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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

JOHN A. TIBBS and MARGARET B. TIBBS,

Plaintiffs,

v.

3M COMPANY *et al.*,

Defendants.

C/A No. 2023-CP-40-01759

In Re:

Asbestos Personal Injury Litigation Coordinated Docket

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CAPE PLC, individually and as successor in interest to CAPE ASBESTOS COMPANY LIMITED, by and through its duly appointed Receiver Peter D. Protopapas,

Third-Party Plaintiff,

v.

ANGLO AMERICAN PLC, individually and as successor in interest to ANGLO AMERICAN CORPORATION OF SOUTH AFRICA LTD. et al.,

Third-Party Defendants.

Affidavit of Eric L. Talley, Ph.D., J.D.

October 18, 2023

I. Qualifications

1. I am the Isidor and Seville Sulzbacher Professor as well as the Faculty Co-Director of the Millstein Center for Global Markets and Corporate Ownership at Columbia University. I am also a member of the European Corporate Governance Institute (ECGI). Until August 2015, I held the Rosalinde and Arthur Gilbert Endowed Chair in Law, Business and the Economy at the University of California at Berkeley, where I was the Co-Director of the Berkeley Center in Law, Business and the Economy. Prior to my appointment at Berkeley, I was the Ivadelle and Theodore Johnson Professor of Law and Business at the University of Southern California ("USC"), where I had dual appointments in the Gould School of Law and the Marshall School of Business (Finance and Business Economics), and where I also served as Faculty Director of the USC Center in Law, Economics, and Organization, a multidisciplinary research group organized across three university departments (law, business, and economics). Also, from 2001 to 2004, I directed the USC/Caltech Olin Center for the Study of Law and Rational Choice. Simultaneous with much of my academic career, I held the position of Senior Economist (Affiliated Adjunct) at the RAND Corporation. At RAND, I conducted research on corporate governance, corporate culture, contract design, securities fraud, securities regulation, the legal and accounting professions, civil justice, business ethics, and private class actions. I hold a Ph.D. in economics from Stanford University, as well as a J.D. from Stanford Law School.

2. I have taught numerous classes over the course of my 28-year academic career in the areas of corporate law, corporate governance, corporate finance, economic analysis of law, business ethics, mergers and acquisitions, valuation, contracts, statistics, law and economics, behavioral law and economics, machine learning and law, and game theory. On two occasions

(2017 and 2022), I have received the Willis L.M. Reese Award for Excellence in Teaching from the graduating class of Columbia Law School.

3. Until November 2022, I served as the Immediate Past Chair of the Board of the Society of Empirical Legal Studies (SELS), the leading academic association in the world of empirical legal scholars. I was Chair of the Board of SELS from 2017 to 2019. I additionally served as co-President of SELS (2013 to 2014). Additionally, I have been elected multiple times to the board of the American Law and Economics Association (ALEA), the leading academic association in the world of law and economics scholars (finishing my most recent term in May 2019). I have previously served as Chair of both the American Association of Law Schools (AALS) section on Law and Economics and the AALS section on Contracts.

4. I frequently speak both to academic audiences and to professional associations, including attorneys, utilities regulators, judges, and corporate directors. I have many times been retained to provide training sessions for regulators, practitioners and judges regarding governance and valuation practices. These sessions have been conducted in both the United States and abroad. In 2008, I was selected to deliver the annual Francis G. Pileggi Distinguished Lecture on corporate law and governance before the assembled Delaware judiciary (state court and federal court judges). I have testified as an expert in a variety of legal proceedings related to corporate governance in both state and federal court.

5. I have conducted research and published dozens of articles in areas pertaining to corporate governance, economic analysis of law, business judgment and ethics, fiduciary duties, corporate opportunities, securities market regulation, and related topics. My publications have appeared in refereed journals, law reviews, and edited volumes, and I am a referee for a number of academic journals in my field. On multiple occasions, my published scholarship has been

designated as one of the "Ten Best Corporate and Securities Articles of the Year" by the Corporate Practice Commentator.

6. A more complete summary of my educational background and professional qualifications is attached as **Appendix A**, which includes a list of my publications, speaking engagements, refereeing experience, and previous expert testimony.

II. Background and Assignment

7. I have been retained by Morgan, Lewis & Bockius LLP ("Counsel") for Third-Party Plaintiff Peter Protopapas, as the duly appointed Receiver for Cape PLC, to opine on issues pertaining to this litigation, as to two core questions:

a. The nature and purposes of limited liability and corporate affiliate structures, including the potential economic advantages of such structures, as well as the potential economic disadvantages of such structures when used to externalize harms to third parties. Third-Party Plaintiff has additionally asked me to assess the cost-benefit case for limited liability within the affiliate structures at issue in this case, pursuant to the facts alleged by the Receiver (which I assume for purposes of this affidavit to be true).

b. The extent to which disregarding the corporate veil occurs in practice, concentrating on the empirical legal studies literature that measures the frequency / rarity of piercing the corporate veil claims when they are adjudicated in American courts.

8. In stating my opinions as to these questions, I reviewed the third-party complaint and several additional documents related to this case, including pleadings. The documents I reviewed in reaching my opinions are listed in **Appendix B**.

9. With respect to this matter, I am being compensated at my usual and customary rate of $1,350 per hour. My compensation is in no way contingent or based on the content of my opinion or the outcome of this or any other matter.

III. Nature and Purpose of Limited Liability

10. Limited liability (or LL) is a longstanding statutory institution in company law that, under certain situations, imposes a limit on the monetary liability of the owner/equity investors of the company at the value of their investment stake in the firm.[1] In other words, when a company receives the presumption of LL, its owner/equity investors (or "shareholders") face risk exposure up to the value of their equity claims in the company but not beyond that.

11. There can be many benefits of the LL structure, which in the right situations can inure to both direct corporate participants and to society. Each of these benefits constitutes a type of *positive* externality associated with the institution – benefits that are captured not solely by the firm, but also shared by society at large.

12. For example, it is widely known and acknowledged that most people (including entrepreneurs) are risk averse. Consequently, entrepreneurs investing in a novel and socially valuable industry are likely to be significantly more risk- averse than society at large would prefer. Risk averse parties are generally unwilling to invest in risky projects unless they are able to obtain something in excess of the actuarial value of the risky venture in return (a "risk

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[1] *See, e.g.*, Joseph K. Angell & Samuel Ames, A Treatise on the Law of Private Corporations Aggregate 349 (Reprint, New York: Arno Press. [1832] 1972) ("No rule of law we believe is better settled, than that, in general, the individual members of a private corporate body are not liable for the debts, either in their persons or in their property, beyond the amount of property which they have in the stock").

premium").[2] By limiting their exposure to downside risk, LL can reduce those required risk premia, and thereby induce entrepreneurs to enter new and important arenas where investment is socially valuable.

13. Limited liability can also help entrepreneurs attract outside capital for projects whose scale is beyond what a single entrepreneur can finance.[3] It can in such situations be important to attract outside investors, who themselves are risk- and uncertainty-averse, perhaps to the same degree as the entrepreneur if not more. By limiting their downside risk, LL helps to attract their willingness to provide investment capital at scale.[4]

14. Moreover, LL also facilitates diversified investments among passive investors, enabling even risk-averse shareholders to spread risks, which in turn may induce them to invest more and discount less, reducing the overall cost of capital for corporate enterprises. Without LL, investors might even find it undesirable to diversify,[5] and as a result would invest less on the aggregate. In turn, by facilitating diversification, LL can help support public capital markets, where millions of shareholders can spread their investments over thousands of different investments.

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[2] *See, e.g.*, Ivo Welch, Corporate Finance 109 (4th ed. 2017); Phillip I. Blumberg, Limited Liability and Corporate Groups, 11 J. Corp. L. 573, 616 (1986) ("By accomplishing risk-shifting not created in the market place, limited liability encourages business managers to venture into activities that they would otherwise not undertake"); Richard A. Posner, The Rights of Creditors of Affiliated Corporations, 43 U. Chi. L. Rev. 499, 502 (1976) (unlimited liability would discourage "substantial entrepreneurial investments by risk averse individuals").

[3] *See, e.g.*, Mirjam van Praag, Gerrit de Wit and Niels Bosma, Initial Capital Constraints Hinder Entrepreneurial Venture Performance, The Journal of Private Equity, Winter 2005, Vol. 9, No. 1 (Winter 2005), pp. 36-44.

[4] *See* Herbert Hovenkamp, Enterprise and American Law: 1836–1937, 54 (1991) ("Limited liability clearly encouraged the flow of capital into new enterprise").

[5] Rustam Ibragimov, Dwight Jaffee, & Johan Walden, Nondiversification Traps in Catastrophe Insurance Markets, 22 REV. FIN. STUD. 959 (2009); Henry Manne, "Our Two Corporation Systems: Law and Economics," 53 Va. L. Rev. 259 (1967).

15. These are all considerable benefits of limited liability. But they do not come free. Limited liability also introduces important economic costs that in some circumstances can grow large. This is because limited liability by nature truncates a corporate entity's damages exposure to third party harms, *i.e., negative* externalities, that its activities create. For actors with unlimited exposure, the specter of liability can (and does) work to deter the overproduction of negative externalities, since it requires the actor to internalize the costs it imposes on society (in the form of anticipated damages). However, LL by nature caps liability, and in so doing it leads to under-deterrence of the actor. In other words, because limited liability entities do not bear the full costs of the third-party harms they create, they can produce such negative externalities at a level that exceeds social efficiency goals, leading to more harms than they otherwise would in the absence of the LL shield. A particularly important context where the specter of such costs looms large is where a corporate entity has a thin equity cushion: there are well documented examples in both theory and practice where inefficient behavior is exceedingly likely among limited liability entities that are at or close to the point of insolvency (sometimes called the "zone of insolvency"). Financial economists typically refer to such circumstances as being in *financial distress.*

16. Moreover, in addition under-deterring thinly capitalized corporate entities as a general matter, LL can in some cases distort matters further still, making it profitable for corporate actors to take deliberate actions to place their affiliate structures into financial distress, effectively "judgment proofing" the affiliates against third party claims. Such reorganizations not only impose additional transaction costs in their own right, but they also sow the seeds for socially wasteful (if privately profitable) corporate behavior.

17. Economists have long known that financial distress – when combined with limited liability – can induce shareholders and managers alike deliberately to eschew economically efficient structures and strategies while pursuing inefficiently risky ones—even ones that *destroy* value overall.[6] An efficiency-minded approach to deterring such wasteful behavior in such circumstances would be to rescind the benefits of LL to the actor who abuses it for these purposes.

18. A simple example can help to illustrate the power of the foregoing points. Consider a corporation controlled by a single shareholder and assets of $100 (assumed for simplicity to be cash), but with a significant amount of corporate debt, consisting of an obligation to a creditor of $99, payable in a month. Consequently, the fair market value of equity for this company is $1 (consisting of its total assets of $100 less the company's debt of $99).[7] Assume that in addition to her stock in the company, the corporation's shareholder also holds personal liquid assets of $1,000.

19. Suppose the company were to choose between two mutually exclusive investment projects, each of which will mature in exactly one month.

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[6] *See, e.g.*, Myers, Stewart, Determinants of corporate borrowing, Journal Financial Economics 5, 147–175 (1977); M. Jensen & W. Meckling, Theory of the firm: managerial behavior, agency costs and ownership structure, 3 Journal of Financial Economics, pp. 305–360 (1976); Lawrence A. Weiss, Karen H. Wruck, Information problems, conflicts of interest, and asset stripping: Chapter 11's failure in the case of Eastern Airlines, Journal of Financial Economics 48:1, pp. 55–97 (1998); Bernardo, Antonio & Eric Talley, Investment Policy and Exit-Exchange Offers Within Financially Distressed Firms, The Journal of Finance, 51: 871–888 (1996); Tirole, Jean, The Theory of Corporate Finance (Princeton Press, 2006).

[7] For the purposes of illustration, I will exclude considerations related to the time value of money, such as the additional interest payments on the debt.

a. Project "A" requires a $100 investment today and yields $105 at the end of the month, with certainty;

b. Project "B" requires a $100 investment today and pays off either $150 or $0 in a month, with equal ½ probabilities.

20. It is clear that Project A is the *safer* project of the two, since it yields a $5 net payoff with certainty, while Project B carries substantial risk. Project A is also the *most valuable* project independent of risk, as it yields a higher *expected* net payoff ($105) than Project B (*negative* $25, consisting of $50 half the time and *negative* $100 the other half of the time).[8] From an economic perspective, then, it is clear that Project A dominates Project B on both a risk and return basis. Favoring Project A is an economic no-brainer.

21. Nevertheless, there are strong reasons to believe that under LL, the corporation in the example above may strategically pursue the *inefficient* Project B. By pursuing Project A, the corporation's shareholder would garner a final payoff of $6 (after paying off the $99 principal owed to creditors). By pursuing Project B, however, the corporation's shareholder would instead receive a $51 payoff should the project succeed (again after paying off creditors), and $0 should the project fail (and insolvency ensues). Because each of these payoffs occurs with equal probability, the corporation's shareholder perceives an expected payoff of $25.50 if the corporation pursued Project B. Unless it is exceedingly risk averse, then, the shareholder will use its control to cause the corporation to pursue Project B, even though the project destroys value and Project A creates value. The reason the corporation favors the wasteful project is

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[8] An alternative way to see this is to note that Project B's expected *gross* payoff is $75 = ½ ($150) + ½ ($0). Because project B requires an investment of $100, its expected *net* payoff is therefore -$25 = $75 - $100.

simple: because of LL, the shareholder is insensitive to the downside risk associated with a bad outcome for Project B. Indeed, the corporation is able to fob that downside onto the firm's creditors. Consequently, the shareholder of a thinly capitalized corporation cares only about "upside" risks, and is most attracted to risky projects, even if such projects are on average money losers (like Project B). This attraction to risk is in many ways similar to one that would ensue for an investor holding an out-of-the-money call option (Myers 1977; Bernardo & Talley 1996).

22. Note that the inefficient choice shown above would not arise if the firm were more amply capitalized. If, for example, the corporation had $200 (rather than $100) in cash assets, the shareholder would have sufficient "skin in the game" to internalize the risk (both upside and downside) associated with Project B. Accordingly, the shareholder would strongly (and efficiently) prefer Project A, and it would use its control to bring about that choice. Thus, LL is less likely to induce inefficient decision making in companies that have a sufficiently ample cushion of equity capital.[9] Put differently, when a company is in financial distress (*i.e.*, insolvent or in the "zone" of insolvency), its shareholder(s) will perversely and inefficiently be attracted to wasteful and risky projects, since fixed claimants bear the downside risks from those choices.

23. It is in such distressed situations that disregarding LL can be justified on economic grounds. Removing LL's cap on liability can effectively and efficiently counteract the incentive problem created by financial distress and thin equity cushions, by affording the creditors the ability to reach the personal assets of the shareholder. This credible threat, in turn, causes the

[9] In fact, it is easy to show in this example that whenever the corporation has outstanding debt of $60 or less, corporate managers will optimally favor Project A over Project B.

shareholder to internalize downside risk, ameliorating the risk-seeking inefficiency described above.

24. In the context of the running example above, suppose once again that the corporation had assets of only \$100, but that the creditors were allowed to pierce into the assets of the corporation's shareholder in the event that the company pursued Project B and later became insolvent. In this event, the shareholder would now internalize the \$99 loss to the creditors in the event that the project failed. Indeed, although project B continues to afford the shareholder (*qua* shareholder) an expected payoff of \$25.50, veil piercing now also imposes an expected personal liability on the shareholder of \$99 should the project fail (which occurs ½ of the time), thus representing a \$49.50 expected cost. The net effect is an expected loss associated with Project B of \$24 (or \$49.50 - \$25.50), which (when combined with the \$1 in equity value foregone) corresponds to the expected social inefficiency of pursuing Project B. The threat of piercing thus realigns the payoffs of the distressed company's shareholder with those of society.[10] If LL were religiously followed in all cases, in contrast, the corporate manager and shareholder remain undeterred from pursuing risky and wasteful projects such as Project B.

25. Such a danger, however, may be only the tip of the iceberg: Under an inflexible LL, corporate owners may even have an affirmative *strategic incentive to use their control to*

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[10] Even the *probabilistic* chance of veil piercing may be enough to provide appropriate deterrence. In the example from the text, for example, suppose the corporation had aggregate debt outstanding of \$*x*. It is easy to confirm that (a) $x>\$60$, the corporation will pursue the efficient project (Project A) *only* so long as the probability of veil-piercing is at least $(x-60)/x > 0$. When $x\leq\$60$, the corporation will have sufficient skin in the game to pursue the efficient project without the threat of veil piercing. This numerical example merely illustrates the more general point that the possibility of veil piercing can be efficient for thinly capitalized firms, so long as the shareholder has sufficient control over the firm's behavior. *See, e.g.*, Che, Y-K & Spier, K, Strategic Judgment Proofing, RAND J. Econ. 39:4 (2008), at p. 941.

deliberately put the firm into financial distress, sowing the very seeds of the economic waste they later visit on the firm (and society).[11]

26. It is easy to see how this type of "strategic judgment proofing" can occur in the running example from above: Suppose that the corporation had $99 in debt (just as before), but liquid assets totaling $200 (rather than the $100 assumed above). In this case, as demonstrated above, the corporation's equity cushion would be sufficiently ample that the shareholder would internalize all relevant upside *and* downside risks, deterring her (efficiently) from pursuing the value-destroying action. Instead, the shareholder/manager would invest $100 in the efficient Project A, yielding a total firm capitalization of $205 after a month. Debt holders would be paid in full and shareholders would receive a net residual payoff of $106 (*i.e.*, $205 less the $99 principal debt value). So far so good.

27. However, suppose further that *prior* to making the choice between Projects A and B, the shareholder could cause the corporation to pay out a $100 dividend to the shareholder, effectively vacuuming out half the firm's asset value and distributing it upstream. Doing so would create an immediate $100 payoff for the shareholder, placing the corporation back into a "zone of insolvency." And once there, as demonstrated above, the shareholder would once again have strong reasons to favor Project B, notwithstanding the fact that Project B both is riskier and destroys value, because doing so yields her an *additional* expected payoff of $25.50.

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[11] Several well-known academic studies have explored this perverse strategic incentive in depth. *See, e.g.*, Che & Spier (2008), at pp. 926–948; Shavell, Steven, The Judgment Proof Problem, International Review of Law and Economics, Vol. 6 (1986), pp. 45–58; Shavell, Steven, Minimum Asset Requirements and Compulsory Liability Insurance as Solutions to the Judgment-Proof Problem, RAND Journal of Economics, Vol. 36 (2005), pp. 63–77.

28. The ultimate effect of this two-stage strategy (extracting a dividend followed by inefficiently pursuing Project B) would yield the shareholder an expected payoff of $125.50 (consisting of the $100 dividend plus the $25.50 expected payoff from Project B as described above). This sum is clearly larger than the $106 payoff the shareholder would reap if the corporation remained capitalized and then efficiently pursued Project A.

29. Consequently, unless the shareholder is extremely risk averse, she will favor the strategic asset-stripping strategy of (a) siphoning from the corporation all but the bare minimum amount it would need to fund its operations; and (b) opting for the inefficient project that externalizes downside risk onto others. While certainly lucrative for the shareholder, this asset-stripping strategy is clearly costly to society overall and economically wasteful.

30. Moreover, the very process of engaging in strategic judgment proofing can visit additional transaction costs on the firm. For example, suppose that executing the $100 dividend above imposed an additional transaction cost of $5 on the firm (reflecting the costs of legal and financial experts). This transaction costs adds another unrecoverable cost, causing the inefficiency associated with pursuing the two-stage asset stripping strategy to grow by an additional $5. Nevertheless, the shareholder would still prefer the strategic asset stripping strategy approach, since the net expected payoff from that strategy (now $120.50) would still exceed the shareholder's expected payoff from the efficient choice of remaining capitalized and pursuing Project A (which remains at $106).

31. In contrast, if there were a credible threat that LL would be disregarded in situations such as the above, the shareholder would have appropriate incentives use her corporate control to avoid such deliberate and inefficient asset stripping strategies. For instance, if the creditors were able to claw back the dividend or otherwise recover from the shareholder's personal assets in the

event insolvency, the shareholder would once again be put in the position of internalizing both upside and downside risk of her project choices. Accordingly, she would be deterred from embracing the inefficient asset-stripping strategy, and thus would have no incentive to impose additional transaction costs from capital restructuring. In short, a credible threat of relaxing LL in appropriate circumstances can be economically efficient and socially desirable.

32. The discussion above demonstrates – through a simple example – three simple points: (a) that absent a credible threat of veil piercing, financial distress combined with limited liability can cause a shareholder to cause a manager to make inefficient, value-reducing decisions that are undesirable from an economic welfare perspective; (b) that absent a credible threat of veil piercing, the shareholder may have a strategic incentive to *deliberately place* the company in financial distress by stripping it of assets, potentially introducing additional inefficient transaction costs; and (c) that a credible threat of veil piercing can provide a targeted means (in the appropriate situations) for deterring the inefficiencies that would occur under (a) and/or (b).

33. More generally, the analysis above implies that the economic case for or against LL must take account of its benefits and costs on a fact-specific basis. Benefits and costs do not always cut in the same categorical direction, and they depend on deeper analysis of facts and circumstances. Under such analysis, the economic case for or against limited liability turns on the extent to which the benefits of LL exceed the costs of LL, as exposited above.

34. As applied to the facts as alleged in this case, the cost-benefit calculus in favor of maintaining limited liability appears dubious on a number of grounds. Consider first the costs. From the facts as alleged in the third-party complaint, it appears that the costs to U.S.-based victims of the use and production of asbestos were appreciable. [Third-Party Compl. ¶¶ 74-76,

79-88, 114]. Not only was the *magnitude* of the potential harm high, but it became increasingly clear that even the *probability* of harm was overwhelmingly high. [*Id.* ¶¶ 61-65].

35. Moreover, from the facts as pleaded in the third-party complaint, it also appears that the Cape defendants took active steps to distort, mischaracterize, and conceal the true gravity of the threat (in both magnitude and probability) from regulators and the public [*id.* ¶¶ 74-76, 79-88, 114], and in so doing made it difficult for public actors to use regulatory intervention to throttle down the activity.

36. In addition, the Receiver has alleged that the Cape defendants used their corporate affiliate structures to remove valuable assets upstream, leaving the operating affiliates inadequately capitalized to contend with the mounting (and near-certain) liability exposure that their activities would bring about. [*Id.* ¶¶ 65, 79-80, 89, 93-94.] Such behavior is entirely consistent with the type of strategic judgment proofing illustrated above, where a corporate shareholder (relying on LL) finds it profitable to drain the corporation of assets in order to fob off downside risk on third parties through corporate insolvency. Indeed, several of the critical operating companies are alleged to have operated deliberately and persistently in financial distress, acting effectively as repositories / cushions for capitated losses. As detailed in the third-party complaint, operating subsidiaries carried inadequate insurance [*id.* ¶ 80], manifested a pattern of upstreaming dividends, failed to make provisions to satisfy contingent liabilities [*id.* ¶ 93], and maintained minimal unincumbered ownership of valuable assets (with a pattern of hastily selling such assets as part of a plan to reduce exposure) [*id.* ¶¶ 96-103].

37. In sum, as detailed in the Receiver's third-party complaint, the Cape and Third-Party Defendants established a longstanding pattern and practice of increasingly concentrating their exposure to asbestos liabilities within a modest collection of poorly-capitalized operating

affiliates (e.g., NAAC), along with intermediate holding companies (e.g., Charter) set up with the purpose and effect of insulating other (more flush) affiliates from liability exposure. [*Id.* ¶¶ 65, 72, 77-79, 94, 96].

38. All told, then, the alleged facts of this case suggest that the costs associated with adhering to LL are high under these circumstances. An economically minded legal policy would thus efficiently relax the LL protections unless there were an even stronger case based on the benefits of LL. However, under the facts as pled, such benefits do not appear to be appreciable (and in many respects appear to be quite modest) in this case.

39. First, the activities pursued by the Cape entities do not appear to be a valuable new field of growth, nor do they reflect the need to encourage entry by new entrepreneurs into a field. Although asbestos products perhaps started out as a novel technology, that did not remain the case during much of the latter half of the twentieth century when many of the harms alleged here were occurring. Moreover, as the Receiver has alleged in his third-party complaint, the Cape defendants took an active role in hiding the true risks of asbestos from regulators and the public, thereby obscuring the technology's true social costs. Moreover, Cape was hardly a new entrepreneurial entrant onto the scene. As detailed in the third-party complaint, it is part of a more than a century old conglomerate of affiliated companies, and it has long been operating in this area.

40. Second, the affiliate structure as it is alleged in this third-party complaint did little to realize the benefits of LL as an efficient risk distribution device amongst diffuse, small-stakes, diversified equity holders, nor did it create substantial securities-market development benefits; nor did it do much to develop strong public capital markets for those assets. Rather, the corporate structure of the Cape affiliates was a wealth-management vehicle for structuring businesses

meant to be held substantially (if not exclusively) by a single family, the Oppenheimers. It thus appeared not to be a vehicle to help diversify those risks across thousands (if not millions) of public equity investors. Consequently, the risk-diversification and securities-market-development rationales for LL appear to be modest (if not non-existent) under the facts as pled in this case.[12]

41. Assuming thc facts as alleged in the third-party complaint by the Receiver are true (which I take to be true for purposes of this affidavit), they resemble a textbook case of strategic and inefficient asset stripping—one that suggests the costs of LL exceed the benefits of LL in these circumstances. Such inefficiencies, as shown above, can be efficiently deterred by a credible commitment to relax the LL shield. Consequently, and on this basis, economic case for disregarding the veil of limited liability among the defendants (or a sizeable number of them) appears strong.

IV. Rarity of Disregarding Limited Liability

42. Although the preceding discussion addresses the cost-benefit calculus of when it is economically justified to lift and/or disregard limited liability, the ultimate decision to do so is a legal determination that involves the application of doctrines such as alter ego, veil piercing, entity theory, agency, and others. This affidavit neither ventures into these legal doctrines, nor

[12] Moreover, to the extent that there was any benefit to capital markets, it appears that most of that benefit inured to the capital markets of apartheid South Africa, which itself has questionable social value. *See, e.g.*, Comprehensive Anti-Apartheid Act of 1986, Pub. L. No. 99-440, § 310, 100 Stat. 1086 (codified at 22 U.S.C. § 5060) ("No national of the United States may, directly or through another person, make any new investment in South Africa," except as "to a firm owned by black South Africans.").

does it attempt to apply them to the facts of this case as they have been alleged. That said, there is a lively empirical literature from social-science-minded scholars on the overall frequency with which U.S. courts pierce the veil in practice. This literature is helpful, particularly in providing a reference point from which to judge the oft-asserted view that veil piercing (and related doctrines) constitute a rare "exception" to the rule of LL.[13]

43. Empirical analyses of cases where courts have decided whether to disregard LL, however, have yielded a far more nuanced landscape. There are several empirical studies of veil piercing that are now well known and well cited in the literature. Four of them stand out[14]: the first by Robert Thompson (1991), and three additional studies - authored in the ensuing decades—by Peter Oh (2010), Lee Hodge & Andrew Sachs (2008), and John Matheson (2010). All four of these studies involved hand-collected data on judicial veil piercing decisions (as reflected in reported decisions) across both state and federal court levels.

44. The above empirical contributions paint an informative picture as to the practical frequency of veil piercing. Table 1 (below) presents a summary of the results of the aforementioned empirical studies. As can be seen from the Table, all four studies find the piercing rate in reported opinions to be appreciable, inconsistent with the common refrain about the "exceptional" and/or "rare" invocation of the doctrine. The most cited study, Thompson

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[13] Phillip I. Blumberg, The Law Of Corporate Groups: Tort, Contract, And Other Common Law Problems In The Substantive Law Of Parent And Subsidiary Corporations § 6.01, at 106 (1987) (stating that courts pierce the veil in "exceptional" cases).

[14] Thompson, R., Piercing the Corporate Veil: An Empirical Study, 76 Cornell L. Rev. 1036 (1991); Oh, P., Veil-Piercing, 89 Tex. L. Rev. 81 (2010); Hodge, Lee C. & Sachs, Andrew B., Piercing the Mist: Bringing the Thompson Study into the 1990s, 43 Wake Forest L. Rev. 341 (2008); John H. Matheson, Why Courts Pierce: An Empirical Study of Piercing the Corporate Veil, 7 Berkeley Bus. L.J. 1 (2010). Matheson's study largely incorporates and expands on a more limited study he published two years prior in the North Carolina Law Review.

(1991), finds overall piercing rates of just over forty percent. The most comprehensive study, Oh (2010), finds even higher piercing rates of almost fifty percent. Matheson (2010) and Hodge and Sachs (2008) report an aggregate piercing rate of approximately one-third.

	Time Period	Cases Analyzed	Overall Piercing Rate
Thompson (1990)	c1930-1985	1583	40.18%
Hodge & Sachs (2008)	1986-1995	228	35.53%
Oh (2010)	c1658-2006	2929	48.51%
Matheson (2010)	1990-April 2008	929	31.86%

Table 1: Veil Piercing Rate as Measured in Four Major Empirical Studies

45. It is worth noting, moreover, that some of the studies from Table 1 also analyzed subsets of their sample to determine the frequency of piercing claims for establishing *jurisdiction* over the pierced-to entity as a procedural matter (as opposed to ultimate liability issues). Thompson (1991), for example, notes a 35.88% success rate of jurisdictional piercing.[15] Similarly, Hodge & Sachs (2008) find a jurisdictional piercing rate of 33%.[16] Although the other studies in Table 1 do not track jurisdictional piercing, Oh (2006) notes that courts are "more lenient" when it comes to piercing for purposes of obtaining jurisdiction.[17]

46. In contrast to the perception that judicial disregard for LL is "rare" or "exceptional," the available empirical literature reveals that such judicial dispositions represent a meaningful

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[15] Thompson, *supra* note 14, at 1060 Table 10.

[16] Hodge & Sachs, *supra* note 14, at 335 Table 9.

[17] Though not the basis for this discussion, other scholars have attempted to analyze the rate at which various veil-piercing doctrines are followed by courts. *See, e.g.*, John A. Swain & Edwin E. Aguilar, Piercing the Veil to Assert Personal Jurisdiction over Corporate Affiliates: An Empirical Study of the Cannon Doctrine, 84 B.U. L. REV. 445 (2004).

portion of litigated cases. As judged through the lens of this literature, the remedy of veil piercing is neither particularly rare nor exceptional. Rather, the evidence suggests that courts treat such claims on a case-by-case basis. This case-by-case treatment, moreover, is consistent with the economic analysis elucidated above, which suggests that honoring/disregarding LL should be done in a manner that corresponds with fact-specific cost-benefit analysis.

47. I reserve the right to modify my opinions to the extent that I become aware of additional information relating to the contents of this affidavit.

Executed this 18th day of October, 2023

Eric Talley

Eric L. Talley, Ph.D., J.D.

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF PHILADELPHIA)

SWORN TO and SUBSCRIBED BEFORE ME
this 18th day of October, 2023.

Notary Public

Commonwealth of Pennsylvania - Notary Seal
Judith Hanratty, Notary Public
Philadelphia County
My Commission Expires Apr 02, 2027
Commission Number 1348913

Notarial act performed by audio-visual communication

Appendix A

Eric L. Talley
Columbia Law School
New York, NY 10027
Phone: **(213) 610-4792**
Email: ***etalley@law.columbia.edu***

Professional/Employment

2015-Pres.	**Isidor and Seville Sulzbacher Professor of Law,** Columbia Law School, New York, NY.
2017-Pres.	**Faculty Co-Director,** Millstein Center for Global Markets and Corporate Ownership, Columbia Law School.
2016-Pres.	**Affiliated Expert,** Cornerstone Research, New York, NY.
2016	**Visiting Professor,** Buchmann Faculty of Law, Tel Aviv University, Tel Aviv Israel.
2009-2015	**Arthur and Rosalinde Gilbert Foundation Chair in Law, Business and the Economy,** UC Berkeley School of Law, Berkeley, CA.
2006-2014	**Faculty Co-Director,** Berkeley Center for Law, Business and the Economy, UC Berkeley School of Law, Berkeley, CA.
2006-2009	**Professor of Law,** UC Berkeley School of Law, Berkeley, CA.
2004-2015	**Senior Economist**, RAND Corporation, Santa Monica, CA, Institute for Civil Justice (Affiliated adjunct staff).
2011	**Visiting Professor,** University of Chicago School of Law, Chicago IL.
2008-2009	**Robert B. and Candice J. Haas Visiting Professor in Corporate Finance and Law,** Harvard Law School, Cambridge, MA.
2006	**Commentator**, *Marketplace* Radio; American Public Media. Weekly slot on national public radio program discussing business and legal affairs.
2005-2006	**Visiting Professor,** UC Berkeley School of Law. Co-Director, Berkeley Center for Law, Business and the Economy.
2005-2006	**Ivadelle & Theodore Johnson Chair in Law and Business,** University of Southern California, Gould School of Law.

2005-2006	**Professor of Finance and Business Economics,** USC Marshall School of Business.
2000-2005	**Professor of Law,** Univ. of Southern California Law School. (Director, USC Center in Law Economics & Organization, 2002-2004; Director, USC/Caltech Olin Center for Study of Law & Rational Choice, 2002-2004).
2003 (Spr.)	**Visiting Research Fellow,** Institute for Civil Justice, RAND Corporation, Santa Monica, CA.
2001-2003	**Visiting Professor of Law,** California Institute of Technology, Department of Humanities and Social Sciences. (Courses: Law and Economics; Regulation of Securities Markets).
2000 (Aut.)	**Visiting Professor of Law and Alfred P. Sloan Research Fellow,** Georgetown University Law Center.
1997-2000	**Associate Professor of Law,** University of Southern California Law School.
1995-1997	**Assistant Professor of Law,** University of Southern California Law School.
1993-94	**Contract Specialist,** Brown & Bain, Palo Alto, CA (non-practicing consultant).
1993	**Summer Associate,** Brown & Bain, Palo Alto, CA.
1993	**Lecturer,** Stanford University. Intermediate microeconomics.
1990, 1992	**Instructor,** Stanford Law School. Taught two seminars for law faculty on the fundamentals of economic analysis and game theory.

Education

Ph.D./J.D.	**Stanford University Dept. of Economics & Stanford Law School.** 1989-95, 1999. Doctoral Dissertation Committee: Paul R. Milgrom (chair; 2020 Nobel Prize recipient); Ian Ayres; A. Mitchell Polinsky.
B.A.	**University of California, San Diego.** 1984-88. Magna Cum Laude. Majors: economics and political science; minor: mathematics.
High School	**Los Alamos High School,** Los Alamos, NM. 1981-84.

Courses Taught

I. Corporate Law / Business Associations
II. Corporate Finance
III. Corporate Governance
IV. Contract Law
V. Mergers and Acquisitions
VI. Valuation Bootcamp for Lawyers
VII. Machine Learning and Law
VIII. Securities Regulation
IX. Private Capital (seminar)
X. Shareholder Activism (seminar)
XI. Law and Economics (seminar)
XII. Law and Empirical Finance (seminar)

Books

- CORPORATE FINANCE AND LAW (Edward Elgar Publishing Ltd., 2024) (Advanced Introduction Series, forthcoming 2024).

- EXPERIMENTAL LAW AND ECONOMICS (Edward Elgar Publishing Ltd., 2008) (co-edited with Jennifer Arlen).

Articles, Chapters, Blog Posts and Occasional Pieces

- *Don't Go Chasing Waterfalls: Fiduciary Duties in Venture Capital Backed Startups* 52 JOURNAL OF LEGAL STUDIES (*forthcoming*, 2024) (with Sarath Sanga). Available at *https://ssrn.com/abstract=3721814*.

- *Debt Textualism and Creditor-on-Creditor Violence: A Modest Plea to Keep the Faith,* 171 U. PENN. L. REV. (*forthcoming* 2023) (with Sneha Pandya). Available at https://ssrn.com/abstract=4317353.

- *Twitter v. Musk: Reflections on the "Trial of the Century" That Wasn't,* 40 DELAWARE LAWYER 8 (2022, Feature Article) (with Ann M. Lipton).

- *The Price of Fairness,* 83 OHIO ST. L. JOURNAL (*forthcoming*, 2023) (with Christopher Buccafusco & Daniel Hemel).

- *Contractual Evolution,* 89 U. CHICAGO L. REV. 901 (2022) (with Matthew Jennejohn & Julian Nyarko). Available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3810214*.

- *Cleaning Corporate Governance,* 170 U. PENN. L. REV. 1 (2021) (with Jens Frankenreiter, Cathy Hwang & Yaron Nili) (lead article). *Corporate Practice Commentator* designation as one of the "Top Ten Corporate and Securities Articles of 2022."

- *Discharging the Discharge for Value Defense,* 17 NYU J. L. & BUSINESS 201 (2021), featured on Bloomberg's Money Talk (by Matt Levine) and New York Times DealBook. Available at https://ssrn.com/abstract=3906201.

- *Looking Back with a Legend: Ira Millstein Reflects on the Impact of Milton Friedman's Views on Corporate Governance,* 71 BUS. LAWYER 945 (2021) (with Ira Millstein and Leo Strine).

- *How the Litigious Bird Caught the (Banque) Worm,* Columbia Blue Sky Blog (February 2021) (with Sneha Pandya). Available at *https://clsbluesky.law.columbia.edu/2021/02/24/how-the-litigious-bird-caught-the-banque-worm/.*

- *Racial Diversity and Corporate Governance: Assessing California's New Board Diversity Mandate,* CAL. BUS. LAW REPORTER (2021) (with Courtney Murray) *(featured on the Columbia Blue Sky Blog).*

- *Patently Risky: Framing, Innovation and Entrepreneurial Preference,* 34 HARVARD J. LAW & TECH. 192 (2020) (with Elizabeth Hoffman, David Schwartz & Matthew Spitzer). Available at *https://jolt.law.harvard.edu/assets/articlePDFs/v34/4.-Talley.pdf.*

- *Liability Design for Autonomous Vehicles and Human-Driven Vehicles: A Hierarchical Game-Theoretic Approach, 118* TRANSP. RES. (Pt. C) *1* (2020) (with Xuan Di & Xu Chen). *Available at https://arxiv.org/abs/1911.02405*

- *Long-Term Bias,* 2020 COLUMBIA BUS. LAW REV. 104 (2020) (with Michal Barzuza). *Available at https://ssrn.com/abstract=3338631*, featured on the Harvard Law School Forum on Corporate Governance.

- *Coronavirus Is Becoming a "Majeure" Headache for Pending Corporate Deals,* Columbia Blue Sky Blog (March 2020) (with Julian Nyarko & Matt Jennejohn), available at https://clsbluesky.law.columbia.edu/2020/03/19/coronavirus-is-becoming-a-majeure-headache-for-pending-corporate-deals/.

- *A "Majeure" Update on COVID-19 and MAEs,* Columbia Blue Sky Blog (April 2020) (with Julian Nyarko & Matt Jennejohn), available at https://clsbluesky.law.columbia.edu/2020/03/26/a-majeure-update-on-covid-19-and-maes/

- *Tesla, SolarCity and Inherent Coercion,* Columbia Blue Sky Blog (February 2020) (with Jamie Brumberger & Anne Tucker), available at https://clsbluesky.law.columbia.edu/2020/02/07/tesla-solarcity-and-inherent-coercion/.

- *A Computational Analysis of Constitutional Polarization,* 105 CORNELL L. REV. 1 (2019) (lead article; with David Pozen & Julian Nyarko), available at https://ssrn.com/abstract=3351339.

- *Republicans and Democrats Are Describing Two Different Constitutions*, THE ATLANTIC MONTHLY (June 2019) (with David Pozen and Julian Nyarko), available at https://www.theatlantic.com/ideas/archive/2019/06/democrats-and-republicans-have-different-constitutions/590005/

- *Informed Trading and Cybersecurity Breaches*, 9 HARVARD BUS. L. REV. 1 (2019) (lead article, with Joshua Mitts), featured at https://corpgov.law.harvard.edu/2018/01/26/informed-trading-and-cybersecurity-breaches/

- *Could US Tax Reform See Increased Offshore Investment?* IFC Economic Report (Autumn 2018).

- *Appraising the Merger Price Appraisal Rule*, 34 J. LAW ECON. & ORG. 543 (2018) (with Albert Choi) *(featured on Harvard's Forum on Corporate Governance and Financial Regulation).*

- *Appraisal Arbitrage and Shareholder Value*, 3 J. LAW FINANCE & ACCOUNTING 147 (2018) (with Scott Callahan and Darius Palia) (featured on the Columbia Blue Sky Blog).

- *Appraisal Apprisal: Dell v. Magnetar*, Columbia Blue Sky Blog (with Jeff Gordon) (2017) available at: http://clsbluesky.law.columbia.edu/2017/12/19/appraisal-apprisal-dell-v-magnetar/.

- *Law and Corporate Governance*, in THE HANDBOOK OF THE ECONOMICS OF CORPORATE GOVERNANCE (Oxford Press; Hermalin & Weisbach eds. 2017) (with Robert Bartlett), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3009451

- *Finance in the Courtroom: Appraising Its Growing Pains, in* DEL. LAWYER (S2017); http://www.delawarebarfoundation.org/wp-content/uploads/2017/09/DeLawSUM17-FINAL.pdf

- *Is the Future of Law a Driverless Car? Assessing How (or Whether) the Data Analytics Revolution Will Transform Practice*, 174 J. INST. & TH. ECON. 183 (2018);; http://www.ingentaconnect.com/content/mohr/jite/2018/00000174/00000001/art00017

- *Contracting Out of the Fiduciary Duty of Loyalty: An Empirical Analysis of Corporate Opportunity Waivers*, 117 COLUMBIA L. REV. 1075 (2017) (with Gabriel Rauterberg).

- *Opting Out of the Fiduciary Duty of Loyalty: Corporate Opportunity Waivers within Public Companies*, Harvard Law School Forum on Corporate Governance and Financial Regulation (August 2016) (with Gabriel V. Rauterberg), *available at https://corpgov.law.harvard.edu/2016/08/22/opting-out-of-the-fiduciary-duty-of-loyalty-corporate-opportunity-waivers-within-public-companies/.*

- *Designing Corporate Bailouts*, 59 J. LAW & ECON. 75-104 (2016) (with Antonio Bernardo and Ivo Welch).

- *Corporate Inversions and the Unbundling of Regulatory Competition*, 101 VA. L. REV. 1649-1751 (2015). *Corporate Practice Commentator* designation as author of one of the "Top Ten Corporate and Securities Articles of 2016."

- *When Fiduciary Duties and Entrepreneurial Innovation Collide: AngioScore v. TriReme*, Columbia Blue Sky Blog (July 13, 2015).

- *Foreword*, 12 J. EMPIRICAL LEGAL STUDIES 601 (2015) (with Anne Joseph O'Connell) (Presidential Introduction, Empirical Legal Studies Conference Issue).

- *A Corporate Governance Give-Away to Tax Inverters? How tax, securities regulation, and corporate law unwittingly conspire to push US firms abroad, and what the US might do about it*, IFC ECONOMIC REPORT (Spring 2015), pp 45-49.

- *On Experimentation and Real Options in Financial Regulation*, 43 J. LEGAL. STUD. S121-49 (2014) (with Matthew Spitzer).

- *Who put the 'lie' in LIBOR (and who should take it out)? Civil LIBOR litigation in the US*, LAW & FIN. MKTS. REV. 145 (June 2014) (with Samantha Strimling).

- *Perspective: Fixing the dearth of women in M&A.* Los Angeles / San Francisco Daily Journal (September 18, 2014) (with Diane Frankle and Jennifer Muller).

- *Social Entrepreneurship and Uncorporations*, 2014 U. ILL. LAW REV. 1867 (with Jesse Finfrock) (2014).

- *Legislation with Endogenous Preferences*, in HANDBOOK OF MARKET DESIGN (Roth, Vulkan & Neeman, eds., 2013) (with A. Heifetz & E. Segev).

- *The World's Most Important Number: How a Web of Skewed Incentives, Broken Hierarchies and Compliance Cultures Conspired to Undermine LIBOR*, 2 JASSA FINSIA JOURNAL OF APPLIED FINANCE 50 (2013) (with Samantha Strimling). *Reprinted in* INTEGRITY, RISK AND ACCOUNTABILITY IN CAPITAL MARKETS : REGULATING CULTURE d (J. O'Brien ed. 2013).

- *Law, Economics, and the Burden(s) of Proof*, in RESEARCH HANDBOOK ON THE ECONOMICS OF TORTS (J. Arlen, ed., 2013).

- *Left, Right and Center: Strategic Information Acquisition and Diversity in Judicial Panels* (with Matthew Spitzer), 29 LAW ECON. & ORG. 638 (2013).

- *Perspective: Traditional Skills Still Necessary; No Longer Sufficient.* Los Angeles / San Francisco Daily Journal (Wed., May 22, 2013).

- *The Measure of a MAC: A Machine-Learning Protocol for Tokenizing Force Majeure Clauses in M&A Agreements* (with D. O'Kane), *168* J. INST. & THEOR. ECON. 181 (2012).

- *On Uncertainty, Ambiguity, and Contractual Conditions,* 34 DEL. J. CORP. LAW 755 (2009).

- *The Supervisory Capital Assessment Program: An Appraisal* (with Johan Walden) (June 2009), *TARP Congressional Oversight Panel, June 2009 Report to Congress, Elizabeth Warren Chair.*

- *Public Ownership, Firm Governance, and Litigation Risk,* 76 U. CHI. L. REV. 335 (2009)

- *Going Private Decisions and the Sarbanes Oxley Act of 2002: A Cross-Country Analysis* (with Ehud Kamar & Pinar Karaca-Mandic), 25:1 J. LAW ECON. & ORG. 107-33 (2009). *Corporate Practice Commentator* designation as one of the "Top Ten Corporate and Securities Articles of 2009."

- *Introduction to Experimental Law and Economics, in* EXPERIMENTAL LAW AND ECONOMICS (Edward Elgar Publishing Ltd., 2008) (with Jennifer Arlen).

- *Hope and Despair in the Magic Kingdom, In Re. Disney Shareholders Litigation,* ICONIC CASES IN CORPORATE LAW (Jonathan Macey, ed.) (2008) (with James D. Cox)

- *Investor and Industry Perspectives on Investment Advisers and Broker-Dealers,* RAND Technical Report TR-556-SEC (2008) (with Angela A. Hung, Noreen Clancy, Jeff Dominitz, Claude Berrebi, and Farrukh Suvankulov).

- *Design of the Qatar National Research Fund,* RAND Technical Report TR-209-QF (2008) (with Debra Knopman, Victoria A. Greenfield, Gabrielle Bloom, Edward Balkovich, D. J. Peterson, James T. Bartis, Stephen Rattien, Richard Rettig, Mark Y.D. Wang, Michael Mattock, Jihane Najjar, & Martin C. Libicki).

- *Experimental Law and Economics, in* HANDBOOK OF LAW AND ECONOMICS (A. Mitchell Polinsky & Steven Shavell, eds.) (2007) (with Colin Camerer).

- *Market Design with Endogenous Preferences* (with Aviad Heifetz & Ella Segev), 58 GAMES & ECON. BEHAVIOR 121-153 (2007).

- *Cataclysmic Liability Risk Among Big-Four Auditors,* 106 COLUM. L. REV. 1641 (2006).

- *On the Private Provision of Corporate Law* (with Gillian Hadfield), 22 J. LAW, ECON. & ORG 414 (2006).

- *Expectations and Legal Doctrine, in* PARADOXES AND INCONSISTENCIES IN THE LAW 183-204 (O. Perez & G. Taubner, eds. 2006).

- Bargaining in the Shadow of Different Regimes (with Ian Ayres), *in* Ian Ayres, OPTIONAL LAW (2005).

- *Unregulable Defenses and the Perils of Shareholder Choice* (with Jennifer Arlen), 152 U. PENN. L. REV. 577 (2003). *Corporate Practice Commentator* designation as author of one of the "Top Ten Corporate and Securities Articles of 2004."

- *Endowment Effects and Corporate Agency Relationships,* 31 J. LEGAL. STUD. 1 (2002) (with Jennifer Arlen and Matt Spitzer).

- *On the Demise of Shareholder Primacy (or, Murder on the James Trains Express),* 75 SO. CAL. L. REV. 1211 (2002).

- *Securities Fraud Class Actions: 70 Years Young, in* RAND Review (2004), at 42.

- *Playing Favorites with Shareholders,* 75 SO. CALIF. L. REV. 276 (2002) (with Stephen Choi) (*reprinted in* 44 CORPORATE PRACTICE COMMENTATOR 235 (2002)).

- *Law and Economics (Theory of), in* THE OXFORD COMPANION TO AMERICAN LAW (David S. Clark, ed.) (2002).

- *Your (Increasingly) Legal Options,* USC LAW 45 (Fall 2001).

- *The Corporate Opportunity Doctrine, in* 2001 USC INSTITUTE FOR CORPORATE COUNSEL: READING MATERIALS (2001) (with Mira Hashmall).

- *Disclosure Norms,* 149 U. PENN. L. REV. 1955 (2001).

- *A Theory of Legal Presumptions* 16 J. L. ECON. & ORG. 1 (2000) (with Antonio Bernardo & Ivo Welch).

- *Judicial Auditing,* 29 J. LEGAL STUD. 649 (2000) (with Matthew Spitzer).

- *Taking the "I" Out of "Team": Intra-Firm Monitoring and the Content of Fiduciary Duties,* 24 J. CORP. LAW 1001 (1999).

- *Precedential Cascades: An Appraisal,* 73 SO. CAL. L. REV. 87 (1999).

- *Turning Servile Opportunities to Gold: A Strategic Analysis of the Corporate Opportunities Doctrine,* 108 YALE L. J. 277 (1998). *Corporate Practice Commentator* designation as author of one of the "Top Ten Corporate and Securities Articles of 1999."

- *Interdisciplinary Gap-Filling: Game Theory and the Law,* 22 J. LAW & SOC. INQ. 1055 (1997) (review essay).

- *Investment Policy and Exit-Exchange Offers within Financially Distressed Firms*, 51 J. FINANCE 871 (1996) (with Antonio Bernardo).

- *Liability-Based Fee Shifting Rules and Settlement Mechanisms Under Incomplete Information,* 71 CHI.-KENT L. REV. 461 (1995).

- *Distinguishing Between Consensual and Non-consensual Advantages of Liability Rules,* 105 YALE L. J. 235 (1995) (with Ian Ayres).

- *Solomonic Bargaining: Dividing a Legal Entitlement to Facilitate Coasean Trade,* 104 YALE L.J. 1027 (1995) (with Ian Ayres).

- *Contract Renegotiation, Mechanism Design and the Liquidated Damages Doctrine,* 46 STAN. L. REV. 1195 (1994).

- BARGAINING UNDER INCOMPLETE INFORMATION AND THE DESIGN OF LEGAL RULES, Doctoral Dissertation, Stanford University (1999).

Submitted Papers, Working Papers and Works-in-Progress

- *Our Misguided Faith in Corporate Voting* (with Ben Johnson & Jennifer Juergens) (2023).

- *Courtroom Valuation, Rulified Finance, and the Promise (and Perils) of Machine Learning* (with Andrew Baker and Jonah Gelbach) (2023).

- *Sex & Startups* (with Talia Gillis and Jens Frankenreiter) (2023).

- *Efficient Liability Assignment in Hub and Spoke Networks* (with Jiyoung Kim) (2023)

- *COVID-19 as a Force Majeure in Corporate Transactions* (with Julian Nyarko & Matt Jennejohn).

- *The Utility of Finance* (2017) (with Shlomit Azgad-Tromer). *Available at https://ssrn.com/abstract=2994314.*

- *A Machine Learning Classifier for Corporate Opportunity Waivers* (2016) (with Gabriel Rauterberg) *Available at https://ssrn.com/abstract=2849491*

- *Financial Regulation and the World's Most Important Number: LIBOR Reporting Behavior during the Credit Crisis* (2013)

- *Optimal Liability for Terrorism* (with Darius Lakdawalla) (2005)

- *Uncorporated Professionals* (with John Romley) (2004) (available for download at SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=587982).

- *Equilibrium Expectations and Legal Doctrine* (2005).

- *The Impact of Regulation and Litigation on Small Business and Entrepreneurship: An Overview*, RAND Working Paper WR-317-ICJ (2006) (with Lloyd Dixon, Susan M. Gates, Kanika Kapur, and Seth A. Seabury).

- *Criteria Used to Define a Small Business in Determining Thresholds for the Application of Federal Statutes,* RAND Working Paper WR-292-ICJ (2005) (with Ryan Keefe and Susan M. Gates).

- *A Defense of Shareholder Favoritism* (with Stephen Choi 2002).

- *Incentives, Investment, and the Legal Protection of Trade Secrets* (with Gillian Lester, 2001).

- *Corporate Governance, Executive Compensation and Securities Litigation* (May 2004) (with Gudrun Johnsen).

- *Private Information, Self-Serving Biases, and Optimal Settlement Mechanisms: Theory and Evidence* (November 2003) (with Seth Seabury).

- *Trade Secrets and Mutual Investments* (with Gillian Lester) USC Law School Working Paper # 00-15; Georgetown Law and Economics Research Paper No. 246406 (Oct. 2000).

- *A Note on Presumptions with Sequential Litigation,* USC Olin Working Paper # 99-9 (with Antonio Bernardo) (1999).

- *Property Rights, Liability Rules, and Coasean Bargaining Mechanisms under Incomplete Information,* Stanford Olin Working Paper # 108 (1994).

Funding/Grants

- Securities and Exchange Commission Grant to study investment advisors and broker dealers, RAND Corporation, 1/2007-3/2008; $280,000 (research staff, task director).

- Ewing Marion Kauffman Foundation, 3-year support grant to fund RAND Center for the Study of Small Business Regulation and Litigation; 11/03-10/06; $1,500,000 (co-PI).

- John Olin Foundation, 3-year support grant to fund USC/Caltech Program in Law and Rational Choice, 6/02-6/05; $300,000 (PI).

- University of Southern California, 3-year Seed Money Grant to Implement USC Center in Law, Economics and Organization, 7/00-6/03; $800,000 (co-PI).

- University of Southern California Zumberge Junior Fac. Award, 8/97-6/98; $30,000 (PI).

Endowed Presentations and Notable Addresses

- Commencement Address, Columbia Law School Class of 2022 (faculty speaker and recipient of Willis L. M. Reese Prize for Excellence in Teaching) (*Peerless*) (Available at https://ssrn.com/abstract=4116830).

- Delaware Judicial Retreat (October 2020) (Invited presentation on corporate law and governance before Delaware Court of Chancery and Supreme Court at annual Judicial Retreat).

- Keynote Address, Michigan State University Law Review symposium, Lansing MI (April 2020).

- Delaware Judicial Retreat (October 2018) (Invited presentation on corporate law and governance before Delaware Court of Chancery and Supreme Court at annual Judicial Retreat).

- Keynote Address, Conference on Empirical Legal Studies East Asia (CELSEA), Taipei, Taiwan (June 2017).

- Commencement Address, Columbia Law School Class of 2017 (faculty speaker and recipient of Willis L. M. Reese Prize for Excellence in Teaching) (*Triumphs of Commission*) (available at https://ssrn.com/abstract=2970477)

- Fifty-Ninth Annual John R. Coen Lecture, University of Colorado at Boulder, March 2016 (*Is the Law a Driverless Car? Assessing How (or Whether) the Data Analytics Revolution Will Transform the Legal Profession)* (available at http://lawweb.colorado.edu/events/details.jsp?id=6629).

- Chair Installation Address, Rosalinde & Arthur Gilbert Chair in Law, Business and the Economy, UC Berkeley School of Law, April 2009.

- Twenty-Fifth Annual Francis G. Pileggi Distinguished Lecture in Law, Delaware Journal of Corporate Law, Widener University, October 2008.

- Ninth Annual Distinguished Speaker Series, McGeorge Law School, University of the Pacific, November 2001 (*Common Agency in Fiduciary Law*).

Consulting/Testimony (Last 5 Years)

- Javice v. JP Morgan Chase Bank (Delaware Chancery Court) (CA 2022-1179-KSJM) (2023). Served as a consulting expert analyzing contractual indemnification / advancement provisions in M&A agreements.

- Politan Capital Management LP v. Masimo Corp. (Delaware Chancery Court) (CA 2022-0948-NAC) (2023). Served as testifying expert analyzing corporate governance and shareholder voting dynamics related to an advance-notice bylaw of a public company.

- Alterra America Insurance Co. et al v. National Football League (Supreme Court of New York, New York County, Index No. 652813/2012) (2022). Served as consulting expert analyzing economic aspects of concussion settlement liability as between unincorporated league and member teams.

- Edison Electric Institute (EEI). Deliver in-depth lectures on economics, finance, and ROE estimation to US-based utilities regulators (commissioners and staff) (2020-Pres.).

- Institute for Regulatory Law and Economics (IRLE). Deliver in-depth lectures on economics, finance, and ROE estimation to US-based utilities regulators (commissioners and staff) (2008-Pres.).

- Sears Holding Corporation, et al. v. Lampert, et al., Case No. 19-08250 (RDD) (Bankr. S.D.N.Y.) (2021-22). Served as consulting expert on corporate governance in relation to several spin-off and loan transations.

- Rising Tide I, LLC v. Fitzsimmons et al. (Case # 3:17-cv-01232-EDL) (N.D. Cal. 2020). Retained as expert to render opinion as to corporate governance practices in connection with allegations of securities fraud.

- Global Blue Group AG Acquisition by Far Point Acquisition Corp. (2020). Retained as expert to evaluate corporate governance practices in board deliberations as to whether a Material Adverse Effect had occurred in a de-SPAC transaction.

- In Re Southern California Gas Leak Cases (JCCP #4861) (CA Superior Court 2019). Retained as expert to render opinion on corporate structure of utilities holding company and operating affiliates.

- Lumius Capital LLC v. AmTrust Financial Services, Inc. (JAMS Ref. No. 1425026461) (2019). Served as expert in valuation issues related to lost business opportunities from a breach of NDA / non-circumvention contract. Testified at arbitration proceeding.

- PWP Xerion Holdings III, LLC v. Red Leaf Resources Inc. (C.A. No. 2017-0235-JTL) (2019). Served as expert in valuation issues related to alleged breach of preemptive rights and quantification of associated damages.

- In Re Appraisal of Capital Bank Financial Corp. (C.A. No. 2018-0226-TMR) (2019). Served as expert in valuation issues in Delaware Appraisal action.

- In Re Appraisal of Columbia Pipeline Group, Inc. (C.A. No. 12736-VCL) (2019). Served as expert in valuation issues and the Efficient Capital Market Hypothesis for Delaware appraisal action. Testified at Trial.

- United States v. Navistar Int'l Corp. et. al, (CV No. 15-cv-6143, USDC, N.D. IL.) (2018) Served as expert in corporate holding company structures in environmental litigation.

Awards and Service

- Willis L.M. Reese Prize for Excellence in Teaching, Columbia Law School (2022).
- Willis L.M. Reese Prize for Excellence in Teaching, Columbia Law School (2017).
- *Corporate Practice Commentator* commendation for "Ten Best Corporate and Securities Articles written in 2022 (for *Cleaning Corporate Governance*). 5/23
- *Corporate Practice Commentator* commendation for "Ten Best Corporate and Securities Articles written in 2017 (for *Contracting out of the Fiduciary Duty of Loyalty: An Empirical Analysis of Corporate Opportunity Waivers*). 5/18
- *Corporate Practice Commentator* commendation for "Ten Best Corporate and Securities Articles written in 2016 (for *Corporate Inversions and the Unbundling of Regulatory Competition*). 5/17
- *Corporate Practice Commentator* commendation for "Ten Best Corporate and Securities Articles written in 2009 (for *Going Private Decisions and the Sarbanes Oxley Act of 2002: A Cross-Country Analysis*). 4/10
- *Corporate Practice Commentator* commendation for "Ten Best Corporate and Securities Articles written in 2004 (for *Unregulable Defenses and the Perils of Shareholder Choice)*. 4/05.
- *Corporate Practice Commentator* commendation for "Ten Best Corporate and Securities Articles written in 1999" (for *Turning Servile Opportunities to Gold: A Strategic Analysis of the Corporate Opportunities Doctrine)*. 3/00.
- Board Member, Ira M. Millstein Center for Global Markets and Corporate Ownership (2017-Present); Executive Committee Member (2020-Present).
- Board of Directors, Society for Empirical Legal Scholars (SELS) (2009-2022) (Immediate Past Chair, 2019-2022; Chair Elect, 2015-2019; Immediate Past President, 2014-15; President 2013-14; Vice President 2012-13).
- Board of Directors, American Law and Economics Association (Elected member; three-year term: June 2016-May 2019).
- Executive Committee, Data Science Institute, Columbia University (2015-Present)
- Program Committee, American Law and Economics Association Annual 2017 Conference (June 2016 – May 2017).
- University of California System-wide Committee on Academic Personnel (UCAP) (2014-2015).

- UC Berkeley Campus Budget and Interdepartmental Relations Committee (Budget Committee) (2011-2014; Chair, 2013-14; ex officio 2014-2015).

- UC Berkeley Academic Senate Divisional Council (DIVCO) (2013-14).

- UC Berkeley Academic Planning and Resource Allocation Committee (CAPRA) (2013-14).

- Legal Education Advisory Board, BARBRI, Inc., August 2013-15.

- Board of Directors, American Law and Economics Association (Elected member; three-year term: June 2005-May 2008).

- Elected Member, Dean's Faculty Advisory Committee, UC Berkeley School of Law (2010 – 2013).

- Chair, Dean Search Committee, Haas Business School, UC Berkeley (2007-2008).

- Member, National Science Foundation Law and Social Science Grant Evaluation Panel (2008 - 2010).

- Program Committee, American Law and Economics Association Annual 2006 Conference (with D. Rubinfeld, and K. Pastor) (November 2005 – May 2006).

- Chair, Administration and Finance Committee (Elected), USC Law School 2004-05.

- Finance Committee, University of Southern California Board of Trustees (faculty representative), 2004-05.

- Representative, Faculty Senate, University of Southern California 2004-05.

- Board Treasurer, The Growing Place Early Childhood Education Center Board of Directors (non-profit) 2004-05.

- Board of Directors, The Growing Place Early Childhood Education Center Board of Directors (non-profit), 2002-2005.

- Chair, Faculty Appointments Committee, USC Law School 2003.

- Chair, AALS Section in Law and Economics, 2004-05.

- Chair, AALS Section in Contracts, 2007-08.

- Chair, Faculty Handbook Committee, University of Southern California, 2002-03. Oversaw reorganization of faculty handbook (approved by USC Faculty Senate, 2004).

- Alfred P. Sloan Foundation Research Fellowship, Georgetown Law Center. 9/00-12/00.

- Zumberge Junior Faculty Research Award, USC. 7/97 - 7/99.
- Centennial Teaching Award, Stanford University. 6/95.
- Articles Editor, *Stanford Law Review* 1993-94 (Volume 46).
- Outstanding Teaching Assistant Award in Economics. 3/94; 6/94; 12/94.
- Hellman Prize for Outstanding Law-Review Note, *Stanford Law Review.* 5/94
- Fellow, Stanford Center for Conflict and Negotiation. 11/92-10/93
- Goldsmith Award for Outstanding Paper in Dispute Resolution. 4/93
- Hilmer Oehlmann, Jr. Prize for excellence in legal research and writing. 5/92
- John Olin Foundation Fellowship in law and economics. 4/94; 6/94; 6/92
- Phi Beta Kappa
- Departmental Honors in both economics and political science, University of California, San Diego. Graduated Magna Cum Laude from Revelle College. 12/88

Professional Affiliations

- Referee, *American Economic Review; Rand Journal of Economics; Journal of Law, Economics & Organization; Journal of Legal Studies; Review of Economic Studies; International Review of Law and Economics; International Economic Review; Journal of Law and Economics.*
- Member, American Law and Economics Association; Society for Empirical Legal Studies.

Students/Advisees

- Jens Frankenreiter, Columbia Law School Post-Doctoral Fellow (2018-19); Assistant Professor of Law, Washington University St. Louis.
- Julian Nyarko, Columbia Law School Post-Doctoral Fellow (2019-21); Assistant Professor of Law, Stanford Law School.
- Reilly Steel, Columbia Law School (JD), Millstein Fellow (2017-18); Clerk to Hon. Leo Strine (Del.) (2018-19); Doctoral Candidate, Princeton Political Science department.

- Sarath Sanga, UC Berkeley Economics Department (PhD); Yale Law School (JD), Professor of Law, Northwestern University Law School.

- Surajeet Chakravarty, USC Economics Department (PhD), Associate Professor, University of Exeter Business School.

- Svetlana Pevnitskaya, USC Economics Department (PhD), Associate Professor of Economics, Florida State University.

- Kathryn Zeiler, Caltech, Social Science (PhD) / USC Law (JD), Professor of Law, Boston University

- Jingfeng Lu, USC Economics Department (PhD), Professor of Economics, National University of Singapore Department of Economics.

- Brian Broughman, UC Berkeley JSP Program (PhD), Professor of Law, Vanderbilt university.

- Michael Gilbert, UC Berkeley JSP Program (PhD), Professor of Law, University of Virginia.

- Andrew Hayashi, UC Berkeley JD / PhD (Economics), Professor of Law, University of Virginia.

- Mira Ganor, UC Berkeley JSD Candidate (2008), Professor of Law, University of Texas.

Personal

- Date of Birth: 26 March, 1966.
- Married (since 1998) to Gillian Lester, Dean, Columbia Law School.
- Two children.
- Hobbies include cycling, hiking, classical/jazz guitar, and skiing.

Appendix B

Documents Reviewed

- Pleadings, C/A No. 2023-CP-40-01759, *Tibbs et al. v. 3M Company et al.* (S.C. Court of Common Pleas for the Fifth Judicial Circuit)
    - Third-Party Complaint, dated June 30, 2023
    - Third-Party Defendant Anglo American PLC's Motion to Dismiss for Lack of Personal Jurisdiction, dated August 14, 2023
    - Third-Party Defendant De Beers PLC's Motion to Dismiss for Lack of Personal Jurisdiction, dated August 14, 2023
    - Third-Party Defendant De Beers UK Limited's Motion to Dismiss for Lack of Personal Jurisdiction, dated August 14, 2023
    - Third-Party Defendant De Beers Jewellers Limited's Motion to Dismiss for Lack of Personal Jurisdiction, dated August 16, 2023
    - Third-Party Defendant Anglo American Crop Nutrients USA LLC's Motion to Dismiss for Lack of Personal Jurisdiction, dated August 18, 2023
    - Third-Party Defendant Anglo American US Holdings' Motion to Dismiss for Lack of Personal Jurisdiction, dated August 18, 2023
    - Third-Party Defendant De Beers Jewellers US, Inc.'s Motion to Dismiss for Lack of Personal Jurisdiction, dated August 18, 2023
    - Third-Party Defendant Element Six Technologies (OR) Corp.'s Motion to Dismiss for Lack of Personal Jurisdiction, dated August 18, 2023
    - Third-Party Defendant Element Six Technologies US Corporation's Motion to Dismiss for Lack of Personal Jurisdiction, dated August 18, 2023
    - Third-Party Defendant Element Six US Corporation's Motion to Dismiss for Lack of Personal Jurisdiction, dated August 18, 2023
    - Third-Party Defendant First Mode Holdings, Inc.'s Motion to Dismiss for Lack of Personal Jurisdiction, dated August 18, 2023
    - Third-Party Defendant Forevermark US, Inc.'s Motion to Dismiss for Lack of Personal Jurisdiction, dated August 18, 2023
    - Third-Party Defendant Lightbox Jewelry, Inc.'s Motion to Dismiss for Lack of Personal Jurisdiction, dated August 18, 2023

- Third-Party Defendant Arranco US, LLC's Motion to Dismiss for Lack of Personal Jurisdiction & for Stay of Discovery, dated August 14, 2023

- Third-Party Defendant Hawk Bidco US, Inc.'s Motion to Dismiss for Lack of Personal Jurisdiction & for Stay of Discovery, dated August 21, 2023

- Third-Party Defendant Sparrows Offshore, LLC's Motion to Dismiss for Lack of Personal Jurisdiction & for Stay of Discovery, dated August 21, 2023

- Third-Party Defendant Arranco US, LLC, Hawk Bidco US, Inc., & Sparrows Offshore, LLC's Motion to Dissolve the Cape, PLC Receivership, dated August 21, 2023

- Third-Party Defendant Altrad Investment Authority SAS's Motion to Dismiss Third-Party Complaint for Lack of Personal Jurisdiction and for Stay of Discovery, dated September 1, 2023

- Third-Party Defendant Central Mining & Investment Corporation's Motion to Dismiss Third-Party Complaint, dated September 1, 2023

- Third-Party Defendant Charter Consolidated, Ltd.'s Motion to Dismiss Third Party Complaint, dated September 1, 2023

- Third-Party Defendant ESAB Corporation's Motion to Dismiss Third-Party Complaint, dated September 1, 2023

- Third-Party Defendant Mohed Altrad's Motion to Dismiss Third-Party Complaint for Lack of Personal Jurisdiction and for Stay of Discovery, dated September 1, 2023

- Third-Party Defendants Mohed Altrad & Altrad Investment Authority SAS's Motion to Dismiss Pursuant to Rules 12(B)1 and 12(B)(6) and Alternative Motion for More Definite Statement and to Strike or Sever Pursuant to Rules 12(E) and 14, dated September 1, 2023

- Third-Party Defendants' Mohed Altrad & Altrad Investment Authority SAS's Motion to Dissolve the Cape PLC Receivership, dated September 1, 2023

- Third-Party Defendants Arranco US, LLC, Hawk Bidco US, Inc., and Sparrows Offshore, LLC's Motion for Protective Order and to Dissolve Receivership, dated September 5, 2023

- Third-Party Defendant De Beers Consolidated Mines Ltd.'s Motion to Dismiss for Lack of Personal Jurisdiction, dated September 6, 2023

- Third-Party Defendant De Beers Centenary AG's Motion to Dismiss for Lack of Personal Jurisdiction, dated September 11, 2023

- Third-Party Defendant Anglo American Crop Nutrients USA, LLC's Motion for Stay of Discovery and Protective Order, dated September 15, 2023

- Third-Party Defendant Anglo American US Holdings, Inc.'s Motion for Stay of Discovery and Protective Order, dated September 15, 2023

- Third-Party Defendant Anglo American, PLC's Motion for Stay of Discovery and Protective Order, dated September 15, 2023

- Third-Party Defendant De Beers Jewellers Ltd.'s Motion for Stay of Discovery and Protective Order, dated September 15, 2023

- Party Defendant De Beers Jewellers US, Inc.'s Motion for Stay of Discovery and Protective Order, dated September 15, 2023

- Third-Party Defendant De Beers, PLC's Motion for Stay of Discovery and Protective Order, dated September 15, 2023

- Third-Party Defendant Element Six Technologies (OR) Corp.'s Motion for Stay of Discovery and Protective Order, dated September 15, 2023

- Third-Party Defendant Element Six Technologies US Corporation's Motion for Stay of Discovery and Protective Order, dated September 15, 2023

- Third-Party Defendant Element Six US Corporation's Motion for Stay of Discovery and Protective Order, dated September 15, 2023

- Third-Party Defendant First Mode Holdings, Inc.'s Motion for Stay of Discovery and Protective Order, dated September 15, 2023

- Third-Party Defendant Forevermark US, Inc.'s Motion for Stay of Discovery and Protective Order, dated September 15, 2023

- Third-Party Defendant Lightbox Jewelry, Inc.'s Motion for Stay of Discovery and Protective Order, dated September 15, 2023

- Third-Party Defendants Mohed Altrad & Altrad Investment Authority SAS's Motion for Protective Order and to Dissolve Receivers, dated September 20, 2023

- Third-Party Defendant Platinum Guild International (USA) Jewelry, Inc.'s Motion to Dismiss for Lack of Personal Jurisdiction, dated October 6, 2012

- Other Authorities

  - Joseph K. Angell & Samuel Ames, A Treatise on thc Law of Private Corporations Aggregate 349 (Reprint, New York: Arno Press. [1832] 1972)
  - Antonio Bernardo & Eric Talley, Investment Policy and Exit-Exchange Offers Within Financially Distressed Firms, The Journal of Finance (1996)
  - Phillip I. Blumberg, The Law Of Corporate Groups: Tort, Contract, And Other Common Law Problems In The Substantive Law Of Parent And Subsidiary Corporations § 6.01 (1987)
  - Che, Y-K & Spier, K, Strategic Judgment Proofing, RAND J. Econ. 39:4 (2008)
  - Comprehensive Anti-Apartheid Act of 1986, Pub. L. No. 99-440, § 310, 100 Stat. 1086
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  - Herbert Hovenkamp, Enterprise and American Law: 1836–1937 (1991)
  - Rustam Ibragimov, Dwight Jaffee, & Johan Walden, Nondiversification Traps in Catastrophe Insurance Markets, 22 REV. FIN. STUD. 959 (2009)
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  - John H. Matheson, Why Courts Pierce: An Empirical Study of Piercing the Corporate Veil, 7 Berkeley Bus. L.J. 1 (2010)
  - Mirjam van Praag, Gerrit de Wit and Niels Bosma, Initial Capital Constraints Hinder Entrepreneurial Venture Performance, The Journal of Private Equity, Winter 2005, Vol. 9, No. 1 (Winter 2005)
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- Steven Shavell, The Judgment Proof Problem, International Review of Law and Economics, Vol. 6 (1986)

- John A. Swain & Edwin E. Aguilar, Piercing the Veil to Assert Personal Jurisdiction over Corporate Affiliates: An Empirical Study of the Cannon Doctrine, 84 B.U. L. REV. 445 (2004)

- Thompson, R., Piercing the Corporate Veil: An Empirical Study, 76 Cornell L. Rev. 1036 (1991)

- Jean Tirole, The Theory of Corporate Finance (Princeton Press, 2006)

- Lawrence A. Weiss, Karen H. Wruck, Information problems, conflicts of interest, and asset stripping: Chapter 11's failure in the case of Eastern Airlines, Journal of Financial Economics 48:1 (1998)