Weber v. U.S. Sterling Securities, Inc.: Contracting the Liability Shield for Members of Delaware Limited Liability Companies

Marios J. Monopolis
MARIOS J. MONOPOLIS*

*J.D. Candidate, University of Maryland School of Law, 2009; M.A., Liberal Arts, Johns Hopkins University, 2006; B.A., Economics, Johns Hopkins University, 2002.

Weber v. U.S. Sterling Securities, Inc.: Contracting the Liability Shield for Members of Delaware Limited Liability Companies

In Weber v. U.S. Sterling Securities, Inc., the Supreme Court of Connecticut considered the limitations of liability for members of a Delaware limited liability company ("LLC") who committed a tortious act in their official capacity. The court held that members of a Delaware LLC are not statutorily shielded by Delaware law from personal liability when they commit a tort in their official capacities and can therefore be held liable for their tortious conduct. In so holding, the court maintained judicial coherence and uniformity with other jurisdictions' decisions regarding the personal liability of individual LLC members. This holding flowed both from proper interpretation and application of Delaware law and recognition of Delaware's steady judicial contraction of the LLC liability shield. The court's decision is further consistent with other jurisdictions' interpretations of similarly worded statutes and with basic principles of agency and corporation law. The implicit refusal to attach personal liability under the common law doctrine of piercing the corporate veil was proper; the court still reached the proper result without exposing its decision to possible reversal and while remaining true to the statutory language.

I. THE CASE

In 2004, Aharon Weber filed a class-action lawsuit against U.S. Sterling Securities, Inc., U.S. Sterling Capital Corporation, Michelle Orr, Shawn Orr, and Retail Relief, LLC ("Defendants") in the Superior Court of Connecticut. Weber alleged that, in
October 2002, the Defendants sent him and other class members an unsolicited advertisement via fax in violation of the Telephone Consumer Protection Act ("TCPA"). The Defendants moved to dismiss for lack of personal jurisdiction, arguing that they did not have sufficient contacts within Connecticut. The court ordered an evidentiary hearing to determine the disputed factual issues concerning jurisdiction and transferred the case to the Superior Court of Connecticut in the Judicial District of Stamford/Norwalk. The Stamford/Norwalk court granted the Defendants' motion to dismiss as to U.S. Sterling Securities, Inc. and U.S. Sterling Capital Corporation, finding that these New York corporations had no contact with Connecticut on which to base personal jurisdiction. The Defendants' motion for summary judgment was also granted as to Shawn Orr, Michelle Orr, and Retail Relief, LLC. Without providing its own analysis or reasoning for granting summary judgment, the court instead relied on the Defendants' arguments in their motion for summary judgment and accepted them entirely. The court accepted the Defendants' argument that Retail Relief's status as a valid Delaware LLC in good standing provided complete protection against imposing personal liability on its individual members under the applicable Delaware statutes. Weber thereafter appealed the district court's decision to Connecticut's Appellate Court, arguing that the trial court improperly (1) interpreted and applied Delaware's limited liability statute to shield the LLC's individual members from personal liability; (2) determined that New York law was applicable to the case; and (3) precluded Weber's

11. Id. at *2.
13. Id. The fax was allegedly sent between two New York addresses. Id.
14. Weber v. U.S. Sterling Sec., Inc., 924 A.2d 816, 820–21 (Conn. 2007). In effect, the trial court held that (1) under title 6, section 18-303(a) of the Delaware Code, individual members of a LLC cannot be held personally liable for their tortious conduct when acting on behalf of the corporation; (2) New York state substantive law applied to Weber's class action request and that request was precluded by section 901(b) of the New York Civil Practice Law and Rules; and (3) Weber's individual claim was barred by section 396-aa of the New York General Business Law. Id. See Del. Code Ann. tit. 6, § 18-303(a) (2005); N.Y. C.P.L.R. § 901(b) (1975); N.Y. Gen. Bus. Law § 396-aa (McKinney Supp. 2008).
15. Weber, 924 A.2d at 821 n.3. The court agreed with the Defendants' assertions that New York law applied and, as a result, precluded class action status for Weber's complaint. Motion for Summary Judgment at 2, Weber v. U.S. Sterling Sec., Inc., No. X05-CV-03-0199155-S, 2005 WL 6075472 (Conn. Super. Ct. May 5, 2005). The Defendants also argued that Weber's complaint failed to plead a cause of action under New York General Business Law section 396-aa because the alleged unsolicited fax advertisement was not greater than five pages in length and was not received during the statutorily prohibited time frame of 6:00 a.m. to 9:00 p.m. Id. at 3. Because the TCPA specifically states that the Act does not preempt state law, and because Weber's allegations failed to satisfy section 396-aa, the fax advertisement was not in violation of the TCPA. Id.
16. In their motion for summary judgment, the Defendants also argued that (1) while the TCPA provides a private right of action, it does not preempt state law, and (2) the plaintiff failed to properly serve the LLC. Motion for Summary Judgment, supra note 15, at 1–4.
personal claim under the TCPA.\textsuperscript{17} Weber’s appeal was transferred to the Supreme Court of Connecticut.\textsuperscript{18}

### II. LEGAL BACKGROUND

When a LLC incorporated in another state is sued in Connecticut, Connecticut courts must apply the substantive laws of the LLC’s state of incorporation\textsuperscript{19} and use Connecticut law on statutory interpretation to discern the meaning and effect of the other state’s substantive laws.\textsuperscript{20} Claims involving the TCPA implicate principles of tort law.\textsuperscript{21} Finally, where the entity in question is a LLC, the court must decide whether the common law doctrine of piercing the corporate veil is implicated, and if so, whether the veil can be pierced in order to hold LLC members personally liable.\textsuperscript{22}

A. Connecticut Courts Look to the LLC’s State of Incorporation for Application of the Relevant Substantive Law

Connecticut law provides that the laws of the state in which a foreign LLC is incorporated govern the LLC and determine the nature and extent of the liability that can be attached to LLC members.\textsuperscript{23} Thus, where the LLC’s state of incorporation is Delaware, the court considers the principles enumerated by Delaware courts governing the legal responsibilities and liability limits of those LLCs.\textsuperscript{24} In Delaware, limited liability companies are incorporated under the Delaware Limited Liability Company Act ("DLLCA").\textsuperscript{25} "Under Delaware law, a limited liability company formed under the [DLLCA] is treated for liability purposes like a corporation."\textsuperscript{26} Delaware courts have long recognized that the individual officers of a corporation

\textsuperscript{17} Weber, 924 A.2d at 822, 825, 828–29.

\textsuperscript{18} Id. at 821 n.4. In Connecticut, section 51-199(c) of the General Statutes and section 65-1 of the Rules of Appellate Procedure allow the Supreme Court to transfer a cause of action from the Appellate Court to itself, without requiring a particular reason for doing so. CONN. GEN. STAT. ANN. § 51-199(c) (West 2005); CONN. R. APP. P. 65-1 (2008).

\textsuperscript{19} See infra Part II.A.

\textsuperscript{20} See infra Part II.B.

\textsuperscript{21} See infra Part II.C.

\textsuperscript{22} See infra Part II.D.

\textsuperscript{23} CONN. GEN. STAT. ANN. § 34-222 (West 2005).

\textsuperscript{24} See infra notes 25–47 and accompanying text.


can be held personally liable for the torts they commit, even if those torts are committed in the officers' official, rather than mere individual, capacities.  

The contraction of the LLC liability shield for actual participation in tortious conduct is most clearly analyzed and explained in *Donsco, Inc. v. Casper Corp.* In *Donsco*, the defendant corporation created and marketed reproductions of the plaintiff's mechanical penny banks in alleged violation of unfair competition and false advertising laws. The plaintiff sued both the corporation and its president. Although the district court held the infringing corporation liable, it declined to hold the corporate officer liable as the corporation's agent. The U.S. Court of Appeals for the Third Circuit reversed the district court's decision with respect to the officer's personal liability, citing case law from several other circuits. The Third Circuit held that corporate officers cannot use a corporation as a shield to escape liability when they are "actual participant[s] in the tort."  

The U.S. District Court for the District of Delaware has since expanded the liability holding in *Donsco* to claims beyond unfair competition and false advertising. In *Brandywine Mushroom Co. v. Hockessin Mushroom Products, Inc.*, the court applied *Donsco*'s holding to trademark infringement and deceptive trade practices. The defendant corporation enticed one of the plaintiff's employees to divert purchase orders from the plaintiff to the defendant by claiming that the defendant was merely a subdivision of the plaintiff's enterprise. The defendant corporation also violated its contract with the plaintiff when it failed to provide the necessary amount of mushrooms the plaintiff required to fulfill its orders. The plaintiff sued the defendant corporation and the corporate officer responsible for the enticement, 


28. 587 F.2d 602. This is not the first Delaware case to address these issues, but it is one of the earliest cases that effectively synthesizes and summarizes the relevant principles of corporate and agency law in its reasoning and holding.  

29. *Id.* at 604–05.  

30. *Id.* at 603.  


32. *Donsco*, 587 F.2d at 608.  


34. *Donsco*, 587 F.2d at 606.  


36. *Id.* at 1311–13.  

37. *Id.* at 1309.  

38. *Id.*
as well as the employee who had subsequently left to work for the defendant corporation. 39 Citing the Third Circuit’s decision in Donasco, the district court denied the corporate officer’s motion for summary judgment, finding enough evidence to support a jury’s determination of personal liability. 40

Delaware courts continued the development of Donasco’s holding in T.V. Spano Building Corp. v. Wilson 41 by refusing to distinguish between tortious conduct committed in an individual capacity and tortious conduct committed in an official capacity. 42 In T.V. Spano, the plaintiff corporation improperly disposed of a significant amount of waste in several pits while developing a residential neighborhood. 43 After the discovery of a methane gas leak in the development, the Department of Natural Resources and Environmental Control ("DNREC") ordered the plaintiff to initiate and pay for mitigation and clean-up measures to remove the hazard. 44 The Environmental Appeals Board sustained the DNREC order with respect to the corporation, but reversed the order’s finding of liability for the corporation’s president. 45 The Superior Court of Delaware overruled the Board’s reversal, holding that corporate officers can be liable for tortious conduct “even though they were acting officially for the corporation in committing the tort.” 46 Subsequent Delaware decisions after T.V. Spano have applied similar reasoning, holding that corporate officers personally liable for tortious conduct even when that conduct is committed in the officers’ official capacities for the corporation. 47

B. Connecticut Applies its Procedural Law to Interpret the Substantive Laws of an Out-of-State LLC’s State of Incorporation

Once the court has identified the applicable substantive laws, it applies Connecticut procedural law to discern the meaning and effect of the substantive law. 48 The court, guided by statutory provision, 49 must construe the substantive statute in such a way that gives “effect to the apparent intent of the legislature.” 50 If the mean-

39. Id.
40. Id. at 1311.
42. Id. at 530.
43. Id. at 525.
44. Id. at 525–26.
45. Id. at 526.
46. Id. at 530 (emphasis added) (citing 3A WILLIAM MEADE FLETCHER ET AL., FLETCHER CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS § 1135 (perm. ed., rev. vol. 2002)).
49. CONN. GEN. STAT. ANN. § 1-2c (West 2007).
ing of any word in the statute is unclear or subject to multiple plausible interpretations, and no statutory definition is provided by the legislature, the court must consult a dictionary to deduce the "commonly approved usage" of the word.\textsuperscript{51}

The court's reliance on Connecticut procedural law in applying the substantive law of another state is well settled. In \textit{Burton v. Burton},\textsuperscript{52} the plaintiff sued for an increase in monthly child support payments from her defendant ex-husband and sought to modify the original marital dissolution decree issued in New York.\textsuperscript{53} The court, noting that Connecticut law governs procedural issues,\textsuperscript{54} adhered to United States Supreme Court precedent holding that the law of the forum controls all matters affecting the judicial remedy.\textsuperscript{55}

After resolving any conflict of law issues, Connecticut courts then seek to interpret and apply the relevant substantive or procedural law.\textsuperscript{56} In \textit{Kinsey v. Pacific Employers Insurance Co.},\textsuperscript{57} the defendant insurance company appealed a trial court judgment affirming an arbitrator's decision in favor of the insured's employee.\textsuperscript{58} After determining that the case required statutory construction analysis, the court stated its primary objective as discovering the meaning of the statute within the framework of the legislature's intent.\textsuperscript{59} The court also noted that, where the statutory text was ambiguous or its meaning not plain, it would consider evidence outside the text to reach a definition.\textsuperscript{60}

Building on the \textit{Kinsey} court's analytical framework, the Supreme Court of Connecticut further clarified what other evidence, beyond a statute's plain text, a court could consider to ascertain a statute's plain meaning.\textsuperscript{61} In \textit{Stone-Krete Construction, Inc. v. Eder},\textsuperscript{62} the defendant appealed the trial court's denial of her motion to discharge the plaintiff's mechanic's lien.\textsuperscript{63} The defendant based her appeal on the plaintiff's alleged violation of section 49-34 of the General Statutes, arguing that the plaintiff had failed to meet the requirements outlined in subsection (1)(C).\textsuperscript{64} Addressing the statutory meaning issue, the court first cited \textit{Kinsey} to reaffirm its

51. Stone-Krete Constr., Inc. v. Eder, 911 A.2d 300, 304 (Conn. 2006); see also Chatterjee v. Comm'r of Revenue Servs., 894 A.2d 919, 924 (Conn. 2006).
52. 454 A.2d 1282.
53. \textit{Id.} at 1283–84.
57. 891 A.2d 959.
58. \textit{Id.} at 960.
59. \textit{Id.} at 963.
60. \textit{Id.}; see also Cogan v. Chase Manhattan Auto Fin. Corp., 882 A.2d 597, 601--02 (Conn. 2005).
62. 911 A.2d 300.
63. \textit{Id.} at 302.
objective as ascertaining the meaning of the statute in question. Then, clarifying Kinsey, the court noted that the proper order of analysis first required consideration of any provided statutory definition, absent which, the court should consider the text's "commonly approved usage" as ascertained from a dictionary.

C. Claims Brought Under the Telephone Consumer Protection Act Sound in Tort

In 1991, Congress passed the Telephone Consumer Protection Act ("TCPA"). The TCPA proscribes the sending of an unsolicited advertisement to a fax machine by any person in the United States. Under the TCPA, a private right of action exists, "if otherwise permitted by the laws or rules of court of a State, and a claimant may sue for an injunction;" the recovery of any actual monetary damages (or $500 for each violation if that amount is greater than the actual monetary damages); or both. A willful or knowing violation of the TCPA can result in treble damages at the court's discretion.

While Connecticut courts have not previously decided cases brought under the TCPA, courts in other jurisdictions have addressed such claims. In US Fax Law Center, Inc. v. IHire, Inc., the plaintiff alleged that the defendant had sent over 100 unsolicited fax advertisements to a group of commercial entities, which then assigned their rights to the receipt of those advertisements to the plaintiff. The U.S. District Court for the District of Colorado held that claims under the TCPA sound in tort because they implicate invasion of privacy issues.

Faced with a similar set of facts, the U.S. District Court for the Central District of California also determined that TCPA claims are based in tort. In J2 Global Communications, Inc. v. Vision Lab Telecommunications, Inc., the plaintiff alleged

66. Id. at 304.
67. Id.
70. Id. § 227(b)(3).
71. Id. § 227(b)(3)(A).
72. Id. § 227(b)(3)(B).
73. Id. § 227(b)(3)(C).
74. Id. § 227(b)(3).
75. The U.S. Court of Appeals for the Second Circuit has considered cases involving the TCPA on only two prior occasions. See Gottlieb v. Carnival Corp., 436 F.3d 335, 337, 343 (2d Cir. 2006) (distinguishing Foxhall and holding that federal courts have concurrent jurisdiction with state courts over TCPA claims where jurisdiction is based on diversity, rather than federal question); Foxhall Realty Law Offices v. Telecomms. Premium Servs., 156 F.3d 432, 434 (2d Cir. 1998) (holding that federal courts have no jurisdiction over TCPA claims because the TCPA gives state courts exclusive jurisdiction over private causes of action).
77. Id. at 1250–51.
78. Id. at 1252.
80. 2006 U.S. Dist. LEXIS 66865.
that the defendant sent unsolicited fax communications to the plaintiff and the plaintiff's customers. The district court held that the customers' TCPA claims sounded in tort because they implicated both property and privacy concerns.

D. The Corporate Veil Liability Shield Can Be Pierced in Certain Circumstances

The "corporate veil" is a legal principle that effectively places a shield around a parent corporation to protect it against claims of liability for the misconduct or wrongful action of a subsidiary. Alternatively, the corporate veil is used to shield individual members and shareholders of a corporation from being held liable for the corporation's wrongful acts. Generally, the corporate veil's shield against liability will stand against claims brought by third parties seeking to hold the parent corporation or shareholders liable. In some situations courts will "pierce" this corporate veil to impose liability on those parties who would otherwise be protected in order to rectify fraud and achieve equity.

Determining what circumstances call for piercing the corporate veil varies from one jurisdiction to another. Connecticut courts will pierce the corporate veil where a sufficient factual basis exists and equity requires them to do so. In Con-

81. Id. at *4–5.
82. Id. at *5–7.
84. See HOK Sport, Inc. v. FC Des Moines, L.C., 495 F.3d 927, 935 (8th Cir. 2007); John E. Moyle, The Law of Business Organizations 192 (4th ed. 2004).
86. See supra note 85.
87. There is no single comprehensive or exhaustive list of factors under which all courts will pierce the corporate veil. Compare HOK Sport, 495 F.3d at 936 (applying Iowa law and piercing where the corporate entity is effectively an intermediary through which fraud can be perpetrated and serves merely as a shell without a legitimate business purpose) and Servo Kinetics, 475 F.3d at 798 (applying Michigan law and piercing where the corporate entity is simply an instrumentality through which the parent corporation acts) with Trust v. Kummerfeld, 153 Fed. App'x 761, 763 (2d Cir. 2005) (applying New York law and piercing where the corporate entity is completely dominated by the owners in order to commit fraud). For a comprehensive analysis of each state's methodology for piercing the corporate veil, see Stephen B. Presser, Piercing the Corporate Veil §§ 2:1 to 2:55 (2004). The analysis for Connecticut and Delaware can be found in §§ 2:7 and 2:8, respectively. There are, however, factors which are common to most jurisdictions: complete control of the corporate entity such that it has no independent existence, use of the corporate entity to commit fraud or inequity, and injury resulting from such use of the corporate entity. See, e.g., Corrigan v. U.S. Steel Corp., 478 F.3d 718, 724 (6th Cir. 2007) (applying Ohio law); Hambelton Bros. Lumber Co. v. Balkin Enters., 397 F.3d 1217, 1228 (9th Cir. 2005) (applying Oregon law); Int'l Fin. Servs. Corp. v. Chromas Techs. Canada, Inc., 356 F.3d 731, 736 (7th Cir. 2004) (applying Illinois law); Plastipak Packaging, Inc. v. DePasquale, 75 Fed. App'x 86, 88 (3rd Cir. 2003) (applying Pennsylvania law); Gallinger v. North Star Hosp. Mut. Assurance, Ltd., 64 F.3d 422, 427–28 (8th Cir. 1993) (applying Minnesota law). Generally, the broad factors can be whittled down to "fraud, illegality, contravention of contract, public wrong, and inequity." 1 William Meade Fletcher et al., Fletcher Cyclopedia of the Law of Private Corporations § 41 (perm. ed., rev. vol. 2002).
necticut, piercing the veil can occur under either of two rules: instrumentality or identity.\textsuperscript{89} To pierce using the instrumentality rule, the plaintiff must prove three elements: (1) complete control over the corporate entity such that it has “no separate mind, will or existence of its own;” (2) commission of a fraud or wrong through the control; and (3) causation between the control and the alleged injury.\textsuperscript{90} The identity rule, on the other hand, requires a showing of near-total unity in interest and ownership, such that the corporate entity has no effective independence, and proof that maintaining the separation would “serve only to defeat justice and equity by permitting the economic entity to escape liability arising out of an operation conducted by one corporation for the benefit of the whole enterprise.”\textsuperscript{91}

In \textit{United Electrical Contractors, Inc. v. Progress Builders, Inc.},\textsuperscript{92} the court explained that, under Connecticut law, the corporate veil could only be pierced in exceptional circumstances where the corporate entity was merely used to disguise fraud or injustice committed by parties behind the entity.\textsuperscript{93} There, the plaintiff performed electrical work on a piece of property owned by the wife of the defendant’s president, but was not paid.\textsuperscript{94} The plaintiff then filed suit against the defendant, its president, the president’s wife, and a second corporate entity which had originally owned the property but transferred it to the president’s wife while the plaintiff was performing the electrical work.\textsuperscript{95} The trial court awarded the plaintiff compensatory and punitive damages as against the two corporate defendants, but not against the corporation’s president and his wife.\textsuperscript{96} Reversing the trial court and holding the president and his wife liable, the court explained that, when necessary to promote justice, the corporate veil may be pierced under either the instrumentality or identity tests.\textsuperscript{97} The court found sufficient evidence of the president’s complete control over the two corporate defendants and use of the corporate entities to defraud the plaintiff to satisfy the elements of the instrumentality test.\textsuperscript{98}

Similarly, in \textit{Falcone v. Night Watchman, Inc.},\textsuperscript{99} the court explained that corporate debts are generally not the liability of the corporation’s stockholders except where “the corporate entity has been so controlled and dominated that justice re-

\textsuperscript{89} \textit{United Elec.}, 603 A.2d at 1194; see also Kregos v. Latest Line, 929 F. Supp. 600, 603 (D. Conn. 1996).
\textsuperscript{90} \textit{United Elec.}, 603 A.2d at 1194 (quoting Saphir v. Neustadt, 413 A.2d 843, 853 (Conn. 1979)); Falcone v. Night Watchman, Inc., 526 A.2d 550, 552 n.2 (Conn. App. Ct. 1987) (internal quotation marks omitted). This rule only applies to cases where there is no express agency relationship. \textit{United Elec.}, 603 A.2d at 1194.
\textsuperscript{91} \textit{United Elec.}, 603 A.2d at 1194 (quoting \textit{Falcone}, 526 A.2d at 552 (internal quotation marks omitted)).
\textsuperscript{92} 603 A.2d 1190.
\textsuperscript{93} \textit{Id.} at 1194.
\textsuperscript{94} \textit{Id.} at 1192.
\textsuperscript{95} \textit{Id.}
\textsuperscript{96} \textit{Id.}
\textsuperscript{97} \textit{Id.} at 1194.
\textsuperscript{98} \textit{Id.} at 1195.
quires liability to be imposed on the real actor." In *Falcone*, a chef in a restaurant owned by the defendant corporation contracted with the plaintiff wholesale produce supplier for the provision of fruits and produce. When payment for the fruits and produce was not made, the supplier contacted the corporation's sole stockholder, who orally promised to pay for the produce. The restaurant, however, went out of business and the stockholder refused to pay the supplier, insisting that the debt was the sole responsibility of the corporation. The trial court pierced the corporate veil under the identity rule, finding that the defendant corporation lacked its own independent identity and was merely the alter ego of the stockholder. Finding sufficient evidence to support the trial court's decision, the appellate court affirmed and noted that the facts indicated "such a unity of interest and ownership" between the defendant corporation and its sole stockholder that the corporation "had in effect ceased or never existed."

III. COURT'S REASONING

In *Weber v. U.S. Sterling Securities, Inc.*, the Supreme Court of Connecticut reversed the judgment of the Superior Court and held that (1) title 6, section 18-303(a) of the Delaware Code does not provide unlimited liability protection to the individual members of a LLC, and (2) claims under the TCPA sound in tort. A unanimous court, in an opinion authored by Judge Vertefeuille, refused to interpret Delaware law as providing a complete shield against legal responsibility to LLC members who perpetuate tortious conduct.

After describing the parties and reviewing the procedural history of the action, the court explained the legislative background and purpose behind the TCPA, since the lawsuit centered on Weber's claim under the Act. Noting Congress's concern with consumers' privacy interests vis-à-vis unsolicited telemarketing and advertising, the court focused on the relevant sections of the Act implicated by Weber's claim. Without Connecticut precedent to rely on, the court looked to the holdings of two extra-jurisdictional courts (in California and Colorado) for the proposition that claims brought under the TCPA are tortious in nature.

100. *Id.* at 552 (quoting Saphir v. Neustadt, 413 A.2d 843, 853 (1979)).
101. *Id.* at 551-52.
102. *Id.* at 552.
103. *Id.*
104. *Id.* at 553.
105. *Id.* at 554.
106. 924 A.2d 816 (Conn. 2007).
107. *Id.* at 825.
108. *Id.*
109. *Id.* at 821.
110. *Id.*
111. *Id.* See supra notes 75-82 and accompanying text.
The court first established the judicial backdrop for its holding and reasoning by reviewing general principles of limited liability companies. The court then analyzed which substantive and procedural laws to use in addressing the primary issue of individual LLC member liability. Guided by Connecticut statute, the court determined that, because the defendant LLC was incorporated in Delaware, the relevant substantive LLC law of Delaware must be applied and that law was found in title 6, section 18-303(a) of the Delaware Code. Drawing from precedent and Connecticut statute, the court determined that procedural issues, such as statutory interpretation, must be resolved under Connecticut law. Judge Vertefeuille then explained that, when faced with issues of statutory construction and interpretation, Connecticut courts have a single objective: "to ascertain and give effect to the apparent intent of the legislature." Where the intent can be determined from a "plain and unambiguous" reading of the statute, the court's job is done; extratextual evidence is only considered where the reading is ambiguous.

With this analytical framework in mind, the court then turned to the text of section 18-303(a) and, after determining that resolution of the liability issue rested on the proper meaning of the word "solely," looked for a definition. Finding none in the statutory text itself, the court—guided again by Connecticut procedural law—turned to Webster's dictionary. With definition in hand, the court concluded that section 18-303(a) limited the liability protection afforded to LLC members by virtue of their membership, and precluded them from being held liable based only on their status as members of the LLC. As a result, the court determined that the Delaware statute did not bar personal liability for tortious conduct if the claim of liability was not based only on membership status. Within this analysis and discussion, the court briefly returned to the TCPA and, noting its previous mention of the California and Colorado decisions, agreed that claims brought under the Act sound in tort. Thus, the court held that the trial court erred in granting summary judgment to the defendants on the plaintiff's tort claim.

112. Weber, 924 A.2d at 822.
113. Id. at 822–24.
114. Id. at 823.
115. Id. at 823 n.5 (citing Burton v. Burton, 454 A.2d 1282, 1287 n.8 (Conn. 1983)).
116. Id.
117. Id.
118. Id. at 823–24.
119. The court noted that, when the statutory text fails to provide definitions for terms, Connecticut courts, pursuant to section 1-1(a) of the General Statutes, must apply the "commonly approved usage" of the terms as determined by dictionary definition. Id. at 824; see also Conn. Gen. Stat. Ann. § 1-1(a) (West 2007).
120. Weber, 924 A.2d at 824. According to the court, Webster's defines solely as "to the exclusion of alternate or competing things." Id. (quoting Webster's Third New International Dictionary 2168 (2002)).
121. Id. at 824.
122. Id.
123. Id. at 825.
124. Id.
IV. ANALYSIS

In Weber v. U.S. Sterling Securities, the court held that members of a limited liability company could be individually liable for their personal tortious conduct, even if that conduct was performed in furtherance of the LLC's business. The court's holding logically resulted from its proper interpretation and application of Delaware corporate law, coupled with recognition of the liability shield's contraction by Delaware courts. The court properly opted for an interpretation that maintained consistency with holdings in other jurisdictions, and with basic principles of agency and corporation law. This consistency, coupled with the court's implicit refusal to apply the common law doctrine of piercing the corporate veil, was appropriate to the maintenance of judicial cohesion and uniformity. Criticisms of the reasoning used by the Weber court are not supported by the case law and ignore basic principles of statutory construction.

A. The Court's Analysis is Properly Framed

The court's analytical framework was properly constructed on its identification of the applicable Delaware law and its interpretation of that law subject to Connecticut law. Connecticut law clearly directed the court to locate and interpret the relevant Delaware law governing the operation and management of limited liability companies. Connecticut law then clearly directed the court to apply specific procedural standards to the statutory interpretation of Delaware's statute. Under the facts presented, the court could not have constructed any other plausible analytical framework within which to analyze the case; doing so would have violated clear and unchallenged Connecticut law. More to the point, courts must adhere to the applicable procedural rules when considering and deciding a case; failure to do so almost certainly invites reversal by an appellate court. Nothing in the court's analysis or reasoning indicates a departure from the well-established rules governing the applicability of relevant statutory provisions and the procedural framework within which those statutes must be considered. The court's analytical framework, therefore, is the only rational structure within which this case could have been adjudicated.

125. 924 A.2d 816.
126. Id. at 824-25.
127. See infra Part IV.A.
128. See infra Part IV.B.
129. See infra Part IV.C.
130. See infra Part IV.D.
131. See infra notes 132-35 and accompanying text.
132. See supra Part II.A.
133. See supra Part II.B.
134. See, e.g., In re Smythe, 592 N.W.2d 628, 633 (Wis. 1999). But see State v. Headman, 802 A.2d 842, 842-44 (Conn. 2002).
Marios J. Monopolis

The court's analytical framework is also consistent with that applied by other courts.136 Most relevant perhaps is that of Delaware, since the underlying statute came from that state. Delaware courts must first look to the plain words of the statute to ascertain its meaning; where there is ambiguity, the courts must use the applicable methods of statutory interpretation to discern the meaning.137 A very similar analytical methodology is used in other jurisdictions as well, including North Carolina,138 Michigan,139 and Wyoming,140 among others.141

B. The Court's Analysis Is Consistent With Other Courts' Interpretations of Similar Statutes and With Agency and Corporation Law Principles

Although no Delaware court had previously addressed the precise issue before the Weber court, prior Delaware case law concerning both corporations and LLCs clearly supports the Weber court's holding.142 Indeed, at least one Delaware court has arrived at the same interpretation of section 18-303(a) as the Weber court did—albeit under a different set of facts—that the word "solely" does not shield LLC members from personal liability when that liability is imposed for reasons

136. See infra notes 137–41 and accompanying text.


138. See Polaroid Corp. v. Offerman, 507 S.E.2d 284, 290 (N.C. 1998) (the underlying purpose of statutory construction is to accomplish the legislature's intent; using words' plain meaning is the starting point); Lafayette Transp. Serv., Inc. v. County of Robeson, 196 S.E.2d 770, 774 (N.C. 1973) (courts will presume that statutory words are defined according to ordinary speech).

139. See Koontz v. Ameritech Servs., 645 N.W.2d 34, 39 (Mich. 2002) (courts will not interpret statutory text that is unambiguous); Popma v. Auto Club Ins. Ass'n, 521 N.W.2d 831, 836 (Mich. 1994) (courts use dictionaries to determine the ordinary meaning of text that lacks a statutory definition).

140. See Kunkle v. State ex rel. Wyo. Workers' Safety & Comp. Div., 109 P.3d 887, 890 (Wyo. 2005) (courts must determine whether statutory text is clear or ambiguous and, if unambiguous, may not substitute their own interpretation for the legislature's intent); Cooper v. Town of Pinedale, 1 P.3d 1197, 1203 (Wyo. 2000) (courts must look to extra-textual sources when legislative intent is unclear and statutory definitions are lacking).


142. See supra notes 28–47 and accompanying text.
other than LLC membership. Weber's interpretation also has wide-reaching support among other jurisdictions interpreting statutes similar to Delaware's.

A California court has held that a local statute containing nearly identical language to section 18-303(a) does not shield LLC members from liability arising out of their participation in tortious acts, even when those acts are performed in their membership role. Likewise, the Supreme Court of Iowa has been willing to impose liability on LLC members for tortious conduct committed in furtherance of the LLC's business under a similar statute. The Iowa court provided a better framework for future cases revolving around this issue by summarizing the applica-

---

143. See Pepsi-Cola Bottling Co. v. Handy, No. 1973-S, 2000 WL 364199, at *3-4 (Del. Ch. Mar. 15, 2000). In Handy, the allegedly tortious acts were committed prior to the formation of the LLC, leading the chancery court to conclude that the defendants were thus not being sued "solely" for their membership in the LLC. Id. at *5. Although the facts of Handy differ from those in Weber, the Handy court's interpretation of section 18-303(a) did not rest on the timing of the tortious conduct. Rather, the chancery court simply concluded that the use of the word "solely" did not preclude other situations, outside of LLC membership, in which liability could be imposed. Id. at *3. The chancery court determined that, based on the timing of the allegedly tortious conduct, the defendants could not possibly have been sued "solely" as a result of their membership in the LLC. Id. at *5.


146. CAL. CORP. CODE § 17158(a) (West 2006). The statute reads:

No person who is a manager or officer or both a manager and officer of a limited liability company shall be personally liable under any judgment of a court, or in any other manner, for any debt, obligation, or liability of the limited liability company, whether that liability or obligation arises in contract, tort, or otherwise, solely by reason of being a manager or officer or both a manager and officer of the limited liability company.

Id.

147. Pac. Landmark, 29 Cal. Rptr. 3d at 199.

148. Estate of Countryman v. Farmers Coop. Ass'n, 679 N.W.2d 598, 603-04 (Iowa 2004). The Iowa statute reads:

1. Except as otherwise provided in this chapter or by written agreement of a member, a member or manager of a limited liability company is not personally liable solely by reason of being a member or manager of the limited liability company under any judgment, or in any other manner, for any debt, obligation, or liability of the limited liability company, whether that liability or obligation arises in contract, tort, or otherwise.

2. A member of a limited liability company is personally liable under a judgment or for any debt, obligation, or liability of the limited liability company, whether that liability or obligation arises in contract, tort, or otherwise, under the same or similar circumstances and to the same extent as a shareholder of a corporation may be personally liable for any debt, obligation, or liability of the corporation, except that the failure to hold meetings of members or managers or the failure to observe formalities pertaining to the calling or conduct of meetings shall not be considered a factor tending to establish that the members have personal liability for any debt, obligation, or liability of the limited liability company.

IOWA CODE ANN. § 490A.603 (West 1999).
oble statute and explicitly noting that personal participation in tortious conduct creates member liability as a matter of law.\textsuperscript{149}

While the Weber court’s opinion does not specifically address agency principles and quickly glosses over basic concepts of corporation law, its decision is firmly rooted in long-standing theories of both. Under agency law, agents who commit a tort are not shielded from liability simply because they were acting under the authority of a principal.\textsuperscript{150} Under corporation law, a similar principle applies.\textsuperscript{151} Both standards reflect the generally-accepted proposition that one cannot escape liability for tortious conduct by hiding behind another legal entity.\textsuperscript{152}

These principles are further reflected in Delaware case law. In Ayers v. Quillen,\textsuperscript{153} a dog owner boarded her dogs at the defendant’s kennel, where they were attacked by other dogs being housed at the kennel.\textsuperscript{154} The dog owner sued both the kennel corporation and the owner of the kennel.\textsuperscript{155} The court considered agency law, corporate law, and the purpose behind the limited liability doctrine to determine whether the individual owner was protected from liability because he was acting on behalf of the kennel corporation.\textsuperscript{156} The court held that, where the plaintiff dog owner could prove that the corporate officer or agent actually participated in the tort, the corporate entity did not provide protection from liability for the kennel owner.\textsuperscript{157}

Connecticut courts have also used agency and corporate law principles to attach personal liability on corporate members. In Ventres v. Goodspeed Airport, LLC,\textsuperscript{158} a local commission and its enforcement officer sued the local airport’s manager, an independent contractor corporation, for violating local regulations requiring a permit before cutting down trees and removing vegetation.\textsuperscript{159} The court considered, among other issues, whether the defendant corporation’s sole member could be held individually liable for the corporation’s violation of the regulations.\textsuperscript{160} After reviewing what it termed “black letter law” regarding individual member liability

\begin{itemize}
  \item \textsuperscript{149} Countryman, 679 N.W.2d at 603.
  \item \textsuperscript{150} See Ayers v. Quillen, No. Civ. A. 03C-02-004-RFS, 2004 WL 1965866, at *3 (Del. Super. Ct. June 30, 2004). \textit{See also} Restatement (Third) of Agency § 7.01 (2006) (relating that an agent is personally liable for his tortious conduct even if his action is committed on behalf of his principal).
  \item \textsuperscript{151} See Ventres v. Goodspeed Airport, LLC, 881 A.2d 937, 962 (Conn. 2005); \textit{see also} JA William Meade Fletcher et al., Fletcher Cyclopaedia of the Law of Private Corporations § 1135 (perm. ed., rev. vol. 2002) (recognizing that individuals are personally liable for their tortious conduct, whether or not they were acting under the direction of a principal or in their official capacities, and personal liability can attach without piercing the corporate veil).
  \item \textsuperscript{152} See infra notes 153–61 and accompanying text.
  \item \textsuperscript{153} 2004 WL 1965866, *1.
  \item \textsuperscript{154} Id.
  \item \textsuperscript{155} Id.
  \item \textsuperscript{156} Id. at *2.
  \item \textsuperscript{157} Id. at *2–4.
  \item \textsuperscript{158} 881 A.2d 937 (Conn. 2005).
  \item \textsuperscript{159} Id. at 943–44.
  \item \textsuperscript{160} Id. at 961–62.
\end{itemize}
for tortious conduct, the court affirmed the trial court's finding of individual liability for the defendant corporation's sole member because the member had directed that the tortious conduct be committed.  

C. The Court's Holding Implicitly Avoids Piercing the Corporate Veil and Maintains Judicial Uniformity

The Connecticut equivalent to section 18-303(a) is similar to the Delaware statute and also includes the word "solely" in the same context. Interestingly, until the Weber decision, Connecticut courts did not employ a statutory interpretation analysis to hold LLC members personally liable for tortious conduct, but instead used the common law principle of piercing the corporate veil to impose personal liability. Courts generally use the doctrine of piercing the corporate veil to remove the shield of liability protection provided by the corporate legal entity and impose direct liability on the corporation's officers and directors. When the corporate veil is pierced, liability "skips" the corporate entity and attaches directly onto the individuals behind the corporation. In contrast, using agency and corporate law instead of piercing the corporate veil means that liability is attached to both the corporate entity and the individual(s) behind the corporation.

As evidenced by the Weber court, use of the piercing the corporate veil doctrine is made obsolete by using statutory interpretation to reach the same conclusion, a result that seems preferable. In order to impose liability on the LLC members, the court had to choose between veil piercing and statutory interpretation, because no other legal tools exist to get around the shield against liability created by the LLC. The court's decision to use statutory interpretation was an implicit rejection of the veil piercing doctrine, although it might have served the court better to be more explicit in explaining its rejection. The corporate veil doctrine is a cumbersome method of imposing liability on LLC members.

---

161. Id. at 962. The Ventres court said, "it is black letter law that an officer of a corporation who commits a tort is personally liable to the victim regardless of whether the corporation itself is liable." Id. (quoting Kilduff v. Adams, Inc., 593 A.2d 478, 488 (Conn. 1991)).

162. See section 34-133(a) of the Connecticut General Statutes, which states in relevant part, "a person who is a member or manager of a limited liability company is not liable, solely by reason of being a member or manager, under a judgment, decree or order of a court, or in any other manner, for a debt, obligation or liability of the limited liability company, whether arising in contract, tort or otherwise or for the acts or omissions of any other member, manager, agent or employee of the limited liability company." Conn. Gen. Stat. Ann. § 34-133(a) (West 2005).


164. See supra Part II.D.

165. Ventres, 881 A.2d at 962 ("[A] director or officer who commits the tort or who directs the tortious act done, or participates or operates therein, is liable to third persons injured thereby, even though liability may also attach to the corporation for the tort." (quoting 18A Am. Jur. 2d Corporations § 1629 (2004))).

166. See Bainbridge, supra note 163, at 83.

some judicial tool to wield, requiring a substantial fact-based inquiry and often subjective review of a corporation's organization and conduct, the intentions and purposes behind the conduct of members and/or officers, and whether, in fact, the corporate entity's existence is genuine or merely designed to allow its members/officers to perpetrate fraud.\textsuperscript{168} Because a court's consideration will likely be subjective in nature, its decision may be subject to significant criticism or even reversal on appeal.\textsuperscript{169} While the use of statutory interpretation is also imperfect, the analytical process seems less time-consuming, presents less opportunities for subjective conclusions, and leaves less room for criticism or reversal. Rather than wrestling with a subjective list of factors that can vary across jurisdictions,\textsuperscript{170} the court can look more objectively at legislative intent, common usage, and dictionary definitions.\textsuperscript{171} A piercing the corporate veil analysis, aside from being inappropriate under the facts of this case,\textsuperscript{172} may have required a different conclusion than that which the court reached,\textsuperscript{173} leading to tension between principles of statutory interpretation, agency law, and corporation law on the one hand, and veil-piercing doctrine on the other. By holding as it did, the Weber court maintains uniformity and consistency in the law, avoids a likely challenge and possible reversal, and preserves the limited liability model in the way it was intended.\textsuperscript{174}

D. Criticism of Weber's Reasoning is Unwarranted and Cannot be Supported

At least two authors suggested previously that the reasoning underlying the Weber court's holding is incorrect with respect to section 18-303(a).\textsuperscript{175} David L. Cohen argued that the statutory language of section 18-303(a) only permits two possible methods for the imposition of personal liability on LLC members: contractual or common law.\textsuperscript{176} He also argued that, because Delaware courts traditionally read acts narrowly in deference to the legislature, the courts would hesitate to impose

\textsuperscript{169} See Bainbridge, \textit{supra} note 163, at 78. Bainbridge argues that the use of the piercing doctrine is "rare, unprincipled, and arbitrary," and is therefore likely to produce inconsistent results that create uncertainty and unpredictability. \textit{Id.; see also} Frank H. Easterbrook & Daniel R. Fischel, \textit{Limited Liability and the Corporation}, 52 U. Chi. L. Rev. 89, 89 (1985); Berkey v. Third Ave. Ry., 155 N.E. 58, 61 (N.Y. 1926).
\textsuperscript{170} See supra Part II.D.
\textsuperscript{171} See supra Part II.B.
\textsuperscript{172} See supra notes 166–71 and accompanying text.
\textsuperscript{173} Since the court did not employ, or even discuss, such an analysis, how it might have found as to the various piercing factors is pure speculation. It is enough to note, though, that the possibility of a different result—and the resulting legal and judicial tension—would have been a risk for the court.
\textsuperscript{174} Based on the agency and corporation law principles already cited, it is clear that limited liability corporations are entitled to certain protections against general liability, but not privy to the blanket shield that some commentators have proposed and that the defendants seemed to expect.
\textsuperscript{175} See infra notes 176–90 and accompanying text.
liability under the common law.\textsuperscript{177} Under his theory, the \textit{Weber} court's decision would be viewed as erroneous by Delaware courts. However, Cohen's argument is based primarily on dicta from a 1996 decision by the Chancery Court of Delaware regarding the use of formality in statutory construction.\textsuperscript{178} In addition, Cohen suggests that in some situations outside the contract, LLC members will have to be held liable for their conduct.\textsuperscript{179} The persuasiveness of Cohen's proposition is lacking, partly from the lack of supporting authority, but more importantly from the evidence of the more recent judicial decisions in \textit{Weber} and \textit{Equipoise PM LLC v. Int'l Truck & Engine Corp.}\textsuperscript{180} Interestingly, the \textit{Weber} court used statutory construction (as granted by the legislature)\textsuperscript{181} to impose liability—it did not rely on either contractual or common law theories advanced by Cohen as the only ways to impose liability under section 18-303(a).

Fredric J. Bendremer put forth an even more forceful proposition: section 18-303(a) protects LLC members from any liability arising out of the LLC's activities.\textsuperscript{182} In effect, Bendremer argued that the LLC as a corporate entity provides unlimited and unqualified liability protection to its members, without exception.\textsuperscript{183} He interpreted section 18-303(a) to mean that all contractual or tortious obligations are the sole responsibility of the LLC.\textsuperscript{184} As a result, LLC members "are fully insulated against personal liability."\textsuperscript{185} In support of his argument, Bendremer cited a 2000 decision by the Chancery Court of Delaware\textsuperscript{186} where the court imposed liability on LLC members because they were being sued \textit{not solely} due to their membership status since the allegedly wrongful acts occurred \textit{prior} to the LLC's formation.\textsuperscript{187} Based on his interpretation of section 18-303(a), he concluded that the type of reasoning and holding reached by the \textit{Weber} court would be "neither candid nor legally sound."\textsuperscript{188} Bendremer's strict and narrow interpretation of the statute is directly contradicted by Cohen's more flexible interpretation.\textsuperscript{189} Bendremer's interpretation also fails to consider, or offer a strong argument that rejects, a basic statutory interpretation analysis such as that used by the \textit{Weber} court.\textsuperscript{190}

\textsuperscript{177} Id. at 477-78.


\textsuperscript{179} Cohen, \textit{supra} note 176, at 492.

\textsuperscript{180} No. 05 C 6008, 2007 WL 2228621 (N.D. Ill. June 5, 2006).

\textsuperscript{181} See \textit{CONN. GEN. STAT. ANN. §§ 1-1(a), 1-2x} (West 2007).

\textsuperscript{182} Bendremer, \textit{supra} note 25, at 387–88.

\textsuperscript{183} Id.

\textsuperscript{184} Id. at 394.

\textsuperscript{185} Id. at 395.


\textsuperscript{187} Id. at *4.

\textsuperscript{188} Bendremer, \textit{supra} note 25, at 403.


\textsuperscript{190} See \textit{supra} notes 115–24 and accompanying text.
V. CONCLUSION

In Weber v. U.S. Sterling Securities, Inc., 191 the Supreme Court of Connecticut properly held members of a Delaware LLC personally liable for tortious conduct committed in furtherance of the LLC's business. 192 The court clearly and carefully adhered to the applicable procedural rules that framed its statutory interpretation of Delaware LLC law. 193 The court's understanding of Delaware's law resulted in a holding that is consistent with, and supported by, the interpretations of similar statutes in other jurisdictions. 194 As a result, the court was able to avoid a complicated piercing the corporate veil analysis. 195

191. 924 A.2d 816 (Conn. 2007).
192. Id. at 825.
193. See supra Part IV.A.
194. See supra Part IV.B.
195. See supra Part IV.C.