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SUPREME COURT OF PENNSYLVANIA

33 WAP 2024, 34 WAP 2024

IN RE: DRAVO LLC-DERIVATIVE CLAIMS AGAINST CARMEUSE LIME, INC., AND CERTAIN AFFILIATED ENTITIES

Appeal of: Carmeuse Lime, Inc. and Certain Affiliated Entities

Brief of Amici Curiae the Chamber of Commerce of the United States of America, the Pennsylvania Chamber of Business and Industry, and the Pennsylvania Coalition for Civil Justice Reform Supporting Appellants

Appeal from the Order of the Superior Court entered December 19, 2023, at No. 1210 WDA 2022, Reversing the Order of the Court of Common Pleas of Allegheny County entered October 5, 2022, at No. GD-20-010198

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

OTHER AUTHORITIES

STATEMENT OF INTEREST

The Chamber of Commerce of the United States of America ("U.S. Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the U.S. Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the U.S. Chamber regularly files amicus curiae briefs in cases that raise issues of concern to the nation's business community.

The Pennsylvania Chamber of Business and Industry ("PA Chamber") is the largest broad-based business advocacy association in Pennsylvania. Thousands of its members throughout the Commonwealth and from every industry sector employ more than 50% of Pennsylvania's private workforce. The PA Chamber's mission is to improve Pennsylvania's business climate for its members.

The Pennsylvania Coalition for Civil Justice Reform is a statewide, bipartisan organization representing businesses, health care and other perspectives. The coalition is dedicated to improving Pennsylvania's civil justice system by elevating

awareness of problems and advocating for legal reform in the legislature and fairness in the courts.

The U.S. Chamber, PA Chamber, and Pennsylvania Coalition for Civil Justice Reform ("Amici") file this brief to assist the Court in evaluating whether claims that are time-barred under the Pennsylvania LLC Act nevertheless can be asserted against the LLC's parent by piercing the LLC's "corporate veil." Members of amici and the broader business community have an interest in Pennsylvania law governing business associations, including theories of liability that may arise under that law. The business community relies upon this Court to shape these doctrines, including veil-piercing, in a predictable and fair manner that does not unduly constrain commercial activity. Failure to do so would ultimately harm the Commonwealth's economic competitiveness and make it less attractive as a place of incorporation.

No one other than Amici, their members, or their counsel paid for the preparation of this brief or authored this brief, in whole or in part.

SUMMARY OF THE ARGUMENT

Plaintiffs have no viable claims against Carmeuse Lime, Inc. or its affiliated entities (together, "CLI") that are appellants in this case. Plaintiffs' only potentially viable claim would be against a separate limited liability company, Dravo LLC, which dissolved in accordance with Pennsylvania's LLC Act in 2018. As such, Plaintiffs face two insurmountable barriers to relief: the LLC Act's statute of repose, which bars claims against a limited liability company more than two years after its dissolution, and the respect that the Commonwealth's courts consistently give the corporate form.

Instead of recognizing that each of those principles independently bars Plaintiffs' claims, the Superior Court did an end run around both to impose its own equitable judgment. Specifically, the Superior Court disregarded well-established limits on corporate veil-piercing to create a new, independent cause of action that would lie directly against CLI and not be subject to the LLC Act's statute of repose.

In so doing, the Superior Court violated both the language and the intent of the LLC Act and well-recognized limits to corporate veil-piercing, which applies only in exceptional cases, such as where the corporate form is abused. The record here reflects no such abuse of the corporate form—to the contrary, Dravo's dissolution followed the process contemplated in the LLC Act. Indeed, a court determined the amount of security required of Dravo to cover future contingent claims.

The Superior Court's expansion of the law, if allowed to stand, will have significant detrimental effects on Pennsylvania's businesses and, by extension, their employees and consumers. Businesses rely on the predictability that is afforded by the LLC Act's limitations on liability, including its statute of repose. They also organize their corporate structures in reliance on the respect that courts are expected to give the corporate form. The Superior Court's decision upends those expectations, disincentivizing businesses from organizing and doing business in the Commonwealth. Small businesses and entrepreneurs will be especially impacted, given that many choose to organize under the

LLC Act precisely because it offers both limited liability protections and relative simplicity.

The Superior Court's decision is contrary to the language of the LLC Act, violates the intent of the General Assembly, and disregards well-established precedent respecting the corporate form. It will also have negative real-world impacts. Accordingly, this Court should reverse.

ARGUMENT

I. The LLC Act limits members' liability and provides an orderly, predictable mechanism for dissolving a business entity.

When it enacted the Uniform Limited Liability Company Act of 2016 ("LLC Act"), 15 Pa.C.S. § 8811, *et. seq*., the General Assembly afforded the protection of limited liability to members of limited liability companies. The Superior Court's reasoning circumvents that protection, contrary to the LLC Act's legislative intent and to the detriment of Pennsylvania's businesses.

In construing the LLC Act, this Court's "task is to discern the intent of the General Assembly." *Oliver v. City of Pittsburgh*, 11 A.3d 960, 965 (Pa. 2011). The "foremost indication" of that intent is the LLC Act's "plain language." *Id.*; *see also Sadler v. Workers' Comp. Appeal Bd.*, 244 A.3d 1208, 1213 (Pa. 2021) ("As with all matters of statutory construction, the plain language of the law must govern."). "[C]ourts may not look beyond the plain meaning of a statute under the guise of pursuing its spirit." *City of Johnstown v. Workers' Comp. Appeal Bd.*, 255 A.3d 214, 220 (Pa. 2021).

Here, the language of the LLC Act is clear about its intent to promote business interests by limiting LLC members' liability. The LLC Act provides that "[a] limited liability company is an entity distinct from its member or members." 15 Pa.C.S. § 8818(a). Accordingly, "[a] debt, obligation or other liability of a limited liability company is solely the debt, obligation or other liability of the company." *Id.* § 8834(a). An LLC's member cannot be held "personally liable." *Id.* That is so regardless of "whether the company has a single member or multiple members," and it is true regardless of "the dissolution, winding up or termination of the company." *Id.* § 8834(a)(1)-(2). It is also true where, as here, the LLC's member is a corporate entity.

The LLC Act also promotes certainty and predictability by providing an orderly mechanism for dissolving LLCs and winding up their affairs. *See* 15 Pa.C.S. §§ 8871-78. In furtherance of that purpose, Section 8875 of the LLC Act bars certain claims against an LLC that are not asserted within two years of dissolution, provided the LLC publishes notice of its dissolution. *Id.* § 8875(c).

Untimely claims are barred. *Id.* In other words, Section 8875 effectively functions as a statute of repose, and it therefore reflects a legislative "judgment that defendants should 'be free from liability after the legislatively determined period of time, beyond which the liability will no longer exist and will not be tolled for any reason.'" *See CTS Corp. v. Waldburger*, 573 U.S. 1, 10 (2014) (quoting C.J.S. § 7, at 24); *see also Dubose v. Quinlan,* 173 A.3d 634, 643-45 (Pa. 2017).

The LLC Act's legislative history confirms that purpose. The LLC Act was first enacted in 1994 and then revised in 2016. In the 1994 LLC Act, the General Assembly insulated an LLC's members from personal liability unless the certificate of organization provided otherwise. 15 Pa.C.S. § 8922(a). The 1994 LLC Act also restricted courts' ability to remove the limited liability shield with regard to creditors, even if an LLC inadvertently failed to comply with some legal formalities. Mark C. Larson, *Piercing the Veil of Pennsylvania Limited Liability Companies*, 75 Pa. B. Ass'n Q. 124, 128-29 (2004).

When the General Assembly overhauled the law governing LLCs in 2016, it sought to "eliminate existing obstacles to the growth of Pennsylvania businesses." Rep. Adam Harris & Rep. W. Curtis Thomas, H. Co-Sponsorship Memorandum, HB 1398, 2015-16 Reg. Sess. (Pa. 2015) ("Harris & Thomas Memo"). To that end, the General Assembly modernized the LLC Act, including the Act's protections against member liability. *See id.*; *see also* 15 Pa.C.S. § 8834(a). The General Assembly also explained that a failure to strictly observe corporate formalities does not justify piercing the corporate veil because the "informality of organization and operation [of LLCs] is both common and desired." Committee Comment to 15 Pa.C.S. § 8106; *see also, e.g.,* Stephen M. Bainbridge, *Abolishing LLC Veil Piercing*, 2005 U. Ill. L. Rev. 77, 88-89 (2005) (criticizing courts' emphasis on operational formalities in LLCs, which by design have more flexibility). Thus, in the absence of other intentional acts to abuse the law, the General Assembly presumed that courts would honor an LLC's limited liability protections and not expand liability beyond the duties and obligations clearly outlined in the LLC Act.

The General Assembly's intentions are consistent with the purposes underlying the analogous Pennsylvania Business Corporation Law of 1988 ("BCL"), 15 Pa.C.S. §§ 1101-9507. The BCL's legislative history reflects an intent to maintain and strengthen corporate protections in order to incentivize businesses to incorporate in Pennsylvania. *See* Vincent F. Garrity, Jr., *Some Distinctive Features of the New Pennsylvania Business Corporation Law*, 45 Bus. Law. 57, 83 (1989) (observing that the BCL was intended, in part, to "make Pennsylvania a more hospitable home for corporate charters"). The General Assembly also reenacted liability protections for shareholders dictating that "[a] shareholder of a business corporation shall not be liable, solely by reason of being a shareholder, under an order of a court or in any other manner for a debt, obligation or liability of the corporation of any kind or for the acts of any shareholder or representative of the corporation." 15 Pa.C.S. § 1526(a).

The General Assembly's intentions could not be clearer. They bar untimely claims against a dissolved LLC, and they affirm the bedrock principle that an LLC's member is not

"personally liable" for the LLC's conduct, regardless of its dissolution. *See* 15 Pa.C.S. §§ 8834(a), 8875(c)-(d)(2). Despite that clear language, the Superior Court permitted Plaintiffs to resurrect their untimely claims and assert them against CLI by expanding the doctrine of corporate veil-piercing.

II. The Superior Court's decision improperly expands the doctrine of veil-piercing to thwart the limitations in the LLC Act.

A. Veil-piercing is not an independent cause of action that can revive a time-barred claim.

To overcome the LLC Act's statute of repose for claims against dissolved LLCs, the Superior Court effectively elevated corporate veil-piercing to an independent cause of action. In so doing, the Superior Court exceeded well-established limits on the doctrine and undermined the plain language and underlying purpose of the LLC Act.

The Superior Court's reasoning far exceeds the limited purpose of veil-piercing. As this Court has made clear, "[a] request to pierce the corporate veil is not an independent cause of action[.]" *Commonwealth v. Golden Gate Nat'l Senior Care LLC*, 194 A.3d 1010, 1035 (Pa. 2018). Rather, it "is a means of imposing

liability *established in an underlying cause of action . . .* against another." *Id.* (emphasis added); *see also* 1 *Fletcher Cyclopedia of the Law of Corporations* § 41.10 (2024) ("An attempt to pierce the corporate veil is a means of imposing liability on an underlying cause of action such as a tort or breach of contract."). Courts have repeatedly affirmed this principle. *See, e.g.*, *Peacock v. Thomas*, 516 U.S. 349, 354 (1996); *Webber v. Armslist LLC*, 70 F.4th 945, 967 n.8 (7th Cir. 2023); *Krawiec v. Manly*, 811 S.E.2d 542, 552 (N.C. 2018); *Wallop Canyon Ranch, LLC v. Goodwyn*, 351 P.3d 943, 960-61 (Wyo. 2015); *Vasquez v. Sportsman's Inn, Inc.*, 57 A.3d 313, 321 (R.I. 2012).

As discussed above, Plaintiffs' claims are time-barred by the LLC Act, which functions as a statute of repose. *See Kornfeind v. New Werner Holding Co.*, 241 A.3d 1212, 1221 (Pa. Super. 2020) (explaining that a statute of repose "extinguish[es] a cause of action outright and preclud[es] its revival.") (quoting *Graver v. Foster Wheeler Corp.*, 96 A.3d 383, 387 (Pa. Super. 2014)). Therefore, there is no underlying cause of action to ground the Superior Court's theory of veil-piercing. *See Krawiec*, 811 S.E.2d

at 552 (holding that veil-piercing is inapposite where "all underlying claims have been or should be dismissed"); *Goodwyn*, 351 P.3d at 960 ("[W]e do not consider veil-piercing until the threshold question of whether there is liability for an underlying cause of action has been answered.") (quotation omitted); *Vasquez*, 57 A.3d at 321 (holding that it was "premature" to apply veil-piercing where plaintiff failed to establish "reasonable likelihood of success on the merits of his underlying negligence claim").

The Superior Court acknowledged this principle, but attempted to distinguish it on the basis that equity justifies piercing the veil (and, by implication, creating an independent cause of action) "where a parent is alleged to have dissolved the entity against which a lawsuit would be filed." *See In re Dravo LLC*, 307 A.3d 146, 153-54 (Pa. Super. 2023). That reasoning ignores that the LLC Act functions as a statute of repose, precluding time-barred claims against a dissolved LLC. 15 Pa.C.S. § 8875(c). The Superior Court's apparent disagreement with that legislative judgment does not justify its expansion of the veil-piercing doctrine.

Veil-piercing cannot be based on nonexistent claims, nor can it be used to revive extinguished claims. *See id.*; *Golden Gate*, 194 A.3d at 1035; *Erdely v. Hinchcliffe & Keener, Inc.*, 875 A.2d 1078, 1086 (Pa. Super. 2005) ("[W]e are in no position to fashion equitable remedies to replace valid legislatively enacted procedures for corporate dissolution."). Allowing the Superior Court's decision to stand would promote overly expansive and unwieldy approaches to veil-piercing, to the detriment of businesses and economic growth in Pennsylvania.

B. By-the-book corporate dissolution is not conduct that justifies veil-piercing.

Even if Plaintiffs *could* bring a standalone cause of action for veil-piercing, it is inappropriate to do so here. "Piercing the corporate veil is an extraordinary remedy reserved for cases involving exceptional circumstances." *Newcrete Prods. v. City of Wilkes-Barre*, 37 A.3d 7, 12 (Pa. Cmwlth. 2012) (citing *Lumax Indus., Inc. v. Aultman*, 669 A.2d 893 (Pa. 1995)). There is a "strong presumption" against veil-piercing, and as a "general rule . . . a corporation shall be regarded as an independent entity

even if its stock is owned entirely by one person." *Lumax*, 669 A.2d at 895.

Pennsylvania courts disregard the limited liability protections of business associations only in extraordinary circumstances, including when the form is blatantly abused. *See, e.g.*, *Mortimer v. McCool*, 255 A.3d 261, 278, 288 (Pa. 2021) (permitting "narrow form" of enterprise liability theory under certain circumstances while stressing that courts still "must tread lightly when called upon to pierce the [corporate] veil"). In deciding whether to employ such a drastic remedy, "[c]are should be taken on all occasions to avoid making 'the entire theory of the corporate entity . . . useless.'" *Wedner v. Unemployment Bd.*, 296 A.2d 792, 795 (Pa. 1972) (alteration in original, quotation omitted).

Veil-piercing jurisprudence in Pennsylvania reflects careful balancing. On the one hand, a strong presumption against veil-piercing preserves corporate separateness and the benefits of limited liability. At the same time, courts may disregard the corporate form in exceptional circumstances when it is necessary

to prevent fraud and abuse and protect creditors' rights. This treatment comports with the General Assembly's intent in passing the BCL and the LLC Act. These statutes' provisions regarding limited liability reflect the General Assembly's intent to encourage business development in the Commonwealth. Consistent with that purpose, courts will not disregard an entity's form unless members or shareholders intentionally misuse it.

That is a high bar. "Mere control and even total ownership of one corporation by another is not sufficient to warrant the disregard of a separate corporate entity." *eCommerce Indus., Inc. v. MWA Intelligence, Inc.*, 2013 WL 5621678, at *27 (Del. Ch. Sept. 30, 2013). Indeed, the "problem with disregarding the 'abuse' element" and focusing solely on control "is that such control will always be potentially present in the case of shareholders or parents." Stephen B. Presser, *The Bogalusa Explosion, "Single Business Enterprise," "Alter Ego," and Other Errors: Academics, Economics, Democracy and Shareholder Limited Liability: Back Towards a Unitary "Abuse" Theory of Piercing the Corporate Veil*, 100 Nw. L. Rev. 405, 427 (2006).

Nor is it sufficient to pierce the corporate veil that a corporate entity cannot pay its debts or has been rendered insolvent by a judgment. Limited liability is a purpose of the LLC Act (and the BCL), and "setting up a limited liability entity to shield oneself from personal liability is not a fraud or wrong." *See* Bainbridge, *supra*, at 90. Disregarding the corporate form merely because an LLC has limited assets would "mak[e] the entire theory of the corporate entity . . . useless." *Wedner*, 296 A.2d at 795 (alteration in original, quotation omitted). Given these guideposts, the Superior Court erred by concluding that piercing Dravo's corporate veil to reach CLI was "necessary to avoid injustice." *Dravo*, 307 A.3d at 160.

Significantly, the LLC Act includes safeguards to protect holders of known and contingent claims against dissolving limited liability companies. In particular, Section 8875 provides that "[a] dissolved limited liability company may publish notice of its dissolution and request persons having claims against the company to present them in accordance with the notice." 15 Pa.C.S. § 8875(a). Only if such a notice is published does the

statute of repose described in Section 8875(c) apply, which bars certain claims not brought within two years after the notice's publication date. Additionally, Section 8876(a) provides that a dissolved LLC that has published notice "may file an application with the court for a determination of the amount and form of security" to pay certain "claims that are reasonably expected to arise" after dissolution. Where such security is posted, such claims "may not be enforced against a member or transferee that received assets in liquidation." 15 Pa.C.S. § 8876(e).

In this case, CLI acquired Dravo via a reverse triangular merger in 1998. In so doing, CLI acquired a 100% ownership stake in Dravo, but it did not acquire its liabilities. Subsequently, Dravo managed its asbestos liabilities through primary and excess insurance policies. Then, in 2018, Dravo dissolved according to the procedures in the LLC Act. Following dissolution, Dravo had sufficient assets to defend and resolve all asbestos liabilities that were not barred by the LLC Act's two-year time limit.

None of this constitutes the kind of "abuse[]" or "truly egregious" conduct warranting the extraordinary remedy of veil-

piercing. *Smith v. A.O. Smith Corp.*, 270 A.3d 1185, 1200 (Pa. Super. 2022). CLI's acquisition of Dravo through a reverse triangular merger was by-the-book. *See* Edward B. Rock, *Adapting to the New Shareholder-Centric Reality*, 161 U. Pa. L. Rev. 1907, 1949 (2013) (observing that a reverse triangular merger is "the standard approach for [leveraged buyouts] in the United States"). CLI's acquisition of an ownership interest in Dravo but not Dravo's liabilities was consistent with the liability-limiting purposes of an LLC. *Cf.* 1 *Fletcher Cyclopedia of the Law of Corporations* § 41 (2024) (noting that an entity "may be formed for the sole purpose of avoiding personal liability"). And Dravo's dissolution, done in accordance with Pennsylvania law and under judicial supervision, was well within the rights of Dravo's sole member.

Taken to its logical conclusion, the Superior Court's ruling would mean that "virtually whenever a parent corporation chose to dissolve its subsidiary, it would become indefinitely liable for its former subsidiary's" liabilities. *See BLH, Inc. v. United States*, 13 Cl. Ct. 265, 274 (1987); *see also Ryman v. First Mortg. Corp.*, 443

F. Supp. 3d 642, 653 (D. Md. 2020) (rejecting veil-piercing theory against shareholder of dissolved company under similar circumstances); *Ruberoid Co. v. N. Tex. Concrete Co.*, 193 F.2d 121, 122 (5th Cir. 1951) (refusing to pierce corporate veil of dissolved entity to reach dominant shareholders where "regular corporate procedure was followed throughout"). The implications of this decision are far reaching, undermining the core pillars of corporate separateness and limited liability that underpin business law in Pennsylvania.

The Superior Court relied on equitable considerations to expand corporate veil-piercing beyond its established limits. But "[e]quity follows the law," not the other way around. *First Fed. Sav. & Loan Ass'n of Lancaster v. Swift*, 321 A.2d 895, 897 (Pa. 1974). Courts may not "substitute [their own] judgment as to public policy for that of the legislature." *Parker v. Children's Hosp. of Phila.*, 394 A.2d 932, 937 (Pa. 1978); *see also Discovery Charter Sch. v. Sch. Dist. of Phila.*, 166 A.3d 304, 318 (Pa. 2017) (noting that "it is not the province of the judiciary to augment the legislative scheme").

Yet that is what the Superior Court did here. Its decision dramatically expands courts' equitable authority to pierce the corporate veil. Even though the LLC Act, by its terms, plainly bars Plaintiffs' claims in this case, the Superior Court said otherwise. In so doing, the court carved out an exception to the LLC Act that the General Assembly never intended.

III. The Superior Court's decision will have significant adverse effects on business entities in Pennsylvania.

Limited corporate liability serves important policy purposes. Fundamentally, it "allows individuals to use small fractions of their savings for various purposes, without risking a disastrous loss if any corporation in which they have invested becomes insolvent." Henry G. Manne, *Our Two Corporation Systems: Law and Economics*, 53 Va. L. Rev. 259, 262 (1967). By insulating investors from any loss beyond their original investment, corporations can raise large amounts of capital, *id.* at 260, 262, which historically "revolutionized modern industry," William W. Cook, *"Watered Stock"—Commissions—"Blue Sky Laws"—Stock Without Par Value*, 19 Mich. L. Rev. 583, 584 (1921).

Limited liability continues to encourage entrepreneurship for individuals, investment by passive investors, and appropriate risk-taking by corporate managers. *See, e.g.*, Frank H. Easterbrook & Daniel R. Fischel, *Limited Liability and the Corporation*, 52 U. Chi. L. Rev. 89, 93-97 (1985). For this reason, limited liability has been called a corporation's or LLC's "most precious characteristic." William W. Cook, *The Principles of Corporation Law* 19 (1925); *see also, e.g.*, *Berger v. Columbia Broadcasting Sys., Inc.*, 453 F.2d 991, 994 (5th Cir. 1972) ("[T]he dual personality of parent and subsidiary is not lightly disregarded, since [doing so] operates to defeat one of the principal purposes for which the law has created the corporation.").

The Superior Court's decision endangers this "precious characteristic" by subjecting LLC members and corporate parents to uncertain and unanticipated potential liability. Under the Superior Court's expansive veil-piercing theory, future litigants would be able to sue LLC members and corporate parent companies in perpetuity, basing their lawsuits on extinguished claims that are no longer viable against lawfully dissolved

entities. These developments would upend the settled expectations of business owners in Pennsylvania.

Such disruption is unnecessary to provide recourse against actual corporate fraud. For one thing, the LLC Act includes safeguards to prevent abuse of its liability shield, including a requirement that notice of an LLC's dissolution be publicized in order for the statute of repose to take effect. 15 Pa.C.S. § 8875(b). The record also reflects that, in accordance with the LLC Act, "Dravo petitioned the trial court for a determination of the amount and form of security for 'payment of claims that are reasonably expected to arise after the date of dissolution.'" *In re Dravo*, 307 A.3d at 152. As such, the LLC Act already contemplates a judicially-supervised process to protect potential holders of contingent claims. To disregard the Act's limitations on liability where Dravo followed that process to the letter is unnecessary and undermines the purpose of the Act. In addition, in true cases of abuse and fraud, courts can use tools such as constructive trusts and the Pennsylvania Uniform Voidable Transactions Act, *see* 12 Pa.C.S. §§ 5105-5110.

On the other hand, the Superior Court's expansive theory creates uncertainty that may influence businesses' decisions about where they will organize and do business. In one survey, a national sample of in-house general counsel, senior litigators, and other senior executives were asked how likely "it is that the litigation environment in a state could affect an important business decision at [his or her] company, such as where to locate or do business." U.S. Chamber Institute for Legal Reform, 2019 Lawsuit Climate Survey: Ranking the States, 4 (Sept. 2019).[1] An overwhelming 89% percent answered that the litigation environment was either somewhat likely or very likely to impact these important decisions.[2] This is an increase from 85% in 2017, 75% in 2015, and 70% in 2012. *Id.* at 3; U.S. Chamber Institute

[1] Available at: https://www.instituteforlegalreform.com/uploads/sites/1/2019_Lawsuit_Climate_Survey_-_Ranking_the_States.pdf.

[2] Notably, Pennsylvania placed near the bottom in the 2019 litigation environment rankings, placing 39th out of 50.

for Legal Reform, 2017 Lawsuit Climate Survey: Ranking the States, 3 (Sept. 2017).[3]

The Superior Court's erosion of limited liability protections will have a particularly significant impact on small businesses, many of which are organized, like Dravo, as LLCs. *See* 1 *Ribstein & Keatinge on Limited Liability Companies* § 1:1 (2024) ("[T]he LLC has become what many consider to be the preferred choice for many businesses" and is "the fastest growing form of unincorporated organization."); *6 Steps to Incorporating Your Business*, CO– by U.S. Chamber of Commerce, (Feb. 25, 2019) ("Many small businesses start out as LLCs")[4]; *How to Register Your Business in Pennsylvania: What You Need to Know*, Pa. Dep't of Community and Econ. Devel. (April 18, 2024) (explaining that LLCs provide limited liability like corporations but "aren't as complex and aren't subject to the additional taxes that

[3] Available at: https://www.instituteforlegalreform.com/uploads/pdfs/Harris-2017-Executive-Summary-FINAL.pdf

[4] Available at https://www.uschamber.com/co/start/startup/how-to-incorporate-business.

corporations often pay.")[5] Thus, small businesses and entrepreneurs are particularly likely to bear the brunt of the Superior Court's decision.

A serial entrepreneur may be hesitant to try her latest idea for fear that the limited liability protections previously afforded to her successful companies would be disregarded and that her assets and those of her existing companies would be wiped out if her newest venture is unsuccessful. Similarly, small businesses may fear that an LLC formed for the purpose of building a new business line may fail, resulting in creditors piercing the veil of an existing family business to pay the new LLC's debts. In either scenario, the Superior Court's ruling exposes business owners to potentially limitless liability for the conduct of their dissolved companies.

Faced with such uncertainty and the potential for massive corporate and personal losses, fewer businesses may be willing to incorporate or organize in Pennsylvania. And those who are

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[5] Available at https://dced.pa.gov/paproudblog/how-to-register-your-business-in-pennsylvania-what-you-need-to-know/

already organized under Pennsylvania law may be tempted to leave for more protective jurisdictions. This Court should continue to apply traditional veil-piercing principles, rejecting the Superior Court's expansive and untenable approach to veil-piercing.

CONCLUSION

This Court should reverse the judgment of the Superior Court.

February 5, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH WORD LIMIT

I certify that this brief complies with the word count limits in Pa.R.A.P. 531(b)(3) because it contains 4,412 words.

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February 5, 2025

CERTIFICATE OF COMPLIANCE WITH PUBLIC ACCESS POLICY OF THE UNIFIED JUDICIAL SYSTEM OF PENNSYLVANIA

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently from non-confidential information and documents.

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