Practical Guidance Designed to Preserve Shareholder Protection from Liabilities of Subsidiaries[1]

By Craig Adoor and Josh Roesch

Every day, corporations are formed to insulate their owners (the shareholders) from liability for the corporation's debts and obligations. Under the principles of corporate law, a corporation's shareholders are typically not held personally liable for the debts, obligations or liabilities of a corporation, unless the corporation has failed to maintain the formalities required keep such debts, obligations and liabilities as separate and distinct from those of the shareholder(s).[2] Courts generally disregard the corporate form, and hold shareholders personally liable for the debts, obligations and liabilities of a corporation, under narrow circumstances when failure to disregard the corporate form would result in an injustice, pursuant to an equitable principle called "piercing the corporate veil."[3]

This article will analyze Missouri and Illinois law relating to piercing the corporate veil and will provide some general guidance on how corporations can organize and operate one or more subsidiaries in a manner that will provide arguments against the piercing of the subsidiary's corporate veil and holding the parent liable for the subsidiary's debts, obligations and liabilities.[4]

Missouri Law

Missouri courts apply the following three-part test to determine whether to pierce a corporation's veil:

> 1) Control, not mere majority or complete stock control, but complete domination, not only of finances, but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own; and 2) Such control must have been used by the corporation to commit fraud or wrong, to perpetrate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of plaintiff's legal rights; and 3) The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.[5]

Missouri courts analyzing whether to pierce the veil of a corporate sub-

1. This article has been prepared for an audience of attorneys so that they may provide practical advice to clients attempting to create a parent/subsidiary relationship in a manner that is aimed at avoiding the piercing of the subsidiary's corporate veil.

2. *See Real Estate Investors Four, Inc. v. American Design Group Inc.*, 46 S.W.3d 51, 56 (Mo. Ct. App. 2001); *Dwyer v. ING Investment Co., Inc.*, 889 S.W.2d 902, 904 (Mo. Ct. App. 1995); *Radaszewski v. Telecom Corp.*, 981 F.2d 305, 305 (8th Cir. 1992); William Meade Fletcher & Carol A. Jones, *Fletchers Cyclopedia Corporations*, § 41 (Thompson/West 2006). Note that individuals will always be liable for their own tortious conduct, meaning that a shareholder who commits tortious acts when acting as an officer, director, employee or agent of a corporation will still be personally liable for those tortious actions.

3. *See Real Estate Investors*, 46 S.W.3d at 56; *Dwyer*, 889 S.W.2d at 904 (Mo. Ct. App. 1995); *Radaszewski*, 981 F.2d at 305; Fletcher, *supra* note 2 at § 41.

4. Frequently, one of the main purposes of forming a subsidiary is to insulate the parent from the debts, obligations and liabilities of the subsidiary.

5. *66, Inc. v. Crestwood Commons Redevelopment Corp.*, 998 S.W.2d 32, 40 (Mo. 1999). The court in *Dwyer v. ING Investment Co., Inc.*, 889 S.W.2d 902 (Mo. Ct. App. 1995), noted that although Missouri courts have articulated both the alter ego test and the instrumentality test as tests for determining when to pierce the corporate veil, "the doctrines behind the tests are basically the same and [the court] regard[s] the tests as interchangeable." *Id.* at 904-05.

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sidiary and hold the parent corporation liable for the subsidiary's obligations, have outlined the following as factors to consider in determining whether a shareholder has complete control over a corporation under the first prong of the test:

> (1) The parent corporation owns all or most of the capital stock of the subsidiary. (2) The parent and subsidiary corporations have common directors or officers. (3) The parent corporation finances the subsidiary. (4) The parent corporation subscribes to all of the capital stock of the subsidiary or otherwise causes its incorporation. (5) The subsidiary has grossly inadequate capital. (6) The parent corporation pays the salaries and other expenses or losses of the subsidiary. (7) The subsidiary has substantially no business except with the parent corporation or no assets except those conveyed to it by the parent corporation. (8) In the papers of the parent corporation or in the statements of its officers, the subsidiary is described as a department or division of the parent corporation, or its business or financial responsibility is referred to as the parent corporation's own. (9) The parent corporation uses the property of the subsidiary as its own. (10) The directors or executives of the subsidiary do not act independently in the interest of the subsidiary but take their orders from the parent corporation in the latter's interest. (11) The formal legal requirements of the subsidiary are not observed.[6]

The above listed factors are used to determine the amount of control the parent corporation exhibits over a subsidiary, and courts will make their finding based on analysis of all such factors, without any single factor being determinative.[7]

The second prong of the Missouri test is based on whether the corporate structure was created to perpetrate a fraud or injustice or to accomplish an unlawful purpose.[8] Although the second prong of the test for piercing the corporate veil is set forth in terms of fraud, a finding of actual fraud is not necessary, as courts will use inadequate capitalization as evidence of fraud, even where a party lacked fraudulent intent.[9]

The adequacy of a corporation's capitalization is a question of fact that is measured as of the time of incorporation.[10] In *66, Inc. v. Crestwood Commons Redevelopment Corp.*,[11] the court noted that capitalizing a corporation with a minimal amount of assets compared to the known risks of the corporation is generally inadequately capitalizing the corporation, which indicates that the dollar amount constituting adequate capitalization for a corporation varies depending on the nature of the business being conducted.[12] In *Dwyer et al. v. ING Investment Co., Inc.*,[13] the court noted that operating a corporation without the purpose to profit is evidence of dishonest and unjust actions, which is a factor used in analyzing the second prong of the veil-piercing test.[14]

The third prong of the test is satisfied where a third party suffers losses as a result of the control exercised by the corporation's shareholders, and is determined based on the facts at issue.

Illinois Law

Under Illinois law, a parent corporation is not held liable for a subsidiary's debt and obligations merely through ownership of the subsidiary's stock, as

> it is a well-established principle that a corporation is separate and distinct as a legal entity from its shareholders, directors, and officers and, generally, from other corporations with which it may be affiliated.[15]

In order to pierce the corporate veil under Illinois law, a party must show that a party exerted extensive control over a corporation to the extent that the corporation is

6. *Real Estate Investors Four,* 46 S.W.3d at 56-57; *Collet v. American National Stores, Inc.*, 708 S.W.2d 273, 284 (Mo. Ct. App. 1986) (*citing Northern Illinois Gas Co. v. Total Energy Leasing Corp.*, 502 F. Supp. 412, 416-17, (N.D. Ill. 1980)).

7. The presence of one or more of these factors may justify a court in taking discovery from the parent regarding whether the parent should be held liable for the subsidiary's debts, obligations and liabilities. The observance of corporate formalities and the facts surrounding the situation at issue may allow the parent to win a case or summary judgment or to obtain a final judgment in its favor, but the parent will still incur the costs of defense.

8. *Collet*, 708 S.W.2d at 286.

9. *66, Inc.*, 998 S.W.2d at 41 (noting that inadequate capitalization shows "an improper purpose or reckless disregard for the rights of others"); *Dwyer v. ING Investment Co., Inc.*, 889 S.W.2d 902, 905 (Mo. Ct. App. 1995).

10. *Id. Fletchers Corporation Cyclopedia* notes that if a corporation is adequately capitalized at formation, then subsequent financial struggles will generally not result in the corporation being considered undercapitalized for veil piercing purposes. *See* Fletcher, *supra* Note 2, at § 41.33. Conversely, if a business is initially organized for one purpose but later expands its purpose to include more potential financial obligations or liabilities, then courts may consider the corporation undercapitalized at the time of the expansion, unless additional capital is contributed to adequately capitalize the corporation for the additional obligations or liabilities. *Id.*

    The court in *Radaszewski v. Telecom Corp.,* 981 F.2d 305 (8th Cir. 1992), noted that "the creation of an undercapitalized subsidiary justifies an inference that the parent is either deliberately or recklessly creating a business that will not be able to pay its bills or satisfy its judgments against it." *Id.* at 308.

11. 998 S.W.2d 32, 40 (Mo. 1999).

12. *Id.* The fact that the adequacy of capitalization varies depending on the nature of the business of the corporation is consistent with the determination of adequate capital being a question of fact, as the specific circumstances of each particular corporation must be considered in determining adequate capitalization.

13. 889 S.W.2d 902, 905 (Mo. Ct. App. 1995).

14. *Dwyer*, 889 S.W.2d at 905.

15. *Main Bank of Chicago v. Baker*, 427 N.E.2d 94, 101 (Ill. 1981).

a mere instrumentality of another, and it must further appear that observance of the fiction of separate existence would, under the circumstances, sanction a fraud or promote injustice.[16]

In further expanding this doctrine, Illinois courts have stated that the corporate veil will be pierced where

(1) there is such a unity of interest and ownership that the separate personalities of the corporations no longer exist and (2) circumstances exist such that adherence to the fiction of a separate corporate existence would sanction a fraud, promote injustice, or result in inequitable consequences.[17]

When examining the first prong of the test, Illinois courts take into consideration the following:

(1) inadequate capitalization; (2) failure to issue stock; (3) failure to observe corporate formalities; (4) nonpayment of dividends; (5) insolvency of the debtor corporation; (6) nonfunctioning of the other officers or directors; (7) absence of corporate records; (8) commingling of funds; (9) diversion of assets from the corporation by or to a stockholder or other person or entity to the detriment of creditors; (10) failure to maintain arm's-length relationships between the entities, and (11) whether, in fact, the corporation is a mere façade for the operation of the dominant stockholders.[18]

Illinois courts have stated that undercapitalization is a significant consideration in determining whether failing to pierce the corporate veil will result in inequitable consequences.[19] In determining whether a corporation is adequately capitalized, Illinois courts will look at whether the amount of capital contributed to the corporation is sufficient to satisfy the business the corporation desires to engage in and the obligations that will arise therewith.[20]

Illinois courts have noted that the same persons serving as officers and directors of both a parent corporation and a subsidiary corporation alone are not sufficient justification for piercing the corporation veil.[21] Nevertheless, a court will likely take such fact into consideration when examining all facts surrounding a parent/subsidiary relationship to determine whether veil piercing is appropriate. If the same persons serve as directors and officers of both a parent and a subsidiary, it may be challenging to argue that the subsidiary is not under the control of the parent, as the same persons are controlling both parties.[22]

In examining whether piercing the corporate veil is appropriate, Illinois courts have stated that the second prong

requires an inquiry into whether there is an element of unfairness, something akin to fraud or deception, or the existence of a compelling public interest.[23]

Although the second prong of the Illinois test notes that fraud is one item that will push the facts in favor of piercing the veil, Illinois courts have been careful to note that actual fraud is not a necessary element and that "limited liability may be discarded to prevent injustice or inequitable consequences."[24]

Illinois courts have gone further than just holding shareholders liable for a corporation's debts, obligations and liabilities and have held that non-shareholders who exhibit extensive control over a corporation can be held liable for a corporation's debts, obligations and liabilities.[25]

Suggestions for Parent/ Subsidiary Relationships

Because a veil-piercing claim is a highly fact intensive inquiry that involves a three- and two-part test in Missouri and Illinois, respectively, and because courts often state that the presence or absence of a particular factor in the first prong is not conclusive, it is difficult to provide definitive guidance on the minimum actions that would defeat the first prong of a veil-piercing claim.[26]

The activities in which a parent and subsidiary may engage in the context of a veil-piercing analysis can be viewed as a continuum. One side of the continuum is comprised of many of the actions that could lead a court to conclude that the parent so dominated the subsidiary that the corporate veil should be pierced, and the shareholder parent be held liable

16. Id.

17. *Gass v. Anna Hospital Corporation*, 911 N.E.2d 1084, 1091 (Ill. App. Ct. 2009); *Fontana v. TLD Builders, Inc.*, 840 N.E.2d 767, 776 (Ill. App. Ct. 2005).

18. *Fontana*, 840 N.E.2d at 778. It is worth noting that Illinois courts have considered inadequate capitalization under the first prong of their test.

19. *Jacobson v. Buffalo Rock Shooters Supply, Inc.*, 664 N.E.2d 328 (Ill. App. Ct. 1996) (noting that "an obvious inadequacy of capital, measured by the nature and magnitude of the corporate undertaking, has frequently been an important factor in cases denying stockholders their defense of limited liability").

20. *Fontana*, 840 N.E.2d at 789.

21. *Main Bank*, 427 N.E.2d at 101.

22. Although this is one factor that courts will consider when determining whether to pierce the corporate veil, courts have stated that the presence of this alone will likely not result in veil piercing, but the presence of the same persons serving as directors and officers of both a parent and subsidiary plus other factors will provide strong arguments in favor of piercing the corporate veil, as they will evidence the parent exerting control and influence of the subsidiary. See *Main Bank*, 427 N.E.2d at 101 (noting that "the use of common officers and directors of itself [does not] render one corporation liable for the obligations of another").

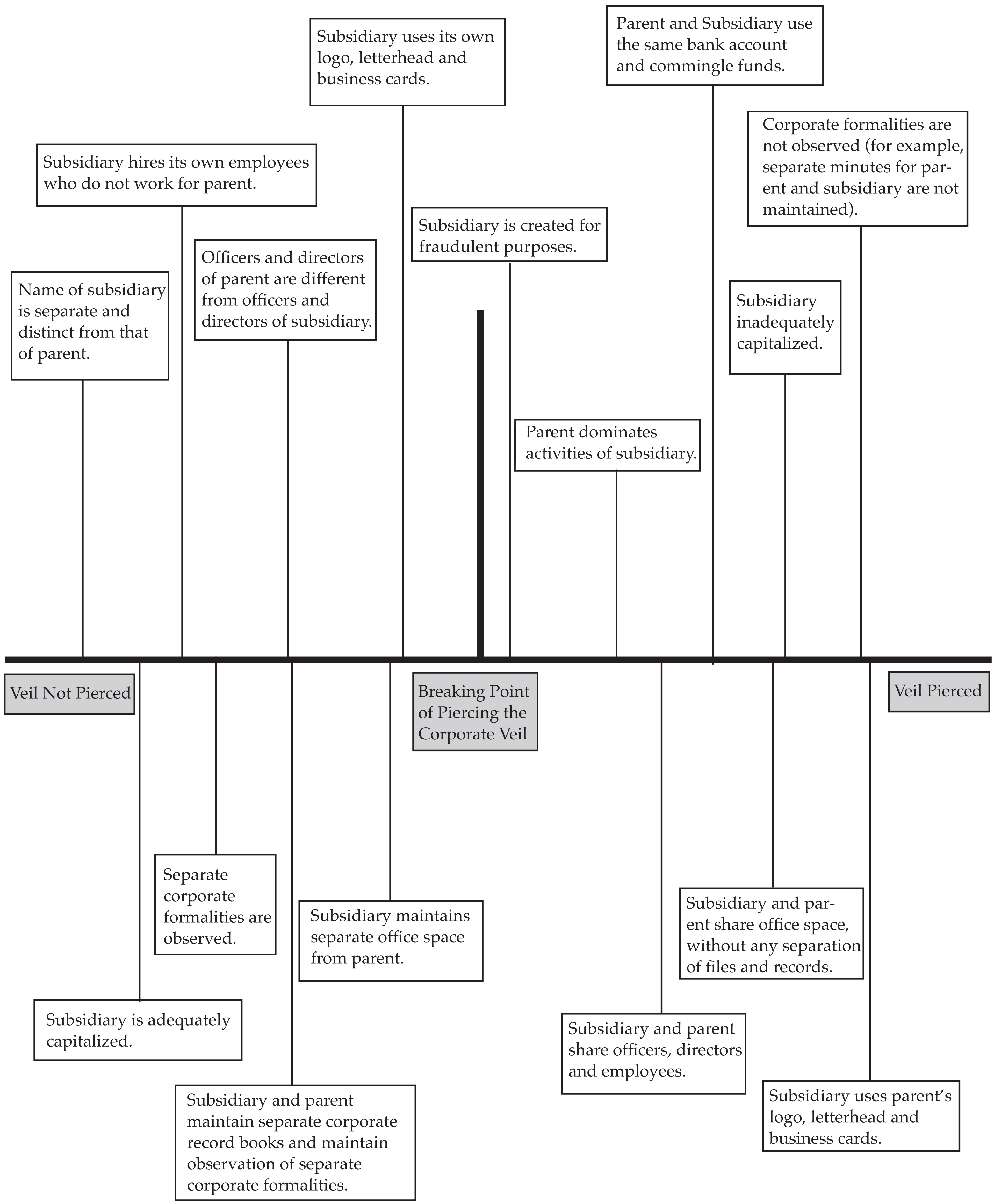
23. *Gass*, 911 N.E.2d 1091.

24. *Fontana*, 840 N.E.2d at 782 (*citing Central States, Southeast & Southwest Areas Pension Fund v. Gaylur Products, Inc.*, 384 N.E.2d 123 (Ill. App. Ct. 1978)).

25. *Fontana v. TLD Builders, Inc.*, 840 N.E.2d 767, 775-76 (Ill. App. Ct. 2005) (noting that in *Macaluso v. Jenkins*, 420 N.E.2d 251 (Ill. App. Ct. 1981), the court held that the chairman of the board of a non-profit corporation could be held liable for the non-profit's obligations).

26. Although the tests for piercing the corporate veil under Missouri law and Illinois law are not identical, they are similar. As a result, a corporation can follow the same advice in attempting to prevent the piercing of the corporate veil of a subsidiary in both Missouri and Illinois.

Veil-Piercing Continuum



for the debts, obligations and liabilities of the subsidiary. The other side of the continuum is comprised of actions that may be taken that could lead a court to conclude that the parent and the subsidiary are operated in such a manner that the parent should be allowed the limitation of liability that incorporation of a subsidiary provides. Not all of the factors a court will take into consideration are listed, and the factors listed are provided as an example of facts a court might consider in an effort to aid in analyzing situations and advising clients regarding the proper manner in which to set up a subsidiary. It is unlikely that any single action alone will be determinative in a veil-piercing claim; however, the more actions taken that fall on one side of the continuum or the other will likely guide a court in its analysis of whether to pierce the corporate veil.

Below we have listed actions that a parent corporation (the "Parent") can use to create and manage a subsidiary corporation (the "Subsidiary") in a manner that provides the Parent with strong arguments to defeat the potential assertion of undue unity of interest and ownership. The concepts of "Clear Distinction Between Parent and Subsidiary," "Actions that May Be Acceptable to Avoid Veil Piercing," and "Actions that Could Easily Result in Veil Piercing" are not ones that have been judicially adopted, but instead are suggestions developed through review of applicable law.

Clear Distinction Between Parent and Subsidiary	Actions that May Be Acceptable to Avoid Veil Piercing[27]	Actions that Could Easily Result in Veil Piercing
	Corporate Structure	
For each type of business activity in which the Parent desires to engage, the Parent causes the Subsidiary to form a joint venture with an unaffiliated partner such that the Parent will not hold all of the ownership interests in the Subsidiary.	The Parent sets up a different Subsidiary for each type of business activity in which the Parent desires to engage and the Parent wholly-owns each Subsidiary, effectively rendering the Parent a holding company.	The Parent establishes a Subsidiary and makes no effort to distinguish between management and operations of Parent and management and operations of Subsidiary.
The Subsidiary's governing documents should provide for fixed distributions to the Parent on a periodic basis; distributions may be cumulative so that a shortfall from one year may be made up in later years from amounts earned in excess of fixed distributions in those later years. If structured in this manner, distributions are beyond the discretion of the Subsidiary's board (whose members were appointed by the Parent).	The board of directors of the Subsidiary, whose members are not officers or members of the board of directors of the Parent, declares regular dividends and makes distributions to the Parent when such funds are not necessary for the Subsidiary's operations or satisfaction of the Subsidiary's debts, liabilities and obligations. [28]	The Parent's domination of the Subsidiary's board of directors is used to compel the Subsidiary's board of directors to dividend all earnings to the Parent, leaving no cushion for the Subsidiary's creditors or on-going operations.
	Assets/Equipment	
The Subsidiary should maintain a separate office in a building separate from any building out of which the Parent or its affiliates operate.	The Subsidiary may have its offices in the same building as the Parent, or one of its affiliates, but the offices, records, and files of the Subsidiary should be segregated from that of the Parent's, or it's affiliate's, office, records and files, and should be subject to a lease signed between the Parent and the Subsidiary, signed by different persons on behalf of the Parent and Subsidiary.	The Parent and Subsidiary operate in the same space without distinction, there is no lease between the Parent and Subsidiary and there is no rent charged between the parties.

27. These less restrictive alternatives may make business sense for a client, but should be coupled with actions that make a clear distinction between the parent and subsidiary; relying exclusively on these alternatives alone might lead a court to find that veil piercing is appropriate.

28. This alone will likely not lead to veil piercing, but it will be a strong argument in favor of it.

Clear Distinction Between Parent and Subsidiary	Actions that May Be Acceptable to Avoid Veil Piercing	Actions that Could Easily Result in Veil Piercing
	Assets/Equipment	
The building and real estate on which the Subsidiary's office is situated should either be owned by the Subsidiary or leased from a third party unaffiliated with the Parent.	The Subsidiary's office space may be leased or subleased from the Parent, so long as the lease was negotiated on an arm's length basis, contains no better terms than the Subsidiary could have received from an unaffiliated lessor and the lease terms are documented in a signed lease between the Parent and the Subsidiary, signed by different persons on behalf of the Parent and Subsidiary.	The Subsidiary's office space is the same as the Parent's, there is no lease between the Parent and Subsidiary, and there is no rent charged between the parties.
Furniture, fixtures, office equipment, operating equipment, vehicles and machinery ("Personal Property Assets") should be owned by the Subsidiary. Personal Property Assets may be leased, but, if so, the lease should be with companies unaffiliated with the Parent.	Personal Property Assets may be leased or subleased from the Parent, so long as such leases are negotiated on an arm's length basis and contain no better terms than the Subsidiary could have received from an unaffiliated lessor. The lease terms should be documented in a lease agreement between the Parent and the Subsidiary, signed by different persons on behalf of the Parent and Subsidiary. Any Personal Property Assets leased from the Parent should be repainted to obliterate any markings that would identify it as owned by the Parent. The Personal Property should be repainted with the Subsidiary's logos and trademarks so that observers will not be led to believe that it is the Parent's property, or that the Parent is providing the goods/services being provided by the Subsidiary.	The Parent and Subsidiary commingle Personal Property Assets and each uses such assets as its own, the use of the Personal Property Assets is not subject to a lease agreement between the parties, and there is no rent charged for the use of such assets.
	Marketing, Financial and Administrative Services	
The Subsidiary's accounting, client services, research and development, business development and all other administrative functions should be staffed completely separate from that of the Parent.	The Subsidiary's accounting, client services, research and development, business development and all other administrative functions may be provided by employees of the Parent pursuant to an administrative services agreement between the Parent and the Subsidiary. The administrative services agreement must be negotiated on an arm's length basis and contain terms no better than the Subsidiary could have received from an unaffiliated administrative services provider. The terms of the administrative services agreement must be documented in an agreement signed by the Parent and Subsidiary with different persons signing on behalf of the Parent and Subsidiary.	The Parent's accounting, client services, research and development, business development or other administrative functions are used by the Subsidiary without charge and without any administrative services agreement between the Parent and Subsidiary.

Clear Distinction Between Parent and Subsidiary	Actions that May Be Acceptable to Avoid Veil Piercing	Actions that Could Easily Result in Veil Piercing
Marketing, Financial and Administrative Services		
The Subsidiary's financial statements and accounting records should be maintained separately from that of the Parent, except as required for federal, state or local tax purposes. The Subsidiary must not furnish the Parent's consolidated financial statements to any customer, prospective customer, vendor, or subcontractor, to induce it to contract with, lend money to or otherwise extend credit to the Subsidiary.	The Subsidiary's financial statements and accounting records should be maintained separately from that of the Parent, except as required for federal, state or local tax purposes. In general, the Subsidiary should not furnish the Parent's consolidated financial statements to any customer, prospective customer, vendor, or subcontractor, to induce it to contract with, lend money to or otherwise extend credit to the Subsidiary. However, if and to the extent obtaining credit is predicated upon receiving the guarantee by the Parent, whether to secure financing or a performance bond, the Parent's consolidated financial statements may be furnished to prospective lenders. Even if financial statements are presented on a consolidated basis, financial records should be kept separately.	The Subsidiary does not maintain separate financial statements and accounting records, and customers and lenders are led to believe they are doing business with the Parent, based on the credit of the Parent.
The Subsidiary should maintain separate corporate record books and observation of corporate formalities.		No separate corporate record books or observation of corporate formalities are maintained by the Subsidiary.
The Subsidiary should maintain separate bank account(s) and should not commingle funds with the Parent.		The Subsidiary fails to maintain separate bank account(s) or commingles funds with the Parent.
The Parent should inject sufficient capital into the Subsidiary based on the Subsidiary's business purposes and its potential liabilities.	The Parent should inject enough capital into the Subsidiary to fund anticipated day-to-day operations but may rely on insurance bonds or guarantees from the Parent used to obtain loans for the remainder of the Subsidiary's business purposes and potential liability.	The Parent contributes minimal capital to the Subsidiary in disregard of the Subsidiary's potential debts, obligations and liabilities based on the business in which it is engaged.
The Subsidiary maintains separate telephone number(s), facsimile number(s) and e-mail address(es) from those of the Parent.		The Parent and Subsidiary utilize the same telephone number(s), facsimile number(s) and e-mail address(es).
Name/Trademarks, Etc.		
The Subsidiary should be organized and conduct its business under a name that is separate and distinct from the Parent, which generally means the Subsidiary should not have a distinguishable part of the Parent's name embedded in the Subsidiary's name.	The Subsidiary can be organized and conduct its business under a name in which part of the Parent's name is embedded.	The corporate name of the Subsidiary is confusingly similar to the name of the Parent, inducing third parties to believe the Subsidiary is the same as, or the alter ego of, the Parent.

Clear Distinction Between Parent and Subsidiary	Actions that May Be Acceptable to Avoid Veil Piercing	Actions that Could Easily Result in Veil Piercing
	Name/Trademarks, Etc.	
The Subsidiary should use colors, logos, trademarks, and trade names that bear no similarity to the Parent's colors, logos, trademarks or trade names.	The Subsidiary may utilize colors, logos, trademarks or trade names that may be identifiable with the Parent so long as they are nevertheless distinctly different from the colors, logos, trademarks, and trade names of the Parent.	The logos, trademarks or trade names of the Parent and Subsidiary are confusingly similar, so as to induce unrelated parties to believe that they are doing business with the Parent, as opposed to the Subsidiary.
The Subsidiary should use letterhead and business cards that are clearly distinguishable from letterhead used by the Parent.		The Subsidiary uses the same letterhead and business cards as the Parent, and/or the Subsidiary's employees pay no regard to using the Subsidiary's separate letterhead and business cards.
The Subsidiary should utilize employee uniforms and marked equipment that is distinctly different from the uniforms and marked equipment worn by employees of the Parent.	The Subsidiary may utilize employee uniforms and marked equipment that may be identifiable with the Parent, so long as they are nevertheless distinctly different from the uniforms worn by employees of the Parent and would not reasonably be expected to confuse a third party to believe it is doing business with the Parent.	The Subsidiary uses the same employee uniforms and marked equipment as the Parent.
	Management	
The directors and officers of the Subsidiary should not be the directors, officers or employees of the Parent.[29]	Some of the directors and officers of the Subsidiary can be directors, officers or employees of the Parent, but the directors and officers of the Parent and Subsidiary are not identical.[30] The Subsidiary should enter into a management services or administrative services agreement with the Parent that furnishes the directors/officers, pursuant to which the Subsidiary pays a fee for the management services provided by such person(s). The management services agreement should be negotiated on an arm's length basis, and the fee paid should be the same as would be paid to an unrelated third party. The terms of the management services agreement must be documented in signed agreement between the Parent and Subsidiary, with different persons signing on behalf of the Parent and Subsidiary.	Management of the Parent manages all aspects of the Subsidiary's operations.

29. If the Subsidiary is set up as a limited liability company, the Subsidiary should be set up as manager managed, and the manager(s) should not be a director, officer or employee of the Parent.

30. If the Subsidiary is set up as a limited liability company, then the Subsidiary should be manager managed. The manager(s) may be a director or officer of the Parent, but not all managers should be directors or officers of the Parent. To the extent practicable, officers of the Subsidiary should not be directors or officers of the Parent, although they may be employees of the Parent.

Clear Distinction Between Parent and Subsidiary	Actions that May Be Acceptable to Avoid Veil Piercing	Actions that Could Easily Result in Veil Piercing
	Management	
Employees of the Subsidiary should have no affiliation with the Parent and should be hired independently from any hiring activities conducted by the Parent.	The Subsidiary may obtain its personnel from the Parent pursuant to employee lease agreements between the Subsidiary and the Parent. The lease agreements should be negotiated on an arm's length basis and the fee paid should be the same as would be paid to an unrelated third party that would supply similar personnel. The terms of the employee lease agreement must be documented in a signed agreement between the Parent and Subsidiary, with different persons signing on behalf of the Parent and Subsidiary.	Employees of the Parent operate the Subsidiary, and vice versa, without an employee lease agreement and without any compensation.
	Contractual Relationships	
The Subsidiary must make clear to customers, prospects, vendors, subcontractors and lenders that the Subsidiary is an entity separate and apart from the Parent and does not rely on the Parent for financial support, credit, management or administrative services, equipment, or any other type of support. The Subsidiary should take affirmative steps at the commencement of any business relationship to inform customers, prospects, vendors, subcontractors and lenders that they are not to rely on the Subsidiary's affiliation with the Parent in deciding to contract with, lend money to or otherwise extend credit to the limited liability company.	The Subsidiary may inform customers, prospects, vendors, subcontractors and lenders that the Subsidiary is a subsidiary of the Parent. The Subsidiary should emphasize that unlike the divisions of the Parent, if any, which comprise a part of the Parent's corporate entity, the Subsidiary is a separate and distinct entity. The managers, officers, and employees of the Subsidiary should not take any actions or make any comments that would lead customers, prospects, vendors, subcontractors and lenders to rely on the Subsidiary's affiliation with the Parent in deciding to contract with, lend money to or otherwise extend credit to the Subsidiary.	The Parent and Subsidiary operate in such a manner that customers and vendors see no distinction between, or are confused as to the identity of, the Parent and Subsidiary and may be led to believe the Parent is responsible for the Subsidiary's debts, obligations and liabilities.

Conclusion

Although a parent corporation is generally protected from being held liable for the debts, obligation and liabilities of its subsidiary, the parent corporation must be careful to not exert too much control and/or influence over the operations of the subsidiary corporation. The above chart and continuum are meant to provide guidance on the types of activities a parent corporation should consider implementing in order to create strong arguments as to why the corporate veil of its subsidiary should not be pierced.

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