

PIERCING THE CORPORATE VEIL IN OHIO:  
THE NEED FOR A NEW STANDARD FOLLOWING  
*DOMBROSKI V. WELLPOINT, INC.*

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I. INTRODUCTION

Recently, the Supreme Court of Ohio had its third attempt to clarify Ohio’s doctrine of piercing the corporate veil—and it failed. Piercing the corporate veil is one of the most criticized and litigated issues of corporate law,<sup>1</sup> and it has been

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\* J.D. expected 2010, Cleveland State University, Cleveland-Marshall College of Law; B.A. Miami University, Oxford, Ohio. Thank you to Brenda Sweet for her thoughtful suggestion of this topic. And a special thank you to Tony Kresser for his love and laughter that made this project, and all of law school, more enjoyable; and a most sincere thank you to my parents, Emily and Patrick Sweeney, for their never-ending love, support, and inspiration.

<sup>1</sup> See Lee C. Hodge & Andrew B. Sachs, *Piercing the Mist: Bringing the Thompson Study into the 1990s*, 43 WAKE FOREST L. REV. 341, 341 (2008) (citing Robert B. Thompson, *Piercing the Corporate Veil: An Empirical Study*, 76 CORNELL L. REV. 1036, 1036 (1991)) (finding similar results to the Thompson study); Kurt A. Strasser, *Piercing the Veil in Corporate Groups*, 37 CONN. L. REV. 637, 637, 641 (2005).

described as something that is “rare, severe, and unprincipled.”<sup>2</sup> The doctrine is meant to hold companies’ shareholders accountable for harms committed behind the veil of the corporate form. But piercing is not as easy as it sounds. Generally, piercing the corporate veil is an equitable doctrine that should be used only in limited circumstances. What these limited circumstances are, however, is widely disputed among courts throughout the country.

This dispute is no less prevalent in Ohio, where, until recently, the state courts of appeals were in conflict as to what circumstances warranted piercing the corporate veil. Some appellate districts held that only “fraud or an illegal act” on the part of the corporation would allow a plaintiff to pierce the corporate veil, and others held that an “inequitable or unjust act” would suffice. In *Dombroski v. WellPoint, Inc.*,<sup>3</sup> the Supreme Court of Ohio modified the *Belvedere* test, which describes when a plaintiff may pierce the corporate veil. Specifically, the Court added that a company’s “fraud, . . . illegal act, or . . . similarly unlawful act” may justify piercing the corporate veil.<sup>4</sup> With this modification, the Supreme Court of Ohio hoped to resolve the confusion among the appellate districts.

The Court’s modification, however, fails to articulate a workable standard for lower courts. The Supreme Court of Ohio has previously addressed the issue as to what type of misconduct warrants piercing the corporate veil, and both of its attempts to do so in *North v. Higbee Co.*<sup>5</sup> and in *Belvedere Condominium Unit Owners’ Ass’n v. R.E. Roark Cos.*<sup>6</sup> have conflicted the appellate districts.<sup>7</sup> The court’s previous phrases—“fraud” and “fraud or an illegal act”—have already conflicted the appellate courts, and its new language in *Dombroski* is no less confusing.

Because the Supreme Court of Ohio’s modification of the *Belvedere* test is merely cosmetic and not substantive, it will not successfully resolve the conflict among the appellate districts. Instead, the Court has caused a new cycle of uncertainty and inevitable conflict among the appellate courts as to the meaning of “similarly unlawful acts.” To prevent another split over the same issue of what conduct permits piercing the corporate veil, the Supreme Court of Ohio should set forth a clear standard in which “fraud or similarly wrongful acts” will warrant piercing. This standard would be consistent with the purposes and traditions of the doctrine in Ohio.

Part II.A of this Comment will discuss the history and purpose of the doctrine of piercing the corporate veil. Part II.B will describe the evolution of this doctrine within Ohio from the development of the *Belvedere* three-part test, through the conflict among the courts of appeals that gave rise to the Supreme Court of Ohio’s

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<sup>2</sup> Frank H. Easterbrook & Daniel R. Fischel, *Limited Liability and the Corporation*, 52 U. CHI. L. REV. 89, 89 (1985).

<sup>3</sup> *Dombroski v. WellPoint, Inc.*, 895 N.E.2d 538 (Ohio 2008).

<sup>4</sup> *Id.* at 545 (emphasis added).

<sup>5</sup> *North v. Higbee Co.*, 3 N.E.2d 391 (Ohio 1936).

<sup>6</sup> *Belvedere Condo. Unit Owners’ Ass’n v. R.E. Roark Cos.*, 617 N.E.2d 1075 (Ohio 1993).

<sup>7</sup> See *infra* Part II.B.

latest attempt at clarification. Part III will discuss the facts and procedural history of *Dombroski v. WellPoint, Inc.* Part IV.A will show how the Supreme Court of Ohio's modification of the *Belvedere* test will inevitably cause another conflict among the courts of appeals. Part IV.B will explain that the Supreme Court of Ohio must adopt a clear standard that permits piercing for "fraud or similarly wrongful acts" to avoid another conflict among Ohio's courts of appeals.

## II. BACKGROUND

### A. A Brief History of the Doctrine of Piercing the Corporate Veil

A fundamental concept of corporate law is that a corporation exists as a legal entity that is separate from its owners and operators.<sup>8</sup> Because a corporation is legally independent, its shareholders enjoy the benefit of limited liability.<sup>9</sup> Under the principle of limited liability, owners, directors, and shareholders are not liable for the obligations and liabilities of the corporation.<sup>10</sup> Additionally, shareholders are liable only up to the amount of their investments in the corporation.<sup>11</sup>

There are times, however, when limited liability would allow a corporation to get away with exceptionally wrongful behavior. When this occurs, the doctrine of piercing the corporate veil serves as a type of "safety valve" to allow plaintiffs to disregard the corporate entity and hold its shareholders and owners personally liable.<sup>12</sup> Piercing the corporate veil is an equitable doctrine, and it is applied in very limited circumstances.<sup>13</sup> Although there is no clear test for when a court will allow a plaintiff to pierce the corporate veil, there are generally three substantive factors that plaintiffs must show:<sup>14</sup> first, that the corporation does not have a separate existence from its shareholders; second, that the corporation, through its shareholders, is engaged in some type of misconduct; and third, that the misconduct caused the plaintiff's asserted injury.<sup>15</sup>

Because the doctrine of piercing the corporate veil is a product of the common law,<sup>16</sup> many courts have developed their own articulation of these factors.<sup>17</sup> As a

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<sup>8</sup> Strasser, *supra* note 1, at 640.

<sup>9</sup> Hodge & Sachs, *supra* note 1, at 341.

<sup>10</sup> See Strasser, *supra* note 1, at 640.

<sup>11</sup> See Hodge & Sachs, *supra* note 1, at 341.

<sup>12</sup> Strasser, *supra* note 1, at 640 ("Yet these rigid legal rules of limited liability needed a safety valve to escape unacceptable results and supervise limited liability. In corporate law, the familiar doctrine of 'piercing the corporate veil' is the traditional safety valve and the one most commonly used . . .").

<sup>13</sup> Hodge & Sachs, *supra* note 1, at 344.

<sup>14</sup> See *id.* at 341-42, 344 (noting that "courts have never enunciated a clear test for when they will pierce the corporate veil"); see also Strasser, *supra* note 1, at 640 ("Whatever the difference in their formulation, the core inquiry in each case emphasizes the same two substantive factors, plus causation of the complained of injury.").

<sup>15</sup> Strasser, *supra* note 1, at 640-41.

<sup>16</sup> Hodge & Sachs, *supra* note 1, at 346-47.

<sup>17</sup> See Strasser, *supra* note 1, at 641-42.

result, many courts have inconsistently applied the doctrine.<sup>18</sup> These inconsistencies have made the doctrine ripe for criticism.<sup>19</sup> Several critics argue that the doctrine has become so abstract that judicial decisions regarding piercing have become largely discretionary.<sup>20</sup> This is especially true when it comes to evaluating the second factor—whether the corporation’s misconduct is sufficient to pierce the corporate veil.<sup>21</sup> Specifically, courts are divided over whether a corporation’s misconduct must constitute fraud or whether other types of unjust or inequitable conduct are sufficient to pierce the veil.<sup>22</sup> Moreover, courts that allow piercing where the corporation’s conduct was something other than fraud are further divided as to what types of misconduct will suffice.<sup>23</sup> When courts do articulate standards for the misconduct, the standards are generally vague and fail to provide guidance to future cases.<sup>24</sup> This was the conflict among Ohio’s courts of appeals, and this conflict gave rise to the Supreme Court of Ohio’s latest attempt to set piercing standards in *Dombroski v. WellPoint, Inc.*

*B. The Evolution of Ohio’s Doctrine of Piercing the Corporate Veil*

Ohio has a well-established recognition of the principle of limited shareholder liability,<sup>25</sup> as well as a settled tradition of allowing plaintiffs to pierce the corporate

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<sup>18</sup> *Id.* (quoting Stephen M. Bainbridge, *Abolishing Veil Piercing*, 26 J. CORP. L. 479, 481 (2001) (stating that the doctrine is “uncertain[ ]” and “lack[s] . . . predictability”).

<sup>19</sup> *See generally* Easterbrook & Fischel, *supra* note 2; Franklin A. Gevurtz, *Piercing Piercing: An Attempt to Lift the Veil of Confusion Surrounding the Doctrine of Piercing the Corporate Veil*, 76 OR. L. REV. 853 (1997); Douglas C. Michael, *To Know A Veil*, 26 J. CORP. L. 41 (2000); Strasser, *supra* note 1.

<sup>20</sup> Strasser, *supra* note 1, at 641 (“Traditional veil piercing has been extensively criticized for at least the last fifty years and the criticism continues unabated. The core charge is that the doctrine is expressed at such a high level of abstraction that decisions in individual cases are in fact highly discretionary with the courts.”).

<sup>21</sup> *See generally id.*

<sup>22</sup> *See id.* at 640-41.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 641. This leads some scholars to argue that courts are heavily influenced by the facts of the particular case rather than any judicially imposed standards. Kurt A. Strasser is one critic of piercing the corporate veil who argues that courts have too much discretion when it comes to implementing the doctrine:

[T]he standards articulated in the cases are quite diverse, giving little general guidance for future cases, and the results are heavily influenced by the specific facts in particular cases. Examples of wrongful conduct are as varied as human experience itself. When necessary to reach what the court views as the correct result, some courts are willing to treat simple commission of a tort, breach of a contract, or insolvency as sufficiently wrongful conduct. In effect, these decisions make the requirement of finding wrongful conduct a formality. However, in many other cases, courts treat this requirement as an insuperable barrier to relief.

*Id.* (footnotes omitted).

<sup>25</sup> OHIO CONST. art. XIII, § 3 (“Dues from private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholder be individually liable otherwise than for the unpaid stock owned by him or her.”).

veil.<sup>26</sup> This tradition, however, has not been smooth and steady. Rather, the doctrine's evolution has seen many splits and shifts.

*North v. Higbee Co.* was Ohio's first attempt to articulate a standard for when courts should permit a plaintiff to pierce the corporate veil.<sup>27</sup> There, the Supreme Court of Ohio held that piercing the corporate veil "requires that the proof . . . show not only an excessive control over the subsidiary but the actual exercise of that control in such a manner as to defraud or wrong the complainant."<sup>28</sup> Under this standard, the Court found that the defendant parent company, Higbee Company, was not liable for the payments on a rent contract made by its subsidiary, the Higbee Realty Company.<sup>29</sup> Because the parent company had not misled or wronged the plaintiff, the Court found that the plaintiff could not pierce the corporate veil and hold the parent company accountable for the rental debt of the subsidiary.<sup>30</sup>

More than fifty years after *North*, the Supreme Court of Ohio attempted to further clarify what type of misconduct warranted piercing the corporate veil. In *Belvedere Condominium Unit Owners' Ass'n v. R.E. Roark Cos.*, the Court interpreted *North* as requiring fraud before piercing could occur.<sup>31</sup> The Court determined that *North*'s standard required two elements: "(1) that the corporation was formed in order to perpetrate a fraud, and (2) that the shareholder's control of the corporation was exercised to defraud the party."<sup>32</sup> Although the Supreme Court of Ohio applied this new interpretation of *North*, the lower court in *Belvedere*, did not apply *North* at

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<sup>26</sup> See *State ex rel. Attorney Gen. v. Standard Oil Co.*, 30 N.E. 279, para. one of the syllabus (Ohio 1892) ("That a corporation is a legal entity, apart from the natural persons who compose it, is a mere fiction, introduced for its convenience in the transaction of its business, and of those who do business with it; but, like every other fiction of the law, when urged to an intent and purpose not within its reason and policy, may be disregarded.").

<sup>27</sup> *North v. Higbee Co.*, 3 N.E.2d 391, 392-93 (Ohio 1936) (stating that both parties relied on Michigan's articulation of disregarding the corporate entity, presumably because Ohio had not stated a clear position or standard on the doctrine).

<sup>28</sup> *Id.* at 398 (citing FREDERICK J. POWELL, PARENT AND SUBSIDIARY CORPORATIONS (1931)) (accepting the trial court's articulation of the standard).

<sup>29</sup> *Id.* at 399.

<sup>30</sup> *Id.*

<sup>31</sup> *Belvedere Condo. Unit Owners' Ass'n v. R.E. Roark Cos.*, 617 N.E.2d 1075, 1085 (Ohio 1993). The court went on to cite the syllabus of *North* to state the standard to pierce the corporate veil:

The separate corporate entities of a parent and subsidiary corporation will not be disregarded and the parent corporation will not be held liable for the acts and obligations of its subsidiary corporation, notwithstanding the facts that the latter was controlled by the parent . . . *in the absence of proof that the subsidiary was formed for the purpose of perpetrating a fraud and that domination of the parent corporation over its subsidiary was exercised in such manner as to defraud complainant.* *Id.*; see also *North*, 3 N.E.2d at 398 ("Furthermore, upon the question whether the Higbee Company, under the doctrine laid down by Mr. Powell, wronged these certificate holders, we must judge the transaction by the financial situation which existed in the fall of 1925 . . .").

<sup>32</sup> See *Belvedere*, 617 N.E.2d at 1085.

all.<sup>33</sup> Instead, it followed the standard set out in *Bucyrus-Erie Co. v. General Products Co.*<sup>34</sup> from the United States Court of Appeals for the Sixth Circuit.<sup>35</sup>

In *Bucyrus-Erie*, the Sixth Circuit recognized that Ohio had not yet set out a clear test for piercing the corporate veil.<sup>36</sup> In light of this doctrinal vacuum, the court laid out a three-part test derived from the Second Circuit.<sup>37</sup> The Sixth Circuit stated that:

[T]he corporate fiction should be disregarded when: (1) domination and control over the corporation by those to be held liable is so complete that the corporation has no separate mind, will, or existence of its own; (2) that domination and control was used to commit fraud or wrong or other dishonest or unjust act, and (3) injury or unjust loss resulted to the plaintiff from such control and wrong.<sup>38</sup>

In *Bucyrus-Erie*, the Defendant, who was the majority shareholder of General Products, argued that the jury should have been instructed to determine whether he used the corporation to perpetrate a fraud.<sup>39</sup> The Sixth Circuit, however, held that the instruction was not needed because fraud was not a required element for piercing the corporate veil.<sup>40</sup>

On appeal in *Belvedere*, the Supreme Court of Ohio agreed with the lower court's decision to apply the Sixth Circuit's standard from *Bucyrus-Erie*.<sup>41</sup> After finding that "the Sixth Circuit's approach to piercing the corporate veil strikes the correct balance between the principle of limited shareholder liability and the reality that the corporate fiction is sometimes used by shareholders to protect themselves from liability for their own misdeeds,"<sup>42</sup> the Supreme Court of Ohio articulated its new standard:

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<sup>33</sup> *Id.* at 1086.

<sup>34</sup> *Bucyrus-Erie Co. v. Gen. Prods. Corp.*, 643 F.2d 413 (6th Cir. 1981).

<sup>35</sup> *Belvedere*, 617 N.E.2d at 1086.

<sup>36</sup> *Bucyrus-Erie*, 643 F.2d at 418 ("No precise test for disregarding the corporate fiction has been articulated by the courts, each case being regarded as 'sui generis' and decidable on its own facts." (citing *DeWitt Truck Brokers, Inc. v. W. Ray Flemming Fruit Co.*, 540 F.2d 681 (4th Cir. 1976))).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* (citing *Brunswick Corp. v. Waxman*, 459 F. Supp. 1222, 1229 (E.D.N.Y. 1978), *aff'd* 599 F.2d 34 (2d Cir. 1979)); *see also* *Berger v. Columbia Broad. Sys., Inc.*, 453 F.2d 991, 995 (5th Cir. 1972).

<sup>39</sup> *Bucyrus-Erie*, 643 F.2d at 418.

<sup>40</sup> *Id.* at 419 ("Though fraud is a frequent ground for application of the alter ego doctrine, it is not essential. The courts will disregard the corporate fiction when its retention would produce injustice or inequitable consequences." (citing *State ex rel. Attorney Gen. v. Standard Oil Co.*, 30 N.E. 279, at para. one of the syllabus (Ohio 1892); *Anderson v. Abbott*, 321 U.S. 349, 361 (1944); *Nat'l Marine Serv. v. C. J. Thibodeaux & Co.*, 501 F.2d 940, 942 (5th Cir. 1974); *Krivo Indus. Supply Co. v. Nat'l Distillers & Chem. Corp.*, 483 F.2d 1098, 1106 (5th Cir. 1973))).

<sup>41</sup> *Belvedere*, 617 N.E.2d at 1086.

<sup>42</sup> *Id.*

[T]he corporate form may be disregarded and individual shareholders held liable for corporate misdeeds when (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 over the corporation by those to be held liable was exercised in such a manner as to commit fraud or an illegal act against the person seeking to disregard the corporate entity, and (3) injury or unjust loss resulted to the plaintiff from such control and wrong.<sup>43</sup>

Even though the Supreme Court of Ohio said that it was adopting the Sixth Circuit's standard, its second factor differed slightly from that of the Sixth Circuit.<sup>44</sup> While the Sixth Circuit required that the corporation "commit fraud or wrong or other dishonest or unjust act,"<sup>45</sup> the Supreme Court of Ohio stated that the corporation must "commit fraud or an illegal act."<sup>46</sup> Under this standard, the Supreme Court of Ohio found that the Defendant corporation owner could not be held personally liable because there was no evidence to show that he used his control to defraud the plaintiff.<sup>47</sup> Under the Sixth Circuit's standard, however, the Court may have allowed piercing if it determined that the defendant's acts were "dishonest or unjust," even if those acts did not qualify as fraudulent.<sup>48</sup> Although the Court did not state that it changed the Sixth Circuit's standard, or that there was even any difference between the two standards,<sup>49</sup> its new articulation began a serious conflict among Ohio's appellate courts.

Confusion arose within Ohio's courts of appeals because the Supreme Court of Ohio claimed to adopt the Sixth Circuit standard but, in fact, changed the language of the second factor. Several courts of appeals interpreted *Belvedere's* articulation of the second factor to mean that a plaintiff could pierce the corporate veil when the defendant's control over the corporation was done "to commit a fraud, illegal, or other unjust or inequitable act."<sup>50</sup> Other districts, however, interpreted *Belvedere* more strictly and allowed piercing only in cases of a fraud or an illegal act.<sup>51</sup> This

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<sup>43</sup> *Id.*

<sup>44</sup> *See id.*

<sup>45</sup> *Bucyrus-Erie*, 643 F.2d at 418.

<sup>46</sup> *Belvedere*, 617 N.E.2d at 1086 (emphasis added).

<sup>47</sup> *Id.* ("We hold that the Association did not introduce sufficient evidence to pierce RERC's corporate veil and reach Roark individually. The Association did not introduce any evidence that Roark used his control over RERC in such a manner as to defraud the Association. . . . The evidence cited by the court of appeals below clearly show[ed] that Roark did exercise control over RERC, but mere control over a corporation is not in itself a . . . basis for shareholder liability.").

<sup>48</sup> *See Bucyrus-Erie*, 643 F.2d at 418.

<sup>49</sup> *See, e.g., Belvedere*, 617 N.E.2d at 1085-87.

<sup>50</sup> *See Dombroski v. WellPoint, Inc.*, 895 N.E.2d 538, 543-44 (Ohio 2008) (emphasis omitted) (quoting *Wienczek v. Atcole Co.*, 671 N.E.2d 1339 (Ohio Ct. App. 1996)).

<sup>51</sup> *See Collum v. Perlman*, No. L-98-1291, 1999 Ohio App. LEXIS 1938, at \*9 (Ohio Ct. App. Apr. 30, 1999).

conflict among the districts led the Supreme Court of Ohio to address the issue in *Dombroski v. WellPoint, Inc.*<sup>52</sup> The distinction between the two interpretations is important, because, as the Supreme Court of Ohio notes, allowing piercing in cases of “unjust or inequitable conduct” significantly increases plaintiffs’ opportunities to pierce.<sup>53</sup> Because piercing the corporate veil is meant to apply in very limited circumstances, the Supreme Court of Ohio certified the conflict in *Dombroski* to attempt to strike a balance between the limited applicability of the doctrine and the occasional need to hold shareholders liable.<sup>54</sup>

### III. STATEMENT OF THE CASE: *DOMBROSKI V. WELLPOINT, INC.*

#### A. *Facts of the Case*

For most of her life, Kimberly Dombroski suffered from significant hearing loss in both of her ears, which rendered her completely deaf.<sup>55</sup> In 2000, Ms. Dombroski’s doctor recommended that she receive a cochlear implant to restore hearing to her left ear.<sup>56</sup> After five years with the singular implant, Ms. Dombroski’s doctor advised that she receive a second implant for her right ear.<sup>57</sup> However, following her doctor’s request for authorization to implant the second device, Ms. Dombroski’s insurance company denied her coverage and said that the use of two cochlear implants was considered “investigational” and, therefore, not covered under her plan.<sup>58</sup>

At this time, Ms. Dombroski contracted with Community Insurance Company for her health insurance.<sup>59</sup> Anthem UM Services, Inc., as an affiliate of Community Insurance, administered Ms. Dombroski’s policy along with Anthem Insurance Company.<sup>60</sup> WellPoint, Inc. owns one hundred percent of the stock of each of these three corporations.<sup>61</sup> After unsuccessfully appealing the denial with Anthem UM,

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<sup>52</sup> *Dombroski*, 895 N.E.2d at 543-44.

<sup>53</sup> *Id.* at 544 (“Adding unjust or inequitable conduct to the second prong of the *Belevedere* test significantly increases the number of cases in which a plaintiff could pierce the corporate veil.”).

<sup>54</sup> *Id.* at 544-45.

<sup>55</sup> *Id.* at 540.

<sup>56</sup> *Id.* The Supreme Court of Ohio defined a cochlear implant as “a small electronic device that is placed inside a deaf person’s ear and provides him or her with a sense of sound.” *Id.* at 540 n.1. The court went on to note that such devices are approved by the Food and Drug Administration and are ninety percent successful. *Id.*

<sup>57</sup> *Id.* at 540.

<sup>58</sup> *Id.* at 540-41 (noting that Ms. Dombroski’s first implant was covered by a separate insurance company that was not party to her suit and whose coverage was not at issue here).

<sup>59</sup> *Id.* at 540.

<sup>60</sup> *Id.* at 540-41.

<sup>61</sup> *Id.* at 541.

Ms. Dombroski filed suit against all four corporations claiming breach of contract, promissory estoppel, and the tort of insurer bad faith.<sup>62</sup>

In support of her claims, Ms. Dombroski alleged that WellPoint, Inc. established “corporate medical policies” through Anthem Insurance.<sup>63</sup> One of these policies stated that the implantation of two cochlear implants is an investigational procedure.<sup>64</sup> Because of this policy, Anthem Insurance and Anthem UM denied coverage for the second cochlear implant.<sup>65</sup> It was the administration of this specific policy, Ms. Dombroski alleged, that constituted insurer bad faith.<sup>66</sup>

### B. Procedural History

In response to Ms. Dombroski’s complaint, WellPoint, Inc. and Anthem Insurance filed motions to dismiss.<sup>67</sup> Both corporations contended that Ms. Dombroski failed to allege a basis for piercing the corporate veil that would enable her to claim liability beyond Anthem UM and Community Insurance.<sup>68</sup> The trial court in Belmont County granted the companies’<sup>69</sup> motions to dismiss, and Ms. Dombroski appealed to the Seventh Appellate District of the Court of Appeals for Ohio.

The Seventh District Court of Appeals addressed the specific issue of whether Ms. Dombroski could pierce the corporate veil of Community Insurance such that she could hold WellPoint, Inc. and Anthem Insurance liable for her bad faith claim.<sup>70</sup>

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<sup>62</sup> *Id.* The promissory estoppel and breach of contract claims are not at issue here.

<sup>63</sup> *Dombroski v. WellPoint, Inc.*, 879 N.E.2d 225, 228 (Ohio Ct. App. 2007).

<sup>64</sup> *Id.*

<sup>65</sup> *Dombroski*, 895 N.E.2d at 541; *see also Dombroski*, 879 N.E.2d at 228-29.

<sup>66</sup> *Dombroski*, 895 N.E.2d at 541. Ohio law imposes a duty of good faith on insurers regarding the “processing and payment of valid claims of [the] insured.” *Gillette v. Estate of Gillette*, 837 N.E.2d 1283, 1286 (Ohio Ct. App. 2005) (citing *Beever v. Cincinnati Life Ins. Co.*, Nos. 02AP-543, 02AP-544, 2003 Ohio App. LEXIS 2663, at \*20 (Ohio Ct. App. June 10, 2003)). The insured may sue the insurer for bad faith if “[a]n insurer fails to exercise good faith in the processing of a claim of its insured where its refusal to pay the claim is not predicated upon circumstances that furnish reasonable justification therefor [sic].” *Id.* (quoting *Zoppo v. Homestead Ins. Co.*, 644 N.E.2d 397, para. one of the syllabus (Ohio 1994)).

<sup>67</sup> *Dombroski*, 879 N.E.2d at 229.

<sup>68</sup> *Id.* Additionally, both corporations claimed that Ms. Dombroski had failed to state a claim for which relief could be granted because she was not in privity of contract with either of them; therefore, the companies argued, she could not assert, nor prevail, on the breach of good faith claim based on the insurance contract with Community Insurance and Anthem UM. *Id.*

<sup>69</sup> The court dismissed the complaint against WellPoint, Inc. and Anthem Insurance, but Community Insurance and Anthem UM remained parties to the suit. *Id.*

<sup>70</sup> The court also decided the issue of whether Ms. Dombroski’s bad faith claim was actionable, but that issue is not pertinent to the corporate veil discussion because the court determined that the claim was valid. *Id.*

The court reviewed Ms. Dombroski's complaint using *Belvedere's* three-part test<sup>71</sup> to see if she had sufficiently pled facts that would show her "desire to proceed under the theory" of piercing the corporate veil.<sup>72</sup>

The court quickly found that Ms. Dombroski's complaint adequately addressed the first and third prongs of the *Belvedere* test.<sup>73</sup> The second prong, however, gave the court more pause. The Seventh District Court of Appeals broadly interpreted the second prong of *Belvedere* and said that fraud or illegal acts are not strictly required to pierce the corporate veil.<sup>74</sup> Instead, the court held that a corporation's unjust or inequitable acts are sufficient to pierce the corporate veil.<sup>75</sup> Under this standard, the court found that Ms. Dombroski's complaint alleging bad faith and breach of contract pled sufficient unjust or inequitable acts to meet the second prong of *Belvedere*.<sup>76</sup> After finding that the complaint also met the third prong of *Belvedere*, the court determined that Ms. Dombroski gave fair notice of an attempt to pierce the corporate veil and held that the trial court's dismissal of the complaint was in error.<sup>77</sup>

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<sup>71</sup> *Id.* at 230. The Supreme Court of Ohio specifically noted that the *Belvedere* test is the correct standard when attempting to pierce the veil to reach an individual shareholders or another corporation. *Id.* ("[T]he *Belvedere* test is equally applicable to piercing a corporation to reach an individual shareholder or owner as it is to piercing a corporation to reach another corporation.") (citing *Belvedere Condo. Unit Owners' Ass'n v. R.E. Roark Cos.*, 617 N.E.2d 1075, 1085 (Ohio 1993)).

<sup>72</sup> The court found that:

A party seeking to pierce the corporate veil is not required to relate the specific intention in the complaint in order to proceed under the doctrine of piercing the corporate veil. . . . All that is required is that the complaint contain sufficient information to indicate a desire to proceed under the doctrine of piercing the corporate veil.

*Dombroski*, 879 N.E.2d at 230-31 (citing *Geier v. Nat'l GG Indus., Inc.*, No. 98-L-172, 1999 Ohio App. LEXIS 6263, at \*10 (Ohio Ct. App. Dec. 23, 1999); *Dalicandro v. Marrison Rd. Dev. Co.*, Nos. 00AP-619, 00AP-656, 2001 Ohio App. LEXIS 1765, at \*20 (Ohio Ct. App. Apr. 17, 2001)).

<sup>73</sup> *Dombroski*, 879 N.E.2d at 231-33 ("Both parties agree that the complaint clearly alleges that WellPoint controls its subsidiaries to the point that they have no separate mind, will or existence of their own. The first prong of *Belvedere* is undisputedly established. . . . In the complaint, she alleges that she has suffered physical loss, pecuniary loss, emotional distress, impaired earning capacity, and lessened likelihood of a successful working implantation of a future right side cochlear implant. She alleges that these injuries have resulted from the 'control and wrong' by WellPoint through its subsidiaries due to the corporate medical policy. This is sufficient to meet the third prong of *Belvedere*.").

<sup>74</sup> *Id.* at 232-33.

<sup>75</sup> *Id.* at 233.

<sup>76</sup> *Id.* ("The failure of the duty to act in good faith in handling claims constitutes an unjust or inequitable act for purposes of pleading piercing the corporate veil.").

<sup>77</sup> *Id.* The court also went on to analyze whether, as Ms. Dombroski asserted, contractual privity needed to be relaxed in order for her to pursue her claim against WellPoint, Inc. and Anthem Insurance. The court ultimately concluded that privity is not required to assert a claim against a parent company if the corporate veil is pierced. *Id.* at 234-35. However, the court's reasoning is not pertinent to the appeal to the Supreme Court of Ohio and, therefore, is not discussed here.

WellPoint, Inc. and Anthem Insurance filed a notice to certify a conflict between the Seventh District Court of Appeals and the Sixth District Court of Appeals.<sup>78</sup> At this point, the Sixth District interpreted the second prong of *Belvedere* as limiting piercing to situations where the corporation committed fraud or an illegal act.<sup>79</sup> Because the Seventh District found that Ms. Dombroski could pierce the corporate veil by showing that WellPoint, Inc.'s acts were unjust or inequitable, the Seventh District certified the conflict to the Supreme Court of Ohio.<sup>80</sup> The specific issue before the Supreme Court of Ohio was:

Does the second prong of *Belvedere*, which states that the corporate veil can be pierced when control of the corporation “was exercised in such a manner as to commit fraud or an illegal act against the person seeking to disregard the corporate entity,” also allow the corporate veil to be pierced in cases where control was exercised to commit unjust or inequitable acts that do not rise to the level of fraud or an illegal act?<sup>81</sup>

The Supreme Court of Ohio began its analysis with the *Belvedere* test.<sup>82</sup> First, the court accepted Ms. Dombroski's claim that WellPoint, Inc. and Anthem Insurance controlled its subsidiaries that administered her policy in such a way that those subsidiaries did not have their own minds, wills, or existences.<sup>83</sup> The Court then recognized that it needed to focus on the second prong of the *Belvedere* test.<sup>84</sup>

The Court recognized that the central issue was whether to adopt a broad or strict construction of the second prong of *Belvedere*. It noted that the Seventh District's interpretation aimed to reconcile *Belvedere*'s limited wording with the original purpose of the piercing doctrine.<sup>85</sup> The Supreme Court of Ohio noted that this reconciliation allows for unjust or inequitable acts because piercing the corporate

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<sup>78</sup> The Sixth District decisions that the defendants asserted were in conflict with the Seventh District were *Collum v. Perlman*, No. L-98-1291, 1999 Ohio App. LEXIS 1938 (Ohio Ct. App., Lucas County Apr. 30, 1999) and *Widlar v. Young*, No. L-05-1184, 2006 Ohio App. LEXIS 777 (Ohio Ct. App., Lucas County Feb. 24, 2006).

<sup>79</sup> *Collum*, 1999 Ohio App. LEXIS 1938, at \*3; *see also Widlar*, 2006 Ohio App. LEXIS 777, at \*51-53.

<sup>80</sup> *Dombroski v. WellPoint, Inc.*, 879 N.E.2d 781 (Ohio 2008). The Ohio Constitution allows for lower courts to certify conflicts to the state supreme court in certain circumstances:

Whenever the judges of a court of appeals finds that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by another court of appeals of the state, the judges shall certify the record of the case to the supreme court for review and final determination.

OHIO CONST. art IV, § 3(b)(4).

<sup>81</sup> *Dombroski v. WellPoint, Inc.*, 116 Ohio St. 3d 1472 (2008) (order certifying a conflict).

<sup>82</sup> *Dombroski v. WellPoint, Inc.*, 895 N.E.2d 538, 542 (Ohio 2008); *see also supra* p. 957 (discussing the *Belvedere* test).

<sup>83</sup> *Dombroski*, 895 N.E.2d at 543.

<sup>84</sup> *Id.*

<sup>85</sup> *See id.*

veil is meant to be an equitable doctrine.<sup>86</sup> It further explained that a broader interpretation of *Belvedere* would allow the doctrine to operate more equitably.<sup>87</sup> Although this interpretation may be more equitable, the Court noted that a broader interpretation would greatly expand plaintiffs' opportunities to pierce the corporate veil.<sup>88</sup>

While the Seventh District's interpretation may be too broad, the Supreme Court of Ohio noted that the Sixth District's strict construction was too restrictive.<sup>89</sup> The Court explained that under the Sixth District's interpretation, piercing is strictly limited to situations where a corporation commits fraud or an illegal act.<sup>90</sup> Under this interpretation, Ms. Dombroski's complaint would fail because she did not allege that the Defendants had committed fraud or an illegal act.<sup>91</sup> Although piercing should occur only in the most exceptional circumstances, the Supreme Court of Ohio determined that *Belvedere*'s language was too limited to address the "wide variety of egregious shareholder misdeeds that may occur."<sup>92</sup>

In an effort to address the needs of plaintiffs who are injured in such a manner, the Supreme Court of Ohio modified its *Belvedere* test.<sup>93</sup> The court held, "[T]o fulfill the second prong of the *Belvedere* test for piercing the corporate veil, the plaintiff must 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."<sup>94</sup> The Court further specified that courts should allow plaintiffs to pierce the corporate veil only when the shareholder defendant has engaged in extreme misconduct.<sup>95</sup>

Finally, the Court held that the tort of insurer bad faith does not constitute the type of "exceptional wrong" for which piercing the corporate veil was meant to

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<sup>86</sup> *Id.* ("Because the plain language of the second prong of the *Belvedere* test imperfectly applies to this view, these courts have modified the requirement of 'fraud or an illegal act' to allow for additional forms of misconduct.").

<sup>87</sup> *Id.* at 544-45.

<sup>88</sup> *Id.* at 544 ("Adding unjust or inequitable conduct to the second prong of the *Belvedere* test significantly increases the number of cases in which a plaintiff could pierce the corporate veil.").

<sup>89</sup> *Id.* at 545 ("[W]e are convinced that our pronouncement in *Belvedere* is too limited to protect other potential parties from the wide variety of egregious shareholder misdeeds that may occur.").

<sup>90</sup> *Id.* at 544 (citing *Collum v. Perlman*, No. L-98-1291, 1999 Ohio App. LEXIS 1938 (Ohio Ct. App. Apr. 30, 1999)).

<sup>91</sup> *See also id.* at 544 n.2 (noting that in her brief to the Supreme Court of Ohio, Ms. Dombroski argued that the insurer bad faith tort could constitute an illegal act, but because this issue was not certified to the Court, the Court will not consider it).

<sup>92</sup> *Id.* at 545.

<sup>93</sup> *Id.* at 544-45.

<sup>94</sup> *Id.* at 545 (emphasis added) (noting further that this does not affect the other two prongs of the test).

<sup>95</sup> *Id.*

remedy.<sup>96</sup> The Court recognized that Ms. Dombroski's bad faith claim would be successful under a standard that allowed piercing for "unjust or inequitable acts," as the Seventh District found.<sup>97</sup> Under the Court's new modification, however, the Court determined that Ms. Dombroski's claim against WellPoint, Inc. and Anthem Insurance must fail.<sup>98</sup>

Justice Pfeifer was the only justice to dissent from the majority opinion.<sup>99</sup> He first notes that *Belvedere* developed from a line of cases that meant to include unjust or inequitable acts, as the majority of Ohio's appellate districts have interpreted.<sup>100</sup> He argues that *Bucyrus-Erie*'s standard—fraud or wrong or other dishonest or unjust act—is indicative of this intent.<sup>101</sup> Even though *Belvedere*'s language differs slightly from that in *Bucyrus-Erie*, Justice Pfeifer argues that the Supreme Court of Ohio merely abbreviated the language to "fraud or an illegal act."<sup>102</sup> Because the phrase is merely an abbreviation of the Sixth Circuit Court of Appeals' test, he argues that *Belvedere* meant to include unjust or inequitable acts as well.<sup>103</sup>

Justice Pfeifer's dissent also notes that even though most Ohio districts have adopted the broader construction of the second prong, it still remains very difficult to pierce the corporate veil.<sup>104</sup> Finally, Justice Pfeifer argues that the majority's modification of the *Belvedere* test did not clarify the second prong; rather, the additional language "muddied the waters" of when to pierce the corporate veil.<sup>105</sup> Even though Justice Pfeifer disagrees with the majority's modification of *Belvedere*, he says that Ms. Dombroski's insurer bad faith action still qualifies as a "similarly unlawful act" for which the majority's standard would allow piercing.<sup>106</sup> He argues that insurer bad faith is not a "simple negligent performance of contractual duties;"<sup>107</sup> what would otherwise be a contract claim, he notes, is "transformed into a tort action because of the unreasonableness of the insurer's behavior."<sup>108</sup> For this reason, he concludes, Ms. Dombroski's allegations were sufficient to pierce the corporate veil, even under the majority's modification of *Belvedere*.<sup>109</sup>

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<sup>96</sup> *Id.*

<sup>97</sup> *Id.* ("Insurer bad faith is a straightforward tort, a basic example of unjust conduct.").

<sup>98</sup> *Id.*

<sup>99</sup> *Id.* at 546.

<sup>100</sup> *Id.* at 546 (Pfeifer, J., dissenting).

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at 546-47.

<sup>106</sup> *Id.* at 547.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

IV. ANALYSIS OF THE COURT'S MODIFICATION OF THE *BELVEDERE* TEST AND ITS LIKELIHOOD TO CAUSE FURTHER CONFLICTS AMONG APPELLATE DISTRICTS

In *Dombroski*, the Supreme Court of Ohio attempted to make a uniform standard for Ohio courts to determine when it is appropriate to pierce the corporate veil in an effort to resolve the conflict among the appellate courts. The Court's attempt, however, will not result in a resolution of the conflict but will cause conflicts over the same issue. Ohio's appellate districts have previously conflicted over this issue—once following *North v. Higbee Co.* and again following *Belvedere*. Both of these conflicts followed Supreme Court of Ohio attempts to clarify what types of misconduct would allow a plaintiff to pierce the corporate veil.<sup>110</sup> *Dombroski v. WellPoint, Inc.* is the Supreme Court of Ohio's third attempt to resolve this conflict. However, because the Supreme Court of Ohio has added language but no substance to the *Belvedere* test, the appellate districts will surely split along the same lines in future cases.

If the Supreme Court of Ohio really wants to prevent future conflicts among the appellate districts, it must set out a new standard that allows piercing when the corporation has engaged in "fraud or similarly wrongful conduct." This standard is consistent with the evolution of Ohio's doctrine of piercing the corporate veil, and it would accomplish the Court's goal of balancing the importance of limited shareholder liability and shareholder accountability. Moreover, this standard would accommodate the conflicting standards of the Sixth and Seventh Districts and, in turn, prevent future conflicts among the appellate courts.

A. *The Court's Modification of the Belvedere Test Will Cause Further Conflicts Among the Appellate Districts*

*Dombroski v. WellPoint, Inc.* is the Supreme Court of Ohio's third attempt to resolve the question of whether a corporation's unjust or inequitable acts are sufficient to pierce the corporate veil.<sup>111</sup> This attempt, however, is just as confusing as the Court's earlier attempts—both of which split the appellate districts over what types of corporate misconduct warranted piercing. The Court's third attempt in *Dombroski* merely adds to the confusing language with another vague phrase—"similarly unlawful acts." This phrase is just as vague as the Court's previous language and will similarly cause conflicts among Ohio's courts of appeals.

The Court's first attempt to address what types of misconduct warrant piercing was in *North v. Higbee Co.*<sup>112</sup> In *North*, the issue on appeal was similar to that in *Dombroski*:

Can the court disregard the fiction of separate corporate entity of the subsidiary corporation when the facts disclose that a wrong and an injustice has been perpetrated upon innocent third persons in the absence

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<sup>110</sup> See *supra* Part II.B.

<sup>111</sup> See generally *Belvedere Condo. Unit Owners' Ass'n v. R.E. Roark Cos.*, 617 N.E.2d 1075 (Ohio 1993); *North v. Higbee Co.*, 3 N.E.2d 391 (Ohio 1936).

<sup>112</sup> See *supra* p. 1057.

of fraud or illegality and hold the parent company liable for the obligations of its subsidiary?<sup>113</sup>

After *North*, the courts of appeals eventually conflicted over what type of misconduct warranted piercing. Despite *North*'s seemingly clear standard that fraud was required,<sup>114</sup> some appellate districts chose to follow *North*, and others chose to follow a broader standard set forth in the Sixth Circuit.<sup>115</sup>

Similar to *North*, in *Dombroski*, the Supreme Court of Ohio has set out a new articulation of its piercing standard. Unlike *North*, however, the Court's standard is not as clear. In *North*, the Court clearly stated that fraud would be the touchstone for piercing the corporate veil.<sup>116</sup> In *Dombroski*, however, the Court stated that "similarly unlawful act[s]" would allow a plaintiff to pierce the veil.<sup>117</sup> If the appellate districts split when the Supreme Court of Ohio clearly stated that fraud—a discernable and definable harm<sup>118</sup>—was required for piercing, it is foreseeable that the Court's additional vague language in *Dombroski* will split the districts again. Because the Supreme Court of Ohio failed to define what type of conduct could be classified<sup>119</sup> as a "similarly unlawful act," the modified *Belvedere* test is left to the interpretation of the historically conflicted appellate districts.<sup>120</sup>

This first conflict among the appellate districts may have occurred because of the interjection of the Sixth Circuit's articulation of piercing standards in *Bucyrus-Erie*

<sup>113</sup> *North*, 3 N.E.2d at 392 (recognizing this as the issue presented before the lower court).

<sup>114</sup> *Id.* at syllabus ("The separate corporate entities of a parent and subsidiary corporation will not be disregarded and the parent corporation will not be held liable for the acts and obligations of its subsidiary corporation, notwithstanding the facts that the latter was controlled by the parent through its stock ownership, and that the officers and directors of the parent corporation were likewise officers and directors of the subsidiary, in the absence of proof that the subsidiary was formed for the purpose of perpetuating a fraud and that domination by the parent corporation over its subsidiary was exercised in such manner as to defraud the complainant.").

<sup>115</sup> See *Belvedere*, 617 N.E.2d at 1086 n.8. This split also occurred in part because of *Bucyrus-Erie*, which interpreted Ohio law as allowing unjust or inequitable acts. *Bucyrus-Erie*, 643 F.2d at 419.

<sup>116</sup> See *supra* note 31.

<sup>117</sup> *Dombroski*, 895 N.E.2d at 545.

<sup>118</sup> See *Gaines v. Preterm-Cleveland, Inc.*, 514 N.E.2d 709, 712 (Ohio 1987) ("The elements of an action in actual fraud are: (a) a representation or, where there is a duty to disclose, concealment of a fact, (b) which is material to the transaction at hand, (c) made falsely, with knowledge of its falsity, or with such utter disregard and recklessness as to whether it is true or false that knowledge may be inferred, (d) with the intent of misleading another into relying upon it, (e) justifiable reliance upon the representation or concealment, and (f) a resulting injury proximately caused by the reliance.") (citing *Burr v. Stark City Bd. of Comm'rs*, 491 N.E.2d 1101, para. two of the syllabus (Ohio 1986)).

<sup>119</sup> The Court did make clear that insurer bad faith claims would be excluded under its standard. *Dombroski*, 895 N.E.2d at 545 ("Insurer bad faith is a straightforward tort, a basic example of unjust conduct; it does not represent the type of exceptional wrong that piercing is designed to remedy.").

<sup>120</sup> See *supra* Part II.B.

instead of an interpretation of the Court's language in *North*. Even so, the Supreme Court of Ohio's attempt to resolve this conflict in *Belvedere* with a new articulation of the standard proved just as futile as its previous attempt in *North*. *Belvedere Condominium Unit Owners' Ass'n v. R.E. Roark Cos.* was the Supreme Court of Ohio's second attempt to clarify what type of corporate misconduct warranted piercing the corporate veil.<sup>121</sup> In *Belvedere*, the court adopted the Sixth Circuit's standard and held that piercing required "fraud or an illegal act" on the part of the corporation.<sup>122</sup> This attempt at clarification failed, and the courts of appeals split again into those that required solely fraud or illegal acts and those that allowed unjust or inequitable acts.<sup>123</sup> This conflict was different than the split that followed *North*, as this conflict was the product of a difference of interpretation between the appellate districts<sup>124</sup> rather than the districts simply adopting one test over another.<sup>125</sup> Because the districts interpreted *Belvedere*'s specific language—"fraud or an illegal act"—in two different ways, there is nothing to show that *Dombroski*'s additional language of "similarly unlawful acts" will prevent that from happening again. If the districts have previously split over the interpretation of "fraud or an illegal act," it is clearly foreseeable that the same split will occur when the modified test merely adds a synonym for the disputed term.<sup>126</sup>

The Supreme Court of Ohio's language in *Dombroski* will likely agitate the appellate districts' predisposition to splitting over this issue. In *Dombroski*, the Court found that the appellate districts that allowed unjust or inequitable acts were too broad in their interpretations of *Belvedere*.<sup>127</sup> The Court's modification of

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<sup>121</sup> *Belvedere*, 617 N.E.2d at 1086 n.8 ("As a result of *Bucyrus-Erie*, two irreconcilable lines of cases have developed in the lower Ohio courts. Some Ohio courts of appeals have followed *North* in requiring that fraud in formation must be established. . . . Other courts of appeals, however, have relied on *Bucyrus-Erie* and held that a finding of fraud in formation is not necessary." (citations omitted)).

<sup>122</sup> *Id.* at 1086. The Supreme Court of Ohio claimed to be adopting the Sixth Circuit standard over the *North* standard, but its language abbreviates what the Sixth Circuit requires. Compare *id.* with *Bucyrus-Erie*, 643 F.2d at 418.

<sup>123</sup> *Dombroski*, 895 N.E.2d at 543-44 ("The courts of appeals have interpreted the phrase 'fraud or an illegal act' in two different ways.").

<sup>124</sup> See *Dombroski*, 895 N.E.2d at 543.

<sup>125</sup> See *supra* Part II.B.

<sup>126</sup> See also *Dombroski*, 895 N.E.2d at 547 (Pfeifer, J., dissenting). The only dissenting justice, Justice Pfeifer, also makes note of the abstraction of the additional language:

The majority believes that it expands on the *Belvedere* element of a "fraud or an illegal act" by including the redundancy "or a similarly unlawful act." Thus, not only may an "illegal act" satisfy the second element of the *Belvedere* test, but so will an act that is similarly unlawful to an illegal act. The new language seems to be pulled from the air. Is there a notable distinction between an "unlawful" and an "illegal" act? Not that the majority identifies. The words appear to be two ways of saying the same thing. Potato, potahto, illegal, unlawful—let's call the whole thing off.

*Id.*

<sup>127</sup> See *id.* at 544-45 ("Were we to allow piercing every time a corporation under the complete control of a shareholder committed an unjust or inequitable act, virtually every close corporation could be pierced when sued, as nearly every lawsuit sets forth a form of unjust or

*Belvedere* in *Dombroski*, however, does nothing to limit this broad interpretation because “unlawful” is a common synonym for “illegal.”<sup>128</sup> Because “fraud” is a term whose definition is not up for interpretation,<sup>129</sup> the lower courts’ split arises from its interpretation of the phrase “illegal acts.” Merely adding a synonym for “illegal” to language that has proven to be vague<sup>130</sup> and will only perpetuate the confusion among the courts. Moreover, an “unlawful act” is considered to be “[c]onduct that is not authorized by law” or “a violation of a civil or criminal law.”<sup>131</sup> Even though the Supreme Court of Ohio indicated that it did not want its modification to allow piercing in all civil actions,<sup>132</sup> its language, in fact, does just that.

Although the Supreme Court of Ohio found that the broad interpretations of *Belvedere* were improper, it also found that strict adherence to *Belvedere*’s language of “fraud or an illegal act” was too limited.<sup>133</sup> The Court modified *Belvedere*’s language hoping to strike a balance between the concept of limited shareholder liability and the occasional need to pierce the corporate veil for “specific egregious acts.”<sup>134</sup> Adding “similarly unlawful acts” to the *Belvedere* test, however, does nothing to clarify what those “specific egregious acts” are; all it says is that the misconduct is not limited to fraud or illegal acts. It seems as if the Court attempted to take the districts’ two conflicting standards—“fraud or an illegal act” and “inequitable or unjust acts”—and come out somewhere in the middle. The additional language, however, is more expansive in practice than the Court argues.

At least one appellate district is already expansively applying *Dombroski*. In *RCO International Corp. v. Clevenger*,<sup>135</sup> the plaintiff filed a complaint alleging breach of contract and intent to pierce the corporate veil.<sup>136</sup> The Tenth District Court of Appeals, which had previously allowed piercing in cases of unjust conduct,<sup>137</sup> held that the plaintiff’s allegations were sufficient to pierce the corporate veil.<sup>138</sup> The court cited *Dombroski v. WellPoint, Inc.* saying, “While demonstrating . . . fraud

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inequitable action and close corporations are by definition controlled by an individual or small group of shareholders.”).

<sup>128</sup> BLACK’S LAW DICTIONARY 763 (8th ed. 2004).

<sup>129</sup> See *supra* note 118 (listing the elements of fraud in Ohio).

<sup>130</sup> This language is proven to be vague because it has been subjected to different interpretations among the courts.

<sup>131</sup> BLACK’S LAW DICTIONARY at 1574.

<sup>132</sup> See *supra* note 127 and accompanying text.

<sup>133</sup> See *Dombroski*, 895 N.E.2d at 544.

<sup>134</sup> See *id.* at 544, 545 (“In view of the reality that shareholders could seriously misuse the corporate form and evade personal liability under the second prong as presently worded, we find it necessary to modify the second prong of the *Belvedere* test to allow for piercing in the event that egregious wrongs are committed by shareholders.”).

<sup>135</sup> RCO Int’l Corp. v. Clevenger, 904 N.E.2d 941 (Ohio Ct. App. 2008).

<sup>136</sup> *Id.* at 942.

<sup>137</sup> Swayne v. Beebles Invs., 891 N.E.2d 1216, 1228 (Ohio Ct. App. 2008) (interpreting *Belvedere* to allow piercing when the corporation’s conduct was unjust).

<sup>138</sup> RCO, 904 N.E.2d at 943.

is one way to meet the second prong of the *Belvedere* test, a plaintiff may also meet the same by demonstrating ‘an illegal act, or a similarly unlawful act.’”<sup>139</sup> Despite the Supreme Court of Ohio’s intent in *Dombroski* to avoid piercing every time a corporation is sued, the Tenth District has continued to apply its unjust conduct standard through *Dombroski*’s “similarly unlawful acts” language.<sup>140</sup> Like *RCO International*, other appellate districts will likely revert back to their pre-*Dombroski* standards because the Supreme Court of Ohio’s language is too vague to give any true guidance. Because *Dombroski*’s language is too vague to prevent another split among the appellate districts, the Supreme Court of Ohio should set out a new standard for what types of corporate misconduct will allow a plaintiff to pierce the veil.

*B. The Supreme Court of Ohio Should Set Forth a New Standard that Allows Piercing in Cases of “Fraud or Similarly Wrongful Conduct”*

The Supreme Court of Ohio must set a new standard for when plaintiffs may pierce the corporate veil because the modification of *Belvedere* in *Dombroski* is no clearer than the previous language that had already split the appellate districts.<sup>141</sup> Instead, the Supreme Court of Ohio should adopt a new standard that allows piercing in cases of “fraud or similarly wrongful conduct.” This standard is consistent with the foundational principles of the piercing doctrine and accomplishes the Supreme Court of Ohio’s goal of balancing the importance of limited liability and the occasional need to pierce the corporate veil. Moreover, this standard would accommodate the conflicting standards of the Sixth and Seventh Districts and, therefore, prevent future conflicts among other appellate courts.

Modifying the *Belvedere* test to allow for wrongful acts in addition to fraud is consistent with the fundamental principles of the piercing doctrine and Ohio’s piercing jurisprudence. Black’s Law Dictionary defines “wrongful” as “[c]haracterized by unfairness or injustice . . . [c]ontrary to law; unlawful . . . .”<sup>142</sup> Under this definition, courts would be permitted to pierce the veil when a corporation has engaged in unjust conduct, similar to the Seventh District standard.<sup>143</sup> Piercing the corporate veil is an equitable doctrine for plaintiffs to ensure fair dealing between shareholders and third parties.<sup>144</sup> It is meant to balance the importance of the principle of limited shareholder liability and the occasional need to hold shareholders accountable.<sup>145</sup> To accomplish this balance, the majority

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<sup>139</sup> *Id.* at 944 (quoting *Dombroski v. WellPoint, Inc.*, 895 N.E.2d 538 (Ohio 2008)).

<sup>140</sup> *Id.*

<sup>141</sup> *See supra* Part II.A.

<sup>142</sup> BLACK’S LAW DICTIONARY at 1644.

<sup>143</sup> *See supra* Part II.B.

<sup>144</sup> *See Dombroski*, 895 N.E.2d at 543; *see also* Michael, *supra* note 19, at 55.

<sup>145</sup> *See* Strasser, *supra* note 1, at 640.

of courts have said that fraud is not the only misconduct that will warrant piercing the corporate veil.<sup>146</sup>

Incorporating the phrase “similarly wrongful acts” into the Ohio’s piercing standard will expand the standard beyond the strict limits of fraud, as the Supreme Court of Ohio desired in *Dombroski*.<sup>147</sup> This standard, however, would not allow piercing in all cases of injustice, as the Supreme Court of Ohio feared the Seventh District’s standard would.<sup>148</sup> Because the standard requires that the wrongful conduct be similar to fraud, courts would be limited to piercing in cases where the injustice or unfairness—as the definition includes—is as serious or similarly serious to the act of fraud.<sup>149</sup> This would prevent, as the Supreme Court of Ohio intended, the application of the doctrine to every suit brought against a corporation.

This standard provides more guidance than *Dombroski*’s “similarly unlawful acts” standard because it is more restrictive. In the Supreme Court of Ohio’s modification, “similarly unlawful act[s]” follows “illegal act[s],”<sup>150</sup> but it does not serve as a limitation on that phrase because “unlawful” is a common synonym for “illegal.”<sup>151</sup> Because the definition of “wrongful” incorporates illegality and injustice, the phrase qualifies and limits itself. Therefore, if a plaintiff seeks to pierce the corporate veil based on an unjust or inequitable act under this standard, that plaintiff would have to show that those acts are considered “similarly wrongful.” This would require the plaintiff to show not only that the wrongful conduct is similarly serious to fraud but that the injustice complained of is illegal as well.

Moreover, the Supreme Court of Ohio should allow piercing in cases of fraud or similarly wrongful conduct because this standard is consistent with the roots of Ohio’s piercing jurisprudence. In *North*, the Supreme Court of Ohio laid out a standard that required fraud before the corporate veil could be pierced.<sup>152</sup> Later, in *Belvedere*, the Supreme Court of Ohio adopted the Sixth Circuit Court of Appeals’ standard and thereby expanded the piercing doctrine to cases of “fraud or an illegal act.”<sup>153</sup> This articulation, however, was an abridgement of the Sixth Circuit’s

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<sup>146</sup> *Id.* at 640-41 (“Must the wrongful conduct rise to the level of common law fraud? While New Mexico and a few other jurisdictions appear to say yes, the prevailing view is that common law fraud is not required to support piercing.”).

<sup>147</sup> *Dombroski*, 895 N.E.2d at 545 (“[H]aving reviewed the various tests for piercing the corporate veil developed by other authorities, we are convinced that our pronouncement in *Belvedere* is too limited to protect other potential parties from the wide variety of egregious shareholder misdeeds that may occur.”).

<sup>148</sup> *Id.* at 544-45.

<sup>149</sup> *See id.* at 545 (noting that piercing the corporate veil should not allow shareholders to be insulated from liability when their acts “are as objectionable as fraud or illegality”).

<sup>150</sup> *Id.*

<sup>151</sup> *See supra* note 128 and accompanying text.

<sup>152</sup> *North v. Higbee Co.*, 3 N.E.2d 391, 398 (Ohio 1936).

<sup>153</sup> *Belvedere Condo. Unit Owners’ Ass’n v. R.E. Roark Cos.*, 617 N.E.2d 1075, 1086 (Ohio 1993) (“We feel the Sixth Circuit’s approach to piercing the corporate veil strikes the correct balance between the principle of limited shareholder liability and the reality that the corporate fiction is sometimes used by shareholders to protect themselves from liability for their own misdeeds.”); *see also supra* pp. 1058-59.

standard that allowed for piercing in cases of “fraud or wrong or other dishonest or unjust act.”<sup>154</sup> In adopting this standard, the Supreme Court of Ohio agreed that the Sixth Circuit standard correctly balanced the interests of limited liability and justice for injured plaintiffs.<sup>155</sup> Furthermore, in *Dombroski*, the Supreme Court of Ohio recognized that piercing is required for a “wide variety of egregious shareholder misdeeds,” including those that were not fraud or explicitly illegal.<sup>156</sup> Adopting the standard that allows piercing in cases of fraud or similarly wrongful acts would further the Supreme Court of Ohio’s historical intent to allow injustices and inequities to pierce the corporate veil when they are “as objectionable as fraud or illegality.”<sup>157</sup> The Supreme Court of Ohio should adopt a standard where plaintiffs may pierce the corporate veil when the corporation has committed fraud or similarly wrongful acts because this standard is consistent with fundamentals of the doctrine and its evolution in Ohio.

#### V. CONCLUSION

The Supreme Court of Ohio’s modification of the *Belvedere* test in *Dombroski v. WellPoint, Inc.* is unclear, inconsistent, and another failed attempt to resolve the conflict among Ohio’s courts of appeals. Because the Court has promulgated yet another confusing standard for what conduct will allow plaintiffs to pierce the corporate veil, Ohio’s courts of appeals are likely to conflict, once again, over this issue.

The doctrine of piercing the corporate veil works as a check on the established corporate law principle of limited shareholder liability. Piercing allows injured plaintiffs to hold shareholders liable for their misconduct despite the general rule that shareholders are not personally liable for the debts of the corporation. It is an equitable doctrine that is based in common law and has no consistent standard throughout the courts. This inconsistency is especially true among Ohio’s courts, which have previously conflicted over its piercing standards. The Supreme Court of Ohio has attempted to resolve this division in *North* and in *Belvedere*. These attempts, however, have proved futile and have only caused further splits among the districts.

The Supreme Court of Ohio’s latest attempt in *Dombroski v. WellPoint, Inc.* is equally futile because its modification of *Belvedere* test is merely cosmetic. Its additional language of “similarly unlawful acts” is likely to cause yet another conflict among Ohio’s courts of appeals as to what types of corporate misconduct warrant piercing the veil. Because the appellate districts conflicted over this issue following previous attempts at resolution, and will likely split again following *Dombroski*, the Supreme Court of Ohio should set out a different standard. To prevent another conflict in the lower courts, the Supreme Court of Ohio should adopt a standard in which fraud or similarly wrongful conduct would allow plaintiffs to

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<sup>154</sup> See *supra* pp. 1059.

<sup>155</sup> See *Belvedere*, 617 N.E.2d at 1086.

<sup>156</sup> *Dombroski*, 895 N.E.2d at 545.

<sup>157</sup> *Id.* (“Limiting piercing to cases of fraud or illegal acts protects the established principle of limited liability, but it insulates shareholders when they abuse the corporate form to commit acts that are as objectionable as fraud or illegality.”).

pierce the corporate veil. This standard is preferable to the standard set out in *Dombroski* because it is more consistent with the purpose of the piercing doctrine, and it accomplishes the Supreme Court of Ohio's goal of balancing the importance of limited liability and the occasional need to hold shareholders liable.