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**Aug 28 2025**

**S.C. SUPREME COURT**

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

Jean Watkins, as Personal  
Representative of the Estate of Mildred  
Watkins,

Plaintiff,

v.

Countrywood Nursing Center, LLC,  
Sterling Healthcare, Inc., Guardian  
Resources, LLC, Robert W. Hagan,  
LaDonna Hagan, Chadwick S. Hagan,  
and Brooke Hagan McGee,

Defendants.

C/A No. 3:24-cv-06432-SAL

**ORDER  
FOR CERTIFICATION**

To: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SOUTH CAROLINA SUPREME COURT

This court has determined that the above-captioned case presents questions of law of the State of South Carolina, which are likely determinative of the cause pending in this court. No controlling precedent from the Supreme Court of the State of South Carolina appears to address whether defendants, who were not parties to the original litigation, may in a subsequent veil piercing action litigate the merits of the claims against the corporation after judgment has already been entered against the corporation. Accordingly, pursuant to South Carolina Appellate Court Rule 244, the United States District Court hereby certifies the questions of law addressed below to the South Carolina Supreme Court, based on the following facts and procedural background.

## I. Introduction

Jean Watkins (“Plaintiff”) brings this action against the Defendants<sup>1</sup> to pierce the corporate veil. Jurisdiction is proper under 28 U.S.C. § 1332 because complete diversity exists between Plaintiff, a resident of Richland County, South Carolina, and Defendants, who are citizens of Georgia and because the amount in controversy exceeds \$75,000.00.

## II. Background Facts

The material facts and procedural history are largely undisputed. Mildred Watkins passed away in a nursing home on December 15, 2011. [ECF No. 15 at 2.] Following her death, Watkins’ estate filed a malpractice action against the Entity Defendants in the Richland County Court of Common Pleas. *Id.* After years of litigation, the circuit court concluded the Entity Defendants had engaged in “unreasonable and unjustifiable delays in the production of discovery documents and responses for over three (3) years[.]” [ECF No. 13-2 at 11.] The court determined sanctions were warranted and, citing their bad faith and willful disobedience, struck the answers of all Entity Defendants.<sup>2</sup> *Id.* (finding “[t]he harm to the Plaintiff in this case is irreparable and must be met with the harshest of sanctions against the Defendants. The Defendants have acted in bad faith

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<sup>1</sup> The Defendants can best be sorted into groups: those named in the underlying state court action (the “Underlying Suit”), and the current individual defendants. Countrywood Nursing Center, LLC, Sterling Healthcare, Inc., and Guardian Resources, LLC, (collectively, the “Entity Defendants”) were parties to the underlying suit. Robert W. Hagan, LaDonna Hagan, Chadwick S. Hagan, and Brooke Hagan McGee (collectively, the “Individual Defendants”) were not. Although not clear at this juncture, Defendants claim LaDonna Hagan, Chadwick S. Hagan, and Brooke Hagan McGee were never controlling owners of any of the Entity Defendants. *See* ECF No. 13 at 12 n.2. On the other hand, Plaintiff alleges the Individual Defendants either owned or controlled the Entity Defendants at the times relevant to this suit. *See* ECF No. 1-1 at ¶¶ 24, 25.

<sup>2</sup> The Entity Defendants appealed the circuit court’s order striking the answers of all corporate defendants. [ECF No. 13-4. At 2.] The circuit court’s decision was affirmed on appeal. [ECF No. 13-5.]

during the discovery process, with willful disobedience to the Court, and with gross indifference to the Plaintiff's rights and to the rule of law.”)

With their answers stricken from the docket, the Entity Defendants proceeded to a damages hearing. There, they were found liable to the Plaintiff to the sum of nearly thirty million dollars.<sup>3</sup> [ECF No. 13-3 at 3.]

On September 18, 2024, Plaintiff initiated this action in the Richland County Court of Common Pleas, seeking to pierce the corporate veil and hold the Individual Defendants personally liable for satisfaction of the judgment. [ECF No. 1-1.] Defendants removed the case to this court on November 13, 2024, based on diversity jurisdiction. [ECF No. 1.]

During discovery in this case, Defendants requested information relating to the merits of the underlying malpractice lawsuit. [ECF No. 13 at 5–9.] They contend that because they were not parties to the prior case, they must be permitted to contest the Entity Defendants' liability. *Id.* at 9–10. Plaintiff responds that this case concerns only veil piercing claims, making the merits of the malpractice suit irrelevant. [ECF No. 15 at 3.]

### **III. Procedural History and Nature of Controversy**

On April 16, 2025, Defendants moved to compel discovery. [ECF No. 13.] They claim they have a right to litigate the underlying liability of the Entity Defendants. *Id.* Plaintiff opposes, asserting that only veil piercing claims are before this court. [ECF No. 15 at 5.]

Both parties rely heavily on the South Carolina Supreme Court's opinion in *Drury Dev. Corp. v. Found. Ins.* 380 S.C. 97 (2008). The *Drury* court dealt with a similar certified question regarding piercing the corporate veil. There, the question was “whether a judgment against the

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<sup>3</sup> Plaintiff was awarded \$19,515,245.68 in the survival action and \$10,000,000.00 in the wrongful death action, for a total of \$29,515,245.68 in damages. [ECF No. 13-3 at 3.] The Entity Defendants appealed this order, however it remains pending with the South Carolina Court of Appeals. [ECF No. 13 at 4.]

corporation is a prerequisite to an alter ego claim.” *Id.* at 99. The court answered in the negative, holding South Carolina trial courts may, consistent with equity principles, resolve both the underlying claims and veil piercing claims in one action. *Id.* at 102–103. The court reasoned that a contrary holding would require *pro forma* actions against unresponsive corporations “before seeking to pierce the corporate veil in a subsequent action.” *Id.*

In a footnote, however, the court noted:

Although we adopt a more limited holding, we note that at least one other court has gone so far as to hold that a *judgment against an unresponsive corporate defendant must be set aside in a subsequent action to pierce the corporate veil if the shareholder defendant was not a party to the determination of corporate liability.* In *Minton et al. v. Cavaney*, 56 Cal.2d 576, 15 Cal. Rptr. 641, 364 P.2d 473 (1961), the California Supreme Court held that a shareholder defendant had the opportunity to relitigate the legitimacy of the underlying corporate obligation. Writing for the majority, Justice Traynor wrote that because the defendant was not a party to the action against the corporation, the defendant “cannot be held liable for debts of [the corporation] without an opportunity to relitigate these issues.” *Id.* at 476.

*Id.* at 103 n. 2. (emphasis added).

Defendants argue this footnote suggests that non-parties to the underlying action, such as themselves, must at least be afforded an opportunity to contest the underlying liability. [ECF No. 13 at 12.] Plaintiff, on the other hand, claims *Drury* expressly adopted a more limited holding, thereby rejecting any rule permitting relitigation. [ECF No. 15 at 5.]

The court recognizes that this issue has divided courts and commentators. For example, the treatise cited by *Drury* suggests that:

A judgment creditor that pursues a collection action against a third party under an alter ego theory, after attempts to collect an underlying judgment against the principal debtor have proven unsuccessful, does not need to relitigate the underlying claims. The only issues in such an action are (1) whether an underlying judgment exists, and (2) whether the corporate entity should be disregarded and the individuals held liable.

1 William Meade Fletcher et al., *Fletcher Cyclopedia of the Law of Private Corporations*  
§ 41.28.70 (2024).<sup>4</sup>

Other courts and commentators contend that those who were not parties to the underlying litigation must be given the right to collaterally attack the underlying judgment—especially in the case of a default judgment:<sup>5</sup>

At least one court has said that to hold an owner bound to a default judgment against his corporation would be a violation of due process of law. *Motores de Mexicali, S.A. v. Superior Court*, 51 Cal. 2d 172, 331 P. 2d 1 (1958). It might be argued that the sole-owner [or] alter ego of a corporation, who has already had a chance to litigate the corporate liability and has declined to do so, should not be allowed to complain later when served as an individual. Yet it is perfectly reasonable for the owner not to litigate when the minimal assets of the corporation do not justify the costs of suit, especially since she cannot be sure she will later be defending her personal assets[.]

[W]hen judgment has been entered by default, the court cannot rely on an otherwise fair litigation of the issue of liability, since there was none. It would be both difficult and inappropriate for the court to attempt to determine whether a particular owner agreed with the decision. In both the single and multiple owner situations the defendant is attempting an initial litigation of the liability issue, not a relitigation.

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<sup>4</sup> Other courts have agreed with this reasoning. See *Pyshos v. Heart-Land Dev. Co.*, 258 Ill. App. 3d 618, 624 (1994) (holding, in regard to piercing the corporate veil, “a judgment creditor may choose to initiate a supplementary proceeding against the third-party shareholders and directors. The inquiry in such supplementary proceedings, however, is limited to considering the allegation that the shareholders and directors are holding assets of the judgment debtor corporation”); *Peetoom v. Swanson*, 334 Ill. App. 3d 523, 529 (2002) (“None of these authorities supports defendants’ assertion that, in an action to pierce the corporate veil to enforce a judgment against a corporation’s shareholders, a plaintiff must reallege and reprove the underlying cause of action that formed the basis for the judgment.”); *Am. Star Energy & Mins. Corp. v. Stowers*, 457 S.W.3d 427, 434 (Tex. 2015) (“This action to collect the judgment debt from the [defendants] does not require relitigation of that claim. At issue is only whether the judgment exists and whether the [defendants] were in fact partners at the time of injury alleged.”).

Neither the cited treatise nor the cases distinguish based on how the judgment being collected was obtained.

<sup>5</sup> Although the matter at hand does not involve a default judgment, other courts have held that striking a defendant’s answer is the substantive equivalent of an entry of default and a subsequent default judgment. See e.g., *Young Jewish Leadership Concepts v. 939 HKH Corp.*, No. CIV. A. 93-2643, 1994 WL 198643, at \*2 (E.D. Pa. May 18, 1994) (“The striking of Defendants’ answer is tantamount to entering default judgment[.]”).

Thus the res judicata policies against forcing a plaintiff to prove an issue already determined in his favor and against the possibility of inconsistent determinations are not involved. Therefore, in accordance with the “actually litigated” requirement, default judgments should not be held conclusive as to the issue of corporate liability.

Glenn M. Gottlieb, *Res Judicata and Collateral Estoppel Beneath the Corporate Veil*, 66 Cal. L. Rev. 1093, 1102 n. 43 (1978).<sup>6</sup>

A similar sentiment is echoed in the Second Restatement of Judgments.

A judgment against a corporation that is found to be the alter ego of a stockholder or member of the corporation establishes personal liability of the latter only if he is given notice that such liability is sought to be imposed and fair opportunity to defend the action resulting in the judgment.

Restatement (second) of Judgments § 59(5) (1982).

In light of these competing authorities, and *Drury’s* expressed limited holding, South Carolina law remains unsettled on whether non-party shareholders or owners may contest liability in a subsequent veil-piercing action, especially when the underlying judgment was entered by default or by sanction.

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<sup>6</sup> Courts, like the one cited in *Drury*, have likewise found this reasoning persuasive. See *Minton et al. v. Cavaney*, 56 Cal.2d 576, 581 (1961) (“Defendant correctly contends that Cavaney or his estate cannot be held liable for the debts of Seminole without an opportunity to relitigate these issues.”); *Dunbar v. Finegold*, 501 P.2d 144, 147 (Colo. App. 1972) (“Where a corporate director was not a party to an action against the corporation and did not control litigation therein, the director cannot be held personally liable upon the judgment against the corporation without an opportunity to re-litigate the issue of the amount of damages.”).

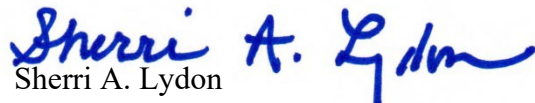
#### IV. Questions Certified

Because the parties' dispute turns on an unsettled issue of state law, the court certifies the following questions to the South Carolina Supreme Court:

1. In an action to pierce the corporate veil, can defendants who were not parties to the underlying suit defend against liability on the grounds that they were not liable for the underlying claims? In other words, does South Carolina follow the rule outlined in *Minton et al. v. Cavaney*?
2. Does the answer change where the underlying judgment resulted from default or from sanctions striking the corporate defendant's answer?

**IT IS SO ORDERED.**

August 28, 2025  
Columbia, South Carolina

  
Sherri A. Lydon  
United States District Judge



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