pierce was recognized as a viable remedy. Here, a high-level analysis of federal circuit court opinions granting a reverse pierce provides a proper survey of states attitudes in favor of the reverse-piercing remedy. The Courts of Appeal for the First, Second, Fourth, and D.C. Circuits in particular have demonstrated that acceptance of the reverse-

177 *See* Allen, *supra* note 3, at 1163–64 (stating that judges may turn to other more traditional remedies to provide "redress without resorting to the drastic remedy of reverse piercing").

178 *See* Gaertner, *supra* note 12, at 668 (addressing the general confusion, inconsistency, and various approaches to veil-piercing doctrine).

179 Kathryn Hespe, *Preserving Entity Shielding: How Corporations Should Respond to Reverse Piercing of the Corporate Veil*, 14 J. BUS. & SEC. L. 69, 93–94 (2013) (comparing the Court of Appeals for the Fourth Circuit's reliance on state appellate court decisions to the Court of Appeals for the Tenth Circuit's search for a clear statement from the state supreme court).

180 *See Cascade Energy*, 896 F.2d at 1576.

181 *See* Gaertner, *supra* note 12, at 668–69.

182 *See id.*

183 *See supra* Section I.C.

piercing doctrine mainly stems from cases where the alter ego test is met, where adherence to the corporate form would perpetuate a fraud or wrong, and where traditional remedies would be at all insufficient to rectify an injustice.[184]

A. *Pro-Reverse Piercing Precedent*

The year 1980 brought about the first formal articulation of an outsider reverse-piercing claim, brought by a tax collector: *Valley Finance, Inc. v. United States*.[185] Here the court relied mostly on alter ego doctrine, finding enough evidence to support the assertion that the corporation in question was an extension of its owner and not a separate entity for tax purposes; thus a reverse pierce was permitted.[186] Other federal courts, which have applied state substantive law in conformance with *Erie*,[187] have done so by articulating at least some established common-law standard emanating from the courts of the respective state. For example, *American Fuel Corp. v. Utah Energy Development Co.*[188] involved a claim seeking to bind a corporation under an arbitration clause, to answer for the actions of its shareholders.[189] Here, the Court of Appeals for the Second Circuit found that New York law recognizes reverse piercing, and described the state's two-prong test, consisting of (1) proof of domination or control and (2) perpetuation of a fraud or wrong.[190] Ultimately, the court did not find that both prongs were satisfied to warrant a reverse pierce, but *American Fuel Corp.* still serves as an example of a proper invocation of substantive state law in the reverse-piercing context.[191] Similarly, the Court of Appeals for the First Circuit took care to enumerate the New York state approach

184 *See* Sky Cable, LLC v. DIRECTV, Inc., 886 F.3d 375, 387 (4th Cir. 2018) (stating reverse veil piercing is particularly appropriate if recognizing the corporate form would cause fraud or similar injustice); Goya Foods, Inc. v. Unanue, 233 F.3d 38, 43 (1st Cir. 2000) (nothing that reverse piercing may be used where the assets at issue are held by a target corporation and the individual who is liable dominates the corporation and is using it to perpetuate a fraud or wrong); Valley Fin., Inc. v. United States, 629 F.2d 162, 172–73 (D.C. Cir. 1980) (recognizing that reverse piercing may be appropriate where the corporation is a mere extension of its owner and not a separate entity for tax purposes).

185 629 F.2d 162, 166–67 (D.C. Cir. 1980).

186 *Id.* at 166, 171 (finding that Pacific Development, Inc.—one of the consolidated plaintiffs—was "a mere instrumentality of [the owner] and a facade for his operations" and that tax debts may also form a sound basis for disregarding the corporate form).

187 *See* Erie R.R. Co. v. Tompkins 304 U.S. 64, 78 (1938) (establishing the requirement to apply the "law of the State" in any case).

188 122 F.3d 130 (2d Cir. 1997).

189 *See id.* at 131–32, 134.

190 *Id.* at 134.

191 *Id.* at 135.

to reverse piercing in a judgment-creditor suit, *Goya Foods, Inc. v. Unanue*.[192] Here, the court held that the corporation was, in fact, the alter ego of the judgment-debtor, so reverse piercing of the corporate veil was permitted.[193]

In *Sky Cable, LLC v. DIRECTV, Inc.*,[194] the Court of Appeals for the Fourth Circuit held that outside reverse piercing was available under Delaware law, particularly when its utilization involved a limited liability company ("LLC") with a singular member, making alter ego theory much easier to prove.[195] The court here noted that Delaware's LLC charging statute did not prevent the court from reverse piercing the corporate veil, particularly because the LLC and its sole member were alter egos of each other and the court found an overall element of injustice or unfairness, as required for outsider piercing under Delaware law.[196] In some ways this was viewed as a narrow holding, because the existence of a sole LLC member alleviated concerns that others with an interest in the assets of the corporation might be negatively affected.[197]

B. *Delaware Court of Chancery Endorses the Reverse Pierce in* Manichaean Capital

As of May 2021, the U.S. corporate law sector had a newfound reason to revive discussions of reverse veil piercing: *Manichaean Capital*. The case involved an appraisal proceeding by the Delaware Court of Chancery in which the plaintiffs asked the court to pierce the veil in reverse.[198] As the newest articulation of a reverse pierce by Delaware,[199] this case serves as a prime example of a modern reverse-piercing standard. More importantly, *Manichaean Capital* represents the first clear endorsement of reverse veil-piercing doctrine by the nation's predominant corporate law forum.[200] This implies that other state and federal courts may look to the Delaware opinion for guidance in formulating an approach to reverse veil-piercing claims, even though it is not binding on other jurisdictions. As far as reverse-piercing jurisprudence, *Manichaean Capital* offers a line of

192 233 F.3d 38 (1st Cir. 2000).

193 *Id.* at 44.

194 886 F.3d 375 (4th Cir. 2018).

195 *Id.* at 387–88.

196 *Id.*

197 *Id.* at 387 (holding that "when an entity and its sole member are alter egos, the rationale supporting reverse veil piercing is especially strong").

198 *See* Manichaean Cap., LLC v. Exela Techs., Inc., 251 A.3d 694, 700 (Del. Ch. 2021).

199 *See id.*

200 *Who We Are*, DELAWARE COURT OF CHANCERY, https://perma.cc/NV8K-TSEU.

reasoning that some federal courts[201] and state courts[202] have already begun to emulate.

In *Manichaean Capital*, the board of SourceHOV Holdings anticipated a merger with Exela Technologies, Inc., and various SourceHOV stockholders sought statutory appraisal.[203] After a long appraisal process and an appeal by SourceHOV, the stockholders were granted appraisal of their shares at a higher rate than they would have received under the merger, but it went unpaid.[204] The plaintiff stockholders alleged that Exela (the new parent company) had created a scheme to prevent post-merger SourceHOV (a holding company which had no direct operating assets, but held interests in its subsidiaries) from satisfying the judgment.[205] The plaintiffs thus asked the court to pierce the corporate veil in reverse (downwards) to enforce the judgment against SourceHOV's otherwise solvent subsidiaries.[206]

Vice Chancellor Slights held for the plaintiffs, that Exela had engaged in a transaction "for the purpose of preventing funds that would otherwise flow from SourceHOV Holdings' subsidiaries directly to SourceHOV Holdings to flow instead directly to Exela, thereby leaving the judgment debtor unable to satisfy the . . . appraisal judgment."[207] The Vice Chancellor was aware that no Delaware court had before permitted a reverse-piercing claim to go to discovery; yet he still allowed it, using his opinion to describe the difference between traditional and reverse veil

201 *See* Grayiel v. AIO Holdings, LLC, No. 15-CV-821, 2022 WL 18228300, at *46–47 (W.D. Ky. Dec. 29, 2022) (following *Manichaean Capital* and granting a reverse pierce); Glob. Gaming Phil., LLC v. Razon, No. 21 Civ. 2655, 2022 WL 836716, at *8 (S.D.N.Y. Mar. 21, 2022) (finding the complaint's allegations to be insufficient to plead a claim of reverse veil piercing under Delaware law because the acts alone did not perpetuate "fraud or an injustice" as stated in *Manichaean Capital*).

202 *See, e.g.*, Harris v. Ten Oaks Mgmt., LLC, No. 21 CVS 13907, 2022 WL 2198888, at *2–3 (N.C. Super. Ct. June 20, 2022) (citing *Manichaean Capital* for the premise that reverse-piercing standards, while still poorly developed, at least begin with pleading requirements for normal veil piercing, which the plaintiff failed to sufficiently allege); Haina Inv. Co. v. InterEnergy Grp. Ltd., No. FSTCV206045183, 2021 WL 4481204, at *7-8 (Conn. Super. Ct. Sept. 8, 2021) (finding that a reverse pierce was not warranted where plaintiff had "not established that [the subsidiary of the defendant] was created as a way to defraud investors or perpetuate injustice on behalf of [the defendant]").

203 *Manichaean Cap.*, 251 A.3d at 699. The term "appraisal proceeding" describes a case "where stockholders of a company [intending a merger] can either elect to participate in the merger or dissent and seek statutory appraisal of their shares." David A. Shargel, Rachel B. Goldman & David J. Ball, *Reverse Veil-Piercing Endorsed by Delaware Chancery Court*, BRACEWELL (June 3, 2021), https://perma.cc/WGV6-A3ZF.

204 *Manichaean Cap.*, 251 A.3d at 702–03.

205 *Id.* at 707–09.

206 *Id.* at 700.

207 *Id.*

piercing, as well as between inside and outside reverse piercing.[208] The court for the first time stated that "reverse veil-piercing has the potential to bypass normal judgement collection procedures" and that it could do so here "by permitting the judgment creditor of a parent [company] to jump in front of the subsidiary's creditors."[209] Though the Vice Chancellor did warn that one side effect of a reverse pierce is that it would "unsettle the expectations of corporate creditors who understand their loans [are] secured . . . by corporate assets," he stated that such risks did not justify a complete rejection of the doctrine.[210]

The Vice Chancellor's opinion summarizes a basic approach to reverse-piercing claims, the evaluation of which considers both (a) alter ego theory, and (b) the potential perpetuation of a fraud or wrong.[211] The opinion suggests that part (b) requires contemplation of several equitable factors, including whether "allowing a reverse pierce would impair . . . legitimate expectations of any adversely affected shareholders," "the degree to which the corporate entity . . . has exercised dominion and control over the insider," and whether the alleged injury is related to such dominion and control.[212] Such analysis also takes into account the degree of public convenience, the extent and severity of the wrong, the possibility that the claimant contributed to the wrongful conduct, and whether or not other practically available remedies exist.[213] The Court of Chancery held that this was an example of a limited instance in which a reverse veil pierce could be permissible, because it had been well-pled that the SourceHOV subsidiaries were alter egos of the parent company, the company had actively participated in a scheme to defraud creditors, and there were no innocent third parties harmed by the action.[214] Though ultimately decided on a motion to dismiss,[215] the case still recognized the viability of a reverse-piercing remedy where no other means would be sufficient to remedy the harm to plaintiffs.[216]

208 *See id.* at 710.

209 *Id.* at 711.

210 *Manichaean Cap.*, 251 A.3d at 711–12 (quoting Floyd v. IRS, 151 F.3d 1295, 1299 (10th Cir. 1998)).

211 *Id.* at 714–15.

212 *Id.* at 715.

213 *Id.*

214 *Id.* at 718 ("[I]t is not clear at this nascent stage of the proceedings that enforcement of the [appraisal judgment] can be achieved through means other than reverse veil-piercing.")

215 *Id.* at 721.

216 *Manichaean Cap.*, 251 A.3d at 716 n.128 ("[I]t is reasonably conceivable that reverse veil-piercing will be the only means by which Plaintiffs may collect the Appraisal Judgment.")

IV. Reverse Piercing as a Viable Equitable Remedy

A. *The Issue*

Despite persistent judicial conflation, there is a difference between (a) recognizing the doctrine of reverse piercing but declining to permit a reverse pierce, and (b) declining to recognize the doctrine as a remedy in any context, merely because it is cumbersome or unclear. Although many will focus on *Manichaean Capital*'s seemingly narrow holding that a reverse pierce is proper only in limited circumstances,[217] it nonetheless serves as an excellent example of a court's ability to recognize the viability of reverse piercing as a remedy and still evaluate the case on the merits if the remedy so applies. Vice Chancellor Slights alluded to this when he wrote: "[t]he risks that reverse veil-piercing may be used as a blunt instrument to harm innocent parties, and to disrupt the expectations of arms-length bargaining, while real, do not, in my view, justify the rejection of reverse veil-piercing outright."[218]

The present scholarship and suggested approaches for reverse piercing are inadequate in that they reaffirm the same general adherence to traditional veil-piercing doctrine, plus some varied consideration of "equitable factors." This broad approach lacks a set standard and fails to recognize that reverse piercing may not require consideration of every aspect of traditional piercing, and that a consensus will likely never be reached as to which equitable factors are most important. Moreover, until *Manichaean Capital*, the national jurisprudence on reverse piercing was slow to catch up with the development of both the form and function of the modern corporation.[219]

As stated above, the first inquiry at the federal level is whether state substantive law exists on the subject of reverse piercing.[220] Historically, this has come in the form of express recognition or denial of reverse piercing in a state appellate court opinion.[221] On one hand, the *absence* of such a statement like "New York law recognizes 'reverse' piercing"[222] is

---

217 *See id.* at 700 (finding that reverse veil piercing "is an appropriate means, in limited circumstances, to remedy fraud and injustice").

218 *Id.* at 712.

219 *See* Gaertner, *supra* note 12, at 668–69 (explaining that most approaches to reverse-piercing theory fail to consider how much the corporate form has evolved).

220 *See* Kemper, *supra* note 13, § 3 (highlighting that federal courts faced with reverse veil-piercing claims usually require a clear statement from the state's appellate courts before applying the doctrine).

221 *See supra* Section I.D; Kemper, *supra* note 13, §§ 4–5 (explaining when reverse veil-piercing concept is accepted).

222 Am. Fuel Corp. v. Utah Energy Dev. Co., 122 F.3d 130, 134 (2d Cir. 1997) (internal quotation marks omitted).

often taken as a complete denial of the doctrine by the respective state, and the federal circuit court declines to explore the matter further.[223] On the other hand, if there *is* express recognition of the doctrine, the federal circuit court often applies a combination of traditional veil-piercing concepts (inclusive of alter ego theory) and various equitable principles to determine if a reverse pierce should be used.[224] Yet as we have seen, this is quite inconsistent. The equitable principles referenced by the court may include anything from a failure of the corporation to maintain corporate formalities to a failure to pay dividends or even purported insolvency of the individual, factors which may be relevant in some traditional veil-piercing cases but have little to no effect on determining the usefulness of a reverse pierce.[225]

B. *A New Standard*

The doctrine of reverse veil piercing should be available at the federal level as a potential remedy for consideration, and it should not be outrightly rejected due to confusion. The following represents an improved standard for understanding reverse veil piercing that can help federal courts clarify the necessary considerations for deciding if a reverse pierce is appropriate, and if it is, how to apply state law correctly.[226]

First and foremost, this new standard does not require blind deference to state court "recognition" of reverse veil piercing, at least not without proof of an established and reasoned state approach deriving from the common law of the original forum state.[227] If, after a survey of

223 *See, e.g.*, Cascade Energy & Metals Corp. v. Banks, 896 F.2d 1557, 1576–77 (10th Cir. 1990).

224 *See* AM. JUR., *supra* note 22, § 7.

225 *See* Gaertner, *supra* note 12, at 679–80 (arguing veil-piercing application is often misguided because one common set of equitable principles is broadly applied to all fact scenarios which involve varying policy considerations).

226 This standard assumes that the federal court has characterized veil piercing as "substantive" rather than "procedural," thereby requiring the application of state substantive law under the *Erie* doctrine.

227 By way of illustration, a California appeals court in *Reliant Life Shares, LLC v. Cooper* refused to prolong a superficial "recognition" analysis based on just one case that declined to recognize reverse piercing in the state. 306 Cal. Rptr. 762, 783–784 (Cal. Ct. App. Apr. 4, 2023). The court, on appeal from the Superior Court of Los Angeles County, rejected the lower court's blind deference to just one case, which declined to recognize a reverse pierce—*Postal Instant Press, Inc. v. Kaswa Corp.*, 77 Cal. Rptr. 3d 96 (Cal. Ct. App. 2008). *Id.* at 783–84. The appeals court instead conducted a survey of the law in the state, finding cases which concluded that "*Postal Instant Press* does not preclude application of outside reverse veil piercing," and "was expressly limited to corporations" but that, by contrast, "[t]here simply is no 'innocent' member of [the LLC] that could be affected by reverse piercing here." *Id.* at 783 (quoting Curci Invs., LLC v. Baldwin, 221 Cal. Rptr. 3d 847 (Cal. Ct. App. 2017)); *see also* Blizzard Energy, Inc. v. Schaefers, 286 Cal. Rptr. 3d 658, 670 (Cal. Ct. App. 2021) ("There is no reason to depart from

the relevant state's law is conducted, a federal court finds a consistent rejection of reverse piercing with reasoned analysis as to why, it may decline to consider reverse piercing as a viable state remedy. Only if the state's highest court expressly disapproves of a reverse-piercing remedy for policy reasons appreciated and understood by the federal court may a denial of recognition be accepted.[228] An undeveloped approach or lack thereof is not proof of per se rejection of a reverse-piercing remedy. If the court has no state substantive law to apply, it may still look to "federal common law,"[229] but should explore all applicable law without resorting to a pure emphasis on public policy.

Second, whether the court applies state substantive law or not, it must still consider traditional veil-piercing requirements: (1) alter ego theory, and (2) evidence that refusal to pierce would perpetuate a fraud or wrong.[230] Notably, this is often already included in the substantive law of most states.[231]

Lastly, the court should consider certain equitable principles, but must limit them to: (1) whether or not the corporation has observed corporate formalities (as necessary to establish a disregard of the corporate form), (2) the degree of harm caused to the claimant, (3) the likelihood that a creditor's loans are at risk (consideration of the "innocent third party" with an actual and established interest in the assets of the corporation), and (4) whether the claimant has at all contributed to the wrongful acts in question, thus precluding them from equitable relief.

This new standard will undoubtedly simplify the practice of federal courts confronted with reverse veil-piercing claims. Federal circuit courts should not deny a reverse pierce as an equitable remedy if the rationale for doing so is based solely on a misunderstanding of procedural requirements or a blind application of traditional veil-piercing doctrine. By reemphasizing relevant considerations and eliminating unnecessary factors, the reverse pierce can stand on its own as a viable remedy.

Of course, there is also something to be said about the assertion that *Manichaean Capital* has "broaden[ed] the risk of inter-corporate liability"

[Curci's] sound analysis."). A federal court could likewise survey the case law in the relevant jurisdiction to avoid a summarily drawn conclusion about a state's acceptance or rejection of reverse piercing.

228 *See* Halabi, *supra* note 62, at 1047 ("Federal courts hear veil-piercing claims in two principal contexts: . . . where state law is applicable . . . or under federal common law.").

229 *Id.*

230 *See supra* Section I.B.

231 *See* C.F. Trust, Inc., v. First Flight Ltd. P'ship, 580 S.E.2d 806, 811 (Va. 2003) ("When determining whether *reverse* piercing . . . is appropriate, a court must consider the same factors [that are relevant in] *traditional* veil piercing . . . ."); State v. Easton, 647 N.Y.S.2d 904, 909 (N.Y. Sup. Ct. 1995) (stating the same factors for traditional veil piercing can be applied to reverse veil piercing).

by formally endorsing reverse piercing and attempting to establish a standard for the doctrine.[232] If it appears that a new approach to reverse veil piercing may incentivize corporations to be more careful (i.e., sneaky) with their transactions in order to avoid liability, this argument need not be overstressed. This assertion fails to note that the solution for a corporation's fear of suits like that in *Manichaean Capital* lies in its own ability to maintain corporate formalities and to institute best practices to detect and prevent fraudulent transactions. Improved corporate governance is a managerial investment worthy of encouragement and does not undermine the validity of a developing standard for reverse veil piercing.

Certainly, if the utility of a reverse-piercing remedy becomes common knowledge, corporations will be "aware of the possibility that courts could hold corporate subsidiaries liable for the debts of their parent companies."[233] However, this creates an incentive for corporate entities to partition their assets more carefully and to closely monitor the transactions of their firm's owners and majority shareholders. The fear of additional suits arising under a new reverse-piercing standard then becomes less daunting, especially if this equitable remedy leads to heightened monitoring standards and a better fulfillment of one's fiduciary duties.

Conclusion

Modern reverse veil-piercing jurisprudence lacks a clear standard for application, leading to judicial avoidance and confusion. State approaches to reverse veil piercing are wide-ranging, and federal procedural requirements complicate the matter even further. Federal courts may attach an overwhelming list of equitable factors to traditional veil-piercing standards or just reject reverse piercing outright. As a result, reverse piercing is perceived as too risky when in fact it is just unwieldy. A new standard would give Article III courts the tools needed to determine if a reverse pierce is proper and streamline their ability to decide a reverse-piercing case on the merits. With alter ego theory at the forefront and a refined list of equitable factors to follow, the equitable remedy of reverse corporate veil piercing can prevent abuses of the corporate structure from all angles.

232 Shargel et al., *supra* note 203.

233 *Id.*