# BANKRUPTCY VEIL-PIERCING

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## INTRODUCTION

Bankruptcy veil piercing disputes have no true torts, and the primary target of piercing activity is not the debtor. The first finding contradicts the conventional wisdom that veil piercing primarily occurs in tort litigation. The second finding contradicts the notion that a failing debtor's owners are the likeliest targets of piercing.

The scholarship focusing on the doctrine of corporate veil piercing is voluminous.[1] Yet, the previous data largely does not accord with two presumptions of the legal academy—namely that piercing in tort should be virtually automatic (piercing would prevent limited liability from diluting the incentives for care of tort law) and that contract disputes are highly unlikely to merit piercing (contracting parties should protect themselves against the risk of their counterparties' insolvencies whereas piercing would erode their incentive to protect themselves). This Article reveals that bankruptcy piercing focuses exclusively on contract.

In a previous article, I have shown that piercing is eminently desirable in contract disputes as an improvement over the common law error doctrine.[2] The previous article could have drawn inferential support from collective judicial intuition by merely pointing out that courts pierce in contract at a more than trivial rate. However, the article's cursory glance at the evidence suggested that courts and litigants demonstrate a bias in favor of piercing in contract disputes when compared to tort disputes. Traces of this bias also appear in other empirical scholarship about piercing. The research of Professor Robert Thompson shows an abundance of piercing in both contract and tort disputes, and greater frequency of plaintiff success in contract piercing.[3] Similarly, Professors Hoffman and Boyd report that piercing occurs with greater probability in consensual relationships than non-consensual ones.[4] A tort between strangers, of course, is the paradigmatic non-consensual source of litigation, but not the only one.

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[1] *See* Christina L. Boyd & David A. Hoffman, *Disputing Limited Liability*, 104 NW. U. L. REV. 853, 854 n.10 (2010) (reporting 5,482 law review articles on the topic of veil piercing).

[2] Nicholas L. Georgakopoulos, *Contract-Centered Veil Piercing*, 13 STAN. J.L. BUS. & FIN. 121, 130–31 (2007).

[3] Robert B. Thompson, *Piercing the Corporate Veil: An Empirical Study*, 76 CORNELL L. REV. 1036, 1058 (1991).

[4] *See* Boyd & Hoffman, *supra* note 1, at 895 (finding that a plaintiff asserting a claim as a voluntary creditor is more likely to be successful on a veil piercing motion than in a case without a voluntary creditor).

The Priest-Klein hypothesis[5] about plaintiff success rates casts doubt on inferences from existing evidence because any differences in observed success rates may result from biased litigation and settlement incentives rather than any difference in underlying law and true likelihood of success.[6] This Article empirically examines alternative explanations of the observed frequency of contract piercing.

Part I updates the comparison of contract-to-tort ratios in veil piercing and beyond. Part II discusses alternative explanations for the surprising frequency of contract piercing, including the substitution of tort piercing with more lenient theories of liability. Part III explains the construction of the bankruptcy sample. Part IV discusses its observations. After the conclusion of the Article, the Appendix lists the bankruptcy opinions analyzed herein.

## I. THE ABUNDANCE OF CONTRACT PIERCING

Piercing in contract is surprisingly frequent compared to piercing in tort. The comparison requires a baseline. The baseline is the universe of all contract and tort opinions. If the ratio of total contract opinions to total tort opinions is very different than the ratio of opinions about piercing in tort to those in contract, then either a different mechanism produces piercing disputes, or the litigants choose to pursue one more intensely when piercing.

Indeed, the comparison shows a vast change from overall contract and tort to their mix in opinions about piercing. Tort becomes much less frequent among piercing opinions than it is overall. Whereas this could be consistent with the notion that tort plaintiffs do not pursue their piercing claims as intensely as contract plaintiffs—which would give inferential support to the idea that piercing in contract is easier—the ensuing analysis will show that the more likely answer is that tort and contract piercing disputes are generated differently than general disputes.

The data for the comparison consist of the entirety of opinions concerning contract and tort from 1947 to 2010, inclusive. The source of the data is Westlaw. For consistency with prior research, contract and tort opinions were

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[5] George L. Priest & Benjamin Klein, *The Selection of Disputes for Litigation*, 13 J. LEGAL STUD. 1, 4–5 (1984) (hypothesizing that where the potential gains or losses from litigation are equal for both plaintiff and defendant, the rate of success for plaintiffs or appellants will tend toward 50% regardless of the substantive standard of law).

[6] *See, e.g.*, Steven Shavell, *Any Frequency of Plaintiff Victory at Trial Is Possible*, 25 J. LEGAL STUD. 493 (1996).

retrieved using Thompson's search criteria.[7] Thompson's method also identifies opinions that mention piercing. This is a text search, pursuing either all forms of the verb "pierce" followed by "the corporate veil" or the phrase "disregard the corporate entity."[8]

The results of these searches are shown in Table 1, which also contains the result of the statistical test.[9] The searches identified over 75,000 contract opinions, of which 693 mention piercing. The searches identified over 162,000 tort opinions, of which 394 mention piercing. The searches also identified opinions about both contract and tort by implication.[10] These include over 5,000 opinions, of which 113 mention piercing.

Notable is the fact that in the sample of all opinions, contract opinions occur less than half as frequently as tort opinions, whereas in the sample of opinions that mention piercing, contract opinions are almost twice as numerous as tort opinions. The statistical test confirms the difference with great statistical

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[7] *See* Thompson, *supra* note 3, at 1036 n.1. West identifies contract opinions with a single Key Number, 95. Tort opinions are those that fall under four Key Numbers, 379, 272, 48av, and 48avi. The resulting searches need date range specifications narrower than 1947 to 2010 because they exceed the maximum number of opinions that Westlaw retrieves. All counts were made on January 25, 2011. As West corrects errors in opinions' Key Numbers periodically, later searches will likely produce slightly different counts.

[8] Accordingly, the search for contract opinions that mention piercing becomes "to(95) & ("pierc! the corporate veil" "disregard the corporate entity") & date(aft 1946 & bef 2011)."

[9] The statistical test is called the chi-test and is used to determine differences between data that fall into categories, like categories of opinions or outcomes of tosses of dice or coins (as opposed to data that consist of numerical values). The test requires that the comparison sample be aggregated and requires the calculation of the expected number of each category. In the case of the piercing sample, the test requires we calculate the fraction that piercing cases (in aggregate) are of all cases, and then apply that fraction (about .0049) to determine the expected number of contract piercing opinions, tort piercing opinions, and piercing opinions with both (about 372, 800, and 28, respectively). The chi-test (included in built-in spreadsheet software functions as CHITEST) compares those to the actual counts of the last column of Table 1 and computes the probability that the difference is due to chance rather than a different generative mechanism. *See generally* NICHOLAS L. GEORGAKOPOULOS, PRINCIPLES AND METHODS OF LAW AND ECONOMICS: BASIC TOOLS FOR NORMATIVE REASONING 294–97 (2005); DAVID FREEDMAN ET AL., STATISTICS 525–46 (3d ed. 1998).

[10] The number of contract opinions includes some opinions on both contract and tort. Similarly, tort opinions include some on both. Summing those two and subtracting the number of opinions on either contract or tort gives the number of opinions that include both contract and tort. For example, if the contract opinions were five, three of which include tort, and tort opinions four, then the number of opinions on either contract or tort would be six. Summing the five contract opinions and the four tort opinions and subtracting the number of opinions about either gives three, the number of opinions about both (3=5+4-6).

The count of contract opinions gives the sum of (i) only contract opinions and (ii) of opinions on both contract and tort: call that $c + b$. The count of torts gives (i) torts only and (ii) both, $t + b$. The count for either contract or tort gives $c + t + b$. Note that the sum of the counts for contracts and that for torts counts twice the opinions on both and can be transformed from $(c + b) + (t + b)$ to $c + t + 2b$. Subtracting from that the number of the search for either, $c + t + b$, leaves $b$ ($b = c + t + 2b - c - t - b$).

significance, i.e., it indicates that the probability that the same (random) mechanism produces both mixes is infinitesimal.

Table 1: Number of Opinions: Contract, Tort and Piercing

| | **Regardless of reference to piercing:** | **Referring to piercing:** |
|---|---|---|
| **Contract:** | 75,697 | 693 |
| **Contract and tort:** | 5,727 | 113 |
| **Tort:** | 162,834 | 394 |
| **Chi-test p-value:** | 0.0000…% | |

The mechanism that produces opinions changes in piercing. The change can arise either in the stage of the production of the disputes or, after that, from the behavior of the parties. Opinions that mention piercing may be the result of a mechanism that produces disproportionately more contract disputes. Alternatively, the parties may use a different mechanism when deciding whether to pursue piercing, either abandoning or settling disproportionately more tort disputes or pursuing contract piercing more intensely.

## II. ALTERNATIVE EXPLANATIONS OF THE ABUNDANCE OF CONTRACT PIERCING

The text that follows explores two explanations for the preponderance of contract piercing opinions. The first is that tort disputes do not carry over to piercing because other, easier, theories of liability displace piercing. Other legal theories exist that impose liability on parents with greater ease (i.e., greater probability of success for the plaintiff) than piercing because they require neither fraud nor that control be excessive. These theories include vicarious liability and product liability. The second possible explanation is that piercing claims arise as a subsidiary approaches insolvency, breaching all its contracts but not systematically causing more torts, so that the circumstances produce more contract disputes than tort disputes.

### *A. Do Product and Vicarious Liability Displace Tort Piercing?*

If legal doctrine provided tort claimants with an easier theory to impose liability on a parent, then tort plaintiffs would not have to argue piercing but would try to impose liability on the parent using the alternative theory. Legal

doctrine provides two such alternative theories to tort plaintiffs: vicarious liability and product liability.

The doctrine of vicarious liability imposes liability on principals of agents, who are not independent contractors, for accidents caused by actions within the agent's scope of authority.[11] This factual setting could give rise to veil piercing as well as a vicarious liability claim because the court could treat the parent's control of the subsidiary as justification for piercing if the control was excessive. The theory of vicarious liability is easier for the plaintiff than veil piercing because under vicarious liability control does not need to be excessive and no showing of fraud is necessary.

The search begins by looking for tort disputes, augmented with text designed to identify vicarious liability.[12] The search identifies 8,430 opinions. Note that since the search includes the Key Numbers for torts, it identifies opinions included in the tort sample but not necessarily included in the piercing sample. Once terms are included to identify opinions that refer to veil piercing, the search produces seventy-four opinions. Several thousand opinions about vicarious liability do not mention piercing (though it is feasible that the plaintiff could have pursued piercing). Thus, vicarious liability may displace piercing. It is worthwhile to note, however, that agency theory is also used to ignore separation of entities in the contract setting.[13]

The other theory supplanting piercing may be product liability. Tort liability can also be imposed on a parent-manufacturing corporation for liability caused by products sold by its subsidiaries (and other resellers) under the doctrine of product liability.[14] This theory can impose liability on a parent even when the subsidiary maintains scrupulous separation from the parent and no grounds for piercing exist. The West Key Numbers for product liability opinions that would also appear in the search for all tort opinions formulate a search that produces 4,861 opinions.[15] Of those, thirty-one opinions mention

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[11] RESTATEMENT (THIRD) OF AGENCY § 7.07(1) (2006) ("An employer is subject to vicarious liability for a tort committed by its employee acting within the scope of employment.").

[12] The search identifies opinions about vicarious liability by searching for the root "vicarious-" immediately preceding the root "liab-" or for the Latin term for this theory, *respondeat superior*. The resulting search is "to(48av! 48avi! 272 379) & ("vicarious! liab!" "respondeat superior") & date(aft 1946 & bef 2011)."

[13] *See, e.g.*, A. Gay Jenson Farms Co. v. Cargill, Inc., 309 N.W.2d 285 (Minn. 1981).

[14] RESTATEMENT (THIRD) OF TORTS: PRODS. LIAB. § 1 (1998) ("One engaged in the business of selling or otherwise distributing products who sells or distributes a defective product is subject to liability for harm to persons or property caused by the defect.").

[15] As the West Key Number for product liability is not included in the main search for tort opinions, this search needs to find those opinions that would appear in the main search while also having the product liability

piercing. Thus, product liability may render pointless the discussion of piercing in many cases.

Combining the two sets of searches avoids overlaps. Searching for either vicarious liability or product liability produces 13,076 opinions, with ninety-eight mentioning piercing. Thus, it is possible that the piercing sample is missing many tort disputes, namely those in which plaintiffs attempt to impose liability on a parent on either of these two theories that are easier to win than piercing. While it is impossible to estimate the proportion of potential piercing disputes in vicarious liability and product liability ones, it is also difficult to imagine them containing many disputes that would not be candidates for piercing. All vicarious liability disputes should be candidates for piercing because of the agency link. A significant fraction of product liability disputes may not be candidates for piercing, because the remote manufacturer did not own or control downstream entities. The conclusion that, without these theories, more tort piercing disputes would appear is inescapable.

### *B. Does Subsidiary Insolvency Lead to a Multitude of Contract Breaches?*

An alternative explanation for the plethora of contract disputes in opinions about piercing could be the unique circumstances of the target. A piercing claim is only made when a corporation (or other entity with limited liability) becomes insolvent. Without insolvency, piercing is unnecessary since the debtor can satisfy its obligations. Insolvency is a special circumstance, this explanation argues, which causes many piercing claims to be made in contract but few in tort. The argument that insolvency is the cause of the difference can be examined in a sample of disputes that arise surrounding insolvency. The opinions of bankruptcy courts provide such a sample, searchable in Westlaw as a separate database.[16]

A threshold question is the frequency of contract and tort disputes in bankruptcy. The searches identifying contract and tort opinions reveal that bankruptcy courts have produced, over the same period of time, 1,621 contract opinions, eighty-four opinions about both contract and tort, and 266 opinions about tort only. The contract-to-tort ratio is over 6:1 (1,621:266) whereas Table 1 had revealed a contract-to-tort ratio of about one-half (1:2) in the sample of all opinions, and less than 2:1 in piercing opinions. Thus, the bankruptcy

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Key Number, 313ak. Accordingly, the search text is "to(313ak!) & to(48av! 48avi! 272 379) & date(aft 1946 & bef 2011)."

[16] The database name is "fbkr-bct."

sample presents a contract-to-tort ratio even more extreme in its difference from the sample of all opinions than that of the piercing opinions. Therefore, the bankruptcy sample differs from the sample of all opinions even more than piercing opinions do.

## III. THE BANKRUPTCY PIERCING SAMPLE

Before becoming absorbed in this remarkable difference, one must analyze searches for veil piercing in the sample of bankruptcy court opinions. The only adjustment made is to expand the search to include substantive consolidation, a theory of bankruptcy law that produces the results of piercing by consolidating different entities into a single bankruptcy estate (as opposed to procedural consolidation, which unifies the procedural aspect of the bankruptcies of several entities while maintaining their separate existence as debtors). The search includes the roots "substantiv- consol-."[17] The resulting search produces ninety-six opinions: seventy-seven about contract, five about both contract and tort, and twenty-four about tort. While noting that the contract-to-tort ratio is about 4:1, one should delve deeper. Since the number of opinions is manageable, they can be subjected to closer scrutiny.

### *A. Sample Winnowing*

Closer scrutiny greatly reduces the sample. It reveals that thirty-six opinions, despite satisfying the search terms, are not truly about piercing.[18] One more opinion drops for being a duplicate of a case that is already in the sample.[19] Three more must drop for being pointless objections to consensual consolidating reorganization plans that received the adequate majority votes of the voting creditor classes.[20] One more drops for pointlessly attempting to

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[17] Accordingly, the search for both contract and tort is "to(48av! 48avi! 272 379) & to(95) & ("pierc! the corporate veil" "disregard the corporate entity" "substantiv! consolidat!") & date(aft 1946 & bef 2011)"; the search for contract or both is "to(95) & ("pierc! the corporate veil" "disregard the corporate entity" "substantiv! consolidat!") & date(aft 1946 & bef 2011)"; the search for tort or both is "to(48av! 48avi! 272 379) & ("pierc! the corporate veil" "disregard the corporate entity" "substantiv! consolidat!") & date(aft 1946 & bef 2011)."

[18] *See infra* Appendix (listing the opinions).

[19] *See* Drake v. Franklin Equip. Co. (*In re* Franklin Equip. Co.), 416 B.R. 483 (Bankr. E.D. Va. 2009).

[20] *See* JPMorgan Chase Bank, N.A. v. Charter Commc'ns Operating, L.L.C. (*In re* Charter Commc'ns), 419 B.R. 221 (Bankr. S.D.N.Y. 2009); Official Comm. of Unsecured Creditors of Mirant Corp. v. S. Co. (*In re* Mirant Corp.), No. 03-46590-DML-11, 2005 WL 6440372 (Bankr. N.D. Tex. May 24, 2005); Smith v. Bank of N.Y. (*In re* Holywell Corp.), 161 B.R. 302 (Bankr. S.D. Fla. 1993). The pointlessness of these cases stems from the fact that § 1129 does not prohibit consolidating plans while giving creditors other grounds for objecting to a plan. *See* 11 U.S.C. § 1129 (2006).

consolidate cases of natural persons, here a debtor trying to consolidate with an ex-spouse.[21] Finally, one more drops for being a statutory dispute about neither contract nor tort, but rather labor law.[22] After these forty-two opinions drop, the remaining sample is fifty-four opinions that are truly about piercing or consolidation in the bankruptcy context. Reading the opinions reveals none that are both about contract and tort. Forty-four are contract disputes and ten are tort disputes, about a 4:1 ratio, the same ratio as before eliminating the above cases.

### *B. Fiduciary Perplexity*

In going through the tort opinions, the frequency of fiduciary breach claims is remarkable. Seven of the ten tort opinions are about fiduciary breaches. Yet, fiduciary breach claims arise very differently than the paradigmatic tort among strangers. They consist essentially of a voluntary investor's complaint that the investor's (likely indirect) agent was not faithful in the discharge of the agent's duties to the investor. The way that agents who are corporate managers must exercise their discretion is not describable in detail and, therefore, it is not contractible. The essence of the fiduciary breach claim is inappropriate action of an agent in a consensual relationship and is much closer to the essence of a contractual dispute than to a tort dispute. Accordingly, fiduciary breach claims are categorized separately by this Article.

The joinder of fiduciary breach claims with piercing claims is curious. Investors who prevail in a fiduciary breach claim will have a direct claim against the agents who breached their fiduciary obligations. To the extent that the agent is the owner of the failed corporation, piercing is redundant. The owner is already liable to the investor for the fiduciary breach, and being liable under a piercing theory as well may not make much difference. Thus, piercing in fiduciary breach claims is likely the type of claim that the court will consider sometimes redundant, and not necessarily having a substantive effect. Indeed, piercing in this subsample turns out to be the least frequent, as Table 2 below shows.

Fiduciary breach claims also have a procedural quirk. Inside bankruptcy the trustee can exercise those claims against the owner or parent for the creditors'

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[21] *See In re* Blair, 226 B.R. 502 (Bankr. D. Me. 1998).

[22] *See* Pension Benefit Guar. Corp. v. Tenn-Ero Corp. (*In re* Tenn-Ero Corp.), 14 B.R. 884 (Bankr. D. Mass. 1981).

benefit, but outside bankruptcy the creditors are much less likely to be able to force a corporation to make a fiduciary breach claim against its owners.

That fiduciary breach claims are 70% of the tort claims and 13% of the sample of fifty-two opinions seems remarkably frequent. A quick check verifies that fiduciary claims are much rarer outside of bankruptcy. The West Key Numbers that identify fiduciary breach are 101k307 (fiduciary nature of relation of directors to corporation) and 101k310 (management of corporate affairs). The search identifying tort piercing cases with those two Key Numbers added produces eighteen opinions.[23] In other words, of the 469 opinions where creditors pursue piercing outside of bankruptcy making tort or *both* tort and contract claims, fiduciary breach is alleged in only 4% of cases, while inside of bankruptcy it is alleged in 70% of cases—a difference that is statistically significant.[24] Unquestionably, the fiduciary breach claims in the sample are a special case.

### *C. Whose Veil?*

The purpose motivating the journey into bankruptcy cases is the exploration of the mechanism that causes the proliferation of contract disputes in piercing. Accordingly, the identification of the piercing claims is also important. While one would expect that the debtor's veil is the one pierced, the reality is surprising. Out of the fifty-four opinions in the sample, the debtor's veil is attacked in eighteen. By contrast, in thirty-six of these disputes, the veil attacked is not the debtor's. This is to say that others' veils are attacked twice as often as debtors' veils.

Attempts to pierce others' veils are caused by a procedural quirk. If the debtor was solvent, then those disputes would either be between the debtor and the third party, the veil of which the debtor attacks, or would not involve the debtor at all. Rather, these disputes would be between two creditors of the debtor, one attacking the other's veil.

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[23] The search string is "to(48av! 48avi! 272 379) & ("pierc! the corporate veil" "disregard the corporate entity") & date(aft 1946 & bef 2010) & to(101k307! 101k310!)." The databases are "allcases, allfeds."

[24] The relevant statistical test is again the chi-test. The hypothesis to be refuted is that, both inside and outside of bankruptcy, the same mechanism produces the observed frequency of fiduciary breach opinions. The expected number of fiduciary breach opinions in the bankruptcy sample of ten would then be about 0.4. The fact that the observed sample has seven opinions makes the probability that the same mechanism produces both samples much less than 0.001%.

### *D. Non-consensual Void*

Putting aside the seven fiduciary breach claims leaves three true tort opinions. How many of those three are the paradigmatic cases of a tort between strangers? None. Even the true tort cases start as consensual relationships and the torts at issue are fraud and conversion.[25] Thus, to the extent that the search in the bankruptcy sample was for piercing in true non-consensual relations, no information appears. The sample contains no cases involving non-consensual relationships.

### *E. Bankruptcy Piercing Activity*

Table 2 presents the results of the examination of the bankruptcy cases, with detail increasing from left to right. The table has three horizontal panels: the opinions about contract, tort, and fiduciary breach. The first column presents the number of opinions about each type of dispute; the percentage of opinions in which the veil is actually pierced; and the contract-to-tort ratio, labeled "C:T." This ratio ignores fiduciary breach.

The second column separates the opinions of the first column depending on the veil targeted. It reports the opinions about the piercing of the debtor's veil and the veils of others. Under each count is the corresponding contract-to-tort ratio. The third column presents the piercing outcome for each category of veil and law. It offers the number of opinions that pierce the veil and the percentage those represent, i.e., the percentage pierced.

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[25] *See supra* text accompanying notes 26–42.

Table 2: Bankruptcy Piercing Activity

| Law | | Veil | | Pierced? |
|---|---|---|---|---|
| Contract: | 44 | Debtor's Veil | 9 | 1 |
| % Pierced? | 20.5% | C:T | 4.5:1 | 11.1% |
| C:T | 14.7:1 | Other's veil | 35 | 8 |
| | | C:T | 35:1 | 22.9% |
| Tort (not fid'ry br.): | 3 | Debtor's Veil | 2 | 2 |
| % Pierced? | 100.0% | | | 100.0% |
| | | Other's veil | 1 | 1 |
| | | | | 100.0% |
| Fiduciary breach: | 7 | Debtor's Veil | 7 | 1 |
| % Pierced? | 14.3% | | | 14.3% |
| | | Other's veil | 0 | 0 |
| | | | | - |

Table 2 shows that the piercing opinions about contract include forty-four cases, of which nine are about the debtor's veil. One pierces, producing a 11.1% piercing rate. Thirty-five of the contract opinions are about the veil of non-debtors, and eight of those pierce, producing a 22.9% piercing rate. Since out of the total forty-four contract opinions, nine opinions pierce, the rate of piercing in contract is 20.5% overall. There are three tort opinions. Two involve the debtor's veil, and all pierce, producing a rate of tort piercing involving the debtor's veil of 100% throughout. There are seven fiduciary breach opinions, all concerning the debtor's veil. Only one pierces, producing a 14.3% rate. The overall contract-to-tort ratio is 14.7:1, the ratio where the veil is the debtor's is 4.5:1, and that where the veil is others' is 35:1.

Notice that the table does not make a distinction based on who brings the piercing claim. One could expect different biases based on whether the bankruptcy trustee or a different entity brings the piercing claim. Yet, the addition of that factor did not reveal additional information.

The next paragraphs discuss the following: that piercing in tort is universal; that most of the attempts to pierce target the veils of others (rather than the debtor) and that courts pierce those veils (in contract disputes) more than twice as often as those of debtors (they pierce others' veils with a 22.9% rate while debtors' veils with an 11.1% rate).

## IV. MESSAGES FROM BANKRUPTCY

First, this Part discusses how, in tort disputes, piercing succeeds in every case. Next, this Part discusses the plethora of attempts to pierce others' veils along with their nearly one-quarter success rate.

### *A. Consensual Tort & Universal Piercing*

The success of tort piercing seems striking. Yet, a slight discrepancy appears given the complete absence of non-consensual relationships in the sample. Since all disputes arose in consensual relationships, a question arises as to whether the courts could have written these three tort opinions as contract opinions.

The dispute of *In re Stone* involved the debtor attacking the veil of a corporation used to defraud the debtor.[26] The court's opinion detailed over seven pages of facts, describing an intimate financial relationship between the lawyer that the debtor hired and the financier who advanced funds through intermediary entities with very onerous terms.[27] The court held that the two conspired to defraud the debtor, pierced the veils of the intermediate entities in order to reach the financier, and disbarred the lawyer.[28]

The dispute of *In re Restaurant Development Group, Inc.*, featured the trustee stating a fraud claim against the debtor's owners and seeking to pierce.[29] Initially, the debtor managed the several successful restaurants that the debtor's owners operated.[30] The owners gradually transitioned the receivables and assets of the debtor corporation to a new corporation.[31] When the debtor was left with no assets or income, it entered liquidation.[32] The court considered the scheme abusive and pierced the debtor's veil so that the creditors could reach the owners' assets.[33]

The facts of *In re Callaghan* show an individual creditor piercing the debtor's veil due to a vehicle repair that went awry, leading to conversion and

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[26] Stone v. Atherton (*In re* Stone), 421 B.R. 401 (Bankr. W.D. Ky. 2009).
[27] *Id.* at 408–15.
[28] *Id.* at 419, 421–22.
[29] Paloian v. Greenfield (*In re* Rest. Dev. Grp., Inc.), 394 B.R. 171 (Bankr. N.D. Ill. 2008).
[30] *Id.* at 176.
[31] *Id.*
[32] *Id.*
[33] *Id.* at 183–84.

fraud claims.[34] The creditor, a firefighter, delivered his motor home, valued at $20,000,[35] for repairs to the debtor in the fall.[36] Due to the debtor's delays, the motor home was not ready for the firefighter's annual vacation in late fall and early winter and was consequently vandalized.[37] The firefighter's insurance covered the vandalism repairs minus a $100 deductible, over which the parties had a protracted dispute that prevented the firefighter from using it for the same vacation period the next year.[38] The court noted that at some point in time the firefighter was unable to get the motor home due to work injuries.[39] The debtor imposed a garage-keeper's lien on the motor home and sold it for $500.[40] The sale took place with no public announcement of an auction, despite the fact that the firefighter served the debtor with a restraining order not to sell it.[41] The court found the debtor's conduct to be so outrageous as to constitute fraud and pierced the veil for the firefighter's benefit.[42]

A straightforward interpretation of these three cases could be that courts observing culpable owners always pierce the corporate veil in tort. However, since all three tort disputes include a fraud claim in a consensual setting, it would be possible for the courts writing these opinions to restate them as *contractual* fraud claims. The complexity and large number of the underlying (fraudulent) transactions makes this highly unlikely but not completely impossible. Playing devil's advocate to resist drawing an inference from this evidence, one would need to argue that courts may be biased to characterize these as torts, but no reason for this choice by the courts exists. The more likely interpretation is to conclude that in disputes involving intentional torts, the veil is very likely pierced.

### *B. Piercing Non-Debtors' Veils*

That only a third of the piercing attempts target the debtor, while two-thirds target others, is counterintuitive. Of all the parties involved in a bankruptcy, the debtor is the only one that is certainly insolvent (by virtue of being in bankruptcy). Therefore, the debtor should attract the preponderance of attempts

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34 Bungert v. Callaghan (*In re* Callaghan), 42 B.R. 821 (Bankr. E.D. Mich. 1984).
35 *Id.* at 824.
36 *Id.* at 822.
37 *Id.*
38 *Id.* at 823.
39 *Id.*
40 *Id.*
41 *Id.*
42 *Id.* at 824.

to pierce the veil. Moreover, attempts to pierce others' veils could have occurred outside bankruptcy, either at the debtor's initiative or at the initiative of creditors. Nevertheless, others' veils are targeted twice as often as the debtor's and are pierced at twice the rate in bankruptcy (almost 23% compared to 11.1%).[43]

The relative success in piercing non-debtors' veils is important for several reasons. It alleviates the concern that the bankruptcy process opens the door to frivolous piercing claims. Granted, the bankruptcy process may be faster and less costly than the regular trial process, but this is not frivolous litigation. Moreover, forum shopping does not appear to be an issue. Forum shopping would involve the filing of a bankruptcy petition by a solvent debtor for the purpose of bringing a piercing claim in the bankruptcy court. Not only is such a practice not apparent in the sample, but also bankruptcy procedure allows non-debtors to obviate it, depending on whether the veil-piercing claim is considered a non-core proceeding and whether the non-debtors are entitled to a jury trial. Core proceedings are those adjudicating disputes arising under the Bankruptcy Code, such as avoidable transfers.[44] Since veil piercing arises under state law, rather than the bankruptcy code, it is not a core proceeding but a related proceeding. The jurisdiction of bankruptcy courts does extend to related proceedings but only to the extent the parties do not object. This means that the creditors can protect themselves. If bankruptcy courts were biased in favor of piercing, then creditors would object to the jurisdiction of bankruptcy courts and remove their disputes to the federal district court. The same result follows if creditors have the right to a jury trial and demand it.[45]

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[43] However, due to the small sample, the difference in these piercing rates does not reach statistical significance. The chi-test indicates that the observed difference can arise by change with well over 10% probability. The chi-test aggregates attempts to pierce veils, namely the nine attempts to pierce the debtor's veil with the thirty-five attempts to pierce others' veils, into forty-four. Then aggregates the successful piercings, namely the one of a debtor's veil and the eight on others, into nine. This 9-in-44, or 20.5%, forms the expectation applied to each group. Thus, the expected number of successful piercings in the nine attempts against debtors' veils is 1.84, and the expected number of successful piercings in the thirty-five attempts against others' veils is 7.15, not far enough from the one and eight, respectively, of the data. Nevertheless, an approach based on Bayes' method that would take into account a prior probability of observing piercings of non-debtor's veils that is low, could give credence to the observed difference.

[44] 28 U.S.C. § 157 (2006).

[45] *See* Granfinanciera, S.A., v. Nordberg, 492 U.S. 33 (1989); Janine C. Ciallella, Note, *Should Bankruptcy Judges Be Permitted to Conduct Jury Trials?*, 8 AM. BANKR. INST. L. REV. 175 (2000).

Granted, situations will exist where removing to the federal district court may not make a significant difference. An example could be *In re Tyson*.[46] The plan administrator for the famous boxer Mike Tyson sought to pierce the veil of a UK and a Gibraltar entity under foreign law in order to reach the foreign individual promoters who were withholding the boxer's purse from a postpetition boxing match held in Kentucky.[47] The bankruptcy court pierced the foreign corporations' veils using UK law.[48] If all domestic courts would tend to pierce more easily than UK courts, even applying UK law, then such defendants would not benefit from removal to the district court, since the district court would have the same bias.

A further study of the success of piercing in this sample is necessary. The piercing rate of 22.9% deviates from the Priest-Klein prediction of 50% success rate. Thus, plaintiffs' successes still appears as too rare, requiring further explanation. The observed frequency can be partly explained by the realization that piercing is not an independent claim but a supplementary one that is added to an underlying claim at little cost. When a party makes the decision to pursue litigation, the probability for victory in the main claim likely overshadows the importance of the probability of success in the additional piercing claim. Such examples appear in this sample. *In re Tousa, Inc.*, involves an attempt by the creditors' committee to avoid certain liens and substantively consolidate the case of the debtor with the lien transferees.[49] The creditors' consolidation attempt was not successful, but their main action was successful in avoiding the liens.[50] Thus, the cost of litigating the substantive consolidation claim need not have been independently justified. The cost of litigating the avoidance of the liens was justified by the outcome and the consolidation claim was simply added to it.

Paradoxically, attacks on debtors' veils are the minority of the sample. This phenomenon refutes the idea that insolvency leads to widespread breaches by the debtor, triggering numerous piercing attacks to reach the debtor's owners.

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[46] Neilson v. Straight-Out Promotions, LLC (*In re* Tyson), 412 B.R. 623 (Bankr. S.D.N.Y. 2009), *vacated in part*, 433 B.R. 68 (S.D.N.Y. 2010) (confirming the Bankruptcy Court's jurisdiction, in part because the parties did not object and in part because the dispute was about the execution of the plan, hence, core).

[47] *Id.* at 628.

[48] *Id.* at 629.

[49] Official Comm. of Unsecured Creditors of Tousa, Inc., v. Citicorp N. Am., Inc. (*In re* Tousa, Inc.,) 422 B.R. 783 (Bankr. S.D. Fla. 2009).

[50] *Id.* at 786.

Future research should analyze the desirability of non-debtor piercing. Bankruptcy procedure gives standing to the trustee and the creditors to raise piercing claims that the debtor could have raised. Would these debtors make these piercing claims outside bankruptcy? Would they face the same odds of success? Is the facilitation of these claims by bankruptcy as desirable as it appears at first blush?

## CONCLUSION

This Article analyzed the relative ease of piercing in tort and in contract. The analysis started with the implications from the Priest-Klein hypothesis when applied to the relative frequency of tort and contract opinions overall compared to opinions that mention piercing.

Two explanations for the frequency of contract-piercing litigation were examined. Tort piercing may be rare because it is displaced by other, more viable theories of liability: product liability and vicarious liability. Alternatively, contract piercing may be more frequent because failing subsidiaries breach most of their contracts and attract unusually frequent piercing litigation.

Displacement of tort piercing by easier theories of liability is plausible. The displacement of piercing in tort by easier theories also renders moot the policy question of whether courts pierce in tort sufficiently easily. True tort disputes between strangers do not reach the question of piercing, presumably because other theories let the plaintiffs reach the assets of parents easier than piercing would. Therefore, the concern that piercing in tort may be too difficult has little consequence.

Furthermore, the bankruptcy sample refuted the idea that attempts to pierce the debtor's veil are the dominant piercing activity in bankruptcy. Rather, attempts to pierce others' veils were twice as frequent and twice as successful as attempts to pierce the debtor's veil. While not clearly understood, this type of activity is consistent with the idea that the web of commerce reacts to the removal of one of its nodes by reassessing the related relations through piercing. The bankruptcy of the debtor means that a member of the web of commerce has disappeared. One of the ripple effects of this disappearance is that others who dealt with the debtor will try to pierce loosely related veils. That the bankruptcy of one debtor leads its creditors to seek to pierce others' veils may be important and requires further normative analysis.

## Appendix: Bankruptcy Piercing Opinions

This Appendix collects the bankruptcy opinions analyzed in this Article. The column "P" identifies the opinions that truly involve piercing or consolidation. The column "C" identifies the opinions that are identified by the contract piercing search (performed in the bankruptcy database of Westlaw, fbkr-bct). The column "T" marks the ones identified by the corresponding tort search.

| # | Name | P | C | T |
|---|---|---|---|---|
| 1 | *In re* England Motor Co., 426 B.R. 178 (Bankr. N.D. Miss. 2010). | X | X | |
| 2 | Cox v. St. John (*In re* St. John), 430 B.R. 804 (Bankr. W.D. Mich. 2010). | X | X | |
| 3 | Bourdeau Bros., Inc., v. Montagne (*In re* Montagne), No. 08-10916, 2010 WL 271347 (Bankr. D. Vt. Jan. 22, 2010). | | X | X |
| 4 | Blixseth v. Kirschner (*In re* Yellowstone Mountain Club, LLC), 436 B.R. 598 (Bankr. D. Mont. 2010). | | | X |
| 5 | Picard v. Chais (*In re* Bernard L. Madoff Inv. Sec. LLC), 440 B.R. 282 (Bankr. S.D.N.Y. 2010). | | | X |
| 6 | Rice v. Bennett (*In re* Supermarket Investors, Inc.), No. 4:09-bk-17497, 2010 WL 5115903 (Bankr. E.D. Ark. Dec. 14, 2010). | | X | |
| 7 | *In re* GCP CT Sch. Acquisition, LLC, No. 09-11846-WCH, 2010 WL 4366139 (Bankr. D. Mass. Oct. 28, 2010). | | X | |
| 8 | Nilsen v. Neilson (*In re* Cedar Funding, Inc.), 419 B.R. 807 (B.A.P. 9th Cir. 2009). | | | X |
| 9 | Cash Am. Fin. Servs., Inc. v. Fox (*In re* Fox), 370 B.R. 104 (B.A.P. 6th Cir. 2007). | X | X | |
| 10 | Pioneer Liquidating Corp. v. U.S. Tr. (*In re* Consol. Pioneer Mortg. Entities), 248 B.R. 368 (B.A.P. 9th Cir. 2000). | | X | |

| # | Name | P | C | T |
|---|---|---|---|---|
| 11 | Charter Asset Corp. v. Victory Mkts., Inc. (*In re* Victory Mkts., Inc.), 221 B.R. 298 (B.A.P. 2d Cir. 1998). | | X | |
| 12 | Ag Venture Fin. Servs., Inc. v. Montagne (*In re* Montagne), 425 B.R. 111 (Bankr. D. Vt. 2009). | X | X | X |
| 13 | Dixon v. Am. Cmty. Bank & Trust (*In re* Gluth Bros. Const., Inc.), 424 B.R. 379 (Bankr. N.D. Ill. 2009). | X | | X |
| 14 | JPMorgan Chase Bank, N.A. v. Charter Commc'ns Operating, LLC (*In re* Charter Commc'ns), 419 B.R. 221 (Bankr. S.D.N.Y. 2009). | | X | |
| 15 | Official Comm. of Unsecured Creditors of Tousa, Inc. v. Citicorp N. Am., Inc. (*In re* Tousa, Inc.), 422 B.R. 783 (Bankr. S.D. Fla. 2009). | X | X | |
| 16 | Stone v. Atherton (*In re* Stone), 421 B.R. 401 (Bankr. W.D. Ky. 2009). | X | X | |
| 17 | Drake v. Franklin Equip. Co. (*In re* Franklin Equip. Co.), 418 B.R. 176 (Bankr. E.D. Va. 2009). | X | X | |
| 18 | Drake v. Franklin Equip. Co. (*In re* Franklin Equip. Co.), 416 B.R. 483 (Bankr. E.D. Va. 2009). | | X | |
| 19 | Neilson v. Straight-Out Promotions, LLC (*In re* Tyson), 412 B.R. 623 (Bankr. S.D.N.Y. 2009). | X | X | |
| 20 | 201 Forest St. LLC v. LBM Fin. LLC (*In re* 201 Forest St. LLC), 409 B.R. 543 (Bankr. D. Mass. 2009). | X | X | |
| 21 | Gouveia v. Cahillane (*In re* Cahillane), 408 B.R. 175 (Bankr. N.D. Ind. 2009). | | X | |
| 22 | *In re* Nutritional Sourcing Corp., 398 B.R. 816 (Bankr. D. Del. 2008). | | X | |
| 23 | Kismet Acquisition, LLC, v. Icenhower (*In re* Icenhower), 398 B.R. 902 (Bankr. S.D. Cal. 2008). | | X | |

| # | Name | P | C | T |
|---|---|---|---|---|
| 24 | Barnhill's Buffets, Inc. v. SCS Gen. Contractors, Inc., (*In re* Barnhill's Buffets, Inc.), 397 B.R. 51 (Bankr. M.D. Tenn. 2008). | X | X | |
| 25 | Bhambri v. Allied Enters., LLC (*In re* Geiler), 398 B.R. 661 (Bankr. E.D. Mo. 2008). | X | X | |
| 26 | Silverman v. KPMG LLP (*In re* Allou Distribs., Inc.), 395 B.R. 246 (Bankr. E.D.N.Y. 2008). | | | X |
| 27 | Paloian v. Greenfield (*In re* Rest. Dev. Grp., Inc.), 397 B.R. 891 (Bankr. N.D. Ill. 2008). | | | X |
| 28 | Paloian v. Greenfield (*In re* Rest. Dev. Grp., Inc.), 394 B.R. 171 (Bankr. N.D. Ill. 2008). | X | | X |
| 29 | O'Connell v. Arthur Andersen LLP (*In re* AlphaStar Ins. Grp. Ltd.), 383 B.R. 231 (Bankr. S.D.N.Y. 2008). | X | X | |
| 30 | Morgan Creek Prods., Inc. v. Franchise Pictures, LLC, (*In re* Franchise Pictures LLC), 389 B.R. 131 (Bankr. C.D. Cal. 2008). | | X | |
| 31 | Brown v. Real Estate Res. Mgmt., LLC, (*In re* Polo Builders Inc.), 388 B.R. 338 (Bankr. N.D. Ill. 2008). | X | X | |
| 32 | *In re* Solutia Inc., 379 B.R. 473 (Bankr. S.D.N.Y. 2007). | | X | |
| 33 | *In re* WorldCom, Inc., 374 B.R. 94 (Bankr. S.D.N.Y. 2007). | X | X | |
| 34 | Doctors Hosp. of Hyde Park, Inc. v. Desnick (*In re* Doctors Hosp. of Hyde Park, Inc.), 360 B.R. 787 (Bankr. N.D. Ill. 2007). | X | X | |
| 35 | Schnelling v. Crawford (*In re* James River Coal Co.), 360 B.R. 139 (Bankr. E.D. Va. 2007). | | X | |
| 36 | Sunset Hollow Props., LLC v. Bank of W. Mass. (*In re* Sunset Hollow Props., LLC), 359 B.R. 366 (Bankr. D. Mass. 2007). | X | X | |
| 37 | Flener v. Turner (*In re* Vencom, Inc.), 355 B.R. 3 (Bankr. W.D. Ky. 2006). | X | | X |

| # | Name | P | C | T |
|---|---|---|---|---|
| 38 | *In re* GlycoGenesys, Inc., 352 B.R. 568 (Bankr. D. Mass. 2006). | | X | |
| 39 | *In re* Nat'l Energy & Gas Transmission, Inc., 351 B.R. 323 (Bankr. D. Md. 2006). | | X | |
| 40 | Alberts v. Tuft (*In re* Greater Se. Cmty. Hosp. Corp. I), 353 B.R. 324 (Bankr. D.D.C. 2006). | X | X | |
| 41 | *In re* Rolling Thunder Gas Gathering, L.L.C., 348 B.R. 803 (Bankr. D. Kan. 2006). | | X | |
| 42 | Official Comm. of Unsecured Creditors of Verestar, Inc. v. Am. Tower Corp. (*In re* Verestar, Inc.), 343 B.R. 444 (Bankr. S.D.N.Y. 2006). | X | | X |
| 43 | Nisselson v. Empyrean Inv. Fund, L.P. (*In re* MarketXT Holdings Corp.), 336 B.R. 39 (Bankr. S.D.N.Y 2006). | | X | |
| 44 | *In re* Mirant Corp., 2005 WL 6440372 (Bankr. N.D. Tex. May 24, 2005). | X | X | |
| 45 | Beltrami v. Beltrami (*In re* Beltrami), 324 B.R. 255 (Bankr. M.D. Penn. 2005). | | X | |
| 46 | Limor v. Buerger (*In re* Del-Met Corp.), 322 B.R. 781 (Bankr. M.D. Tenn. 2005). | X | | X |
| 47 | Holcomb Health Care Servs., LLC v. Quart Ltd., LLC (*In re* Holcomb Health Care Servs., LLC), 329 B.R. 622 (Bankr. M.D. Tenn. 2004). | | X | |
| 48 | Kittay v. Atl. Bank of N.Y. (*In re* Global Serv. Grp., LLC), 316 B.R. 451 (Bankr. S.D.N.Y. 2004). | X | | X |
| 49 | Brown v. Countrywide Home Loans, Inc. (*In re* Brown), 319 B.R. 278 (Bankr. D.D.C. 2004). | X | X | X |
| 50 | Collins v. Kohlberg & Co. (*In re* Sw. Supermarkets, L.L.C.), 315 B.R. 565 (Bankr. D. Ariz. 2004). | X | X | |

| # | Name | P | C | T |
|---|---|---|---|---|
| 51 | *In re* Fas Mart Convenience Stores, Inc., 320 B.R. 587 (Bankr. E.D. Va. 2004). | X | X | |
| 52 | Tese-Miller v. TPAC, L.L.C. (*In re* Ticketplanet.com), 313 B.R. 46 (Bankr. S.D.N.Y. 2004). | X | | X |
| 53 | Parkway Provision Co. v. Bankr. Estate of Devos, Inc. (*In re* Devos, Inc.), 310 B.R. 520 (Bankr. W.D. Pa. 2004). | X | X | |
| 54 | Kittay v. Flutie N.Y. Corp. (*In re* Flutie N.Y. Corp.), 310 B.R. 31 (Bankr. S.D.N.Y. 2004). | X | | X |
| 55 | IT Grp., Inc. v. Bookspan (*In re* The IT Grp., Inc.), 305 B.R. 402 (Bankr. D. Del. 2004). | X | X | |
| 56 | *In re* King, 305 B.R. 152 (Bankr. S.D.N.Y. 2004). | X | X | |
| 57 | Lichtenstein v. Anderson (*In re* E. Continuous Forms, Inc.), 302 B.R. 320 (Bankr. E.D. Pa. 2003). | X | X | |
| 58 | Nat'l City Bank of Minneapolis v. Lapides (*In re* Transcolor Corp.), 296 B.R. 343 (Bankr. D. Md. 2003). | X | X | |
| 59 | InSITE Servs. Corp. v. Am. Elec. Power Co. (*In re* InSITE Servs. Corp.), 287 B.R. 79 (Bankr. S.D.N.Y. 2002). | X | X | |
| 60 | Liquidating Grantor's Trust of Proteva, Inc. v. Finova Capital Corp. (*In re* Proteva, Inc.), 290 B.R. 584 (Bankr. N.D. Ill. 2002). | | X | |
| 61 | Sec. Investor Prot. Co. v. R.D. Kushnir & Co. (*In re* Sec. Investor Prot. Corp.), 274 B.R. 768 (Bankr. N.D. Ill. 2002). | | X | X |

| # | Name | P | C | T |
|---|---|---|---|---|
| 62 | NationsBank, N.A. v. Commercial Fin. Servs., Inc. (*In re* Commercial Fin. Servs., Inc.), 268 B.R. 579 (Bankr. N.D. Okla. 2001). | | X | |
| 63 | *In re* NWFX, Inc., 267 B.R. 118 (Bankr. W.D. Ark. 2001). | | | X |
| 64 | Official Comm. of Unsecured Creditors of Toy King Distribs., Inc. v. Liberty Sav. Bank (*In re* Toy King Distribs., Inc.), 256 B.R. 1 (Bankr. M.D. Fla. 2000). | | X | |
| 65 | Desmond v. State Bank of Long Island (*In re* Computer Eng'g Assocs.), 252 B.R. 253 (Bankr. D. Mass. 2000). | X | X | |
| 66 | Namer v. Sentinel Trust Co. (*In re* AVN Corp.), 248 B.R. 540 (Bankr. W.D. Tenn. 2000). | | X | X |
| 67 | Red Bell Brewing Co. v. GS Capital, L.P. (*In re* RBGSC Inv. Corp.), 242 B.R. 851 (Bankr. E.D. Pa. 2000). | X | X | |
| 68 | Mar-Kay Plastics, Inc. v. Reid Plastics, Inc. (*In re* Mar-Kay Plastics, Inc.), 234 B.R. 473 (Bankr. W.D. Mo. 1999). | X | X | |
| 69 | *In re* McKenzie Energy Corp., 228 B.R. 854 (Bankr. S.D. Tex. 1998). | | X | |
| 70 | *In re* Blair, 226 B.R. 502 (Bankr. D. Me. 1998). | X | | X |
| 71 | Steinberg v. Kendig (*In re* Ben Franklin Retail Stores, Inc.), 225 B.R. 646 (Bankr. N.D. Ill. 1998). | | | X |
| 72 | Dionne v. First Ala. Bank (*In re* XYZ Options, Inc.), 217 B.R. 912 (Bankr. N.D. Ala. 1998). | X | X | |
| 73 | Breeden v. Bennett (*In re* The Bennett Funding Grp., Inc.), 220 B.R. 743 (Bankr. N.D.N.Y. 1997). | | X | |

| # | Name | P | C | T |
|---|---|---|---|---|
| 74 | *In re* Island Helicopters, Inc., 211 B.R. 453 (Bankr. E.D.N.Y 1997). | X | X | |
| 75 | *In re* Rothman, 204 B.R. 143 (Bankr. E.D. Pa. 1996). | | X | |
| 76 | Firstar Bank Burlington v. Stark Agric. Servs., Inc. (*In re* Kevin W. Emerick Farms, Inc.), 201 B.R. 790 (Bankr. C.D. Ill. 1996). | X | X | |
| 77 | Walter v. Celotex Corp. (*In re* Hillsborough Holdings Corp.), 203 B.R. 1000 (Bankr. M.D. Fla. 1996). | X | X | |
| 78 | Litzler v. Am. Elk Conservatory, Inc. (*In re* Kelso), 196 B.R. 363 (Bankr. N.D. Tex. 1996). | | X | |
| 79 | *In re* Sanborn, Inc., 181 B.R. 683 (Bankr. D. Mass. 1995). | X | X | |
| 80 | Dicello v. Jenkins (*In re* Int'l Loan Network, Inc.), 160 B.R. 1 (Bankr. D.D.C. 1993). | | X | |
| 81 | Smith v. Bank of New York (*In re* Hollywell Corp.), 161 B.R. 302 (Bankr. S.D. Fla. 1993). | X | X | |
| 82 | *In re* Chateaugay Corp., 139 B.R. 598 (Bankr. S.D.N.Y. 1992). | X | | X |
| 83 | *In re* Thymewood Apartments, Ltd., 129 B.R. 505 (Bankr. S.D. Ohio 1991). | | X | |
| 84 | Kolinsky v. Russ (*In re* Kolinsky), 100 B.R. 695 (Bankr. S.D.N.Y. 1989). | X | X | |
| 85 | *In re* Carterhouse, Inc., 94 B.R. 271 (Bankr. D. Conn. 1988). | X | X | |
| 86 | Guinee v. Heydt (*In re* Wilson), 90 B.R. 208 (Bankr. E.D. Va. 1988). | X | X | |
| 87 | *In re* Coral Petroleum, Inc., 60 B.R. 377 (Bankr. S.D. Tex. 1986). | X | X | |

| # | Name | P | C | T |
|---|---|---|---|---|
| 88 | Fundex Capital Corp. v. Balaber-Strauss (*In re* Tampa Chain Co.), 53 B.R. 772 (Bankr. S.D.N.Y. 1985). | X | X | |
| 89 | Lisk v. Criswell (*In re* Criswell), 52 B.R. 184 (Bankr. E.D. Va. 1985). | X | X | |
| 90 | Amoco Oil Co. v. Joyner (*In re* Joyner), 46 B.R. 130 (Bankr. M.D. Ga. 1985). | | X | |
| 91 | Ernst v. Ohsman & Sons, Co. (*In re* Manchester Hides, Inc.), 45 B.R. 794 (Bankr. N.D. Iowa 1985). | X | X | |
| 92 | Bungert v. Callaghan (*In re* Callaghan), 42 B.R. 821 (Bankr. E.D. Mich. 1984). | X | | X |
| 93 | *In re* The Nova Real Estate Inv. Trust, 23 B.R. 62 (Bankr. E.D. Va. 1982). | X | X | |
| 94 | Pension Benefit Guar. Corp. v. Tenn-Ero Corp. (*In re* Tenn-Ero Corp.), 14 B.R. 884 (Bankr. D. Mass. 1981). | X | | X |
| 95 | *In re* Washington Med. Ctr., Inc., 10 B.R. 616 (Bankr. D.D.C. 1981). | X | X | |
| 96 | *In re* W.T. Grant Co., 4 B.R. 53 (Bankr. S.D.N.Y. 1980). | X | X | |