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Harvey Gelb

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THE HUSKY CASE: FRAUD, BANKRUPTCY, AND VEIL PIERCING

Harvey Gelb[*]

ABSTRACT

A recent Supreme Court decision, Husky International Electronics, Inc. v. Ritz, explores the meaning of the word "fraud" under a federal bankruptcy statutory section. That section uses the term "actual fraud," and bears upon the question of whether a particular debt should be denied a discharge. The Court's approach in defining fraud affords guidance to the question of defining fraud under other statutes. The Husky case also raised a veil piercing issue to be dealt with on remand. That issue involved the application of Texas statutory law precluding veil piercing in cases brought by contract creditors unless they were victims of "actual fraud." Recognizing the need to protect the deserving contract or tort creditor, as well as limited liability's role in promoting a vibrant business environment, the author reviews mainstream veil piercing law. The author concludes that a statute like that of Texas, which limits veil piercing by contract creditors to cases involving actual fraud, would be a poor model to impose on mainstream veil piercing law. The centrality of fraud, bankruptcy law, and state veil piercing law in American creditor-debtor relations makes the Husky case a compelling subject.

INTRODUCTION

In a recent decision, *Husky International v. Ritz*,[1] the Supreme Court interpreted the meaning of the word *fraud*, a very important word in the legal lexicon. "Fraud" appears in various guises in different parts of speech, including as a noun by itself; an adjective, fraudulent; a verb, defraud; or an adverb, fraudulently. It is also found, in one form or another, in various contexts including statutes and cases. In *Husky*, the phrase "actual fraud" is used as a part of a federal bankruptcy statute that deals with denying a debtor a discharge from a particular debt.[2] That section prohibits the discharge of an individual debtor under Chapter 7 from any debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by . . . false pretenses, a false representation, or actual fraud . . . ."[3]

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* Professor and Kepler Chair in Law and Leadership Emeritus, University of Wyoming College of Law; B.A. 1957, Harvard College; J.D. 1960, Harvard Law School. The author is very grateful to the University of Wyoming College of Law's continuing support spearheaded by then Associate Dean Jim Delaney. Both the excellent work from research assistant Emma Pinder and the outstanding assistance from the Law School's library staff proved invaluable for off-campus research, writing and publication.

1. Husky Int'l Elecs., Inc. v. Ritz, 136 S. Ct. 1581 (2016).
2. *See id.* at 1585 (citing 11 U.S.C. § 523(a)(2)(A) (2012)).
3. 11 U.S.C. § 523(a)(2)(A).

In the United States, fraud in its various formats occurs in everyday expressions discussing claims or news of its perpetration. Many use the word to describe what they consider to be shameful behavior. In *Husky*, the Supreme Court rejected the very narrow interpretation of fraud that had been rendered by the Fifth Circuit, concluded that it had a broader meaning under the statutory section involved in the case, and, along the way to its decision, pointed to the historic breadth of fraud. In addition, the Court discussed the application of the "obtained by" fraud requirement.

Husky also involved issues to be resolved on remand—from the Supreme Court to the Fifth Circuit—regarding not only the federal bankruptcy discharge section already referred to, but also regarding the meaning of actual fraud and direct personal benefit under a Texas veil piercing statute[4] crucial in determining if Ritz was personally indebted to Husky. As will be discussed more fully, Husky sought to hold Ritz personally liable on a debt it was owed by Chrysalis Manufacturing Corporation, and also claimed that the debt was not discharged under the applicable federal bankruptcy statute. The remand resulted in significant analyses and holdings from the Fifth Circuit[5] and eventually the bankruptcy court.[6]

This Article considers (a) the Supreme Court's ruling as to the meaning of actual fraud, (b) the Court's discussion of the "obtained by" requirement, (c) veil piercing aspects of the case discussed by the Fifth Circuit and the bankruptcy court on remand, including their views in light of an idiosyncratic Texas veil piercing statute, (d) mainstream veil piercing law, and (e) whether the Texas statute represents a good modification to veil piercing law.

Both fraud and veil piercing are fundamental topics in American law, and *Husky* presents an excellent opportunity for giving them special attention.

I. THE SUPREME COURT OPINION IN *HUSKY*

A. ACTUAL FRAUD UNDER THE FEDERAL STATUTE

Chrysalis Manufacturing Corporation owed Husky almost $164,000. Ritz, a part owner and director of Chrysalis, drained it of large sums which could have been used to pay creditors like Husky by transferring the sums to other entities Ritz controlled.[7] Husky sued Ritz seeking to hold him personally responsible for Chrysalis's debt.[8] Husky contended that Ritz's transfers constituted actual fraud under a Texas statute that would have permitted recovery in certain situations from shareholders, *inter alia*, for a corporate debt under a veil piercing theory.[9] Ritz filed a Chapter 7 bankruptcy

4. *See* TEX. BUS. ORGS. CODE ANN. § 21.223(b) (2017).
5. *See In re* Ritz, 832 F.3d 560 (5th Cir. 2016).
6. *See* Husky Int'l Elecs., Inc. v. Ritz (*In re* Ritz), 567 B.R. 715 (Bankr. S.D. Tex. 2017).
7. *See Husky*, 136 S. Ct. at 1585.
8. *See id.* at 1593.
9. *See* TEX. BUS. ORGS. CODE. ANN. §§ 21.223, 21.224 (2017).

and Husky sought to hold Ritz personally liable in that proceeding.[10] Husky also contended that the debt owed to Husky could not be discharged in bankruptcy because it constituted actual fraud under the statutory section prohibiting the discharge of an individual debtor under Chapter 7 from any debts "for money, property, services or an extension, renewal or refinancing of credit, to the extent obtained by . . . false pretenses, a false representation, or actual fraud . . . ."[11] Although the district court had held Ritz personally liable for the corporate debt under Texas law, it had also held that the discharge of Ritz's debt was not barred under the aforementioned bankruptcy section because the debt was not "obtained by . . . actual fraud."[12] The Fifth Circuit affirmed the district court ruling that the debt could be discharged under the bankruptcy statute, but refrained from consideration of the lower court's position on liability under Texas law.[13]

The basis of the Fifth Circuit's ruling was that a misrepresentation from the debtor to the creditor is a necessary element of the actual fraud statutory requirement.[14] The Supreme Court reversed, holding that "[t]he term 'actual fraud' in § 523(a)(2)(A) encompasses forms of fraud, like fraudulent conveyance schemes, that can be effected without a false representation."[15] In support of its position, the Court pointed out that before 1978, the Bankruptcy Code prohibited the discharge of debts obtained by false pretenses or false representations, but that Congress added actual fraud to the list of disqualifying conduct in the Bankruptcy Reform Act of 1978.[16] Stating that "[w]hen 'Congress acts to amend a statute we presume it intends its amendment to have real and substantial effect,'"[17] the Court found it sensible to presume that Congress did not intend actual fraud to mean the same thing as a false representation.[18]

The Court found, what it called, even stronger evidence for its position in that, historically, actual fraud encompasses the conduct alleged to have occurred in this case, i.e., a transfer scheme designed to hinder the collection of debt.[19] Relying further on the use of history in construing the relevant statutory section, the Court turned to defining its terms in accordance with the "elements that the common law has defined them to include."[20] In examining the common law definition of actual fraud, the Court first focused on the meaning of actual as follows:

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10. *See Husky*, 136 S. Ct. at 1585.
11. 11 U.S.C. § 523(a)(2)(A) (2012).
12. *Husky*, 136 S. Ct. at 1585.
13. *See id.* at 1585–86.
14. *See id.* at 1586.
15. *Id.*
16. *See id.*
17. *Id.* (citing United States v. Quality Stores, 134 S. Ct. 1395, 1401 (2014)).
18. *See id.*
19. *See id.*
20. *Id.* (citing Field v. Mans, 516 U.S. 59, 69 (1995)).

> The word "actual" has a simple meaning in the context of common-law fraud: It denotes any fraud that "involv[es] moral turpitude or intentional wrong." "Actual" fraud stands in contrast to "implied" fraud or fraud "in law," which describe acts of deception that "may exist without the imputation of bad faith or immorality." Thus, anything that counts as "fraud" and is done with wrongful intent is "actual fraud."[21]

Stating that "'fraud' connotes deception or trickery generally, [but that] the term is difficult to define more precisely,"[22] the Court wisely stuck to the question presented by the facts of this case in determining if Ritz's conduct constituted fraud. The Court quoted no less an authority than the legendary Joseph Story: "Fraud . . . being so various in its nature, and so extensive in its application to human concerns, it would be difficult to enumerate all the instances in which Courts of Equity will grant relief under this head."[23] The Court was able to conveniently follow a narrower approach saying:

> There is no need to adopt a definition for all times and all circumstances here because, from the beginning of English bankruptcy practice, courts and legislatures have used the term "fraud" to describe a debtor's transfer of assets that, like Ritz' scheme, impairs a creditor's ability to collect the debt.[24]

In support of its position, the Court went all the way back to the use of the word "fraudulent" in the Statute of 13 Elizabeth called the Fraudulent Conveyances Act of 1571, of which the Court said: "In modern terms, Parliament made it fraudulent to hide assets from creditors by giving them to one's family, friends or associates."[25] The Court further explained that "[t]he principles of the Statute of 13 Elizabeth—and even some of its language—continue to be in wide use today,"[26] and that the "degree to which this statute remains embedded in laws related to fraud today clarifies that the common-law term 'actual fraud' is broad enough to incorporate a fraudulent conveyance."[27] The Court then made the powerful point that under the common law, fraudulent conveyances, although a fraud, do not require a misrepresentation from the debtor to the creditor, nor are fraudulent conveyances inducement-based fraud. The Court continued by stating that the fraudulent conduct is "in the acts of concealment and hindrance."[28]

The Court also pointed out that under the Statute of 13 Elizabeth and the laws that followed, both the debtor and the recipient of a fraudulent conveyance were liable for fraud. The Court explained further, "[t]hat

21. *Id.* (citations omitted).
22. *Id.*
23. *Id.* at 1586–87.
24. *Id.* at 1587.
25. *Id.*
26. *Id.*
27. *Id.*
28. *Id.*

principle underlies the now-common understanding that a 'conveyance which hinders, delays or defrauds creditors shall be void as against [the recipient] unless . . . th[at] party . . . received it in good faith and for consideration.'"[29]

The Supreme Court's reasoning for defining "fraud" in *Husky* is sound and instructive. Not only does its presumption that Congress intended its amendment in the 1978 Code of the relevant statutory section to have a real and substantial effect make sense, but also its use of history and the common law is persuasive. Additionally, the Court could draw further comfort in its interpretation of actual fraud by Ritz's concession that fraudulent conveyances are a form of actual fraud.[30]

The Supreme Court's reluctance to confine "fraud" to situations involving misrepresentation is consistent with the Court's acceptance of the word's broader legal usage in situations, in addition to the fraudulent conveyances statute cited in its opinion. For example, in *Skilling v. United States*,[31] although the Court responded affirmatively to the question of whether the jury improperly convicted the defendant of conspiracy to commit "honest services" wire fraud, it conceded that the word reached bribes and kickbacks as follows: "In proscribing fraudulent deprivations of 'the intangible right of honest services,' Congress intended at least to reach schemes to defraud involving bribes and kickbacks. Construing the honest-services statute to extend beyond that core meaning, we conclude, would encounter a vagueness shoal."[32]

In addition, since "fraud" appears by itself or as a part of other words and phrases in statutes dealing with various subjects and issues, the Supreme Court's decision to refrain from attempting to adopt a definition for all times and circumstances is both wise and practical. For example, one statute dealing with health care fraud speaks, *inter alia*, of "a scheme or artifice to defraud any health care benefit program,"[33] and a statute dealing with bank fraud speaks of "a scheme or artifice to defraud a financial institution."[34] Furthermore, Professor Ellen S. Podgor's excellent 1999 article *Criminal Fraud*[35] illustrates many appearances of fraud in the legal lexicon. It is prudent, therefore, to define fraud when it appears in its various guises in legislation in accordance with the normal process of statutory interpretation.

Moreover, "fraud" is not simply a seldom used legal term like "estoppel" or "life estate," but rather exists in common parlance to describe various kinds of shameful conduct. Many non-lawyers would be surprised to

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29. *Id.* at 1588.
30. *See id.* at n.2.
31. Skilling v. United States, 130 S. Ct. 2896 (2010).
32. *Id.* at 2907 (citations omitted).
33. 18 U.S.C. § 1347(a)(1) (2012).
34. *Id.* § 1344.
35. *See generally* Ellen S. Podgor, *Criminal Fraud*, 48 AM. U. L. Rev. 729 (1999).

hear the contention that only a misrepresentation gives birth to fraud as the word is understood in the everyday use of language. Of course, students of the law know that the interpretation of statutory words may turn on more than common usage. Still, it is comforting that the expectations of people subject to an anti-fraud law should not be disappointed by the Supreme Court's *Husky* decision that a misrepresentation is not required in determining that the behavior under attack is fraudulent.

Another example, a Report by the Association of Certified Fraud Examiners, a worldwide occupational fraud study,[36] illustrates the considerable breadth of the meaning of "fraud." The Report lists three primary categories of occupational fraud: asset misappropriation, corruption, and financial statement fraud.[37] The Glossary of Terminology in the Report gives a definition for each term:

> Asset misappropriation: A scheme in which an employee steals or misuses the employing organization's resources (e.g., theft of company cash, false billing schemes, or inflated expense reports)
>
> Corruption: A scheme in which an employee misuses his or her influence in a business transaction in a way that violates his or her duty to the employer in order to gain a direct or indirect benefit (e.g., schemes involving bribery or conflicts of interest)
>
> Financial statement fraud: A scheme in which an employee intentionally causes a misstatement or omission of material information in the organization's financial reports (e.g., recording fictitious revenues, understating reported expenses, or artificially inflating reported assets)[38]

The Report in Figure 3's fraud tree also lists examples of each type of fraud.[39] This broad usage of "fraud" by an organization of this type certainly gives added credence to the Supreme Court's observation of its scope in *Husky* and in the Story reference in that case.[40] It also supports the wisdom of Justice Sotomayor's refusal to define fraud for all purposes, as well as her conclusion that the term is not limited to misrepresentation cases under the bankruptcy statutory section under consideration. In determining the meaning of "fraud" (or words or phrases of which it is a component) in each of its statutory habitats, judges—going forward—will need to employ appropriate rules of interpretation as the Supreme Court did in *Husky*.

36. ASS'N OF CERTIFIED FRAUD EXAM'RS, REPORT TO THE NATIONS ON OCCUPATIONAL FRAUD AND ABUSE (2016).

37. *See id.* at 10.

38. *Id.* at 90.

39. *See id.* at 11.

40. *See* Husky Int'l Elecs., Inc. v. Ritz, 136 S. Ct. 1581, 1586–87 (2016).

B. THE "OBTAINED BY" REQUIREMENT

Notwithstanding the concession that fraudulent conveyances are a form of actual fraud, Ritz pressed ahead with quibbles about statutory redundancies that would result from the broad view of actual fraud ultimately adopted by the Court.[41] Easily rejecting those arguments, the Court turned to the more significant issue under the statute as to whether the debt was "for money, property, services, or . . . credit . . . obtained by . . . actual fraud . . . ."[42] Ritz contended that at the end of a fraudulent conveyance there was no debt that could be said to result from or be traceable to the fraud, and that actual fraud should not be interpreted to encompass forms of fraud incompatible with the "obtained by" requirement.[43] This issue had been ignored by the Fifth Circuit which thought the case resolved by its interpretation of actual fraud as requiring a misrepresentation.

The Supreme Court offered its perspective on the matter as follows:

> It is of course true that the transferor does not "obtain[n]" debts in a fraudulent conveyance. But the recipient of the transfer—who, with the requisite intent, also commits fraud—can "obtain[n]" assets "by" his or her participation in the fraud. If that recipient later files for bankruptcy, any debts "traceable to" the fraudulent conveyance will be nondischargeable under § 523(a)(2)(A).[44]

The Court expressly remanded it to the Fifth Circuit to consider "whether the debt to Husky was 'obtained by' Ritz' asset-transfer scheme."[45]

As this Article will further explain, this perspective is off-course in resolving the "obtained by" issue. In this case, Ritz will only become a debtor to Husky if Chrysalis's veil is pierced to hold Ritz personally liable and not because he is the recipient of a transfer constituting a fraudulent conveyance. The significance of the fraudulent conveyance statute is that it aids in providing a definition of fraud.

II. REMAND

A. THE FIFTH CIRCUIT

On remand, the Fifth Circuit logically turned to the question of whether Ritz owed a debt to Husky under Texas law because, if not, there would be no debt to discharge and therefore the case would be moot.[46] The court held Husky's theory—Ritz's liability for Chrysalis's debt—to be legally viable

41. *See Husky*, 136 S. Ct. at 1588–89.
42. 11 U.S.C. § 523(a)(2)(A) (2012).
43. *See Husky*, 136 S. Ct. at 1585–86.
44. *Id.* at 1589 (citations omitted).
45. *See id.* at n.3.
46. *See* Husky Int'l Elecs., Inc. v. Ritz (*In re* Ritz), 832 F.3d 560, 562 (5th Cir. 2016).

under Texas veil piercing law.[47] In so holding, the court noted that Texas recognizes various legal theories for disregarding the corporate form but pointed to a Texas statute which limits veil piercing in that a shareholder of a corporation generally may not be held liable to the corporation or its obligees with respect to:

> any contractual obligation of the corporation or any matter relating to or arising from the obligation on the basis that the holder, beneficial owner, subscriber, or affiliate is or was the alter ego of the corporation or on the basis of actual or constructive fraud, a sham to perpetrate a fraud, or other similar theory[.][48]

The Fifth Circuit further explained:

> However, the shareholder may be held personally liable for the business's obligations "if the obligee demonstrates that the . . . beneficial owner . . . caused the corporation to be used for the purpose of perpetrating and did perpetrate an *actual fraud* on the obligee primarily for the *direct personal benefit* of the . . . beneficial owner."[49]

The Fifth Circuit referred to an earlier bankruptcy court decision in *Husky*, holding that such fraud required a misrepresentation followed by a district court rejection of that position.[50] That rejection was based on a previous Fifth Circuit case where it had been "held that other conduct could satisfy the standard of 'dishonesty of purpose and intent to deceive' necessary to show actual fraud."[51] The district court further held that a fraudulent transfer under the Texas Uniform Fraudulent Transfer Act (TUFTA) is committed with the actual intent to hinder, delay or defraud, and thus, would satisfy the actual fraud requirement of the Texas veil piercing statute, a legal conclusion with which the Fifth Circuit agreed.[52] In explaining its position, the Fifth Circuit stated that "in the context of piercing the corporate veil, actual fraud is not equivalent to the tort of fraud. Instead, in that context, actual fraud involves 'dishonesty of purpose or intent to deceive.'"[53] The court further held:

> [E]stablishing that a transfer is fraudulent under the actual fraud prong of TUFTA is sufficient to satisfy the actual fraud requirement of veil-piercing because a transfer that is made "with the actual intent to hinder, delay, or defraud any creditor," necessarily "involves 'dishonesty of purpose or intent to deceive.'"[54]

47. *See id.* at 566.
48. TEX. BUS. ORGS. CODE ANN. § 21.223(a)(2) (2017).
49. *In re* Ritz, 832 F.3d at 566 (citing TEX. BUS. ORGS. CODE ANN. § 21.223(b)).
50. *See id.*
51. *Id.* (citing Spring St. Partners-IV, L.P. v. Lam, 730 F.3d 427, 442 (5th Cir. 2013)).
52. *See id.* at 566–67.
53. *Id.* at 567 (citations omitted).
54. *Id.* (citations omitted).

Thus, both the Supreme Court in analyzing "fraud" under the relevant federal statute and the Fifth Circuit analyzing the term under Texas veil piercing law rejected the restrictive notion that "fraud" encompassed only a case involving misrepresentation and, in particular, recognized certain fraudulent conveyance schemes as coming within the scope of the relevant federal bankruptcy and state veil piercing statutory sections. Still, the Fifth Circuit remanded the case to the district court and ultimately to the bankruptcy court for additional fact-finding in an attempt to assess whether Ritz's conduct satisfied the actual fraud prong of TUFTA and was for Ritz's "direct personal benefit."[55] The Fifth Circuit took the position that if the court made the necessary adverse findings regarding Ritz, he would be liable for Chrysalis's debt to Husky under the Texas veil piercing statute.[56] The Fifth Circuit further stated that if there is a debt, then the bankruptcy court must address whether it should be denied a discharge consistent with the Supreme Court's opinion in this case.[57]

B. THE BANKRUPTCY COURT

Responding to the Fifth Circuit on remand, the bankruptcy court considered whether Ritz's conduct reflected the requisite intent to hinder, delay, or defraud in order to satisfy the actual fraud prong of TUFTA.[58] Explaining its reliance on circumstantial evidence, the bankruptcy court indicated that the Fifth Circuit, along with many courts, allowed the use of a "badge of fraud" analysis.[59] TUFTA itself listed a number of specific badges such as "the transfer was to an insider," "the transfer was concealed," "the debtor was insolvent or became insolvent shortly after the transfer was made."[60] For purposes of this Article, it is sufficient to note that after an extensive badges of fraud analysis, the bankruptcy court "unequivocally [made] a finding that the Debtor's transfers of the $1,161,279.90 were made with the actual intent to hinder, delay, or defraud Husky under TUFTA."[61]

The bankruptcy court also decided that the actual fraud was perpetrated primarily for Ritz's direct personal benefit. In doing so, the court referred, *inter alia*, to (a) the Debtor's admission that a transfer of Chrysalis's funds to a company for which he had a personal guarantee would be a personal benefit to him, (b) the Debtor's transfers of over $677,000 to one company which owed a debt for a one-million-dollar loan Debtor had guaranteed, and

55. *Id.* at 569.

56. *See id.* (This latter point, however, does seem textually at odds with the Texas statute, which only seems to remove an impediment to holding Ritz liable and not mandating that outcome.).

57. *See id.*

58. *See* Husky Int'l Elecs., Inc. v. Ritz (*In re* Ritz), 567 B.R. 715, 739 (Bankr. S.D. Tex. 2017).

59. *Id.* at 740.

60. *Id.* (where a longer list of badges of fraud appears).

61. *Id.* at 755.

(c) transfers from Chrysalis to continue the businesses of the Debtor's other companies instead of paying Chrysalis's creditors.[62]

The bankruptcy court then turned to the issue of whether Ritz's debt to Husky was non-dischargeable under § 523(a)(2)(A) as a "debt for money to the extent obtained by . . . actual fraud."[63] The court, referring specifically to transfers to Debtor-Creditor Entities, held that money was obtained by Ritz.[64] Pointing to its "badges of fraud" analysis, the court concluded that the debtor committed actual fraud when he transferred the $1,161,279.90 from Chrysalis to the Debtor-Controlled Entities.[65] The bankruptcy court reasoned that Ritz's personal debt arose due to the Debtor-Controlled Entities obtaining the funds from his fraudulent conduct because the Texas veil piercing statute imposed personal liability on the debtor for the debt to Husky. The court explained, "[t]here is no question that the creation of this personal obligation is directly traceable to—i.e., resulted from—the Debtor's fraudulent actions in orchestrating the transfers of $1,161,279.90 out of Chrysalis's account and into the accounts of the Debtor-Controlled Entities."[66] Alluding to the Supreme Court's language in *Husky* that "debts 'traceable to' the fraudulent conveyance,' [are] non-dischargeable under § 523(a)(2)(A),"[67] the bankruptcy court found Ritz's debt owed to Husky to be non-dischargeable.[68]

III. VEIL PIERCING

As a longtime student of veil piercing law,[69] I was moved by the *Husky* case to review the mainstream piercing law and consider whether a statute modeled after the idiosyncratic Texas veil piercing statute, which severely limits the rights of contract creditors, would be a wise addition. In presenting this review, I do not pretend to have found complete uniformity and clarity in veil piercing law among the various jurisdictions in our country, but I can be comfortable at least in setting forth certain dominant judicial themes. It is important to note too that this review is focused on the efforts of creditors to engage in veil piercing to collect debts rather than other occasions on which the topic of piercing may come up—such as in service of process cases.

62. *See id.* at 759–61 (noting the court's personal benefit discussion).
63. *Id.* at 761–62.
64. *See id.* at 762.
65. *Id.*
66. *Id.*
67. *Id.*
68. *See id.*
69. The author wrote the book HARVEY GELB, PERSONAL CORPORATE LIABILITY, A GUIDE FOR PLANNERS, LITIGATORS AND CREDITORS' COUNSEL (1991), which includes a lengthy first chapter on veil piercing containing considerable analysis on the subject, as well as several articles dealing with piercing.

A. ABUSE OF THE LIMITED LIABILITY PRIVILEGE

The limited liability privilege is granted to owners of certain enterprises, such as corporations or limited liability companies, to encourage investment. "The common purpose of statutes providing limited shareholder liability is to offer a valuable incentive to business investment."[70] Thus, in general, a person can transfer assets to and become an owner of a limited liability entity without losing assets uncommitted to the venture. Persons are encouraged thereby to take risks, but on a limited basis. This privilege should appeal to passive investors who are willing to place at least some of their assets into enterprises controlled by others. But it should also be attractive to investors who participate in the control of an enterprise.

While much good may come from the existence of the limited liability privilege, it may be abused, and when that happens courts have shown a readiness, however reluctant, to counter the abuse. To take an extreme example, suppose a person who organizes and operates a limited liability entity neither provides, nor allows it to retain, any assets available for the payment of creditors, and permits it to purchase no insurance. Suppose further that a customer is seriously injured because of the entity's negligent high-risk operations, and that the customer obtains an uncollectible judgment of $50,000 against the entity for her injury. Is justice served by passing this loss to the victim, and indirectly to others to whom she is indebted because of her injury, or even to the society at large that charitably helps her meet needs traceable to it? Or, suppose the same entity purchased inventory for which it has not paid and the seller has not agreed to look only to the entity for payment. Is justice served by allowing its owner-operator to hide behind the veil of limited liability? In either case—is the public policy of stimulating investment, which underlies the limited liability privilege, being served? Carried to absurd lengths, would the limited liability privilege allow pseudo-investors to accomplish through fraud or other wrongful conduct the transfer or retention of wealth for their own benefit at the expense of their creditors?

To counter abuse of the limited liability privilege, many courts have used veil piercing doctrines in recognition of the fact that, in some situations, blind acceptance of the privilege will permit the triumph of injustice, inequity, fraud, or the like of a serious enough nature to warrant piercing.

B. SYMBOLIC TERMS, APPROPRIATE TARGETS, AND GENERAL TESTS

Veil piercing cases sometimes contain colorful or symbolic terms such as "sham," "instrumentality," "alter ego," or "dummy" to reflect characteristics of entities whose veils are to be disregarded.[71] While the terms are themselves conclusory in nature and generally of little analytical use, they

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70. Labadie Coal Co. v. Black, 672 F.2d 92, 96 (D.C. Cir. 1982).

71. *See* GELB, *supra* note 69, at § 1.2.

form part of the vocabulary used in particular jurisdictions and their use must be understood in various contexts, say, for example, by an appellate advocate who responds to a judge asking her to present her alter ego argument.

In cases where creditors—whose underlying claims stem from the tort or contract liability of the entity—seek to pierce its veil, the proper targets are generally those who by virtue of their control are responsible for the conduct triggering the piercing decision.[72]

Two of the guiding tests, neither of which is written in language entirely understandable on its face and either of which appears with some frequency, though by no means universally, in cases involving piercing claims, may be set forth substantially in the forms that follow. Test 1 may be referred to as the "unity of interest and ownership test," and it states that to pierce the corporate veil, the plaintiff must show that:

> (1) [T]here is such a unity of interest and ownership that the separate personalities of the corporation and the parties who compose it no longer exist, and (2) circumstances are such that adherence to the fiction of a separate corporation would promote injustice or inequitable circumstances.[73]

Test 2 may be referred to as the "instrumentality test" and may be stated largely as follows:

> The instrumentality rule requires, in any case but an express agency, proof of three elements: (1) Control, not mere majority or complete stock control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own; (2) that such control must have been used by the defendant to commit fraud or wrong, to perpetrate the violation of a statutory or other positive legal duty, or a dishonest or unjust act in contravention of [the] plaintiff's legal rights; and (3) that the aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.[74]

C. GUIDING FACTORS

In addition, courts often set forth lists of factors as guidance in piercing decisions.[75] The lists do not purport to be exclusive, may be of varying sizes

72. *See* RONALD J. COLOMBO, LAW OF CORPORATE OFFICERS AND DIRECTORS: RIGHTS, DUTIES AND LIABILITIES § 20:13 (2017).

73. Steiner Elec. Co. v. Maniscalco, 51 N.E.3d 45, 46, 56 (Ill. App. Ct. 2016). For a similar example of this test, *see* Semmaterials, L.P. v. Alliance Asphalt, Inc., 2008 WL 161797, at *4 (D. Idaho Jan. 15, 2008).

74. Batoh v. McNeil-PPC, Inc., 167 F. Supp. 3d 296, 323 (D. Conn. 2016). For a similar statement of this test, *see* John Knox Village v. Fortis Const. Co., LLC, 449 S.W.3d 68, 76 (Mo. Ct. App. 2014).

75. *See* Continental Cas. Co. v. Symons, 817 F.3d 979, 993–94 (7th Cir. 2016), *cert. denied*, 137 S. Ct. 493 (2016). *See* GELB, *supra* note 69, at § 1.4. For further discussion of the use of factors,

and content, and are rather loosely applied as guidelines without any requirement that all or any particular factors be present to justify piercing.[76] It is important too, as reflected in the second prong of Test 1 or with more detail in the second prong of Test 2, that piercing in favor of creditors is used to prevent injustice or inequity or the like of sufficient gravity to overcome the normally expected judicial reluctance to pierce.

Continental v. Symons[77] provides a good vehicle for reviewing several aspects of mainstream veil piercing law for purposes of this Article. First, it contains a list of guiding factors (referred to as the "*Aronson* factors") under Indiana's veil piercing law, factors which to a considerable degree appear in veil piercing analyses under the law of other states. Second, it provides a good basis for the discussion of some of the important issues which may arise in veil piercing cases. Third, like *Husky*, Continental is a contract creditor pursuing a veil piercing claim.

In 1998, IGF Insurance Company (IGF) purchased a crop insurance business from Continental.[78] In 2002, while still indebted to Continental for more than $25 million in connection with that purchase, IGF resold the crop insurance business for more than $40 million.[79] But the Symons Group (Gordon, Alan, and Douglas) that controlled IGF structured the sale so that most of the proceeds were siphoned into other companies the group controlled as follows: $9 million to Symons International Group Inc. and Goran Capital Inc. (which were IGF parent companies) in exchange for non-compete agreements and $15 million to Granite Reinsurance Co. in exchange for a reinsurance treaty.[80] Only $16.5 million of the purchase price went to IGF.[81] Continental sued for breach of contract and fraudulent transfer.[82] District court findings that the non-compete and reinsurance agreements constituted fraudulent diversions of the purchase money for the crop insurance business were upheld by the circuit court,[83] but the court expressly avoided deciding if Alan and Gordon's estate (which was substituted for Gordon after his death) were liable as transferees under the Uniform Fraudulent Transfer Act.[84]

Although the appeal focused on several questions for review, the discussion here is mainly limited to the bases for the court finding Alan

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see Harvey Gelb, *Limited Liability Policy and Veil Piercing*, 9 WYO. L. REV. 551, 556–58 (2009) [hereinafter Gelb, *Limited Liability Policy*].

76. *See Continental*, 817 F.3d at 993–94; GELB, *supra* note 69, at § 1.4; Gelb, *Limited Liability Policy*, *supra* note 75, at 556–58.

77. *See Continental*, 817 F.3d at 993.

78. *See id.* at 981–82.

79. *See id.* at 982.

80. *Id.*

81. *Id.*

82. *Id.*

83. *See id.*

84. *See id.* at 992–93.

Symons and the Estate of Gordon Symons subject to "veil piercing" liability (at times characterized by the court as "alter ego" liability).[85]

In dealing with veil piercing liability under the pertinent Indiana law, the Seventh Circuit noted that "Indiana courts hesitate to pierce the corporate veil [but they] will do so to prevent fraud or injustice to a third party."[86] The court stated that the alter ego analysis in Indiana proceeds along the so-called "*Aronson* factors" which include:

> (1) undercapitalization; (2) absence of corporate records; (3) fraudulent representation by corporation shareholders or directors; (4) use of the corporation to promote fraud, injustice or illegal activities; (5) payment by the corporation of individual obligations; (6) commingling of assets and affairs; (7) failure to observe required corporate formalities; or (8) other shareholder acts or conduct ignoring, controlling, or manipulating the corporate form.[87]

A look at the above *Aronson* factors and similar ones,[88] the like of which appear in many veil piercing cases, would indicate that evidence regarding these factors may well be probative of financial irresponsibility or misbehavior, information on who was in control of the limited liability entity, and whether the defendant had wronged the plaintiff in a way serious enough to justify veil piercing. And while piercing terminology and factors are not completely uniform across the United States, *Continental*, in its use of the *Aronson* factors, offers a good example of a mainstream judicial approach.

The Seventh Circuit pointed to some additional factors (the "*Smith* factors") used where a court is asked to decide if two or more affiliated corporations should be treated as a single entity, a question which also came up in *Continental*: "whether similar corporate names were used; whether there were common principal corporate officers, directors, and employees; whether the business purposes of the corporations were similar; and whether the corporations were located in the same offices and used the same telephone numbers and business cards."[89]

D. CONTRACT CREDITORS —THE CAVEAT EMPTOR SHRUG

Before proceeding with its veil piercing analysis in accord with Indiana's lists of relevant factors, the Seventh Circuit blocked an effort by defendants to administer a knockout blow to Continental's veil piercing claim.

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85. The veil piercing proceeding against Douglas was stayed because he was in a bankruptcy proceeding. *See id.*

86. *Id.* at 993.

87. *Id.* at 993–94.

88. For a similar list of factors, *see* Steiner Elec. Co. v. Maniscalco, 51 N.E.3d 45, 56–57 (Ill. App. Ct. 2016). In addition, for references regarding list of factors, *see* GELB, *supra* note 69, at § 1.4.

89. *Continental*, 817 F.3d at 994. For further discussion of the Aronson and Smith factors in *Continental*, *see infra* text accompanying notes 96, 97.

> The defendants argue as a threshold matter that this case lacks the sort of injustice necessary to warrant a veil-piercing inquiry. Caveat emptor, they shrug. Continental knew what it was getting into when it sold its crop-insurance business to IGF. It was never misled. That IGF can't pay makes this merely "an unsatisfied judgment" and no reason to pierce the corporate veil.
>
> We're not persuaded. Yes, it's true that Continental was a sophisticated market actor; any deal can turn sour and sometimes judgments go unsatisfied. But none of this makes it just or fair for the Symons family to have structured the *later* sale of the business to Acceptance to syphon assets away from IGF to evade the debt to Continental, which is what the noncompetes and reinsurance in this deal accomplished. If nothing else, Continental had reason to believe that IGF wouldn't dump the crop-insurance business for less than half its value. We think this constitutes injustice to a third party.[90]

The court's rejection of the caveat emptor shrug as eliminating what it perceived to be an injustice to Continental on the facts of this case is entirely appropriate. It is difficult, perhaps absurd, to construe Continental's contractual intention to effectively surrender its right to collect from IGF. Moreover, the court's view that an injustice has been done to Continental is relevant in light of the second prong of the Indiana veil piercing test.[91] In another statement relevant to that prong, the court refers to fraudulent behavior by the Symonses.[92]

E. Factors Analysis

Before considering the court of appeals' analysis and application of veil piercing factors in reviewing the district court decision to hold Alan and Gordon personally liable, it may be useful to bear in mind two points.

First, there is the direct or indirect control of Symons family members over a host of entities, which the court even referred to as a corporate empire.[93] Significantly, the court of appeals approved the district court's findings that "'Alan, Doug, and Gordon Symons ignored, controlled, and manipulated the corporate forms' of IGF, IGF Holdings, Symons International, Granite Re, Superior, Pafco, and Goran, and 'operated the corporations as a single business enterprise such that these entities were mere instrumentalities of the Symons family.'"[94]

Second, the existence of controlled entities not only opens the door for possible questionable dealings between or among controlling parties and the entities, but also between or among the entities, dealings that could render a

90. *Continental*, 817 F.3d at 994 (citations omitted).
91. For the Indiana test, *see supra* note 87 and accompanying text.
92. *See infra* text at note 98.
93. *See Continental*, 817 F.3d at 995.
94. *Id.* at 994.

limited liability entity debtor unable to meet obligations. Questionable dealings, therefore, must be examined to determine if the limited liability privilege conferred on the debtor entity has been abused by those in control. Examples of examinations involving controlled entity dealings appear in connection with circuit court references to commingling.[95]

In sustaining the district court's alter ego findings as not clearly wrong, the Seventh Circuit Court of Appeals approved the trial judge's use of factors identified in *Aronson* and *Smith* in determining if Alan and Gordon used their control over their corporate empire to enrich themselves at the expense of Continental.[96] In doing so, the court rejected defendants' claim that use of factors from both cases involved an improper blending, stating that the *Aronson* factors are not necessarily exhaustive, and thus the court demonstrated an unsurprising flexibility in the utilization of factors in a piercing case.[97] The court referred to the lower court's evaluations regarding undercapitalization, fraudulent representation by corporation shareholders or directors, corporate formalities, commingling assets, and common address as the basis for the lower court conclusion "that the Symonses used their control over the Goran-related companies to fraudulently avoid satisfying the debt to Continental."[98]

Regarding undercapitalization, the appellate court pointed to the lower court's evaluation as follows:

> The judge did not find the companies undercapitalized for the purposes of the *Aronson* test because "[t]he adequacy of capital is to be measured as of the time of a corporation's formation." Nevertheless, the judge noted that the fact that almost all of the Symons companies were undercapitalized as of 1999 "cannot be ignored."[99]

One can understand a court attempting to wriggle free of an arbitrary freezing of an undercapitalization determination to the time of a company's formation. There are cases which examine undercapitalization as a continuing issue.[100] Indeed the capitalization of a corporation, along with the other assets it has available for conducting its business and paying creditors, may reflect on whether it is being operated in a financially responsible way and worthy of the limited liability privilege. In addition, liability insurance carried by an entity may be especially relevant to the financial responsibility issue where a tort victim is the creditor.[101] And, of course, the expansion or contraction of a business or the hazards it faces may require the reassessment

95. *See infra* text accompanying notes 105, 118.
96. *See Continental*, 817 F.3d at 995.
97. *See id.*
98. *Id.*
99. *Id.* at 994 (citations omitted).
100. *See* Steiner Elec. Co. v. Maniscalco, 51 N.E.3d 45, 58 (Ill. App. Ct. 2016); *see also* Coughlin Const. Co., Inc. v. Nu-Tec Indus., Inc., 755 N.W.2d 867, 876 (N.D. 2008).
101. *See* Radaszewski v. Telecom Corp., 981 F.2d 305, 309 (8th Cir. 1992).

of the adequacy of its capital.[102] The point is that veil piercing involves a fact-intensive inquiry done in a realistic way and should not be hamstrung by ill-conceived rigidity.

A piercing case decided under Illinois law in 2016 furnishes a good example of a court taking a continuing view of the adequacy of capital.[103] There, the court not only pointed to the failure of the piercing defendant to contribute unencumbered capital to the corporation, it also referred to testimony of a forensic accountant who reviewed various records for a five-year period and testified that the corporation whose veil was under attack was undercapitalized, had consistently and increasingly negative equity and income over the time period he reviewed, and 2004–2008 tax returns showing negative retained earnings each year. The court concluded that the undercapitalization factor weighed in favor of piercing.[104]

As to commingling assets, the appellate court in *Continental* pointed to the lower court's evaluation as follows:

> The companies all made extensive use of intercompany loans, purchases, sales, securities, real estate, mortgages, and other investments. There was vertical overlap between IGF and IGF Holdings in their payroll. In 2001 IGF, Superior, and Pafco were all incurring significant operating losses while their holding companies made over $40 million from the operating companies in management and service agreements.[105]

Such commingling poses serious problems for creditors. It may impair or destroy the viability of a limited liability entity and its capacity to pay debts, thereby thwarting the reasonable expectations of creditors. What makes commingling of special concern is that creditors may encounter significant difficulty and expense in searching for improper transactions.

Regarding corporate formalities, the court referred to the findings, *inter alia*, of the judge below that the "corporate formalities maintained by the Symons-controlled companies were entirely 'cosmetic'";[106] that "Goran and Symons International boards met at the same time and place on [eighteen] separate occasions between March 1997 and May 2001";[107] and that "Alan Symons was the principal representative of IGF, IGF Holdings, Symons International, Goran, and Granite Re during negotiations with Acceptance" (the latter was the purchaser of the crop insurance business).[108] Under the title "Common Address," it was pointed out that the lower court referred to

102. *See* Atlas Const. Co. v. Slater, 746 P.2d 352, 356 (Wyo. 1987).
103. *See Steiner*, 51 N.E.3d at 57–58.
104. *See id.* at 58.
105. Continental Cas. Co. v. Symons, 817 F.3d 979, 995 (7th Cir. 2016).
106. *Id.* at 994–95.
107. *Id.* at 995.
108. *Id.*

the fact that a number of the Symons enterprises shared an Indianapolis address.[109]

Factors that are set forth, involving the observance of formalities which bear only upon the attention given to technical ones, may not deserve to be accorded much probative weight as guidelines. It is a matter of common knowledge that many closely held enterprises generally do not follow technical formalities, and it is unlikely that such behavior indicates unworthy conduct harmful to creditors. In addition, it is hard to see the significance in this case of the "common address" finding. On the other hand, the term "formalities" may be construed by some as broad enough to include practices that could bear on a veil piercing decision. For example, if records are not properly kept by entities, the opportunity for creditors to detect improper, unjust, or fraudulent behavior by controlling persons may be unfairly reduced and therefore relevant to their claims. In addition, lack of documentation of certain transactions, such as loans to controlling persons, may be important in making piercing determinations and may be thought by some to be encompassed within the term formalities. Finally, some of the guiding factors, including inattention to formalities, may be useful in determining which persons exercise control over or perpetrate the wrongful behavior which justifies or even necessitates a decision to pierce.

It should be noted, however, that the role of Alan Symons as representative of various parties, while likely relevant in the piercing analysis, seems semantically misplaced as an issue of formality.

Regarding the factor entitled "[f]raudulent representation by corporation shareholders or directors," the judge below found they had been made by the Symons family and certain others to regulatory agencies and the general public, "in particular misrepresentations to the Federal Crop Insurance Corporation."[110]

Such representations are of concern under *Aronson*'s third and fourth factors, and are, therefore, relevant in the Indiana piercing analysis. Additionally, their existence clashes sharply with defendants' wish to use the fact that because the Goran companies are regulated businesses, they could not be considered as controlled as one enterprise. The appellate court shot down this argument saying: "the fact that the insurance industry is heavily regulated changes nothing of significance here. Unless the defendants can show that the regulatory requirements prevented the Symonses from manipulating their companies (and they can't), this argument doesn't get off the ground."[111] Not only do the false representations undercut or eliminate any benefit to creditors, but also the comforting veneer of regulation and reports may give undue legitimacy and prestige to some debtors in the eyes

109. *Id.*
110. *Id.* at 994.
111. *Id.* at 996.

of creditors—thus engendering a misplaced reliance on undeserving companies.

The defendants also argued that the Goran companies could not be considered controlled as one enterprise because some were publicly traded.[112] It has been conventionally and conveniently assumed that veil piercing is a remedy unlikely to be applied to publicly held entities. Indeed, in an important study published in 1991, Professor Robert B. Thompson reported that in his data set, no piercing occurred with respect to publicly held companies, and that this fact reflected "the different role that limited liability plays in larger corporations."[113] He explained further as follows:

> All corporations can use the corporate form to allocate risk. Limited liability performs the additional function in larger corporations of facilitating the transferability of shares and making possible organized securities markets with the increased liquidity and diversification benefits that these markets make possible. The absence of these market-related benefits for close corporations explains, in part, why courts are more willing to pierce the veil of close corporations, but a piercing result still requires a combination of other factors.[114]

The court in *Continental*, in rejecting the defendants' argument, emphasized that no rule precluded piercing the veil of public companies.[115] While acknowledging that veil piercing is usually applied to closely-held corporations, the court explained that that has more to do with the ease of abusing the corporate form in such a corporation rather than anything else. The court, citing authority for not ruling out public corporation piercing, noted that it has happened before.[116] The court also said that if there were a rule against public company piercing, it would be justified by a concern for innocent third-party shareholders, but that Goran and Symons have been delisted from the NASDAQ, "so that's of limited salience."[117]

Because the law relating to veil piercing in the case of public corporations lacks development, it is premature to discuss it for purposes of the review of mainstream veil piercing law undertaken in this Article. This does not mean that this topic is unimportant. Quite the contrary.

The court supported its climactic moment of affirming the court below in holding Alan and the Estate of Gordon liable under alter ego theory by reiterating its dissatisfaction with the respect for formalities shown, and more significantly with a telling reference to commingling: "[a]ssets were

112. *See id.*

113. Robert B. Thompson, *Piercing the Corporate Veil: An Empirical Study*, 76 CORNELL L. REV. 1036, 1047 (1991).

114. *Id.* at 1047–48.

115. *See Continental*, 817 F.3d at 996.

116. *See id.*

117. *Id.* For an additional case involving the issue of veil piercing of a public corporation, *see* First Nat'l Bank of Omaha v. iBeam Sols., LLC., 61 N.E.3d 740 (Ohio Ct. App. 2016).

commingled—indeed, the corporations all seem to have raided one another with some degree of impunity. Symons family members received millions of dollars in no-interest, unsecured loans from their companies."[118] And the court added: "[f]inally, Alan was the principal agent of all the relevant companies and the architect of the sale."[119]

F. IS THE TEXAS VEIL PIERCING STATUTE A GOOD MODEL TO FOLLOW?

The Texas veil piercing statute featured in *Husky* discriminates against creditors seeking to collect claims based on contractual debts. This raises the fundamental question of whether the application of mainstream veil piercing law as described in this Article should be limited by a requirement modeled after the Texas statute. For the following reasons, this Article argues that the Texas requirement in contract debtor cases is a mistake.

1) This statute precludes action by many contract creditors such as workers, suppliers, and consumers who are unable to protect themselves against potential payment defaults by limited liability entities. There are, of course, some exceptional situations like bank loans where creditors can protect themselves. In those relatively few cases where special bargaining is possible, that may well be considered among the equities of the piercing case.

2) Veil piercing, as it occurs in mainstream law, is imposed on persons who used their control over limited liability entities to unfairly abuse their creditors. It thus serves as a deterrent to misuse the limited liability privilege and affords a remedy to deserving creditors.

3) Using a limited liability entity in a financially irresponsible way is often one type of conduct unfair to the creditor of the entity. In a broader sense, such behavior has harmful effects not only on its victims, but also on business activity in general.

4) Yet, if the limited liability privilege is to be a meaningful incentive to investment, it must not be too easily undermined by litigation or the threat of litigation. For example, the use of financial irresponsibility as a basis for veil piercing cannot be based on nitpicking. Creditors must not be encouraged to believe that they can win cases or extract settlements by merely producing evidence of small errors in financial judgement. The degree of financial irresponsibility to justify piercing should be serious if the limited liability privilege is to serve its purpose.

5) Some may complain of the lack of mathematical certitude in determining the required degree of irresponsibility needed to justify a decision to pierce. But making judgements about matters of degree is not uncommon in the resolution of cases.

118. *Continental*, 817 F.3d at 996.
119. *Id.*

6) The possibility of veil piercing sensitizes many attorneys and clients to the need for proper behavior. That possibility should not be undermined by a statute like that of Texas.

7) Although the situations that can be classified as actual fraud are not defined by the Texas statute, it seems certain that the phrase will be interpreted more narrowly than the mainstream veil piercing approach exemplified by typically used broader judicial terms, such as those contained in Test 1[120] of this Article, which refers to the promotion of injustice or inequitable circumstances, and Test 2,[121] which speaks of control "used by the defendant to commit fraud or wrong, to perpetrate the violation of a statutory or other positive legal duty, or a dishonest or unjust act in contravention of [the] plaintiff's legal rights."[122] Not only does the scope of the term "actual fraud" appear to seriously shrink the possibility of successful veil piercing, but the Fifth Circuit reasonably refers to the Texas statute as requiring "dishonesty of purpose and intent to deceive,"[123] a further limitation and a serious one, not seen as part of traditional veil piercing law. It is also evident that a creditor will face difficulties of proof respecting issues of purpose and intent. Veil piercing should not depend on proof and findings of evil purpose, or intent on the part of its targeted defendants. Historic veil piercing tests, lists of factors, and mainstream judicial decisions do not go that far. The policy behind the granting of the privilege of limited liability is well served by looking at what the facts show about whether it is fair to leave certain creditors holding the bag on certain debts. Additionally, the phrase "direct personal benefit" is not without ambiguity, and poses a further unfamiliar obstacle to veil piercing.

The Texas veil piercing statute leaves too many legitimate creditors, whose claims stem from contractual obligations, without a veil piercing remedy. Veil piercing is a venerable and respectable judicial remedy which has helped creditors collect on debts arising from contracts or torts. This remedy should not be unreasonably eroded.

CONCLUSION

It is understandable that Congress would use a narrow phrase such as "actual fraud" in describing one of the grounds to defeat the discharge of certain debts in a bankruptcy proceeding. After all, an important bankruptcy law policy is to give relief to an honest but unfortunate debtor.[124] But the Texas veil piercing statute would show compassion to many potential debtors who may not be considered unfortunate, at least in any economic sense, while it is not sufficiently supportive of abused creditors. Nor does it support the

120. *See supra* text accompanying note 73.
121. *See supra* text accompanying note 74.
122. Batoh v. McNeil-PPC, Inc., 167 F. Supp. 3d 296, 323 (D. Conn. 2016).
123. Husky Int'l Elecs., Inc. v. Ritz (*In re* Ritz), 832 F.3d 560, 566–67 (5th Cir. 2016).
124. *See* Marrama v. Citizens Bank of Mass., 549 U.S. 365, 366 (2007).

purpose of the limited liability privilege. For veil piercing purposes, mainstream judicial doctrines that challenge broad forms of misbehavior including fraud, inequity, and injustice are properly considered by courts.