TO TELL THE TRUTH: I'VE GOT A SECRET
THE TRANSPARENCY OF LIMITED LIABILITY ENTITIES

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JUNE 1, 2016

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(Revised)

1. Introduction

1.1. Limited liability entities (awkwardly referred to here as "LLEs") have an important social purpose. As shown in part 2., below, they allow capitalism to work.

1.2. That having been said, however, they have been the subject of attacks recently due to their use for ends that are somewhat irrelevant to their essential social purposes.

1.3. Specifically, LLEs are increasingly finding favor as vehicles to hide assets, hide the identities of political campaign contributors, and avoid responsibility to pay taxes.

1.4. The purpose of this presentation is neither to offer some sort of blanket defense of LLE's nor is it to demonize LLEs. In fact, I come to this discussion with a bias toward privacy and, yes, secrecy. Yet, I also have the growing sense that I may have helped create a monster.

2. Limited Liability–What Is It Good For?[2]

2.1. In a 2007 law review article, *Piercing the Corporate Veil, Financial Responsibility, and the Limits of Limited Liability*, 56 Emory L.J. 1307 (2007) http://bit.ly/250RUel, David K. Millon identified several rationales for allowing limited liability:

2.1.1. LLEs allow for the aggregation of large amounts of capital from numerous small investors. If liability were not limited, even a small investment

[1]The title is, of course, a dead giveaway that the author is, ah, of a certain age, since it references two television series that ended in 1978 and 1967, respectively.

[2]With apologies to Edwin Starr.

could render a shareholder liable for a substantial corporate obligation. Because even a remote risk of a huge loss may overshadow small gains that are more likely, potential investors may forego investments that have a positive net present value. Limited liability therefore encourages investment that otherwise would not occur.

2.1.2. Reduction of capital costs by allowing individuals to hold diversified portfolios.

2.1.3. Reducing the costs to shareholders of attempting to protect themselves from unduly risky corporate behavior. With limited liability, however, investors need not concern themselves with monitoring efforts or participation in management and they can optimize their returns by making smaller investments in a larger number of companies.

2.1.4. Under a regime of unlimited liability, the likelihood that any single shareholder would have to pay a judgment against an insolvent corporation would depend in part on the resources of the other shareholders. If the majority of the shareholders have modest personal wealth, an affluent shareholder would end up paying a larger share of the judgment out of his own pocket. Shareholders would therefore incur costs in attempting to keep track of both the identities of their fellow shareholders and also their individual wealth.

2.1.5. Limited liability facilitates capital liquidity. If liability were unlimited, protection of creditor interests would require either a rule prohibiting transfer to low-asset transferees or else a rule exposing the transferor to liability after the transfer.

2.2. Added to the list outlined by Millon is one that is not really derived from limited liability, but which, based upon our (collective) historical professional experience, is so closely aligned with limited liability that most of us view it as inseparable–lowering the tax burden on investment.

2.2.1. This takes numerous forms, such as:

2.2.1.1. Lower income tax rates on the income of the LLE and on distributions from LLEs;

2.2.1.2. The ability to aggregate the entire ownership in an LLE in some sort of representative form (*e.g.*, stock) that can be sold, with the profits taxed at lower capital gain rates.

2.2.2. Of course, tax benefits are often subject to perceived abuse. Thus, there are several statutory and doctrinal provisions that are directed to address these perceived abuses, including, but certainly not limited to, the following:

2.2.2.1. The personal holding company tax (IRC § 541 *et seq.*) that subjects certain tax-favored income to what is, in effect, a penalty tax if the income is aggregated within a corporation;

2.2.2.2. The accumulated earnings tax (IRC § 531 *et seq.*) that subjects earnings being held in a corporation that are not needed for the activities of the business and are held, in essence, to avoid or defer the tax that would be incurred upon their distribution to the shareholders.

2.2.2.3. The older doctrine (still alive, but limited due to the reduction of taxes on dividends) of recasting purported compensation (which is tax deductible to the corporation) as a dividend (which is not deductible). *See Menard, Inc. v. Commissioner*, 560 F.3d 620 (2009) http://bit.ly/229nHEX.

3. **LIMITED LIABILITY AND ITS DISCONTENTS.**

3.1. We are all allegedly familiar with the doctrine of piercing the corporate veil. However, as two commentators have noted "The doctrine of piercing the corporate veil is shrouded in misperception and confusion." J. Macey and J. Mitts, *Finding Order in the Morass: the Three Real Justifications for Piercing the Corporate Veil*, 100 Corn. L.R. 99, 100 (2014) http://bit.ly/1scG7b5

3.2. Macey and Mitts contend that:

> All of the piercing cases can be explained as an effort to accomplish one of these three goals: (1) achieving the goals of a particular regulatory or statutory scheme; (2) avoiding fraud or misrepresentation by shareholders trying to obtain credit; and (3) promoting the bankruptcy value of eliminating favoritism among claimants to the cash flows of a firm.

3.3. The current negative attention on LLEs has a somewhat different focus, however. More precisely, there appear to be several somewhat different focii.

3.3.1. The use of the opacity of LLEs to shield from public view the activities of the controlling parties to avoid taxes. Thus:

3.3.1.1. The IRS has noted that:

In response to efforts by the Organization for Economic Cooperation and Development (OECD) to eliminate harmful tax competition, some nations labeled as tax havens have accused OECD members of carrying on the very practices the members seek to stop. One example put forth is the ease with which nonresident aliens may do business through limited liability companies (LLCs) domiciled in the United States, in comparative anonymity. http://1.usa.gov/1R2KXwc

3.3.1.2. Your fair state has come in for more than its fair share of direct criticism in this regard:

When thinking of tax havens, one generally pictures notorious zero-tax Caribbean islands like the Cayman Islands and Bermuda. However, we can also find a tax haven a lot closer to home in the state of Delaware – a choice location for U.S. business formation. A loophole in Delaware's tax code is responsible for the loss of billions of dollars in revenue in other U.S. states, and its lack of incorporation transparency makes it a magnet for people looking to create anonymous shell companies, which individuals and corporations can use to evade an inestimable amount in federal and foreign taxes. The Internal Revenue Service estimated a total tax gap of about $450 billion with $376 billion of it due to filers underreporting income in 2006 (the most recent tax year for which this data is available). While it is impossible to know how much underreported income is hidden in Delaware shell companies, the First State's ability to attract the formation of anonymous companies suggests that it could rival the amount of income hidden in more well-known offshore tax havens.

"Delaware: An Onshore Tax Haven" December 10, 2015, by the Institute on Taxation and Economic Policy ("ITEP"), http://bit.ly/1V4csN3 (Last visited: May 15, 2016).

3.3.1.3. But, of course, tax evasion is not the only alleged ill that is pinned upon LLEs. Take a look at the preamble of S. 2489 (H.B. 4450) (the "Incorporation Transparency and Law Enforcement Assistance Act") introduced this past February in the Senate and the House of Representatives, respectively, by Senator Whitehouse and Representative Maloney. (I will refer to this as the "ITLEA"). The ITLEA states that its purpose is:

[T]o ensure that persons who form corporations or limited liability companies in the United States disclose the beneficial owners of those corporations or limited liability companies, in order to prevent wrongdoers from exploiting United States corporations and limited liability companies for criminal gain, to assist law enforcement in detecting, preventing, and punishing terrorism, money laundering, and other misconduct involving United States corporations and limited liability companies, and for other purposes.

See: http://bit.ly/1OtaO62[3]

3.3.1.4. Of course, this is a presidential election year. Thus, we have now focused on the use of LLEs, in political campaign funding, particularly (but by no means solely) the alleged abuse of entities formed under IRC § 501(c)(4) to hide political donors. I note that a full discussion of how campaign contributions are hidden from public is way beyond the scope of this presentation.

3.3.1.5. Finally, there is the use of LLCs to attempt to avoid the valid claims that creditors have against members of the LLCs. I will address this below in Section 6.

4. **TAXES**.

4.1. The ITLEA identifies two areas of specific concern with respect to tax avoidance.

4.2. The first is the zero tax on income relating to intangible assets held by a "Delaware Holding Company," or a "Passive Investment Company (PIC)."

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[3]I have uploaded S. 2489 which is identical to the House Bill.

This includes interest and investment income as well as income related to intellectual property, such as trademarks and patents. In essence, this "loophole" works, if at all, to reduce state and local income taxes, not federal taxes. (N.B. I use the term "loophole" without any intent to categorize any provision cited in this presentation either positively or negatively. After all, one person's "loophole" is another person's "stimulative tax policy device.")

4.2.1. Even though I'm from your next-door neighbor, I am not very concerned about any alleged tax depredation via Delaware Holding Companies. The reason is that the Maryland Comptroller and the Maryland Court of Appeals closed that loophole in *Comptroller v. Syl, Inc.*, 375 Md. 78 (2003) http://bit.ly/1TDMxGE. Maryland's approach was summarized in *NICH, Inc. v. Comptroller*, 439 Md. 668 (2014) http://bit.ly/22btIAR, as folows:

Once upon a time, before the advent of the shot clock, some basketball teams employed a maneuver known as the "four corners offense." This strategy involved a series of passes among team members that seemingly did not advance the ultimate purpose of putting the ball in the hoop, but had the separate purpose of depriving the opposing team of possession of the ball. In a somewhat analogous enterprise, corporate tax consultants devised a strategy that involved a series of transactions passing licensing rights between related corporations and that was motivated by a desire, not to directly enhance corporate profits, but to keep a portion of those profits out of the hands of state tax collectors. Much as the shot clock led to the demise of the four corners offense, judicial decisions during the past two decades have limited the utility of this tax avoidance strategy.

4.2.2. Needless to say, Nordstrom's, the ultimate parent in the NICH case, was tagged with the tax.

4.2.3. This is not to say that a variation on this theme is no longer used. I do not know whether a major grocery chain is using this strategy, but, based upon a review of its "house brand" products, its trademarks are owned by a "Sarl." "Sarl" is an acronym for "Société à responsabilité limitée," roughly equivalent to an LLC. Since I don't have audit or subpoena power over this company, I cannot determine whether royalties are escaping Maryland income tax ala SYL and NICH. But I have my suspicions.

4.2.4. Stated simply, the tax avoidance or minimization scheme that is opened by Delaware Holding Company statute can easily be addressed by relatively simple compliance efforts by states that desire to block this strategy. See the most famous of these cases, *Geoffrey, Inc. v. South Carolina Tax Commission*, 313 S.C. 15 (1993) http://bit.ly/1TDN9fG.

4.2.5. Academic work in this area seems to confirm that states can effectively address tax avoidance strategies enacted by other states. Thus, one study found that:

[T]axes play an economically important role in determining whether U.S. firms locate subsidiaries in Delaware and that a Delaware-based state tax avoidance strategy lowers state effective tax rates by between 0.7 and 1.1 percentage points, on average. The tax savings represent a 15% to 24% decrease in the state income tax burden and translate to an increase in net income of 1.04% to 1.47%. However, we find that the tax benefits of Delaware tax strategies are diminishing over time in response to initiatives by state governments to limit multistate tax avoidance.

S.D. Dyreng, B.P. Lindsey, and J.R. Thornock, "*Exploring the Role Delaware Plays as a Domestic Tax Haven*" http://bit.ly/1V4ms8M (2012).

4.3. States may not be as effective in addressing tax avoidance by individuals, however.

4.3.1. Often, states do not actually audit individual returns themselves. Instead, they ride on the coattails of federal audits. Since the IRS has no dog in the fight of whether individuals are correctly paying state taxes, state tax avoidance is simply not examined.

4.3.2. This leads us to the ITLEA.

5. The ITLEA.

5.1. The goal of the ITLEA is to allow federal and state law enforcement agencies, including tax collection agencies, to determine the beneficial owners of business entities.

5.2. ITLEA would require that any LLE, upon its formation, provide to the state agency in charge of LLE formation, a list of beneficial owners of the LLE that identifies each such beneficial owner by name, address, and either passport number or state driver's license number.

5.3. The information has to be updated within sixty (60) days following any change. There is a shorter notification period when the update is occasioned by the transfer by a formation agent.

5.4. Bearer instruments would be outlawed.

5.5. There are various transition provisions.

5.6. A violation of the provisions of ITLEA would be subject to a possible fine of not less than $10,000.00 and imprisonment for not more than 3 years.

5.7. Needless to say, there are certain exceptions, the most significant of which are LLEs that (i) employ more than 20 employees on a full-time basis in the U.S., (ii) file U.S. tax returns showing more than $5 million in gross receipts, (iii) have a operating presence at a physical office in the U.S., or are owned by a qualifying entity.

5.8. The disclosure of the "Panama Papers" has resulted in increased attention to these issues.

5.8.1. See this article from the Guardian where European companies are putting pressure on the U.S. for greater financial transparency. http://bit.ly/1V4u8b7 (U.K. Prime Minister David Cameron is quoted as follows: "The state of Delaware, for instance, has a lot of companies registered and not much transparency. We have to work with all these countries to persuade them that if we all raise the bar it will be more effective. I am committed to doing that and the United States certainly should be as well.")

5.8.2. Of course, not everyone agrees that the ITLEA is a good thing. After all, an earlier version was introduced several years ago by Senator Carl Levin and co-sponsored by a junior senator by the name of Obama. It failed to get out of committee.

5.8.3. The American Bar Association has come out in opposition to the ITLEA contending that the bill would "impose burdensome, costly, and unworkable "beneficial ownership" reporting requirements on lawyers, their clients, businesses, and states." http://bit.ly/1Tchis3 (Last visited: May 15, 2016.)

5.8.4. Notwithstanding the opposition of the ABA, the National Conference of Commissioners on Uniform State Laws has developed and proposed the Uniform Law Enforcement Access to Entity Information Act. See http://bit.ly/1X5XqIt (last visited May 29, 2016). The Uniform Act is "designed to be a substitute for the" ITLEA. Under the Uniform Act.[4]

i. All domestic filing entities are prohibited from issuing certificates of bearer shares and are required to include in their initial public organic document (IPOD) filed in the office of the Secretary of State (SOS) a statement declaring whether or not the entity is a "conventional privately-held entity" (CPE).

ii. A CPE is an entity that has no more than 50 interest holders.

iii. A CPE must identify with the Secretary of State of its state of organization "the name and business or residential address of the CPE's 'record contact' and 'responsible individual.'"

iv. Existing organizations have two years to come into compliance.

v. The states' costs of compliance would be borne by the federal government.

vi. An enacting state can elect to have the information treated as a confidential document to be disclosed only to authorized agents of law enforcement agencies and other specified agencies and committees.

5.9. I am a proud alumnus of Pimilico Junior High School which is virtually next door to the famous race track. Despite that, I don't engaged in wagering. Notwithstanding that, however, I would be willing to place a small wager on the likelihood that the disclosure requirements of the sort contained in ITLEA will, at some point, find their way into law. My rationale is as follows: When

[4]My thanks to Allan G. Donn of Willcox & Savage, P.C., who was one of the ABA's advisors to the drafting committee.

business-oriented publications such as Fortune come out in support of such legislation, the end is in sight. http://for.tn/1WtkgcB (Last visited May 15, 2016.)

6. **THE OBAMA ADMINISTRATION REACTS.** The Obama Administration has not waited for legislative action. On May 5, 2016, it announced both administrative action and proposed legislation to address these issues. http://1.usa.gov/1YtGhW2.

6.1. First, the Treasury finalized the Customer Due Diligence ("CDD") Regulations.

6.1.1. The CDD regulations adds a new requirement that financial institutions – including banks, brokers or dealers in securities, mutual funds, futures commission merchants, and introducing brokers in commodities – collect and verify the personal information of the real people (also known as beneficial owners) who own, control, and profit from companies when those companies open accounts. The Regulations also amends existing Bank Secrecy Act (BSA) regulations.

6.1.2. Specifically, the rule contains three core requirements:

i. Identifying and verifying the identity of the beneficial owners of companies opening accounts;

ii. Understanding the nature and purpose of customer relationships to develop customer risk profiles; and

iii. Conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

iv. Financial institutions will have to identify and verify the identity of any individual who owns 25 percent or more of a legal entity, and an individual who controls the legal entity.

6.2. At the same time, the Administration proposed amendments to the Bank Secrecy Act.

6.2.1. These amendments would require any United States entity to maintain records and file reports on the beneficial owners of such entity.

6.2.2. I have posted a copy of the proposed amendments here: http://bit.ly/1TodIcH It is only one page. Nevertheless, it is a very big deal.

6.2.3.Under the proposal, a United States entity means “an entity as the Secretary [of the Treasury] shall by regulation prescribe” that is “created, organized, or qualified or registered to do business under the laws of any jurisdiction within the United States” and uses any instrumentality involved in interstate commerce.

6.2.4. The Secretary would be authorized to issue regulations defining the term “beneficial owner.”

6.2.5. All subject entities would be required to “file . . . reports at such time and in such manner as the Secretary may prescribe” that “shall include names, addresses, unique identifying numbers, such as social security, tax identification, passport, and driver’s license numbers, and such other information, including information on the identity of any entity and individual who formed the United States entity as well as the identity of the individual who is submitting the report.”

6.2.6. Failure to file a report carries a civil penalty of $5,000.00 for each violation.

i. The proposal also states that “[e]ach day a violation continues shall constitute a separate violation.”

ii. The entity and “any beneficial owner whose identity . . . was required to [be disclosed] in the report or record may be liable for the penalty.”

6.2.7. The proposal is breathtaking.

i. I suspect that in due course, most financial institutions will require that entities provide them with this information.

ii. It is not a stretch to suggest that the states will similarly require the filing of this information.

iii. Finally, while not publicly available, the reports, since they must be retained by the entities for five years after filing, will be a frequent target for discovery in civil cases.

6.3. Finally, the Treasury also announced proposed regulations to require foreign-owned disregarded entities, including foreign-owned single-member LLCs to obtain EINs from the Service. The Treasury claims that '[o]nce these regulations are finalized, they will allow the IRS to determine whether there is any tax liability, and if so, how much, and to share information with other tax authorities. This will strengthen the IRS's ability to prevent the use of these entities for tax avoidance purposes, and will build on the success of other efforts to curb the use of foreign entities and accounts to evade U.S. tax."[5]

6.3.1. The proposed regulations would amend section 301.7701–2(c) to treat a domestic disregarded entity that is wholly owned by one foreign person as a domestic corporation separate from its owner for the limited purposes of the reporting and record maintenance requirements (including the associated procedural compliance requirements) under section 6038A.

6.3.2. Because the proposed regulations would treat the affected domestic entities as foreign-owned domestic corporations for the specific purposes of section 6038A under the proposed regulations, and because such entities are foreign-owned, they would be reporting corporations within the meaning of section 6038A. Consequently, they would be required to file the Form 5472 information return with respect to reportable transactions between the entity and its foreign owner or other foreign related parties (transactions that would have been regarded under general U.S. tax principles if the entity had been, in fact, a corporation for U.S. tax purposes) and would also be required to maintain records sufficient to establish the accuracy of the information return and the correct U.S. tax treatment of such transactions.

6.3.3. The regulations would specify as an additional reportable category of transaction for these purposes any transaction within the meaning of section 1.482–1(i)(7) (with such entities being treated as separate taxpayers for the purpose of identifying transactions and being subject to requirements under section 6038A) to the extent not already covered by another reportable category. The term "transaction" is defined in section 1.482–1(i)(7) to include any sale, assignment, lease, license, loan, advance, contribution, or other transfer of any interest in or a right to use any property or money, as well as the performance of any services for the benefit of, or on behalf of, another

[5]My thanks to Paul Marcotte, Jr., of Paley Rothman for initially focusing my attention on this. I would also like to thank Jay Adkisson of Riser & Adkisson LLP for his comments.

taxpayer. For example, under these proposed regulations, contributions and distributions would be considered reportable transactions with respect to such entities. Accordingly, a transaction between such an entity and its foreign owner (or another disregarded entity of the same owner) would be considered a reportable transaction for purposes of the section 6038A reporting and record maintenance requirements, even though, because it involves a disregarded entity, it generally would not be considered a transaction for other purposes, such as making an adjustment under section 482. The penalty provisions associated with failure to file the Form 5472 and failure to maintain records would apply to these entities as well.

6.3.4. Somewhat ominously, the announcement of the proposed regulations states that: "Consistent with the changes contemplated by these proposed regulations, the IRS is also considering modifications to corporate, partnership, and other tax or information returns (or their instructions) to require the filer of these returns to identify all the foreign and domestic disregarded entities it owns."

6.3.5. The Treasury's announcement and the full proposed regulations can be accessed here: http://1.usa.gov/1XbVeiJ

6.4. Anyone who does not believe that the tide is clearly turning should read or listen to the story "1 Address, 2,000 Companies, And The Ease Of Doing Business In The U.K." that appeared on NPR's "Morning Edition" on May 30, 2016. http://n.pr/1Z8a2fv The story reports that British Prime Minister Cameron announced that Britain will launch a public register of true company ownership in June, with means companies required to identify the beneficial owners of corporations. A beneficial owner would be defined as a person with more that a 25 percent stake in a company.

7. **Some Call It Asset Protection.**

7.1. As noted at the beginning of this outline, the essential purpose of limited liability is to allow the efficient and safe employment of capital in business investment.

7.2. However, often business entities have been used for what some would call "asset protection." (Those of us who are, perhaps, more jaded and skeptical might contend that "asset protection" is a mere euphemism for "scofflaw protection.")

7.3. An early, somewhat bumbling, attempt to use an LLE as an asset protection vehicle was presented in *In Re Albright*, 291 B.R. 538 (Bankr. D. Colo. 2003) http://bit.ly/1TfwnUC. (Holding that a bankruptcy trustee became the sole member of LLC upon the sole member/debtor's bankruptcy filing. Thus, the trustee controlled, directly or indirectly, all governance of that entity, including decisions regarding liquidation of the entity's assets.)

7.4. See also *Movitz v. Fiesta Investments, LLC (In re Ehmann)*, 319 B.R. 200 (Bankr. D.Ariz. 2005) http://bit.ly/1R2SbjS. (No executory contract when the LLC was "created simply as a way to reduce the estate tax liabilities that might otherwise have been incurred upon the death of the parents and the distribution of their estate to their heirs. Indeed, as *King Lear* suggests, the irrevocable transfer of the parents' assets to Fiesta and the irrevocable gift of membership interests in Fiesta to their children probably creates even less obligations on the children than the ordinary filial obligations morally felt by most expectant heirs.")

7.5. The energy of those contemplating exposure to potential liabilities should not be underestimated. They have moved, for instance, to limit the extent of the charging order remedy.

7.6. Delaware's LLC charging order provision, § 18-703 is, what might be called, a traditional charging order provision. Basically, a creditor can "charge" the debtor/member's interest in an LLC with "any distribution or distributions to which the judgment debtor would otherwise have been entitled in respect of such . . . interest."

7.7. Apparently, Delaware does not allow foreclosure of LLC interests. See J.D. Adkisson, C.G. Bishop, T.E. Rutlege *Recent Developments in Charging Orders* Business Law Today 2013. http://bit.ly/1XcZ0GJ (Last visited May 15, 2016.)

7.8. Maryland gives members the ability to prohibit foreclosure through the operating agreement. *See* Md. Code Ann., Corps. & Ass'ns § 4A-607(c)(3)(i) ("Unless otherwise agreed, on a showing that the distributions under a charging order will not pay the amount owed to the creditor within a reasonable time, the court may order foreclosure of the economic interest subject to the charging order and order the sale of the economic interest of the debtor.").

7.9. For a fairly recent overview of the topic, see M. Cipriano, *Limited Liability Company Charging Orders Part II, Charging Order Protections: Exclusivity, Foreclosure and Single Member LLCs*, MSBA Business Law Section Newsletter, April 2, 2015, http://bit.ly/1OuL1Fs (Last visited May 15, 2016.)

7.10. In addition to any statutory limitations which may be applicable, issues concerning personal jurisdiction often arise. Assume, for instance, a member/debtor is amenable to service in State X, but the LLC that the member/debtor owns is either not amenable to service in State X or is formed under another state's LLC Act.

7.10.1. In *Arayos, LLC v. Ellis* (Misc.Action 15-0027-WS-M, S.D. Ala. April 25, 2016) http://bit.ly/1OuLveA, the Court denied a motion to issue a charging order against an Alabama member/creditor's interest in two non-Alabama LLCs, holding that the Alabama Limited Liability Company Act only authorized charging orders against Alabama LLCs.

7.10.2. However, in *Dream Games of Arizona, Inc., v PC Onsite, LLC* (No. CV-03-00433-PHX-DLR (ESW) D. Ariz., March 24, 2016) http://bit.ly/1sfwFnu The Court's opinion at slip op. 6, footnote 4 is quite explicit:

[T]he Court does not need personal jurisdiction over [the LLC] to issue an order charging Judgment Debtor's interests in [the LLC]. Personal jurisdiction over Judgment Debtor is sufficient. *See Vision Marketing Resources Inc. v. McMillin Group, LLC*, No. 10-2252-KHV, 2015 WL 4390071, at *3-5 (D. Kansas July 15, 2015) (concluding that the court "need not have jurisdiction over the LLC entity itself in order to issue a charging order, when it has jurisdiction over the LLC member because the LLC has no right or direct interest affected by the charging order. Rather it is the judgment debtor's interest in and right to future distributions of the LLC that is being charged").

7.10.3. The differences between *Arayos, LLC v. Ellis* and *Dream Games* are both striking and important. Until the issue of what might be called "extra-territorial" application of charging orders are settled, there will remain a premium on forming LLCs in states that have (i) the most limited charging order provisions and (ii) are as far away from the possible creditor members as one can reasonably justify. Stated another way, until the courts have developed a uniform approach to charging orders, states will be faced with a sort of Gresham's Law of statutory formulation–Overvalued (meaning weak) charging order provisions will flood into circulation.

8. **SUMMARY.**

8.1. One of the striking aspects of the Internet is the availability and rapid profusion of knowledge.

8.2. Knowledge can be applied for good or ill.

8.3. As a consequence, planning opportunities that were once infrequently used, become more widely available. Since one person's opportunity might reasonably be considered to be another individual's exemplar of abuse, in due course there will be pressure for governments to act to limit some planning opportunities.

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6.2.2.	Proposed Amendments to the Bank Secrecy Act to Require Reporting and Recordkeeping on Beneficial Ownership of Legal Entities	http://bit.ly/1TodIcH
6.3.5.	Proposed Regulations Re: Foreign-owned Disregarded Entities	http://1.usa.gov/1XbVeiJ
6.4.	"1 Address, 2,000 Companies, And The Ease Of Doing Business In The U.K." from NPR's "Morning Edition." May 30, 2016	http://n.pr/1Z8a2fv
7.3.	*In Re Albright*, 291 B.R. 538 (Bankr. D. Colo. 2003).	http://bit.ly/1TfwnUC.
7.4.	See also *Movitz v. Fiesta Investments, LLC (In re Ehmann)*, 319 B.R. 200 (Bankr. D.Ariz. 2005).	http://bit.ly/1R2SbjS.
7.7.	See J.D. Adkisson, C.G. Bishop, T.E. Rutlege *Recent Developments in Charging Orders* Business Law Today 2013.	http://bit.ly/1XcZ0GJ

SECTION	ITEM	LINK
7.9.	M. Cipriano, *Limited Liability Company Charging Orders Part II, Charging Order Protections: Exclusivity, Foreclosure and Single Member LLCs*, MSBA Business Law Section Newsletter, April 2, 2015 (Last visited May 15, 2016.)	http://bit.ly/1OuL1Fs
7.10.1.	*Arayos, LLC v. Ellis* (Misc.Action 15-0027-WS-M, S.D. Ala. April 25, 2016) .	http://bit.ly/1OuLveA
7.10.2.	*Dream Games of Arizona, Inc., v PC Onsite, LLC* (No. CV-03-00433-PHX-DLR (ESW) D. Ariz., March 24, 2016).	http://bit.ly/1sfwFnu
7.10.3.	*See Vision Marketing Resources Inc. v. McMillin Group, LLC*, No. 10-2252-KHV, 2015 WL 4390071 (D. Kansas July 15, 2015)	http://bit.ly/1sfwFnu