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VEIL PIERCING AND FRAUDULENT TRANSFER AVOIDANCE IN SUPPLEMENTAL PROCEEDINGS: HOW EXPANDING STATUTORY REMEDIES AND ENFORCEMENT JURISDICTION CAN PROMOTE JUDICIAL ECONOMY AND FACILITATE JUDGMENT COLLECTION

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I. INTRODUCTION

The court has decided—your client prevails, and judgment is entered. But, for many successful litigants this only marks the beginning of a new struggle for compensation. Indeed, judgment creditors are often surprised by how difficult it can be to enforce the judgments they have painstakingly fought to obtain. In many cases, judgment debtors attempt to conceal assets and frustrate their judgment creditors by creating sham corporations,[1] transferring funds to shareholders and third parties, or even engaging in complex multilayered transactions.[2]

Judgment creditors possess statutory remedies to aid in the execution of their judgments, often referred to as supplemental proceedings.[3] However, the permissible scope of these proceedings varies significantly based upon the law of the jurisdiction in which the creditor's judgment was entered.[4] There are two particularly controversial remedies that often arise in an enforcement context: piercing the corporate veil[5] and avoidance of fraudulent conveyances.[6] State legislatures and interpreting courts have taken

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1. A sham corporation, also known as a shell corporation, typically refers to a corporation that operates as a mere facade for the operations of a dominant shareholder. 114 AM. JUR. 3D *Proof of Facts* § 403 (2010); BP Envtl. Servs., Inc. v. Republic Servs., Inc., 946 F. Supp. 2d 402, 414 (E.D. Pa. 2013); *In re* Canopy Fin., Inc., 477 B.R. 696, 703 (N.D. Ill. 2012) (applying Delaware law).

2. *See, e.g.*, United States v. Tabor Court Realty Corp., 803 F.2d 1288, 1302–03 (3d Cir. 1986) (affirming the district court's decision that that a particularly complex series of mortgage transactions by a tax debtor, including a leveraged buyout, fell within the meaning of a fraudulent transfer under the Pennsylvania Uniform Fraudulent Transfer Act).

3. Supplemental proceedings are "a continuation of the creditor's original action against the debtor." DAVID G. EPSTEIN ET AL., DEBTORS AND CREDITORS: CASES AND MATERIALS 60 (3d ed. 1987) (citing Mitchell v. Godsey, 53 N.E.2d 150, 154 (Ind. 1944)).

4. Each state has its own unique statutes relating to supplemental proceedings, which are incorporated into federal cases through Federal Rule of Civil Procedure 69(a), which provides in pertinent part as follows: "The procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies." FED. R. CIV. P. 69(a).

5. "Piercing the corporate veil" is commonly defined as "[a] Judicial process whereby [a] court will disregard usual immunity of corporate officers from liability for wrongful corporate activities; e.g., when incorporation exists for sole purpose of perpetrating fraud." BLACK'S LAW DICTIONARY 1147–48 (6th ed. 1990).

6. The essence of the term "fraudulent conveyance" is captured well by the following definition from the Internal Revenue Manual: "[W]hen real or personal property is transferred to a third party with the object or the result of placing the property beyond the reach of the creditor or hindering the creditor's ability to collect a valid debt." I.R.M. § 5.17.14.2.3.2(3) (Jan. 24, 2012). More generally, they "may be

a number of different approaches to the question of whether these remedies should be available within a supplemental proceeding.[7]

Piercing the veil, the most frequently litigated issue in corporate law,[8] is an equitable remedy[9] which holds a corporation liable for the wrongful acts of its shareholders.[10] In an enforcement context, it is an especially powerful form of relief that can undo much of the damage resulting from a corporate debtor's fraudulent attempts to conceal assets in shareholders or third parties.[11] Despite the obvious utility of veil piercing to judgment creditors, many courts have been reluctant to pierce corporate veils in the context of supplemental proceedings, citing due process and jurisdictional concerns.[12] Thus, in most states, a judgment creditor will usually be forced to initiate an entirely new case (bearing all attendant costs), in order to attempt to pierce the corporate veil and enforce its judgment.[13] There are a few exceptions to this general rule, however, including the law in the states of Florida and Minnesota.[14]

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roughly defined as an infringement of the creditor's right to realize upon the available assets of the debtor." GARRARD GLENN, THE LAW OF FRAUDULENT CONVEYANCES § 1 (1931). The ability to avoid fraudulent conveyances is an important remedy to judgment creditors seeking to recover funds previously transferred by judgment debtors to third parties. By holding the transferee liable for the value of the transferred property, a judgment creditor can largely reverse the deleterious effect of the judgment debtor's fraudulent transfer.

7. *Compare, e.g.*, Sanchez v. Renda Broad. Corp., 127 So. 3d 627, 628–29 (Fla. Dist. Ct. App. 2013) (interpreting Florida law as allowing for both veil piercing and fraudulent transfer avoidance in supplemental proceedings), *with* Reyes-Fuentes v. Shannon Produce Farm, Inc., No. 6:08-CV-59, 2012 WL 3562399, at *6 (S.D. Ga. Aug. 13, 2012) (interpreting Georgia law as permitting neither veil piercing nor fraudulent transfer avoidance without filing new action).

8. Robert B. Thompson, *Piercing the Corporate Veil: An Empirical Study*, 76 CORNELL L. REV. 1036, 1036 (1991).

9. "Pierc[ing] the corporate veil is an equitable remedy, not an independent cause of action." *In re* Gulf States Long Term Acute Care of Covington, LLC, 487 B.R. 713, 722 n.38 (Bankr. E.D. La. 2013) (citing Peacock v. Thomas, 516 U.S. 349, 354 (1996); Grothues v. IRS, 226 F.3d 334, 337 (5th Cir. 2000)); *accord* Fontana v. TLD Builders, Inc., 840 N.E.2d 767, 776 (Ill. App. Ct. 2005).

10. *See* BLACK'S LAW DICTIONARY, *supra* note 5, at 1147–48 (defining piercing the corporate veil).

11. For example, in *Flushing Plaza Assocs. No. 2 v. Albert*, 958 N.Y.S.2d 713, 715 (N.Y. App. Div. 2013), the New York Supreme Court pierced the veil of a debtor corporation that breached a lease with the plaintiff and then transferred money to its controlling shareholder, which left it judgment-proof, all while continuing to collect subtenant rents unimpeded.

12. Most notably, the United States Supreme Court rejected extending federal ancillary enforcement jurisdiction over third parties not already liable for the underlying judgment. *Peacock*, 516 U.S. at 358.

13. *See, e.g.*, Green v. Ziegelman, 767 N.W.2d 660, 665–68 (Mich. Ct. App. 2009) (interpreting Michigan law to require filing of new action to find liability of third-party corporation); Pyshos v. Heart-Land Dev. Co., 630 N.E.2d 1054, 1058 (Ill. App. Ct. 1994) (finding Illinois law to require the same).

14. *See Sanchez*, 127 So. 3d at 628–29 (interpreting Florida law to allow for veil piercing in supplemental proceedings); *accord* Guava LLC v. Merkel, No. A15-0254,

Another remedy judgment creditors often pursue is the avoidance of fraudulent transfers. These situations arise when a judgment creditor learns that the judgment debtor conveyed assets to a third party, either before or after trial, in an effort to avoid enforcement.[15] In contrast to veil piercing, several state legislatures, as well as federal courts, have been willing to allow judgment creditors to implead third parties in supplemental proceedings in order to avoid fraudulent conveyances those third parties may have received from judgment debtors.[16] Other states, however, have not been as flexible.[17] Thus, the current landscape of supplemental proceedings is nebulous, with judgment creditors often left wondering how to proceed in enforcing their judgment against clever judgment debtors.

This comment will highlight the advantages of consolidating fraudulent transfer avoidance claims and piercing actions within supplemental proceedings, particularly with respect to the important goals of promoting judicial economy and the successful collection of judgments. To begin this analysis, Section II of this comment will provide a background of the legislative enactments and judicial holdings of several jurisdictions which, in the author's opinion, are representative of the existing differences in the permissible scope of supplemental proceedings.

These jurisdictions have been divided into three groups: (1) jurisdictions with supplemental proceedings that allow for both fraudulent conveyance and piercing actions, of which Florida[18] and Minnesota[19] ("Group 1") are clear examples; (2) jurisdictions that only allow for the avoidance of fraudulent conveyances within supplemental proceedings (and not piercing), which include

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2015 WL 4877851, at *4–6 (Minn. Ct. App. Aug. 17, 2015) (similarly interpreting Minnesota law to permit veil piercing in supplemental proceedings).

15. *See* definition of fraudulent transfers referenced *supra* note 6.

16. *See*, *e.g.*, Woodridge Hills Ass'n v. Williams, No. 300193, 2011 WL 6378813, at *3 (Mich. Ct. App. Dec. 20, 2011) (interpreting Michigan law to allow impleading of third parties into supplemental proceeding for purposes of fraudulent transfer avoidance); Epperson v. Entm't Express, Inc., 242 F.3d 100, 104 (2d Cir. 2001) (holding that Connecticut law allows for fraudulent transfer avoidance through the impleading of transferees in supplemental proceedings).

17. For example, the Georgia statute does not provide for any postjudgment relief for fraudulent conveyance avoidance without filing a new action. *See Reyes-Fuentes*, 2012 WL 3562399, at *6.

18. *See Sanchez*, 127 So. 3d at 628–29 (interpreting FLA. STAT. § 56.29 (2014)).

19. *See Guava LLC*, 2015 WL 4877851, at *5 (interpreting MINN. STAT. § 322B.833, subdiv. 1(3)(i) (2015)).

Michigan,[20] Illinois,[21] Connecticut,[22] and Alaska[23] ("Group 2"); and (3) jurisdictions that have prohibited both piercing and fraudulent conveyance actions in supplemental proceedings, namely Georgia[24] and New York[25] ("Group 3").

After reviewing the relevant statutes and decisions in these three groups of jurisdictions, Section III of this comment will compare and contrast each group's interpretation of whether fraudulent conveyance avoidance and veil piercing ought to be permissible in supplemental proceedings. Each jurisdiction will be evaluated upon two criteria: (1) how the jurisdiction's laws affect judicial economy;[26] and (2) whether the jurisdiction's laws aid or impair judgment creditors' ability to successfully enforce and collect their judgments. Section III will also provide additional detail pertaining to the due process concerns raised by each jurisdiction's supplemental proceedings.[27]

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20. In the case of *Green*, 767 N.W.2d 660 at 665–68, the Michigan Appellate Court held that Michigan law did *not* permit a judgment creditor to pierce the corporate veil of a third party, to whom no fraudulent transfer was alleged to have been made. In contrast, Michigan law does permit the avoidance of fraudulent transfers to third parties by the judgment debtor, considering them to be the property of the judgment debtor subject to enforcement. *Woodridge Hills Ass'n*, 2011 WL 6378813, at *3; MICH. COMP. LAWS §§ 600.6116, .6134 (2015).

21. *See Pyshos*, 630 N.E.2d at 1058 (forcing veil-piercing actions against third parties to be pursued through a new action); *see also* Star Ins. Co. v. Risk Mktg. Group Inc., 561 F.3d 656, 660 (7th Cir. 2009) (interpreting Illinois law to allow for the impleading of fraudulent transferees in a supplemental proceeding).

22. *See Epperson*, 242 F.3d at 104 (holding that under Connecticut law, a fraudulent conveyance avoidance action was a simple mechanism, and permissible in the context of a supplemental proceeding, but also explicitly noting that its ruling did not extend to piercing actions).

23. *See* Thomas, Head & Greisen Employees Trust v. Buster, 95 F.3d 1449, 1459–60 (9th Cir. 1996) (holding that under Alaska law, a judgment debtor's impleading of a third-party transferee to a fraudulent conveyance was permissible in a supplemental proceeding, even though the transferee was not a party to the underlying action).

24. *See Reyes-Fuentes*, 2012 WL 3562399, at *6 (finding Georgia law to require the filing of a new action to avoid postjudgment fraudulent transfers or to pierce corporate veil of a third party.)

25. The state of New York has a unique enforcement mechanism for postjudgment collection, known as a special proceeding. Nevertheless, this statutory mechanism still requires an entirely new case be initiated in order to establish third-party liability for fraudulent transfers. *See Wasserman Media Grp.*, 2012 WL 1506181, at *3.

26. I.e., how each jurisdiction's laws affect the management and conservation of limited judicial resources, such as by consolidating related proceedings for disposition by one judge. *See* Alvarez v. United States, 465 F.2d 373, 374 (5th Cir. 1972) ("In these days of crowded dockets, judicial economy compels the use of any knowledge of the facts or other expertise which a judge may have acquired in his prior contacts with a litigant.").

27. For example, the Supreme Court's decision in *Peacock*, 516 U.S. 349, was largely based upon a concern for the due process rights of third parties to an ancillary enforcement action. How to best preserve these rights is an integral question to any proposed expansion to supplemental jurisdiction.

Upon completing a detailed comparison of each jurisdiction's supplemental proceedings, Section IV of this comment will argue that there is a need for greater homogeneity and efficiency in supplemental proceedings. In furtherance of these goals, Section IV proposes the legislative enactment of stronger statutes allowing for plaintiffs to avoid fraudulent transfers by debtors and pierce corporate veils directly through supplemental proceedings. Section IV will also address potential solutions to the due process concerns that may arise from broadening the scope of supplemental proceedings. Finally, Section V will briefly summarize the benefits of permitting veil piercing and fraudulent conveyance actions to be litigated directly in supplemental proceedings.

II. BACKGROUND

A. Group 1—Jurisdictions with Supplemental Proceedings That Allow for Both Veil Piercing and Fraudulent Transfer Avoidance

1. Florida

Florida is an instructive jurisdiction to consider in the area of judgment enforcement, in light of its large repertoire of available remedies to judgment creditors. In particular, section 56.29 of the Florida Statutes governs supplemental proceedings in the state of Florida, which the statute refers to as "proceedings supplementary."[28] Under section 56.29, a judgment creditor initiates supplemental proceedings after the entry of judgment by simply filing an affidavit stating that the judgment is valid and outstanding.[29] Considered an equitable remedy, Florida courts liberally construe section 56.29 with the intention of "afford[ing] the judgment creditor with the most complete relief possible."[30]

Florida's supplemental proceedings are exceptionally flexible in comparison to other jurisdictions. To this end, Florida courts have consistently permitted both veil-piercing actions and fraudulent conveyance actions to be maintained against impleaded third parties, irrespective of whether the third party was a litigant to the underlying prejudgment cause of action.[31] Remarkably, a judgment creditor is not even required to allege a fraudulent transfer in order

28. FLA. STAT. § 56.29 (2014).

29. FLA. STAT. § 56.29(1).

30. *Sanchez*, 127 So. 3d at 628–29 (quoting Mejia v. Ruiz, 985 So. 2d 1109, 1112 (Fla. Dist. Ct. App. 2008); Amjad Munim, M.D., P.A. v. Azar, 648 So. 2d 145, 151 (Fla. Dist. Ct. App. 1994)).

31. *See Sanchez*, 127 So. 3d at 628–29 (finding that a judgment creditor was permitted to directly implead the sole shareholder of an asset-less corporate judgment debtor into supplemental proceedings where the debtor deceived the judgment creditor into entering into a lease without having the capacity to perform).

to implead a third party to the supplemental proceeding or to veil pierce.[32] However, a Florida judgment creditor must still allege improper conduct on the part of either the judgment debtor or the party sought to be impleaded in order to pierce a corporate veil in supplemental proceedings.[33] Although the mere use of a corporate alter ego is not in of itself improper conduct under Florida law,[34] it may rise to that level when coupled with evidence of fraud, deception, or illegal acts.[35]

Ultimately, Florida courts emphasize the importance of facilitating judgment enforcement in supplemental proceedings. Nevertheless, Florida tempers the flexibility of its supplemental proceedings with requirements that judgment creditors allege improper conduct on the part of any parties sought to be implead.[36] The result of this balancing act is an uncommon and fresh extension to the scope of supplemental proceedings.

2. *Minnesota*

Section 322B.833, subdivision 1(3)(i) of the Minnesota Statutes sets forth the available remedies for judgment creditors in supplemental proceedings in the state of Minnesota.[37] Minnesota has interpreted this statue broadly with respect to the available relief to judgment creditors of corporations and LLCs in supplemental proceedings.[38]

A Minnesota court may grant "any equitable relief it considers just and reasonable in the circumstances," in a supplemental action by a judgment creditor whose claim has been returned unsatisfied.[39]

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32. The *Sanchez* court stated this proposition as follows: "The [Florida] statute does not require the judgment creditor to allege a fraudulent transfer in order to use proceedings supplementary aid in the execution of its judgment. . . . [T]here is authority to support the use of proceedings supplementary to pierce the corporate veil absent an allegation of a fraudulent transfer." *Sanchez*, 127 So. 3d at 629 (citing Ocala Breeders' Sales Co. v. Hialeah, Inc., 735 So. 2d 542, 543–44 (Fla. Dist. Ct. App. 1999)).

33. *See* Rashdan v. Sheikh, 706 So. 2d 357, 357 (Fla. Dist. Ct. App. 1998) (reversing judgment against impleaded defendant due to "absence of any allegations or evidence of fraud, fraudulent transfer or other improper conduct on the part of either [the impleaded defendant] or his professional association, [the judgment debtor]"); *see also Ocala*, 735 So. 2d at 543 (permitting impleading of third-party parent corporation in supplemental proceeding for its use of judgment debtor subsidiary to "mislead creditors or to perpetrate a fraud upon them.").

34. Geigo Props., L.L.P. v. R.J. Gators Real Estate Grp., 849 So. 2d 1109, 1110 (Fla. Dist. Ct. App. 2003).

35. Dania Jai–Alai Place, Inc. v. Sykes, 450 So. 2d 1114, 1117 (Fla. 1984) ("[C]ourts will look through the screen of corporate entity to the individuals who compose it in cases in which the corporation was a mere device or sham . . . to evade some statute or to accomplish some fraud or illegal purpose.").

36. *Rashdan*, 706 So. 2d at 357.

37. MINN. STAT. § 322B.833, subdiv. 1(3)(i) (2015).

38. *Guava LLC*, 2015 WL 4877851, at *4.

39. *Id.*

Minnesota courts have explicitly clarified that this includes this veil piercing, which is considered an equitable remedy,[40] and not an independent cause of action.[41] Thus, section 322B.833, subdivision 1(3)(i) has been construed to permit the direct impleading of a third party in a supplemental proceeding.[42]

In addition, fraudulent transfers by the judgment debtor to a third party can also be directly avoided in a supplemental proceeding in Minnesota.[43] This policy is in agreement with the broad enforcement powers granted under Minnesota law, and the general principles behind judgment execution.[44] Thus, Minnesota provides another excellent example of a jurisdiction where the available remedies to judgment creditors in supplemental proceedings have been expanded.

B. Group 2—Jurisdictions with Supplemental Proceedings That Allow for Only Fraudulent Transfer Avoidance (and Not Veil Piercing)

1. Michigan

Sections 600.6101 through 600.6143 of the Michigan Compiled Laws and Michigan Court Rule 2.621 address supplemental proceedings in the state of Michigan.[45] Notably, section 600.6104(2) of the Michigan Compiled Laws allows Michigan courts to "[p]revent the transfer of any property, money, or things in action, or the payment or delivery thereof to the judgment debtor."[46] Further, section 600.6104(5) gives the court discretion to "[m]ake any order as within his [the judge's] discretion seems appropriate in regard to carrying out the full intent and purpose of these provisions to subject any nonexempt assets of any judgment debtor to the satisfaction of any judgment against the judgment debtor."[47]

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40. *Id.* (citing Equity Trust Co. Custodian *ex rel.* Eisenmenger IRA v. Cole, 766 N.W.2d 334, 339 (Minn. Ct. App. 2009)).

41. Amica Mut. Ins. Co. v. Wartman, 841 N.W.2d 637, 643 (Minn. Ct. App. 2014), *review denied* (Mar. 18, 2014) (finding a judgment creditor's attempt to pierce corporate veil of third party in satisfaction of a prior judgment to constitute an enforcement action on the judgment, rather than an independent cause of action).

42. *Guava LLC*, 2015 WL 4877851, at *4; MINN. STAT. § 322B.833, subdiv. 1(3)(i).

43. *See, e.g.*, Clarinda Color LLC v. BW Acq. Corp., No. 00-CV-722 JMR/FLN, 2004 WL 2862298, at *9 (D. Minn. June 14, 2004) ("We conclude that the Court does have subject matter jurisdiction over Clarinda's claims to the extent that Clarinda is seeking to avoid fraudulent transfers and to enforce the underlying judgment. Under the Minnesota UFTA, the remedies are limited to: avoidance of the transfer, attachment, an injunction, execution, or appointment of a receiver to take charge of the transferred asset. *See* Minn .Stat. § 513.47.").

44. *See* MINN. STAT. § 322B.833, subdiv. 1(3)(i).

45. MICH. COMP. LAWS §§ 600.6101–.6143. (2015); MICH. CT. R. 2.621 (2015).

46. MICH. COMP. LAWS § 600.6104(2).

47. MICH. COMP. LAWS § 600.6104(5).

In spite of these seemingly broad provisions, however, Michigan courts have refused to permit a judgment creditor to pierce the corporate veil of a third party, particularly if no fraudulent transfer is alleged to have been made.[48]

In contrast to veil-piercing actions, sections 600.6116 and 600.6134 of the Michigan Compiled Laws *do* permit the avoidance of fraudulent transfers to third parties by the judgment debtor, considering them to be the property of the judgment debtor subject to enforcement.[49] As such, while Michigan courts may be willing to permit fraudulent transfer avoidance claims in supplemental proceedings, they will not go as far as other courts in allowing veil-piercing claims.

2. *Illinois*

Under Illinois law, supplemental proceedings are governed by chapter 735, section 5/2-1402 of the Illinois Compiled Statutes and Illinois Supreme Court Rule 277.[50] Fraudulent transfer avoidance can be accomplished directly in supplemental proceedings, without the need to initiate an entirely new proceeding.[51] Veil piercing, however, has been consistently disallowed by Illinois courts in the context of supplemental proceedings, with judgment creditors being forced to initiate entirely new causes of actions to further pursue their enforcement efforts.[52]

In 2008, however, the Illinois legislature enacted certain amendments to chapter 735, section 5/2-1402,[53] which led to speculation that at least some veil-piercing claims could perhaps be

48. *See Green*, 767 N.W.2d 660, 665–68 (holding that judgment creditor could not pierce the corporate veil of a third party to whom no fraudulent transfer was alleged to have been made); *see also* Int'l Millennium Consultants, Inc. v. Taycom Bus Solutions, Inc., No. 08-CV-11303, 2010 WL 1347597 (E.D. Mich. Apr. 1, 2010).

49. MICH. COMP. LAWS §§ 600.6116, .6134 (2015); *see also Woodridge Hills Ass'n*, 2011 WL 6378813, at *3.

50. 735 ILL. COMP. STAT. § 5/2-1402 (2014); ILL. SUP. CT. R. 277 (2013).

51. *See, e.g.*, *Star Ins. Co.*, 561 F.3d at 660 (interpreting Illinois law to allow for the impleading of fraudulent transferees directly in a supplemental proceeding); Dexia Credit Loc. v. Rogan, 602 F.3d 879, 885 (7th Cir. 2010) (construing Illinois law to permit the entry of a restraining order in supplemental proceeding which prohibited third-party wife of judgment debtor from transferring assets).

52. *See Pyshos*, 630 N.E.2d at 1058 (forcing veil-piercing actions against third parties to be pursued through a new action); Lange v. Misch, 598 N.E.2d 412, 415 (Ill. App. Ct. 1992) ("[N]othing in the [Illinois] Code authorizes the entry of a judgment at a supplementary proceeding against a third party who does not possess assets of the judgment debtor.").

53. In particular, chapter 735, section 5/2-1402, subsection (c)(3) of the Illinois Compiled Statutes was amended effective January 1, 2008, to include the following provision: "A judgment creditor may recover a corporate judgment debtor's property on behalf of the judgment debtor for use of the judgment creditor by filing an appropriate petition within the citation proceedings." 735 ILL. COMP. STAT. § 5/2-1402(c)(3) (2014) (amended by S.B. 229, 95th Gen. Assemb., Reg. Sess., P.A. 95-661 (Ill. 2007)).

brought directly within supplemental proceedings.[54] However, in spite of these optimistic analyses, Illinois courts have refused to date to interpret these 2008 amendments as permitting veil piercing in supplemental proceedings, preferring to uphold the validity and precedential weight of the existing caselaw which predates the 2008 amendments.[55]

As a result, Illinois provides a unique example of a jurisdiction whose legislature attempted to modernize and expand the scope of its supplemental proceedings, but whose courts have failed to effectively incorporate the enacted statutory modifications. This conflict between the text of a statute, on the one hand, and its interpretation, on the other, provides essential insight into how statutes pertaining to supplemental proceedings must be carefully crafted in order to ensure that the rights of judgment creditors are consistently understood and enforced.

3. Connecticut

Sections 52-350a through 52-400f of the General Statutes of Connecticut address postjudgment procedures.[56] In Connecticut, fraudulent conveyance avoidance actions are considered simple mechanisms, and are permissible remedies in supplemental proceedings.[57]

However, this permission does not extend to veil-piercing claims, which are restricted universally in Connecticut

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54. For example, in Fish v. Hennessy, No. 12 C 1856, 2013 WL 5770512, at *1 (N.D. Ill. Oct. 24, 2013), the court observed in obiter dictum that the 2008 amendments to section 5/1402, subsection (c)(3) might theoretically permit a judgment creditor to pierce the veil of a corporate judgment debtor in a supplemental proceeding. However, the court held that no similar provision existed which would permit a "reverse piercing" action (i.e., impleading a corporation to find it liable for a judgment entered against an individual). *See also* JPMorgan Chase Bank v. PT Indah Kiat Pulp & Paper, No. 02 C 6240, 2012 WL 2254193, at *3 (N.D. Ill. June 14, 2012) ("No court has yet addressed the effect of the amendment on *Star Insurance* or the cases on which it relied."); Robert G. Markoff & Christopher J. McGeehan, *Enforcement of Judgments*, *in* CREDITORS' RIGHTS IN ILLINOIS § 2.54, at 48 (Robert G. Markoff ed., 2009 & Supp. 2011) (opining that the 2008 amendment to section 5/1402, subsection (c)(3) "permits the court to hear a petition in the nature of an action to pierce the corporate veil in the context of a citation proceeding rather than forcing the creditor to file a new action as was required by *Lange* and *Pyshos*.").

55. Buckley v. Abuzir, 2014 IL App. Ct. 130469, ¶ 9, N.E.3d 1166, 1169 (maintaining the existing rule under *Lange* and *Pyshos* that the "[p]arties may, however, bring a *separate action* to pierce the corporate veil for a judgment already obtained against a corporation." (emphasis added)); *see also* Conserv FS, Inc. v. Von Bergen Trucking, Inc., 2011 IL App. Ct. 101225U, ¶ 28 ("[W]e cannot reach the merits of Conserv's corporate-veil argument because an action to pierce the corporate veil to hold RayVB [third-party corporation] liable for the judgment against VB [the judgment debtor] is not properly brought, as it was here, in supplemental proceedings to enforce the judgment against VB.").

56. CONN. GEN. STAT. §§ 52-350a to -400f (2015).

57. *See Epperson*, 242 F.3d at 104.

postjudgment practice.[58] Connecticut law is exceptionally clear on the distinction between veil-piercing claims and fraudulent transfer avoidance actions, with only the latter made available for use by judgment creditors in supplemental proceedings.[59] According to Connecticut courts, this restriction is rooted in jurisdictional concerns with imposing liability on third parties who were not defendants to the underlying action.[60] Thus, Connecticut's supplemental proceedings are limited in scope, and do not have the same degree of flexibility as those jurisdictions which permit claims that establish liability on the part of a new party.[61]

4. *Alaska*

Alaska Rule of Civil Procedure 69 is the controlling authority for supplemental proceedings in the state of Alaska.[62] However, its provisions are meager, with only a limited number of available remedies for judgment creditors.[63] In particular, the text of Alaska Rule of Civil Procedure 69(c) only allows the court to enter an order *preventing* the disposition of property by the judgment debtor, but does not explicitly provide for any remedy against a third-party transferee in a supplemental proceeding for a fraudulent transfer they received from the judgment debtor.[64]

Nevertheless, courts interpreting Alaska law have broadened the scant language of Alaska Rule of Civil Procedure 69(c) to permit actions sounding in fraudulent transfer avoidance when required to enforce a judgment.[65] Thus, although Alaska's statutory provisions

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58. *See* Connecticut Sav. Bank v. Obenauf, 758 A.2d 363, 365 (Conn. App. Ct. 2000) ("Accordingly, under Connecticut law . . . a successful claim of fraudulent conveyance could not result in a judgment of liability against the transferee, joint and several or otherwise, on the underlying debt obligations owed by the transferor."); Crepeau v. Gronager, 675 A.2d 1361, 1367 (Conn. App. Ct. 1996); Derderian v. Derderian, 490 A.2d 1008, 1013 (Conn. App. Ct. 1985).

59. *Epperson*, 242 F.3d at 104; Bridgeport Water Pollution Control Auth. v. Prof. Servs. Grp., No. 399294, 2004 WL 1925833, at *3 (Conn. Super. Ct. July 26, 2004).

60. Schuftan v. Bridges, No. 3:06CV00741 SRU, 2007 WL 2688856, at *2 (D. Conn. Sept. 13, 2007).

61. *Epperson*, 242 F.3d at 107 ("Nothing in Connecticut statutory or common law would permit a party to impose liability for the underlying judgment on the transferee of a fraudulent conveyance or to reach the transferee's own assets.").

62. ALASKA R. CIV. P. 69.

63. *Id.*

64. ALASKA R. CIV. P. 69(c) ("[T]he court may make an order restraining the judgment debtor from selling, transferring, or in any manner disposing of any property liable to execution pending the proceeding. For disobeying any order or requirement authorized by this rule the judgment debtor may be punished as for a contempt.").

65. *See Buster*, 95 F.3d at 1452 ("Although Alaska R. Civ. P. 69 does not expressly authorize postjudgment fraudulent conveyance actions . . . [s]ince Federal Rule 69(a) is . . . not meant to put the judge into a procedural straitjacket . . . we think [t]he procedure followed here . . . accord[ed] with the spirit of the Rules and . . . [was] a sufficiently close adherence to state procedures.") (alterations in original) (citations

pertaining to supplemental proceedings are relatively narrow when read literally, courts have been willing to stretch their interpretations of the applicable rules when the "exigencies of the case or the interests of justice may [so] require."[66]

The permissibility of veil-piercing claims in supplemental proceedings is a scarcely litigated topic in published Alaska opinions. That being said, at least one fairly recent trial court decision found that extending alter ego liability was inappropriate in the context of postjudgment litigation.[67] Given this absence of favorable rulings, there is currently no indication that Alaskan courts are willing to interpret Alaska Rule of Civil Procedure 69(c) to permit veil-piercing actions in supplemental proceedings.

C. Group 3—Jurisdictions with Supplemental Proceedings That Prohibit Both Piercing and Fraudulent Transfer Avoidance

1. Georgia

The Official Code of Georgia Annotated section 9-11-69 provides a limited number of remedies to judgment creditors in aid of the execution of judgment.[68] These include examining persons who may have knowledge of the location of the judgment debtor's assets,[69] but certainly do not extend to piercing the corporate veil.[70]

Notably, the statute does not even permit the avoidance of a fraudulent transfer without the filing of a new complaint.[71] However, at least one Georgia district court has permitted the initiation of a new, but related action in order to accomplish transfer

omitted) (internal quotation marks omitted); *see also* Great W. Sav. Bank v. George W. Easley Co., 778 P.2d 569, 581 n.12 (Alaska 1989) ("A court of equity has power to entertain an action which has for its purpose the enforcement of a judgment in order that complete justice may be done to the parties in interest as the exigencies of the case or the interests of justice may require.") (quoting Shields v. Thomas, 59 U.S. 253, 262 (1855)).

66. *Buster*, 95 F.3d at 1453 (quoting *Great W. Sav. Bank*, 778 P.2d at 581 n.4).

67. Leisnoi, Inc. v. Merdes & Merdes, P.C., No. 3AN-13-07180CI, 2015 WL 7184610, at *1 (Alaska Super. July 10, 2015) (rejecting arguments raised by judgment creditor suggesting that it had the right to present postjudgment "alter ego evidence" to find a third-party law firm liable for the debt of the judgment debtor); *see also* Leisnoi, Inc.'s Trial Brief at 6, Leisnoi, Inc. v. Merdes & Merdes, P.C. (Alaska Super.) (No. 3AN-13-07180CI), 2014 WL 10725649.

68. GA. CODE ANN. § 9-11-69 (2015) (LexisNexis).

69. *Id.*

70. C-Staff, Inc. v. Liberty Mut. Ins. Co., 571 S.E.2d 383, 385 (Ga. 2002) ("To enforce a judgment against persons who are not parties to a judgment, a judgment-creditor in Georgia must initiate a civil action against those it seeks to hold responsible . . . which requires a complaint to be filed and the defendants to be served with process.") (footnote omitted).

71. *Reyes-Fuentes*, 2012 WL 3562399, at *6; *see also supra* text accompanying note 24.

avoidance.[72] Thus, although Georgia state law provides for exceptionally narrow supplemental proceedings in which even fraudulent transfers cannot be avoided, courts have been willing to ease this rigidity by facilitating the initiation of new lawsuits by judgment creditors.

2. New York

The state of New York has a unique statutory enforcement mechanism, known as a special proceeding, which is governed by article 52 of the New York Civil Practice Law and Rules.[73] Under section 5225(a) of the New York Civil Practice Law and Rules, a judgment creditor pursuing property in the possession of the judgment debtor must seek a court order requiring the judgment debtor to turn it over.[74] But, under section 5225(b), a judgment creditor pursuing property in the possession of someone other than the judgment debtor must "*commence an* [entirely new] *action*" against the person in possession.[75]

Thus, while New York's special proceeding may seem to be flexible at first, this unique statutory creation still requires an entirely new case be initiated in order to establish third-party liability for fraudulent transfers.

However, the special proceeding also has its appurtenant advantages in comparison to an ordinary lawsuit:

> With regard to the special proceeding provided for in CPLR 5225(b), it is well established that it may be used to attack fraudulent transfers without the need to resort to a plenary action. The main attainment here, since the same kind of relief has always been available in a plenary action, is that the facile device of a special proceeding is being made available to do the job, avoiding the usual delays of the conventional action.[76]

In fact, the special proceeding can even be used to pierce a corporate veil,[77] and even compel foreign banks to turnover assets to pay the debts of account-bearers who are New York account judgment debtors.[78]

As a result, while New York is unusually rigid in its requirement that a judgment creditor initiate new actions to avoid fraudulent transfer, its special proceedings are enormously flexible

72. *Id*.

73. N.Y. C.P.L.R. §§ 5201–5253 (2015).

74. N.Y. C.P.L.R. § 5225(a).

75. N.Y. C.P.L.R. § 5225(b); *Wasserman Media Grp.*, 2012 WL 1506181, at *2–3.

76. Mitchell v. Lyons Prof'l Servs., Inc. 727 F. Supp. 2d 120, 123 (E.D.N.Y. 2010) (quoting David D. Siegel, *Practice Commentaries*, *in* N.Y. C.P.L.R. 5225:7, at 264–65 (McKinney 1997)).

77. WBP Cent. Assocs. v. DeCola, 855 N.Y.S.2d 210, 211 (N.Y. App. Div. 2008).

78. *See* Koehler v. Bank of Bermuda Ltd., 911 N.E.2d 825 (N.Y. 2009) (compelling a third-party Bermudan bank to turnover stock certificates in a garnishment proceeding against New York judgment debtor).

once opened, affording plenary relief. In this respect, New York is similar to the jurisdictions in Group 1. The following Analysis Section of this comment will delve deeper into these similarities as well as the distinctions among the surveyed jurisdictions in Group 1, Group 2, and Group 3. In particular, the next Section will focus on the influence that each jurisdiction's supplemental proceedings have on judicial economy and the successful enforcement of judgments.

III. ANALYSIS

A. Introduction to Analysis

"Judicial economy is concerned with the best allocation among competing claimants of [judicial] resources which have not been used."[79] A critical auxiliary goal to every court, judicial economy is an essential factor which weighs heavily in procedural policies and decisions.[80] For example, one efficient and universally implemented method to preserve judicial resources is to assign a particular judge to a particular case. By ensuring that one judge sees the case through its inception through its disposition, a court promotes judicial familiarity, which saves time and achieves fairer results.[81]

The striking differences highlighted in this comment between each jurisdiction's supplemental proceedings also have disparate impacts on judicial economy. Likewise, the distinctions between these jurisdictions bear a very close connection with a judgment creditor's likelihood of collecting on its judgment. Multiple jurisdictions have even tackled perceived due process concerns with

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79. Don B. Kates & William T. Baker, *Mootness in Judicial Proceedings: Toward a Coherent Theory*, 62 CALIF. L. REV. 1385, 1433–34 (1974).

80. *See, e.g.*, Valencia *ex rel.* Franco v. Lee, 316 F.3d 299 (2d Cir. 2003) (finding that a district court must consider "judicial economy, convenience, fairness, and comity" when determining whether to exercise supplemental jurisdiction); Aioi Seiki, Inc. v. JIT Automation, Inc., 11 F. Supp. 2d 950 (E.D. Mich. 1998) ("[P]laintiff gives no evidence or argument that would suggest that . . . judicial economy would be better served if this court allowed this action to continue as a new proceeding separate from the original judgment."); *see also Alvarez*, 465 F.2d at 374 (finding that judicial economy favors using the same judge to adjudicate disputes between prior litigants). *But see Peacock*, 516 U.S. at 355 ("[N]either the convenience of litigants nor consideration of judicial economy" can justify the extension of ancillary jurisdiction over Thomas' [i.e., the judgment creditor's] claims in this subsequent proceeding.") (quoting Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 377 (1978)).

81. *See, e.g.*, Drake v. Lab. Corp. of Am. Holdings, 323 F. Supp. 2d 449, 455 (E.D.N.Y. 2004) ("Given the lengthy history of Drake's litigations, and the Court's familiarity with every aspect of his lawsuits, judicial economy, convenience and fairness—notwithstanding basic concerns for comity—would be served by keeping the case with the Court."); U.S. Ship Mgmt. v. Maersk Line, Ltd., 357 F. Supp. 2d 924, 939 (E.D. Va. 2005) ("[T]he more important consideration is judicial economy in having the same judge consider the same underlying facts and issues only once and thereby guarding against inconsistent results."); *Alvarez*, 465 F.2d at 374.

permitting veil piercing in supplemental proceedings.[82] This analysis seeks to review the jurisdictions of Group 1, Group 2, and Group 3 in order to identify how the differences in their supplemental proceedings impact these particular issues.

B. The Effect of Group 1's Laws on Judicial Economy, Ease of Enforcement, and Due Process (Florida and Minnesota)

Florida and Minnesota's supplemental proceedings are flexible, with their courts allowing both veil piercing and fraudulent conveyance claims to be directly brought without any need to file a new action.[83] This flexibility promotes judicial economy to a great degree by reducing the total number of cases on the docket, and by ensuring that judges will hear matters that are essentially related to the judgments they previously entered. As a result, judges can reduce the amount of time they need to familiarize themselves with new fact patterns and litigants.

Moreover, judgments are easier to enforce in Florida and Minnesota because judgment creditors do not need to initiate entirely new causes of action to implead third parties in order to pierce a shell corporation's veil or to avoid a fraudulent transfer.[84] As such, additional filing fees are saved and the amount of time and resources expended on discovery can be severely reduced. This is because there is no need to expend additional court costs associated with filing a new civil action,[85] and the discovery process is far less expansive in supplemental proceedings.[86]

However, this supplemental jurisdiction is not without its limits. For example, in *Geigo Props., L.L.P.*, the court refused to pierce a corporate debtor's veil to attach liability to its individual

82. For example, the Supreme Court in *Peacock*, 516 U.S. 349, explicitly held that due process concerns precluded the possibility of impleading third parties to federal enforcement proceedings for the purpose of attaching liability to them for the underlying judgment. Nevertheless, this decision did not preclude state law and state courts providing remedies in excess of what is permissible under federal enforcement jurisdiction. *See, e.g., Guava LLC*, 2015 WL 4877851, at *4–6; *Sanchez*, 127 So. 3d at 628–29; *Ocala*, 735 So. 2d at 543.

83. *See generally Sanchez*, 127 So. 3d 627; *Guava LLC*, 2015 WL 4877851.

84. *Id.*

85. In Florida, filing fees range from $395 to $1,900, depending on the size of the claim. FLA. STAT. § 28.241 (2013). Thus, in Florida, avoiding the filing of a new action can be highly desirable, especially if the claim in question is large. In contrast, Minnesota's filing fees are a flat $310, regardless of the size of the claim. MINN. STAT. § 357.022, subdiv. 2(1). Regardless of the amount of the savings, judgment creditors in both Florida and Minnesota benefit by avoiding the unnecessary costs associated with filing an entirely new action.

86. The issues raised in supplemental proceedings are narrower in their scope, as they almost exclusively relate to the assets of the judgment debtor, and the potential transfer or exchange of those assets to third parties.

president merely because the president had used a shell corporation, citing a lack of improper conduct.[87] In contrast, in cases where a shareholder creates a sham corporation for the purpose of misleading creditors, both Florida and Minnesota have allowed liability to attach to that shareholder without the need for an entirely new proceeding.[88] The point of distinction is whether the judgment debtor is in fact a mere alter ego of a controlling third party, with Florida and Minnesota courts permitting this question to be adjudicated directly in supplemental proceedings.[89]

Although this expansion of enforcement jurisdiction has been attacked by litigants citing due process concerns, Florida and Minnesota courts have consistently upheld the broad scope of their supplemental proceedings.[90] Specifically, Group 1 courts have reasoned that even in instances of veil piercing, the court is merely acting to enforce an existing judgment against an alter ego of the judgment debtor,[91] and that this alter ego relationship is the basis for the extension of liability.[92] Thus, the flexible supplemental proceedings of jurisdictions in Group 1 may not necessarily lead to due process concerns, provided that courts are careful and apply strict standards when deciding to extend liability to an alter ego.[93]

Ultimately, Group 1's flexibility is a boon to judicial economy and judgment enforcement, as it reduces the number of cases that need to be assigned to new judges, while simultaneously facilitating judgment enforcement for creditors. These benefits are supported by exacting requirements for applying third-party liability. As such, Group 1 jurisdictions provides key models for understanding how enforcement proceedings have been, and continue to evolve throughout the country.

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87. *Geigo Props., L.L.P.*, 849 So. 2d at 1109.

88. *Ocala*, 735 So. 2d at 542–43; *Sanchez*, 127 So. 3d at 628–29; *Guava LLC*, 2015 WL 4877851, at *4–6.

89. *Amica Mut. Ins. Co.*, 841 N.W.2d at 642; *Ocala*, 735 So. 2d at 542–43; *Sanchez*, 127 So. 3d at 628–29.

90. *Sanchez*, 127 So. 3d at 628–29; *Guava LLC*, 2015 WL 4877851, at *4–6.

91. *See Amica Mut. Ins. Co.*, 841 N.W.2d at 643 ("[T]he district court correctly concluded that appellant's veil-piercing action is similar to a creditor's bill, is ancillary to the original 2002 judgment, and is intended only to satisfy an existing judgment.").

92. *See Guava LLC*, 2015 WL 4877851, at *5–6 (finding veil piercing to require the establishment of an alter ego relationship).

93. For example, in Florida, these exacting standards for veil piercing include requirements that the judgment debtor be a "mere instrumentality" of the third party, and that the third party act with the fraudulent intent to mislead creditors. *Sanchez*, 127 So. 3d at 628–29. *See also Guava LLC*, 2015 WL 4877851, at *6–8 (detailing a two-prong test to establish an alter ego relationship, considering a multitude of factors).

C. The Effect of Group 2's Laws on Judicial Economy, Ease of Enforcement, and Due Process (Michigan, Illinois, Connecticut, and Alaska)

States in Group 2 have realized some of the benefits of expanding enforcement jurisdiction, primarily by permitting fraudulent transfer avoidance actions to be consolidated with supplemental proceedings.[94] However, by disallowing veil-piercing claims from supplemental proceedings, it is still possible for some judgment debtors to prolong enforcement by funneling assets through alter egos, while judgment creditors are forced to expend additional costs in pursuing new actions.[95]

In contrast to fraudulent transfer avoidance actions, the jurisdictions in Group 2 have approached veil piercing with hesitation. In Connecticut, for example, traditional common law principles of liability and due process have lead courts to disfavor veil piercing in supplemental proceedings.[96] An even more intriguing situation is Illinois, where a statutory amendment lead some to speculate that at least some veil-piercing actions could be brought in a supplemental proceeding.[97] Nevertheless, Illinois courts have seemingly refused to acknowledge any effect to this amendment, and have continued to cite old precedent which precludes any possibility of veil piercing in a supplemental proceeding.[98]

The state of Michigan also has repeatedly analyzed the question of whether a third party can ever be found liable in a supplemental proceeding for the underlying judgment of the

94. *E.g.*, *Star Ins. Co.*, 561 F.3d at 660 (interpreting Illinois law to allow for the impleading of fraudulent transferees in a supplemental proceeding); *Buster*, 95 F.3d at 1459–60 (finding Alaska law to permit judgment debtors to directly implead third-party transferees of fraudulent conveyances into supplemental proceedings, even if transferees are not parties to the underlying action); *Woodridge Hills Ass'n*, 2011 WL 6378813, at *3 (determining that Michigan law permits impleading of third parties into supplemental proceeding for purposes of fraudulent transfer avoidance).

95. The Illinois case of *Conserv FS, Inc.*, 2011 IL App. Ct. 101225U, provides a particularly potent example, with the appellate court refusing to reach the merits of the appellant's veil-piercing arguments due to the improper venue of supplemental proceedings. One can only imagine the wasted costs associated with refiling an entirely new action to have these claims heard, only to have the adjudications in that new action subject to appeal once again. *See supra* text accompanying note 55.

96. *Derderian*, 3 Conn. App. at 529 ("Common law principles do not authorize a general creditor to pursue the transferee in a fraudulent conveyance action for anything other than the specific property transferred or the proceeds thereof.").

97. *See Fish*, 2013 WL 5770512, at *1; *JPMorgan Chase Bank*, 2012 WL 2254193, at *3; Robert G. Markoff & Christopher J. McGeehan, *Enforcement of Judgments*, *in* CREDITORS' RIGHTS IN ILLINOIS § 2.54, at 48; *see also supra* text accompanying note 54.

98. *See, e.g., Buckley*, 2014 IL App. Ct. 130469, ¶ 9 (following traditional Illinois precedent requiring filing of separate action to pierce corporate veil); *Conserv FS, Inc.*, 2011 IL App. Ct. 101225U, ¶ 28.

judgment debtor.[99] But, like other Group 2 states, Michigan courts have drawn upon the same common law traditions and precedential decisions, and as a result, have been unwilling to extend liability in this way.[100] The adherence of jurisdictions in Group 2 such as Connecticut, Illinois, and Michigan to older precedent rooted in common law is understandable, especially in light of the Supreme Court's landmark decision in *Peacock v. Thomas*.[101] Although this viewpoint may be familiar for courts, it does not consider the unnecessary delays imposed in requiring new civil actions to remedy instances of fraudulent conduct by a judgment debtor,[102] such as those involving shell corporations.[103]

Nevertheless, by at least allowing for fraudulent conveyance litigation in supplemental proceedings, Group 2 states still benefit judicial economy more so than if these actions had to be separately litigated through filing new actions. In addition, by allowing creditors to directly avoid fraudulent transfers in supplemental proceedings, Group 2 jurisdictions facilitate judgment enforcement by giving creditors extra statutory teeth to use in enforcing their judgments.[104] But, these remedies are not nearly as potent as those

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99. *See, e.g.*, *Green*, 767 N.W.2d 660 (finding that the filing of a new action is required to attach liability to a third-party corporation); *Int'l Millennium Consultants, Inc.*, 2010 WL 1347597; *Aioi Seiki, Inc.*, 11 F. Supp. 2d 950; Dundee Cement Co. v. Schupbach Bros., 288 N.W.2d 379 (Mich. Ct. App. 1979); Kostopoulos v. Crimmins, No. 299478, 2011 WL 6848354 (Mich. Ct. App. Dec. 29, 2011).

100. Green, 767 N.W.2d 660; Int'l Millennium Consultants, Inc., 2010 WL 1347597.

101. 516 U.S. 349, 357 (precluding federal enforcement jurisdiction from attaching liability to third parties); *see also* H.C. Cook Co. v. Beecher, 217 U.S. 497 (1910) (refusing to force individual directors of a judgment debtor corporation to be liable for the judgment already obtained against the corporation).

102. For just one of the countless examples of just how long the enforcement process can take if new actions are required to be filed, see *Mack Film Dev., LLC v. Benv. Partners*, No. FBTCV104033543S, 2014 WL 6462116, at *4 (Conn. Super. Oct. 10, 2014) ("In the present case, the plaintiffs claim that the defendant has delayed various enforcement proceedings since 2008, including refusing to appear at an examination of judgment debtor in April 2011, leading to the defendant's arrest on March 26, 2013, the precursor to the recently completed examination of judgment debtor . . . .").

103. For example, in *Goya Foods, Inc. v. Unanue*, 233 F.3d 38, 42 (1st Cir. 2000), the First Circuit affirmed a district court decision to pierce the corporate veil of an underfunded corporation owned by a judgment debtor's wife, which had been used for the purpose of funneling assets away from potential enforcement. Notably, the underlying judgment from which the judgment debtor sought to protect his assets was entered in February 1995, and the judgment creditor filed a subsequent lawsuit in November 1995 seeking to pierce the corporate veil of the judgment debtor's related entity. *Id.* But, it was not until November 28, 2000, that the appeal of this subsequent lawsuit was finally decided. *Id.* at 38. Thus, the requirement that a judgment creditor file an entirely new action to collect upon a judgment resulted in over five years of delayed enforcement in this particular case, in no small part due to the ability of the judgment debtor's continued ability to relitigate and even appeal every milestone event of the subsequent action from service through judgment.

104. *See, e.g.*, C. Laborers' Pension Fund v. AEH Constr., Inc., No. 14-3052, 2015 WL 5462139, at *5 (C.D. Ill. Sept. 17, 2015) ("As noted above, a judgment creditor

in Florida and Minnesota, where veil piercing is also permissible in supplemental proceedings, and the courts have even wider latitude over whether to hold a third party liable. As a result, Group 2 jurisdictions have common, but increasingly outdated limitations on the remedies permissible in supplemental proceedings.

D. The Effect of Group 3's Laws on Judicial Economy, Ease of Enforcement, and Due Process (New York and Georgia)

States in this final group are among the least flexible with respect to supplemental proceedings. While New York does have a unique statutory creation called the special proceeding which seems to permit both fraudulent transfer avoidance and veil piercing, this special proceeding still requires the filing of a new action with certain appurtenant costs.[105] Georgia law is even less flexible, with few statutory carve-outs for judgment creditors.[106] Federal courts interpreting Georgia law have been forced to stretch the applicable statutes just to permit the avoidance of fraudulent conveyances through a newly filed, though still ancillary, proceeding.[107]

The two states in Group 3 are both inefficient from the perspective of judicial economy and in terms of reducing court costs, as they necessitate additional docket entries[108] and filing fees.[109] Nevertheless, New York's special proceedings at least provide judgment creditors with the capacity to recover from third parties once these requirements have been met, even to the extent of requiring foreign banks to surrender assets.[110] To this end, if one is attempting to pursue a foreign bailee or agent holding the assets of

may obtain 'avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim,' and, where a judgment creditor has obtained judgment against a debtor, 'the creditor, if the court so orders, may levy execution on the asset transferred.'") (quoting 740 ILL. COMP. STAT. § 160/8(a)(1), (b) (2014)); *accord Woodridge Hills Ass'n*, 2011 WL 6378813, at *3 (construing MICH. COMP. LAWS §§ 600.6116, .6134).

105. *See* N.Y. C.P.L.R. § 5225(b) (requiring a new "special proceeding [be] commenced by the judgment creditor," the cost of which "shall not be awarded against a person who did not dispute the judgment debtor's interest or right to possession."); *Wasserman Media Grp.*, 2012 WL 1506181, at *2–3 (finding that the impleading of a third party requires the initiation of new proceeding, not mere filing of motion); *see also* N.Y. C.P.L.R. §§ 8018(a)(1),(3), 8020(a) (2015) (detailing fees associated with filing new proceedings).

106. *See generally* GA. CODE ANN. § 9-11-69 (2015) (LexisNexis) (setting forth the limited available remedies for judgment creditors); *C-Staff, Inc.*, 571 S.E.2d at 385 (prohibiting veil piercing in supplemental proceedings).

107. *Reyes-Fuentes*, 2012 WL 3562399, at *6.

108. *Id.*

109. N.Y. C.P.L.R. §§ 8018(a)(1),(3), 8020(a); GA. CODE ANN. § 15-6-77(e)(2) (2010).

110. *See Koehler*, 911 N.E.2d at 825 (extending jurisdiction over third-party Bermudan Bank holding stock certificates owned by judgment debtor).

a judgment debtor, New York's special proceedings may be the most creditor-friendly of all jurisdictions.[111] In contrast, Georgia's law pertaining to supplemental proceedings is vague and toothless, and has a negative impact on both judicial economy and judgment enforcement.[112] As a result, while both Group 3 jurisdictions require judgment creditors initiate new causes of action (and pay filing fees) to avoid fraudulent transfers, New York's and Georgia's supplemental proceedings have little else in common.

In fact, the most striking differences between New York's special proceedings and Georgia's supplemental proceedings are the explicit statutory provisions in New York which allow for avoidance of fraudulent transfers and the surrender of property owned by the judgment debtor.[113] Through these provisions, New York's special proceedings certainly provide stronger enforcement rights than those afforded Georgia law.[114] However, these very same provisions have also evoked due process concerns, especially when they have been utilized against foreign corporations.[115] As a result, New

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111. "The Court of Appeals is generally creditor-friendly when it comes to localizing the situs of property or garnishees in New York." Vincent C. Alexander, *The CPLR at Fifty: A View from Academia*, 16 N.Y.U. J. LEGIS. & PUB. POL'Y 664, 679 (2013) (citing Hotel 71 Mezz Lender LLC v. Falor, 926 N.E.2d 1202 (N.Y. 2010); *Koehler*, 911 N.E.2d at 825; ABKCO Indus. v. Apple Films, Inc., 350 N.E.2d 899 (N.Y. 1976)).

112. The very fact that the case of *Reyes-Fuentes*, 2012 WL 3562399, had to be decided largely on the basis of federal enforcement jurisdiction, and not state law, which is the typical basis of enforcement procedure under F.R.C.P. 69, is proof positive that Georgia state law pertaining to supplemental proceedings is considerably weaker than desirable for enforcement purposes.

113. The most notable of these provisions reads in pertinent part as follows:

> Upon a special proceeding commenced by the judgment creditor, against a person in possession or custody of money or other personal property in which the judgment debtor has an interest, or against a person who is a transferee of money or other personal property from the judgment debtor, where it is shown that the judgment debtor is entitled to the possession of such property or that the judgment creditor's rights to the property are superior to those of the transferee, the court shall require such person to pay the money, or so much of it as is sufficient to satisfy the judgment, to the judgment creditor and, if the amount to be so paid is insufficient to satisfy the judgment, to deliver any other personal property, or so much of it as is of sufficient value to satisfy the judgment, to a designated sheriff.

N.Y. C.P.L.R. § 5225(b).

114. *Compare* N.Y. C.P.L.R. § 5225, *with* Ga. Code Ann. § 9-11-69.

115. The majority's decision in *Koehler*, 911 N.E.2d at 825–31, provoked numerous negative opinions, the first being Judge Smith's dissent, to which two other judges subscribed. *Koehler*, 911 N.E.2d 825 at 831–34 (J. Smith, dissenting). Other jurisdictions later agreed with this dissent, refusing to follow the majority's decision that would permit the extension of enforcement jurisdiction beyond the territory of the United States. *See, e.g.*, Sargeant v. Al-Saleh, 137 So. 3d 432, 435 (Fla. Dist. Ct. App. 2014), *reh'g denied* (May 5, 2014), *review denied*, 157 So. 3d 1040 (Fla. 2014) ("From a policy standpoint, we agree with the *Koehler* dissent."); Alfred J. Lechner, Jr., *After Koehler, New York Courts Joust with Federal Courts over Separate Entity Rule*, 9 No. 5. Sec. Litig. Rep. 8 (2012) ("The 4–3 *Koehler* majority

York's unique special proceedings illustrate some of the potential benefits and risks that correspond with expanding enforcement jurisdiction, while still imposing some of the burdensome costs associated with the filing of a new action. Georgia's supplemental proceedings, on the other hand, only illustrate the negative effect that vague and unsatisfactory statutory provisions can have on judgment enforcement.

E. The Juxtaposition of Group 1, Group 2, and Group 3

It is clear that each of the supplemental proceedings represented in Group 1, Group 2, and Group 3 have their respective benefits and concerns.[116] Through this analysis, the benefits and concerns of each jurisdiction has been identified, and can now be used as the basis of comparison among the jurisdictions. Understanding the advantages of each jurisdiction's supplemental proceeding, as well as potential criticisms, is an essential step to developing a practical model for the future.

Initially, the thrust of the concerns in jurisdictions which prohibit veil piercing in supplemental proceedings pertain to due process, and particularly, the extent to which a court can properly find a third party liable for the judgment of another.[117] Jurisdictions in Group 2, as well as Georgia in Group 3, for example, find no basis in the common law to allow a third party to be found liable for a judgment entered against another.[118] In contrast, Group 1 jurisdictions have not found any unsurmountable due process issues with extending the scope of supplemental proceedings, especially in light of the fact that the third party is entitled to a hearing in which it can assert its defenses.[119]

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opinion should not be extended.").

116. For example, supplemental proceedings in Florida have the benefit of allowing judgment creditors to directly implead third parties, but with this benefit comes the appurtenant risk of alienating litigants' due process rights. *See Sanchez*, 127 So. 3d at 628–629 (allowing veil piercing in supplemental proceedings under Florida law); *but cf. Peacock*, 516 U.S. at 354–55 (expressing concerns with expanding ancillary judgment over third parties in federal enforcement proceedings).

117. For example, the following statement by the Supreme Court is a common basis for many jurisdictions' reluctance to expand enforcement jurisdiction: "We have never authorized the exercise of ancillary jurisdiction in a subsequent lawsuit to impose an obligation to pay an existing federal judgment on a person not already liable for that judgment." *Peacock*, 516 U.S. at 357. However, despite this holding, there is no similar prohibition on transferring liability on state court judgments.

118. *See, e.g.*, *Epperson*, 242 F.3d at 107 (finding no basis under common law or Connecticut law to assign liability for a judgment to another); *Green*, 767 N.W.2d at 667–68 (holding that Michigan law requires the filing of new action in order to find liability of third-party corporation); *Pyshos*, 630 N.E.2d at 1058 (finding Illinois law requires the filing of a new action in order to find liability against a third party); *C-Staff, Inc.*, 571 S.E.2d 383 (interpreting Georgia law to preclude any possibility of veil piercing in supplemental proceedings).

119. *See, e.g.*, *Guava LLC*, 2015 WL 4877851, at *5 (noting that any procedural

Nevertheless, Group 1 jurisdictions still have limits in place which attempt to assuage any due process concerns associated with veil piercing in supplemental proceedings. For example, in Florida, these limits include a showing that that the third-party corporation sought to be pierced was created for a fraudulent purpose or to misleading creditors.[120] By putting in place these kinds of limitations, jurisdictions have limited the extension of liability in supplemental proceedings to only those entities who are used to further fraudulent plans, or who are mere instrumentalities[121] for the purpose of frustrating collection efforts.

Ultimately, these differences between jurisdictions' supplemental proceedings have a significant impact on judgment creditors' ability to successfully collect, as well as the judicial economy of each jurisdiction's docket. Although extending the scope of potential liability in supplemental proceedings to include third parties raises some due process concerns, these issues can be more-or-less disposed of with appropriate safeguards. The determination and implementation of these safeguards is a key subject in the proposal outlined in the following section of this comment.

IV. PROPOSAL

A. The Preferred Means of Expanding Enforcement Jurisdiction—Legislative Amendment or Judicial Interpretation?

Upon consideration of the distinctions in the supplemental proceedings of the jurisdictions in Group 1, Group 2, and Group 3,

due process concerns were negated because the third-party defendant had been "afforded a full opportunity to present a defense to his personal liability."); *see also Sanchez*, 127 So. 3d at 628–29; *Ocala*, 735 So. 2d at 543.

120. *See Rashdan*, 706 So. 2d at 357–58 ("The corporate veil cannot be pierced absent a showing of improper conduct, or that the corporation was organized or employed for some fraudulent purpose or to mislead creditors.") (citing *Dania Jai–Alai Palace, Inc.*, 450 So. 2d 1114; Moorings at Aberdeen Homeowners Ass'n v. UDC Homes, Inc., 673 So. 2d 981 (Fla. Dist. Ct. App. 1996); Acquisition Corp. of Am. v. Am. Cast Iron Pipe Co., 543 So. 2d 878 (Fla. Dist. Ct. App. 1989); Steinhardt v. Banks, 511 So. 2d 336, 338 (Fla. Dist. Ct. App. 1987)).

121. Numerous jurisdictions have employed this "mere instrumentality" language to describe the conditions in which veil piercing is permissible. *See, e.g.*, *Woodridge Hills Ass'n*, 2011 WL 6378813, at *6 ("For the corporate veil to be pierced, the corporate entity must be a mere instrumentality of another individual or entity."); Equity Trust Co. Custodian *ex rel.* Eisenmenger IRA v. Cole, 766 N.W.2d 334, 339 (Minn. App. 2009) (If the corporation or limited liability company is found to be an alter ego or mere instrumentality, a court may pierce the corporate veil if there is an "element of injustice or fundamental unfairness."); *Schuftan*, 2007 WL 2688856, at *1 ("Under Connecticut law, courts will disregard the fiction of separate legal entity when a corporation is a mere instrumentality or agent of another corporation or individual owning all or most of its stock.") (citations omitted) (quoting another source) (internal quotation marks omitted).

it is clear that there are potential ways to improve judicial economy and successful judgment enforcement without unduly burdening due process rights. One potential solution, drawing inspiration from jurisdictions like Florida in Group 1,[122] and New York in Group 3,[123] is to legislatively enact statutory mechanisms that allow creditors to pierce the corporate veil and avoid fraudulent conveyances by debtors in supplemental proceedings. Another avenue to accomplish these goals is to enlarge a court's enforcement jurisdiction through judicial decisions that broadly interpret the provisions of an existing statute, a possibility that is perhaps best exemplified by Minnesota in Group 2.[124]

Both of these possible methods of expanding enforcement jurisdiction and increasing the likelihood of successful judgment collection have their potential pitfalls. For example, even if a legislature successfully enacts an amendment which purports to expand the scope of supplemental proceedings, that is still no guarantee that courts will interpret and judicially enforce the change. This is especially evident in the example of Illinois, a Group 2 jurisdiction who enacted statutory amendments in 2008[125] that some commentators thought would permit judgment debtors to take control of third-party corporate assets directly in supplemental proceedings.[126] Despite these amendments, Illinois courts have refused to date to acknowledge any realistic impact of the amendments, and have continued to follow pre-amendment precedent which requires entirely new actions to be initiated in order to enforce judgments against third parties.[127]

In contrast, if enforcement jurisdiction is expanded through broad judicial interpretations of existing statutes (instead of legislative amendments), the danger is that there will be no concrete foundation upon which to decide whether a certain particular procedure or situation falls under the court's enforcement jurisdiction. In other words, relying solely upon judicial decisions to expand enforcement jurisdiction may not achieve the precise procedural clarity necessary to ensure due process in supplemental proceedings. For example, crucial due process issues such as the

122. FLA. STAT. § 56.29; *Sanchez*, 127 So. 3d at 628–29.

123. N.Y. C.P.L.R. §§ 5201–5253; *WBP Cent. Assocs.*, 855 N.Y.S.2d 210.

124. *See Guava LLC*, 2015 WL 4877851, at *4 (interpreting the broad phrase "the court may grant any equitable relief it considers just and reasonable" contained in section 322B.833, subdivision 1(3)(i) of the Minnesota Statutes to permit veil piercing, which the court considered to be an equitable remedy).

125. S.B. 229, 95th Gen. Assemb., Reg. Sess., P.A. 95-661 (Ill. 2007) (amending, *inter alia*, 735 ILL. COMP. STAT. § 5/2-1402(c)(3)).

126. *See Fish*, 2013 WL 5770512, at *1; *JPMorgan Chase Bank*, 2012 WL 2254193, at *3; Robert G. Markoff & Christopher J. McGeehan, *Enforcement of Judgments*, *in CREDITORS' RIGHTS IN ILLINOIS* § 2.54, at 48; *see also supra* text accompanying note 54.

127. *Buckley*, 2014 IL App. Ct. 130469, ¶ 9; *Conserv FS, Inc.*, 2011 IL App. Ct. 101225U, ¶ 28.

procedural right to respond to postjudgment discovery,[128] or the court's capacity to adjudicate the substantive rights of the parties to a supplemental proceeding,[129] if not addressed by statute, will have to be decided through further litigation and judicial opinions. This very real possibility of creating additional legal questions that must be answered from the bench could potentially negate any advantage to judicial economy created by a judicial decision which expands enforcement jurisdiction.

In light of these potential concerns, it seems that the most prudent way for a given state to successfully expand enforcement jurisdiction is to legislatively amend its relevant statutes pertaining to supplemental proceedings in a clear and unambiguous fashion. Through the process of statutory amendment, state legislatures can negotiate and ensure that there are appropriate considerations for creditors, debtors, and third-party defendants, as well as ensure that the state courts will have adequate instructions to interpret the new amendments.[130] Thus, legislative amendment is a more coherent method of expanding enforcement jurisdiction than solely relying upon courts to broadly interpret existing statutes. The considerations that should be weighed by legislatures attempting such amendments, and some proposed putative mechanisms to ensure that parties' due process rights are preserved, will be discussed in the following subsection.

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128. Judgment creditors may "use supplementary proceedings to discover whether the judgment debtor corporation's individual shareholders and directors held assets of the [debtor] corporation." Miner v. Fashion Enters., 794 N.E.2d 902, 911 (Ill. App. Ct. 2003). The procedural due process rights afforded by this postjudgment discovery process are of particular importance to jurisdictions such as Minnesota, which permit the extension of liability through supplemental proceedings:

> Hansmeier [the third-party owner] represented himself and Alpha [the judgment debtor corporation] very actively throughout post-judgment discovery, including filing an opposition to respondents' request for an examination of debtors and submitting multiple letters and motions to the court on Alpha's behalf. In granting the debtors' examinations, the district court found that Hansmeier had adequate notice and time to prepare for the examinations. . . . . As the district court concluded, Hansmeier was afforded due process and an adequate opportunity to present a defense.

Guava LLC, 2015 WL 4877851, at *5.

129. *Compare Guava LLC*, 2015 WL 4877851, at *4 ("Minn. Stat. § 322B.833, subd. 1(3)(i) authorizes the district court to hear and determine whether to pierce the corporate veil in post-judgment proceedings against an LLC."), *and Sanchez*, 127 So. 3d at 629 ("[T]here is authority to support the use of proceedings supplementary to pierce the corporate veil . . . ."), *with* Bollore S.A. v. Imp. Warehouse, Inc., 448 F.3d 317, 323 (5th Cir. 2006) ("[I]t is black-letter Texas law that proceedings pursuant to the turnover statute may not be used to determine the substantive property rights of the judgment debtors or of third parties."), *and* Maiz v. Virani, 311 F.3d 334, 343–45 (5th Cir. 2002) (holding that a district court may not use a turnover proceeding to adjudicate whether a corporation is an individual judgment debtor's alter ego).

130. In other words, unlike Illinois's 2008 amendments which are essentially ignored by its courts to this day.

B. Expanding Enforcement Jurisdiction by Legislative Amendment—Potential Implementation Considerations and Methods to Protect Due Process Rights

Any legislative amendment to an issue as sensitive as judgment enforcement and collections will have its fair share of divisive opinions. On the one hand, expanding the scope of supplemental proceedings to allow for veil piercing has the potential to hold third parties liable for judgments they ordinarily would have had the opportunity to defend through an entirely new lawsuit, thereby infringing upon the distinction between a corporation and its shareholders. However, expanding enforcement jurisdiction also greatly assists judgment creditors in preventing judgment debtors from conveying assets to shell corporations or to shareholders for the purpose of obfuscating collection efforts. Thus, any legislative amendment designed to affect the scope of supplemental proceedings must be sensitive to both of these countervailing concerns.

After taking in consideration the laws and judicial decisions of the jurisdictions in Group 1, Group 2, and Group 3, the author proposes that legislative amendments can be formulated which create expansive supplemental proceedings like those of jurisdictions in Group 1, but which nonetheless have explicit safeguards in place to protect the due process rights of potential litigants. For example, a state should pass an amendment which resembles Florida's proceedings supplementary or New York's special proceedings, but with explicit provisions that govern postjudgment discovery, and stipulate the precise conditions in which liability can properly implead and attach liability to a third party.

Such an amendment could, for instance, have provisions which allow a litigant to issue discovery to a third party on the subject of that party's relationship to the judgment debtor, with the third party subject to impleading and even liability should it fail to comply with the discovery requests. And, if the third party's discovery responses reveal evidence sufficient to establish a prima facie showing that the third party is an alter ego or fraudulent agent of the judgment debtor, the court in its discretion should be able to implead the third party as a defendant, and require it to rebut any formal veil-piercing or fraudulent transfer allegations brought against it by the judgment creditor.

Presumably, such a putative amendment would also require the original trial judge that entered the judgment to hear any motions pertaining to postjudgment discovery or veil piercing, as this judge is more likely to know the facts of the case and the litigants at issue.[131] This hypothetical amendment could also improve upon the jurisdictions in Group 2 and even the special proceedings of New York in Group 3 by ensuring that a new case does not need to be filed in order to continue enforcement, thereby saving additional costs and unnecessary docket clutter.[132]

Beyond just saving costs and docket entries, however, loosening the requirement that a new action be filed to impose liability on certain fraudulent third parties would be an enormous boon to judicial economy, as there would be no need to have a completely new discovery and prejudgment process begin anew. Rather, all that is really necessary in such cases is a narrowly tailored postjudgment discovery and fact-finding process focused on the relationship between a given third party and the judgment debtor.[133] Such an amendment could prevent the filing of entirely

131. *See U.S. Ship Mgmt.*, 357 F. Supp. 2d at 939 (pointing out judicial economy is best served by having the same judge consider the facts and arguments raised only once).

132. For examples of these costs, *See* N.Y. C.P.L.R. §§ 8018(a)(1),(3), 8020(a); *see also Wasserman Media Grp.*, 2012 WL 1506181, at *2–3.

133. In fact, it is even possible to imagine a state implementing a template or form which incorporates some of the typical questions that might be asked to a third party in which an alter ego or fraudulent agency relationship is suspected. For example, in Illinois, in order for a citation lien to be considered valid against a judgment debtor, the law already requires that the judgment creditor serve the judgment debtor with a statutorily mandated form containing questions pertaining to the income and assets of the judgment debtor. *See* 735 ILCS 5/2-1402(b-1), (b-5) (2014). There is no reason why similar forms could not be codified for both corporate and individual third parties which lists questions pertaining to that party's relationship to the judgment debtor, and the party's independent financial status. These questions could even be largely based upon the jurisdiction's standard factors for the presence of an alter ego, such as the following listing, considered by one at least one court to be "the most straightforward listing, employed in whole or part by various jurisdictions":

> a) Does the parent own all or most of stock of the subsidiary?
>
> b) Do the parent and subsidiary corporations have common directors or officers?
>
> c) Does the parent corporation finance the subsidiary?
>
> d) Did the parent corporation subscribe to all of the capital stock of the subsidiary or otherwise cause its incorporation?
>
> e) Does the subsidiary have grossly inadequate capital?
>
> f) Does the parent pay the salaries and other expenses or losses of the subsidiary?
>
> g) Does the subsidiary do no business except with the parent or does the subsidiary have no assets except those conveyed to it by the parent?
>
> h) Is the subsidiary described by the parent (in papers or statements) as a department or division of the parent or is the business or financial responsibility of the subsidiary referred to as the parent corporation's own?

new causes of action solely intended to decide the limited issue of whether a third party is an alter ego or fraudulent instrumentality of a judgment debtor.

An amendment with these putative provisions could provide judgment creditors with the necessary tools to enforce their judgments against shell corporations, while still ensuring that judgment debtors and their corporations have sufficient safeguards to preserve their due process rights. Moreover, unlike jurisdictions like Minnesota which rely largely upon judicial interpretations of broadly written statutes to expand their supplemental proceedings,[134] codified amendments provide clarity and assurance to both judgment creditors and debtors as to the extent of their rights in enforcement proceedings. State legislatures can draft provisions which explicitly address the permissible scope of postjudgment discovery, and even create sections which set forth the requirements for veil piercing, such as the evidentiary burden required to establish the existence of an alter ego or fraudulent purpose.

Thus, by enacting statutory amendments that allow judgment creditors to veil pierce and avoid fraudulent transfers in supplemental proceedings, subject to evidentiary showings and judicial discretion, state legislatures can promote judicial economy and successful collection efforts without unduly burdening the due process rights of judgment debtors and third-party respondents. Amendments of this kind will alleviate docket clutter by reducing the number of new cases filed, and promote judicial economy by ensuring that judges adjudicate cases in which they are already familiar with the facts and litigants. Moreover, in the process of debating and enacting such amendment, state legislatures have free reign to decide exactly what kind of discovery should be permissible,[135] or whether to extend jurisdiction over foreign agents and bailees of judgment debtors.[136] Ultimately, careful use of the

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i) Does the parent use the property of the subsidiary as its own?

j) Do the directors or executives fail to act independently in the interest of *164 the subsidiary, and do they instead take orders from the parent, and act in the parent's interest?

k) Are the formal legal requirements of the subsidiary not observed?

Inter-Tel Techs., Inc. v. Linn Station Props., LLC, 360 S.W.3d 152, 163–64 (Ky. 2012) (citing FREDRICK J. POWELL, PARENT AND SUBSIDIARY CORPORATIONS 9 (1931); STEPHEN B. PRESSER, PIERCING THE CORPORATE VEIL 41–42 (2011)).

134. *Guava LLC*, 2015 WL 4877851, at *4.

135. In other words, the state legislature gets to decide to what extent a third-party corporation might be required to relinquish financial information in supplemental proceeding, and can set appropriate safeguards to prevent "fishing expeditions" where no relevant evidence is likely to be discoverable.

136. Thus, the state legislature, rather than the judiciary (as was the case in New York in *Koehler*, 911 N.E.2d 825), would have the right to decide whether foreign third-party agents and bailees, such as financial institutions, should be included

legislative amendment process can result in a potent expansion of enforcement jurisdiction, in conjunction with statutorily mandated due process safeguards.

V. CONCLUSION

The benefits of allowing judgment creditors to directly attack the fraudulent agents and transfers of judgment debtors are many, and the potential pitfalls are surmountable with careful legislation and interpretation. While many jurisdictions identified in this comment have been reluctant to permit veil piercing in supplemental proceedings (particularly those in Group 2 and Georgia in Group 3), their hesitation can be alleviated by crafting statutory provisions that ensure that the rights of judgment debtors and third parties are preserved. In the end, it is up to state legislatures to decide exactly how far to extend their enforcement jurisdiction, and this legislative power can and should be used to draft unambiguous provisions that promote judicial economy and clearly delineate the rights of judgment creditors, judgment debtors, and third parties in supplemental proceedings and postjudgment discovery.

within the state's jurisdiction.