

# Client Bulletin



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## An Interesting "Westlaw Headnote of the Day"

Westlaw is a legal publisher of, among other things, reporters that report court decisions/opinions. As part of its service, Westlaw includes "headnotes" by its editors that summarize the legal holding in the decision/opinion. It now provides to Westlaw subscribers a "Westlaw Headnote of the Day." As this is football season, the following Headnote of the Day might be of interest to some readers: "Courts of equity are without authority to review decisions of high school football referees because those decisions do not present judicial controversy. *Georgia High Sch. Ass'n v. Waddell*, 285 S.E.2d 7 (Ga. 1981)"

## Update/Revisions to Building Codes for Commercial Construction

On November 1, 2011, the state building codes for commercial construction were updated and revised. These state building codes, which apply to multi-family residential buildings with four or more units, commercial and industrial construction, are: 2011 Ohio Building Code, 2011 Ohio Mechanical Code, 2011 Ohio Plumbing Code, 2011 National Electric Code.

The effectiveness and the effective date of these 2011 state building codes can vary among charter municipal corporations that do not have ordinances in place adopting the state building codes as they may change from time to time. Residential construction, single family homes, duplexes/doubles and triplexes continue under the 2004 Residential Code of Ohio unless a charter municipality has adopted its own building code.

Further information can be obtained from the Ohio Board of Building Status's website at <http://com.ohio.gov/dico/BBS.aspx>.

## Update on "Piercing the Corporate Veil" to Hold Shareholders Liable for Corporation Debts and Obligations; Sister Corporation Liability

As a general rule, the creditors of a corporation cannot hold a shareholder liable for the debts and obligations of the corporation. Notable exceptions to this general rule are when a shareholder has guaranteed, in writing, a specific obligation of the corporation, when the corporation has not been properly formed legally (i.e., articles of incorporation not filed; articles of incorporation filed by a shareholder holder does not pay his or her or its share subscription payment) or when a court determines that there are grounds to "pierce the corporate veil" and hold the shareholders individually liable for the debts and obligations of the corporation.

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In 1993 the Ohio Supreme Court set forth a three-pronged test to be used to determine whether a corporation's veil can be pierced in a specific situation (the so-called "Belvedere test" after *Belvedere Condominium Unit Owners' Assn v. RE Roarkark Cos., Inc.* (1993), 67 Ohio St. 3d 274). The Belvedere test for when the corporate form may be disregarded and an individual shareholder held liable for wrongs committed by the corporation was:

- 1) Control over the corporation by those to be held liable was so complete that the corporation has no separate mind, will or existence of its own;
- 2) Control was exercised by the shareholders "in such a manner as to commit fraud or illegal acts against the person seeking to disregard the corporate entity"; and
- 3) Injury or unjust loss resulted to the plaintiff from such control and wrong.

The first prong of the Belvedere test, that of a defendant shareholder or shareholders control over the corporation being so complete that the corporation had no separate mind, will or existence of its own is always met in a sole shareholder corporation and can generally be met in a corporation with very few shareholders, especially when those shareholders are related parties.

In the decade and a half following the pronouncement of the three-prong Belvedere test a split occurred in Ohio's courts of appeal, with some courts holding that the second prong of the Belvedere test could be met, and the corporate veil pierced, when the control of the corporation was exercised to commit unjust or inequitable acts although those acts were not found to rise to the level of fraud or an illegal act. The Ohio Supreme Court in *Dombroski v. Wellpoint, Inc.*, 119 Ohio St. 3d 506 in 2008 in a opinion by the late Chief Justice Moyer, held that to meet the second prong of the Belvedere test, the plaintiff has to demonstrate that the defendant shareholder exercised control over the corporation in such a manner as to commit fraud, an illegal act or a similarly unlawful act. The Court specifically held that bad faith by an insurance company did not rise to the level of fraud or an illegal act. Although in *Dombroski* the Supreme Court did not set forth a definition for an illegal act or a similarly unlawful act, commentators have construed the phrase "illegal act" as a violation of a criminal statute and the phrase "similarly unlawful act" as being an act prohibited by a statute where there is a civil fine or other penalty for violating the civil statute (i.e., an EPA fine). In the spring of 2009, in *Minno v. Pro-Fab, Inc.*, 121 Ohio St. 3d 464, the Ohio Supreme Court again revisited the requirements for piercing the corporate veil holding that the veil may not be pierced in order to hold one corporation liable for the corporate misdeeds of another corporation, even though the two corporations have common individual shareholders where neither corporation has any ownership interest in the other corporation (that is, Corporation A cannot be held liable for the fraud or illegal act or similarly unlawful act of Corporation B when Corporation A is not a shareholder in Corporation B).

It should be pointed out that piercing the corporate veil and the modified three-prong Belvedere test to pierce the corporate veil does **NOT** come into play when the lawsuit is against an individual shareholder based on a contention by the plaintiff that the plaintiff was dealing with the individual defendant and not a corporate entity (the typical allegations being that plaintiff provided goods to John Smith, not to Smith, Inc. of which John Smith was the sole or controlling shareholder).

## Notice

This bulletin provides general information and is not legal advice. Please contact us if you need legal advice.

If you have friends or associates who you think would enjoy receiving a copy of this Client Bulletin, please feel free to forward it on. Thank you.

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