“To get into federal court, our West Virginia plaintiffs would have to sue the out-of-state Pittston Company. But to sue Pittston, the Buffalo Mining Company’s sole shareholder, they would have to pierce the Buffalo Mining Company’s corporate veil” (Stern 55-56). This was one of the main concerns of Gerald Stern, author of The Buffalo Creek Disaster, while he served as the main attorney from Arnold & Porter, LLP representing more than 600 plaintiffs that suffered the tragedy in Buffalo Creek on February 26, 1972. Stern considered using this rare tactic to first bring the case to federal court if appealed to that level, and second, to increase the amount of awards plaintiffs would receive in compensatory (compensation from out-of-pocket losses) and punitive (pain and suffering caused by defendant) damages.

Piercing the Corporate Veil – Defined

Corporate law is built around the fundamental principal of a corporation. A corporation is regarded as a legal entity separate from its shareholders. Therefore, shareholders have the protection from their corporate entity’s acts. This protection encourages investment in the corporation, which benefits their corporation and also reduces the shareholder’s involvement in corporate ownership issues (Thompson). Forming this limited liability and reducing risk for shareholders is known as a corporate veil. The veil acts as a division between the corporate entity and the personal assets of that entity’s shareholders. If a corporation is challenged in a lawsuit the veil may be pierced, possibly making the shareholders equally as liable for the actions of the corporation (Brunetti).

Under this condition a court has the opportunity to disregard the corporate entity and hold the corporation’s shareholders directly responsible for the acts that are being challenged. This rare occurrence only takes place when a court believes that the corporation serves as an “alter ego” or “instrumentality” of the shareholders. In other words, the shareholders may have
coercive control over the corporation’s acts and may be directly breaching corporate formalities. Doctrines of piercing the corporate veil are controlled and vary by state. Most commonly states have developed a two-part test, placing the burden on the plaintiff, to determine whether the court should pierce the veil. First, there has to be “such a unity of interest and ownership that the separate personalities of the corporation and its corporate shareholder no longer exist” and second, “if the acts are treated as those of the corporation alone, then an inequitable result will follow” (Thompson).

Factors that Cause Piercing of Veil

Misuse of Corporate Funds – This could be the result of the court determining that the shareholder treats the corporation’s assets as their own or is using them for personal benefit. This most commonly happens when a shareholder co-mingles company accounts with their own and fails to keep a detailed record of transactions between the company and themselves ("Citizen Media Law Project").

Failure to Observe Corporate Formalities – Disregarding formalities include failure to issue stock; failure to hold shareholder meetings/prepare minutes for these meetings; and failure to formally document transactions between shareholders and the business ("Citizen Media Law Project"). This was one of the factors in which Stern was ready to challenge Pittston with due to the fact that Arnold & Porter was able to prove that “there were no formal…meetings backing up any of the purported minutes of the six [shareholder’s] meetings. [With this evidence] we could argue that Pittston had not run the Buffalo Mining Company as a separate independent corporation… and had no right to hide behind Buffalo Ming Company’s corporate veil” (Stern 145).
**Fraud** – The court can also examine whether the shareholder used the company to commit fraud or make “fraudulent representations” of the business. For example, a shareholder could come under deep suspicion of a court if they themselves are willing to pay off debts of the corporation and make this verbally or otherwise known to creditors. This immediately assumes liability for the shareholder ("Citizen Media Law Project ").

*Avoid Piercing the Veil and Strengthening the Veil*

First and foremost, piercing the corporate veil can be avoided by corporations if they are properly established and maintained in a responsible and ethical way. There are many other ways a corporation can avoid having the veil pierced, but the following tactics are among the most common and easily accomplishable for corporations to establish themselves as a separate entity:

**Documenting Formalities** - This entails creating By-Laws, issuing stock, holding regular shareholder meetings, keeping up to date minutes and filing annual reports. Also, intercompany agreements should be made which should include how transactions between and company and its shareholders should be documented (Brunetti).

**Avoiding Co-mingling** - All corporate assets should be in the corporation’s name and have a separate bank account from a shareholder. A corporation’s funds should not be seen as interchangeable to shareholders (Brunetti).

**Capitalization** – A corporation should purchase appropriate liability insurance. Shareholders should never undercapitalize a company, for it is one of the most common claims made by the plaintiff to pierce the corporate veil (Brunetti).

**Multiple Corporation** – Corporations should avoid identical or interlocking stock ownership, officers, directors and employees (Brunetti).
After the devastation passed, Stern had to file suit against Pittston in order to compensate the 600+ plaintiffs he was representing. In the early stages of filing suit Stern had to make the decision of what he was challenging the defendant for specifically and defining what wrongdoing they had committed. He says that piercing the corporate veil would be a valid option, but “since piercing the corporate veil is so rarely permitted” it would be wise to find other terms on which to sue them. He makes the point that the suit could not rely on “fraud or illegality” both of which are needed to pierce the veil, but they could show that Buffalo Creek Mining Company was not operating as a separate, independent entity. After a long process of acquiring the transcripts from the governor’s Ad Hoc committee, Stern was able to show that Buffalo Creek Mining Company was being operated as a division of Pittston instead of as a separate corporate subsidiary. Stern’s argument was supported by a sign that was actually at the Buffalo Creek Mining site that read, “Buffalo Creek Mining Company – Lorado Coal – A Division of The Pittston Company.” Stern says that “division” is a “magic word.” Basically, by publicly calling the Buffalo Creek Mining Company a division of Pittston it established to the public that “this was now a Pittston operation, and no longer a separate Buffalo Mining Company” (Stern 81-82). In other words, if a shareholder does not want to separate themselves from their corporation, do not make it publically known.

Other factors that benefited Stern’s attempt to pierce the corporate veil was the fact that Buffalo Mining Company did not have the adequate funds to pay a lawsuit of $52 million. This was a sign of financial inability to pay which sometimes indicates that investors “have not given their corporation enough initial capital to conduct its business.” This was supported by solid evidence produced by Pittston indicating that Buffalo Creek Mining Company had a net worth of
$7 million and insurance coverage of $15 million (Stern 83). Another factor that weakened the veil of Pittston was their poor documentation of investor meetings. After previous statements were made that there were initially six shareholder meetings the Pittston lawyers admitted in another statement that only two had taken place. Eventually, as stated prior, it was found that no formal meetings took place to support the minutes that were submitted (Stern 145). Both of these examples violate the use of corporate funds and proper documentation of corporate formalities. This caused the veil of Pittston to become, in some sense, sheer and from this point in the pre-trail process Pittston was in a downward spiral.

Even though Stern’s main argument throughout the book shifts from piercing Pittston’s corporate veil to “psychic impairment” of the plaintiffs, I think there was a substantial benefit from Stern’s efforts. All of the research that uncovered dirty facts about Pittston’s unethical corporate activities revealed The Pittston Company to the public. This grew the public’s opinion and concern about the wrongdoings of the company and created awareness, thus creating opinions that can indirectly influence opinions of judges. There were numerous articles written by big name newspaper in New York, West Virginia and probably many other states that were not mentioned in the book.

The media coverage acted as a liaison between Gerald Stern and Zane Staker, Pittston’s defense lawyer. Once a statement was filed or a meeting with Judge Hall took place the media immediately acted on it and had an article in the paper the next day. This was especially true when Stern started to uncover corporate irresponsibility by Pittston or when Pittston filed a claim that Judge Hall failed. The media ate that up and regurgitated it into a juicy news story to stir public opinion.
Work Cited


