

IF THE VEIL DOESN'T FIT . . . AN EMPIRICAL STUDY OF 30 YEARS OF PIERCING THE CORPORATE VEIL IN THE AGE OF THE LLC

INTRODUCTION

"The more things change, the more they stay the same."¹ Or so it seems, based on the results of this Empirical Study of how courts apply the doctrine of piercing the corporate veil.

This Study began with an eye towards identifying if, and to what extent, the Great Recession had influenced the way courts handle veil-piercing questions. The results support no conclusions that the Great Recession has changed courts' attitudes towards piercing the corporate veil.

While piercing rates have declined since Robert B. Thompson published his groundbreaking empirical study of corporate veil-piercing cases,² aggregating and supplementing the data of post-Thompson studies shows that there is no significant downward trend in how often courts pierce the corporate veil,³ contrary to the conclusion of more recent studies.⁴

Finally, this Study examines and comments on the ways the veil-piercing doctrine has been applied, unchanged, to a dynamically changing business landscape. The astronomic rise of the limited liability company ("LLC") has changed the way businesses structure themselves. Yet, courts have almost universally adopted the *corporate* veil-piercing doctrine to deal with these new business models.⁵ This Study highlights results that raise the issue of whether LLCs and small, closely held corporations have inherent characteristics such as undercapitalization and domination and control that predispose them to higher rates of veil piercing.

Piercing the corporate veil has been called the most litigated issue in all of corporate law.⁶ Veil piercing has also been described

1. An epigram by Jean-Baptiste Alphonse Karr in the January 1849 issue of his journal *Les Guêpes* ("The Wasps").

2. Robert B. Thompson, *Piercing the Corporate Veil: An Empirical Study*, 76 CORNELL L. REV. 1036 (1991).

3. John H. Matheson, *Why Courts Pierce: An Empirical Study of Piercing the Corporate Veil*, 7 BERKELEY BUS. L.J. 1, 16–17 (2010).

4. See Richmond McPherson & Nader Raja, *Empirical Study, Corporate Justice: An Empirical Study of Piercing Rates and Factors Courts Consider When Piercing the Corporate Veil*, 45 WAKE FOREST L. REV. 931, 944 (2010).

5. Stephen M. Bainbridge, *Abolishing LLC Veil Piercing*, 2005 U. ILL. L. REV. 77, 77 (2005).

6. Thompson, *supra* note 2, at 1036.

as seriously flawed and insupportable as a matter of public policy.⁷ In 1991, Robert B. Thompson confronted piercing the corporate veil, which had been described as “defy[ing] any attempt at rational explanation,” with an empirical study.⁸ Thompson’s seminal study analyzed piercing decisions by looking at the nature of defendant corporations, the plaintiffs, the jurisdiction, and the reasons courts cited to support their decisions to pierce or not pierce the corporate veil.⁹ The results of Thompson’s study challenged many preexisting notions regarding the doctrine of piercing the corporate veil, while strengthening others.¹⁰

Subsequent studies have utilized Thompson’s methodology to update and enrich the available data regarding corporate veil piercing.¹¹ Studies published in the *Wake Forest Law Review* in 2008 (“Wake I”)¹² and 2010 (“Wake II”)¹³ analyzed court decisions from 1986 through 2005. Notably, the Wake I study published in 2008 found that between 1986 and 1995, courts pierced more frequently in the tort setting than in the contract setting.¹⁴ Those results flew in the face of Thompson’s findings and seemed to vindicate the earlier suggestions of the Honorable Frank H. Easterbrook and Daniel R. Fischel.¹⁵ Richmond McPherson and Nader Raja’s most significant assertion in Wake II was that their data, when coupled with Wake I and Thompson’s data, produced a downward logarithmic trend over time in courts’ willingness to pierce the corporate veil.¹⁶

The Wake II study also suggested that future studies evaluate whether or not the Great Recession has had any impact on how courts handle piercing the corporate veil.¹⁷ McPherson and Raja

7. Bainbridge, *supra* note 5, at 77.

8. See Thompson, *supra* note 2, at 1037 (alteration in original) (quoting Jonathan M. Landers, *A Unified Approach to Parent, Subsidiary, and Affiliate Questions in Bankruptcy*, 42 U. CHI. L. REV. 589, 620 (1975)).

9. *Id.* at 1038.

10. *Id.* For example, Thompson’s results challenged the traditional notion that piercing should be more likely in a tort setting, finding instead that, “[C]ourts pierce less often in tort than in contract contexts, and a piercing decision is not less but more likely when the shareholder behind the veil is an individual rather than another corporation. . . . [T]he likelihood of piercing increases as the number of shareholders decreases.” *Id.*

11. See, e.g., Lee C. Hodge & Andrew B. Sachs, *Empirical Study, Piercing the Mist: Bringing the Thompson Study into the 1990s*, 43 WAKE FOREST L. REV. 341, 341 (2008); McPherson & Raja, *supra* note 4, at 939 (2010).

12. See Hodge & Sachs, *supra* note 11 (analyzing cases from 1986 to 1995).

13. See McPherson & Raja, *supra* note 4, at 932 (analyzing cases from 1996 to 2005).

14. Hodge & Sachs, *supra* note 11, at 362.

15. Frank H. Easterbrook & Daniel R. Fischel, *Limited Liability and the Corporation*, 52 U. CHI. L. REV. 89, 112 (1985) (suggesting that courts would be more likely to pierce in the tort setting than in the contract setting).

16. McPherson & Raja, *supra* note 4, at 967.

17. *Id.* at 968.

hypothesized that the failure of banks and corporations en masse could influence how courts decide piercing questions.¹⁸ The question that was present in 2010, and to a great degree at the inception of the present Study (“Wake III”), was whether the failure of financial institutions, widespread corporate bankruptcies, and acts of corporate fraud and malfeasance that seemed to dominate the American news post-2008 would alter the ways in which courts applied the doctrine of veil piercing.¹⁹ Wake II’s findings did not uncover any conclusions about the impact that the Great Recession had on veil-piercing outcomes.²⁰

Peter Oh joined the fray in 2010 with a study examining cases from 1658 to 2006.²¹ Standing in contrast to the results of Thompson and both previous Wake studies, Oh found that piercing the corporate veil was slightly more successful in tort than in contract settings.²² In fact, Oh’s recasting of Thompson’s methodology produced different results when analyzing cases within the same time frame as Thompson, Wake I, and Wake II.²³ Central to Oh’s study was a critique of Thompson’s methodology, which he described as “crude.”²⁴ Oh utilized an original methodology to segregate fraud claims from tort and contract claims, stating that “[t]he versatility in the characterization of Fraud claims presents a potentially distortive effect on Thompson’s findings about the frequency of and rates for veil-piercing in Contract and Tort.”²⁵

Oh’s study set aside cases that involved unincorporated business entities such as LLCs.²⁶ Since the 1990s, however, the number of LLCs has grown exponentially and LLCs are now the most popular form of new business entity in the United States.²⁷ The doctrine of veil piercing has been applied unmodified to unincorporated business entities such as LLCs and limited liability partnerships.²⁸ Some scholars view the application of the veil-piercing doctrine to unincorporated business entities as “inflict[ing] damage in collateral contexts.”²⁹

18. *Id.* at 931.

19. *Id.*

20. *Id.* at 968.

21. Peter B. Oh, *Veil-Piercing*, 89 TEX. L. REV. 81, 81 (2010).

22. *Id.* at 126.

23. *Id.* at 127 (finding that tort cases pierced at a rate of 52.94%, compared to contract cases that pierced at a rate of 45.90%).

24. *Id.* at 97.

25. *Id.* at 95.

26. *Id.* at 100.

27. Rodney D. Chrisman, *LLCs Are the New King of the Hill: An Empirical Study of the Number of New LLCs, Corporations, and LPs Formed in the United States Between 2004–2007 and How LLCs Were Taxed for Tax Years 2002–2006*, 15 FORDHAM J. CORP. & FIN. L. 459, 460 (2010).

28. See Oh, *supra* note 21, at 84.

29. *Id.*

Part I of this Study provides an overview of the law of piercing the corporate veil and the arguments for and against limited liability. Part II describes the methodology used in this project. Part III presents the empirical results of this Study, compares the results of this Study with previous studies, and combines this Study's new data with the data from Wake I and II to evaluate any trends that may exist post-1985. Part IV offers conclusions that can be drawn from the empirical results of this project and recommends possible areas of interest for future empirical studies of the veil-piercing doctrine.

I. LAW

Since the mid-nineteenth century, a fundamental principle of corporate law has been that shareholders in a corporation are not liable for the obligations of the enterprise beyond the capital that they have invested.³⁰ This theory of limited liability is embodied in the concept that the business entity is distinct and separate from its shareholders, directors, and officers.³¹ Almost all states have adopted the view, embodied in the Model Business Corporation Act, that "shareholders are not personally liable for the acts or debts of the corporation unless the articles of incorporation provide otherwise or the shareholder becomes personally liable 'by reason of his own acts or conduct.'"³²

Limited liability has been described as "the greatest single discovery of modern times," and it has been said that "[e]ven steam and electricity are far less important than the limited liability corporation, and they would be reduced to comparative impotence without it."³³ Easterbrook and Fischel outlined six rationales that support limited liability in the corporate context.³⁴ First, investors in businesses cloaked in limited liability can reduce the cost of monitoring the officers and directors of the corporation.³⁵ Recognizing that their risk is limited to their investment, investors can reduce their monitoring costs to the health of the organization.³⁶

Second, monitoring costs are also reduced as they pertain to other shareholders.³⁷ If limited liability did not exist, individual shareholders would be exposed to liability created by the actions of

30. Thompson, *supra* note 2, at 1039.

31. *Id.*

32. *Id.* at 1041-42 (quoting MODEL BUS. CORP. ACT § 6.22(b) (AM. BAR ASS'N 1985)).

33. McPherson & Raja, *supra* note 4, at 933 (quoting NICHOLAS MURRAY BUTLER, WHY SHOULD WE CHANGE OUR FORM OF GOVERNMENT? 82 (1912)).

34. Hodge & Sachs, *supra* note 11, at 343 (citing FRANK H. EASTERBROOK & DANIEL R. FISCHEL, THE ECONOMIC STRUCTURE OF CORPORATE LAW 41-44 (1991)).

35. EASTERBROOK & FISCHEL, *supra* note 34, at 41.

36. *Id.* at 41-42.

37. *Id.* at 42.

other shareholders—thus incentivizing, if not requiring, shareholders watching shareholders.³⁸

Third, limited liability incentivizes efficient management of the business entity by officers and directors through the free alienability of corporate securities.³⁹ The reduced monitoring costs discussed above create liquidity in the trading of a corporation's securities and adds motivation for effective corporate management, lest capital flee to pursue other investments.⁴⁰

Fourth, limited liability allows for accurate valuation of corporations.⁴¹ Without limited liability, the value of a corporation would be intertwined with the means of its investors.⁴² Thus, limited liability allows companies to be valued on their commercial merits as opposed to the assets of their investors.⁴³

Fifth, limited liability allows individual investors to invest in a diverse portfolio of companies without the burden of monitoring each company closely.⁴⁴ Sixth, and closely related to the previously listed factors, limited liability ultimately allows investors to invest in companies with positive net value and incentivizes companies and their directors to create positive-net-value projects worthy of investment.⁴⁵

The consequences of limited liability are not always positive.⁴⁶ When business entities are unable to satisfy their debts, creditors can go unpaid.⁴⁷ Thus, the cost of doing business is sometimes shifted away from the corporate actors themselves and onto other parts of society.⁴⁸

To deal with these realities, courts and legislatures have embraced the notion that limited liability is not absolute and have fashioned methods to hold individuals liable for the debts of the business.⁴⁹ The most prominent method is piercing the corporate veil.⁵⁰ The equitable doctrine of piercing the corporate veil allows creditors to hold an individual liable for the acts or debts of a corporation.⁵¹

38. *Id.*

39. *Id.* at 42–43.

40. *See id.* at 43.

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.* at 43–44.

46. *See* Thompson, *supra* note 2, at 1040.

47. *Id.* at 1070.

48. *Id.* at 1040.

49. McPherson & Raja, *supra* note 4, at 933–34.

50. *Id.* at 934.

51. *Id.* Some states, like Texas, have codified the equitable doctrine in statutes. *See* TEX. BUS. ORGS. CODE ANN. § 21.223 (West 2012).

Because it is an equitable doctrine, the decision to pierce the corporate veil is almost always entirely up to the judge.⁵² Grappling with the reality that a broad shield wielded by corporations often shifts the costs of business onto the innocent, scholars have called for veil-piercing decisions to adhere to an “existing principled doctrine,” as opposed to “an ill-defined and illegitimate judicial power to do the right thing.”⁵³ Oh complained that courts applying the doctrine demand metaphorical proof of *ex post* factors to pierce the veil of limited liability, resulting in a “doctrinal mess.”⁵⁴

The Rise of the LLC

Prior to the 1990s, there were only two choices available when two or more owners looked to form a new business entity: the partnership and the corporation.⁵⁵ The default law was the partnership, which provided business owners the benefit of pass-through taxation but without limited liability.⁵⁶ In contrast, the corporation blessed business entities with limited liability but required a state filing and double taxation.⁵⁷ Following the promulgation of the “check-the-box” tax regulations in 1996,⁵⁸ the LLC became the best of both worlds: limited liability *plus* pass-through taxation.⁵⁹ LLCs have exploded in numbers and now outpace corporation formations in the United States by a margin of nearly two-to-one.⁶⁰

As the name denotes, piercing the *corporate* veil was a doctrine fashioned for a particular type of business entity—the corporation.⁶¹ Despite the differences between corporations and LLCs, courts have applied the doctrine to LLCs.⁶² Some courts appear to recognize that the factors used in determining whether to pierce the veil of a corporation should be different than those used to pierce the veil of

52. See Thompson, *supra* note 2, at 1041.

53. McPherson & Raja, *supra* note 4, at 934 (quoting Douglas C. Michael, *To Know a Veil*, 26 J. CORP. L. 41, 59 (2000)).

54. Oh, *supra* note 21, at 84.

55. Chrisman, *supra* note 27, at 463–65.

56. *Id.* at 465.

57. *Id.*

58. Effective as of 1997, a business entity formed under state law will be taxed as a partnership (“pass-through taxation”) and not a corporation (“double taxation”) unless the entity chooses corporate taxation by “checking the box.” See Simplification of Entity Classification Rules, 61 Fed. Reg. 66,584, 66,585 (1996) (amending 26 C.F.R. pts. 1, 301, 602) (effective Jan. 1, 1997); Larry E. Ribstein, *The New Choice of Entity for Entrepreneurs*, 26 CAP. U. L. REV. 325, 330 (1997).

59. Chrisman, *supra* note 27, at 466.

60. *Id.* at 460.

61. See Thompson, *supra* note 2, at 1039.

62. See, e.g., *In re Osorno*, 478 B.R. 523 (Bankr. D. Mass. 2012) (applying the same standard of piercing the corporate veil to LLCs); *Martin v. Freeman*, 272 P.3d 1182 (Colo. App. 2012) (piercing veil of single-member LLC).

an LLC.⁶³ The Bankruptcy Court for the Southern District of New York, for example, stated that there is “somewhat less emphasis . . . placed on whether the LLC observed internal formalities because fewer such formalities are legally required.”⁶⁴ Another court stated that although the doctrine should be applied with equal force to LLCs, “[l]esser weight should be afforded the element of domination and control and adherence to corporate formalities.”⁶⁵

Unlike Oh’s study,⁶⁶ the data collected and studied below include cases involving LLCs. The judicial language cited above, singling out factors that should be given less weight by courts in LLC cases, could very easily be applied to all small business entities. After all, domination and control, undercapitalization, and relaxed corporate formalities seem inherent in businesses comprised of one, two, or three individuals. Yet, the results of this Study, and of previous empirical studies, clearly show that smaller businesses are much more likely to have their veils pierced.⁶⁷ Future research is needed to empirically study veil piercing in the LLC context to determine whether or not courts actually give LLCs the deference some judges have described as appropriate.⁶⁸

The results below seem to suggest that, while the process may be messy, courts have found a consistency in veil piercing. Aggregating our data with the data compiled by Wake I and Wake II, and comparing it with Thompson’s results, seems to suggest that—qualitative assessments of the doctrine notwithstanding—courts have struck an equilibrium in determining what constitutes actions worthy of disregarding the limited liability shield.

II. METHODOLOGY

A. *The Data Set*

To a great extent, the value of the Thompson study, and the follow-ups in Wake I and Wake II, stems from the fact that the

63. See Elizabeth S. Fenton, *Trends in Piercing the Corporate Veil*, ABA (July 31, 2013), <http://apps.americanbar.org/litigation/committees/businessstorts/articles/summer2013-0713-trends-in-jurisprudence-piercing-the-corporate-veil.html>.

64. *In re BH S & B Holdings*, 420 B.R. 112, 138 (Bankr. S.D.N.Y. 2009) (quoting *NetJets Aviation, Inc. v. LHC Commc'ns, LLC*, 537 F.3d 168, 176 (2d Cir. 2008)).

65. *D.R. Horton, Inc.-New Jersey v. Dynastar Dev., L.L.C.*, No. MER-L-1808-00, 2005 WL 1939778, at *31 (N.J. Super. Ct. Law Div. Aug. 10, 2005).

66. Oh, *supra* note 21, at 100.

67. See Thompson, *supra* note 2, at 1055 & tbl.7; Hodge & Sachs, *supra* note 11, at 352 & tbl.6; McPherson & Raja, *supra* note 4, at 951 & tbl.8.

68. See *In re BH S & B Holdings*, 420 B.R. at 138–39 (citing *Capricorn Inv'rs III, L.P. v. Coolbrands Int'l, Inc.*, No. 603795/06, 2009 WL 2208339, at *5 (N.Y. Sup. Ct. July 14, 2009)); *D.R. Horton, Inc.*, 2005 WL 1939778, at *31.

studies apply the same methodology to piercing cases over time.⁶⁹ Therefore, the methodology for this Study seeks to replicate that used in Thompson, Wake I, and Wake II as closely as possible. One of the goals of this Study was to determine whether the new trends and deviations observed in Wake II had continued, or whether these results were an anomaly. Because Wake II's differing results could have been attributed to small changes in methodology, whenever there was a discrepancy in methodology across Thompson, Wake I, and Wake II, the authors chose to follow the Wake II methodology.

The cases used in this Study are a random sampling of cases reported in WestlawNext from January 1, 2006, through December 31, 2014. The initial search query was "pierc! /2 'corporate veil'" with the filter set for "All State & Federal." This initial search returned 3991 cases, which were then arranged in chronological order. Initially, every eighth case was analyzed to determine whether the court had "reached an affirmative decision on whether or not to pierce the corporate veil and hold a shareholder liable."⁷⁰ As in Wake II, cases where the issue of piercing the corporate veil was raised to gain personal jurisdiction over a defendant, or where the issue was "reverse piercing,"⁷¹ were not included in the second data set.⁷² Cases that denied a defendant's motion to dismiss or motion for summary judgment were also not included because, by virtue of their procedural posture and disposition, they deferred an affirmative decision on the veil-piercing issue.⁷³ In the end, a

69. See Thompson, *supra* note 2, at 1044–45; Hodge & Sachs, *supra* note 11, at 347–48; McPherson & Raja, *supra* note 4, at 939–42.

70. McPherson & Raja, *supra* note 4, at 940. Similar to Wake I and II, the authors were unable to analyze every opinion published in the relevant time period. The goal was to have a sample size of 200 cases where the court had reached a decision on the issue of veil piercing. The analysis of the initial 488 cases yielded only 152 decided cases, so every twenty-first case was added from the chronologically ordered master list and analyzed for the initial determination: Did the court reach an affirmative decision on piercing the corporate veil? This expanded our second data set to 198 cases for further analysis.

71. See, e.g., Fed. Nat'l Mortg. Ass'n v. Grossman, Civil No. 12-2953, 2014 WL 4055371, at *3 (D. Minn. Aug. 15, 2014) ("Under the doctrine of reverse veil piercing, in an action against an individual who owns or controls an entity that would otherwise be separate from its owners or managers, the entity may lose its separate status as such if the individual manipulated the entity for his own personal purposes. And in a fraudulent transfer action, an entity he has thus abused is a valid additional defendant." (citation omitted)).

72. McPherson & Raja, *supra* note 4, at 940.

73. When a defendant was granted summary judgment on the issue of piercing the corporate veil, the case was counted as reaching an affirmative decision on the issue. When courts granted a defendant's motion to dismiss, the courts usually engaged in an analysis of whether the plaintiff had pleaded sufficient facts to meet one or more factors of the veil-piercing test. While the disposition may be considered procedural, the courts' analyses in these cases addressed the subjective factors tallied in the Study's methodology. Granted

sample of 198 cases that reached a decision on whether to pierce the veil was compiled for further review.

For each case analyzed, the following data were recorded: whether the veil was pierced, the year of the decision, the level of the court, which jurisdiction's law was being applied, the number of shareholders in the corporation that was the object of the piercing, whether a person or an entity was behind the corporate veil, the identity of the party seeking the piercing, and the substance of the claim (contract, tort, statutory, or criminal).⁷⁴

For each case, the authors noted whether the courts had mentioned the following "subjective" factors in their analysis, and whether the courts had noted the presence or absence of each of these factors in supporting their decision to pierce or not to pierce the corporate veil: the use of conclusory terms ("instrumentality," "alter ego," and "dummy corporation");⁷⁵ misrepresentation; fraud;⁷⁶ agency;⁷⁷ lack of substantive separation or intertwining;⁷⁸ undercapitalization;⁷⁹ failure to observe corporate formalities;⁸⁰

motions to dismiss were also counted as reaching an affirmative decision on the issue based on the facts alleged in the pleadings.

74. These factors are identical to those analyzed in *Wake II*. See McPherson & Raja, *supra* note 4, at 941. *Wake I* and Thompson also examined whether the claim involved procedure, but the authors followed *Wake II*'s lead in excluding this factor.

75. "Instrumentality," "alter ego," and "dummy corporation" were recorded only if the term was explicitly cited by the court. As noted by Professor Thompson, these terms are considered conclusory in nature. See Thompson, *supra* note 2, at 1045 & nn.56-57. This assessment seems to be supported by the data. See McPherson & Raja, *supra* note 4, at 960 tbl.12 (showing pierce rates when the court noted the presence of "instrumentality" (100% of cases analyzed by *Wake II*, 100% in *Wake I*, 97.3% in Thompson), "alter ego" (100% in *Wake II*, 97.5% in *Wake I*, 95.58% in Thompson), and "dummy corporation" (100% in *Wake II*, 80% in *Wake I*, 89.74% in Thompson)).

76. Neither Thompson nor the *Wake* studies recorded instances where the court cited "fraud" as a factor. Acknowledging Professor Oh's critiques, however, this factor was included in an effort to ascertain whether failure to account for fraud cases could have a distortive effect when using the Thompson methodology.

77. "Agency" was recorded when the court discussed an agency relationship between the shareholder and the corporation. See Hodge & Sachs, *supra* note 11, at 348 & n.62; McPherson & Raja, *supra* note 4, at 941 n.63.

78. "[Lack of substantive separation or intertwining] were noted when the court observed a commingling of corporate and private funds, a siphoning of funds, a shareholder treating corporate assets as his own, and other intertwining activities." McPherson & Raja, *supra* note 4, at 941 & n.64.

79. "'Undercapitalization' was noted both when it was present at the corporation's inception and in cases where the corporation became undercapitalized later." Hodge & Sachs, *supra* note 11, at 348 n.65.

80. This "informalities" category includes mentions of a "lack of formal board meetings, record-keeping, or other corporate formalities." McPherson & Raja, *supra* note 4, at 942 n.66.

domination and control;⁸¹ and overlap.⁸² When a court noted the presence or absence of more than one factor, all factors mentioned were recorded.

B. *Methodology Questions and Limitations*

The limitations of the data and methodology of the Thompson study have been acknowledged since the original study was published.⁸³ The Wake I and II studies, as well as this Study, are also limited by the fact that not all reported cases for a particular time period were analyzed, and that each study focused only on ten-year intervals.⁸⁴ The latter attribute may introduce additional selection bias that could account for the illusion of a trend or significant deviation from historical rates, when in fact the data would normalize if tracked over a longer time period.

In an effort to account for the limitations specific to Wake I and Wake II—the inability to analyze all cases in a certain time period, smaller sample size, and the possibility that focusing on a shorter timeframe may skew results—the authors decided to aggregate the data for Wake I, Wake II, and Wake III. This expanded the universe of cases analyzed to 662 cases spanning thirty years, and allowed comparisons of pre-1985 and post-1985 data as a whole. Finally, all four studies share most of the same limitations, but because they applied the same methodology, comparisons amongst them are at least internally consistent.

81. “Domination and control” was noted “when the shareholder personally paid or guaranteed corporate debts or owned all the stock of a corporation, when the corporation engaged in no action independent of its shareholder, or simply where the shareholder was said to have ‘dominated’ the corporation.” *Id.* at 942 n.67. “Domination” is not a conclusory term—most courts noted that a mere finding of domination or control, especially through sole ownership of all stock, is not sufficient to pierce the veil. *See, e.g.,* Michaels v. Banks, 901 F. Supp. 2d 354, 358–59 (N.D.N.Y. 2012) (finding defendants exerted control to further the purpose of the company and not their own personal affairs); Prichard v. 164 Ludlow Corp., 854 N.Y.S.2d 53, 55 (N.Y. App. Div. 2008) (stating that maintaining control over a corporation is not sufficient to find that defendant abused the corporate form).

82. Thompson, Wake I, and Wake II separately counted mentions of overlap of officers, directors, owners, offices, business activities, employees, and management. Thompson, *supra* note 2, at 1044 & n.52; Hodge & Sachs, *supra* note 11, at 348; McPherson & Raja, *supra* note 4, at 942. Because the aggregated category of “overlap” yields a significantly lower pierce rate than other factors, all “overlap” subcategories were grouped together in this Study.

83. *See* Thompson, *supra* note 2, at 1045–47 (noting, inter alia, that results based on cases reported in Westlaw may not be a representative sample of all cases considered, filed, or decided, and that there is an inherent selection bias when analyzing only disputes that reached the litigation stage).

84. *See* Hodge & Sachs, *supra* note 11, at 349; McPherson & Raja, *supra* note 4, at 940, 942.

III. EMPIRICAL RESULTS

TABLE 1: OVERALL PIERCING RESULTS

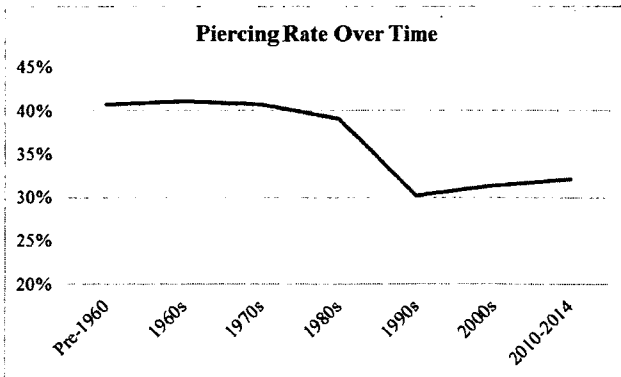
	Total Cases	Pierce	No Pierce	% Piercing
Wake III	198	70	128	35.4%
Wake I-III	662	215	451	32.5%
Thompson	1583	636	947	40.2%

TABLE 2: PIERCING OVER THE YEARS

Category	Total Cases	Pierce	No Pierce	% Piercing
2006	16	8	8	50.0%
2007	22	4	18	18.2%
2008	18	8	10	44.4%
2009	33	15	18	45.5%
2010	29	10	19	34.5%
2011	20	4	16	20.0%
2012	17	4	13	23.5%
2013	26	9	17	34.6%
2014	17	8	9	47.1%
	198	70	128	35.4%

Category	Total Cases	Pierce	No Pierce	% Piercing
Pre-1960	130	53	77	40.8%
1960s	399	164	235	41.1%
1970s	572	233	339	40.7%
1980s	573	224	349	39.1%
1990s	222	67	115	30.2%
2000s	242	76	169	31.4%
2010-2014	109	35	74	32.1%

FIGURE 1: PIERCING RATE OVER TIME



Wake II, analyzing data from 1985 to 2005, observed a downward trend in the pierce rate beginning at the end of the Thompson study, punctuated by a 26.8% pierce rate from 2000 to 2005.⁸⁵ Wake II was unsure whether the pierce rate had leveled out in the 27–35% range, or if it would continue to decrease.⁸⁶ Based on the data in this Study, the answer to that question is that the rate did not continue to fall, although the aggregate data of Wake I, II, and III (“Wake I–III”) does seem to show that, beginning in the 1990s, the pierce rate settled in at the low thirty percent range.

TABLE 3: PIERCING BY JURISDICTION

Wake III	Category	Total Cases	Pierce	No Pierce	% Piercing
	Federal	129	47	82	36.4%
	State	69	23	46	33.3%
	Category	Total Cases	Pierce	No Pierce	% Piercing
Wake I-III	Federal	384	128	256	33.3%
	State	278	87	191	31.3%
Thompson	Federal	647	268	379	41.4%
	State	938	369	569	39.3%

The Thompson study found that federal and state courts pierced in similar percentages of cases, which flew in the face of conventional wisdom at the time.⁸⁷ Wake I and II found a larger gap between the pierce rate of federal courts and state courts,⁸⁸ and the results in this Study show the difference increasing as well. While the gap in any given decade seems to be higher, aggregating Wake I–III together shows a similar federal/state piercing-rate ratio post-Thompson as the one Thompson found.

TABLE 4: COURT LEVEL

Wake III	Category	Total Cases	Pierce	No Pierce	% Piercing
	Trial	131	47	84	35.9%
	Intermediate	63	22	41	34.9%
	Supreme	4	1	3	25.0%

85. See McPherson & Raja, *supra* note 4, at 944–45 & tbl.2.

86. *Id.* at 944, 965–66.

87. Thompson, *supra* note 2, at 1049 & tbl.3 & n.78.

88. Hodge & Sachs, *supra* note 11, at 350 & tbl.3; McPherson & Raja, *supra* note 4, at 946–47 & tbl.3.

	Category	Total Cases	Pierce	No Pierce	% Piercing
Wake I-III	Trial	371	111	260	29.9%
	Intermediate	264	95	169	36.0%
	Supreme	27	9	18	33.3%
Thompson	Trial	401	161	240	40.1%
	Intermediate	860	338	522	39.3%
	Supreme	316	133	183	42.1%

While pierce rates by trial and appellate courts varied greatly among each individual Wake study, grouping Wake I–III together shows that over time, trial, appellate, and supreme courts pierce in a similar percentage of cases. This is in line with Thompson's findings. It is also worth noting that the law seems to have settled on the subject of piercing the veil—while in the Thompson study 20% of cases analyzed were supreme court cases, post-1985 only 4.1% of cases analyzed reached the highest court in their jurisdiction.

TABLE 5: INDIVIDUAL VS. CORPORATE PLAINTIFFS

Wake III	Category	Total Cases	Pierce	No Pierce	% Piercing
	Individual P	89	19	70	21.3%
	Corporate P	91	42	49	46.2%

	Category	Total Cases	Pierce	No Pierce	% Piercing
Wake I-III	Individual P	308	67	241	21.8%
	Corporate P	295	118	177	40.0%
Thompson	Individual P	695	262	433	37.7%
	Corporate P	652	240	412	36.8%

While the identity of the plaintiff as either an individual or a corporation had no effect on the piercing outcome in the Thompson and Wake I studies,⁸⁹ the Wake II study showed a dramatic gap between individual plaintiff success rate (12.8%) and corporate plaintiff success rate (40.8%).⁹⁰ Even though the size of the gap has diminished compared to Wake II, our data still show a great advantage for corporate plaintiffs, who pierced at a 46.2% rate compared to 21.3% for individual plaintiffs. The difference is equally marked when grouping the data of the Wake I–III studies:

89. Thompson, *supra* note 2, at 1055 tbl.7; Hodge & Sachs, *supra* note 11, at 351 & tbl.5.

90. McPherson & Raja, *supra* note 4, at 948 & tbl.5.

post-1985 corporate plaintiffs were almost twice as likely to successfully pierce the veil as individual plaintiffs.⁹¹

TABLE 6: LAW APPLIED⁹²

Wake II-III*	Category	Total Cases	Pierce	No Pierce	% Piercing
	NY	48	13	35	27.1%
	CT	28	4	24	14.3%
	CA	17	6	11	35.3%
	TX	18	6	12	33.3%
	MI	12	3	9	25.0%
	OH	16	9	7	56.3%
	DE	9	3	6	33.3%
	GA	6	1	5	16.7%

Thompson	Category	Total Cases	Pierce	No Pierce	% Piercing
	NY	212	74	138	34.9%
	CT	11	7	4	63.6%
	CA	89	40	49	44.9%
	TX	106	37	69	34.9%
	MI	22	6	16	27.3%
	OH	14	8	6	57.1%
	DE	11	0	11	0.0%
	GA	47	18	29	38.3%

Over time, New York law continues to be the most-applied law in veil-piercing cases.⁹³ Interestingly, the pierce rate when New York law is applied is also consistently lower than the expected pierce rate at the state level in the whole sample (27.1% compared to 31.4% in Wake II-III; 34.9% compared to 39.3% in Thompson). Notably, Ohio has a consistently high pierce rate pre- and post-1985—a staggering 56.7% overall.⁹⁴

91. This could be an example of self-selection—where corporate attorneys bring only cases that are likely to succeed, while individual plaintiffs' attorneys bring any colorable claim that may give them access to deeper pockets. This potential explanation is weakened by the fact that the percentage of cases brought by each type of plaintiff has remained constant pre- and post-1985, with about 51% of cases analyzed being brought by individual plaintiffs and 49% by corporate plaintiffs.

92. The Thompson study included data for all fifty states. Wake I did not include this variable, and Wake II only included data for the highest frequency states and Delaware. For purposes of comparison, Table Six compares only the states for which data were available across multiple studies. Because future researchers may find the breakdown by state to be useful, the data for all fifty states and federal jurisdictions are included in Appendix 1, *infra*.

93. McPherson & Raja, *supra* note 4, at 968.

94. For an interesting discussion of Ohio's unique corporate veil-piercing jurisprudence that may help explain this consistently high pierce rate, see

TABLE 7: INDIVIDUAL VS. CORPORATE DEFENDANTS

Wake III	Category	Total Cases	Pierce	No Pierce	% Piercing
	Individual D	132	52	80	39.4%
	Corporate D	63	18	45	28.6%

	Category	Total Cases	Pierce	No Pierce	% Piercing
Wake I-III	Individual D	416	160	256	38.5%
	Corporate D	222	50	172	22.5%
Thompson	Individual D	786	339	447	43.1%
	Corporate D	637	237	400	37.2%

When there is an individual behind the veil, courts seem to consistently pierce at a higher rate, and this rate has stayed reasonably constant since the Thompson study. When there is a corporation behind the veil, however, courts have become less likely to pierce the veil to reach them—down from 37.2% of cases pre-1985 to only 22.5% of cases post-1985. The proportion between veil-piercing cases that are brought against individuals as opposed to corporations has also changed. Before 1985, 55% of cases were brought against individuals and 45% against corporations. After 1985, 65% of veil-piercing cases were ultimately trying to reach individual defendants and only 35% were going after corporate defendants.

TABLE 8: IDENTITY OF SHAREHOLDERS

Wake I-III	Identity of Shareholders	Total Cases	% of Total Cases	Pierce	No Pierce	% Pierce
	<u>Individuals:</u>					
	One	199	37.6%	77	122	38.7%
	Two or Three	138	26.1%	67	71	48.6%
<u>Close but:</u>						
	More than three	179	33.8%	38	141	21.2%
	Public Shareholders	13	2.5%	0	13	0.0%
	Total Individuals	529				
<u>Corporate</u>						
	Parent	142	73.6%	29	113	20.4%
	Subsidiary	11	5.7%	3	8	27.3%
	Sibling	40	20.7%	14	26	35.0%
	Total Corporate	193				

generally Margaret A. Sweeney, Comment, *Piercing the Corporate Veil in Ohio: The Need for a New Standard Following Dombroski v. Wellpoint, Inc.*, 57 CLEV. ST. L. REV. 951 (2009).

Wake III	Identity of Shareholders	Total	% of Total	No		% Pierce
		Cases	Cases	Pierce	Pierce	
<u>Individuals</u>						
	One	82	46.9%	37	45	45.1%
	Two or Three	58	33.1%	26	32	44.8%
Close but:						
	More than three	28	16.0%	3	25	10.7%
	Public Shareholders	7	4.0%	0	7	0.0%
	Total Individuals	175				
<u>Corporate</u>						
	Parent	46	73.0%	13	33	28.3%
	Subsidiary	1	1.6%	0	1	0.0%
	Sibling	16	25.4%	5	11	31.3%
	Total Corporate	63				

Thompson	Identity of Shareholders	Total	% of Total	No		% Pierce
		Cases	Cases	Pierce	Pierce	
<u>Individuals:</u>						
	One	276	35.1%	137	139	49.6%
	Two or Three	238	30.3%	110	128	46.2%
Close but:						
	More than three	263	33.5%	92	171	35.0%
	Public Shareholders	9	1.1%	0	9	0.0%
	Total Individuals	786				
<u>Corporate</u>						
	Parent	386	60.6%	142	244	36.8%
	Subsidiary	68	10.7%	19	49	27.9%
	Sibling	183	28.7%	76	107	41.5%
	Total Corporate	637				

Although our data sample showed an increase in the percentage of cases that were brought against individual shareholders, aggregating the Wake I–III studies shows that the percentage has remained constant. The pierce rate against individual shareholders has decreased significantly, from 49.6% before 1985 to 38.7% in the last thirty years. This does not necessarily mean that individual shareholders are receiving preferential treatment, however, since pierce rates went down across the board, and 38.7% is still higher than the general pierce rate of 32.5%. Proportionally, the reduction in pierce rate was also smaller than for other types of shareholder: Corporate parents saw a 44.5% decrease in having their corporate veil pierced, and closely held companies with more than three shareholders saw a 39.3% decrease. The decrease for individual shareholders was only 22%. Meanwhile, both the percentage of cases where two or three individuals are behind the veil and the pierce rate in these cases have remained constant.

TABLE 9: IDENTITY OF PLAINTIFF

Wake III	Category	Total Cases	Pierce	No Pierce	% Piercing
	Private	176	59	117	33.5%
	Government	16	9	0	56.3%
	Corporate (Self)	0	0	0	-
	Shareholder	4	2	2	50.0%

	Category	Total Cases	Pierce	No Pierce	% Piercing
Wake I-III	Private	526	167	359	31.7%
	Government	55	29	19	52.7%
	Corporate (Self)	11	2	9	18.2%
	Shareholder	9	3	6	33.3%
Thompson	Private	1126	466	660	41.4%
	Government	218	126	92	57.8%
	Corporate (Self)	164	22	142	13.4%
	Shareholder	59	15	44	25.4%

Government plaintiffs continue to maintain a significant advantage in veil-piercing cases. Our data found that government plaintiffs succeeded in 56.3% of cases. When aggregated, Wake I-III shows a post-1985 pierce rate for government plaintiffs of 52.7%, well above the 32.5% average for all plaintiffs. The aggregated data is in line with Thompson's results.⁹⁵ With the exception of Wake II, corporate plaintiffs attempting to pierce their own veil succeeded at the lowest rate among all types of plaintiffs.⁹⁶ Our data produced no self-corporate veil-piercing cases. Perhaps plaintiffs read the previous studies and got the message that corporations must take the bad side of limited liability with the good.⁹⁷

TABLE 10: CREDITOR VS. NONCREDITOR PLAINTIFFS⁹⁸

Wake III	Category	Total Cases	Pierce	No Pierce	% Piercing
	Creditor	79	38	41	48.1%
	Noncreditor	97	21	76	21.6%

	Category	Total Cases	Pierce	No Pierce	% Piercing
Wake I & III*	Creditor	124	56	68	45.2%
	Noncreditor	244	67	177	27.5%
Thompson	Creditor	612	259	353	42.3%
	Noncreditor	514	207	307	40.3%

95. Thompson found that government plaintiffs succeeded 57.8% of the time. Thompson, *supra* note 2, at 1057 tbl.8.

96. McPherson & Raja, *supra* note 4, at 952 tbl.9.

97. See Thompson, *supra* note 2, at 1057-58.

98. Wake II did not classify its plaintiffs as creditor or noncreditor. The aggregate table in this Study contains only data from Wake I and Wake III.

Creditors have maintained a consistent rate of success—higher than the overall pierce rate by a margin of approximately 13%. On the other hand, noncreditors (who were about equally successful pre-1985)⁹⁹ have become substantially less successful compared to creditors.

TABLE 11: TYPE OF CLAIM

Wake III	Category	Total Cases	% of Cases Brought	Pierce	No Pierce	% Piercing
	Contract	104	53.3%	33	71	31.7%
Tort	32	16.4%	5	27	15.6%	
Criminal	4	2.1%	3	1	75.0%	
Statutory	55	28.2%	27	28	49.1%	
	<u>195</u>					

Wake I-III	Category	Total Cases	% of Cases Brought	Pierce	No Pierce	% Piercing
	Contract	308	48.5%	96	212	31.2%
Tort	100	15.7%	21	79	21.0%	
Criminal	4	0.6%	3	1	75.0%	
Statutory	223	35.1%	84	139	37.7%	
	<u>635</u>					

Thompson	Category	Total Cases	% of Cases Brought	Pierce	No Pierce	% Piercing
	Contract	779	49.6%	327	452	42.0%
Tort	226	14.4%	70	156	31.0%	
Criminal	15	1.0%	10	5	66.7%	
Statutory	552	35.1%	224	328	40.6%	
	<u>1572</u>					

Professor Thompson's finding that courts were more willing to pierce the veil in contract claims than in tort claims flew in the face of conventional wisdom.¹⁰⁰ While the overall piercing rate has gone down for both contract and tort cases since Thompson's study, the proportion between the two seems to remain constant: plaintiffs are about 1.4 times more likely to successfully pierce the corporate veil in contract cases than in tort cases.

99. Thompson, *supra* note 2, at 1057 tbl.8.

100. *See id.* at 1058.

TABLE 12: STATUTORY CLAIMS

Wake III	Category	Total Cases	Pierce	No Pierce	% Piercing
	Bankruptcy	21	11	10	52.4%
	ERISA	9	7	2	77.8%
	Environment	4	1	3	25.0%
	Discrimination	4	0	4	0.0%
	Fraud	7	4	3	57.1%
	Patent	3	1	2	33.3%
	Workers Comp	2	0	2	0.0%
	Tax	1	0	1	0.0%
	Gov't Regulation	2	1	1	50.0%
	Corporate	2	2	0	100.0%
		55	27	28	49.1%

Wake I-III	Category	Total Cases	Pierce	No Pierce	% Piercing
	Bankruptcy	64	27	37	42.2%
	ERISA	39	19	20	48.7%
	Environment	15	8	7	53.3%
	Discrimination	18	0	18	0.0%
	Fraud	14	7	7	50.0%
	Patent	13	3	10	23.1%
	Workers Comp	6	1	5	16.7%
	Tax	8	5	3	62.5%
	Gov't Regulation	4	2	2	50.0%
	Corporate	5	3	2	60.0%
		308	123	185	39.9%

Thompson	Category	Total Cases	Pierce	No Pierce	% Piercing
	Bankruptcy	34	16	18	47.1%
	ERISA	2	2	0	100.0%
	Environment	6	5	1	83.3%
	Discrimination	7	5	2	71.4%
	Fraud	11	9	2	81.8%
	Patent	19	14	5	73.7%
	Workers Comp	39	5	34	12.8%
	Tax	133	41	92	30.8%
	Gov't Regulation	40	21	19	52.5%
	Corporate	25	7	18	28.0%
		316	109	173	34.5%

There has been an increase in the volume of bankruptcy cases post-1985, although there was no spike in the 2010–2014 period as may have been expected with the financial crisis. The pierce rate in bankruptcy cases has remained similar pre- and post-1985. After bankruptcy, the most common statutory claims involving veil piercing were Employee Retirement Income Security Act (“ERISA”) claims. The success rate for piercing the veil in ERISA cases was also high, at 48.7%. Finally, it is interesting to note that not a

single discrimination claim included in the random sample over the past thirty years has succeeded in piercing the veil.

TABLE 13: SUBSTANTIVE FACTORS

Wake III					
Category	Cases Where Factor Present	% of Cases Where Present	Pierce	No Pierce	% Piercing
Dummy Corporation	4	2.0%	4	0	100.0%
Alter Ego	50	25.5%	49	1	98.0%
Fraud	41	20.7%	40	1	97.6%
Instrumentality	20	10.2%	19	1	95.0%
Intertwining *	53	26.9%	47	6	88.7%
Undercapitalization *	40	20.3%	33	7	82.5%
Informalities *	37	18.8%	30	7	81.1%
Misrepresentation *	15	7.6%	11	4	73.3%
Domination and Control *	73	37.1%	46	27	63.0%
Agency	11	5.6%	5	6	45.5%
Overlap	51	25.9%	22	29	43.1%

Wake I-III					
Category	Cases Where Factor Present	% of Cases Where Present	Pierce	No Pierce	% Piercing
Dummy Corporation	21	3.2%	20	1	95.2%
Alter Ego	114	17.2%	112	2	98.2%
Fraud	41	6.2%	40	1	97.6%
Instrumentality	47	7.1%	46	1	97.9%
Intertwining *	130	19.6%	117	13	90.0%
Undercapitalization *	99	15.0%	87	12	87.9%
Informalities *	106	16.0%	83	23	78.3%
Misrepresentation *	62	9.4%	56	6	90.3%
Domination and Control *	148	22.4%	108	40	73.0%
Agency	27	4.1%	18	9	66.7%
Overlap	344	52.0%	190	154	55.2%

Thompson					
Category	Cases Where Factor Present	% of Cases Where Present	Pierce	No Pierce	% Piercing
Dummy Corporation	78	4.9%	70	8	89.7%
Alter Ego	181	11.4%	173	8	95.6%
Fraud	0	0.0%	0	0	-
Instrumentality	75	4.7%	73	2	97.3%
Intertwining *	204	12.9%	174	30	85.3%
Undercapitalization *	120	7.6%	88	32	73.3%
Informalities *	151	9.5%	101	50	66.9%
Misrepresentation *	169	10.7%	159	10	94.1%
Domination and Control *	551	34.8%	314	237	57.0%
Agency	52	3.3%	48	4	92.3%
Overlap	812	51.3%	459	343	56.5%

When courts found “dummy corporation,” “alter ego,” or “instrumentality” to be present—the factors that previous studies and commentators had classified as “conclusory”—they continued to pierce at the highest rates. Consistent with Oh’s assumptions, this Study found that a finding of “fraud” also results in piercing in almost all cases.

Over the past thirty years, intertwining was found in a higher percentage of cases than in Thompson, and this factor seems to have become slightly more outcome determinative.

Undercapitalization was found in 15% of cases, up from only 7.6% of cases in the Thompson study. The pierce rate in undercapitalization cases increased significantly as well. Courts pierced the veil in 87.9% of analyzed post-1985 cases when they found undercapitalization, compared to only 73.3% pre-1985.

Informalities were also found in a higher percentage of cases (16% compared to 9.5%), but the outcome-determinativeness of this factor remained among the lowest on the list, with only 78.3% of analyzed cases where informalities were found resulting in piercing. Still, this is substantially higher than the 66.9% pierce rate in Thompson.

The changes in “domination and control” findings are interesting: Domination and control was found in more than one-third of the cases Thompson analyzed, but in his study the presence of this factor resulted in piercing in only 57% of cases.¹⁰¹ Aggregating Wake I–III, domination and control was present in only one of five cases, but the pierce rate in those cases went up to 73%.

Agency, dummy, and misrepresentation appear to be old-fashioned terms that do not appear with any real frequency in veil-piercing decisions—only 4.1%, 3.2%, and 9.4% of post-1985 cases, respectively. However, these numbers do not represent any significant reduction from pre-1985 levels—Thompson found them in 3.3%, 4.9%, and 10.7% of cases.¹⁰² It is possible that these words are simply a vestige still present in state law tests that are underrepresented in our sampling. While infrequently found, “dummy” and “misrepresentation” still correlate highly with decisions to pierce. The significance of an “agency” relationship, on the other hand, has diminished—a finding of agency correlated with a 92.3% pierce rate pre-1985, but only 66.7% post-1985.

101. *Id.* at 1065.

102. *See id.* at 1051 tbl.6, 1063 tbl.11.

TABLE 14: UNDERCAPITALIZATION

Wake III	# of Shareholders	# of Cases When Court Pierced	# of Piercing Cases Citing UC	% of Piercing Cases Citing UC
	One	37	19	51.4%
	Two or Three	26	13	50.0%
	Close but >3	3	1	33.3%
	Parent / Sub	13	5	38.5%
	Sibling	5	2	40.0%

Wake I-III	# of Shareholders	# of Cases When Court Pierced	# of Piercing Cases Citing UC	% of Piercing Cases Citing UC
	One	78	35	44.9%
	Two or Three	68	33	48.5%
	Close but >3	39	10	25.6%
	Parent / Sub	33	10	30.3%
	Sibling	14	6	42.9%
Thompson	One	137	20	14.6%
	Two or Three	110	27	24.5%
	Close but >3	92	11	12.0%
	Parent / Sub	162	18	11.1%
	Sibling	76	8	10.5%

The presence of undercapitalization in cases where the veil was pierced increased substantially post-1985. Undercapitalization was noted in almost 50% of cases (68 of 146) involving less than three shareholders where the veil was pierced, compared to 19% (47 of 247) in the Thompson study.

CONCLUSION

In the 1980s, the overall pierce rate dropped from around 40% to 30%, and the aggregate post-1985 data seems to indicate that 30% is the new normal. Whether that decrease is related to the rise of the LLC as the business entity of choice is beyond the scope of this Study, but future empirical studies could isolate this variable to pursue this hypothesis. The normative implication of applying a doctrine that attaches liability to certain traits that may be inherent in LLCs is also ripe for exploration.

Another clear difference between pre- and post-1985 cases is the difference in piercing outcomes when the plaintiff is an individual, as opposed to a corporation. Over the past thirty years, corporate plaintiffs have successfully pierced the corporate veil almost 40% of the time, compared to 22% for individual plaintiffs.

As far as the substantive factors that courts consider when deciding to pierce the corporate veil, the "conclusory" factors that are almost synonymous with a finding of abuse of the corporate form continue to result in pierce rates above 90%. Of potential interest and concern is the increase in cases that resulted in piercing when the courts found undercapitalization, informalities, and domination

and control. As noted in the introduction, these are factors that are not necessarily indicative of intent to abuse the corporate form, but rather may be intrinsic characteristics of LLCs and small companies with less than three shareholders.

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APPENDIX 1: STATE PIERCING RATES

Category	Total Cases	Pierce	No Pierce	% Piercing
AK	2	1	1	50.0%
AR	1	1	0	100.0%
AZ	1	0	1	0.0%
CA	8	3	5	37.5%
CO	4	1	3	25.0%
CT	12	4	8	33.3%
DE	6	3	3	50.0%
Federal	16	5	11	31.3%
FL	5	1	4	20.0%
GA	1	0	1	0.0%
IA	2	0	2	0.0%
ID	1	1	0	100.0%
IL	8	3	5	37.5%
IN	2	1	1	50.0%
KY	7	5	2	71.4%
LA	4	4	0	100.0%
MA	5	3	2	60.0%
ME	3	0	3	0.0%
MI	7	2	5	28.6%
MN	7	3	4	42.9%
MO	3	1	2	33.3%
NC	3	2	1	66.7%
NE	1	0	0	0.0%
NJ	12	2	10	16.7%
NV	2	1	1	50.0%
NY	27	7	20	25.9%
OH	7	4	3	57.1%
PA	10	0	10	0.0%
SC	1	0	1	0.0%
TN	7	4	3	57.1%
TX	8	3	5	37.5%
UT	1	1	0	100.0%
VA	6	1	5	16.7%
WA	3	2	1	66.7%
WI	2	1	1	50.0%
WV	2	0	2	0.0%