Article

Harpooning the Corporate Whale: A Federal Maritime Treatise on Veil-Piercing

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All the subtle demonisms of life and thought;
all evil, to crazy Ahab, were visibly personified,
and made practically assailable in Moby Dick.[1]

1. HERMAN MELVILLE, MOBY DICK 177 (Signet Classic, Penguin Group 1998) (1851).

I. Introduction

For many maritime lawyers, it is easy to understand the frustrations of Captain Ahab, for the world of international shipping and commerce is no stranger to the shifting assets of undercapitalized subsidiaries. The importance of finding a solvent party under such circumstances cannot be ignored. When dealing with one of these subsidiaries, obtaining redress from shareholders or parent companies may prove as arduous and maddening as the hunt for Moby Dick. Limited liability is the rule and only under extraordinary circumstances will it be disregarded.[2]

Regrettably, the circumstances justifying disregard of the corporate form do not provide a model of clarity.[3] As Justice Cardozo once remarked, the entire area of law is "enveloped in mists of metaphor."[4] Others have described the jurisprudence as an "unprincipled hodgepodge of seemingly ad hoc and unpredictable results."[5] This is problematic in any context, but especially in the world of international shipping and commerce that prides itself upon predictability and uniformity.

This Article seeks to guide the maritime lawyer through the many challenges and pitfalls that often arise when he seeks to harpoon a corporate whale. Part I provides a general overview of veil-piercing doctrine under the body of United States jurisprudence commonly referred to as general maritime law. Jurisdictional issues, standards of pleading, and choice-of-law issues are discussed. Part II provides a comprehensive analysis of the various approaches to veil-piercing adopted by the different United States circuit courts of appeals. Part III concludes with a plea for admiralty courts to continue to delineate and define the boundaries of

2. Murray v. Miner, 74 F.3d 402, 404 (2d Cir. 1996).

3. *See* Neil A. Helfman, *Establishing Elements for Disregarding Corporate Entity and Piercing Entity's Veil*, 114 Am. Jur. Proof of Facts 3d 403, §1 (Originally Published in 2010).

4. Berkey v. Third Ave. Ry. Co., 155 N.E. 58, 61 (N.Y. 1926).

5. Katherine Hespe, *Preserving Entity Shielding: How Corporations Should Respond to Reverse Piercing of the Corporate Veil*, 14 J. Bus. & Sec. L. 69, 69 (2013) (citing David Millon, *Piercing the Corporate Veil, Financial Responsibility, and the Limits of Liability*, 56 Emory L.J. 1305, 1311 (2007)).

a distinct maritime approach to veil-piercing—one that best serves equity and responds to the unique needs of the maritime world.

II. The General Maritime Law of Veil-Piercing

A. A Doctrinal Overview

Individuals who incorporate are not typically liable for the acts and obligations of the corporation.[6] This concept of limited liability has been called one of the most important legal developments of the nineteenth century.[7] By diminishing risk, many have argued that limited liability benefits society as a whole by promoting commerce and industrial growth.[8] There are times, however, when strict adherence to corporate separateness can bring about unjust results.[9] To address these concerns, courts have crafted the equitable doctrine of "piercing the corporate veil."[10] When the veil is pierced, shareholders are held personally liable for the obligations of their corporation.[11] Although commentators have articulated different theories to explain this exception to the rule of limited liability,[12] admiralty courts generally apply an "alter ego" or "instrumentality" version.[13] According to this approach, the corporate form will be disregarded when there is such a unity of ownership and interest between the corporation and its shareholders that their separate personalities no longer exist.[14] This determination is necessarily fact-intensive.[15] Factors courts will consider include: undercapitalization; insolvency; siphoning or intermingling of funds; failure to observe corporate formalities or maintain corporate records; non-functioning of officers; control by a dominant stockholder; overlap in ownership, officers, directors, and other personnel; common office space; the degree of discretion shown by

6. Model Bus. Corp. Act, § 6.22 (Am. Bar Ass'n 2002).

7. *See* Helfman, *supra* note 3, at § 1 (citing Consumer's Co-op. of Walworth County v. Olsen, 419 N.W.2d 211, 213 (Wis. 1988).

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. Stephen B. Presser, *Piercing the Corporate Veil* §1.9 (2014).

13. Based on the author's review of numerous secondary sources, treatises, and maritime cases regarding the subject matter.

14. *See, e.g.,* Chan v. Society Expeditions, Inc., 123 F.3d 1287, 1294 (9th Cir. 1997) (noting that courts "have held that disregard of corporate separateness 'requires that the controlling corporate entity exercise total domination of the subservient corporation, to the extent that the subservient corporation manifests no separate corporate interests of its own'") (quoting Kilkenny v. Arco Marine Inc., 800 F.2d 853, 859 (9th Cir.1986)); Kirno Hill Corp. v. Holt, 618 F.2d 982, 985 (2d Cir. 1980) (noting that the requirements for piercing the corporate veil are clear in federal maritime law and that the defendant corporation must "have so dominated and disregarded" the corporate form of the other corporation).

15. Vitol, S.A. v. Primerose Shipping Co., 708 F.3d 527, 544 (4th Cir. 2013).

the allegedly dominated corporation; and whether the dealings of the entities are at arm's length.[16]

However, merely proving that a corporation is an alter ego without more is generally insufficient to justify the extraordinary remedy of veil-piercing. Courts additionally require proof that respecting corporate separateness "would sanction a fraud or promote an injustice."[17] Because of the amorphous nature of these equitable terms, courts have struggled to articulate a clear framework, offering jurists little guidance in subsequent cases.[18] Many have criticized the resulting unpredictable nature of the jurisprudence, lamenting that the same facts appear in cases providing relief as those denying relief.[19] Addressing these concerns, scholars have compiled empirical data from thousands of veil-piercing cases to determine the factors most prevalent in successful suits.[20] These statistical findings are important for numerous reasons, and practitioners would be wise to learn their significance before bringing suit.

B. Admiralty Jurisdiction in Veil-Piercing Cases

Admiralty courts are courts of limited jurisdiction. They possess only the power authorized by the United States Constitution or given to them by the United States Congress.[21] Article III of the United States Constitution gives the judiciary power to hear all cases of admiralty and maritime jurisdiction.[22] Congress extended this constitutional power to the district courts with passage of the Judiciary Act of 1789.[23] Neither the Constitution nor the Act however, provide the means for ascertaining whether a claim is cognizable in admiralty. Delineating the boundaries, therefore, has been a task primarily relegated to the courts.[24]

Performing this task, the United States Supreme Court first held veil-piercing appropriate in the maritime context in *Swift & Co. Packers*

16. *Id.*

17. Sea-Land Servs., Inc. v. Pepper Source, 941 F.2d 519, 522 (7th Cir. 1991) (citing Van Dorn Co. v. Future Chem. & Oil Corp., 753 F.2d 565, 570 (7th Cir. 1985)); *see also* Cunningham v. Rendezvous, Inc., 699 F.2d 676, 680 (4th Cir. 1981) (nothing that court must find "an element of injustice or fundamental unfairness").

18. Robert B. Thompson, *Piercing the Corporate Veil: An Empirical Study*, 76 Cornell L. Rev. 1036, 1036 (1991); *see also See Sea-Land Servs.*, 941 F.2d at 522.

19. *Id.* at 1037.

20. *See, e.g.,* Richmond McPherson and Nader Raja, *Corporate Justice, An Empirical Study of Piercing Rates and Factors Courts Consider When Piercing the Corporate Veil*, 45 Wake Forest L. Rev. 931, 957-66 (2010).

21. Kokkoken v. Guardian Life Ins. Co. of America, 511 U.S. 375, 377 (1994).

22. U.S. Const. art. III, § 2, cl. 1.

23. Judicial Act of 1789, ch. 20, § 9, 1 Stat. 73 (codified as amended at 28 U.S.C. §1333 (2012)).

24. 1 Robert Force & Martin J. Norris, The Law of Maritime Personal Injuries §1:1 (5th ed. 2004).

v. Compania Colombiana Del Caribe, S.A.[25] *Swift* involved the veil-piercing claim of cargo owners against a shipowner.[26] The shipowner argued that equitable powers to examine corporate separateness were outside the bounds of admiralty.[27] The Supreme Court disagreed, reasoning that such a rule would diminish admiralty's effectiveness in responding to the practicalities and needs of the international shipping community.[28]

Since *Swift & Co. Packers*, it is well established that admiralty courts possess the equitable power to pierce the corporate veil under appropriate circumstances.[29] Not every veil-piercing claim, however, can be brought in admiralty.[30] For a veil-piercing claim to sound in admiralty, the underlying dispute between the claimant and the corporation must be maritime.[31] In other words, the underlying dispute must constitute a maritime tort,[32] relate to a maritime contract,[33] or arise from circumstances under which the United States Congress has statutorily conferred admiralty jurisdiction on the federal district courts.[34]

C. Pleading

1. Standard of Pleading and Maritime Attachments

Practitioners should know where and how to discover the necessary facts to support their veil-piercing claims,[35] for the jurisprudence is replete with disappointed parties whose claims were summarily dismissed.[36] This is partially a result of the heightened standard of pleading in two situations that commonly arise in veil-piercing claims. First, when a party alleges fraud, the Federal Rules of Civil Procedure require the party to plead with particularity.[37] Second, a higher standard of pleading is required whenever a party seeks a "maritime attachment." In the United

25. 339 U.S. 684, 691-92 (1950).

26. *Id.* at 685.

27. *See id.* at 687-88.

28. *See id.* at 691.

29. *See generally* Blue Whale Corp. v. Grand China Shipping Dev. Co., 722 F.3d 488 (2d Cir. 2013); Vitol, S.A. v. Primerose Shipping Co., 708 F.3d 527 (4th Cir. 2013); Chan v. Soc'y Expeditions, Inc., 123 F.3d 1287 (9th Cir. 1997).

30. *See Swift & Co. Packers*, 339 U.S. at 690 (noting that "a court of admiralty will not enforce an independent equitable claim merely because it pertains to maritime property.").

31. Blue Whale Corp. v. Grand China Shipping Dev. Co., 722 F.3d 488, 494 (2d Cir. 2013).

32. *See* Robert Force, Admiralty and Maritime Law 3-9 (2d ed. 2013).

33. *See id.* at 9-11.

34. *See, e.g.*, The Death on the High Seas Act, 46 U.S.C. §§ 30301-30308 (2006).

35. For tips on how to discover such facts, *see* William Hoffman Pincus, *Piercing the Corporate Veil in Maritime Cases*, 28 J. Mar. L. & Com. 341, 341-42 (1997).

36. *See, e.g.*, Vitol, S.A. v. Primerose Shipping Co., 708 F.3d 527, 547 (4th Cir. 2013); Williamson v. Recovery Ltd., 542 F.3d 43, 53 (2d Cir. 2008).

37. Fed. R. Civ. P. 9(b).

States, Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims ("Rule B") governs the process of maritime attachment.[38] The party seeking attachment pursuant to this rule is required to set forth the "circumstances from which the claim arises with such *particularity* that the defendant or claimant will be able, without moving for a more definite statement, to commence an investigation of the facts and frame a responsive pleading."[39] This heightened level of pleading guards against the improper use of seizure proceedings and ensures that the complaint affords a reasonable belief that the claim has merit.[40]

Rule B attachments serve two fundamental purposes: (1) the ability to obtain *in personam* jurisdiction over a respondent through his property; and (2) the ability to secure satisfaction in case the suit is successful.[41] This power to obtain security is especially important in the veil-piercing context because it is most likely a party who has obtained a worthless judgment against an insolvent debtor and would seek a deeper pocket. The need for security is a major reason why Rule B attachments are a preferred tactic of the veil-piercing claimant, even if stricter procedural rules make recovery more difficult.

However, not every veil-piercing claim requires the claimant to satisfy a heightened pleading standard. Fraud is not always a necessary element in a veil-piercing claim[42] and there are several ways for an admiralty court to obtain jurisdiction without resort to the Supplemental Rules.[43] Under such circumstances, the claimant who brings suit in federal court must satisfy the ordinary pleading requirements of Rule 8 of the Federal Rules of Civil Procedure.[44] The rule requires a short and plain statement that the pleader is entitled to relief.[45] Satisfying even this lower standard, however, can prove extremely difficult in the context of veil-piercing claims.[46] A court will dismiss a complaint pursuant to Rule 12(b)(6) if it does not allege enough facts "to state a claim to relief that is plausible on its face."[47] This means that a complaint must contain "more than labels and conclusions, and a formulaic recitation of the elements of a cause of

38. FED. R. CIV. P. SUPP. R. B.

39. FED. R. CIV. P. SUPP. R. E(2)(a) (emphasis added).

40. *Vitol*, 708 F.3d at 542.

41. *See* Swift & Co. v. Compania Colombiana Del Caribe, S.A., 339 U.S. 684, 693 (1950).

42. *See, e.g.*, Cunningham v. Rendezvous, Inc., 699 F.2d 676, 680 (4th Cir. 1983).

43. The Supplemental Rules for Admiralty or Maritime Claims govern only the procedure for asserting jurisdiction over a party through attachment, garnishment, or arrest of that party's property. *See* FED. R. CIV. P. SUPP. R. A – G. Even without resort to these Supplemental Rules, maritime courts can assert jurisdiction over a party through the ordinary rules set forth in the Federal Rules of Civil Procedure.

44. FED. R. CIV. R. 1

45. FED. R. CIV. P. 8(a).

46. *See, e.g.*, Vitol, S.A. v. Primerose Shipping Co., 708 F.3d 527, 532 (4th Cir. 2013).

47. Bell Atl. Corp v. Twombly, 550 U.S. 544, 570 (1955).

action will not do."[48]

The United States Court of Appeals for the Fourth Circuit decision of *Vitol, S.A. v. Primerose Shipping Co.* provides an example of the unique interaction between different pleading requirements in veil-piercing claims. In *Vitol*, the Fourth Circuit vacated an attachment because the plaintiff failed to satisfy the heightened pleading standard of Rule E.[49] However, vacatur did not automatically result in dismissal of the complaint.[50] The court reasoned that continued control over the *res* was not necessary for maintenance of jurisdiction.[51] It was therefore theoretically possible, according to the court, "that a complaint, adequate to withstand a Rule 12(b)(6) motion, may, nevertheless, not be adequate to avoid the vacatur of an attachment."[52]

2. *A Note About Whether Vacatur Should Automatically Result in Dismissal*

The Fourth Circuit is not alone in holding that vacatur of a maritime attachment does not automatically result in dismissal of a claim. The United States Court of Appeals for the Ninth Circuit reached this conclusion as well.[53] In *Stevedoring Services of America v. Ancora Transport, N.V.*, a stevedoring company contracted with a charterer to unload cargo from a vessel.[54] When the charterer failed to pay for these services, the company attached funds belonging to the defendant, an alleged alter ego of the charterer.[55] In response, the defendant entered a restricted appearance and successfully contested the claim.[56] After vacatur, the defendant argued that the court was without jurisdiction to review the plaintiff's appeal.[57] Like the Fourth Circuit in *Vitol*, the Ninth Circuit disagreed, reasoning that continued control over the *res* was unnecessary for the maintenance of jurisdiction.[58] Also like the Fourth Circuit, the Ninth Circuit relied primarily on the Supreme Court decision of *Republic National Bank of Miami v. United States* to reach this conclusion.[59]

A close look at this Supreme Court decision, however, calls into question its applicability to the situations presented in *Vitol* and *Ancora*

48. *Id.* at 555.
49. *Vitol,* 708 F.3d at 547.
50. *Id.* at 541.
51. *Id.* at 539-40.
52. *Id.* at 541.
53. Stevedoring Servs. of America v. Ancora Transp., N.V., 59 F.3d 879, 883 (9th Cir. 1995).
54. *Id.* at 881.
55. *Id.*
56. *Id.*
57. *Id.* at 882.
58. *Id.* at 883.
59. *See Ancora Transp.*, 59 F.3d at 882; *Vitol*, 708 F.3d at 540.

Transport. Republic National Bank involved an *in rem* proceeding where the attached property was central to, and the subject matter of, the dispute.[60] This is distinguishable from the *quasi-in rem* situations presented in *Ancora Transport* and *Vitol*,[61] especially in their veil-piercing context. When a veil-piercing claimant proceeds *quasi-in rem*, the *res* might have very little, if any, relation to the dispute, and might belong to a completely separate legal entity. Subjecting the government to the jurisdiction of the district in which it has seized immovable property, as the Supreme Court allowed in *Republic National Bank*,[62] does not come close to offending traditional notions of fair play and substantial justice.[63] The same cannot be said for subjecting a corporation to the jurisdiction of a state in which it "cannot be found"[64] merely because an affiliated entity owes an obligation to a third party, as the circuit courts did in *Vitol* and *Ancora Transport.*

Perhaps even more troubling, the Fourth and Ninth Circuit seem to attribute no legal significance to the defendants' restricted appearances.[65] A defendant entering a restricted appearance can vigorously defend the merits of a claim without appearing generally.[66] The rule thus "permits a defendant[,] whose appearance is obtained by attachment[,] the ability to avoid the dilemma of either defending the attached property by generally appearing and . . . risking a loss greater than the value of the property, or letting it go by default."[67] The homeowner in *Republic National Bank* consented to the forfeiture at the district court level.[68] It was therefore undisputed that jurisdiction had been perfected prior to the removal of the *res* from the court's custody.[69] The defendants in *Ancora Transport* and *Vitol*, by contrast, restricted their appearances so that they could defend solely against the attachments.[70] When the attachments were vacated, the courts should have been deprived of their only basis for exercising jurisdiction.

The question presented after *Vitol* and *Ancora Transport* is: why the

60. Republic Nat'l Bank of Miami v. United States, 506 U.S. 80, 82 (1992).

61. *Ancora Transp.*, 59 F.3d 882; *Vitol*, 708 F.3d at 531, n.2.

62. *Republic Nat'l Bank*, 506 U.S. at 92-93.

63. *See* Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945).

64. Courts have interpreted this requirement to signify that attachment is improper when: (1) the defendant can be found within the district for jurisdictional purposes; or (2) when the defendant can be found for service of process. Seawind Compania, S.A. v. Crescent Line, Inc., 320 F.2d 580, 582 (2d Cir. 1963).

65. *See Ancora Transp.*, 59 F.3d at 883; *Vitol*, 708 F.3d at 533.

66. FED. R. CIV. P., SUPP. ADM. R. E(8).

67. Teyseer Cement Co. v. Halla Mar. Corp., 794 F.2d 472, 478 (9th Cir. 1986).

68. United States v. One Single Family Residence, 731 F. Supp. 1563, 1565 (S.D. Fla. 1990), *rev'd*, 995 F.2d 1558 (11th Cir. 1993).

69. *See id.*

70. *Ancora Transp.*, 59 F.3d at 881; *Vitol,* 708 F.3d at 531.

requirement of pleading with particularity should be treated differently from other procedural requirements of Rule B? If a federal court, after issuing an attachment, determined that the claim did not sound in admiralty, the appropriate remedy would be vacatur. It would be absurd to think that the court could proceed to the merits of the non-maritime dispute without justifying such continuance on other jurisdictional grounds. A rule that allows a federal court to adjudicate a claim against a defendant neither present nor owning any property in the district offends traditional notions of fair play and substantial justice. It is similarly offensive that a non-present defendant can be subjected to the jurisdiction of a court merely because an affiliate's property has been improperly attached. Moreover, a rule that required courts to dismiss claims brought pursuant to procedurally deficient Rule B attachments would not impose any unjust hardship on claimants, who can protect their rights by asking the district court to stay vacatur or post a supersedeas bond.[71]

D. Choice-of-Law in Maritime Veil-Piercing Claims

1. Historical Confusion

Choice-of-law issues in maritime veil-piercing claims have historically been a major source of confusion.[72] A substantial number of courts have adopted an "internal affairs" approach, whereby the crucial relationship involved in a veil-piercing claim is between the corporation and the shareholder and thus is governed by the incorporating state's law.[73] Some scholars have criticized this approach and argued that application of variable state law principles to these disputes effectively hampers the uniformity to which maritime law aspires.[74]

Other courts, when presented with maritime veil-piercing claims, have applied the forum state's choice-of-law rules. Many of these courts did so without explaining their choice[75] while other courts justified such application on the grounds of diversity.[76] For example, in *Patin v. Thoroughbred Power Boats Inc.*, plaintiffs injured in a boating accident

71. *See* Fed. R. Civ. P. 62.

72. *See* Gregory Scott Crespi, *Choice-of-Law in Veil-Piercing Litigation: Why Courts Should Discard the Internal Affairs Rule and Embrace General Choice-of-law Principles*, 64 N.Y.U. Ann. Surv. Am. L. 85, 90 (2008) (noting that generally "[t]he choice-of-law jurisprudence regarding corporate veil piercing is conflicting and poorly articulated"); *see also* Blue Whale Corp. v. Grand China Shipping Dev. Co., 722 F.3d 488, 494-500 (2d Cir. 2013) (addressing conflicting approaches to choice-of-law in the context of maritime veil-piercing claims).

73. *See* Crespi, *supra* note 72, at 98-97.

74. *See generally*, Pincus, *supra* note 35 (arguing for applying a uniform federal standard of piercing the corporate veil in maritime cases); Crespi, *supra* note 72.

75. *See, e.g.*, Cunningham v. Rendezvous, Inc., 699 F.2d 676, 680 (4th Cir. 1983).

76. *See, e.g.*, Sea-Land Servs., Inc. v. Pepper Source, 941 F.2d 519, 524 (7th Cir. 1991); Patin v. Thoroughbred Power Boats Inc., 294 F.3d 640 (5th Cir. 2002).

brought suit against the manufacturer of the vessel in a Louisiana state court.[77] After removing the case to federal court on the basis of diversity, the defendant ceased all of its operations and transferred its assets to a successor corporation.[78] Addressing the alter-ego action against the successor, the United States Court of Appeals for the Fifth Circuit concluded that the choice-of-law rules of the forum state governed because the court was exercising its diversity jurisdiction.[79]

The Fifth Circuit is not alone in coming to this conclusion. The United States Court of Appeals for the Seventh Circuit in *Sea-Land Services, Inc. v. Pepper Source* also applied the forum state's choice-of-law rules to a veil-piercing claim because it was sitting in diversity.[80] The flawed logic in these decisions becomes evident when their specific facts are recalled. *Patin* involved personal injuries sustained by those aboard a vessel in navigation,[81] and *Sea-Land* involved a dispute arising out of the transport of cargo aboard an ocean carrier.[82] Unquestionably, these claims constituted maritime actions, and thus substantive rules of admiralty should have applied regardless of the court's jurisdictional basis.[83]

When substantive admiralty law is applicable, the United States Supreme Court has instructed lower courts to employ a maritime conflicts-of-law analysis.[84] The purpose of this analysis is "to assure that a case will be treated [i]n the same way under the appropriate law regardless of the fortuitous circumstances which often determine the forum" in admiralty.[85] This test, first crafted by the United States Supreme Court in *Lauritzen v. Larsen*,[86] requires points of contact between a claim and the competing bodies of law to be ascertained and valued.[87] Courts, however, have not consistently employed the conflicts-of-law test when confronted with maritime veil-piercing claims. Some court decisions seem to suggest an almost per se rule that issues of corporate identity trigger ap-

77. *Id.* at 643.

78. *Id.* at 643-44.

79. *Id.* at 646.

80. *See Sea-Land Servs.*, 941 F.2d at 520.

81. 294 F.3d 640 at 643.

82. 941 F.2d at 519.

83. *See* Blue Whale Corp. v. Grand China Shipping Dev. Co., 722 F.3d 488, 498 (2d Cir. 2013); *see also* FORCE, *supra* note 32, at 20.

84. *See* Lauritzen v. Larsen, 345 U.S. 571, 591 (1953).

85. *Id.*

86. *Id.* at 583.

87. Supplemented by subsequent cases, the non-exhaustive list of factors include: (1) place of the wrongful act; (2) law of the flag; (3) allegiance or domicile of the injured; (4) allegiance of the defendant shipowner; (5) place of contract; (6) inaccessibility of an alternative forum; (7) law of the forum; and (8) the defendant's base of operations. *See* Hellenic Lines Ltd. v. Rhoditis, 398 U.S. 306, 309 (1970); *Lauritzen*, 345 U.S. at 583-91.

plication of federal law.[88] This automatic application of federal law is inconsistent with the choice-of-law doctrine articulated by the Supreme Court in *Lauritzen.* It discourages the expansion of international business by promoting a parochial concept of the law and insisting that all disputes, no matter how distinctly foreign, will be resolved by United States courts applying United States law.[89] The other approach, whereby a federal court looks to the choice-of-law doctrine of the forum state, invites variable application of state law principles, diminishing uniformity.[90] This is also problematic. In *Blue Whale Corp. v. Grand China Shipping Dev. Co.*, the United States Court of Appeals for the Second Circuit addressed these issues.[91] The decision offers an insightful resolution to choice-of-law issues in maritime veil-piercing claims.

2. Blue Whale Corp. v. Grand China Shipping Development Co.

In *Blue Whale*, a Liberian corporation entered into a charter party with a Chinese corporation for the transport of iron ore.[92] The vessel, owned by the Liberian corporation and registered in the Republic of Liberia, was to transport the ore from Brazil to China.[93] The charterer was to pay ninety-eight percent of the total freight within seven days of the cargo being loaded.[94] When this payment was not made, the vessel owner commenced arbitration in London pursuant to a clause in the charter party.[95] The arbitration was still ongoing when the vessel owner brought a veil-piercing suit against the parent corporation of the charterer, hoping to obtain security in the event it prevailed at arbitration.[96] After the attachment was authorized, the parent corporation moved for vacatur.[97] The district court, applying the charter party's provisional choice of English law, held the claim invalid and vacated the attachment.[98] On appeal, the Second Circuit concluded that the district court's application of English law was improper.[99]

The Second Circuit concluded that the choice-of-law clause in the

88. *See, e.g.,* Clipper Wonslid Tankers Holding A/S v. Biodiesel Ventures, LLC, 851 F. Supp. 2d 504, 508, (S.D.N.Y. 2012) (holding that "[f]ederal courts sitting in admiralty must apply federal common law when examining corporate identity") (citing Holborn Oil Trading Ltd., v. Interpetrol Bermuda Ltd., 774 F. Supp. 840, 844 (S.D.N.Y 1991)).

89. *See* Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 629 (1985).

90. *See generally*, Pincus, *supra* note 35, at 344-51.

91. Blue Whale Corp. v. Grand China Shipping Dev. Co., 722 F.3d 488, 497 (2d Cir. 2013).

92. *Id.* at 491, 491 n.1.

93. *Id.* at 491.

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.* at 492.

99. *Id.* at 499-500.

charter party was irrelevant in the action against the non-signatory parent.[100] The court reasoned that the plaintiff's claim concerned the parent's legal status as an alter ego of the subsidiary, rather than the contractual obligations between the vessel owner and the charterer.[101] The court then rejected the contention that admiralty courts must apply federal law when examining corporate identity.[102] The Second Circuit noted that the many cases standing for this proposition had all relied on *Kirno Hill,* a case that did not involve international parties or any quarrel over choice-of-law.[103] *Kirno Hill* and its progeny, therefore, were not binding.[104] While acknowledging the value that district courts often found in applying federal law, the court nevertheless concluded that the appropriate body of law governing a veil-piercing claim should be determined by a maritime conflicts-of-law analysis.[105]

Applying this type of analysis, the Second Circuit concluded that the law substantively most related to the veil-piercing claim was federal law.[106] Federal law had the strongest points of contact to the claim by virtue of the location of the parent's property, the unavailability of an alternative forum, and the absence of a dominant foreign law.[107] The Second Circuit therefore vacated the district court's order and remanded for reconsideration under federal law.[108]

Blue Whale is significant because it means that federal courts may apply foreign substantive law to veil-piercing claims brought pursuant to Rule B.[109] Although *Blue Whale* raises this possibility, there are reasons to expect that lower courts will continue to apply federal law in such disputes.[110] Federal law will be applied over state law, according to the Second Circuit, because "uniformity in . . . the realm of admiralty supersedes *any* competing interest in applying state law."[111] Federal law will also likely be applied over foreign law, in veil-piercing claims brought pursuant to Rule B, because the crucial factor becomes the location of the defendant's property when charter party obligations are considered irrelevant.[112] It was the location of property, according to the court, that

100. *Id.* at 496.
101. *Id.*
102. *Id.*
103. *Id.* at 497.
104. *Id.* at 497-98.
105. *Id.* at 496-500.
106. *Id.* at 499-500.
107. *Id.*
108. *Id.* at 500.
109. David R. Maas, Note, *Veiled Threats: Will the Second Circuit Hamstring Alter-Ego Claims By Applying Foreign Law?*, 38 TUL. MAR. L.J. 723, 730-31 (2014).
110. *Id.*
111. *Blue Whale*, 722 F.3d at 497 (emphasis added).
112. *Id.* at 499-500.

enabled the action, and, along with it, the application of federal law.[113]

Another interesting aspect of the *Blue Whale* decision is the Second Circuit's complete silence about the defendant's status as a Chinese corporation—an implicit rejection of the internal affairs approach. The Second Circuit employed the rationale of *Kalb, Voorhis & Co. v. American Financial Corp.*, only as far as to find choice-of-law obligations irrelevant to the corporate veil issue.[114] The ultimate conclusion in *Kalb*, however, was that "the law of the state of incorporation determines when the corporate form will be disregarded."[115] A defendant's status as a corporation under a nation's laws is related significantly to a veil-piercing claim and should have played a larger role in the court's analysis. Chinese law could be said to have much more contact with the claim than federal law, whose only point of contact was the mere location of the property. The defendant, being incorporated under the laws of China, could have anticipated that the benefits of limited liability would depend upon such laws. It is much more doubtful that the defendant could ever have foreseen that United States law would govern.[116]

The *Blue Whale* decision is also noteworthy because of what it suggests in a footnote. According to the court, neither party raised the issue of whether the non-signatory parent could be bound to the choice-of-law provision in the subsidiary's contract by principles of agency.[117] These principles have long been embraced in the Second Circuit and could have been used to bind the parent to the choice-of-law found in the subsidiary's charter party.[118] For example, in *FR 8 Singapore Pte. v. Albacore Maritime Inc.*, the court applied a choice-of-law clause even against a non-signatory defendant; it did not find such obligations irrelevant.[119] The court reasoned that applying federal law in spite of choice-of-law clauses invites "international plaintiffs who . . . are disgruntled with the choice-of-law in the contract to use the United States as a way to get around their bargain."[120] The Second Circuit's reference to *FR8 Singapore* in *Blue Whale* suggests that the court may later approve binding a non-signatory shareholder to the contractual obligations of the corporation. Until a court does so, the primary significance of *Blue Whale* is that it establishes a choice-of-law doctrine for analyzing veil-piercing claims in admiralty.[121] Under this approach, incorporation in a jurisdiction is a rel-

113. *Id.*
114. *Id.* at 496.
115. 8 F.3d 130, 132-33 (2d Cir. 1993).
116. *See* FR 8 Sing. Pte. v. Albacore Mar. Inc., 794 F. Supp. 2d 449, 458 (S.D.N.Y. 2011).
117. *See Blue Whale*, 722 F.3d at 492, n.2.
118. *See* Kirno Hill Corp. v. Holt, 618 F.2d 982, 985 (2d Cir. 1980) (per curiam).
119. 794 F. Supp. at 457-59.
120. *Id.* at 458.
121. *See Blue Whale*, 722 F.3d at 499-500.

evant contact, but not the only factor to be considered.[122]

III. Maritime Veil-Piercing Jurisprudence in the United States

This Section analyzes the controlling maritime veil-piercing law in each of the United States federal jurisdictions. Each circuit has approached the issue in various ways, as outlined below.

A. The United States Court of Appeals for the Second Circuit

In order to prevail in the Second Circuit, a claimant must prove that shareholders used the corporate form to perpetuate a fraud or so dominated the corporate form that the corporation primarily transacted the shareholders' personal business rather than its own.[123] Although the court has articulated several factors to guide the determination, "there is no set rule as to how many . . . factors must be present."[124] Instead, the general principle is to impose liability "when doing so would achieve an equitable result."[125]

The admiralty bench of the Second Circuit first addressed veil-piercing in *Kirno Hill Corp. v. Holt*.[126] In this *per curiam* decision, a shipowner time chartered one of its vessels to a company, which subsequently failed to pay charter hire for several months.[127] When the shipowner demanded payment, the company refused, stating that it had executed the charter party on behalf of a separate corporation and its shareholder.[128] Ten days later, the shipowner brought suit against the shareholder.[129] The district court found several facts indicative of alter ego status and imposed liability.[130] The Second Circuit, however, concluded that the record did not support this theory, reasoning that single-shareholder situations do not alone justify disregard of the corporate form.[131] Additionally, the court found that, because the corporation was formed prior to the execution of the charter party, the corporation could only have been conducting its own business rather than the shareholder's per-

122. *See* Crespi, *supra* note 72, at 88.

123. *See* Williamson v. Recovery Ltd., 542 F. 3d 43, 53 (2d Cir. 2008); Itel Containers Int'l Corp. v. Atlanttrafik Exp. Serv. Ltd., 909 F.2d 698, 703-04 (2d Cir. 1990); Dow Chemical Pacific Ltd. v. Rascator Mar. S.A., 782 F.2d 329, 342 (2d Cir. 1986); *Kirno Hill,* 618 F.2d at 985.

124. *See Williamson*, 542 F.3d at 53.

125. *Id.* (quoting William Wrigley Jr. Co. v. Waters, 890 F.2d 594, 600 (2d Cir.1989)).

126. *Kirno Hill*, 618 F.2d at 985.

127. *Id.* at 984.

128. *Id.*

129. *Id.*

130. *Id.* at 984-85.

131. *Id.* at 985.

sonal business.[132]

In *Dow Chemical Pacific Ltd. v. Rascator Maritime S.A.*, a corporate time charterer contracted, through subsidiary entities, with various shippers to deliver cargo to Bombay, India.[133] The day before the vessel was to depart, it received different instructions to proceed to four different ports in Europe.[134] The charterer never informed the shippers of the change in plans.[135] When the shippers discovered the deviation, they asserted a veil-piercing claim against a creditor of the charterer.[136] According to the shippers, the creditor was able to exert dominion and control over the charterer to such a degree that the chartering corporation was nothing more than a mere alter ego.[137] The Second Circuit agreed.[138]

According to the Court, the charterer was essentially a shell corporation.[139] The shareholder's cousin served as its president, and the shareholder's assistant served as its secretary.[140] The corporation had no records of any meetings, of the issuance of any stock, or of the election of any directors.[141] The corporation's sole asset was a bank account, which was started with funds deposited by the creditor and over which only the creditor had managing authority.[142] Statements from the account were forwarded to the creditor's home address, and funds consistently shuttled between the creditor's personal accounts and the corporation's account.[143] Additionally, the creditor signed checks for the charter hire payments owed by the charterer, played an active role in booking the vessel's cargo arrangements, and caused the vessel's deviations.[144]

All of these findings, according to the Second Circuit, were supported by the record and could not be regarded as clearly erroneous.[145] Further, the fact that the charterer held itself out as having a vessel that would carry freight to Bombay, and accepted cargo on this basis, when the vessel was in fact ordered, and did proceed, to four different ports gave rise to a fair inference of fraud.[146] Thus, the Second Circuit concluded that the district court's decision to pierce the corporate veil was

132. *Id.*
133. 782 F.2d 329, 332 (2d Cir. 1986).
134. *Id.*
135. *See id.* at 332-33.
136. *Id.* at 332-33.
137. *Id.* at 333-34.
138. *Id.* at 342.
139. *Id.* at 343.
140. *Id.*
141. *Id.*
142. *Id.*
143. *Id.*
144. *Id.*
145. *Id.*
146. *Id.*

not in error.[147]

In *Itel Containers International Corp. v. Atlanttrafik Express Service Ltd.*, Sea Containers Limited ("SCL"), a company in the business of leasing cargo containers to ocean carriers, decided to purchase a shipping line.[148] "Since SCL did not wish to compete openly with its customers, it decided to incorporate separate entities to buy and operate the line."[149] SCL provided the funds and legal fees for the creation of these other entities (hereinafter collectively referred to as "AES"), as well as the funds necessary for their day-to-day operations.[150] SCL also possessed the right to have all AES shares transferred upon request.[151]

The shipping line, however, had pre-existing lease arrangements with other container-leasing companies.[152] These other companies sought assurances from SCL that the lease arrangements would be respected, but SCL refused.[153] Nonetheless, after the sale was consummated and the lease arrangements had expired, AES did not return the containers, treating the leases as if they had been extended.[154] Several months later, with the equipment still unreturned, it had become clear that the AES operation was a failure.[155] AES "was deeply in debt and incurring large monthly losses."[156] SCL refused to give further financial support and AES went into liquidation.[157] The other leasing companies then brought suit in federal court against SCL to recover payment for the equipment rentals, alleging SCL and AES to be alter egos of each other.[158] The district court, and the Second Circuit on appeal, found no merit in the plaintiffs' veil-piercing claim.[159]

According to the Second Circuit, the record established several facts that disproved alter ego status.[160] The court noted that AES was responsible for its everyday affairs and that SCL did not interfere.[161] AES observed corporate formalities and held board meetings.[162] The court noted that AES had refused, despite SCL's importuning, to give prefer-

147. *Id.*
148. 909 F.2d 698, 700 (2d Cir. 1990).
149. *Id.*
150. *Id.*
151. *Id.*
152. *Id.*
153. *Id.*
154. *Id.* at 700-01.
155. *Id.* at 701.
156. *Id.*
157. *Id.*
158. *Id.*
159. *Id.* at 701, 704.
160. *Id.* at 704.
161. *Id.*
162. *Id.*

ential treatment for SCL containers.[163] Further, when a dispute over whether to retain AES' president arose, SCL's view was overruled.[164] The court also noted that "when AES received $6 million payment from the former owner of the shipping line, the money was used to pay off some of AES' outstanding bills, including bills from the plaintiffs, but no part of the payment was used to reduce the amount owed to SCL."[165] Thus, the Second Circuit dismissed the veil-piercing claim.[166]

In *Williamson v. Recovery Ltd.*, workers who contracted to participate in shipwreck recovery brought an action to recover for their share of treasure and artifacts recovered.[167] The defendants were the signatories of the ship-recovery contracts, other corporations involved in the search and rescue operations, and the alleged alter egos of those signatories and corporations.[168] The Second Circuit found no merit in the veil-piercing claim.[169] According to the court, the plaintiffs' allegations regarding the liability of other corporate entities were "supported merely by generalized assertions in the attorney-verified complaint, unsworn court filings in related actions, and documentation showing common business addresses and management."[170] On this record, the Second Circuit held the plaintiff's claim insufficient to support veil-piercing.[171]

The most recent maritime veil-piercing decision reported from the Second Circuit is *Blue Whale Corp. v. Grand China Shipping Development Co.*[172] The decision is of significant importance to the jurisprudence because it establishes a choice-of-law doctrine for analyzing all veil-piercing claims in admiralty.[173] According to the Second Circuit, the appropriate body of law governing a maritime veil-piercing claim is determined by a maritime conflicts-of-law analysis.[174]

B. The United States Court of Appeals for the Third Circuit

According to the Third Circuit, a court should disregard the corporate form when necessary to "prevent fraud, illegality, or injustice, or when recognition of the corporate entity would defeat public policy or

163. *Id.*
164. *Id.*
165. *Id.*
166. *Id.*
167. Williamson v. Recovery Ltd. P'ship, 542 F.3d 43, 47 (2d Cir. 2008).
168. *Id.* at 46.
169. *See id.* at 53-54.
170. *Id.* at 53.
171. *Id.* at 52-53.
172. 722 F.3d 488, 495 (2d Cir. 2013).
173. *Id.* at 499-500.
174. *Id.* at 498.

shield an individual from liability for a crime."[175] The Third Circuit noted, "[t]here is no doubt that an admiralty court has as part of its general jurisdiction sufficient equitable powers to apply this test."[176] In applying the test, however, the Third Circuit directs courts to "start from the general rule that the corporate entity should be recognized and upheld, unless specific, unusual circumstances call for an exception."[177] The Third Circuit, however, has not yet encountered such specific, unusual circumstances that would justify veil-piercing in the maritime context.[178]

C. The United States Court of Appeals for the Fourth Circuit

The Fourth Circuit articulated a framework to guide the determination of whether to pierce the corporate veil in *DeWitt Truck Brokers, Inc. v. W. Ray Flemming Fruit Co.*[179] and *Keffer v. H.K. Porter Co.*[180] Although both these cases were non-maritime, subsequent Fourth Circuit maritime decisions adopted this approach as well.[181] According to the Fourth Circuit, the conclusion to disregard the corporate form is a fact-intensive inquiry, and every case must be judged according to it own facts and circumstances.[182] "[A] court must focus on reality and not form, [on] how the corporation operated and the individual defendant's relationship to that operation."[183]

Cunningham v. Rendezvous, Inc. involved the wrongful death actions of four seamen who lost their lives aboard a sinking vessel.[184] In addition to bringing suit against the corporation that owned the vessel, the decedents' estates sought recovery from its shareholders.[185] The district court instructed the jury that fraud or wrongdoing was a necessary element of the veil-piercing claim—an instruction that the Fourth Circuit, on appeal, found to be an abuse of discretion because it set too high a burden on claimants.[186]

175. *Zubik v. Zubik*, 384 F.2d 267, 272 (3d Cir. 1967).

176. *Id.* at 273.

177. *Id.*

178. *See id.* at 274; Gardner v. The Calvert, 253 F.2d 395, 398 (3d Cir. 1958); Publicker Commercial Alcohol Co. v. Indep. Towing Co., 165 F.2d 1002, 1006 (3d Cir. 1948).

179. 540 F.2d 681, 686-87 (4th Cir. 1976).

180. 872 F.2d 60, 65 (4th Cir. 1989).

181. *See* Vitol, S.A. v. Primerose Shipping Co., 708 F.3d 527, 544 (4th Cir. 2013); Ost-West-Handel Bruno Bischoff GMBH v. Project Asia Line, Inc., 160 F.3d 170, 174 (4th Cir. 1998); Cunningham v. Rendezvous, Inc., 699 F.2d 676, 680 (4th Cir. 1983).

182. *Vitol*, 708 F.3d at 544 (quoting *DeWitt Truck Brokers*, 540 F.2d at 684); *Ost-West-Handel*, 160 F.3d at 174 (citing *DeWitt Truck Brokers*, 540 F.2d at 684).

183. *Vitol*, 708 F.3d at 544 (quoting *Ost-West-Handel*, 160 F.3d at 174).

184. 699 F.2d. at 677.

185. *Id.*

186. *Id.* at 680.

By instructing district courts to set a lower bar, it would be reasonable to think that the Fourth Circuit looked favorably upon an individual's right to obtain redress from shareholders. Subsequent case law, however, demonstrates the degree of difficulty faced by veil-piercing claimants in the Fourth Circuit.[187] In *Ost-West-Handel Bruno Bischoff GmbH v. Project Asia Line, Inc.*, the court addressed a vessel owner's claim against a charterer and its alleged alter ego for unpaid charter hire.[188] The alleged alter ego had contributed substantial financial support to the charterer.[189] Corporate records and formalities were not maintained.[190] Furthermore, an overlap in personnel suggested a disregard of corporate separateness.[191] Despite these facts, the Fourth Circuit concluded that the alter ego allegation was meritless.[192] Crucial to this determination was the Fourth Circuit's finding that the financial contributions constituted a loan rather than a capital investment—a determination made in the absence of any legal instrument indicating such an arrangement.[193] *Ost-West-Handel* is exemplary of how difficult it is for a claimant in the Fourth Circuit to succeed in piercing the corporate veil.

This difficulty is further exemplified in *Vitol, S.A. v. Primerose Shipping Co.*, a veil-piercing claim brought in the aftermath of an oil spill off the coast of Estonia.[194] The claimant was the charterer of the unseaworthy vessel involved in the spill.[195] Prior to bringing suit in federal court, the claimant had obtained a judgment against Capri Marine, the vessel's owner, in England based on an action of unseaworthiness.[196] Capri Marine, however, was a substantially undercapitalized corporation.[197] At the time it owned the vessel, it had no appreciable funds in any account and did not own office space.[198] Its only asset was the unseaworthy vessel responsible for the oil spill and that was sold to an affiliated entity for inadequate consideration shortly after the incident.[199] The proceeds of the sham sale were not even used to pay for Capri Marine's fault in bringing about the oil spill.[200] Instead, outstanding loans to affili-

187. *See, e.g., Vitol*, 708 F.3d at 527; *Ost-West-Handel*, 160 F.3d at 170.
188. 160 F.3d at 173.
189. *Id.* at 174.
190. *Id.* at 175.
191. *Id.*
192. *Id.* at 176.
193. *Id.* at 174.
194. Vitol, S.A. v. Primerose Shipping Co., 708 F.3d 527, 531 (4th Cir. 2013).
195. *Id.* at 531.
196. *Id.*
197. *Id.* at 532.
198. *Id.* at 544-45.
199. *Id.* at 544.
200. *See id.* at 544.

ated entities were given priority and repaid.[201] Within five years, the $6.1 million judgment would increase to over $9 million and remain substantially unpaid.[202]

In order to recover this outstanding debt, the claimant prayed for process of attachment to restrain the vessel THOR when it sailed into the District of Maryland.[203] The claimant alleged that the vessel's owner, Spartacus, and the vessel's manager, Primerose (collectively S&P) were mere puppets and instrumentalities of the Kalogiratos Group—mainly a father and son whose shipping empire dominated and controlled Capri Marine as well.[204] The Fourth Circuit agreed, for the sake of argument, that Capri Marine was an alter ego of Gerassimos Kalogiratos.[205] The court noted the sham sale of the unseaworthy vessel to a Kalogiratos entity, loans made to Capri Marine by other Kalogiratos entities, Capri Marine's gross undercapitalization, and the failure to maintain corporate formalities and records as indicative of this status.[206]

However, Capri Marine's status did not resolve the question whether alter ego liability could attach to S&P as well.[207] To link S&P to Capri Marine, the claimant identified: a series of loans and transfers between the two entities; that the two entities were operated out of the same office by the same personnel; that the vessels in both fleets appeared nearly identical; that S&P was started with funds invested by Capri Marine's managing entity in the aftermath of the sham sale; that both entities failed to respect corporate formalities or keep minutes; and that Gerassimos Kalogiratos was involved in the financing of the THOR by signing certain mortgage documents on behalf of S&P and directing loan-related documents to be sent to his attention.[208] Despite all these allegations, the Fourth Circuit concluded that the claimant failed to create a reasonable belief that S&P was an alter ego of the Kalogiratos family.[209] Accordingly, the Fourth Circuit affirmed the district court's order to vacate the attachment and dismiss the claim.[210]

After reading *Vitol*, two questions arise. First, what more could the claimant possibly have done to avoid dismissal of his claim? In asking this question, it is important to remember that the Fourth Circuit decided

201. *Id.* at 532.
202. *Id.* at 531.
203. *Id.*
204. *Id.* at 531-32
205. *Id.* at 545.
206. *Id.* at 544-45.
207. *Id.* at 545.
208. *Id.* at 544-45, 547 n.15.
209. *Id.* at 545.
210. *Id.* at 547.

the merits of *Vitol* at a Rule E(4)(f) hearing.[211] At this preliminary stage of adjudication, the claimant had not benefited from the fact-finding tools of discovery. It is hard to imagine, however, what he might have been able to discover even if the court had allowed the claim to proceed. Capri Marine had no employees to depose and, like S&P, did not keep any corporate records or minutes to analyze.[212] Although the universal rule is that the burden of proof is on the veil-piercing claimant,[213] perhaps it would be more equitable for the burden to shift to the corporation in circumstances where, because of a failure to keep corporate records or minutes, discovering facts has become nearly impossible.

Additionally, it should be recalled that the Fourth Circuit analyzed *Vitol* under Rule 8, which requires only a "short and plain statement of the claim showing that the pleader is entitled to relief."[214] It would be reasonable to think that at this lowest standard of pleading the court would have allowed the claim to proceed. The fact that the court found the claimant's thirty pages of detailed allegations insufficient to satisfy even this lowest standard is further exemplary of the degree of difficulty veil-piercing claimants face in the Fourth Circuit.

The second question that arises after *Vitol* is whether the Fourth Circuit would have reached a different result if the cause of action arose from tort instead of contract. If, for example, the claimant had been the sovereign state of Estonia, seeking recovery for the substantial damage to its coastline in the wake of the oil spill, perhaps the Court would have been more forgiving. Although this contract/tort distinction is rarely an express justification employed by courts, empirical data suggests that a claimant is significantly more likely to succeed on its veil-piercing claim when the cause of action arises from tort instead of contract.[215] Jurists have articulated an equitable rationale for this distinction, noting that in actions based on contract, the creditor has willingly transacted with the undercapitalized entity even though the creditor could have sought assurances or done due diligence prior to contracting.[216] In a tort situation, by contrast, the injured party has no such choice and the limitations of corporate liability are, from its standpoint, fortuitous and non-consensual.[217]

211. *Id.* at 541.

212. *Id.* at 532; Vitol, S.A. v. Capri Marine, Ltd., No. CIV.A. MJG-09-3430, 2011 WL 5577618, at *4 (D. Md. Aug. 22, 2011).

213. Coryell v. Phipps, 128 F.2d 702, 704 (5th Cir. 1942), *aff'd on other grounds*, 317 U.S. 406 (1943); *see also* Vitol, S.A., v. Capri Marine, Ltd., No. MJG-09-3430, 2011 WL 5577618, at *4-6 (D. Md. Aug. 22, 2011).

214. *Vitol*, 708 F.3d at 539.

215. *See, e.g.*, Mcphereson & Raja, *supra* note 20, at 938.

216. United States v. Jon-T Chemicals Inc., 768 F.2d 686, 693 (5th Cir. 1985).

217. *See, e.g., id.* at 692; *see also* Thompson, *supra* note 18, at 1038.

D. THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

According to the Fifth Circuit, "the principle of limited liability remains a dominant characteristic of . . . corporate law."[218] Although the court has recognized exceptional circumstances justifying the veil-piercing remedy, it has been unable to articulate an "encompassing doctrinal basis for determining when principals will be [held] liable."[219] At best, the Fifth Circuit has provided exemplary situations to guide lower courts, instructing them to impose liability when doing so would achieve an equitable result.[220]

Equity required the imposition of liability on a shareholder in *Talen's Landing Inc. v. M/V Venture II*.[221] In *Talen's Landing*, the plaintiff never received payment for marine services it provided to a vessel and brought suit against the vessel's corporate owner, the owner's dominant shareholder, and two other affiliated corporations.[222] The Fifth Circuit explained that the determination to disregard the corporate form "depends upon the trial court's findings of fact."[223] In reviewing the trial court record, the Fifth Circuit agreed that the shareholder dominated and controlled his corporate entities, thus, the extraordinary remedy of veil-piercing was warranted.[224]

Baker v. Raymond International, Inc. perhaps demonstrates the limits placed on a district court's discretion.[225] The case involved an injured seaman's attempt to impose Jones Act liability on the controlling shareholder of a corporation's subsidiary, the actual employer of the plaintiff.[226] The jury imposed individual liability, and the district court entered judgment.[227] The Fifth Circuit, concluded, however, that the jury's imposition of liability was premised on an erroneous district court instruction.[228] The district court instructed the jury to determine whether the parent exercised "actual control" over the subsidiary and identified nine factors that the jury could consider.[229] On appeal, the Fifth Circuit agreed that the factors were relevant to the veil-piercing issue, but concluded that the district court failed to present them adequately in the context of a rudimentary understanding of the principles of limited liabil-

218. Baker v. Raymond, 656 F.2d 173, 179 (5th Cir. Unit A Sept. 1981).
219. *Id.*
220. *See id.* at 179-80.
221. 656 F.2d 1157, 1161-62 (5th Cir. Unit A Sept. 1981).
222. *Id.* at 1158.
223. *Id.* at 1160.
224. *Id.* at 1161-62.
225. 656 F.2d 173 (5th Cir. Unit A Sept. 1981).
226. *Id.* at 175.
227. *Id.*
228. *Id.* at 180-81.
229. *Id.* at 180.

ity.[230] The district court also erred by not accurately describing to the jury the degree of control necessary.[231] Actual control is not the standard; instead, the control must amount to "total domination of the subservient corporation, to the extent that the subservient corporation manifests no separate corporate interests of its own and functions solely to achieve the purposes of the dominant corporation."[232]

The Fifth Circuit has analyzed veil-piercing in other maritime contexts as well. In *Coryell v. Phelps*, the court, in dicta, concluded that a principal of a corporation owning vessels possessed the statutory right to limit liability.[233] In *National Marine Service, Inc. v. C.J. Thibodeaux Co.*, the court held a corporation liable for an affiliated entity's debts to a ship repair yard.[234] In *Florida Bahama Lines, Ltd. v. Steel Barge Star 800 of Nassau*, the Fifth Circuit concluded that the corporate form could not be employed deceitfully so as to affect the priority of maritime liens.[235] In *North Pacific Steamship Co. v. Pyramid Bulkcarriers, Inc.*, the Fifth Circuit held that a vessel owner could not attach alter ego liability against corporations through the mechanism of a show cause order.[236]

Although all these cases directly analyzed maritime veil-piercing, it is unclear whether designating a claim as maritime has any significance in the Fifth Circuit. In *United States v. Jon-T Chemicals, Inc.*, the court expressed doubt over whether a uniform federal alter ego rule was necessary, claiming that state and federal alter ego tests were "essentially the same."[237] Although the doctrines are similar, the Fifth Circuit is arguably incorrect in finding federal and state veil-piercing approaches to be essentially the same. Even amongst states, there is no single approach to corporate law. Each state has primary responsibility to regulate the corporate affairs of individuals incorporating within its borders,[238] and specific differences with respect to veil-piercings standards often arise.[239]

Because of the many benefits that can accrue, a state will often seek to incentivize incorporation by shaping its corporate law to benefit the interests of managers or shareholders—a situation referred to as a "race

230. *Id.* at 181.

231. *Id.* at 180.

232. *Id.* at 181 (citing Krivo Indus. Supply Co. v. National Distillers & Chem. Corp., 483 F.2d 1098, 1106 (5th Cir. 1973), *modified* per curiam, 490 F.2d 916 (5th Cir. 1974).

233. *See* 128 F.2d 702, 704 (5th Cir. 1942).

234. 501 F.2d 940, 941 (5th Cir. 1974).

235. *See* 433 F.2d 1243, 1248-49 (5th Cir. 1970).

236. *See* 515 F.2d 426, 427 (5th Cir. 1974).

237. United States v. Jon-T Chemicals, Inc., 768 F.2d 686, 690 n.6 (5th Cir. 1985).

238. Lucian Arye Bebchuk, *Federalism and the Corporation: The Desirable Limits on State Competition in Corporate Law*, 105 HARV. L. REV. 1435, 1438 (1992).

239. Sara C. Haan, *Federalizing the Foreign Corporate Form*, 85 ST. JOHN'S L. REV. 925, 978-79 (2011).

to the bottom" by many commentators.[240] While racing to the bottom, the interests of third parties are often ignored and adversely affected.[241] It is these socially undesirable results for parties outside the corporate structure that has led many commentators to argue for adoption of a uniform set of federal rules.[242] Such rules would be especially beneficial in the maritime context.[243]

Even if the doctrines are not essentially the same, the Fifth Circuit is correct in noting that courts addressing the alter ego issue "rarely stated whether they were applying a federal or state standard and . . . cited federal and state cases interchangeably."[244] Thus, practitioners can feel confident in relying on both maritime and non-maritime decisions to support their veil-piercing claims. To this end, two non-maritime decisions from the Fifth Circuit warrant special attention. In *United States v. Jon-T Chemicals, Inc.*, the Fifth Circuit articulated a unique analytical framework for evaluating veil-piercing in the parent-subsidiary context,[245] and in *Edwards Co. v. Monogram Industries, Inc.*, the court set a lower bar for veil-piercing claimants to satisfy in tort situations than in contract situations.[246]

E. The United States Court of Appeals for the Seventh Circuit

The Seventh Circuit indirectly examined veil-piercing in the maritime context twice.[247] In neither of these decisions, however, does the court acknowledge the maritime nature of the decisions before it. *Sea-*

240. *See* Harvard Law Review, *The Case for Federal Threats in Corporate Governance*, 118 Harv. L. Rev. 2726, 2727 (2005); Bebchuk, *supra* note 238, at 1438.

241. Bebchuk, *supra* note 238, at 1509.

242. *See* Haan, *supra* note 239, at 1009-10; Bebchuk, *supra* note 238, at 1509-10.

243. *See* Pincus, *supra* note 35, at 349-350.

244. United States v. Jon-T Chemicals, Inc., 768 F.2d 686, 690 n.6 (5th Cir. 1985).

245. The court developed

> a laundry list of factors to be used in determining whether a subsidiary is the alter ego of its parent. These include whether: (1) the parent and the subsidiary have common stock ownership; (2) the parent and the subsidiary have common directors or officers; (3) the parent and the subsidiary have common business departments; (4) the parent and the subsidiary file consolidated financial statements and tax returns; (5) the parent finances the subsidiary; (6) the parent caused the incorporation of the subsidiary; (7) the subsidiary operates with grossly inadequate capital; (8) the parent pays the salaries and other expenses of the subsidiary; (9) the subsidiary receives no business except that given to it by the parent; (10) the parent uses the subsidiary's property as its own; (11) the daily operations of the two corporations are not kept separate; and (12) the subsidiary does not observe the basic corporate formalities, such as keeping separate books and records and holding shareholder and board meetings.

Id. at 691-92.

246. 730 F.2d 977, 980-84 (5th Cir. 1984).

247. *See* Great Lakes Overseas, Inc. v. Wah Kwong Shipping Group, Ltd., 990 F.2d 990 (7th Cir. 1993); Sea-Land Servs. v. Pepper Source, 941 F.2d 519 (7th Cir. 1991).

Land Services, Inc. v. Pepper Source involved an ocean carrier's claim to recover on a substantially unpaid freight bill,[248] and *Great Lakes Overseas v. Wah Kwong Shipping Group, Ltd.* involved a shipping agent's agreement to book cargo and issue bills of lading on behalf of a freight line service.[249] Under these circumstances, the actions arguably were within admiralty and should have been analyzed under substantive, uniform maritime principles. Instead, the Seventh Circuit, without justification or explanation, analyzed these issues under Illinois law.[250]

Nonetheless, *Sea-Land Services* and *Great Lakes Overseas* remain persuasive authority as to how the Seventh Circuit approaches the veil-piercing issue in the maritime context. According to these decisions, a court should disregard the corporate form when there is "such a unity of interest and ownership that the separate personalities of the corporation and the individual, or other corporation, no longer exist;" and where the circumstance are "such that adherence to the fiction of separate[ness] . . . would sanction a fraud or promote injustice."[251]

In *Sea-Land Services*, the court found the first prong satisfied after its examination of the record revealed that: the defendant was the sole shareholder of several corporations; only one of the corporations ever held a single meeting; none of the corporations ever passed articles of incorporation, bylaws, or other agreements; the defendant ran all of the corporations out of a single office, with the same phone line, and the same express accounts; and the defendant borrowed substantial sums of money, interest free from these corporations, sometimes for the purpose of making child support payments to his ex-wife, education expenses for his children, maintenance of his personal automobiles, and health care for his pet.[252] By contrast, the Seventh Circuit concluded that the plaintiff did not satisfy the unity of interest/ownership prong in *Great Lakes Overseas*.[253] According to the Seventh Circuit, the record in *Great Lakes Overseas* "indicate[d] no failure to keep separate corporate records or to comply with corporate formalities and no undercapitalization or commingling of funds."[254] Although some common directors served on the boards of both entities, that fact alone, according to the court, was insufficient to prove alter ego status.[255]

248. *Sea-Land Servs.*, 941 F.2d at 519-20.

249. *Great Lakes Overseas*, 990 F.2d at 991.

250. *Id.* at 996-97; *Sea-Land Servs.*, 941 F.2d at 520.

251. *Sea-Land Servs.*, 941 F.2d at 520 (quoting *Macaluso v. Jenkins*, 420 N.E.2d 251, 255 (Ill. App. 1981)); *see also Great Lakes Overseas*, 990 F.2d at 996 (quoting *Sea-Land Servs.*, 941 F.2d at 520).

252. *Sea-Land Servs.*, 941 F.2d at 521-22.

253. *Great Lakes Overseas*, 990 F.2d at 996-97.

254. *Id.* at 997.

255. *See id.*

As to the second prong, the Seventh Circuit interpreted the equitable term "promoting injustice" to mean something less than an affirmative showing of fraud and something more than a creditor's inability to collect.[256] The Seventh Circuit remanded on this prong in *Sea-Land Services*.[257] In *Great Lakes Overseas*, however, the court found the prong unsatisfied, concluding that respecting the corporate form would not work an injustice.[258] According to the court, the plaintiff's allegation that the defendant bled its subsidiary's funds was a mischaracterization of the defendant's attempt to enforce its security interests.[259]

F. The United States Court of Appeals for the Ninth Circuit

The Ninth Circuit has directly addressed maritime veil-piercing on at least ten different occasions.[260] Following the lead of the Second Circuit, the Ninth Circuit allows piercing "where a corporation uses its alter ego to perpetuate a fraud *or* where it so dominates and disregards its alter ego's corporate form that the alter ego was actually carrying on the controlling corporation's business without manifesting any corporate interests of its own."[261] The overarching instruction is that "corporate separateness [should be] respected unless doing so would work injustice upon innocent third parties."[262]

The Ninth Circuit has addressed the choice-of-law issue in maritime veil-piercing claims on at least three different occasions. In *Villar v. Crowley Maritime Corp.* and *Pereira v. Utah Transport, Inc.*, foreign seamen attempted to impose Jones Act liability upon foreign shipowners.[263] The seamen, or their respective representatives, argued that the foreign registration and incorporation of the shipowners were mere façades hiding the true American ownership and control of the business

256. *See Sea-Land Servs.*, 941 F.2d at 522.

257. *Id.* at 524-25.

258. *Great Lakes Overseas*, 990 F.2d at 997.

259. *Id.*

260. *See* Chan v. Soc'y Expeditions, Inc., 123 F.3d 1287, 1294 (9th Cir. 1997); Bergen v. F/V St. Patrick, 816 F.2d 1345, 1351-52 (9th Cir. 1987); Kilkenny v. Arco Marine Inc., 800 F.2d 853, 858-59 (9th Cir. 1986); Teixeira v. Van Camp Seafood Co., 783 F.2d 951, 952 (9th Cir. 1986); Villar v. Crowley Mar. Corp., 782 F.2d 1478, 1481 (9th Cir. 1986); Pereira v. Utah Transp. Inc., 764 F.2d 686, 689-90 (9th Cir. 1985); M/V American Queen v. San Diego Marine Const. Corp., 708 F.2d 1483, 1489-90 (9th Cir. 1983); United Cont'l Tuna Corp. v. United States, 550 F.2d 569, 572-74 (9th Cir. 1977); Fong v. United States, 300 F.2d 400, 409 (9th Cir. 1962); Stralla v. Connell Bros. Co. (Canada) Ltd., 220 F.2d 511, 513 (9th Cir. 1955).

261. *Chan*, 123 F.3d at 1294 (emphasis added) (citing Kirno Hill Corp. v. Holt, 618 F.2d 982, 985 (2d Cir. 1980)).

262. *Kilkenny*, 800 F.2d at 859 (citing Edwin K. Williams & Co. v. Edwin K. Williams & Co.-East, 542 F.2d 1053, 1063 (9th Cir.1976)).

263. *See Villar*, 782 F.2d at 1479; *Pereira*, 764 F.2d at 687-88.

ventures.[264] In applying the *Lauritzen* test, the Ninth Circuit found the alter ego allegations relevant to two factors: the allegiance of the shipowner and the shipowner's base of operations.[265] Although the Ninth Circuit ultimately found the claims meritless, *Villar* and *Pereira* demonstrate the relevance of actual control, not mere corporate status, to the determination of Jones Act applicability.

In *Chan v. Society Expeditions, Inc.*, the court, addressing a veil-piercing claim against a German corporation, applied federal common law.[266] The court reasoned, "[f]ederal courts sitting in admiralty generally apply federal common law when examining corporate identity."[267] The Second Circuit, however, expressly rejected this proposition in its decision of *Blue Whale*.[268] Whether the Ninth Circuit will continue to examine the identity of foreign corporations by resort to federal law, especially in the aftermath of *Blue Whale*, remains unclear.

As to the actual merits of maritime veil-piercing claims, most claimants have been unsuccessful. Their lack of success is generally attributable to their failure to carry the burden of proof, for example, consider *Teixera v. Van Camp Seafood Co.*[269] and *M/V American Queen v. San Diego Marine Const. Corp.*[270] In *Teixera*, the captain and crew of a fishing vessel brought suit against the vessel's husbanding agent, the alleged alter ego of the crew's employer, contending that certain expenses had been improperly charged to their wages.[271] In *M/V American Queen*, a shipowner brought suit against a marine repair company and its parent corporation alleging improper service and repair of the vessel's rudder.[272] In both cases, the plaintiffs offered no evidence of alter ego status at trial, relying instead on mere, conclusory allegations.[273] Accordingly, the Ninth Circuit dismissed both their "alter ego" claims.[274]

The plaintiffs in *Chan v. Society Expeditions, Inc.*,[275] *Kilkenny v. Arco Marine, Inc.*,[276] and *Stralla v. Connell Bros. Co.*[277] were able to adduce more facts in support of their veil-piercing claims than the plaintiffs

264. *See Villar*, 782 F.2d at 1481; *Pereira*, 764 F.2d at 689.
265. *See Villar*, 782 F.2d at 1481-82; *Pereira*, 764 F.2d at 689-90.
266. *Chan*, 123 F.3d at 1294, 1296-97.
267. *Id.* at 1294 (citing *In re* Holborn Oil Trading, Ltd., 774 F. Supp. 840, 844 (S.D.N.Y. 1991)).
268. Blue Whale Corp. v. Grand China Shipping Dev. Co., 722 F.3d 488, 496 (2d Cir. 2013).
269. 783 F.2d 951, 953 (9th Cir. 1986).
270. 708 F.2d 1483, 1489-90 (9th Cir. 1983).
271. *Teixeira*, 783 F.2d at 952.
272. *M/V American Queen*, 708 F.2d at 1489-90.
273. *See Teixeira*, 783 F.2d at 953; *M/V American Queen*, 708 F.2d at 1489-90.
274. *Teixeira*, 783 F.2d at 953; *M/V American Queen*, 708 F.2d at 1486.
275. 123 F.3d 1287 (9th Cir. 1997).
276. 800 F.2d 853 (9th Cir. 1986).
277. 220 F.2d 511 (9th Cir. 1955).

in *Teixeira* and *M/V American Queen*.[278] Nevertheless, the Ninth Circuit came to the same result and dismissed their claims.[279] In *Chan*, plaintiffs incurred severe personal injuries when the vessel they were aboard capsized off the coast of a coral atoll in French Polynesia.[280] Alleging crew negligence, the plaintiffs sought redress from the sole shareholder of the corporations involved in the incident.[281] The Ninth Circuit found common ownership alone to be an insufficient ground to justify disregard of the corporate form.[282]

In *Kilkenny*, the representatives of a diver who perished while performing underwater maintenance on a vessel brought suit against the shipowner and its alleged alter ego.[283] The plaintiffs adduced facts demonstrating: that some of the shipowner's expenses were paid by the corporation; that some of the shipowner's employees stated that they were employed by the corporation; and that the shipowner's business consisted of transporting goods on behalf of the corporation.[284] These facts, according to the Ninth Circuit, did not satisfy the standard of proof for alter ego status.[285]

In *Stralla*, the Ninth Circuit addressed veil-piercing in the context of a closely held corporation.[286] The district court imposed personal liability upon the corporation's manager, a shareholding member of the family, and ordered him to return prepaid freight for undelivered cargo.[287] On appeal, the Ninth Circuit determined that imposition of liability was in error.[288] While members of the manager's family owned all the corporation's stock, the manger owned only one share and "there [was] no evidence that the corporation was without capital . . . ."[289] This was

278. *See, e.g., Chan,* 123 F.3d at 1294 (providing evidence of common ownership of all corporations by one individual); *Kilkenny*, 800 F.2d at 858-59 (providing evidence of maintenance invoices and disbursement vouchers and testimony of two crewmen suggesting ownership by parent corporation); *Stralla*, 220 F.2d at 512 (alleging evidence that the individual personally received payment and cargo, rather than the corporation).

279. *Chan,* 123 F.3d at 1294 (holding that there was insufficient support to disregard the corporate form); *Kilkenny,* 800 F.2d at 859 (holding that there is no genuine issue of material fact that there was an alter ego); *Stralla,* 220 F.2d at 513 (holding that libelants did not meet burden of proof of alter ego).

280. *See Chan*, 123 F.3d at 1289.

281. *See id.* at 1289-90.

282. *Id.* at 1294.

283. 800 F.2d at 854-55.

284. *Id.* at 859.

285. *Id.*

286. *See* 220 F.2d 511, 511-12 (9th Cir. 1955).

287. Connell Bros Co v. Seven-Seas Trading & S S Co, S A, 111 F. Supp. 227, 230 (N.D. Cal. 1953), *rev'd sub nom.* Stralla v. Connell Bros. Co. (Canada) Ltd., 220 F.2d 511 (9th Cir. 1955).

288. *Stralla*, 220 F.2d at 513.

289. *Id.*

insufficient to justify the veil-piercing remedy.[290]

In *United Continental Tuna Corp. v. United States*, the Ninth Circuit addressed a maritime veil-piercing claim brought in an unusual posture.[291] Generally, the veil-piercing claimant is a party outside of the defendant's corporate structure. In *United Continental Tuna*, however, the shareholders sought to pierce the corporate veil of their own corporation so as to avoid the reciprocity provision of the Public Vessels Act.[292] The Ninth Circuit refused to pierce the veil, reasoning that it would be unsound policy to allow shareholders the benefits of incorporation when such an entity was favorable to their interests and at the same time allow them to disregard the corporate form when it was not.[293]

G. The United States Court of Appeals for the Eleventh Circuit

The Eleventh Circuit has addressed maritime veil-piercing on at least six different occasions.[294] According to the Eleventh Circuit, "corporate distinctions generally may not be disregarded absent fraud, improper conduct, illegality, or bad faith."[295] In *Drakidis v. Mori*, the plaintiff was injured while working aboard a vessel and brought suit against the corporate shipowner.[296] The jury found the corporation negligent and awarded the plaintiff damages.[297] The plaintiff then filed a motion for entry of judgment against the corporation and an alleged alter ego.[298] However, the plaintiff failed to raise the alter ego issue at trial, and the Eleventh Circuit held the argument waived.[299]

In *LIG Ins. Co. v. Inter-Florida Container Transport, Inc.*, an unpublished opinion, the Eleventh Circuit addressed the veil-piercing claim of a

290. *See id.*

291. *See* 550 F.2d 569, 571-72 (9th Cir. 1977).

292. *Id.* at 573. The reciprocity provision of the Public Vessels Act bars any foreign national from bringing a suit under the Act unless it appears that his government, under similar circumstances, allows nationals of the United States to sue in its courts. *See* 46 U.S.C. § 31111 (2006).

293. *United Cont'l Tuna,* 550 F.2d at 573.

294. LIG Ins. Co. v. Inter-Florida Container Transp. Inc., 564 F. App'x 495, 495-96 (11th Cir. 2014) (per curiam); Drakidis v. Mori, 546 F. App'x 930, 931 (11th Cir. 2013) (per curiam); Popescu v. CMA-CGM, 384 F. App'x 902, 902-03 (11th Cir. 2010) (per curiam); Cooper v. Meridian Yachts Ltd., 575 F.3d 1151, 1170 (11th Cir. 2009); Membreno v. Costa Crociere S.P.A., 425 F.3d 932, 936-37 (11th Cir. 2005) (per curiam); Edward Leasing Corp. v. Uhlig & Associates Inc., 785 F.2d 877 (11th Cir. 1986); *see also* Vasquez v. YII Shipping Co., 559 F. App'x 841, 843-44 (11th Cir. 2014) (per curiam).

295. *Membreno*, 425 F.3d at 936 (citing Johnson Enters. of Jacksonville, Inc. v. FPL Group, Inc., 162 F.3d 1290, 1320-22 (11th Cir. 1998)).

296. 546 F. App'x at 930-31.

297. *Id.* at 931.

298. *Id.*

299. *Id.*

subrogated insurer against a marine storage facility after three shipping containers, entrusted to the facility and filled with valuable cargo, were stolen.[300] Additionally, the plaintiff sought to impose liability on the dominant shareholder of the facility and certain other incorporated entities of his.[301] After a review of the record indicated overlapping directors and officers, a lack of corporate formalities, and gross undercapitalization, the Eleventh Circuit concluded that the district court committed no error in piercing the corporate veil of the storage facility.[302]

In *Edward Leasing Corp. v. Uhlig & Associates, Inc.*, a shipowner alleged breach of a maritime contract to repair two engines and sought to pierce the veil of the repair yard.[303] Although the plaintiff adduced some facts to support his alter ego theory of liability, such as the common ownership and management, the district court rejected the allegation.[304] The Eleventh Circuit affirmed, reasoning that the district court's findings were not clearly erroneous.[305] The Eleventh Circuit also found common ownership and management to be an insufficient basis to pierce the corporate veil in *Cooper v. Meridian Yachts, Ltd.*—a case concerning injury to a sea captain and the subsequent settlement of his claims by third parties.[306]

The Eleventh Circuit also addressed the maritime veil-piercing issue in *Membreno v. Costa Crociere, S.P.A.*[307] and *Popescu v. CMA-CGM*.[308] Both cases involved foreign seamen and their attempt to invoke statutory protection under the Jones Act.[309] In both cases, the alter ego allegation was relevant to the court's determination of whether the vessel or its operator had a "substantial base of operations" in the United States.[310] In both cases, the Eleventh Circuit concluded that the activities of affiliated entities could not be considered without the prerequisites for veil-piercing being established.[311]

IV. Conclusion

Historically, the designation of a claim as being within admiralty has

300. 564 F. App'x 495, 495 (11th Cir. 2014) (per curiam).
301. *Id.*
302. *Id.* at 496.
303. 785 F.2d 877, 878 (11th Cir. 1986).
304. *Id.* at 882.
305. *Id.*
306. 575 F.3d 1151, 1157, 1170 (11th Cir. 2009).
307. 425 F.3d 932, 936-37 (11th Cir. 2005) (per curiam).
308. 384 F. App'x 902, 903 (11th Cir. 2010) (per curiam).
309. *Id.* at 902-03; *Membreno*, 425 F.3d at 934.
310. *Popescu*, 384 F. App'x at 903; *Membreno*, 425 F.3d at 936.
311. *See Popescu*, 384 F. App'x at 903; *Membreno*, 425 F.3d at 936.

made little, if any, difference to the court's veil-piercing approach.[312] The jurisprudence's treatment of a maritime veil-piercing doctrine as separate and distinct from its shoreside counterpart is of recent vintage. Courts should continue to delineate and define the boundaries of this doctrine and, in doing so, recognize the inherent differences between admiralty and common law. These differences arise with respect to numerous issues, from jurisdictional inquiry, to standards of pleading, to conflicts-of-law. By recognizing these differences, courts can continue to shape a maritime veil-piercing approach uniquely responsive to the needs of the international shipping community.

312. *See* United States v. Jon-T Chems., Inc., 768 F.2d 686, 690 n.6 (5th Cir. 1985) ("Our non-diversity alter ego cases have rarely stated whether they were applying a federal or state standard, and have cited federal and state cases interchangeably.") (citing Talen's Landing, Inc. v. M/V Venture, 656 F.2d 1157, 1160–62 (5th Cir.1981)) (admiralty case); Baker v. Raymond Int'l, 656 F.2d 173, 179–81 (5th Cir.1981) (Jones Act and admiralty case); National Marine Service, Inc. v. C.J. Thibodeaux & Co., 501 F.2d 940, 942–43 (5th Cir.1974) (contract and admiralty case)).