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PIERCING THE CORPORATE VEIL TO RECOVER PENSION PAYMENTS: IT'S TIME TO ADDRESS THE ISSUE

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INTRODUCTION

John Smith (Smith), who has worked for XYZ Corporation for forty years, is close to retiring from the company. Throughout his employment, Smith contributed to the corporation's pension fund. Unfortunately, due to recent changes in the market, the corporation is suffering from economic hardship and cannot pay all

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1. See generally United States v. Milwaukee Refrigerator Transit Co., 142 F. 247, 254-55 (E.D. Wis. 1905) (discussing the fundamental principles of corporations). Corporations can be described as "an artificial person, created by law as the representative of those persons, natural or artificial, who contribute to and become the holders of shares in the property entrusted to it for a common purpose." Id. (citations omitted).

2. See generally Williams v. Wright, 927 F.2d 1540, 1543 (11th Cir. 1991) (discussing the characteristics of employee pension plans); JEFFREY D. MAMORSKY, EMPLOYEE BENEFITS LAW: ERISA AND BEYOND 1-2 (1999) (noting the framework and basics of the Employment Retirement Income Security Act of 1974 (ERISA)). Retirement and pension plans are used interchangeably throughout this Comment, and are defined by ERISA as a:

plan, fund, or program . . . established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund or program:

(1) provides retirement income to employees, or

(2) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan.

29 U.S.C. § 1002(2)(A) (1996). Simply speaking, a pension plan is an agreement where an employer makes predetermined contributions to a fund that will be disbursed to employees upon retirement from the company. MAMORSKY, supra, at 1-3.
The corporation, in particular, has not made any payments to its pension fund. Smith and the other employees want to pierce the corporate veil\(^3\) and hold its shareholders liable for the now-delinquent payment disbursements from the pension plan. The employees are seeking to hold only those shareholders liable who have taken an active and visible role in the corporation.

Smith and the other employees are blue-collar workers. Thus, the contributions they made to the pension plan are critical, and in most cases will be their only source of income at retirement. The employees base their right to pierce the corporate veil on provisions contained in the Employment Retirement Income Security Act of 1974 (ERISA),\(^4\) which provides a general framework addressing situations when an employee can bring a lawsuit against an employer. In Smith's situation, it is unlikely that the employees will prevail on their claim, because currently shareholders are generally protected from corporate debt, especially ERISA debt.\(^5\)

Although the scenario presented above is fictitious, the problem presented by the situation is very real. With the increased fear of not having sufficient income for retirement, individuals are investing more of their salary in pension funds offered by their employers.\(^6\) The growth of pension investing is sprouting concern about who can be held liable for pension payments once payments to and from a plan become delinquent.\(^7\)

Given the seriousness of this situation and the detrimental effect on retiring employees, a general plan and guidelines to deal with this situation must be created.

The purpose of this Comment is to address the issues that arise when corporations become delinquent in funding and disbursing pension funds. The purpose of this Comment is also to provide a guideline for employees to use when attempting to recover these delinquent distributions from individuals other than their employers. Part I of this Comment discusses the relationship between the corporate structure and piercing the corporate veil, while also providing background information on

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3. See discussion infra Part I.B and notes 27-45 for a definition of and background information about piercing the corporate veil.

4. See discussion infra Part I.C and notes 46-60 for background information about ERISA.

5. See discussion infra Part I.A and notes 11-26 for information about the concept of a shareholder's limited liability.


7. See 29 U.S.C. § 1001(a) (addressing the overall expansion of contributions to pension plans).
Piercing the Corporate Veil

ERISA. Part II analyzes the courts’ inconsistent treatment of actions seeking to pierce the corporate veil in ERISA contexts. Part III proposes ERISA be amended to provide an outline of specific elements that must be present in order for an employee to bring a piercing the corporate veil action against shareholders. Such an amendment would foster uniformity and consistency with the policies underlying ERISA.

I. THE STRUCTURE AND PRINCIPLES UNDERLYING CORPORATIONS AND EMPLOYEE BENEFIT PLANS

The ability to pierce the corporate veil and remove limited liability is a fundamental principle and an essential part of business law. Section A discusses the corporate structure. Section B discusses and provides information regarding the theory of piercing the corporate veil. Section C provides general background information about ERISA.

A. The Corporate Structure

The corporate entity is the predominate structure used in this country to operate a business. A corporation can be described as a continuous series of contracts between the management and shareholders of the corporation. These contracts may be subject to regulatory control depending on how the business was incorporated. A state has the right to regulate a business that incorporates within its borders.

9. See discussion infra Part I.C and notes 46-60 for an overview of the policies underlying ERISA.
10. See generally Rockney v. Blohorn, 877 F.2d 637, 642 (8th Cir. 1989) (emphasizing the critical role that limited liability plays in business law); Ira S. Bushey & Sons, Inc. v. United States, 398 F.2d 167, 171 (2d Cir. 1968) (discussing the credibility behind limited liability in an agency context).
11. See generally HENRY N. BUTLER & LARRY E. RIBSTEIN, THE CORPORATION AND THE CONSTITUTION vii (1995) (discussing the popularity and advantages of conducting a business as a corporation). The other forms that a business may take include “partnerships, limited liability companies, sole proprietorships and joint ventures, and non-firm, relational contracts, such as franchises and long-term supply contracts.” Id. at 4.
12. See id. at 7 (providing various theories relating to the formation of a corporation). The description presented is the contractual theory of corporations. Id.
13. Id. at 19. This statement describes the concession theory of corporations. Id. The concession theory suggests that a corporation does not consist of normal, routine contracts, but special contracts that are subject to direct governmental control. Id. at 18.
Regardless of the reasons for forming a corporation, the corporation is subject to the laws of the state in which it is incorporated. The corporation's officers decide what state to incorporate in, and this decision is based on which state has laws most compatible with the corporation's business purpose and objective. In order to incorporate a business, the initial step is to file the articles of incorporation. Articles of incorporation set forth primarily the name and purpose of the corporation and must be filed with the Secretary of State or other designated office. Regardless of how the articles of incorporation read, the type of work performed, or where a business is incorporated, the corporation must maintain an existence independent from its shareholders. This separate existence limits the shareholder's responsibility to pay off delinquent balances to corporate creditors.

Corporations are essentially formed to provide investors with limited liability. Limited liability protects an investor from of states imposing their laws and authority on corporations).

15. See BUTLER & RIBSTEIN, supra note 11, at 107 (discussing the regulations that govern corporations). See also Cort, 422 U.S. at 84 (stating that states have the authority to regulate corporations because "[c]orporations are creatures of state law.").

16. See GEORGE C. SEWARD & W. JOHN NAUSS, JR., BASIC CORPORATE PRACTICE 27-31 (2d ed. 1977) (discussing the considerations that must be addressed when incorporating a business). See generally FRANK H. EASTERBROOK & DANIEL R. FISCHEL, THE ECONOMIC STRUCTURE OF CORPORATE LAW 6-7 (1991) (providing an example of the analysis used by corporate officers in selecting the state of incorporation). Despite the corporation's primary place of business, many corporations incorporate in Delaware due to the state's favorable corporate laws. HARRY G. HENN, HANDBOOK OF THE LAW OF CORPORATIONS AND OTHER BUSINESS ENTERPRISES 138 (2d ed. 1970). In fact, nearly "one-third of the corporations listed on the New York Stock Exchange are incorporated in Delaware." Id.

17. See generally HENN, supra note 16, at 199-200 (listing the disclosures and other information required in the articles of incorporation).


20. See Lin Hanson, Corporate Limited Liability Certainly Has Its Limits, CHI. DAILY L. BULL., Apr. 1, 1992, at 5 (stressing the importance of individuals remaining removed from the daily operations of a corporation).

21. See generally Gallagher, 415 N.E.2d at 563 (noting that no requirement exists regarding the minimum amount of investors necessary to form a corporation, but corporations are generally owned by several investors). See generally EASTERBROOK & FISCHEL, supra note 16, at 1 (providing useful information about how an individual becomes an investor). Investors in a corporation are called shareholders. Id. A shareholder usually invests money in the corporation in return for an ownership percentage. Id.

22. See EASTERBROOK & FISCHEL, supra note 16, at 11 (analyzing the benefits shareholders receive from limited liability).
losing more than the amount of capital initially invested in the corporation. Thus, a shareholder's personal assets not invested in the corporation are protected from creditors, despite the threat of corporate bankruptcy and the reality that creditors may never receive their money. A corporation has a persona of its own, independent from that of corporate investors; this distinction prevents investors from using their personal assets to pay for corporate debt. To bypass this obstacle, however, creditors attempt to obtain their money by piercing the corporate veil.

B. Piercing the Corporate Veil: What Does it Mean?

Piercing the corporate veil is a means by which a corporate creditor may obtain a shareholder's personal assets to pay for an outstanding balance owed by the corporation. Limited liability represents the veil that creditors want to remove, so that a

23. Id. at 55. Generally, an individual is responsible for corporate debt only if the debt results from the individual's wrongful conduct, or if the assumption of responsibility is documented in the corporation's charter. Id. The advantages of limited liability and reasons why stockholders insist on it are that limited liability:

- decreases the need to monitor agents [and] ... reduces the costs of monitoring other shareholders . . . . [B]y promoting free transfer of shares, limited liability gives managers incentives to act efficiently[,] ... makes it possible for market prices to impound additional information about the value of firms[,] ... allows more efficient diversification . . . [and] facilitates optimal investment decisions.

Id. at 41-42. See generally Ted Harrison Oil Co. v. Dokka, 617 N.E.2d 898, 900-02 (Ill. App. Ct. 1993) (suggesting that incorporators can purposely select one corporate structure over another in an effort to limit the personal liability of investors).


26. See Gonzalez, 455 F. Supp. at 366 (stating that creditors may, in limited situations, recover outstanding corporate balances by holding shareholders personally liable).

27. See EASTERBROOK & FISCHER, supra note 16, at 54 (discussing in great detail the concept of piercing the corporate veil). Theoretically, the threat of incurring personal liability serves to prevent corporate personnel from engaging in risky activities that would cause a reduction of corporate assets into negative figures. Id. at 60.
shareholder's personal assets are exposed. Once exposed, the assets must be used to pay off corporate debt. The protection provided to investors through limited liability is ignored if that protection infringes any rights belonging to an individual, or, theoretically speaking, if the corporation is a mask meant to hide the fact that the shareholders, and not the officers, are running the corporation. Courts are prone to pierce the corporate veil in these situations to prevent an injustice.

In determining whether investors should incur responsibility to pay corporate debts, courts initially consider whether corporate and individual identities are identical and whether the lack of different identities causes injury to a creditor. Courts that

28. See generally Rockney v. Blohorn, 877 F.2d 637, 642 (8th Cir. 1989) (suggesting that the corporate form serves to protect a shareholder's personal assets).

29. Id.


the corporate form may be disregarded in the interests of justice where it is used to defeat an overriding public policy [and] ... [where equity would preclude the shareholders from maintaining the action in their own right.... The principal beneficiary of any recovery and [the corporation are] estopped from complaining of petitioners' alleged wrongs, [and] cannot avoid the command of equity through the guise of proceeding in the name of... corporations which it owns and controls.

Id. (citations omitted). See also Hystro Prod., Inc. v. MNP Corp., 18 F.3d 1384, 1390 (7th Cir. 1994) (stating that in an effort to promote fairness, courts will hold shareholders liable for corporate liabilities, especially when shareholders engage in improper acts apart from the nonpayment of debt); Craig Hukill, Labor and the Supreme Court: Significant Issues of 1992-1996, MONTHLY LAB. REV., Jan. 1997, at 13 (stating that courts may impose liability on shareholders in an effort to promote equity and fairness).

32. See Gallagher, 415 N.E.2d at 564 (discussing the factors that must be analyzed in veil piercing cases). The following excerpt provides additional insight into the critical factors used by courts to decide whether to impose corporate debt on shareholders:

The decision to disregard the corporate entity does not generally rest on a single factor but involves the consideration of many factors such as[:]

inadequate capitalization, failure to issue stock, failure to observe corporate formalities, nonpayment of dividends, insolvency of the debtor corporation at the time, non-functioning of other officers or directors, absence of corporate records and whether in fact the corporation is only a mere façade for the operation of the dominant stockholders; in addition, in the absence of fraud, the particular situation must generally present an element of injustice or fundamental unfairness.

Id. (citing 1 WILLIAM MEADE FLETCHER ET AL., FLETCHER CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS § 41.3 (perm. ed. rev. vol. 1990)). The most important factor in analyzing the propriety of the relationship between the
suspect inappropriate shareholder behavior after initial consideration of the situation often narrow the analysis and look at the specifics of the situation by using typical veil piercing tests. The typical veil piercing tests include:

(1) the alter ego, or mere instrumentality test, requiring that the subsidiary be completely under the control and domination of the parent;

(2) the fraud or wrong or injustice test, requiring that the defendant parent's conduct in using the subsidiary have been somehow unjust, fraudulent, or wrongful towards the plaintiff; and

(3) the unjust loss or injury test, requiring that the plaintiff actually have suffered some harm as a result of the conduct of the defendant parent.

These tests are strictly and narrowly applied because of courts' hesitation to pierce the corporate veil. Limited liability is undoubtedly removed once the activities of a corporation and stockholder become intricately intertwined, ultimately eliminating the separate individualities. The rationale for holding a shareholder liable in such a situation is that the shareholder acts as an alter ego of the corporation.

corporation and a shareholder is the initial funding or capitalization of a corporation. Id. See generally Suzanne C. Pysker, Tenth Circuit Survey: Commercial Law Survey, 71 DENV. U. L. REV. 873, 882 n.101 (1994) (discussing both the factors necessary to pierce the corporate veil and the alter ego doctrine).

33. STEPHEN B. PRESSER, PIERCING THE CORPORATE VEIL 1.6 (CCH 1991). Courts look for obvious signals and indicators that the corporate entity and shareholders are no longer distinct. Hanson, supra note 20, at 5. A company not performing typical or expected corporate functions due to shareholder involvement is an example of an obvious signal, and is a sufficient basis from a court's perspective to impose liability on the investor. Id. See generally Muir & Schipani, supra note 8, at 1083-89 (discussing piercing tests under state and federal law).

34. PRESSER, supra note 33, at 1.33. See generally Chicago Dist. Council of Carpenters Pension Fund v. Sunshine Carpet Serv., 866 F. Supp. 1113, 1116 (N.D. Ill. 1994) (providing the criteria that must be used in evaluating veil piercing cases).


37. See Chicago Dist. Council of Carpenters Pension Fund, 866 F. Supp. at 1115-16 (illustrating the factors that indicate when an alter ego problem exists). See also Bernard G. Helldorfer, Recent Developments Under The National Labor Relations Act, 41 BUS. LAW. 1122, 1122 (1986) (noting the
rationale is also known as "the alter ego doctrine" and is one test used to impose an obligation upon shareholders to pay for corporate debt. Determining the applicability of the alter ego doctrine in a case consists of a three-part analysis. First, courts analyze the extent to which a shareholder acknowledges the existence of an independent corporation, separate from the shareholder. Second, courts investigate whether a shareholder engaged in any fraudulent activity with the corporation. Finally, courts evaluate the consequences and harm caused to creditors if limited liability is preserved. Courts generally will not pierce the corporate veil unless injustice results or public welfare is jeopardized. ERISA analyzes these policy considerations in light of the role they play in pension plans.

C. ERISA Fundamentals

Determining the propriety of imposing liability on shareholders for business debt becomes more difficult when both increase in popularity of using the alter ego doctrine to impose liability on individuals).

38. See Pysher, supra note 32, at 882 n.103 (stating that the alter ego doctrine is one theory creditors can use to reach a shareholder’s assets). The alter ego doctrine applies when an individual makes corporate decisions and uses the corporation as a means of carrying out personal business. Id.
39. Id.
41. See, e.g., Stap v. Chicago Aces Tennis Team, Inc., 379 N.E.2d 1298, 1303 (Ill. App. Ct. 1978) (illustrating shareholder behavior that ignores a separate corporate existence). To fully understand the theory of alter ego, the following definition is helpful:

The concept of disregarding the corporate existence and imposing liability personally upon the real parties to a transaction is well established ... where the director or officer is the alter ego of the corporation, that is, where there is such unity of interest and ownership that the separateness of the individual and [the] corporation has ceased to exist, and the facts are such that an adherence to the fiction of separate existence of the corporation would sanction a fraud or promote injustice, such director or officer will be held liable for obligations of the corporation.

Id. at 1301-02 (citing People ex rel. Scott v. Pintozzi, 277 N.E.2d 844, 851-52 (1971)).
43. See Freeman v. Complex Computing Co., 119 F.3d 1044, 1052-53 (2d Cir. 1997) (emphasizing that the harm suffered by an individual must be caused by the shareholder to permit veil piercing).
the corporation and pension plan cannot meet financial obligations. Retirement benefit plans are governed by ERISA. ERISA strives to protect the money that both employees and employers contribute to pension plans. ERISA prevents blatant misuse and deprivation of retirement funds by company management and shareholders. To apply the provisions of ERISA as the drafters intended, the statute must be broadly interpreted to protect contributions and ensure disbursement of pension funds.

At retirement, employees expect to receive payments from the pension plan to which the employees and employer made contributions. However, an employee may not receive payment if

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46. Id. at 1-2. See STEPHEN R. BRUCE, PENSION CLAIMS RIGHTS AND OBLIGATIONS 4 (2d ed. 1993) (stating that ERISA's provisions apply to all retirement plans created by business owners, management or associations that influence and engage in a trade or profession); THOMAS J. GRIFFITH, CORPORATE COUNSEL'S GUIDE TO ERISA 1.002 (1998) (discussing in great detail the structure and general scheme of ERISA). ERISA is broken down into four titles, each containing individual provisions:

1. Title I contains important provisions concerning reporting and disclosure requirements,

2. Title II contains tax provisions that amended the Internal Revenue Code (Code) of 1954,

3. Title III contain specific government rules for implementing ERISA, [and]

4. Title IV protects the rights and benefits of pension plan participants during plan terminations. [This title] creates a government insurance program administered by the Pension Benefit Guaranty Corporation (PBGC).

Id.

47. WOODRUFF, supra note 45, at 8-2. ERISA was created and enacted to:

1. Guarantee that if a worker has been promised a benefit upon retirement - and he or she has fulfilled whatever conditions are required to obtain that benefit - he or she will in fact receive it [and]

2. [Ensure] that employees and their beneficiaries are not deprived of anticipated retirement benefits by the termination of pension plans before sufficient funds [are] accumulated in the plans.

Id.

48. See BRUCE, supra note 46, at 2 (noting that ERISA attempts to prevent employers from deliberately depriving employees of pension contributions made to a plan during employment).

49. See Smith v. CMTA-IAM Pension Trust, 746 F.2d 587, 589 (9th Cir. 1984) (discussing the protection ERISA provides to employees). See also Kross v. Western Elec. Co., 701 F.2d 1238, 1242 (7th Cir. 1983) (suggesting that ERISA's provisions are to be liberally construed and interpreted).

50. See BRUCE, supra note 46, at 249 (detailing the timing of pension distributions). Unless an employee elects to defer receipt of retirement benefits, money in the fund must be disbursed before “the 60th day after the end of the ‘plan year’ during which the later of these events occurs:”

1. The participants attain age 65, or any earlier normal retirement age specified under the plan,

2. The participant passes his or her tenth anniversary of the commencement of participation in the plan,
the plan lacks sufficient assets to distribute funds, or if the employer decides to terminate the plan. An employer can terminate a plan if careful analysis of the plan's financial statements reveals a strong indication of either current or future insolvency.

Obviously, employees become disgruntled at the prospect of not receiving retirement payments, and as a consequence, they analyze ERISA to determine what cause of action they can bring against the corporation and related parties to recover payments. ERISA must be analyzed because in the realm of pension plans, this statute discloses the rights and responsibilities of each individual involved in the pension plan. In an attempt to obtain delinquent retirement payments, employees attempt to hold

(3) The participant terminates from service with the employer.

Id.

51. See generally WALD & KENTY, supra note 6, at 319-29 (providing reasons that may prevent disbursement of funds).

52. BRUCE, supra note 46, at 591. Under ERISA, an employer may file for a distress termination. Id. In order to qualify as a “distress termination,” the plan's current financial position must make it nearly impossible to continue operating the plan. Id. at 592. The possible categories for a distress termination include situations in which a corporation:
   (1) Has filed, or has had filed against it, a petition seeking liquidation under the federal bankruptcy code or any similar state law;
   (2) Has filed, or has had filed against it, a petition seeking reorganization under the federal bankruptcy code or any similar state law, with the bankruptcy court having approved a plan termination based on determinations that unless the plan is terminated [the plan sponsor and other members of the same controlled group (a)] will be unable to pay all its debts pursuant to a plan of reorganization and [(b)] will be unable to continue in business outside the chapter 11 [sic] reorganization process; or
   (3) Demonstrates to the satisfaction of the PBGC that it is unable to pay debts when due and to continue in business unless the plan is terminated, or that it is incurring unreasonably burdensome pension costs solely as a result of a decline in the active work force covered by all plans maintained by the contributing sponsor.

Id. Terminating a pension plan exposes the employer to the risk of having to compensate the fund for any resulting deficiencies. Id.

53. See generally Peacock v. Thomas, 516 U.S. 349, 353 (1996) (discussing the possible recourses employees can take to recover delinquent pension payments and the likelihood of recovery). Employees can sue a corporation based on a breach of the terms that created the pension plan. Id. An employee cannot bring a lawsuit premised solely on veil piercing. Id. at 354. For a discussion of the Peacock v. Thomas case, see Muir & Schipani, supra note 8, and Supreme Court Bars Federal Lawsuit Based on Alter Ego Doctrine Against Shareholder of a Corporation Liable for Breaching Its ERISA Fiduciary Duties, 5 ERISA Litig. Rep. (Aspen L. & Bus.) 1, 2-6 (Apr. 1996) [hereinafter ERISA Litig. Rep.].

54. See generally GRIFFITH, supra note 46, at 1.039 (noting the legal actions employees can bring to recover pension payments).

55. See generally BRUCE, supra note 46, at 2-3 (discussing the applicability of ERISA to employment and pension law).
shareholders personally liable. However, no provision specifically exists in ERISA that permits or deals with veil piercing. ERISA does not explicitly allow the elimination of corporate limited liability for the sole purpose of collecting pension payments from a shareholder. ERISA places primary liability on employers. The word “employer” in an ERISA context does not include, nor is it intended to include shareholders, unless the shareholders assume the role of employer by participating in too many corporate activities. Currently, each court interprets and analyzes the policies surrounding veil piercing and ERISA differently when deciding delinquent pension distribution cases, which creates a lack of uniformity among pension plans.

II. THE JUDICIAL SYSTEM’S CURRENT TREATMENT OF EMPLOYEE ACTIONS TO RECOVER DELINQUENT CONTRIBUTIONS

Similar to any complex issue, courts lack consistency in the analysis and resolution of veil piercing cases arising from ERISA disputes. Section A discusses the reasons that protect shareholders from liability. Section B provides the counter-analysis and a discussion of reasons supporting corporate veil piercing.

A. Reasons Rejecting the Propriety of Veil Piercing

Shareholder liability for corporate debt is not a novel issue for the courts, since decisions regarding this concept date back to the late 1800s. In an ERISA context, courts, albeit not consistently,

56. See, e.g., Steinberg v. Buczynski, 40 F.3d 890, 892 (7th Cir. 1994) (offering an analysis of the factors creditors should consider when attempting to hold a shareholder liable for corporate debt).

57. Peacock, 516 U.S. at 354.


59. See generally Chicago Truck Drivers, Helpers & Warehouse Union (Independent) Pension Fund v. Century Motor Freight, Inc., 125 F.3d 526, 528 (7th Cir. 1997) (reiterating the requirement of employers to make contributions to the corporation’s retirement plan).


61. See, e.g., Flour City Nat’l Bank v. Wechselberg, 45 F. 547, 550 (E.D.
have refused to impose liability on shareholders based on the courts' interpretation of the statute. Subsection One examines the courts' interpretation of Congress' intent concerning the payment of ERISA obligations. Subsection Two discusses mechanisms created by the courts to guard against imposing liability on undeserving third parties.

1. Drafter's Vision Regarding ERISA Liability

Courts reluctantly hold investors liable for corporate debt because ERISA does not explicitly permit such a cause of action. In fact, documentation written by Congress directly stating that it intended to hold individuals liable for ERISA debt does not exist. Employees bypass this technicality by premising a cause of action against an individual for delinquent contributions on 29 U.S.C. § 502 of ERISA. Under section 502, employees can bring a cause of action to determine and uphold their rights and benefits arising under the pension plan. Employees manipulate that section to mean that since they have a right to collect pension payments, they also have a right to bring a cause of action to collect.

Wis. 1891) (addressing whether a creditor can obtain a judgment for past due corporate balances from a shareholder).

62. See, e.g., Glover v. S.D.R. Cartage Co., 681 F. Supp. 1293, 1296 (N.D. Ill. 1988) (finding that creditors are unlikely to succeed in a cause of action for delinquent ERISA payments against a shareholder who does not control the corporation).


64. See Canario v. Byrnes Express & Trucking Co., 644 F. Supp. 744, 750 (E.D.N.Y. 1986) (noting the absence of any documentation suggesting that shareholders should be held liable for outstanding corporate debt).

65. See 29 U.S.C. § 1132 (1999) (providing statutory information relating to various causes of actions, each having different remedies and requiring different elements, available to employees who invest in pension funds). Typically, an employee attempts to recover monetary losses under § 1132 of ERISA, which states in pertinent part that a suit can be brought:

(2) by the Secretary, or by a participant, or fiduciary for appropriate relief under section 409;
(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this title or the terms of the plan. . . .


delinquent payments from shareholders. However, as the Third Circuit Court of Appeals stated, collecting outstanding pension liability does not qualify as a determination or upholding of an employee's rights under section 502. Courts consciously strive to uphold Congress' original intent of preserving shareholder limited liability for pension debt. Thus, courts remain skeptical of causes of actions camouflaged as violations of specific ERISA provisions that, in reality, seek to hold shareholders personally liable. As a result of this skepticism, courts created restrictions on imposing liability on third parties.

2. Court Imposed Restrictions on Third Party Liability

Without evaluating the surrounding circumstances, employees cannot automatically impose liability for delinquent pension obligations on shareholders just because the individual invested in the corporation. Similarly, shareholders cannot incur liability based solely on the number of shares or percentage of a corporation they own. A shareholder must exhibit extensive control over the corporation to become responsible for pension liability. Extensive control is determined by the application of the economic reality test. The first element of this test is to determine whether a limited number of individuals own the company. The second element is to determine whether the

68. Id.
70. See Sasso v. Cervoni, 985 F.2d 49, 50 (2d Cir. 1993) (supporting the contention that shareholders must not incur liability to pay for ERISA contributions). See generally McMahon, 794 F.2d at 108 (supporting the appropriateness of a cause of action arising from the denial of an employee's rights as set forth in the pension agreement).
71. See generally Sasso, 985 F.2d at 51 (inferring the apprehension of imposing ERISA liability on shareholders).
72. See id. (suggesting that concrete evidence must be presented to impose shareholder liability for delinquent debts).
74. Id.
76. Id. at 149.
77. Id. When the elements of the extensive control test are met, the corporate veil is automatically pierced. See generally id. (addressing the consequences of being categorized as an employer because of the control the
individuals who own the company also dominate the power and dictate the exact functioning of the company. Only in the extreme cases when an individual's actions within a corporation reflect extensive control must the individual assume financial responsibility for corporate obligations. Since veil piercing is a gray area of the law, reasons justifying veil piercing must also exist.

B. Reasons Justifying Veil Piercing

The courts' general apprehension to pierce the corporate veil is quickly overcome if doing so advances the public's best interest. Subsection One addresses a test and rationale used by courts to impose liability on investors. Subsection Two discusses the liability imposed on individuals acting as fiduciaries. Subsection Three examines policy reasons for piercing the corporate veil in an ERISA context.

1. A Test Designed to Impose Liability on a Shareholder

Despite the lack of authority not to hold third parties liable for delinquent ERISA debt, a developing trend among the courts is to impose liability on these persons. The trend is to adopt the "liberal veil-piercing standard." This standard attempts to hold shareholders liable for outstanding liabilities by completely disregarding the corporate form as if limited liability did not individual exerted over the corporation and the pension plan). "[S]tock ownership, management, direction, and the operational control over the day to day functions of the corporation" are considered in determining whether an individual is actually an employer and therefore liable for unpaid corporate claims. Id.


79. See generally Westphal, supra note 75, at 145-46 (providing examples of individuals who could be held liable for pension contributions due to their positions in the corporation).

80. See Olthoff, supra note 35, at 328-29 (noting the inconsistency in holdings in veil piercing cases).

81. See generally Sea-Land Serv., Inc. v. Pepper Source, 993 F.2d 1309, 1312 (7th Cir. 1993) (stating that the corporate veil can be pierced to prevent injustice). The courts' willingness to pierce the corporate veil in an ERISA context is consistent with ERISA's purpose of also trying to advance the public's best interest. See supra Part I.C for a discussion of ERISA and its underlying policy.


The rationale for holding a shareholder liable under this test is that the shareholder exerted tremendous control on the corporation sufficient enough to qualify the person as an employer under ERISA. The underlying justification for this test is that a shareholder who has the freedom and power of running a corporation must assume the risks associated with that power.

Courts implement the above analysis to hold shareholders personally liable for pension debt. For instance, the U.S. District Court in the District of Massachusetts imposes responsibility for pension liability on individuals who make important and influential corporate decisions, especially those concerning the pension plan. When an individual steps beyond the boundary line drawn that separates shareholders who are merely investors from those who control the corporation, the individual becomes accountable for corporate debt. Regardless of whether an individual qualifies as an employer, an individual who defrauds a plan becomes liable for the damages that result from the fraudulent activity. Deception or injustice clearly justifies veil piercing.

Piercing the corporate veil occurs despite the detrimental effect on the shareholder who, as a result, becomes liable for outstanding corporate balances. Interestingly, courts more readily allow piercing the corporate veil in contract cases,
premised on an ERISA violation, than they do in tort cases.\footnote{94 Id. at 1058.}

Courts use the traditional veil piercing tests to determine whether to hold a shareholder liable for delinquent ERISA payments.\footnote{95 See Laborers' Pension Trust Fund v. Sidney Weinberger Homes, Inc., 872 F.2d 702, 704-05 (6th Cir. 1988) (discussing the typical veil piercing characteristics as they apply to causes of action involving pension plans); Lumpkin v. Enviroydne Indus., Inc., 159 B.R. 814, 820 (Bankr. N.D. Ill. 1993) (finding that even though insufficient funding of a corporation is an essential factor to consider, it alone will not justify piercing the corporate veil in an ERISA context).} The fundamental factors of these tests include: a shareholder having complete control of the corporation; the shareholder performing improper acts; and the shareholder's improper acts harming a third party.\footnote{96 See supra note 34 and accompanying text for a discussion regarding the elements comprising the traditional veil piercing tests.} Courts consider these three factors on a case-by-case basis.\footnote{97 See Douglas J. Gardner, Comment, An Innovative Approach to Piercing the Corporate Veil: An Introduction to the Individual Factor and Cumulative Effects Analysis, 25 LAND & WATER L. REV. 563, 564-65 (1990) (addressing the veil piercing tests that exist and how courts use them).}

The recent trend is for courts to interpret broadly the three factors comprising the veil piercing tests to provide employees with the outstanding pension payments to which they are entitled.\footnote{98 See generally Pension Benefit Guar. Corp. v. Ouimet Corp., 711 F.2d 1085, 1093 (1st Cir. 1983) (discussing the application of the veil piercing tests in ERISA cases and the leniency in satisfying the tests).} For instance, a First Circuit decision held other members of a brother-sister controlled group of corporations liable for the pension debt of another bankrupt member in an attempt by the court to ensure justice and fairness to employees.\footnote{99 Id.} The court reasoned that enforcing limited liability is less important than adhering to the employee protection policies encouraged by ERISA.\footnote{100 Id. See Gary Barnett, Fundamental Principles and Structuring Techniques in Domestic and Cross-Border Securitizations, 781 PRAC. L. INST. 1, 108-09 (1998) (providing general information about control groups); Muir & Schipani, supra note 8, at 1103-04 (explaining the concept of common control).} A control group consists of a group of individuals in a particular occupation that collectively exerts enough control over the business to justify imposing financial liability.\footnote{101 See Herr v. McCormick Grain - The Heiman Co., 841 F. Supp. 1500, 1516 (D. Kan. 1994).} Corporations could continually escape the duty to pay pension plan liabilities if shareholders who exert dominant control in corporate matters were not held liable; such a result directly contradicts the policy of ERISA.\footnote{102 Id.} Also, ERISA policy clearly provides that a fiduciary that breaches the duties associated with that position can be held
personally liable.\footnote{103}

2. Liability Imposed on a Fiduciary

In certain situations, an employee can hold a shareholder acting as a fiduciary\footnote{104} of the plan liable for the pension's debt.\footnote{105} Deciding whether to hold a fiduciary liable involves asking if the fiduciary sought outside advice and investigated other alternatives before making a decision claimed to promote the pension plan's purposes.\footnote{106} If the fiduciary did not properly analyze the situation, the accountability for any resulting loss or negative impact to the plan rests with the individual.\footnote{107} A fiduciary also incurs

\footnote{103. 29 U.S.C. § 1002(21)(A) (1999).}
\footnote{104. See id. (discussing a fiduciary's role in pension plans). A fiduciary is defined as follows:}
\footnote{[A] person is a fiduciary with respect to a plan to the extent:
(i) [H]e exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets,
(ii) [H]e renders investment advice for a fee or other compensation... with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or
(iii) [H]e has any discretionary authority or discretionary responsibility in the administration of such plan.}
\footnote{Id. Fiduciaries of a pension plan must abide by certain specified standards which are as follows:}
\footnote{[A] fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and –}
\footnote{(A) [F]or the exclusive purpose of:
(i) [P]roviding benefits to participants and their beneficiaries; and
(ii) [D]efraying reasonable expenses of administering the plan;
(B) [W]ith the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;}
\footnote{...}
\footnote{D) [I]n accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this subchapter.}
\footnote{105. See, e.g., Laborers' Pension Fund v. Litgen Concrete Cutting & Coring Co., 709 F. Supp. 140, 144 (N.D. Ill. 1989) (addressing the propriety of imposing the responsibility to pay for pension liabilities on an individual who acted as a fiduciary). See also Cammarn, supra note 86, at 725-26 (discussing who is a fiduciary); Muir & Schipani, supra note 8, at 1106-07 (addressing the rights employees have against a fiduciary who does not perform his duties).}
\footnote{106. See Siske et al., supra note 83, at 71 (referring to the factors used by courts to assist in their determination of whether to hold individuals liable as plan fiduciaries for pension obligations).}
\footnote{107. See Donovan v. Bierwirth, 680 F.2d 263, 273 (2d Cir. 1982) (noting that a fiduciary incurs personal liability for failing to properly look after the participants' interests in a pension plan).}
responsibility for corporate liabilities when plan funds are used to pay personal debt instead of the required ERISA distributions.\textsuperscript{108} Regardless of the circumstances, a fiduciary must act only in the best interest of employees and the pension plan to avoid personal liability.\textsuperscript{109} Ethical considerations concerning pension fund liability applies to all individuals dealing with pension plan contributions, not just to a fiduciary.\textsuperscript{110}

3. Ethical and Policy Reasons for Holding an Individual Liable for Pension Plan Debt

Courts hold a shareholder liable for accrued pension payments that result from the shareholder's fraudulent activities.\textsuperscript{111} For instance, a shareholder's deliberate scheming to conceal the number of hours employees worked in an attempt to reduce the corporation's pension liability is sufficiently fraudulent to warrant imposition of the pension deficit on the individual.\textsuperscript{112} A state's corporate law could also potentially impose liability on individuals engaging in improper acts, even if they did not contractually agree to the assumption of liability for any plan deficits.\textsuperscript{113} However, even in the latter situation, shareholders cannot incur liability when they explicitly deny such assumption in the terms of the pension plan.\textsuperscript{114}

When shareholders violate the principles underlying limited liability and ERISA, such violation offends the concept of justice and courts accordingly hold the shareholders liable.\textsuperscript{115} Individuals

\textsuperscript{108} See Lowen v. Tower Asset Mgmt., Inc., 829 F.2d 1209, 1213 (2d Cir. 1987) (discussing the imposition of pension obligations on a fiduciary who engaged in activities that ERISA prohibits).

\textsuperscript{109} ERISA FIDUCIARY LAW 19 (Susan P. Serota & Frederick A. Brodie eds., 1995). The standard of acting only in the best interest of the participants in a pension fund is also known as the "solely in interest" or "exclusive purpose" test in ERISA law. Id.

\textsuperscript{110} See Leddy v. Standard Drywall, Inc., 875 F.2d 383, 388 (2d Cir. 1989) (holding a party other than a fiduciary liable for illegal activities associated with a pension fund).

\textsuperscript{111} See id. (holding that a controlling corporate official who engages in illegal activities associated with a pension fund is responsible for the resulting harm, even if the traditional veil piercing conditions are not met).

\textsuperscript{112} Id. at 384.

\textsuperscript{113} Levit v. Ingersoll Rand Fin. Corp., 874 F.2d 1186, 1194 (7th Cir. 1989). See Romney v. Lin, 105 F.3d 806, 811 (2d Cir. 1997) (stating that New York's corporate law holds shareholders liable for employer's delinquent employee benefit contributions).

\textsuperscript{114} See Levit, 874 F.2d at 1193 (stating that the responsibilities between the parties of a pension plan are often dictated by the terms agreed to in the plan).

\textsuperscript{115} See Lumpkin v. Enviroyde Indus., 159 B.R. 814, 820 (Bankr. N.D. Ill. 1993) (presenting the plaintiff's argument that individuals cannot engage in actions involving a pension fund which place employee distributions in jeopardy).
must assume responsibility to pay for debt in these situations because ERISA strives to ensure that employees receive all earned pension payments. Courts disregard the corporate form if doing so protects employees and promotes the interests of justice. Of course, ERISA does not advocate holding shareholders liable for delinquent pension funds if a suspicion of foul play exists without providing sufficient proof to support the suspicion.

If the corporate veil cannot be pierced, employees can attempt to recover their benefits under a state's Wage Collection Statute. However, this cause of action is unlikely to succeed because the federal court typically lacks jurisdiction over the state claim. Also, unless the state's Wage Collection Statute is interpreted broadly, recovery is difficult because ERISA preempts most state laws.

If courts at a minimum use the same uniform criteria to evaluate all veil piercing cases, employees could devise a persuasive cause of action to recover delinquent pension contributions. Such treatment would be in accordance with the purposes underlying ERISA.

III. AMENDING ERISA WOULD PROMULGATE ITS PURPOSE

Congress enacted ERISA to govern the operation of pension funds. Since Congress did not include a provision in ERISA that addresses corporate veil piercing, each court is forced to interpret ERISA and conclude for itself the propriety of corporate veil piercing. Thus, decisions regarding corporate veil piercing for ERISA purposes produce varied results. ERISA was enacted to

116. *Id.* at 819.
117. See generally Lakota Girl Scout Council, Inc. v. Havey Fund-Raising Mgmt., Inc., 519 F.2d 634, 638 n.4 (8th Cir. 1975) (discussing the responsibility imposed on individuals to promote fairness and justice through their actions).
120. See, e.g., *id.* (demonstrating the difficulty in establishing pendant party jurisdiction where the federal court has dismissed all federal claims against the party).
121. *Id.*
122. WOODRUFF, *supra* note 45, at 1-2.
123. *Id.*
124. See *supra* notes 62-64 and accompanying text for a discussion regarding the avoidance of the veil piercing issue.
125. See *supra* notes 63-122 and accompanying text discussing the various holdings and conclusions concerning the propriety of piercing the corporate veil.
create one uniform standard of regulations concerning employee benefit plans throughout the nation. If courts interpret the statute differently in veil piercing situations, the underlying purpose of ERISA is defeated. Although veil piercing situations require analysis on a case-by-case basis, consistency must exist in the guidelines used by each court.

To make veil piercing holdings consistent, Congress needs to amend ERISA to establish a guideline that explicitly details the circumstances permitting veil piercing. Such an amendment would be in accordance with the spirit of ERISA. However, this amendment should not purport to hold shareholders automatically liable for delinquent ERISA contributions just because they invested in the company.

One of the criteria to be included in the proposed amendment is to permit veil piercing when a shareholder engages in fraudulent activity. Shareholder withdrawal of funds from the corporation in times of financial trouble for personal use, which prevents the company from making the required ERISA contributions, constitutes fraud and justifies veil piercing.

127. See Nash v. Trustees of Boston Univ., 946 F.2d 960, 964 n.8 (1st Cir. 1991) (stating that ERISA was established to promote uniformity in the regulation of employee benefit plans).
128. Crane v. Green & Freedman Baking Co., 134 F.3d 17, 22 (1st Cir. 1998). Veil piercing in the ERISA context is a question of fact to be decided by a jury, not a legal issue to be decided by a judge. Id.
129. See Davidson, supra note 126, at 203–05 (discussing the rationale behind ERISA).
131. See Crane, 134 F.3d at 23 (providing an example of an act that is fraudulent under ERISA).
132. Id. Withdrawing funds for personal use also indicates the shareholder's disrespect for the corporate entity, which is one element of the traditional three-part test of piercing the corporate veil. Id. at 25. Any transfer of money for personal use must be related to the company's inability to pay the pension contributions before a court can hold a shareholder liable for corporate obligations. Id. at 26. Thus, despite the general rule that shareholders are not liable for corporate debt, specific situations exist where shareholders do in fact incur liability. Hudson Serv. Corp., 871 F. Supp. at 638. An individual who "(1) knowingly participat[es] in a fiduciary's breach of ERISA trust obligations; (2) conspir[es] to divert ERISA funds for personal benefit; (3) intermingl[es] personal and corporate assets; (4) engag[es] in fraudulent conduct; or (5) where the individual is in fact the corporation or the corporation's alter ego" is held accountable for corporate liabilities. Id.
Although ERISA was enacted to protect pension contributions, an employee cannot bring an action to recover delinquent contributions if the contributions would have been illegal or if the underlying agreement is void, because the employee's action would be a form of fraud.  

In Trustees of the Building Service 32B-J Pension, Health & Annuity Funds v. Hudson Service Corp., the court adopted a two-part test and used it to determine whether shareholders are liable for ERISA contributions when fraudulent activities are suspected. This two-part test consists of determining whether the individual is a controlling figure in the corporate structure and if elements of fraud are present. To provide a clear standard of what conduct qualifies as fraud for ERISA purposes, Congress should uniformly adopt this two-part test and incorporate it in the amendment to ERISA.

Another criterion that Congress should include in the amendment is to determine whether ignoring the corporate identity and form would create an injustice. The corporate form is ignored when no distinction exists between corporate activities and the individual's personal activities. In veil piercing cases, acts that cause injustice include: (1) engaging in inappropriate employment activities; (2) violating terms of a contract; (3) engaging in activity that results in a tort; and (4) failing to satisfy the financial obligations of a business. Congress should uniformly adopt these criteria and incorporate them into ERISA. Congress should provide explicit examples of each of the criteria to prevent potential inconsistencies in courts' application of the tests. Courts indicate that the satisfaction of one of criteria alone cannot satisfy the injustice element, because at least one criteria, the fourth one, is typically found in every veil piercing case.

Allowing shareholders to escape liability by forming a fake corporation that is purposely inadequately funded to avoid making ERISA contributions is an injustice. Injustice also occurs when

134. 871 F. Supp. at 631.
135. See id. at 638 (providing an example of shareholder behavior that does not acknowledge the separate existence of a corporation).
136. See id. (disclosing a test used by the courts to determine if an individual acts as an employer).
137. See Environmental Dynamics, Inc. v. Robert Tyer & Assoc., 929 F. Supp. 1212, 1235 (N.D. Iowa 1996) (stating that shareholders are liable for delinquent corporate balances if no separation exists between their identities and that of the corporation).
138. Id. at 1236.
139. Id.
140. Id.
141. See United States v. WNH Ltd. Partnership, 995 F.2d 515, 520 (4th Cir.)
the purposes and policies of ERISA are deliberately violated.\footnote{142}{See Michigan Carpenters Council Health & Welfare Fund v. C.J. Rogers, Inc., 933 F.2d 376, 384-85 (6th Cir. 1991) (emphasizing that ERISA is designed to safeguard employees' pension contributions).}

Since courts find that these scenarios constitute injustices, Congress should collectively adopt these scenarios in an amendment to ensure uniformity and advancement of fairness when veil piercing in ERISA contexts.

ERISA holds an employer liable for delinquent contributions, but it does not expressly distinguish between an employer and a shareholder.\footnote{143}{See generally Taylor v. Carter, 948 F. Supp. 1290, 1296-99 (W.D. Tex. 1996) (discussing the different ways to interpret the word employer under ERISA).} Under certain circumstances, courts hold that an individual can be held liable as an employer, even if the individual does not expressly recognize himself as an employer.\footnote{144}{See generally id. (analyzing various holdings to conclude that shareholders can qualify as employers).} The definition of employer under ERISA is overly broad and difficult to apply in veil piercing situations.\footnote{145}{See supra notes 85-91 and accompanying text for a discussion regarding the meaning of the word employer.} Anyone who makes vital decisions affecting a pension plan is an employer under ERISA.\footnote{146}{See supra note 60 and accompanying text for a definition of the word employer.} Congress needs to redefine the term employer and address the specific circumstances under which a shareholder can incur employer liability. To prevent future confusion, Congress must also clearly define the responsibilities of other key members of a corporation and address their potential liability for pension debt.

ERISA does not specifically allow an employee to bring a cause of action to pierce the corporate veil.\footnote{147}{See supra notes 65-67 and accompanying text for a discussion of causes of actions allowed under ERISA.} Some states have enacted statutes to solve this problem.\footnote{148}{See, e.g., Blackburn v. Iversen, 925 F. Supp. 118, 120 (D. Conn. 1996) (providing an example of a statute that permits employees to bring a cause of action for delinquent pension payments).} For instance, a Connecticut statute expressly imposes personal liability on individuals when a civil cause of action is brought for delinquent pension debt.\footnote{149}{Id. at 119.} However, an employee cannot establish a cause of action based on a state statute alone because ERISA is a federal statute that expressly preempts all state laws and statutes.\footnote{150}{See generally Barkdoll v. H & W Motor Express Co., 820 F. Supp. 410, 413 (N.D. Iowa 1993) (discussing ERISA preemption of state laws).} Although the Connecticut statute would resolve the problem of collecting delinquent contributions by allowing a civil suit to

\begin{itemize}
\item \textit{142.} See Michigan Carpenters Council Health & Welfare Fund v. C.J. Rogers, Inc., 933 F.2d 376, 384-85 (6th Cir. 1991) (emphasizing that ERISA is designed to safeguard employees' pension contributions).
\item \textit{143.} See generally Taylor v. Carter, 948 F. Supp. 1290, 1296-99 (W.D. Tex. 1996) (discussing the different ways to interpret the word employer under ERISA).
\item \textit{144.} See generally id. (analyzing various holdings to conclude that shareholders can qualify as employers).
\item \textit{145.} See supra notes 85-91 and accompanying text for a discussion regarding the meaning of the word employer.
\item \textit{146.} See supra note 60 and accompanying text for a definition of the word employer.
\item \textit{147.} See supra notes 65-67 and accompanying text for a discussion of causes of actions allowed under ERISA.
\item \textit{148.} See, e.g., Blackburn v. Iversen, 925 F. Supp. 118, 120 (D. Conn. 1996) (providing an example of a statute that permits employees to bring a cause of action for delinquent pension payments).
\item \textit{149.} Id. at 119.
\item \textit{150.} See generally Barkdoll v. H & W Motor Express Co., 820 F. Supp. 410, 413 (N.D. Iowa 1993) (discussing ERISA preemption of state laws).\end{itemize}
collect the funds, it is expressly preempted by ERISA. 151 However, if a state has recognized the importance of providing an employee with the ability to pierce the corporate veil, Congress should adopt a similar practice by passing an amendment that would provide a general means to allow employees to collect delinquent contributions. 152 Amending ERISA would eliminate any confusion regarding the propriety of veil piercing in ERISA contexts and would enforce the spirit of ERISA in pension plans.

CONCLUSION

Pension plans are a vital part of America's corporate employment structure 153 and, thus, there is a need for Congress to address the veil piercing issue and incorporate its conclusions in ERISA. Only when Congress has addressed the issue can uniformity exist in pension plans. Such congressional action can produce a uniform standard to ensure that the intent of ERISA rings true in employee benefit plans. 154

152. See generally id. at 120 (supporting the contention that employees have a right to seek compensation for delinquent contributions from key corporate individuals).
153. See supra note 7 and accompanying text for a discussion of the importance of pension investing.
154. See supra notes 47 and 126 and accompanying text for a discussion of ERISA's policies.