

Piercing Corporate Veil Piercing

BY LEE F. SACHNOFF AND BENJAMIN L. JONES

Reader Advisory: Anyone who finds the tone and tenor of this article to not meet the standards of Colorado Lawyer should not read the endnotes as they are even more sarcastic, infantile, and insipid than the main text. The views expressed in this article do not necessarily reflect the views of Colorado Lawyer, the Colorado Bar Association, or any law firm. Moreover, they do not even necessarily reflect the views of the authors. The authors wrote this article without using artificial intelligence or intelligence of any kind.

Our legal cups overflow with metaphors to help explain abstract legal concepts to laypeople. Some more notable ones include:

- The law is a jealous mistress.¹
- On a fishing expedition.²
- Another bite at the apple.³
- Fruit of the poisonous tree.⁴
- Dead letter law.⁵
- More fun than a barrel of monkeys.⁶
- What, like it's hard?⁷
- Take cognizance that (from now on) I will not accept here any copper from you that is not of fine quality.⁸
- How can you tell when matzo is stale?⁹
- Attractive nuisance.¹⁰

One of the best-known legal metaphors is “piercing the corporate veil,” which is shorthand for allowing a creditor to hold a corporation’s shareholders responsible for the corporation’s liability.¹¹ We believe that this legal metaphor has outlived its usefulness and should be retired, put out to pasture, and dry-cleaned only.¹²

Background

Oh, where to begin? The beginning is as good a place to start as any.

The Cambridge Dictionary defines “pierce” to mean “to make a hole in something using a sharp point.” So a sewing needle, paper clip, thumbtack, corkscrew, stiletto heel, spork, instant meat thermometer, or swordfish is all a creditor needs to pierce something as flimsy as a veil.

As succinctly and eloquently stated in *Colorado Methods of Practice*:

The corporate entity is a construct of the law, a primary purpose of which is to encourage investment by limiting the personal liability of a corporation’s shareholders. . . . On rare occasions, however, the corporate form is disregarded and with it the limited liability of its shareholders. In such instances, courts “pierce the corporate veil” to hold individual shareholders personally liable for the obligations of the corporation based on principles of equity.¹³

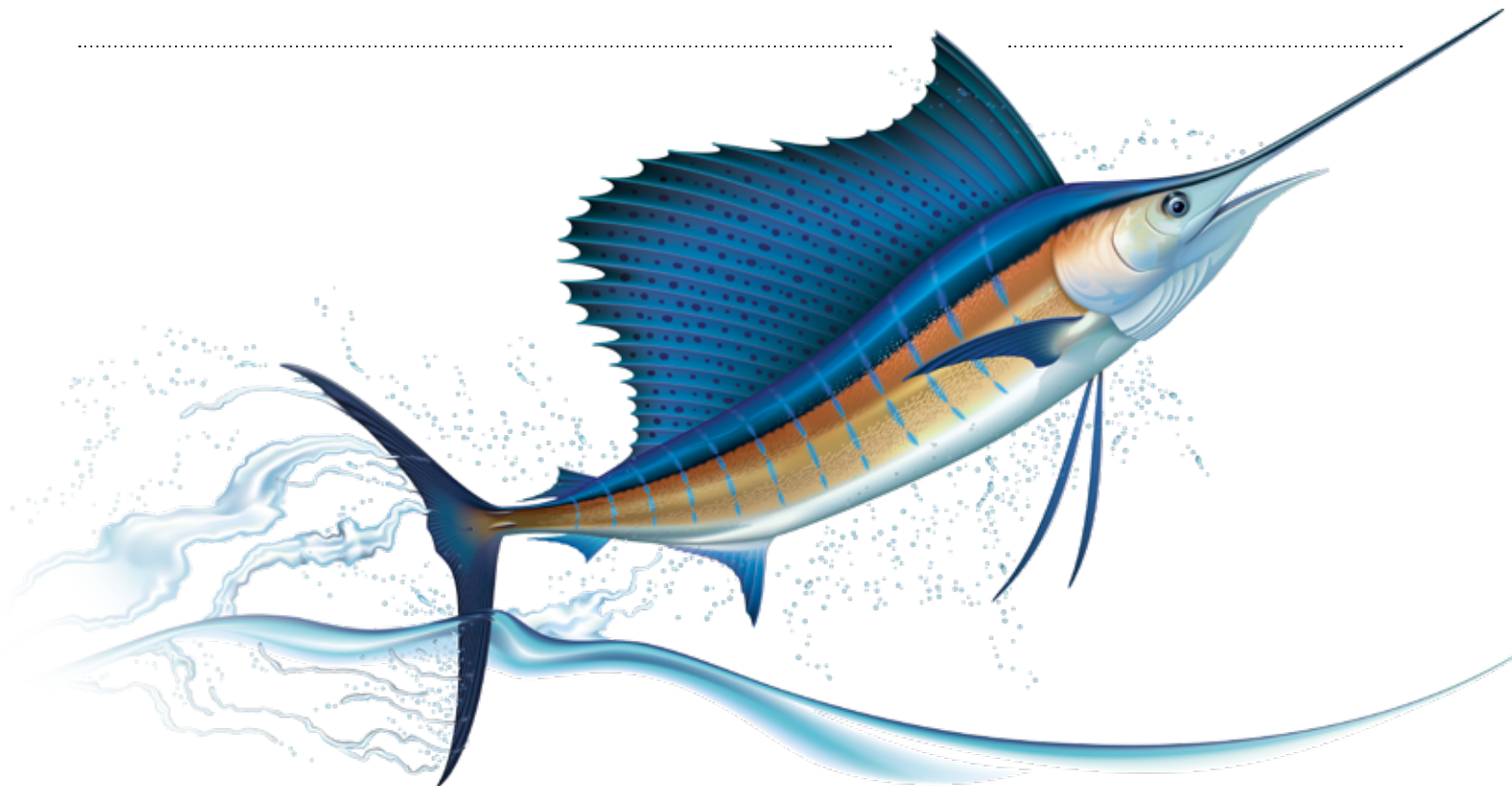
Veil piercing is a rare remedy—there are 24 reported Colorado court decisions and 22 reported Colorado federal court decisions ruling on the issue.¹⁴

For corporations with multiple shareholders, Colorado courts apply a “three!!!”¹⁵ step analysis¹⁶ to determine whether to pierce the corporate veil.¹⁷ The first step, split into additional baby steps as is the wont and privilege of the judiciary, is to answer the question: Is the corporation merely the alter ego of its shareholders? The court then blindly delves¹⁸ into the following factors:¹⁹ “whether (1) the corporation is operated as a distinct business entity; (2) funds and assets are commingled; . . . [and yada, yada, yada²⁰].” Second, did the (allegedly) villainous shareholders use the corporate veil to commit a fraud or circumvent a proper claim? And “third,”^{21,22} does Equity²³ require piercing the veil?

To pierce a subsidiary’s veil and hold a parent corporation liable for its obligations, Colorado courts apply the factors test set forth in *Fish v. East*:²⁴ “(1) The parent corporation owns all or majority of the capital stock of the subsidiary.²⁵ (2) The parent and subsidiary corporations have common directors or officers. (3) The parent corporation finances the subsidiary. . . . [Squirrel!]²⁶.”

The Problem

Picture this scenario. You have just met with a new client that consists of two individuals who want to form a new business to build widgets.²⁷ The principals do not want to lose their homes and savings if the business does not succeed, and so you explain to them that, as a general matter, they only stand to lose their invested capital if they organize as a corporation or



limited liability company. One of the principals is satisfied with your answer, but the other one (the one who is actually going to read all the way through the documents you draft) asks about the “as a general matter” qualification. You launch into an explanation of “piercing the corporate veil.”

The inquisitive owner is aghast: “You mean the only thing protecting me from unlimited liability and financial ruin is a *veil* that can simply be *pierced*?” You then have to explain that this is a rare occurrence, that you should be able to protect yourself if you organize and operate your business properly, and so on.²⁸ However, by now the damage is done, and you have lost all credibility with your new and now former client.

Veils are antiquated. The online *Cambridge Dictionary* defines “veil” as “a piece of thin material worn by women to cover the face or head,”²⁹ whereas the highly reputable *Urban Dictionary* defines “veil” as something “[e]quipped by shuns when rioting about [sic] the streets. It is for protection against the pepper spray and tear gas. Very rad, very rad.”³⁰ So by any definition,³¹ “veils” either inappropriately

assume a corporation’s gender or are associated with urban violence.

As further proof that veils are antiquated, in a recent survey, 87.13%³² of voting-age Americans can only associate veils with bridal veils. With 12 out of 8 marriages ending in divorce,³³ a veil hardly offers any reassurance of protection.

But more fundamentally, if veils are “a thin piece of material,” what kind of protection do they really afford corporate shareholders, limited liability company members, and limited partners? Clearly little to none if they can simply be pierced. The *Cambridge Dictionary* defines “pierce” to mean “to make a hole in something using a sharp point.”³⁴ So a sewing needle, paper clip, thumbtack, corkscrew, stiletto heel, spork, instant meat thermometer, or swordfish³⁵ is all a creditor needs to pierce something as flimsy as a veil.

So, we dare any lawyer to explain to a client that the only thing stopping a creditor from holding them personally responsible for all the liabilities of the corporation—piercing the corporate veil—is nothing more than a used Kleenex and a No. 2 Ticonderoga pencil with a worn-down eraser and teeth marks.³⁶

Finally, piercing the corporate veil is an Equitable³⁷ remedy, and it is Inequitable³⁸ (and probably Unconstitutional³⁹) that other forms of business entities do not merit a mention. CRS § 7-80-107(1) does provide (emphasis added):

In any case in which a party seeks to hold the members of a limited liability company personally responsible for the alleged improper actions of the limited liability company, the court shall apply the case law which interprets the conditions and circumstances under which **the corporate veil of a corporation may be pierced** under Colorado law.

However, in 2024, approximately 3.141592653589793238462643383%⁴⁰ of the entities registering with the Colorado Secretary of State were corporations, while the rest were a limited liability company (LLC), limited partnership (LP), limited liability partnership (LLP), limited liability limited partnership (LLLLP), limited partnership association (LPA), cooperative, cooperative association, limited cooperative association (LCA), limited association membership enterprise (LAME), or limited liability active membership association (LLAMA).⁴¹


The Solution

Colorado has the opportunity to lead the nation and adopt one or more new metaphors that illustrate the strength of the shield protecting business owners from personal liability, that expressly include more than corporations, and that can personally reflect on an individual attorney’s practice. The authors hereby propose that the grievously inadequate CRS § 7-80-107(1) be revised to reference the chart on the right to create personalized metaphors for Colorado attorneys.

So hypothetically,⁴⁷ if your Colorado bar number ends in 9, you were born in March, and you are dealing with a limited liability company, the proper metaphor would be “ravage the LLC rampart.” With an eye to keeping this article relevant for years to come, in the parlance of the younger generation, this chart will take your metaphor from a chuegy and cringe phrase to a dope and bussin’ expression of legal brilliance.

The authors are also developing a phone app to facilitate the adoption of new metaphors. All you have to do is enter your Colorado bar number, type of entity, birth month, social security number, and mother’s maiden name, and your new and improved metaphor will automatically generate.

Conclusion

In collusion [sic], the authors want to encourage practitioners of all stripes and flavors to create a new metaphor to describe how and when an owner may become liable for the liabilities of a company that otherwise provides limited liability protection. Let’s call all hands on deck so we can run up a flagpole a grindstone to which we have put our collective noses⁴⁸ to see who salutes to address this 800-pound white elephant in the room. 



Lee F. Sachnoff is a partner in the corporate working group in the Denver office of Kutak Rock LLP, where he advises clients on a broad range of commercial matters—lee.sachnoff@kutakrock.com. **Benjamin L. Jones** is an associate in Kutak Rock LLP’s Denver office, where his practice focuses on New Markets Tax Credit (NMTC) and Low-Income Housing Tax Credit (LIHTC) transactions—benjamin.jones@kutakrock.com.

PERSONALIZED METAPHORS

LAST DIGIT OF BAR #	ACTION	BIRTH MONTH	BARRIER
0	Explode	January	Barricade
1	Implode	February	Vault
2	Disintegrate	March	Rampart
3	Drive a Hyster H40-70A ICE pneumatic tire forklift ⁴² through	April	Tactical level IV bulletproof vest
4	Excavate	May	Roadblock
5	Raze	June	Fortifications
6	Invest (archaic) ⁴³	July	Portcullis
7	Send the Kool-Aid Man into	August	Golden Dome missile defense system
8	Sack ⁴⁴	September	Bocage (Normandy hedgerows)
9	Ravage	October	Tank plated armor
A ⁴⁵	Smite	November	Shield generator on the forest moon of Endor
I ⁴⁶	Lance	December	Armada

NOTES

- 1. *Everett v. Cole*, 282 P. 253, 254 (Colo. 1929).
- 2. *United States v. Loya-Ramirez*, No. 15-CR-00272, 2017 WL 11483914, at *1 (D.Colo. Mar. 20, 2017).
- 3. *Kleinert v. Salazar*, No. 11-CV-02428, 2012 WL 3471632, at *1 (D.Colo. Aug. 14, 2012).
- 4. *People v. Hines*, 575 P.2d 414, 414, 416 (Colo. 1978).
- 5. *Sensoria, LLC v. Kaweske*, 581 F.Supp. 1243, 1258 (D.Colo. 2022).
- 6. Technically, this is not a legal metaphor. And technically, it makes no sense, because in what universe could a barrel of monkeys be fun? Apart from animal cruelty issues, we assume that any barreled monkey would not be festive. Throw in some monkey poo flinging, and you have created a situation that is anything but fun.
- 7. *Legally Blonde* (Metro-Goldwyn-Mayer Pictures 2001), regarding admission to Harvard Law School.
- 8. Oppenheim, *Letters From Mesopotamia: Official, Business, and Private Letters on Clay Tablets from Two Millenia* 83 (1967) (translating the oldest-known consumer complaint, written on a stone tablet dated to 1750 BCE that sits in the British Museum).
- 9. *People v. Sachnoff*, 1 S.Ct. 1 (1776). This citation is fake. While the authors could not find any reference to stale matzo evaluations on Westlaw, Google, or the dark web, the authors feel strongly that it should become part of the legal lexicon and strongly encourage its use.
- 10. Mr. Jones wants to make clear that he knows “attractive nuisance” is not a metaphor. However, “attractive nuisance” has been Mr. Sachnoff’s nickname since first-year torts, and he insisted that it be included.
- 11. *Swinerton Builders v. Nassi*, 2012 COA 17, ¶ 14, 272 P.3d 1174.
- 12. There is no evidence of “dry-clean only” being used as a metaphor legal or otherwise, but the authors again feel strongly that it should be, notwithstanding it not making any sense in or out of context.
- 13. Rosenthal and Donovan, 1 *Colorado Methods of Practice*, Ch. 2, “The Corporation” 141, 298 (Thomson West 2023).
- 14. *Id.* at 299.

15. These quotation marks indicates sarcasm rather than a quote, and the three exclamation points are to note the authors' added disdain.

16. A three-step analysis is commonly known as a "waltzing" analysis and is named after Academy Award-winning actor Christopher Waltz. There is no citation for this because it is just something everyone knows and accepts.

17. *McCallum Family, L.L.C. v. Winger*, 221 P.3d 69, 72 (Colo.App 2009).

18. The court's delving is necessarily blind because justice is blind.

19. *McCallum Family, L.L.C.*, 221 P.3d at 74 (citing *In re Phillips*, 139 P.3d 639, 644 (Colo. 2006)).

20. *Seinfeld*, "The Yada Yada," Season 8, Episode 19 (Apr. 24, 1997).

21. Once again, sarcasm.

22. All tests for veil piercing require three or more prongs because two prongs do not make a right.

23. Please note that when this word appears in an opinion, it is capitalized in the writer's mind whether or not it reaches the page with a capital "E."

24. *Fish v. East*, 114 F.2d 177, 191 (10th Cir. 1940). See also *Great Neck Plaza, L.P. v. Le Peep Restaurants, LLC*, 37 P.3d 485, 490 (Colo.App. 2001).

25. Query: Is not the definition of a "subsidiary" a company in which a parent corporation owns all or a majority of its stock? Is this first prong in the analysis even necessary?

26. Dug in *Up* (Pixar 1990).

27. After exhaustive research consisting of one Google search, there is no business that manufactures widgets, and therefore this example does not open us up to action from our more litigious colleagues. Moreover, widgets only exist in the land of unicorns, the Tooth Fairy, and role-playing games like Dungeons and Dragons, Fallout, and Bankruptcy Court.

28. See notes 17 and 22.

29. <https://dictionary.cambridge.org/us/dictionary/english/veil>.

30. <https://www.urbandictionary.com/define.php?term=Veil>.

31. By "any definition," we specifically mean the two from the *Cambridge Dictionary* and Urban Dictionary. See notes 29 and 30.

32. This is a completely invented number, and no such survey was done.

33. This is also a completely made-up figure and is mathematically impossible.

34. <https://dictionary.cambridge.org/us/dictionary/essential-british-english/pierce>. The Urban Dictionary also offers several definitions of "pierce," most of which are not suitable for reprinting in *Colorado Lawyer*.

35. Throughout this article the authors have used sarcasm to support their thesis. However, to our knowledge these sarcastic sharp points have never pierced a veil, although they may have bruised an ego along the way.

36. See <https://www.kleenex.com/en-us> and <https://weareticonderoga.com/products/>

pencils/classic_yellow_wood_cased_pencils_sharpened.

37. Capitalized to emphasize moral weight.

38. *Id.*

39. *Id.*

40. This percentage is completely fabricated, and the fact that it is pi carried out to 27 digits is entirely coincidental.

41. Neither Limited Association Membership Enterprise nor Limited Liability Active Membership Associations have been approved by the Colorado legislature and signed into law, but the authors want this article to remain useful for posterity and are trying to get ahead of the curve. (Editors' note: We see what we just did there by using another metaphor. This attempt at cleverness will go over like a lead balloon.)

42. Authors' note: Mascot idea???

43. The authors recommend that you both

state "(archaic)" out loud and provide your client with a printout of the fourth Google search result for "invest meaning": "surround (a place) in order to besiege or blockade it," in the event that your bar number ends with 6. Clients may otherwise get the wrong idea about which direction the money is intended to flow.

44. As in the Visigoth sack of Rome in 410 AD.

45. A is the 11th digit in a duodecimal (base-numeral numeric system).

46. This symbol is used solely for illustrative purposes in the event that the Colorado Supreme Court decides to follow the lead of the Colorado Department of Motor Vehicles for license plates and permit designer attorney registration numbers.

47. Technically, this is not a hypothetical because these are one author's actual bar number and birthday information.

48. Gross.

The SideBar is an informal space where members can share their experiences, offer practical advice, share law-related stories, and take a lighter look at the law. Send your SideBar submissions to Susie Klein at sklein@cobar.org.

Trial Coming Up? I can help



SCOTT JURDEM

Best Lawyers in America

Inducted American Board
of Trial Advocates, Fellow

Board Certified Civil Trial Advocate —
National Board of Trial Advocacy

Life Member — NACDL

2006–2025 Colorado Super Lawyer

"Don't Get Outgunned"

JURDEM, LLC

820 Pearl Street, Suite H, Boulder, Colorado, 80302

303-402-6717

sj@jurdem.com

www.jurdem.com