Jerry formed Jerry’s AutoShop, Inc. in 2005. Jerry has been the only shareholder since the corporation was formed. Jerry has never worried about the corporate formalities because, as the only shareholder, he didn’t worry about suing himself. He kept a single bank account and didn’t always use the word incorporated on his signs and work orders. Recently, the brakes failed on a customer’s car shortly after one of Jerry's employees had repaired them. Can the person injured by the brake failure recover from Jerry’s personal assets?

The formation of Jerry’s AutoShop, Inc. in 2005, if properly done and managed, would insulate Jerry from personal tort (liability) claims. However, to borrow a quote from an old John Wayne movie, “The Quiet Man”, “The proprieties must be observed”. Adherence to rules of operation must be adhered to, or claimants wishing to attack the owner of a corporation personally may be able to “pierce the corporate veil”.

The term refers to an attack on a corporation which acts less like a corporation and more like an extension of the owner’s finances. Courts will pierce the corporate veil, and bring the owner in to claims against the corporation, when:

* There is no real separation between the company and its owners. Jerry has operated the business from a personal checkbook and did not use the incorporated name on all his documents. Both imply that he was operating the business personally.
* The company's actions were wrongful or fraudulent.  Brake failure shortly after repair could be considered the fault of Jerry and/or his employees. Not doing the work properly or not diagnosing problems could be considered negligence.
* The company's creditors suffered an unjust cost. We are not told about damages incurred by the customer only that their brakes failed. Without a quantifiable damage, it will be unlikely that Jerry would lose at trial.

There are common factors that will be considered by courts in making this determination:

* whether the corporation or LLC engaged in fraudulent behavior (NO)
* whether the corporation or LLC failed to follow corporate formalities (YES – commingling of assets)
* whether the corporation or LLC was inadequately capitalized (if the corporation never had enough funds to operate, it was not really a separate entity that could stand on its own) (UNKNOWN, BUT LIKELY, as the overall personal and business funds are likely all withdrawn by the owner), and
* whether one person or a small group of closely related people were in complete control of the corporation or LLC (YES, one owner).

Each state has a history of case law to draw upon, with a history of these decisions that will be binding in their state. These are general guidelines, applicable to the fact pattern as general law.

Because there is no quantifiable damage, it is hard to see a grant of damages. The brakes might have failed in the customer’s driveway, at no cost other than a second repair and the owner’s aggravation. It is also possible that the second failure was unrelated to the first repair. It is possible that Jerry could be held liable, IF there were damages.