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Subject: RE: quick alter ego question

All is pretty well here in DC after the storm. Some folks have downed trees and lingering power outages to deal with, but this area got nothing compared to the devastation in New Jersey and New York.

A person's lack of legal ownership interest (as opposed to an equitable ownership interest) alone should not preclude us from determining that he is potentially an alter ego of a business. Some alter egos have no legal interest in their alter ego businesses by design. That said, your attorney should look at the whole picture and every potential factor when determining whether alter ego would apply. From a logical perspective, it is generally tougher to claim that a real person is an alter ego of a business than the other way around, because you are actually saying that all property owned by the person is property of the business. It is not impossible, however. I just reviewed a Tax Court case being appealed to the 11th Circuit (Eckhardt) where the Tax Court determined that a husband who owned shares of a gas station was the alter ego of the gas station, whereas the wife who did not own shares but was an officer was not an alter ego. At the end of the day, courts will take a holistic approach and weigh all the factors. BTW, our two common law factors that we espouse in the CC Notice are really just a "big picture" look at the many factors that states generally look to, it is just that some states put certain emphasis on specific facts more than the common law approach does.

As a whole, nominee is generally less onerous than alter ego, because it is property specific (e.g., Bob hold title to a car, although the business officers and employees use it, therefore the business has an equitable interest to such an extent that Bob really only holds legal title to the car as a nominee of the business). I generally recommend that attorneys try to see if nominee theory applies first before moving to the arguably more-challenging argument that a person is an alter ego of a business entity.