

RESTRICTING LLC HIDE-AND-SEEK: REVERSE PIERCING THE CORPORATE VEIL IN THE STATE OF MICHIGAN

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I. INTRODUCTION

The practice of piercing the corporate veil is a judicial doctrine universally adopted in courts across the United States.¹ While the corporate form will normally protect the assets of its shareholders, courts have permitted creditors of corporate activity to disregard the veil of limited liability when the corporate form is utilized to perpetuate illegitimate business activity and the entity has become a mere “alter ego”

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1. Nicholas B. Allen, Note, *Reverse Piercing of the Corporate Veil: A Straightforward Path to Justice*, 85 ST. JOHN'S L. REV. 1147, 1148 (2011).

of the shareholders.² Courts have applied traditional veil piercing with “the ‘paramount goal’ of . . . [achieving] an equitable result.”³

Conversely, the doctrine of reverse piercing the corporate veil presents a far less common practice than its traditional counterpart.⁴ Unlike a traditional piercing case, reverse piercing the corporate veil permits a creditor with a judgment against an individual who possesses no assets to gain access to the individual debtor’s entity.⁵ Hence, the “reverse” distinction: reverse piercing presents the inverse format of traditional piercing.⁶ Despite some courts’ willingness to apply this new version of traditional veil piercing, many jurisdictions across the United States remain resistant to usage of this recently developed theory of recovery.⁷ Amongst the courts that *have* adopted the doctrine, there is hardly a consensus on the best method of application.⁸

This Note will explain how application of the reverse piercing doctrine will provide the most equitable remedy as it pertains to judgments against the sole member of a single-member limited liability company (LLC). To do so, Part II will begin by looking at prior reverse piercing jurisprudence throughout the United States. This section will then provide a careful examination of how single-member LLCs, in particular, have been treated under the doctrine. To conclude the section, this Note will explore how Michigan law has traditionally treated single-member LLCs. Part III will provide an analysis of the traditional factors utilized in reverse piercing jurisprudence, and then apply these factors to a single-member LLC analysis. Finally, Part IV will conclude that courts situated within the state of Michigan would be best suited to adopt the doctrine of reverse veil piercing, specifically as it applies to single-member LLCs.

2. *Id.* at 1147 n.1, 5, 1148 n.6, 8 (citing *United States v. Bestfoods*, 524 U.S. 51, 62 (1998); *Anderson v. Abbott*, 321 U.S. 349, 362 (1944); *First Nat’l Bank of Chi. v. F.C. Trebein Co.*, 52 N.E. 834, 837 (Ohio 1898); *Phillips v. Double B Trading Co.*, 893 P.2d 1357, 1362 (Colo. App. 1994); *Connolly v. Englewood Post No. 322 Veterans of Foreign Wars of the U.S., Inc.*, 139 P.3d 639, 644 (Colo. 2006) (en banc)).

3. *Allen*, *supra* note 1, at 1148.

4. *Id.*

5. Garrett Sutton, *Case Study: How Does Reverse Veil Piercing Occur?*, CORP. DIRECT (Apr. 4, 2018), <https://www.corporatedirect.com/asset-protection-resources/reverse-veil-piercing/> [<https://web.archive.org/web/20200125131945/https://www.corporatedirect.com/asset-protection-resources/reverse-veil-piercing/>]; see also Kurtis A. Kemper, Annotation, *Acceptance and Application of Reverse Veil-Piercing—Third-Party Claimant*, 2 A.L.R. 6TH 195 (2005).

6. Sutton, *supra* note 5.

7. *Allen*, *supra* note 1, at 1148.

8. *Id.* at 1148–49.

II. BACKGROUND

In order to understand the doctrine of reverse piercing the corporate veil, it may be useful to begin with a digestible example of a situation in which it may apply. Traditionally, a corporate entity is formed for its liability protections: in its simplest form, the owner is insulated from the liabilities arising from the activities of the entity, and the entity is insulated from liabilities arising from the personal activities of the owner (i.e., in a role distinct from his or her role as the owner of the company).⁹ However, once the activities of the owner and the entity become intertwined, the possibility for a “pierce” of the liability shield becomes readily apparent.¹⁰ Reverse piercing is utilized to pierce the liability shield that normally protects the entity from the owner’s activities.¹¹

A common example is the owner who transfers his personal assets to an entity in order to utilize the entity’s liability shield, or a commingling of assets.¹² Without the reverse piercing remedy for creditors, an owner who performs such a transfer may protect these assets indefinitely from any personal judgments.¹³ However, by doing so, the owner also establishes the existence of the entity as the “alter-ego” of the owner, meaning the legal distinction normally existing between the two is at best blurred and at worst nonexistent.¹⁴ The alter-ego determination by a court is key for application of a reverse-piercing doctrine: an owner who has utilized or transferred company assets and personal assets interchangeably increases the risk of fraud and injustice, two results that courts are eager to avoid.¹⁵

The doctrine of reverse piercing presents a controversial twist on the traditional doctrine. In practice, reverse piercing is far less recognized

9. Tod Northman, *What is Reverse Veil Piercing, and When is it Appropriate?*, TUCKER ELLIS LLP (May 11, 2018), <https://www.tuckerellis.com/lingua-negoti-blog/what-is-reverse-veil-piercing-and-when-is-it-appropriate> [<https://web.archive.org/web/20200125134126/https://www.tuckerellis.com/lingua-negoti-blog/what-is-reverse-veil-piercing-and-when-is-it-appropriate>].

10. *Id.*

11. *Id.*

12. *Id.*

13. See *Patin v. Thoroughbred Power Boats, Inc.*, 294 F.3d 640, 653 (5th Cir. 2002) (reasoning that the alter-ego doctrine provides courts with the ability to exercise personal jurisdiction over an individual or entity over which it would not otherwise be able to exercise jurisdiction. The theory which underlies this conclusion points out that “because the two corporations (or the corporation and its individual alter ego) are the *same entity*, the jurisdictional contacts of one are the jurisdictional contacts of the other for the purposes of the *International Shoe* due process analysis”).

14. *Id.*

15. Northman, *supra* note 9.

across jurisdictions than the more established exercise of traditional veil piercing. However, it still represents a growing trend across the courts of several states.¹⁶ Reverse piercing the corporate veil can take one of two forms: outside or inside.¹⁷ Of particular importance to this Note is the process of *outside* reverse piercing, which permits a third-party creditor to reach the assets of the corporate entity via the debts of an individual owner or shareholder.¹⁸ While the doctrine of reverse corporate veil piercing remains an ongoing source of controversy,¹⁹ the practice of reverse piercing the veil of single-member LLCs presents an even trickier issue.

The states that have already recognized reverse corporate veil piercing in some form include: California, Colorado, Nevada, New York, Texas, Virginia, and Washington, to name only a few.²⁰ Courts in these

16. Allen, *supra* note 1, at 1148.

17. 18 AM. JUR. 2D *Corporations* § 51 (2019) (explaining that outside reverse-piercing involves a third-party creditor reaching the assets of the corporation as a means of satisfying the debts of its insider(s), and that inside reverse veil piercing “involves an insider of a corporation seeking to disregard the corporate form of the insider’s own corporation for the insider’s own benefit”).

18. *Id.*; see also Allen, *supra* note 1, at 1148; Ariella M. Lvov, *Preserving Limited Liability: Mitigating the Inequities of Reverse Veil Piercing with a Comprehensive Framework*, 18 U.C. DAVIS BUS. L.J. 161, 167 (2018); Gregory S. Crespi, *The Reverse Pierce Doctrine: Applying Appropriate Standards*, 16 J. CORP. L. 33, 34 (1990).

19. Allen, *supra* note 1, at 1148.

20. DOUGLAS K. MOLL & ROBERT A. RAGAZZO, *CLOSELY HELD CORPORATIONS* § 5.08 n.184 (2019); see, e.g., *In re Phillips*, 139 P.3d 639, 647 (Colo. 2006) (“Colorado law permits outside reverse piercing claims when a dominant shareholder and corporation are alter egos of each other and justice requires that the trial court disregard the corporate form to achieve an equitable result.”); *C.F. Trust, Inc. v. First Flight Ltd. P’ship*, 580 S.E.2d 806, 810 (Va. 2003) (concluding “that there is no logical basis upon which to distinguish between a traditional veil piercing action and an outsider reverse piercing action . . . [t]herefore, we hold that Virginia does recognize the concept of outsider reverse piercing”); *Fox v. Fox*, Nos. 0721–97–4, 1094–97–4, 1998 WL 114010, at *8 (Va. Ct. App. Mar. 17, 1998) (“The record supports the trial court’s determination that the various entities and Dr. Fox shared a unity of interest and ownership, such that their separate personalities no longer existed” and affirming the trial court (internal quotations omitted)); *State v. Easton*, 647 N.Y.S.2d 904, 910 (Sup. Ct. 1995) (“[I]n terms of reverse piercing of the corporate veil, alter ego, or independent fraud, these corporations are liable to the State of New York for their own illicit activity as well as that of their alter ego, Dr. Easton.”); *Yamin v. Carroll Wayne Conn, L.P.*, 574 S.W.3d 50, 67 (Tex. Ct. App. 2018) (“Direct and reverse veil piercing are appropriate (1) where a corporation is organized and operated as a mere tool or business conduit of another; and (2) there is such ‘unity between corporation and individual that the separateness of the corporation has ceased’ and holding only the corporation or individual liable would result in injustice It is not clear why reverse veil-piercing would be any worse for business than traditional veil piercing, for both apply only where the corporation has ceased to have a separate existence.” (citation omitted)); *W.G. Platts, Inc. v. Platts*, 298 P.2d 1107, 1111 (Wash. 1956) (“If the interests of justice require the court to disregard the entity concept for the purpose of a division of property, it is able to do so for the purpose of imposing a lien as security for the payment”);

jurisdictions, as well as others that have previously considered the doctrine of reverse veil piercing, have pointed to a number of factors that must be weighed before determining that a reverse pierce is the appropriate remedy.²¹ These factors include: (1) the degree of identity between the shareholder and the corporation; (2) public policy concerns; (3) the degree of fraud, injustice, or inequity that would result; (4) the potential harm to non-culpable shareholders; (5) the hindrance to commercialism; and (6) the threat to investors' expectations.²² Some courts have previously permitted reverse piercing under a number of justifications that are interrelated with these factors.²³ Perhaps the most prevalent justification for reverse piercing exists when the individual uses the corporate entity as an "alter ego," thereby permitting the individual to shield their assets from liability exposure to a potential creditor.²⁴

LFC Mktg. Grp., Inc. v. Loomis, 8 P.3d 841, 847 (Nev. 2000) ("[W]e conclude that there are limited circumstances where the alter ego doctrine may be applied 'in reverse' in order to reach a corporation's assets to satisfy a controlling individual's debt."); *Curci Invs., LLC v. Baldwin*, 221 Cal. Rptr. 3d 847, 853 (Cal. Ct. App. 2017) ("For all of these reasons, we conclude reverse veil piercing may be available in this case.").

21. See *Connolly*, 139 P.3d at 647; *C.F. Trust*, 580 S.E.2d at 810; *Easton*, 647 N.Y.S.2d at 910; *Yamin*, 574 S.W. at 67.

22. See *supra* note 20. This Note will focus largely on the first four factors of analysis as they pertain to single-member LLCs in the state of Michigan. It is important to note that the final two criteria—the hindrance to commercialism and the threat to investors' expectations—do not require significant consideration for purposes of this Note. Generally speaking, a hindrance to commercialism will apply no matter what the reverse-piercing standard is. All economic and commercial decisions are "forward-looking," meaning the market will adjust and businesses will plan around any judicial decision that affects their practices. Thus, commercialism will be affected in *some* way, regardless of which side a court falls on in the reverse-piercing debate. As for the second criterion, no threats to investors exists per the very nature of a single-member LLC. The doctrine of reverse-piercing presumes an alter-ego between the sole member and the company (that the two are essentially one entity/person), and as such there exists no investors whose interests could be threatened by the decision.

23. See, e.g., *Connolly*, 139 P.3d at 646 ("A court may reverse pierce the corporate veil . . . only upon a clear showing that (1) the controlling insider and the corporation are alter egos of each other, (2) justice requires recognizing the substance of the relationship over the form because the corporate fiction is utilized to perpetuate a fraud or defeat a rightful claim, and (3) an equitable result is achieved by piercing" (citations omitted)); *Curci*, 221 Cal. Rptr. at 852 ("Among those concerns were allowing judgment creditors to bypass standard judgment collection procedures, harming innocent shareholders and corporate creditors, and using an equitable remedy in situations where legal theories or legal remedies are available." (citing *Postal Instant Press, Inc. v. Kaswa Corp.*, 77 Cal. Rptr. 3d 96, 97 (Cal. Ct. App. 2008))); *C.F. Trust*, 580 S.E.2d at 811 ("[A] court . . . must weigh the impact [on] innocent investors [, must] consider the impact [on] innocent secured and unsecured creditors[, and] must also consider the availability of other remedies the creditor may pursue. [A] litigant who seeks reverse veil piercing must prove the necessary standards by clear and convincing evidence.").

24. *MOLL & RAGAZZO*, *supra* note 20; see also *Allen*, *supra* note 1, at 1148.

Those courts that have acknowledged a creditor's right to reverse corporate veil pierce have typically adopted what is referred to as the "inverse method."²⁵ The inverse method favors substance over form and requires that the claimant in each case prove two conditions.²⁶ First, there must be a sufficient interrelation between interest and ownership, indicating that the debtor's corporate entity is essentially an "alter-ego."²⁷ Second, there must exist the overwhelming possibility of an inequitable result should the court elect not to acknowledge a theory of reverse piercing.²⁸ The justification for the inverse method lies with "the need for the court to 'avoid an over-rigid preoccupation with questions of structure . . . and apply the preexisting and overarching principle that liability is imposed to reach an equitable result' when the traditional test is satisfied."²⁹ The inverse method could be characterized as a complete detachment from an outright ban on the doctrine of reverse piercing; while one is entirely rigid in application, the other exists within a chaotic structure that ultimately results in inconsistent agreement, often leading to misunderstandings.³⁰

In the jurisdictions where reverse corporate veil piercing is not permitted or has not yet been recognized, the form of remedy varies depending on the form of the entity.³¹ In cases where the creditor has a judgment against a corporate shareholder, normal judgment collection techniques allow the creditor to attach the defendant's stock.³² As such, the judgment creditor is now entitled to the dividend payments that are

25. Lvov, *supra* note 18, at 169; *see also* Allen, *supra* note 1, at 1157 ("The inverse method simply takes the requirements of traditional veil piercing and applies them in the context of a reverse pierce.").

26. Lvov, *supra* note 18, at 168 n.46. (citing *In re Schuster*, 132 B.R. 604, 612 (D. Minn. 1991), which permitted reverse piercing to prevent "a legal fiction—the facade of the family corporation—to triumph over substance—Debtor's accrual and retention of nonexempt wealth, in the face of his insolvency and discharge from debt.").

27. *Id.* at 169.

28. *Id.*

29. *Id.* at 169–70 (quoting *Litchfield Asset Mgmt. Corp. v. Howell*, 799 A.2d 298, 312 (Conn. App. Ct. 2002)).

30. *Id.* at 176 (citing Kathryn Hespe, Note, *Preserving Entity Shielding: How Corporations Should Respond to Reverse Piercing of the Corporate Veil*, 14 J. BUS. & SEC. L. 69, 75–76 (2013)).

31. *Id.*

32. Allen, *supra* note 1, at 1164 (citing *Cascade Energy & Metals Corp. v. Banks*, 896 F.2d 1557, 1577 (10th Cir. 1990)); *see also* Timothy P. Glynn, *Beyond "Unlimiting" Shareholder Liability: Vicarious Tort Liability for Corporate Officers*, 57 VAND. L. REV. 329, 330 (2004) ("Since the early twentieth century, state business corporation statutes have limited the liability of shareholders for corporate obligations to the amount of their investment . . .").

normally distributed to the liable shareholder.³³ Courts that prefer this method of recovery traditionally cite the potential harm to non-culpable shareholders and other corporate creditors as justification for refusing application of the reverse piercing doctrine.³⁴ States that have expressly rejected the doctrine, for this or similar reasons, include Utah, Georgia, and Kansas.³⁵

If an individual obtains a judgment against a member of an LLC, the traditional (non-reverse piercing) remedy is similar to that of a corporate entity.³⁶ A judgment creditor of an LLC member receives a charging order, which is “an order issued by a court directing an LLC’s manager to pay to the debtor-owner’s personal creditor any distributions of income or profits that would otherwise be distributed to the debtor-member.”³⁷ In approximately two-thirds of states, such an order is a creditor’s exclusive remedy against LLC debtor-members.³⁸ The weakness of this remedy contributes to the need for reverse veil piercing in the LLC context.³⁹ In most states, the judgment creditor does not obtain *any* management rights in the LLC, only a financial interest in their distributions.⁴⁰ Thus, the

33. Pierre R. Loiseaux, *Liability of Corporate Shares to Legal Process*, 5 DUKE L.J. 947, 948 (1972) (“Whatever the physical situs of the certificates of stock, the wealth represented by these certificates should be available to the creditors of the owner.”); see also *Postal Instant Press, Inc. v. Kaswa Corp.*, 77 Cal. Rptr. 3d 96, 105 (Cal. Ct. App. 2008) (“The judgment creditor can enforce the judgment against the shareholder’s assets, including shares in the corporation. Upon acquiring the shares, the judgment creditor will have whatever rights the shareholder had in the corporation.”).

34. Allen, *supra* note 1, at 1163–64.

35. See, e.g., *Floyd v. IRS*, 151 F.3d 1295, 1300 (10th Cir. 1998) (“[I]n the absence of a clear statement of Kansas law by the Kansas courts, we will not assume that such a potentially problematic doctrine already has application in that state.”); *Acree v. McMahan*, 585 S.E.2d 873, 875 (Ga. 2003) (“[W]e are inclined to conclude that more traditional theories . . . are adequate to deal with situations where one seeks to recover from a corporation for the wrongful conduct committed by a controlling stockholder without the necessity to invent a new theory of liability.”); *Transamerica Cash Reserve v. Dixie Power & Water, Inc.*, 789 P.2d 24, 26 (Utah 1990) (“That issue has yet to be addressed in Utah, although it follows logically from the basic premise of the alter ego rule But even assuming we would so extend the doctrine, Transamerica has not made out a case for the doctrine’s application here.”).

36. See Stephen Fishman, *LLC Asset Protection and Charging Orders: An Overview of State Laws*, Nolo, <https://www.nolo.com/legal-encyclopedia/llc-asset-protection-charging-orders.html>

[<https://web.archive.org/web/20200129121756/https://www.nolo.com/legal-encyclopedia/llc-asset-protection-charging-orders.html>] (last visited Jan. 28, 2020).

37. *Id.*

38. *Id.*

39. See *id.*

40. *Id.*

creditor is unable to require the LLC to make any distributions, which may render the creditor's receipt of a judgment credit functionally useless.⁴¹

A. The Doctrine of Outside Reverse Corporate Veil Piercing

The doctrine of outside reverse corporate veil piercing permits an outsider to assert a claim against a corporate entity, not for the actions of the entity, but rather for the actions of one of its members or shareholders.⁴² Outside veil piercing can also arise as a method "to impose liability on a subsidiary corporation for the debts of a parent corporation," as well as "to hold one controlled corporation liable for the debts of an affiliated corporation."⁴³ Much like traditional veil piercing, the doctrine of reverse veil piercing requires a two-pronged analysis: (1) domination, which occurs when owners or members use the corporate form to advance personal goals, and (2) the extent of fraud or injustice against the creditor.⁴⁴

The first case that addressed the concept of reverse corporate veil piercing was *Kingston Dry Dock Co. v. Lake Champlain Transportation Co.*⁴⁵ This case presented an instance in which a creditor attempted to hold a subsidiary company liable for the debts of its parent company.⁴⁶ In *Kingston*, the appellant creditor attempted to levy an attachment in the conditional seller's boats based upon its conditional interest in the boats.⁴⁷ The court rejected the findings of the district court, stating that the attachment reaches the conditional buyer, but *not* the conditional seller simply by virtue of their parent-subsidiary relationship.⁴⁸ The fact that the conditional buyer and seller were separate corporations owned by the same shareholders and governed by the same directors was irrelevant to the court's finding of liability.⁴⁹ The court ultimately refused to apply the

41. *Id.* See *infra* Part III for further exploration of this possibility.

42. *Curci Invs., LLC v. Baldwin*, 221 Cal. Rptr. 3d 847, 851 (Cal. Ct. App. 2017); see also Sutton, *supra* note 5.

43. Allen, *supra* note 1, at 1154.

44. *Id.* at 1151, 1153.

45. *Kingston Dry Dock Co. v. Lake Champlain Transp. Co.*, 31 F.2d 265 (2d Cir. 1929); see also Allen, *supra* note 1, at 1154.

46. *Kingston Dry Dock Co.*, 31 F.2d at 267.

47. *Id.* at 266; see also Allen, *supra* note 1, at 1154 n.50 ("While Judge Hand described the facts of a typical outside reverse pierce case, he did not use the term 'reverse pierce.' The first mention of the term 'reverse pierce' came forty-five years later in a Georgia case."); *Kingston Dev. Co., Inc. v. Kenerly*, 208 S.E.2d 118, 122 (Ga. Ct. App. 1974) ("Philosophically, we see no reason why such reverse piercing of the corporate veil should not be enforced even though no fraud is alleged.").

48. *Kingston Dry Dock Co.*, 31 F.2d at 266.

49. *Id.* at 266-67.

doctrine of reverse piercing.⁵⁰ In his conclusion, Judge Learned Hand attempted to limit the scope of the reverse piercing doctrine.⁵¹ Specifically, Judge Hand wrote that although "it may be too much to say that a subsidiary can never be liable for a transaction done in the name of a parent . . . such instances, if possible at all, must be extremely rare."⁵²

Another early case in which the doctrine of reverse corporate veil piercing was considered was *Shamrock Oil & Gas Co. v. Ethridge*.⁵³ In *Shamrock*, the defendant obtained a judgment against the owner of the corporation in his individual capacity.⁵⁴ With the judgment unsatisfied, the defendant attempted to attach the corporation's main asset—an oil-drilling rig—as a method of satisfying the judgment against the owner.⁵⁵ Under a theory of reverse veil piercing, the court found that the defendant was the proper owner of the property, and further, that they were entitled to immediate possession because the corporation was an alter-ego of the officer.⁵⁶

The court continued, finding two relevant factors in determining the likelihood of an ability to reverse pierce: (1) that "the corporation is not only influenced and governed by the person, but that there is such a unity of interest and ownership that the individuality, or separateness, of the said person and corporation has ceased," and (2) "that the facts are such that an adherence to the fiction of the separate existence of the corporation would, under the particular circumstances, sanction a fraud or promote injustice."⁵⁷ When applying these factors, the court determined that the corporation had no legitimate business purpose distinguishable from Phillips and his drilling operations and concluded that the corporation's sole purpose was for possession of the rig while Phillips made personal use of it for those operations.⁵⁸ Further, the court determined that an injustice would occur if the doctrine was not applied, since the defendant would be losing the value of its judgment against Phillips.⁵⁹ Ultimately, the court concluded that the defendant in this case was entitled to immediate possession of Phillips' property.⁶⁰

50. *Id.* at 267.

51. Allen, *supra* note 1, at 1155.

52. *Id.* (quoting *Kingston Dry Dock Co.*, 31 F.2d at 267).

53. *Id.*

54. *Id.*

55. *Id.*

56. *Shamrock Oil & Gas Co. v. Ethridge*, 159 F. Supp. 693, 697-98 (D. Colo. 1958).

57. *Id.* at 697.

58. *Id.*

59. *Id.* at 698.

60. *Id.*

One of the most widely cited opinions regarding reverse corporate veil piercing came from the Colorado Supreme Court.⁶¹ In *In re Phillips*, the court held that “Colorado law permits outside reverse piercing when justice so requires.”⁶² The case was the result of a bankruptcy trustee attempting to prevent a debtor from transferring property into the name of a corporation of which the debtor was the dominant and controlling shareholder, thereby placing the property beyond the reach of the trustee.⁶³ In reaching its conclusion, the Colorado Supreme Court reasoned that concerns surrounding outside reverse piercing’s effects upon innocent shareholders are “effectively alleviated” when an equitable result is obtained through its usage.⁶⁴ The court further established a precedent for later decisions, requiring the presence of three factors before the corporate entity may be disregarded: (1) the debtor and the corporate entity are alter-egos of one another; (2) justice requires that the court disregard the corporate form because the entity is merely a corporate fiction used to perpetrate fraud or defeat a rightful claim; and (3) an equitable result is ultimately achieved by allowing the reverse pierce.⁶⁵

B. Treatment of Single-Member LLCs in Other Jurisdictions

In jurisdictions beyond the state of Michigan, some courts have shown a willingness to recognize the rights of creditors as they pertain to the debts owed by a single-member of an LLC.⁶⁶ In the case of *In re Albright*, the trustee of a Chapter 7 bankruptcy filing moved to take possession of an LLC, when the bankruptcy debtor was the sole member and manager.⁶⁷ The trustee argued that “because the Debtor was the sole member and manager” at the time of the bankruptcy filing, the trustee was entitled to possession and total control of the LLC.⁶⁸ The U.S. Bankruptcy Court in Colorado agreed with the trustee and rejected the argument that a creditor’s sole remedy against a single-member LLC was a charging order.⁶⁹ A charging order provides a judgment creditor with rights to the distributions made to the individual member (debtor) obtained as a result

61. *In re Phillips*, 139 P.3d 639 (Colo. 2006); see also Allen, *supra* note 1, at 1161.

62. *Phillips*, 139 P.3d at 645.

63. *Id.* at 641–42.

64. *Id.* at 645.

65. *Id.* at 646.

66. See, e.g., *Sky Cable, LLC v. DIRECTV, Inc.*, 886 F.3d 375 (4th Cir. 2018); *In re Albright*, 291 B.R. 538 (Bankr. D. Colo. 2003); *Curci Invs., LLC v. Baldwin*, 221 Cal. Rptr. 3d 847 (Cal. Ct. App. 2017).

67. *Albright*, 291 B.R. at 539.

68. *Id.*

69. *Id.* at 541.

of their interests in the LLC and is enforced to protect the other members of the LLC.⁷⁰ It provides the other members with protection from the possibility of sharing governance responsibilities with an individual they did not previously contract with or do not otherwise have any intentions of contracting with.⁷¹

The court considered the reasons for applying the charging order as an exclusive remedy and found that because there were no other members whose interests needed protection in this instance, a charging order did not need to be the exclusive remedy for the creditor.⁷² As such, the court permitted the creditor to undertake the practice of reverse veil piercing, at which point the creditor stepped into the debtor's shoes and became the sole possessor of the LLC.⁷³ As a result, the creditor was able to liquidate the assets of the company and distribute them to himself as a means of satisfying the debts owed by the company's prior sole member.⁷⁴

A more recent case dealing with this particularized formulation of the doctrine occurred in California, when the Fourth District concluded that the applicable California statute providing for a charging order as the remedy against LLCs did *not* preclude application of outside reverse veil piercing as a means of allowing a third-party creditor to add the LLC to the action against the LLC's sole member.⁷⁵ In *Curci Investments LLC v. Baldwin*, Baldwin owned a 99% member interest in a Delaware LLC, while his wife owned the other 1%.⁷⁶ After receiving a loan from Curci, which was due with interest some years later, Baldwin proceeded to distribute the funds from JPBI (the Delaware LLC) into various general partnership accounts.⁷⁷

After not receiving the payment due on the loan, Curci received a judgment from the court against Baldwin, which Baldwin also subsequently failed to pay.⁷⁸ Baldwin's second failure to fulfill his obligations allowed Curci to pursue and receive a charging order against JPBI on any distributions made to Baldwin.⁷⁹ However, upon receipt of the charging order, JPBI did not make a single distribution to Baldwin, which meant that Curci received no money as a result of Baldwin's control

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Curci Invs., LLC v. Baldwin*, 221 Cal. Rptr. 3d 847, 853 (Cal. Ct. App. 2017).

76. *Id.* at 849.

77. *Id.*

78. *Id.* at 849–50.

79. *Id.* at 850.

over the distributions JPBI made.⁸⁰ In its opinion, the court reasoned as follows:

[T]he key is whether the ends of justice require disregarding the separate nature of JPBI under the circumstances. In making that determination, the trial court should, at minimum, evaluate the same factors as are employed in a traditional veil piercing case, as well as whether Curci has any plain, speedy and adequate remedy at law.⁸¹

The court also noted a key distinction between a creditor of a corporation and a creditor of an LLC.⁸² A creditor of a shareholder of a corporation possesses the right to step into the shareholder's shoes and receive distributions, whereas a creditor of a member of an LLC possesses only a right to a lien on distributions when they are made.⁸³ An LLC, especially one controlled by a single member, possesses the ability to ensure that no distributions are made, thus rendering a creditor's charging order effectively valueless.⁸⁴

The United States Court of Appeals for the Fourth Circuit considered a similar question shortly after the California state court decision in *Curci Investments*.⁸⁵ In *Sky Cable*, the Fourth Circuit permitted a judgment creditor against an LLC's single member to reach the assets of the LLC when it was determined that the LLC was merely an alter ego of the debtor.⁸⁶ The LLC was, in effect, a sham entity.⁸⁷ The district court "found significant evidence of Coley's failure to observe corporate formalities, an utter lack of proper accounting records, and extensive commingling of assets."⁸⁸ The appellate court affirmed the district court's findings of an alter ego based on these facts⁸⁹ and later rejected an argument from Coley that the alter ego must be established with a fraudulent purpose in mind to

80. *Id.*

81. *Id.* at 854 (citation omitted).

82. *See id.* at 852-53.

83. *Id.*

84. *See, e.g., id.* at 853 (reasoning that "[a] debtor remains a member of the LLC with all the same rights to manage and control the LLC, including . . . the right to decide when distributions to members are made, if ever." (emphasis added)).

85. *Sky Cable, LLC v. DIRECTV, Inc.*, 886 F.3d 375, 382 (4th Cir. 2018) ("This appeal raises the question whether application of Delaware law in this case permits the remedy of reverse piercing a corporate veil of an LLC, when the LLC has been determined to be the alter ego of its sole member.").

86. *Id.* at 389.

87. *Id.*

88. *Id.* at 390 (internal quotation marks omitted).

89. *Id.*

permit reverse veil piercing.⁹⁰ Instead, the court reasoned that the requisite condition is one of results, not of motive.⁹¹ If the alter ego is a mechanism used in the perpetration of a fraud or injustice, it would be sufficient for a reverse piercing claim regardless of original motivations.⁹² If the rule was one based upon motivations rather than results, it would severely diminish the ability of the state to protect its legitimate interest in “‘prevent[ing] the entities it charters from being used as vehicles for fraud,’ and would allow solvent debtors to engage in fraud by using the LLC form solely to avoid liability for their debts.”⁹³

The court also pointed to substantial proof that the various LLCs were commingling funds.⁹⁴ This evidence validated the existence of a single economic entity among the various LLCs, with Coley conducting the operations of the singular economic unit.⁹⁵ As such, the Fourth Circuit determined that the exclusivity provision in Delaware’s charging statute did not allow the protections of the Delaware statute.⁹⁶ The Delaware charging statute provides that “entry of a charging order is the exclusive remedy by which a judgment creditor of a member or a member’s assignee may satisfy a judgment out of the judgment debtor’s limited liability company interest. . . .”⁹⁷ However, the Fourth Circuit was careful in its construction of the rule, holding that the doctrine of reverse piercing should only be permissible in those rare instances in which a fraud or other injustice had been clearly established, because this doctrine would otherwise defeat the legal status of the LLC.⁹⁸

C. Treatment of Single-Member LLCs in Michigan

In the state of Michigan, the Michigan Limited Liability Company Act (MLLCA) defines the rights of LLCs.⁹⁹ As currently constructed, the MLLCA provides that the exclusive remedy by which a judgment creditor can seek to satisfy a judgment against one of the company’s members is through a charging order.¹⁰⁰ A charging order is defined as “a lien on the membership interest of the member that is subject to such an order.”¹⁰¹

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.* at 389 (quoting *NACCO Indus. v. Applicia Inc.*, 997 A.2d 1, 26 (Del. Ch. 2009)).

94. *Id.* at 390.

95. *Id.* at 391.

96. *Id.* at 389.

97. DEL. CODE ANN. tit. 6, § 18-703 (West 2013).

98. *See Sky Cable*, 886 F.3d at 389.

99. MICH. COMP. LAWS §§ 450.4101–450.5200 (1993).

100. MICH. COMP. LAWS § 450.4507 (2010).

101. *Id.*

Importantly, Michigan law provides that a recipient of a charging order “does *not* then become a member of the limited liability company” because of his victorious judgment; rather, the creditor only receives the right to distributions normally due to the member against whom the charging order is received.¹⁰²

A near-direct application of the MLLCA to the circumstance this Note considered occurred in *In re Dzierzawski*.¹⁰³ In *Dzierzawski*, a bankruptcy court in the Eastern District of Michigan considered arguments as to whether or not a creditor possessed a right to reverse pierce the veil of a single-member LLC, which was attached to its sole member, while the single member was undergoing bankruptcy proceedings.¹⁰⁴ In this case, the creditor advanced various arguments consistent with reverse veil-piercing jurisprudence.¹⁰⁵ First, it argued that because only a single member operates the LLC, the considerations of prejudice to other members would be irrelevant.¹⁰⁶ Second, the bankruptcy creditor argued that if considered outside the bankruptcy context, the single member would retain the power to manipulate the schedule of distributions, and, as such, a strong possibility existed that a charging order against the company would provide little to no benefits to the recipient of such an order.¹⁰⁷ In its conclusion, the bankruptcy court reasoned:

[T]his Court predicts, with a high degree of confidence, that the Michigan Supreme Court (and any other non-bankruptcy court) would hold that the Michigan charging-order statute, Mich. Comp. Laws § 450.4507, and its limitations on creditor remedies, *does* apply to single-member LLCs just as it applies to all other LLCs.¹⁰⁸

The court found no reason to distinguish between limited liability companies controlled by multiple members and those controlled by a single member because, as the court pointed out, “the statute is unambiguous on this point.”¹⁰⁹ Ultimately, the decision of the bankruptcy

102. *Id.* (emphasis added).

103. *In re Dzierzawski*, 528 B.R. 397 (Bankr. E.D. Mich. 2015).

104. *Id.*

105. *Id.* at 408–09 (“But Vulpina argues that it may be greatly prejudiced in its ability to realize any collection of its judgment from the Vinifera asset, if Vulpina must pursue its fraudulent transfer action outside of bankruptcy. Outside of bankruptcy, Vulpina’s ability to realize any value from the Debtor’s membership interest in Vinifera may be greatly limited by Michigan’s charging-order statute that applies to limited liability companies.”).

106. *Id.* at 412.

107. *Id.*

108. *Id.* at 413.

109. *Id.*

court suggests that Michigan law, as currently construed, would not permit the doctrine of reverse corporate veil piercing in the context of LLCs.

More recently, Michigan courts further considered the possibility of permitting the practice of reverse piercing in *Securities and Exchange Comm'n v. Mulholland*.¹¹⁰ *Mulholland* did not specifically involve or address single-member LLCs, but it presents important concepts pertaining to the approach of Michigan courts to the doctrine of reverse piercing.¹¹¹ The question presented in this case was whether the Securities and Exchange Commission (SEC) was permitted to enforce one of its own judgments without regard to the protections afforded through state law to the creditors of private judgments.¹¹² Pursuant to Michigan law, the defendant in this case argued that the SEC must first seek a charging order to satisfy the outstanding debts of the member.¹¹³ In response, the SEC contended that the entities in question were merely shell companies¹¹⁴ and, as such, the corporate form should be disregarded in the interests of justice.¹¹⁵

The District Court reiterated that “Michigan courts will not pierce the corporate veil unless (1) the corporate entity was a mere instrumentality of another entity or individual; (2) the corporate entity was used to commit a fraud or wrong; and (3) the plaintiff suffered an unjust loss.”¹¹⁶ The court went even further, stating:

Factors to consider include whether there is ‘[c]omplete identity of interest between sole shareholder and corporation,’ whether ‘the corporation is a mere agent or instrumentality of its

110. SEC v. Mulholland, No. 12-cv-14663, 2017 U.S. Dist. LEXIS 190387 (E.D. Mich. Nov. 17, 2017).

111. *Id.* at *46 (“[T]he company appears to have been created solely for the purpose of placing James Mulholland’s assets outside the reach of his creditors. In this situation, allowing James Mulholland to shield his assets behind the corporate form would work a fraud on the Court . . .”).

112. *Id.* at *21.

113. *Id.* at *41.

114. See Nicholas Vail, Comment, *Cracking Shells: The Panama Papers & Looking to the European Union’s Anti-Money Laundering Directive as a Framework for Implementing a Multilateral Agreement to Combat the Harmful Effects of Shell Companies*, 5 TEX. A&M L. REV. 133, 136 (2017) (“A shell company is an entity that has no significant assets or ongoing business activities and ‘has disguised its ownership in order to operate without scrutiny from law enforcement or the public.’” (quoting *Anonymous Companies*, GLOB. FIN. INTEGRITY, <http://www.gfintegrity.org/issue/anonymous-companies/> [web/20200125233003/https://gfintegrity.org/issue/anonymous-companies/] (last visited Jan. 26, 2020))).

115. See *Mulholland*, 2017 U.S. Dist. LEXIS 190387, at *41.

116. *Id.* (citing *Servo Kinetics, Inc. v. Tokyo Precision Instruments Co.*, 475 F.3d 783, 798 (6th Cir. 2007)).

shareholders or a device to avoid legal obligations,' or whether the corporate form is being used 'to defeat public convenience, justify a wrong, protect fraud or defend crime.'¹¹⁷

Ultimately, the court found that the defendant was attempting to utilize the protections of state law to shield his assets from creditors, a practice the court concluded would create a fraud upon both the court and the SEC.¹¹⁸

After considering the forms of reverse corporate veil piercing applied by other jurisdictions as well as the approach Michigan courts contemplated, it is apparent that the case law strongly supports the conclusion that application of the reverse-piercing doctrine to single-member LLCs would be in the best interest of Michigan courts, as it is the most equitable remedy for all parties.

III. ANALYSIS

When assessing single-member LLCs, Michigan courts would be best served by adopting a policy of reverse corporate veil piercing in the rare situations where such a policy is necessary.¹¹⁹ Reverse piercing the veil of a single-member LLC achieves the goal of providing equitable justice to deserving parties, while also preserving the previously cited concerns of courts in other jurisdictions. As it is currently construed, the MLLCA is not a sufficient measure for dealing with single-member LLCs because there are conceivable, exceptional circumstances under which a judgment creditor can remain without an adequate remedy at law.¹²⁰ Furthermore, reverse piercing the liability shield of single-member LLCs is justified by a multitude of the previously discussed relevant factors, including: (1) the degree of identity between the individual and the entity; (2) various public

117. *Id.* (citing *Kline v. Kline*, 104 Mich. App. 700, 703, 305 N.W.2d 297, 298-99 (1981)).

118. *Id.* at *46.

119. Namely, when the single member of an LLC has received a judgment against it in the form of a charging order but refuses to make distributions, the charging order is rendered toothless. *See, e.g.,* Stephen Fishman, *LLC Asset Protection and Charging Orders: An Overview of State Laws*, NOLO, <https://www.nolo.com/legal-encyclopedia/llc-asset-protection-charging-orders.html>

[<http://web.archive.org/web/20200126175450/https://www.nolo.com/legal-encyclopedia/llc-asset-protection-charging-orders.html>] (last visited Jan. 26, 2020).

120. *See, e.g.,* *Curci Invs., LLC v. Baldwin*, 221 Cal. Rptr. 3d 847, 852 (Cal. Ct. App. 2017) ("The debtor remains a member of the LLC with all the same rights to manage and control the LLC, including . . . the right to decide when distributions to members are made, if ever." (emphasis added)).

policy concerns; (3) the degree of fraud, injustice or inequality that would result; and (4) the potential harm to non-culpable parties.¹²¹

A. Michigan's Charging Order Statute is Not Sufficient for Dealing with Single-Member LLCs

As previously mentioned, the current source of remedy for a judgment creditor of a member of an LLC is the MLLCA, which provides that the exclusive remedy whereby a judgment creditor can seek to satisfy a judgment against one of the company's members is through a charging order.¹²² Charging orders themselves are limited in nature: they only give the judgment creditor rights to payments based on the distributions made to the member (judgment debtor).¹²³ In the case of single-member LLCs, this problem is further exasperated by the fact that the individual responsible for management decisions, such as when to make distributions, would also be the judgment debtor. Thus, the end result is a situation where a creditor cannot obtain equitable justice without further action from the judicial system because an LLC's member-manager with an adverse judgment will simply opt against making distributions, rendering the creditor's lien worthless in a practical sense.¹²⁴

This point of contention has been previously argued in Michigan courts via the *Dzierzawski* case.¹²⁵ In deciding the case, the Michigan Bankruptcy Court found that the charging order statute would apply equally to single-member LLCs as it would to all other LLCs chartered within the state.¹²⁶ In reaching this conclusion, the court highlights two

121. MOLL & RAGAZZO, *supra* note 20.

122. MICH. COMP. LAWS § 450.4507 (2010).

123. *Id.*

124. The court stated:

[A] creditor does not have the same options against a member of an LLC as it has against a shareholder of a corporation. . . . [I]f the debtor is a member of an LLC, the creditor may only obtain a charging order against distributions made to the member The debtor remains a member of the LLC with all the same rights to manage and control the LLC, including, in Baldwin's case, the right to decide when distributions to members are made, if ever.

Curci, 221 Cal. Rptr. 3d at 853 (citations omitted).

125. The court stated:

Vulpina argues that outside of bankruptcy, if it were limited to this statutory charging order for collecting from the Debtor's membership interest in Vinifera, the Debtor, as the sole member of Vinifera, could manipulate the affairs of Vinifera in such a way that Vinifera would owe little or no distributions to its member, and thereby have to pay Vulpina little or nothing under the charging order.

Dzierzawski, 528 B.R. 397, 409 (Bankr. E.D. Mich. 2015).

126. *Id.* at 414.

main points: (1) that other jurisdictions have not “actually [held] that a charging order statute does not apply to single-member LLCs,”¹²⁷ and (2) that the Michigan statute as it pertains to charging orders as a remedy is not ambiguous.¹²⁸

However, by applying this logic, the Michigan Bankruptcy Court misses a crucial point in the judgment creditor’s argument. Whether or not the MLLCA applies (or should apply) is not the crux of the issue; rather, the main fear from a judgment creditor’s perspective is the possibility of a judgment being virtually uncollectible because of the nature of single-member LLCs and the process for which charging orders are enforced. To this point, the court correctly recognizes that “[plaintiff] will be left with an exclusive but substantially limited remedy for collecting its judgment” if the court opts to dismiss the fraud claim from the bankruptcy proceeding currently in front of it.¹²⁹

B. The Degree of Identity Between an LLC and its Single Member is Substantial

In considering the degree of identity between an LLC and its single member, courts have looked towards the “alter ego” theory in determining whether or not the entity and its ownership are sufficiently comingled so as to completely disregard the corporate fiction.¹³⁰ Courts will consider a number of factors in reaching an alter-ego determination, and these factors have been “cleverly coined as ‘the indicia of alter ego’”¹³¹ The relevant factors to LLCs include commingling of funds,¹³² failure to observe certain formalities,¹³³ treating the entity as a “façade” for the activities of the dominant member,¹³⁴ non-payment of distributions,¹³⁵ and utilizing the form as a means of promoting “fraud, injustice, or

127. *Id.*

128. *Id.*

129. *Id.*

130. Lvov, *supra* note 18, at 163.

131. *Id.*

132. *Id.* at 163–64 (citing *Lamar v. Am. Basketball Ass’n*, 468 F. Supp. 1198, 1204 (S.D.N.Y. 1979); *MP Nexlevel of Cal., Inc. v. CVIN, LLC*, No. 1:14-cv-288-LJO-GSA, 2014 WL 5019639, at *11 (E.D. Cal. Oct. 7, 2014)).

133. *Id.* at 164 (citing *Electro Source, Ltd. Liab. Co. v. Nyko Techs., Inc.*, No. CV 01-10825 DT (BQRx), 2002 U.S. Dist. LEXIS 28436, at *9 (C.D. Cal. Apr. 15, 2002); *MP Nexlevel*, 2014 WL 5019639, at *11).

134. *Id.* (citing *Energy Marine Servs., Inc. v. DB Mobility Logistics AG*, No. 15-24-GMS, 2016 WL 284432, at *3 (D. Del. Jan. 22, 2016); *Ost-West-Handel Bruno Bischoff GmbH v. Project Asia Line, Inc.*, 970 F. Supp. 471, 479 (E.D. V.A. 1997)).

135. *Id.* (citing *Ost-West-Handel*, 970 F. Supp. at 478).

illegalities.”¹³⁶ The court in *Shamrock Oil* further added that “the theory of the alter ego has been adopted by the courts to prevent injustice, in those cases where the fiction of a corporate entity has been used as a subterfuge to defeat public convenience, or to perpetuate a wrong.”¹³⁷

The inquiry into the degree of identity between a corporation (or LLC) and its management is plainly a fact-driven analysis. In particular, a plaintiff’s attempt to prove the use of a state-chartered entity to perpetuate fraud will be entirely fact-based. That being said, the form of a single-member LLC provides certain facts that indicate that the LLC and its sole member share a consistent overlap in identity. One such example exists in the Internal Revenue Code (IRC): single-member LLCs are treated as disregarded entities for tax purposes, and the LLC’s activities will instead be reflected on its single owner’s income tax return.¹³⁸ In terms of federal income taxation, this process is commonly referred to as pass-through taxation.¹³⁹

By treating single-member LLCs as disregarded entities, the Internal Revenue Service (IRS) provides some external evidence as to the common identity an LLC and its single member share. If the federal income tax laws regard a single-member LLC as an extension of its single member, logically, it would seem that the law has already considered the significant overlap between the entity and its owner. The perspective the IRC advanced favors the application of a reverse-piercing doctrine; if the entity and the owner sufficiently overlap, the analysis favors allowing a judgment creditor to reverse-pierce, since the LLC’s interests are the same as the interests of the individual debtor.

136. *Id.* at 164 (quoting Jonathan Macey & Joshua Mitts, *Finding Order in the Morass: The Real Justifications for Piercing the Corporate Veil*, 100 CORNELL L. REV. 99, 100 (2014)).

137. *Shamrock Oil & Gas Co. v. Ethridge*, 159 F. Supp. 693, 697 (D. Colo. 1958) (citing *Pickwick Corp. v. Welch*, 21 F. Supp. 664, 669 (D.C. Cir. 1937)).

138. Alexander J. Davie, *How the Federal Government Taxes LLCs*, STRICTLY BUS. (Oct. 31, 2011), <https://www.strictlybusinesslawblog.com/2011/10/31/how-the-federal-government-taxes-llcs/>

[[web/20200125233654/https://www.strictlybusinesslawblog.com/2011/10/31/how-the-federal-government-taxes-llcs/](https://www.strictlybusinesslawblog.com/2011/10/31/how-the-federal-government-taxes-llcs/)]; see also *Single-member Limited Liability Companies*, IRS (Apr. 23, 2018), <https://www.irs.gov/businesses/small-businesses-self-employed/single-member-limited-liability-companies>

[[web/20200125233926/https://www.irs.gov/businesses/small-businesses-self-employed/single-member-limited-liability-companies](https://www.irs.gov/businesses/small-businesses-self-employed/single-member-limited-liability-companies)] (“If a single-member LLC does not elect to be treated as a corporation, the LLC is a ‘disregarded entity,’ and the LLC’s activities should be reflected on its owner’s federal tax return.”).

139. “Pass-through taxation” is “[t]he taxation of an entity’s owners for the entity’s income without taxing the entity itself.” *Taxation*, BLACK’S LAW DICTIONARY (11th ed. 2019).

One author has proposed shifting from the ownership prerequisite in favor of a “domination” standard.¹⁴⁰ Under this standard, courts would be permitted to apply the doctrine of reverse-piercing in situations where either the legal *or* equitable owners performed actions leading to fraud or injustice, rather than prioritizing legal form over actual substance.¹⁴¹ By extension, this standard “would not lower the threshold to permit piercing,” but instead would simply provide those creditors who are currently unable to pursue reverse piercing because of a lack of nominal legal ownership with an adequate remedy at law.¹⁴²

While practical in theory, the proposed domination standard is not necessary in this context. Because the single-member of a single-member LLC is both the nominal and functional owner of the LLC, it is not necessary to distinguish between the two roles. When considering the suitability of applying the reverse piercing remedy, courts should balance the interests of the parties involved with the interests of third parties *and* the interests of the judicial system.

As it stands, the requisite standard of ownership to a reverse piercing case would encompass all of the circumstances contemplated by this Note.

C. Public Policy Concerns Favor the Judgment Creditor in Cases Involving Single-Member LLCs

There are various public policy concerns implicated by the doctrine of reverse piercing, and most of these concerns favor the application of the doctrine as it pertains to single-member LLCs. Perhaps the strongest public policy argument in favor of disregarding the liability shield of an LLC arises from the practical result of maintaining a charging order as the sole remedy for a creditor of a single-member LLC. If a creditor is not permitted to reverse pierce the LLC, the end result is, practically speaking, judicial preference of allowing a single member to hide his assets behind the liability shield of the LLC, while leaving the creditor with a virtually toothless charging order judgment.¹⁴³

140. Allen, *supra* note 1, at 1180.

141. *Id.*

142. *Id.*

143. See, e.g., LFC Mktg. Grp., Inc. v. Loomis, 8 P.3d 841, 846 (Nev. 2000) (“Indeed, ‘[i]t is particularly appropriate to apply the alter ego doctrine in ‘reverse’ when the controlling party uses the controlled entity to hide assets or secretly to conduct business to avoid the pre-existing liability of the controlling party.” (citing Select Creations, Inc. v. Paliapito Am., Inc., 852 F. Supp. 740, 774 (E.D. Wis. 1994)); *In re Dzierzawski*, 528 B.R. 397, 414 (Bankr. E.D. Mich. 2015) (“Vulpina will be left with an exclusive but substantially limited remedy for collecting its judgment.”); *Curci Invs., LLC v. Baldwin*, 221 Cal. Rptr. 3d 847, 853 (Cal. Ct. App. 2017) (“The debtor remains a member of the

The court in *Sky Cable* highlights that not only is the creditor adversely affected by this result, but also is the state in which the court resides.¹⁴⁴ “Delaware has a powerful interest of its own in preventing the entities that it charters from being used as vehicles for fraud. Delaware’s legitimacy as a chartering jurisdiction depends on it.”¹⁴⁵ The court in *Sky Cable* correctly points out that public policy concerns extend further than just the parties to the action; the state where the action is brought also shares an interest in the prevention of fraud and injustice.¹⁴⁶ Furthermore, as a state that draws the interest of many incorporating companies,¹⁴⁷ Delaware courts possess a unique understanding of public policy concerns of this nature due to continuous application of corporate law.¹⁴⁸

Further public policy concerns may arise when considering the interests of both parties, and how they may be affected by a change in the law. From the perspective of the injured party, it is clear that permitting a creditor to reverse-pierce best serves their interests, and thus the question remains: *what about the business planner?* While permissible reverse piercing undoubtedly affects the judgment debtor, these effects do not outweigh the potential adverse effects on the creditor as well as the state of the LLC’s charter. Specifically, permissible reverse-piercing should not affect the business planning considerations of those who do not plan to commit fraud or otherwise utilize their entity as a sham or as an illegitimate shelter for their assets.¹⁴⁹

LLC with all the same rights to manage and control the LLC, including, in Baldwin’s case, the right to decide when distributions to members are made, if ever.”)

144. *Sky Cable, LLC v. DIRECTV, Inc.*, 886 F.3d 375, 387 (4th Cir. 2018).

145. *Id.* (citing *NACCO Indus., Inc. v. Applica Inc.*, 997 A.2d 1, 26 (Del. Ch. 2009)).

146. *Id.*

147. Suzanne Raga, *Why Are the Majority of U.S. Companies Incorporated in Delaware?*, MENTAL FLOSS (Mar. 11, 2016), <http://mentalfloss.com/article/76951/why-are-so-many-us-companies-incorporated-delaware> [<http://web.archive.org/web/20200126175008/https://www.mentalfloss.com/article/76951/why-are-so-many-us-companies-incorporated-delaware>].

148. See, e.g., Alana Semuels, *The Tiny State Whose Laws Affect Workers Everywhere*, THE ATLANTIC (Oct. 3, 2016), <https://www.theatlantic.com/business/archive/2016/10/corporate-governance/502487/>

[<http://web/20200126180445/https://www.theatlantic.com/business/archive/2016/10/corporate-governance/502487/>] (pointing out that two-thirds of the Fortune 500 companies are incorporated in Delaware, which means their cases will fall under Delaware state law and be subject to the Delaware Court of Chancery).

149. See *C.F. Tr., Inc. v. First Flight Ltd. P’ship*, 306 F.3d 126, 135 (4th Cir. 2002) (“[I]n permitting an outsider reverse veil-piercing claim, ‘[a]lthough one purpose of corporation law is to limit shareholders’ liability for corporate debts, . . . corporations are not intended to be used to shelter the assets of shareholders from lawful claims of judgment creditors.’” (citing *Winey v. Cutler*, 165 Vt. 566, 678 A.2d 1261, 1262 (Vt. 1996))).

Furthermore, as the District Court in the Eastern District of Virginia pointed out, "Simply put, the rationale for traditional piercing operates with equal force in support of reverse piercing."¹⁵⁰ This demonstrates that while reverse-piercing may not be in the interests of the party against whom the judgment is levied, it is not unreasonable to expect business planners to have to account for a change in the law that would apply with equal force as current law. Thus, the public policy interests of the members of single-member LLCs and their ability to partake in business planning are outweighed by the combination of the interests of the injured party, the state, and the overall administration of justice.

Some have proposed further public policy concerns involving more than just the parties to the lawsuit.¹⁵¹ These affected parties could potentially include the employees of the entity, the customers for whom they provide services, and the larger communities they serve.¹⁵² This position contends that the depletion of an entity's assets through reverse piercing could have ripple effects that stretch beyond the main parties to litigation and could further become the problems of the aforementioned innocent third parties.¹⁵³ Ultimately, the concerns for innocent third parties beyond the predictable ones (such as fellow owners of a corporate entity) provide a counterargument to the point that all of the public policy arguments balance in favor of allowing courts to reverse pierce.¹⁵⁴

The narrow method of application this Note proposes suffices to alleviate some of the above-mentioned public policy concerns. To the extent that a single-member LLC's assets would become depleted by the creditor who receives a judgment permitting a reverse pierce, the concerns for third parties are not nearly in equipoise with the potential disadvantages the creditor would face if such an action were not permitted. That is to say, the situation involving a single-member owner of an LLC is far less likely to present the same concerns that the depletion of a corporate entity may. If a court were to determine that the single member and the LLC were alter egos of one another, it would seem that many of the concerned third parties would also be negatively affected by the coexistence of the member and entity. The particular situations addressed by this Note—specifically, the usage of the entity to promote fraud—would defeat the prior concerns, because the establishment of the entity would be in effect a sham and not designed for the benefit of employees, consumers, or the community in the first place.

150. *C.F. Tr., Inc. v. First Flight Ltd. P'ship*, 111 F. Supp. 2d 734, 741 (E.D. Va. 2000).

151. *Lvov*, *supra* note 18, at 174.

152. *Id.*

153. *Id.*

154. *Id.*

D. Maintaining the Current Remedy Promotes a Great Degree of Injustice

As previously pointed out, the current chosen remedy for a judgment creditor against the member of an LLC is a charging order.¹⁵⁵ Regarding single-member LLCs, it is apparent that such a remedy does not sufficiently mitigate the injustice (or potential for injustice) suffered by the recipient of a charging order when the judgment debtor is in complete control of the distribution schedule of the LLC against which the order was received. Courts will often argue against applying the doctrine of reverse-piercing, while citing the presence of more traditional and less drastic measures than reverse piercing.¹⁵⁶ While it is true that a charging order presents a relatively traditional and less consequential approach to the issue, the likelihood of an injustice to the judgment creditor remains too great for courts to simply dismiss the option as too radical in lieu of other remedies. Reverse piercing in the context of single-member LLCs eliminates much of the risk attributed to the judgment debtor, while at the same time provides the judgment creditor with a much stronger likelihood of receiving equitable justice.

To be clear, reverse piercing need not occur in *every* instance in which a charging order is sought against a single-member LLC. The point of adopting such a solution is to provide a creditor with a path to justice in the event of fraud or purposeful deception on the part of the single member. The court in *Curci* pertinently points out that “although legal remedies . . . may be available in many cases, thereby precluding reverse veil piercing, it is precisely the rare situations in which they are not that reverse piercing should deliver justice.”¹⁵⁷ As previously highlighted, such an approach would be fact-based, and in the event fraud or other injustice is found, reverse piercing would provide an otherwise out-of-luck judgment creditor with another avenue to justice.

There are other considerations that render the current method for applying the reverse-piercing doctrine inadequate.¹⁵⁸ One such hypothesis

155. MICH. COMP. LAWS § 450.4507 (2010).

156. Allen, *supra* note 1, at 1164; *see also* Floyd v. IRS, 151 F.3d 1295, 1300 (10th Cir. 1998) (arguing that various forms of equitable remedies beyond reverse piercing exist. First, examining the possibility of holding a corporation liable under a theory of agency law for the actions of a controlling shareholder when it is dominated by such shareholder. Second, the court hypothesizes the adequacy of standard collection procedures “without expanding equitable theories of corporate liability. Finally, in taxation-specific cases, the court points out that a transfer to a shareholder can be framed as a constructive dividend, making such transfer reachable without extending traditional corporate liability).

157. *Curci Invs., LLC v. Baldwin*, 221 Cal. Rptr. 3d 847 (Cal. Ct. App. 2017).

158. *See Lvov, supra* note 18, at 175.

argues that the inverse method creates substantial confusion, which results in the consideration of factors irrelevant to the ultimate conclusion.¹⁵⁹ Furthermore, the contention is that the domination standard is too rigid and unworkable to provide a method of meaningful application of the inverse method.¹⁶⁰ This conclusion is supported by courts and commentators alike, who agree that the instances of complete domination allowing for reverse piercing are too rare and extreme to make application of the doctrine useful.¹⁶¹

The situations under which the inverse method is *clearly* applicable may be rare, but it does not necessarily follow that such methodology is not useful in a practical sense. Particularly, in the context of single-member LLCs, the application is as direct as it possibly could be under the formulation. Whether using an ownership or a dominance standard, the requirement remains fulfilled regardless of the chosen means when the focal point of the analysis is the ownership of single-member LLCs. Furthermore, the analysis preceding this subsection demonstrates that all the normally considered factors overwhelmingly favor the application of the doctrine in these instances. The concerns about application of “irrelevant” factors are partially alleviated when the relevant factors all point to the same conclusion because the result is a lack of need to analyze the perceived irrelevant ones.

E. The Potential Harm to Non-Culpable Members is Non-Existent

Perhaps the strongest argument in favor of recognizing the doctrine of reverse-piercing as it pertains to single-member LLCs flows from the lack of adversely affected third parties. Because single-member LLCs—by definition—only have one member, there is no concern regarding the potential ill-effects to non-culpable members or third parties. In *Sky Cable*, the court reasoned the following:

Reverse veil piercing is particularly appropriate when an LLC has a single member, because this circumstance alleviates any concern regarding the effect of veil piercing on other members who may have an interest in the assets of an LLC. Therefore, when an entity

159. *Id.* at 176–77.

160. *Id.* at 177.

161. *Id.*

and its sole member are alter egos, the rationale supporting reverse veil piercing is especially strong.¹⁶²

Similarly, in *Curci Investments*, the California court found: “Baldwin, the judgment debtor, holds a 99% interest in JPBI. His wife holds the remaining 1% interest, but she is also liable for the debt owed to Curci. There simply is no ‘innocent’ member of JPBI that could be affected by reverse piercing here.”¹⁶³ The *Curci* court was also careful to distinguish itself from *Postal Instant Press v. Kaswa Corp.* on this basis, stating, “*Postal Instant Press* does not preclude application of outside reverse veil piercing in this case for several reasons. To begin with, *Curci* seeks to disregard the separate status of an LLC, not a corporation. The court’s decision in *Postal Instant Press* was expressly limited to corporations.”¹⁶⁴ The court reasoned that the facts of the *Curci* case, as well as the concerns presented in *Postal* regarding the practice of reverse piercing a corporation, made the concerns wholly different in *Curci*.¹⁶⁵ As its support, the court highlighted the aforementioned lack of an innocent member to the LLC who may be affected and further mentioned its concern with the lack of legal remedy available to a creditor of the member of an LLC as compared to the shareholder of a corporation.¹⁶⁶

Furthermore, those courts that have denied the reverse piercing doctrine point to the existence of non-culpable parties as a significant driving force behind disallowing the remedy.¹⁶⁷ While such an argument is convincing in other contexts, there is simply no basis under which single-member LLCs will share the same risks by this standard. It follows naturally that this factor of the analysis favors an application of the reverse-piercing doctrine as it pertains to single-member LLCs.

162. *Sky Cable, LLC v. DIRECTV, Inc.*, 886 F.3d 375, 387 (4th Cir. 2018) (citations omitted).

163. *Curci Invs., LLC v. Baldwin*, 221 Cal. Rptr. 3d 847, 852 (Cal. Ct. App. 2017).

164. *Id.* (citing *Postal Instant Press, Inc. v. Kaswa Corp.*, 77 Cal. Rptr. 3d 96 (Cal. Ct. App. 2008) (“[T]he corporate form is not being used to evade a shareholder’s personal liability, because the shareholder did not incur the debt through the corporate guise and misuse that guise to escape personal liability for the debt.”)).

165. *Id.*

166. *Id.* (pointing out that a creditor of a corporate shareholder may “step straight into the shoes of the debtor” and obtain whatever rights the shareholder had in the corporation for himself. Conversely, “if the debtor is a member of an LLC, the creditor may only obtain a charging order against distributions made to the member”).

167. *See, e.g., Cascade Energy and Metals Corp. v. Banks*, 896 F.2d 1557, 1576–77 (10th Cir. 1990) (“[T]o the extent that the corporation has other non-culpable shareholders, they obviously will be prejudiced if the corporation’s assets can be attached directly. In contrast, in ordinary piercing cases, only the assets of the particular shareholder who is determined to be the corporation’s alter ego are subject to attachment.”).

Others have proposed narrow remedies to the issue of permitting reverse piercing as it applies to non-culpable shareholders.¹⁶⁸ One such proposal includes a factual determination of a shareholder's true "innocence" by determining whether or not the shareholder benefitted from the alleged fraud.¹⁶⁹ However, it has been correctly pointed out that such a test would burden the courts with the arbitrary task of determining aggregate shareholder innocence and leaving as the answer yet another question: just how much "innocence" is required in the aggregate to allow for application of the reverse piercing remedy?¹⁷⁰ Another suggestion involves limiting the creditor's recovery to the pro rata interest possessed by the shareholder who is currently indebted to the claimant.¹⁷¹ This solution eliminates the need for courts to engage in a fact-intensive determination of who the innocent parties are, and whether or not there are enough of them to support a reverse pierce.¹⁷²

These solutions offer compelling perspectives as it applies to shareholder misconduct coupled with the existence of non-culpable shareholders. However, the factual situation examined by this Note does not require a court to reach this point in the analysis. The lack of other non-culpable parties with single-member LLCs means one of the most significant points of contention becomes a non-issue. Setting aside this point, the application of the reverse piercing doctrine should not be based on a sliding scale of shareholder innocence, but rather should be based on a lack of available remedies at law for the party seeking the remedy. Stated more precisely, "The protection of innocent shareholders, while vital, does not necessitate that their mere existence should preclude a plaintiff from reverse piercing."¹⁷³ As it has been reiterated throughout this Note, a creditor of an LLC's single member presents perhaps the most obvious scenario under which other remedies would not be sufficient, and thus would be the most appropriate test case for this proposed solution.

IV. CONCLUSION

If Michigan were to adopt the doctrine of reverse piercing the corporate veil as it applies to single-member LLCs, the interests of judgment creditors and the advantages of the corporate form would be in equipoise. By allowing judgment creditors to reverse pierce against single-

168. See, e.g., Allen, *supra* note 1, at 1179; Lvov, *supra* note 18, at 181.

169. Allen, *supra* note 1, at 1182.

170. Lvov, *supra* note 18, at 180.

171. *Id.* at 187.

172. *Id.* at 188.

173. Allen, *supra* note 1, at 1180.

member LLCs, the result would be a strengthened alternative to the limited charging order remedy.

Furthermore, permitting reverse piercing under firm standards, such as the ones this Note proposes, would fulfill all the factors traditionally used in applying the doctrine: (1) it provides a necessary alternative to a currently insufficient remedy; (2) in these limited situations, the degree of identity between an LLC and its sole member is substantial; (3) public policy favors the judgment creditor in such cases; (4) there is a great deal of injustice that results from maintaining the current law; and finally (5) the concerns regarding potential harm to non-culpable third parties are virtually non-existent. While many courts recognize the controversy and potential harm that could result from unilaterally applying the reverse piercing doctrine, the particulars involved with single-member LLCs make the application of the remedy in these limited scenarios a necessary step in the right direction. Michigan is one such state that must consider moving its jurisprudence forward.