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FEATURE ARTICLE

STAYING SINGLE: PRESERVING THE SINGLE-PURPOSE ENTITY FOR CONSTRUCTION PROJECTS

*by Steven B. Lesser * & Ryan F. Carpenter ***

I. Introduction

Owners of construction projects can reap immense financial returns or suffer disastrous consequences as a result of a single incident. Given their frequency, owners should expect to face claims based on delays, faulty design or construction, and force majeure events like hurricanes and earthquakes. Other risks appear without warning, such as the mortgage crisis, where the monetary fallout can be devastating. Understandably, owners have become vigilant in their quest to minimize risk and avoid monetary loss. As Arnold Palmer taught us, "The road to success is always under construction." Toward that end, owners continue to develop innovative ways to guard against devastating financial losses.

Over the past decade, "single-purpose" entities have been formed and managed to limit the risk of a construction project to that entity alone. By this process, owners can protect parent company assets as well as personal wealth from exposure due to a failed or troubled project. Yet, the formation of a single-purpose entity is not a bulletproof solution. When an aggrieved party is on the hunt for assets to satisfy a claim, it will aggressively try to dismantle the single-purpose structure. Its end goal will be to pierce the corporate veil and recover losses from parent companies and their principals. Nevertheless, as discussed in this article, there are specific steps an owner can take to use and preserve

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single-purpose entities to mitigate the risk of a financial disaster.

II. Establish Single-Purpose Entity

Owners have recently experienced the repercussions of an economic downturn, such as rampant bankruptcies with litigious claimants ferociously chasing money from any available source. In the wake of these experiences, owners with multiple projects underway have migrated toward establishing a separate entity to be the "owner" of each new project. Single-purpose entities allow owners to reap the financial benefit from the project, if everything goes well, or if not, then a disposable entity exists to prevent negative financial ramifications from impacting other unrelated projects or affiliated companies.

To some extent, the single-purpose entity option is uniquely available to owners. This is because owners do not have the same licensing, bonding and other requirements that traditionally preclude contractors and design professionals from taking advantage of it. Notwithstanding its merit and appeal, the single-purpose entity approach can backfire in certain jurisdictions, particularly if certain formalities are not followed.

III. Benefits

A single-purpose entity can shield the parent entity from liabilities that arise out of the development of a project. However, the parent can lose the protection by committing some act that directly causes damages,[1] or voluntarily assuming its subsidiary's liability, for example, by providing a guaranty to a subsidiary's creditor. Aside from such exceptions, the single-purpose entity approach generally protects the parent's assets from both its subsidiaries' business debts and the potential reach of judgment creditors.

Establishing a new entity for each project can also provide a marketing advantage to the project. For example, an owner building a contemporary condominium in the "hip" part of town can select a name, logo, marketing program and employees that will appeal to the "millennial" demographic. If that owner later constructs an office park or nursing home, the owner can (and probably should) select different names, logos, marketing programs and employees for the "owners" of those projects.

IV. Liability Theories

Protecting a parent's assets from creditors is the primary reason to establish a single-purpose entity. When the parent and subsidiary become too intertwined, parties seeking to recover damages might try to "pierce the corporate veil" to recover from the parent's assets. Several other legal theories established in different jurisdictions provide plaintiffs with similar or equivalent remedies although referred to by different names such as "substantive consolidation," "fraudulent transfer" and a "denuding theory."[2] As explained below, "holding out" and "direct participation" theories have also been developed in various jurisdictions to afford plaintiffs additional arguments to reach beyond a single-purpose entity's assets.

A. Piercing the Corporate Veil

The piercing the corporate veil doctrine allows plaintiffs to circumvent the protections of a business entity (its "veil") to recover from the personal assets of an individual owner. In many instances, these efforts are even directed at individuals who have no ownership interest in the entity at issue,[3] as well as parent[4] and affiliated[5] entities. While the option exists in virtually all jurisdictions in some form, the particulars of the doctrine vary by jurisdiction based on specific statutes and common law.

Generally, the doctrine has been used to disregard the corporate form when principles of justice and equity require it to prevent fraud or injustice.[6] A basic link between a parent and its subsidiary alone is not sufficient to justify holding the parent liable,[7] nor will the parent merely providing funding to its subsidiary be sufficient as long as it was not done to perpetrate fraud.[8] In fact, through its long history of use, jurisdictions have developed specific qualifying elements that can be difficult to satisfy.

The terminology and specific elements vary by jurisdiction, but courts will typically require those seeking to pierce a corporate veil to satisfy a test such as the following two-part "unity of interest" test: (1) there exists a unity of interest and owner-

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ship such that the separate personality of the company no longer exists (*i.e.*, that the company being pierced is the "alter ego" of another entity or its owner), and (2) if the corporate form is upheld, an inequitable result would follow.[9] Jurisdictions require varying levels of proof in satisfying their respective tests, but many have enumerated similar factors to consider in deciding whether their established tests have been satisfied.[10]

In Massachusetts, plaintiffs must satisfy a "very high standard."[11] Against this backdrop, the First Circuit identified several factors to consider, including, but not limited to: (1) common ownership, (2) pervasive control, (3) confused intermingling of business activity, (4) insufficient capitalization, (5) nonobservance of corporate formalities, (6) nonpayment of dividends, (7) insolvency of corporation at the time of transaction, (8) siphoning of corporate funds by the dominant shareholders, (9) nonfunctioning of officers and directors other than as the shareholders, (10) absence of corporate records, (11) use of the corporation for transactions of the dominant shareholders, and (12) use of the corporation in promoting fraud.[12] Other states such as Illinois,[13] Kansas,[14] New York,[15] and Maine,[16] among others have established single formulaic analyses.

A recent study by the Wake Forest Law Review analyzed plaintiffs' attempts to pierce the corporate veil in a variety of settings.[17] The authors found those seeking to pierce the corporate veil in Ohio achieved a consistently high success rate.[18] More generally, the study suggests that piercing corporate veil claims have the best overall chance of success in Arkansas, Idaho, Louisiana and Utah and the worst chance of success in Georgia, Iowa, Maine, Nebraska, Pennsylvania, South Carolina and West Virginia:[19]

Jurisdiction	Cases in Sample	Pierce	No Pierce	% Piercing
AR	1	1	0	100.0%
ID	1	1	0	100.0%
LA	4	4	0	100.0%
UT	1	1	0	100.0%
KY	7	5	2	71.4%
NC	3	2	1	66.7%
WA	3	2	1	66.7%
MA	5	3	2	60.0%
OH	7	4	3	57.1%
TN	7	4	3	57.1%
AK	2	1	1	50.0%
DE	6	3	3	50.0%
IN	2	1	1	50.0%
NV	2	1	1	50.0%
WI	2	1	1	50.0%
MN	7	3	4	42.9%
CA	8	3	5	37.5%
IL	8	3	5	37.5%
TX	8	3	5	37.5%
CT	12	4	8	33.3%
MO	3	1	2	33.3%
Federal	16	5	11	31.3%
MI	7	2	5	28.6%
NY	27	7	20	25.9%
CO	4	1	3	25.0%
FL	5	1	4	20.0%
NJ	12	2	1	16.7%
VA	6	1	5	16.7%
AZ	1	0	1	0.0%

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GA	1	0	1	0.0%
IA	2	0	2	0.0%
ME	3	0	3	0.0%
NE	1	0	0	0.0%
PA	10	0	10	0.0%
SC	1	0	1	0.0%
WV	2	0	2	0.0%

Plaintiffs have also realized success using holding out and direct participation theories. While the bedrock of these theories have similar factors to those used to pierce a corporate veil, their less-defined requirements appear to have given courts greater flexibility and have arguably made it easier to recover assets from the parent entity.

B. Holding Out Theory

The holding out theory is based on principal/agent principles.[20] Success turns on establishing that the parent is bound by the acts of its subsidiary with the apparent authority which the parent knowingly permits the subsidiary to assume, or which the parent holds the subsidiary out to the public as possessing.[21] The law of agency imposes liability, not as the result of a contractual relationship but because the actions of the parent somehow misled third parties into reasonably believing that the authority exists.[22]

Normally, the trier of fact decides whether an agency relationship existed.[23] Applied in a construction context, a parent risks assuming liability from the single-purpose entity's actions when, from the public's perspective, the actions giving rise to damages were committed as an "agent" of the parent. The internet has proved valuable to plaintiffs in gathering proof of holding out by using marketing and advertising materials to blur the lines of distinction between the entities. Advertising the success of previous projects coupled with careless representations by sales personnel can destroy all diligent efforts designed to maintain a subsidiary's independence. Such records can also reflect instances of one entity performing routine business on behalf of the other, further supporting a plaintiff's argument that the parent should be liable for the acts of its subsidiary.

C. Direct Participant Theory

Along those lines, the direct participant theory will hold a parent liable when it directs or authorizes the manner in which an activity is undertaken and foreseeable injury results.[24] A parent can be held liable if, *for its own benefit*, it directs or authorizes the manner in which its subsidiary's actions are implemented, disregarding the discretion and interests of the subsidiary, foreseeably resulting in harm to the claimant.[25] However, the parent's role must consist of more than simply being an officer of the parent making policy decisions for the subsidiary and supervising the subsidiary's activities; instead, plaintiffs must demonstrate that the conduct complained of occurred while the officer was acting in his or her capacity as an officer of the parent, rather than as an officer of the subsidiary.[26] Liability is imposed on a parent or principal when its/his actions involving an entity, when performed alone or jointly with the entity, would create liability.[27] For example, in one instance a corporate executive was held personally liable for executing a bad check, even when the check was signed in the executive's representative capacity and he did not know there were insufficient funds in his company's account to cover the check.[28] In that situation, the direct participant theory would serve to acknowledge that only a person can draft a check and that the drafter is personally obligated to assure that it is drawn on an account containing sufficient funds.

V. Drawbacks

To avoid liability under the foregoing theories, the parent must engage in a continual balancing act to keep its subsidiaries separate, in order to preserve the benefits of a single-purpose entity. An organized game plan must be formulated and rigorously enforced to keep the entities distinct. But such measures have a number of drawbacks. Keeping entities separate may limit the owner's ability

to tout its reputation in a marketing campaign, for historically producing quality construction along with strong financial resources to stand behind its product. Those drawbacks must be weighed against the benefits of a single-purpose entity to determine whether using a single-purpose entity is worthwhile. Choosing a subsidiary's name illustrates the tradeoffs that must be considered. Using a name that reflects its association with the parent might help capitalize on the parent's goodwill and reputation, but, at the same time, make the parent a more vulnerable target for creditors.

Licensing requirements for contractors and architects pose a more significant challenge to creating single-purpose entities. When a contractor subsidiary must employ an individual with a particular license to operate, or have a sufficient track record of successful projects to obtain a performance bond, a subsidiary's only option might be to adopt its parent's license or track record as its own. Similarly, when a design professional subsidiary tries to acquire professional liability coverage for that stand-alone entity, it might be impossible to obtain or be cost-prohibitive to purchase.

VI. Measures to Preserve Benefits of Single-Purpose Entities

No single measure by itself can safely preserve the benefits of a single-purpose entity. The more proactive measures that are taken, the more likely the single-purpose entity structure will be successfully maintained. One step to enhance the likelihood that the single-purpose entity is preserved is to include a provision in all contracts by which the other parties acknowledge that their relationships are solely with the subsidiary and that any rights or remedies they might have shall only be against the subsidiary, not the parent. Commonly-used provisions confirming that there are no intended third-party beneficiaries can be modified to serve this purpose.[29]

Parent companies should also consider how future plaintiffs could use written records and employee statements to argue that the parent should be liable for the acts of its single-purpose entity. Plaintiffs will use any reference to the parent in written documents to argue that the parent should be liable, as well as its subsidiary. It might be easier said than done, but the parent can deprive potential plaintiffs of that ammunition by avoiding references to the parent in: (1) records from the feasibility/planning stages, (2) applications seeking government approvals and permits, (3) meeting minutes, (4) proposals and invoices, (5) correspondence with vendors, (6) marketing materials, press releases, news interviews and promotional videos, (7) issuing checks and other forms of payment, and (8) insurance policies.[30]

Separate books and records can be used to demonstrate the subsidiary's independence from the parent entity. At relatively little cost, a subsidiary can have its own signatories, registered agent, logos and letterhead. Even though more costly, maintaining separate email domains, websites and physical offices might also be worthwhile endeavors. Conversely, using similar or overlapping services, books, records and websites can produce calamitous results and serve up to plaintiffs countless examples of the relationship between parent and subsidiary.[31] Precautionary steps must be taken at the inception of a project, otherwise the anticipated benefit could be irretrievably lost.

If both entities initially use a single website, or even if there are merely links between the two, these connections will continue to exist and enable plaintiffs to find and use this evidence to establish liability against the parent. Old versions of websites are readily accessible to potential plaintiffs on "The Wayback Machine" (an internet archive website) at https://archive.org/web/. Moreover, previous versions may also be discoverable from an IT or website hosting company's backups acquired by subpoena in the event that litigation is pursued. In either case, the plaintiff will be able to show the websites to a trier of fact even though they are no longer being used. Financial and operational facets must also be scrutinized to ensure the parent and single-purpose entity have been maintained as objectively distinct and independent entities. Using parent assets to obtain financing for the subsidiary should be minimized.

With regard to personnel, ideally the parent's officers and employees should not staff the subsidiary entity and should avoid directing the subsidiary's strategies or authorizing its actions. This

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approach may prove prohibitively expensive or disruptive for the parent. If it is necessary for a parent's officers or employees to participate in the subsidiary's operations, they should be fully and officially designated to serve as the subsidiary's officers and employees during pendency of a project. For example, officers and employees involved in the subsidiary's operations should receive a W-2 from the subsidiary, not the parent. Likewise, separate insurance policies should be issued to the subsidiary and endorsements should be carefully worded to avoid the "spill over" effect to establish a connection between the parent and subsidiary.

Eliciting damaging testimony from people involved in a project referring to the parent instead of the subsidiary could be one of the most potent weapons in a plaintiff's arsenal. Proactive steps should be implemented to neutralize the effectiveness of this tactic. For example, from the earliest planning stages to even after project completion, owners should continually consider what future deponents will say, and how plaintiffs will use their testimony. If employees are conditioned to recognize and honor the distinctness of the subsidiary, that will likely go a long way to molding third-parties' perceptions (and ultimate testimony) to keep the parent out of the line of fire. As an illustration, if during normal operations employees refer to their employer as the subsidiary and accountants are consistent in referring to the subsidiary as the owner of assets, their use of the subsidiary's name will likely lead to vendors testifying that they were dealing with the subsidiary, not the parent. If, on the other hand, employees ultimately testify that they were employed by the parent, accountants testify that the subsidiary's assets were the parent's, or vendors testify that they provided goods and services to the parent, it will be difficult for the parent to preserve the sanctity of its single-purpose entity.[32]

In the early planning stages of a project, clear policies must be established to properly educate the marketing team, sales department and other employees as to the distinct nature of the parent. It is insufficient simply to have a good policy and conduct a few (or no) training sessions. To be effective, a parent must enforce the policy throughout the course of a project. Inevitable turnover and generally transient workforces can seem like overwhelming obstacles, but they can be overcome through diligent efforts. Even when a project is winding down, a parent must not let its guard down, or the benefit of its prior efforts might be negated. For example, while it might be a standard practice to deploy a specialized team of non-project employees to deal with the punch list phase, they must receive the same training as regular project employees.

Disgruntled employees and vendors are a virtual certainty. Out of spite, they might supply plaintiffs with damaging testimony. A parent could insist on relationship-clarifying contract provisions, or even confidentiality agreements, but neither will prevent a vindictive witness from making contradictory statements during his/her deposition or at trial. To mitigate the harm of such testimony, a parent's most effective response will likely be to discredit the witness by offering, hopefully, numerous examples of statements and documents issued by the witness before the relationship soured which comport with and acknowledge the distinctness of the two entities.

The foregoing measures might be costly and/or inconvenient to implement. Nevertheless, if deemed worthwhile, all of the approaches are completely within the parent's control to adopt.

VII. Conclusion

As Sanford I. Weill said, "Details create the big picture." A lack of attention to detail in establishing and using single-purpose entities can derail efforts to maintain their distinctness and nullify their benefits. When that happens, others can unnecessarily become liable under a variety of legal theories. Participants must realize that simply forming a single-purpose entity without actively managing it to keep it separate will not avoid that liability transfer and can spell financial disaster. Vigilant supervision of marketing and sales efforts and routine day-to-day operations is critical to success. By knowing the laws of your jurisdiction and executing a thoughtful game plan, the single-purpose entity can remain intact and bar liability from being transferred to others.

ENDNOTES:

[1]See *Kilduff v. Adams, Inc.*, 219 Conn. 314, 593 A.2d 478, 11 A.L.R.5th 957 (1991) (corporate veil did not have to be pierced to find that corporate officers were personally liable for their misrepresentations since officers would be personally liable for their torts regardless of whether corporation was itself liable).

[2]Examples of theories that offer remedies analogous to piercing the corporate veil are:

Substantive Consolidation. *See In re Huntco Inc.*, 302 B.R. 35, 42 Bankr. Ct. Dec. (CRR) 65, 51 Collier Bankr. Cas. 2d (MB) 1331 (Bankr. E.D. Mo. 2003) (the pooling of debtors' estates when necessary due to their interrelationship, upon which creditors relied).

Civil Conspiracy. *See International Bankers Life Ins. Co. v. Holloway*, 368 S.W.2d 567 (Tex. 1963).

Fraudulent Transfer. *See Mountview Plaza Associates, Inc. v. World Wide Pet Supply, Inc.,* 76 Conn. App. 627, 820 A.2d 1105 (2003) (upholding default judgment against shareholder and limited liability company to which the shareholder transferred a corporation's assets to avoid a debt of the corporation).

Trust Fund Doctrine. *See Henry I. Siegel Co., Inc. v. Holliday*, 663 S.W.2d 824 (Tex. 1984) (allowing creditor to recover from corporate assets preferentially transferred to stockholders).

Denuding Theory. *See World Broadcasting System, Inc. v. Bass*, 160 Tex. 261, 328 S.W.2d 863 (1959) (holding stockholders of corporation personally liable to creditors to the extent of the funds they received from corporation when it was effectively dissolved after the creditors' claim arose).

[3]*See Angelo Tomasso, Inc. v. Armor Const. & Paving, Inc.*, 187 Conn. 544, 447 A.2d 406, 412 (1982) (stock ownership is important but not essential), *Lally v. Catskill Airways Inc*., 198 A.D.2d 643, 603 N.Y.S.2d 619 (3d Dep't 1993) (deeming an individual an "equitable owner" even without being a shareholder, when individual exercised sufficient control), *Equity Trust Co. Custodian ex rel. Eisenmenger IRA v. Cole*, 766 N.W.2d 334, 339-40 (Minn. Ct. App. 2009) (imposing personal liability when the individual exerted complete control); *but see, Morris v. New York State Dept. of Taxation and Finance*, 82 N.Y.2d 135, 603 N.Y.S.2d 807, 623 N.E.2d 1157 (1993) (non-shareholder could not be held personally liable), *Riddle v. Leuschner*, 51 Cal.2d 574, 335 P.2d 107 (1959) (without ownership interest and no right to profits, individual may not be held personally liable).

[4]*Pearson v. Component Technology Corp.*, 247 F.3d 471, 484, 17 I.E.R. Cas. (BNA) 769, 143 Lab. Cas. (CCH) P 11005 (3d Cir. 2001).

[5]*Troyk v. Farmers Group, Inc.*, 171 Cal.App.4th 1305, 90 Cal.Rptr.3d 589 (4th Dist. 2009).

[6]*See Green v. Ziegelman*, 310 Mich. App. 436, 464-65, 873 N.W.2d 794, 811-12 (2015), *appeal denied*, 498 Mich. 921, 871 N.W.2d 180 (2015) (where judgment was entered against an architectural corporation, the sole owner, who transferred assets to unjustly prevent judgment creditor from collecting on judgment, was held personally liable).

[7]*UST Corp. v. General Road Trucking Corp.*, 783 A.2d 931, 939 (R.I. 2001).

[8]*Sonora Diamond Corp. v. Superior Court*, 83 Cal.App.4th 523, 99 Cal.Rptr.2d 824 (5th Dist. 2000). As a particularly debtor-friendly state, case law from Florida exemplifies the necessity in some jurisdictions of showing that the corporation was organized or utilized for fraudulent or illegal purposes to justify piercing the corporate veil. *See, e.g., Hilton Oil Transport v. Oil Transport Co., S.A.*, 659 So. 2d 1141, 1152-53, 1996 A.M.C. 113 (Fla. 3d DCA 1995) (upholding corporate form because there was no evidence that the corporation was organized or utilized for fraudulent or illegal purposes, despite lack of corporate formalities, inadequate capitalization, overlapping owners, use of same corporate office, informal loan transactions, corporation being in effect financed by individual and directors not acting independently in the best interests of the company).

[9]*See Trustees of the Graphic Communications Intern. Union Upper Midwest Local 1M Health and Welfare Plan v. Bjorkedal*, 516 F.3d 719, 43 Employee Benefits Cas. (BNA) 2129 (8th Cir. 2008), *Fontana v. TLD Builders, Inc.,* 362 Ill. App. 3d 491, 298 Ill. Dec. 654, 840 N.E.2d 767 (2d Dist. 2005), *Automotriz Del Golfo De California S. A. De C. V. v. Resnick*, 47 Cal.2d 792, 306 P.2d 1, 63 A.L.R.2d 1042 (1957) (two requirements for disregard of the corporate entity are that there be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist and that, if the acts are treated as those of the corporation alone, an inequitable result will follow).

[10]*See, e.g., Lomas v. Kravitz*, 2015 PA Super 267, 130 A.3d 107, 126 (2015), *granting appeal on different grounds*, 147 A.3d 517 (Pa. 2016) (listing the following factors to consider in determining whether to pierce the corporate veil: (1) undercapitalization; (2) failure to adhere to corporate formalities; (3) substantial intermingling of corporate and personal affairs, and (4) use of the corporate form to perpetrate a fraud), *Burchinal v. PJ Trailers-Seminole Management Co., LLC,* 372 S.W.3d 200, 218, 93 A.L.R.6th 713 (Tex. App. Texarkana 2012) (listing the following as proof of an alter ego: (1) the payment of alleged corporate debts with personal checks or other commingling of funds, (2) representations that the individual will financially back the corporation, (3) the diversion of company profits to the individual for the individual's personal use, (4) inadequate capitalization, and (5) other

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failures to keep corporate and personal assets separate).

[11]*Hiller Cranberry Products, Inc. v. Koplovsky*, 165 F.3d 1 (1st Cir. 1999). The seminal veil piercing case in Massachusetts is *My Bread Baking Co. v. Cumberland Farms, Inc.,* 353 Mass. 614, 233 N.E.2d 748 (1968).

[12]*Pepsi-Cola Metropolitan Bottling Co., Inc. v. Checkers, Inc*., 754 F.2d 10, 14-16 (1st Cir. 1985).

[13]*See Real Colors, Inc. v. Patel,* 39 F. Supp. 2d 978, 993 (N.D. Ill. 1999).

[14]*See BioCore, Inc. v. Khosrowshahi,* 41 F. Supp. 2d 1214, 1228-29 (D. Kan. 1999).

[15]*See Liberty Mut. Ins. Co. v. Leroy Holding Co., Inc*., 226 B.R. 746, 752, 42 Fed. R. Serv. 3d 475 (N.D. N.Y. 1998).

[16]*See Johnson v. Exclusive Properties Unlimited,* 1998 ME 244, ¶ 6, 720 A.2d 568 (Me. 1998).

[17] Rolf Garcia-Gallont and Andrew J. Kilpinen, *If the Veil Doesn't Fit . . . An Empirical Study of 30 Years of Piercing the Corporate Veil in the Age of the LLC*, 50 Wake Forest L. Rev. 1229 (2015).

[18]*Id.* at 1242.

[19]*Id*. at 1252, Appendix I.

[20]*Irving v. Doctors Hosp. of Lake Worth, Inc*., 415 So. 2d 55 (Fla. 4th DCA 1982).

[21]*Id.* at 58-59.

[22]*See Morgan v. Jackson Ready-Mix Concrete*, 247 Miss. 863, 881, 157 So. 2d 772, 778 (1963) (upholding jury's finding that corporation with which plaintiff had a contract was an agent of general partnership, resulting in partners being held personally liable).

[23]*Stone v. Palms West Hosp.*, 941 So. 2d 514 (Fla. 4th DCA 2006); *see also, Cuker v. Hillsborough County Hosp. Auth.*, 605 So. 2d 998, 1000 (Fla. 2d DCA 1992) (trial court erred in refusing to allow issue of "apparent agency" to go to the jury), *Acevedo ex rel. Salmeron v. Lifemark Hosp. of Florida, Inc.,* 2005 WL 1125306 (Fla. Cir. Ct. 2005) (like actual agency, using apparent agency principles to find liability is left for the jury's consideration).

[24]*Forsythe v. Clark USA, Inc.*, 224 Ill. 2d 274, 309 Ill. Dec. 361, 864 N.E.2d 227 (2007).

[25]*Id.* at 237.

[26]*Id.* at 236.

[27]*First Realvest, Inc. v. Avery Builders, Inc.,* 410 Pa. Super. 572, 576, 600 A.2d 601, 603 (1991); *Garcia v. Coffman*, 123 N.M. 626, 944 P.2d 274 (1997).

[28]*Kolodkin v. Cohen*, 230 Ga. App. 384, 385, 496 S.E.2d 515, 517 (1998), *superseded by statutory amendment as stated in Helmer v. Rumarson Technologies, Inc.*, 245 Ga. App. 598, 538 S.E.2d 504 (2000).

[29]The following provision might help undermine a plaintiff 's attempts to reach beyond the singlepurpose entity:

> [Contracting party] understands, acknowledges and agrees that [subsidiary] is an independent entity, separate and distinct from [parent entity] and [subsidiary's] affiliated entities. [Contracting party] acknowledges that by virtue of this Agreement it has a contractual relationship with [subsidiary] but confirms that it has no relationship with [parent entity] or [subsidiary's] affiliated entities with regard to [project name], contractual or otherwise. [Contracting party] agrees that no provision in this Agreement shall create or give to [contracting party] any claim or right of action against [parent entity] or [subsidiary's] affiliated entities. [Contracting party] further acknowledges that any claim or right of action it might have based on statements, representations, marketing materials, or any other writing issued directly or indirectly by [parent entity], [subsidiary's] affiliated entities, or any of their officers or employees, with regard to the project may be pursued solely against [subsidiary].

Other similar protective provisions as set forth below should be incorporated in the construction agreement to shield individuals associated with the entity from liability:

> In no event shall [contracting party] have any recourse against the individual partners, officers, directors, employees, agents, and direct or indirect owners of [subsidiary] personally in connection with the obligations and liabilities of [subsidiary] hereunder. [Subsidiary], its partners and its representatives shall have no personal liability with respect to any of the provisions of the Agreement.

[30]A plaintiff could argue that if the parent deems itself to have the insurable interest to warrant paying insurance premiums to recoup its financial damages in the event of a loss, it should have liability in other respects.

[31]To prevail, a plaintiff might have to show more than indicators of the relationship between the parent and its subsidiary. *See Muminov v. Muniraj Enterprises, Inc.*, 2012 WL 760638 (M.D. Fla. 2012) (granting summary judgment because plaintiff failed to present indicia of control required to establish vicarious liability). Nevertheless, depriving a plaintiff of evidence of the relationship might preclude the argument to begin with.

[32]*See A.G. Cullen Const., Inc. v. Burnham Partners, LLC,* 2015 IL App (1st) 122538, 390 Ill. Dec. 647, 29 N.E.3d 579 (1st Dist. 2015), *appeal denied*, 396 Ill. Dec. 173, 39 N.E.3d 999 (Ill. 2015) (unpaid contractor using developer's bookkeeper's LinkedIn profile listing her as the operations manager of the parent entity and testimony of contractor's employee that he believed parent and subsidiary "were one and the same" and principal of parent was the ultimate decision-maker on the project because "everything had to go through [him]" was successful in getting appellate court to reverse the lower court, finding that the lower court should have pierced the subsidiary's corporate veil because of principal's fraudulent transfers).