

# MAINE BUSINESS ENTITIES

## Liability of Individuals and Successors

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May 21, 2009

# Personal Liability

- General Rule:

Corporations and LLCs are separate legal entities with statutorily derived limited liability protections for owners and those that manage the entity



# Can't touch this

## CORPORATIONS

- SHAREHOLDERS
- DIRECTORS
- OFFICERS

## LIMITED LIABILITY

## COMPANIES

(LLCs)

- MEMBERS
- MANAGERS

# Personal Liability

Unless otherwise provided in a corporation's articles of incorporation, a **shareholder** of a corporation is not personally liable for the acts or debts of the corporation except that the shareholder may become personally liable by reason of the shareholder's acts or conduct.

**13-C M.R.S. § 623(2)**

# Personal Liability

Except as otherwise provided in this Act, the debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or otherwise, are solely the debts, obligations and liabilities of the limited liability company. A **member or manager** of a limited liability company is not obligated personally for any such debt, obligation or liability of the limited liability company solely by reason of being a member or acting as a manager of a limited liability company.  
31 M.R.S. § 645(1)

# Piercing the Corporate Veil

Piercing the Corporate Veil is an equitable doctrine that attempts to balance the public policies of encouraging business development with protecting those who deal with the corporation. *Johnson v. Exclusive Properties Unlimited*, 1998 ME 244, 720 A.2d 568

# Piercing the Corporate Veil

- Courts are hesitant to disregard the legal entity
- Will do so only when necessary to promote justice

# Piercing the Corporate Veil

Plaintiff must establish:

- 1) That the defendant abused the privilege of a separate corporate existence – some manner of dominating, abusing, or misusing the corporate form; and
- 2) An unjust or inequitable result would occur if the court recognized the separate existence.

*Johnson*, 1998 ME 244, ¶ 6

# Piercing the Corporate Veil

First Prong: Abuse of the privilege of separate corporate existence may be evidenced by twelve factors:

- 1) Common ownership
- 2) Pervasive control

# Piercing the Corporate Veil

- 3) Confused intermingling of business activity, assets or management
- 4) Thin capitalization
- 5) Nonobservance of corporate formalities

# Piercing the Corporate Veil

- 6) Absence of corporate records
- 7) No payment of dividends
- 8) Insolvency at the time of the litigated transaction

# Piercing the Corporate Veil

- 9) Siphoning away of corporate assets
- 10) Nonfunctioning of officers and directors
- 11) Use of corporation for transactions of the dominant shareholders
- 12) Use of the corporation in promoting fraud

# Piercing the Corporate Veil

Fraud is not a prerequisite to piercing the corporate veil. While a finding of fraud can make it easier to find that there has been an abuse of the privilege of a separate corporate identity, there could be a finding of abuse without fraud. *Advanced Construction Corporation v. Pilecki*, 2006 ME 84, 901 A.2d 189

# Piercing the Corporate Veil

- Second Prong: An unjust or inequitable result would occur if the court recognized the separate corporate existence

Does not *require* a finding of fraud or illegality. Could be to prevent injustice or inequitable consequences. *Johnson*, 1998 ME 244, ¶8

# Piercing the Corporate Veil

When attempting to pierce the corporate veil in the context of a contractual relationship, courts should apply more stringent standards because the party seeking relief is presumed to have voluntarily and knowingly entered into an agreement with a corporate entity and is expected to suffer the consequences of the limited liability associated with the corporate business form. *Alternative Nursing Care, Inc. v. C.H. Wright, Inc.*, 2003 Me. Super. LEXIS 114, Crowley, J. (Jun. 3, 2003)

# Piercing the Corporate Veil

Application to Limited Liability  
Companies

*Mowles v. Predictive Control System, LLC*,  
2002 Me. Super. LEXIS 190, Cole, J. (Oct.  
22, 2002)

# Piercing the Corporate Veil

31 M.R.S. § 645(3): The exceptions under the common law to the limited liability of shareholders of a business corporation organized under the Maine Business Corporation Act and shareholders of a professional corporation organized under the Maine Professional Service Corporation Act apply to the limited liability of members of a limited liability company

# Wrongful Act of Corporate Officer

Corporate officers who **participate** in wrongful acts can be held liable for their individual acts, and such liability is distinct from piercing the corporate veil. *Advanced*

*Construction Corporation v. Pilecki*,  
2006 ME 84, 901 A.2d 189

# Wrongful Act of Corporate Officer

Officer personally participating in the wrongful act cannot use the corporation to shield himself

Must show direct personal involvement by the officer in some decision or action which is causally related to the injury or harm

# Wrongful Act of Corporate Officer

Application to Limited Liability Companies

*Weber v. U.S. Sterling Securities, Inc.*, 924  
A.2d 816 (Conn. 2007)

# Tortious Conduct of Agent

In an action for the tortious conduct of an agent, both the agent and the principal may be held liable.

*Advanced Construction*, 2006 MR 84,

¶ 16

# Agency-Undisclosed Principal

An agent who makes a contract for an undisclosed principal or a partially disclosed principal will be liable as a party to a contract. *Treadwell v. J.D. Construction Co.*, 2007 ME 150, 938 A.2d 794

# CRIMINAL LIABILITY

An **individual** is criminally liable for any conduct the individual performs in the name of an organization or in its behalf to the same extent as if it were performed in the individual's own name or behalf. 17-A M.R.S. § 61(1)

# CRIMINAL LIABILITY

If a criminal statute imposes a duty to act on an organization, any **agent of the organization** having primary responsibility for the discharge of the duty is criminally liable if the agent recklessly omits to perform the required act.... 17-A M.R.S. § 61(2)

# Responsible Corporate Officer Doctrine

Limited Application: Strict liability

- A responsible share or responsible relationship
- Defendant has by reason of position in the corporation, responsibility and authority either to prevent in the first instance, or promptly to correct, the violation complained of, and that he/she failed to do so

# Personal Liability

Remember to Look for Statutory  
Bases for Liability

# Successor Liability

General Rule:

A corporation that purchases the assets of another corporation in a *bona fide* arm's-length transaction is not liable for the debts of the transferor corporation.

# Successor Liability

Bases:

- 1) Successor agrees either expressly or impliedly to assume liabilities of the predecessor
- 2) Transaction accomplished through merger or consolidation and becomes liable by operation of law

# Successor Liability

- 3) Transaction is fraudulent attempt to escape obligations of predecessor
- 4) Transaction is a sham
  - Mere continuation doctrine
  - De facto merger doctrine

# Successor Liability

Product Line Doctrine

Continuity of the Enterprise Doctrine

# Successor Liability

Remember to look for statutory  
bases of liability

# Maine Business Entities

Thank you