No. 23-14081-C

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Keith Pearce, et al.,
Plaintiffs-Appellants

v.

State Farm Florida Insurance Company, et al.
Defendants-Appellees.

On Appeal from the United States District Court
for the Southern District of Florida
(Case No. 2:22-cv-12353)

AMICUS CURIAE BRIEF OF U.S. CHAMBER OF COMMERCE AND FLORIDA CHAMBER OF COMMERCE IN SUPPORT OF APPELLEES

JONATHAN URICK
TYLER S. BADGLEY
U.S. CHAMBER LITIGATION CENTER
1615 H Street NW
Washington, DC 20062
(202) 463-5337
JUrick@USChamber.com
TBadgley@USChamber.com

JASON GONZALEZ
ROBERT E. MINCHIN III
LAWSON HUCK GONZALEZ, PLLC
215 S. Monroe Street, Suite 320
Tallahassee, Florida 32301
(850) 825-4334
jason@lawsonhuckgonzalez.com
bob@lawsonhuckgonzalez.com

CERTIFICATE OF INTERESTED PERSONS, CORPORATE DISCLOSURE STATEMENT, AND STATEMENT OF CONSENT

Under Federal Rule of Appellate Procedure 29 and Eleventh Circuit Rules 29-1 and 29-2, amici curiae U.S. Chamber of Commerce ("U.S. Chamber") and Florida Chamber of Commerce ("Florida Chamber") submit the following Certificate of Interested Persons, Corporate Disclosure Statement, and Statement of Consent:

Corporate Disclosure Statement

The U.S. Chamber is a not-for-profit corporation that has no parent corporation, and no publicly held corporation owns 10 percent or more of its stock.

The Florida Chamber is a not-for-profit corporation that has no parent corporation, and no publicly held corporation owns 10 percent or more of its stock.

Certificate of Interested Persons

In addition to the persons and entities named in the parties' certificates of interested persons, the following individuals or entities may have an interest in the outcome of this case:

1. Badgley, Tyler
2. Florida Chamber of Commerce
3. Gonzalez, Jason
4. Lawson Huck Gonzalez, PLLC

5. Minchin III, Robert E.
6. Urick, Jonathan
7. U.S. Chamber of Commerce

Statement of Consent

Counsel for amici have conferred with counsel for the parties, who represented that Appellants and Appellees consent to the filing of this brief.

Dated: June 21, 2024

Respectfully submitted,

/s/ *Jason Gonzalez*

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

IDENTITY AND INTEREST OF AMICI CURIAE[1]

The U.S. Chamber is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the U.S. Chamber is to represent the interests of its members in matters before the Congress, the Executive Branch, and the courts.

The Florida Chamber is Florida's largest federation of employers, chambers of commerce, and associations championing Florida job creators. This federation represents more than 150,000 member businesses with more than 3 million employees in Florida. The Florida Chamber serves as Florida's business advocate and frequently appears as amicus curiae in litigation that is likely to impact its members.

Amici file this brief to explain the importance of limited liability for corporations that maintain subsidiaries as separate legal entities. Additionally, amici explain how Appellants' theory of "apparent agency" in the parent–

[1] Under Federal Rule of Appellate Procedure 29(a)(4)(E), amici curiae the U.S. Chamber and the Florida Chamber state that no party's counsel authored this brief in whole or in part; that no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and that no person or entity other than amici curiae, their members, or their counsel contributed money that was intended to fund preparing or submitting the brief.

subsidiary context would run afoul of Florida's "conservative" approach to corporate liability and thus threaten the economic efficiencies and legal certainty on which amici's members rely in utilizing the standard corporate form.

STATEMENT OF THE ISSUES

Whether Florida law supports Appellants' theory that State Farm Florida acted as State Farm Mutual's apparent agent in light of Florida's conservative and well-established corporate veil-piercing doctrine.

SUMMARY OF ARGUMENT

Florida law governing corporate liability protections is well settled. Florida courts have adopted a "conservative approach" to the question of whether and when a corporate parent may be held liable for the actions of its subsidiaries. Fundamental to this approach is respect for the corporate legal form: separate legal entities are presumptively treated as such and liabilities of one entity cannot be imputed to others. The corporate form may be disregarded to reach a parent entity only by "piercing the corporate veil," which, under Florida law, requires a showing that the parent entity engaged in fraud or other improper conduct in forming or operating its corporate structure.

Appellants nevertheless ask this Court to circumvent Florida's well-established corporate veil-piercing doctrine by adopting a theory of "apparent agency" under which a corporate parent may be held liable for the actions of its subsidiaries without showing fraud or improper conduct. The potential impact of this theory is far-reaching for businesses of all sizes—both within and without the state of Florida. Businesses have planned and established their corporate structures for decades in reliance on the economic efficiencies and legal certainty afforded by Florida's precedents respecting the legal sanctity of separate corporate entities. Accordingly, amici urge this Court to reject Appellants' theory of apparent agency—a transparent effort to circumvent Florida's well-established and

conservative veil-piercing jurisprudence—and affirm the district court's order dismissing Appellants' claims.

ARGUMENT

I. Florida courts recognize the importance of limited liability in the corporate parent–subsidiary relationship and have developed a "conservative" jurisprudence over many decades of precedent

The first principle of corporate law is that "[c]orporations . . . are presumed to be distinct legal entities." *Edmonson v. Velvet Lifestyles, LLC*, 43 F.4th 1153, 1162 (11th Cir. 2022) (quoting *Molinos Valle Del Cibao, C. por A. v. Lama*, 633 F.3d 1330, 1349 (11th Cir. 2011)) (cleaned up). This principle of strict separation between corporate entities and their owners makes no distinction "whether [the owners] be individuals or other corporations." *Id.*; *see also* Elizabeth M. Bosek et al., *Corporation as Entity Distinct from Individual Members or Shareholders*, 8A Fla. Juris. 2d Bus. Relationships § 12 (June 2024 update) ("A corporation is a separate legal entity, distinct from both its individual members or shareholders and its subsidiaries . . . ." (footnotes omitted)).

"The purpose of [the corporate] fiction is to limit the liability of the corporation's owners." *Edmonson*, 43 F.4th at 1162. And "Florida law is not willing to easily disregard this fiction." *Id.* (quotation marks omitted); *see also* Bosek et al., 8A Fla. Juris. 2d Bus. Relationships § 12 ("A corporation's separate existence cannot generally be disregarded.").[2]

[2] Because this case arose under the district court's diversity jurisdiction, this Court applies Florida's substantive law. *See Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938). Where the highest court—in this case, the Florida Supreme Court—has

Just as individual shareholders are shielded from the liabilities incurred by corporations, a parent corporation ordinarily is not liable for the actions of its subsidiaries. *See Am. Int'l Grp., Inc. v. Cornerstone Buss., Inc.*, 872 So. 2d 333, 337 (Fla. Dist. Ct. App. 2004). Regardless of ownership structure, the benefits of limited liability serve the interests of economic efficiency and judicial certainty. *See, e.g.*, Frank H. Easterbrook & Daniel R. Fischel, *Limited Liability and the Corporation*, 52 U. Chi. L. Rev. 89, 93–97 (1985).

Limited liability enhances economic efficiency in numerous ways. First, it promotes efficiency in economic production by reducing agency and capital costs. *See* Frank H. Easterbrook & Daniel R. Fischel, The Economic Structure of Corporate Law 41–54 (1991). Second, it creates a pathway by which corporations can achieve economies of scale without proportionally increasing their exposure to liabilities. *See* William A. Voxman, *Jurisdiction over a Parent Corporation in Its Subsidiary's State of Incorporation*, 141 U. Pa. L. Rev. 327, 343 (1992). Third, it reduces litigation costs by ensuring that parent corporations are not required to

---

spoken on the topic, this Court follows its rule. *See Lama*, 633 F.3d at 1348. But where, as here, that court has not spoken explicitly, this Court predicts how the highest court would decide the case. *See id.* Such an exercise requires caution. *See, e.g.*, *Salinero v. Johnson & Johnson*, 995 F.3d 959, 968–69 (11th Cir. 2021) ("'Federal courts sitting in diversity should be cautious about pushing state law to new frontiers.' . . . 'When making an *Erie*-guess in the absence of explicit guidance from the state courts, we must attempt to predict state law, not to create or modify it.'" (quoting *Nicolaci v. Anapol*, 387 F.3d 21, 27 (1st Cir. 2004), and *Associated Int'l Ins. Co. v. Blythe*, 286 F.3d 780, 783 (5th Cir. 2002)).

shoulder the burden of defending themselves against the actions of their subsidiaries in addition to the costs of defending the subsidiaries themselves. *See* Steven L. Schwarcz, *Collapsing Corporate Structures: Resolving the Tension Between Form and Substance*, 60 Bus. Law. 109, 129 (2004). The cost savings afforded by these efficiencies benefit both consumers and investors.

As to legal certainty, a healthy business climate requires that corporations be able to "predict[] how a court might decide a particular set of facts facing [them] should [they] be required to defend their actions or enforce their rights." Glenn D. West & Stacie L. Cargill, *Corporations*, 62 SMU L. Rev. 1057, 1058 (2009). If businesses cannot rely on a legal regime that consistently respects the sanctity of the corporate form, they have no way to predict their exposure to liability through the actions of their subsidiaries, and "the effectiveness of the law as a tool to regulate society's behavior is seriously diminished." *Id.* (cleaned up). Limited corporate liability thus promotes justice by promoting stability and predictability in the law. *See id.*

The Florida Supreme Court recognizes these benefits and has long respected the sanctity of the corporate form. "The corporate entity is an accepted, well used and highly regarded form of organization in the economic life of our state and nation" whose "purpose is generally to limit liability and serve a business convenience." *Roberts' Fish Farm v. Spencer*, 153 So. 2d 718, 721 (Fla. 1963).

Invoking both the economic and legal justifications for limited corporate liability, the court held that "[t]hose who utilize the laws of [Florida] in order to do business in the corporate form have every right to rely on the rules of law which protect them against personal liability." *Id.*

However, Florida courts have simultaneously acknowledged that the corporate form is not inviolable and set out a clear exception for a parent–subsidiary relationship "created or used in order to mislead or defraud." Stephen B. Presser, *Florida*, Piercing the Corp. Veil § 2:10 (Dec. 2023 update); *see also* Joseph H. Sommer, *The Subsidiary: Doctrine Without a Cause?*, 59 Fordham L. Rev. 227, 238–39 (1990) (noting that improper conduct by a subsidiary most commonly occurs when the subsidiary "misrepresents itself as the parent organization"). Florida law thus allows the corporate entity to be disregarded if "the corporation is formed or used for some illegal, fraudulent or other unjust purpose which justifies piercing of the corporate veil." *Roberts' Fish Farm*, 153 So. 2d at 721.

Florida has previously reined in abuses of this exception that threatened to swallow the rule whole. In the mid-1980s, courts—including those in Florida—were grappling with an increasingly prevalent view that a corporate parent could be held liable for the actions of its subsidiaries under circumstances showing that the subsidiary was a mere instrumentality or alter ego of the parent, even in the

absence of fraud, misrepresentation, or other misconduct in forming or operating the corporation. *See* Marilyn Blumberg Cane & Robert Burnett, *Piercing the Corporate Veil in Florida: Defining Improper Conduct*, 21 Nova L. Rev. 663, 667–68 (1997). But the Florida Supreme Court shut the door on this trend. *See Dania Jai-Alai Palace, Inc. v. Sykes*, 450 So. 2d 1114, 1116 (Fla. 1984). After an extensive survey of its precedent, the court affirmed "that the corporate veil may not be pierced absent a showing of improper conduct." *Id.* at 1121. Florida courts have expressly established "veil-piercing as an extraordinary remedy, to be exercised with caution." Presser, Piercing the Corp. Veil § 2:10.

Courts and commentators alike have observed that Florida's stringent "improper conduct" requirement has given its veil-piercing jurisprudence a "somewhat conservative character," *Resolution Tr. Corp. v. Latham & Watkins*, 909 F. Supp. 923, 930 (S.D.N.Y. 1995); Presser, Piercing the Corp. Veil § 2:10, "impos[ing] a strict standard upon those wishing to pierce a corporate veil," *Seminole Boatyard, Inc. v. Christoph*, 715 So. 2d 987, 990 (Fla. Dist. Ct. App. 1998). And while the standard is strict, it is not insurmountable. Florida courts will pierce the corporate veil and impute liability to a corporate parent upon a finding of improper conduct.

For example, in *Southeast Capital Investment Corp. v. Albemarle Hotel, Inc.*, the Second District Court of Appeal endorsed veil-piercing where the party

seeking to pierce was able to demonstrate that the requisite "unjust purpose or conduct" was found in the controlling individual's having used the subsidiary to enter a real estate contract requiring a cash payment of $2.1 million at closing, "without the present ability or expectation of the ability to perform." 550 So. 2d 49, 51 (Fla. Dist. Ct. App. 1989). This was said to have been done "for the benefit of its parent corporation at the expense and detriment of the [p]laintiff [who sought to pierce the veil]." *Id.*

Again, in *USP Real Estate Investment Trust v. Discount Auto Parts, Inc.*, the First District Court of Appeal pierced the corporate veil where a subsidiary was created solely for the purpose of holding a lease to shield the parent from any liability if the lease was broken. 570 So. 2d 386, 389 (Fla. Dist. Ct. App. 1990). There, a parcel of real estate was leased to a subsidiary of Discount Auto Parts to operate a business. *Id.* at 387. The premises were abandoned before the lease expired, and the property owner sued the subsidiary for breach of contract and lease agreement and was awarded a judgment. *Id.* Evidence showed that the officers of both Discount Auto Parts and its subsidiary were the same and that the subsidiary never had a bank account, filed no tax returns, could produce no written sublease between it and Discount Auto Parts, and never kept any receipts of expenditures. *Id.* at 389.

In sum, to bring a veil-piercing claim, Florida law imposes a strict standard requiring Appellants to show fraud or improper conduct by State Farm Mutual in forming or operating its subsidiaries. Apparently recognizing this high bar, Appellants have abandoned the alter-ego theory they primarily argued before the district court with no allegations of such conduct. Instead, Appellants seek to devise a misconduct-free workaround creating imputed corporate liability that Florida law has not recognized in the parent–subsidiary context.

II. Application of "apparent agency" liability to corporate subsidiaries would sidestep Florida's "conservative" veil-piercing jurisprudence

Appellants argue on appeal that State Farm Mutual is liable as a principal under a theory that State Farm Florida acted as its apparent agent. This theory would create a dangerous end-run around Florida's jurisprudence requiring improper conduct to disregard the corporate form.

Under Florida law, a corporate parent may be held liable for actions of its subsidiaries under principles of *actual* agency. *See Reynolds Am., Inc. v. Gero*, 56 So. 3d 117, 120 (Fla. Dist. Ct. App. 2011) (noting that "in order to establish an agency relationship between a parent and its subsidiary, . . . a high and very significant level of control exerted by the parent over the subsidiary's actions must be demonstrated" (quotation marks omitted)). But appellants cannot cite, and amici have been unable to locate, any case where a Florida court held that corporate parents are similarly liable under *apparent* agency. Instead, Appellants improperly

ask this Court to establish a new theory of corporate liability under Florida state law. The importance of the distinction between actual and apparent agency in this context becomes evident upon examining the elements required to establish liability under each theory.

The elements of an *actual* agency relationship under Florida law are "(1) acknowledgement by the principal that the agent will act for it, (2) the agent's acceptance of the undertaking, and (3) control by the principal over the actions of the agent." *Id.* at 119. By contrast, the elements of an *apparent* agency relationship are (1) "a representation by the purported principal," (2) "a reliance on that representation by a third party," and (3) "a change in position by the third party in reliance on the representation." *Mobil Oil Corp. v. Bransford*, 648 So. 2d 119, 121 (Fla. 1995). Actual agency thus requires acknowledgement by the principal that its agent acts on its behalf. Apparent agency does not.

What this means in the context of the parent–subsidiary relationship is that a corporate parent, like any other principal, may subject itself to liability for the actions of one or more subsidiaries by acknowledging that the subsidiary acts on its behalf as an actual agent. But to impute liability to a corporate parent under a theory of apparent agency would be to subject the parent—without its acknowledgement or consent—to the very sort of liability from which the corporate form is expressly designed to protect it. Stated differently, to hold a

parent liable for its subsidiary's actions under apparent agency would be to pierce the corporate veil by another name, a proposition at least one federal court has already rejected as an improper application of Florida law. *See NCR Credit Corp. v. Reptron Elecs., Inc.*, 863 F. Supp. 1561, 1565 (M.D. Fla. 1994) ("Finding of an apparent agency relationship . . . would necessitate piercing the corporate veil[] . . . . It is long established under Florida law that a corporation has every right to rely on the laws that protect it as a separate entity absent the showing of improper conduct." (citing *Dania*, 450 So. 2d at 1120)).[3] But—most critically—it would be to pierce the corporate veil without any showing of fraud or other improper conduct, and if accepted, this Court would render Florida's corporate veil-piercing jurisprudence irrelevant.

This Court should not lay aside Florida's "strict standard" that mandates a showing of improper conduct to disregard the corporate form, which Florida courts have honed over the course of many decades. *Seminole Boatyard*, 715 So. 2d at 990. "Those who utilize the laws of [Florida] in order to do business in the corporate form have every right to rely on the rules of law which protect them

[3] Other jurisdictions have reached the same conclusion. *See Fidenas AG v. Honeywell, Inc.*, 501 F. Supp. 1029, 1037 (S.D.N.Y.1980) (observing that the tests for finding agency so as to hold a parent corporation liable for the obligations of its subsidiary are "virtually the same" as those for piercing the corporate veil); *cf. Dow Jones & Co., Inc. v. Ablaise Ltd.*, 606 F.3d 1338, 1349 (Fed. Cir. 2010) ("[I]t is well-settled law that, absent a piercing of the corporate veil . . . , a parent company is not liable for the acts of its subsidiary.").

against" the sort of liability to which Appellants' theory would subject them. *Roberts' Fish Farm*, 153 So. 2d at 721. Accordingly, Florida's approach to liability limitations under the corporate form counsels strongly against subjecting a parent to liability for its subsidiary's actions as an apparent agent.

Appellants cite several cases for the uncontroversial proposition that Florida law recognizes apparent agency, each in wholly unrelated contexts.[4] Indeed, appellants cite, and amici have located, no case in which a Florida court has ever held that a corporate parent is liable as a principal for its subsidiary's actions as an apparent agent.

Appellants rely most strongly on *Ilgen v. Henderson Properties, Inc.*, where a husband and wife sued the franchisee of a national homebuilding concern, as well as the franchisor itself, for breach of contract and negligence. 683 So. 2d 513, 514 (Fla. Dist. Ct. App. 1996). As a threshold matter, the Second District Court of Appeal observed that the apparent agency theory in the franchisor–franchisee context was made available through the Florida Supreme Court's holding in *Mobil*

[4] *See Landcastle Acquisition Corp. v. Renasant Bank*, 57 F.4th 1203 (11th Cir. 2023) (apparent agency found when an individual signed documents on behalf of a law firm, thus imputing liability to that firm); *Babul v. Golden Fuel, Inc.*, 990 So. 2d 680 (Fla. Dist. Ct. App. 2008) (apparent agency found when individuals signed documents on behalf of a corporation, thus imputing liability to the corporation); *Fi–Evergreen Woods, LLC v. Estate of Robinson*, 172 So. 3d 493 (Fla. Dist. Ct. App. 2015) (apparent agency found when a man signed documents on behalf of his wife); *Harrell v. Branson*, 344 So. 2d 604 (Fla. Dist. Ct. App. 1977) (apparent agency found when a woman signed documents on behalf of her husband).

"that franchisors may . . . enter into agency relationships with franchisees if the franchisor has directly or apparently participated in some substantial way in directing or managing acts of the franchisee, beyond the mere fact of providing contractual franchise support activities." *Id.* (citing *Mobil*, 648 So. 2d at 121).

Ilgen does not compel the result Appellants seek. Unlike the franchisor–franchisee context, the Florida Supreme Court has not greenlit apparent agency in the corporate parent–subsidiary context. Nor does the *Mobil* holding provide support for extending *Ilgen*'s holding in this way. If anything, *Mobil* merely highlights the relevant differences between franchisor–franchisee and parent–subsidiary relationships.

The "fundamental difference between franchisor–franchisee and parent–subsidiary relationships" in terms of "how the two operate" is well understood. John A. Capobianco, *In Restraint of Wages: The Implications of "No-Poaching" Agreements*, 33 Notre Dame J. of L., Ethics, & Pub. Pol'y 419, 436 (2019). Franchises are creatures of contract and thus are "limited in scope to the terms of that contract." *Id.* "A subsidiary," in contrast, "is a corporation which has a controlling amount of its voting stock owned by another corporation." *Id.* Stated differently, "[f]ranchises are controlled by agreements between two businesses . . . . In turn, anything outside the scope of a franchise agreement, whether by choice or law, cannot be touched by franchisors." *Id.* But "there is no contractual

relationship between a subsidiary and the parent corporation that limits the parent's control over the subsidiary. Rather, the parent company possesses the subsidiary and makes all of the subsidiary's decisions." *Id.*

Mobil held that apparent agency can exist in the franchisor–franchisee relationship only when "something" happens "to communicate to the plaintiff the idea that the franchisor is exercising substantial control." 648 So. 2d at 121. In the parent–subsidiary relationship, substantial control is assumed by the very nature of the standard corporate form. Nevertheless, "[t]hose who utilize the laws of [Florida] in order to do business in the corporate form have every right to rely on the rules of law which protect them against personal liability." *Roberts' Fish Farm*, 153 So. 2d at 721. Accordingly, any attempt to circumvent the corporate form in a manner not endorsed by Florida courts should be rejected.

CONCLUSION

Florida courts have never disregarded the corporate form under a theory that a corporate parent is liable for the actions of a corporate subsidiary as an "apparent agent" of the parent. Unless and until Florida courts decide that a corporate parent may be held liable for the actions of a corporate subsidiary as an apparent agent of the parent, this Court should not expound on this unexplored area of Florida law. Rather, it should respect the conservative approach Florida courts have taken to assess corporate liability in the parent–subsidiary context. To do otherwise would

threaten the legal stability and predictability on which corporations rely in doing business in Florida and across the nation. Accordingly, amici urge this Court to affirm the district court's order dismissing Appellants' claims.

Dated: June 21, 2024

Respectfully submitted,

/s/ *Jason Gonzalez*

JASON GONZALEZ
ROBERT E. MINCHIN III
LAWSON HUCK GONZALEZ, PLLC
215 South Monroe Street, Suite 320
Tallahassee, FL 32301
(850) 825-4334
jason@lawsonhuckgonzalez.com
bob@lawsonhuckgonzalez.com

JONATHAN URICK
TYLER S. BADGLEY
U.S. CHAMBER LITIGATION CENTER
1615 H Street NW
Washington, DC 20062
(202) 463-5337
JUrick@USChamber.com
TBadgley@USChamber.com

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(g)(1), the typeface requirements of Rule 32(a)(5), and the type-style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface, Times New Roman 14-point font, and because according to the word processor program used to prepare the brief, Microsoft Word for Mac version 16.71, the brief contains 3,641 words, excluding the parts of the document exempted by Rule 32(f).

/s/ *Jason Gonzalez*

CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

/s/ *Jason Gonzalez*