

08-1234

IN THE
SUPREME COURT OF THE UNITED STATES

Ionia Management S.A.,

Petitioners,

v.

United States of America,

Respondents,

On Writ of Certiorari from the United States Court of Appeals
For the Second Circuit

BRIEF FOR THE RESPONDENT

QUESTIONS PRESENTED

1. Was the district court's instruction on corporate criminal liability authorized by Supreme Court precedent and federal statutory law?

2. Was the district court's instruction on corporate criminal liability consistent with general principles of criminal law and should the Court revisit its holding in *New York Central & Hudson River Railroad v. United States*?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED.....	ii
TABLE OF AUTHORITIES	v
JURISDICTION.....	1
STATUTORY PROVISIONS INVOLVED.....	1
STATEMENT OF THE CASE.....	1
SUMMARY OF THE ARGUMENT.....	2
ARGUMENT.....	4
I. THE DISTRICT COURT’S JURY INSTRUCTIONS ON CORPORATE CRIMINAL LIABILITY ARE AUTHORIZED BY SUPREME COURT PRECEDENT AND FEDERAL STATUTORY LAW THEREFORE THE SECOND CIRCUITS DECISION MUST BE AFFIRMED.....	4
a. The Districts Court’s Instructions Are Authorized By Supreme Court Precedent, Which Is Well Settled Law On Vicarious Corporate Criminal Liability For Over A Century.....	5
b. The District Court’s Jury Charge Is Authorized By The Legislature, Federal Statutory Law And The Modern Federal Jury Instructions.....	7
II. THE DECISION OF THE SECOND CIRCUIT COURT OF APPEALS MUST BE AFFIRMED THE JURY INSTRUCTIONS ARE CONSISTENT WITH THE GENERAL PRINCIPLES OF CRIMINAL LAW AND NEW YOUR CENTRAL & HUDSON RIVER RAIL ROAD V. UNITED STATES IS STILL APPLICABLE LAW.....	11

TABLE OF CONTENTS- continued

a. The District Courts Instruction Are Consistent With The General Principles Of Criminal Law A Corporation Can Only Act Through Its Agents And Must Be Held Criminally Liable For The Actions Of Its Agents When The Agents Intention Is To Benefit The Corporation.....12

b. Because Iona Fails To Meet The Prudential And Pragmatic Considerations That The Court Has Set Forth In Deciding Not To Follow Stare Decisis This Court Must Not Revisit The Holding Of New York Central & Hudson River Rail Road V. United States.....15

Conclusion.....25

TABLE OF AUTHORITIES

CASES:

American Soc. of Mechanical Engineers, Inc. v. Hydrolevel Corp, 456 U.S. 556, 567(1982)...9

Continental Baking Co. v. United States, 281 F.2d 137, 150 (6th Cir. 1960).....5,9,10

Egan v. United States, 137 F.2d 369 (8th Cir. 1943) cert. denied 320 U.S. 78.....12

New York Central & H.R.R. Co. v. United States, 212 U.S. 481, 495 (1909).....Passim

Planned Parenthood v. Casey, 505 U.S. 833.....4,11,15

President Coolidge; Dollar S.S. Co. V. United States, 101 F. 2d638, 640 (9th Cir. 1939).....14

Standard Oil Co of TX. v. United States, 307 F.2d 120, 127 (5th Cir.1962).....4,9,11,12,16

United States v. A &P Trucking Co. ET AL. 358 U.S. 121, 124-25, 79 S Ct. 203, 296, 3 L. Ed. 2d 165, 169. (1958).....12,13,16

United States v. Automated Med. Lab., Inc., 770 F.2d 399, 407 (5th Cir. 1985).....12,13

United States v. Basic Construction Co., 711 F.2d 570,573 (1983) cert denied 464 U.S. 956 (1983).....4,8,10

United States v. Beusch, 596 F 2d. 871.....12,14,16

United States v. Cincotta, 689 F.2d 238, 242 (1st Cir. 1982), cert. denied, 459 U.S. 991 (1982).....9,12

United States v. DeMauro, 581 F.2d 50, 53(2d Cir. 1978).....6

TABLE OF AUTHORITIES--continued:

United States v. George F. Fish, Inc., 154 F.2d 798, 801 (2nd Cir. 1946), cert. denied, 328 U.S. 869 (1946).....7,10,12,13,16

United States v. Gold, 743 F.2d 800, 823 (11th Cir.1984).....10

United States v. Harry L. Young & Sons, Inc., 464 F.2d 1295, 1296-97 (10th Cir. 1972).....13

United States v. Hilton Hotels Corp., 467 F.2d 1000, 1005 (9th Cir. 1972) cert. denied 409 U.S. 1125 (1973).....12,13,16,17

United States v. Ionia Mgmt. S.A., 526 F. Supp. 2d 319 (2007).....1,2,6,9

United States v. Koppers Co., 652 F.2d 290, 298 (2d Cir. 1981).....7,10

United States v. Sun-Diamond Growers of California, 138 F.3d 961, 971 (D.C. 1998).....13,14

United States v. Twentieth Century Fox Film Corp., 882 F.2d 656, 660 (2d Cir. 1980) cert. denied,493 U.S.1021(1990).....10,12,14,15,16

STATUTES:

RULES OF CONSTRUCTION 1 U.S.C. §1 (2008).....4,5,7,11,12,16,17

CONSPIRACY 8 U.S.C. §371 (2008).....7

PREVENTION OF POLLUTION FROM SHIPS 33 U.S.C. §1908(A) (2008).....7

OBSTRUCTION OF JUSTICE 18 U.S.C. §1519 (2008).....7

OBSTRUCTION OF JUSTICE 18 U.S.C. §1505(2008).....7

TABLE OF AUTHORITIES--continued:

SECONDARY AUTHORITIES:

18B AM. JUR. 2D Corporations §1839 (2003).....5

Stacey Neumann Vu, *Corporate Criminal Liability: Patchwork Verdicts and the Problem of Locating a Guilty Agent*, 104 Colum. L. Rev. 459 (2004).....16,17

OTHER AUTHORITIES:

MODERN FEDERAL JURY INSTRUCTIONS-CRIMINAL § 2.01 Instr. 2-7 (2007).....8

SEVENTH CIRCUIT PATTERN CRIMINAL JURY INSTRUCTION §5.03.....8

EIGHTH CIRCUIT MODEL CRIMINAL JURY INSTRUCTION §5.03.....8

JURISDICTION

Certiorari has been granted to review a judgment of the court of appeals for the second circuit, entered on September 1, 2008. The petition for writ of certiorari was granted on December 12, 2008. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE:

Ionia Management S.A. (hereinafter Ionia) manages the tanker vessel M/T Kriton. (hereinafter Kriton). *United States v. Ionia Mgmt. S.A.*, 526 F. Supp. 2d 319, 325 (2007). As required by law, Kriton is equipped with an oily water separator and an oil content monitor. The purpose of this equipment is to prevent the illegal discharge of oily waste and bilge water into the sea. *Id* at 324-25. Evidence at trial illustrated that Kriton crew members were directed by their superiors not to use the equipment. The testimony showed that the Chief and Second Engineer of Kriton specifically instructed their subordinates to pump the ship's oily waste directly into the ocean; intentionally bypassing the oil prevention pollution equipment. *Id*. Additionally, the evidence proved that the chief engineers' purposely falsified Kriton's oil record books and submitted false statements to the U.S. Coast Guard to conceal this illegal conduct. *Id*.

Based on these facts, the district court instructed the jury in accordance with what the federal courts accept as the established law on vicarious corporate criminal liability. *Id* at 324. Specifically, the court instructed the jury that Ionia could be held vicariously liable for the unlawful acts of its employees if the acts were "done on behalf of and for the benefit of the corporation, and directly related to the performance of the duties the employee has authority to perform." *Id*. The court advised the jury that Ionia's liability is not relieved simply because "the agent's act was illegal, contrary to his employer's instructions or against the corporation's policies." *Id*. at 325. The court further instructed the jury that it may consider "whether the agent

disobeyed instructions or violated company policy in determining whether the agent intended to benefit the corporation and/or was acting within his authority." *Id.* Lastly, the court's instructions did not require that the offending employees be of any particular level of seniority. *Id.*

Inevitably, on September 6, 2007 the jury convicted Ionia on all charges. *Id.* at 321. On appeal, the Second Circuit Court of Appeals affirmed the district court's jury instructions on corporate criminal liability. Ionia now seeks relief from the United States Supreme Court.

SUMMARY OF THE ARGUMENT:

The district court's jury instructions are in accordance with the general principles of corporate criminal liability. The law of corporate criminal liability stems from Supreme Court precedent and has been universally accepted for nearly a century. In accordance with this law, juries are advised that a corporation can be held criminally liable for the acts of its employees acting in the scope of their employment and for the benefit of the corporation. These jury instructions are well accepted by the legislature, federal statutory law, and modern federal jury instructions.

Since a corporation can only act through its agents, it must be held liable for the acts of its agents when they are act within the scope of their employment and with the intent to benefit the corporation. Holding corporations liable for the acts of its agents is consistent with the general principles of criminal law. If the Court were to permit corporations to escape liability for the acts of its agents it would immunize the offender who benefits from the illegal action. Moreover, the punishment of only the offending employee would be an ineffective deterrent to future corporate crimes. Moreover, it is Congress's intent to punish corporations who violate federal statutes. Congress has specified that the words "person" and "whoever" are to include

corporations. In addition, congress has made no effort to exclude corporations from criminal liability.

If we were to permit corporations to escape liability for the acts of its agents it would immunize the offender who benefits from the illegal action. Not only is identification of the particular agent who is responsible for the violation difficult, the punishment of that one agent is an ineffective deterrent to future corporate crimes. Moreover, public policy demands that corporations remain liable for the acts of their agents. In holding corporations liable for the act of its agents, corporations are motivated to monitor the activities of their agents and deter illegal employee conduct.

The fact that an agent may have violated a corporate policy must not be an affirmative defense to corporate criminal liability. The law prohibits acts that pose a threat to the public and to allow such a defense would permit corporations to hide behind the acts of their agents, while benefiting from the illegal actions.

There is no justifiable reason to revisit the established law of *New York Central*. *Ionia* has failed to meet any of the prudential and pragmatic requirements that the Court has set forth in deciding if we should abandon stare decisis. The holding of *New York Central* remains practical and workable. Furthermore, *New York Central* is not doctrinal anarchism, and cannot be abandoned without causing serious hardship to the victims of corporate crimes. Lastly, the facts of the case at issue are significantly similar making the holding of *New York Central* justifiable and relevant.

ARGUMENT

Corporate criminal liability holds a corporation liable for the acts of its agents when that act is committed within the scope of their authority and with the intention to benefit the corporation *New York Central & H.R.R. Co. v. United States*, 212 U.S. 481, 495 (1909). The well established law of New York Central has since been universally accepted by the Federal Courts. *United States v. Basic Constr. Co.*, 711 F.2d 570,572 (1983) cert denied 464 U.S. 956 (1983). Although federal statutes are generally silent on corporate criminal liability, congress has expressed its intent to include corporations within criminal statutes. RULES OF CONSTRUCTION 1 U.S.C. §1 (2008).

Criminal law as well as public policy requires all persons, corporate or private, refrain from certain practices in the interest of public policy. *N.Y. Central*, 212 U.S. at 495. Because the pragmatic and prudential requirements have not been met there is no justifiable reason to revisit the holding of *New York Central*. *Planned Parenthood v. Casey*, 505 U.S. 833, 845 (1992)

I. THE DISTRICT COURT'S JURY INSTRUCTIONS ON CORPORATE CRIMINAL LIABILITY ARE AUTHORIZED BY SUPREME COURT PRECEDENT AND FEDERAL STATUTORY LAW THEREFORE THE SECOND CIRCUITS DECISION MUST BE AFFIRMED

There is no valid objection in law to prevent a corporation from being held liable for the unlawful acts of its agents who knowingly and purposely violate a federal statute in order to benefit the corporation. *N.Y. Cent*, 212 U.S. at, 495. For almost a century, it has been established that a corporation acting through its agents has the legal capacity to do wrong as well as right. *Standard Oil Co of TX. v. United States*, 307 F.2d 120, 127 (5th Cir.1962). It is been established through Supreme Court precedent and has been universally accepted within the federal courts that a corporation is legally bound by the acts and statements of its agents that were taken within the scope of their authority and for the benefit of the corporation. *N.Y Cent*,. 212 U.S. at 495.

Most criminal statutes do not speak to corporate criminal liability per se. Rather, the majority of statutes prohibit criminal behavior of beings; usually incorporating the words such as “persons” or “whomever,” in the statutes. The fact that the legislature has not expressly excluded corporations from being criminally liable is a clear indication of its intent that corporations are to be considered persons within the meaning of the Code in the absence of any clear indication to the contrary. *See* 18B AM. JUR. 2D Corporations §1839 (2003). The United States Code specifically states that when interpreting the language contained in any act of congress “the words “person” and “whoever” include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals” unless the context states otherwise. 1 U.S.C. §1.

Additionally, the federal statutes that the Ionia Management S.A. [hereinafter Ionia] was indicted under indicate punishment may be a fine, which is an applicable punishment to a corporation. This is a further indication that Congress intends to hold corporations liable for the violation of federal statutes. Corporate criminal liability is well-accepted law and the courts have correctly instructed their jurors that a corporation is punishable for the unlawful act of their employee done within the scope of their employment. *Continental Baking Co. v. United States*, 281 F.2d 137, 150 (6th Cir. 1960).

a. The District Court’s Instructions Are Authorized By Supreme Court Precedent, Which Is Well Settled Law On Vicarious Corporate Criminal Liability For Over A Century.

The District Court correctly instructed the jury on corporate criminal liability as sanctioned by this Court. In 1909 this court held that “the act of an agent, while exercising the authority delegated to him ... may be controlled, in the interest of public policy, by imputing his act to his employer and imposing penalties upon the corporation for which he is acting in the premises.”

N.Y. Cent. 212. U.S. at 494. This Court has set forth and followed a long-established rule that corporations can be held criminally liable for the acts of its employees by applying the doctrine of respondeat superior. *Id.*

The Court in *New York Central* held that a corporation can be held criminally liable for its employee's unlawful conduct done in the course of his employment, even if it was done recklessly or against the express orders of the principal. *Id.* The Court's rationale was that liability is being imputed not because the corporation participated in the unlawful conduct, but because the conduct was done to benefit the corporation. *Id.* Moreover, this Court stated that a corporation is liable not only for the agent's actions that have been "strictly construed," but for conduct that the agent has assumed to perform for the corporation under his employment. *Id.* The Supreme Court has never found it necessary to revisit this established precedent. Furthermore, the ruling in *New York Central* has remained the law and it has since been a general rule that a corporation may be held vicariously liable for the criminal conduct of its employees. *United States v. DeMauro*, 581 F.2d 50, 53(2d Cir. 1978).

The district court correctly instructed the jury that if they find that the employee's actions were performed on behalf or for the benefit of the corporation, and related to the duties the employee had the authority to perform, then the Ionia would be held vicariously liable for the unlawful acts. *Ionia*, 526, F. Supp. at 324-25 The instructions further advised the jury that if they found that the employees conduct was illegal and adverse to the corporation's policy, Ionia could still be found vicariously liable for its employee's conduct. *Id.* The court was correct in instructing the jury that it may consider whether the employee disobeyed specific instructions or violated the corporation's policy when determining whether the employee had the intent to benefit the corporation and/or whether the employee was actually acting under any authority. *Id.*

Furthermore, the court correctly instructed the jury not to consider the employee's position level. *United States v. George F. Fish, Inc.*, 154 F.2d 798, 801 (2nd Cir. 1946), cert. denied, 328 U.S. 869 (1946)(no distinction "between [employees] holding positions involving varying degrees of responsibility," and ruled that the actions of even "subordinate" and "minor" employees could give rise to vicarious liability.); *See also United States v. Koppers Co.*, 652 F.2d 290, 298 (2d Cir. 1981) (the standard for liability remains that the employee merely must be acting within its scope of employment, regardless of the level.) The precedent of the Supreme Court and the position that is followed by an overwhelming majority of the district courts does not take into consideration the position of the employee. *Id.*

This Courts precedent authorizes the district courts instructions to the jury. The ruling in *New York Central* has remained well-accepted law for almost a century, and the Court has not seen it fit to revisit the establish holding. Because the jury instructions were consistent with this Courts precedent the district court's jury instructions are in accordance with the law, and therefore the holding of the Second Circuit should be affirmed.

b. The District Courts Jury Charge Is Authorized By The Legislature, Federal Statues Modern Federal Jury Instructions.

The District Court's jury instructions are in conformity with the federal statutory law on corporate criminal liability. The federal statutes that Iona was indicted under clearly illustrate the legislatures intent to hold corporations criminally liable for the unlawful acts of their agents, by including punishment by fine. *See* CONSPIRACY 8 U.S.C. §371 (2008); PREVENTION OF POLLUTION FROM SHIPS 33 U.S.C. §1908(A) (2008); OBSTRUCTION OF JUSTICE 18 U.S.C. §1519 (2008); OBSTRUCTION OF JUSTICE 18 U.S.C. §1505(2008). Furthermore congress has specifically stated that the terms "person" and "whoever" are to apply to corporations. 1 U.S.C. §1.

Congress has not deemed it necessary to change or codify the two-step analysis that the courts have placed into effect when determining corporate criminal liability. This analysis requires that a jury evaluate (1) whether the agent's actions were within the scope of employment; and (2) whether the agent acted with intent to benefit the corporation. *Basic Constr. Co.*, 711 F.2d at, 573.

Moreover, the Modern Federal Jury Instructions [hereinafter Modern Jury Instructions] also instruct the jury that a corporation can be held criminally liable for its employees unlawful conduct done during the scope of his employment. MODERN FEDERAL JURY INSTRUCTIONS-CRIMINAL § 2.01 Instr. 2-7. (2007) The Modern Jury Instructions advise that the scope of employment encompass either acts of the agent that are specifically authorized, or acts that are within the scope of the agents authority, and that were performed with the intent to benefit to the corporation. *Id.* The Modern Jury Instructions explain that if the agent's act was directly related to the "performance of the kind of duties that the agent had the general authority to perform," the corporation may be liable. *Id.* Further, the Modern Jury Instructions state that the "fact that the agent's act was illegal, contrary to his employer's instructions, or against the corporation's policies will not relieve the corporation of responsibility for" the agents unlawful conduct. *Id.* The Modern Jury Instructions further advise the jury may consider the fact that the agent "disobeyed instructions or violated company policy in determining whether the agent intended to benefit the corporation, or was acting within this authority." *Id.* Finally, the Modern Jury Instructions advise that the jury that even if an agent was not acting within the scope of his employment; if the agents actions were later approved by the corporation, the corporation will be liable. (omissions apply). *Id.* See also SEVENTH CIRCUIT PATTERN CRIMINAL JURY INSTRUCTION 5.03; EIGHTH CIRCUIT MODEL CRIMINAL JURY INSTRUCTION 5.03.

In accordance with the Modern Jury Instructions, the district court correctly advised the jury that to find Ionia criminally liable for the acts of its agent the acts must directly relate to the duties of the agents employment and must have been done on behalf of and for the benefit of the corporation. *Iona*, 526 F. Supp. at 325. An act is within the duties of employment if the act was authorized by the corporation, or the agent was acting within his authority and with the intent to benefit the corporation. *Id.*

Furthermore, the district court was correct in instructing the jury that if it found that the employee was acting within the scope of his employment, “the fact that the agent's act was illegal, contrary to his employer's instructions, or against the corporation's policies will not necessarily relieve the corporation of responsibility for the agent's act.” *Id.* The court was correct in instructing the jury that when determining if the agent intended to benefit the corporation and or was acting within his authority the jury may consider whether the agents conduct disobeyed instructions or violated the company’s policy *Id.*

Governing precedent in the federal system holds corporations criminally liable for their employee’s unlawful acts when done within the scope of their authority. *Standard Oil Co.*, 307 F.2d at 127. Under federal law, scope of authority is equivalent to scope of employment. *United States v. Cincotta*, 689 F.2d 238, 242 (1st Cir. 1982), cert. denied, 459 U.S. 991(1982). This simply means that the employee must have been performing acts that he was authorized to perform. *Id.* Authority can be either actual authority or apparent authority. *Continental Baking Co.*, 281 F.2d at 150. Actual authority is the expressed authority that an employee was specifically given by his superior. *Id.* Apparent authority is the authority that outsiders would normally assume that the employee would have. *American Soc. of Mechanical Engineers, Inc. v. Hydrolevel Corp.*, 456 U.S. 556, 567 (1982).

It is not necessary that the employee's intent be solely to benefit the corporation. *United States v. Gold*, 743 F.2d 800, 823 (11th Cir.1984). It is only necessary that the employee was motivated, at least in part, by a desire to benefit the corporation. *Id.* Even if assuming employee's action violated a corporate policy that clearly prohibited their illegal conduct, the corporation can still be found criminally liable so long as the employee was acting under authority. *United States v. Twentieth Century Fox Film Corp.*, 882 F.2d 656, 660 (2d Cir. 1980) cert. denied, 493 U.S.1021(1990). There is a presumption under federal law that as long as the criminal act is directly related to the duties the employee has authority to perform the corporation is liable for those acts and must be deemed to have authorized the criminal act. *Continental Baking Co.*, 281 F.2d at 150. In determining whether the employee has violated corporate policy the jury may consider whether the employee was acting within his authority, and/or with the intent to benefit the corporation. *Basic Constr. Co.*, 711 F.2d at 572

The district court's jury instructions are in conformity with jury instructions upheld by an overwhelming amount of federal courts . *See Basic Constr. Co.*, 711 F.2d at 572; *Koppers Co.*, 652 F.2d at 298; *Fish, Inc.*, 154 F.2d at 80; *Continental Baking Co.*, 281 F.2d at, 150 – 151. Furthermore, the jury instructions are consistent with the intent of the legislature to hold corporations liable for the acts off its agents. The instructions given by the district court to the jury are in agreement with Supreme Court precedent and federal statutory law and therefore the decision of the Second Circuit should be affirmed.

II. THE DECISION OF THE SECOND CIRCUIT COURT OF APPEALS MUST BE AFFIRMED THE JURY INSTRUCTIONS ARE CONSISTENT WITH THE GENERAL PRINCIPLES OF CRIMINAL LAW AND NEW YORK CENTRAL & HUDSON RIVER RAIL ROAD V. UNITED STATES IS STILL APPLICABLE LAW

The district court's instructions are consistent with the general principles of criminal law and therefore the Second Circuits decision must be affirmed. Congress has specifically expressed its intent to impose criminal liability on corporations, when it included a corporation in the definition of person and whoever. 1 U.S.C.§1. Furthermore, it is well established law that a corporation will be held criminally liable for acts of its agents when they are acting within the scope of their employment, and with the intent to benefit the corporation. *N.Y. Cent.*, 212 U.S. at 493-94. Moreover, it is well recognized that the corporation does not need to receive an actual benefit from its agents' actions. *Standard Oil Co*, 307 F. 2d, 128-29. Because a corporation can only act through its agents, public policy supports the imposition of criminal liability when its agent acts with the intent to benefit the corporation, regardless of whether act was authorized by the corporation. *N.Y. Central*, 212 U.S. at 495

Ionia has failed to meet any of the prudential and pragmatic considerations that this court has set forth in deciding whether to depart from stare decisis. *Planned Parenthood*, 505 U.S. at, 845. Therefore, there is no basis for the Court to overrule or revisit the holding in *New York Central*. The four considerations that the Court is to consider are: whether or not the central ruling has become impractical and unworkable, has the principles of law developed so far that the law is nothing more than a remnant of an abandoned doctrine, is it possible for the rule be changed without causing serious hardship, and is the central holding unjustifiable or irrelevant because the facts are significantly different. *Id*, at 845-846. Because Ionia does not meet any of the considerations that this Court has deemed necessary to overrule a prior decision, *New York Central* is still applicable law. Therefore, the instructions of the district court were consistent

with the general principles of criminal law and the holding of the Second Circuit should be affirmed.

a. The District Court's Instructions Are Consistent With The General Principles Of Criminal Law A Corporation Can Only Act Through Its Agents And Must Be Held Criminally Liable For The Actions Of Its Agents When The Agents' Intention Is To Benefit The Corporation.

The district court's instructions were consistent with the general principles of criminal law and therefore the Second Circuit's decision must be affirmed. Congress has expressed its intent to include corporations within the criminal law. 1 U.S.C. §1. The United States Code has specified that the words "person" and "whoever" are to include corporations. *Id.* Because Congress has specifically included a corporation within the meaning of person, it shows that it intended corporations to be treated as entities. *Cf. United States v. A &P Trucking Co. ET AL.* 358 U.S. 121, 124-25, 79 S Ct. 203, 296, 3 L. Ed. 2d 165, 169. (1958) Furthermore, "[i]t is reasonable to assume that Congress intended to impose liability upon business entities for the acts of those to whom they choose to delegate the conduct of their affairs" *United States v. Hilton Hotels Corp.*, 467 F.2d 1000, 1005 (9th Cir. 1972) cert. denied 409 U.S. 1125 (1973)

A violation of a criminal law must not go unpunished. Because a corporation can only act through its agents the standard for corporate criminal liability must remain status quo. It is well-established law that a corporation may only be held criminally liable if one of its agents acts within the scope of their authority, and with the intent to benefit the corporation. *N.Y. Cent.*, 212 U.S. at 493-94; *Cincotta*, 689 F. 2d at 241-242; *Twentieth Century Fox.*, 882 F. 2d at 660-01; *United States v. Beusch*, 596 F 2d. 871, 877-78; *Standard Oil Co.*, 307 F. 2d at 128-29; *Fish*, 154 F. 2d at 801. It is not required that the agents actions actually benefit the corporate entity, just that the agent intended to benefit the corporation. *Standard Oil Co.*, 307 F. 2d at 128-29; *United States v. Automated Med. Lab., Inc.*, 770 F.2d 399, 407 (5th Cir. 1985); *Egan v. United States*,

137 F.2d 369 (8th Cir. 1943) cert. denied 320 U.S. 788 (1943); *United States v. Harry L. Young & Sons, Inc.*, 464 F.2d 1295, 1296-97 (10th Cir. 1972). Because corporations can only act through its agents, it is the intent of the agent that is of importance, not the result. *Automated Med. Lab.*, F.2d at 407. This requirement is actually creates an insulation for corporations from criminal liability from actions of its agents which are contrary to the interests of the corporation or actions that were undertaken solely to advance the interests of that agent. *Id.*

If the Court were to deny corporate liability, it would immunize the offender who benefits from the illegal action. *Fish*, 154 F.2d at 801. Identification of the particular employee that is responsible for the violation of law is difficult and the punishment of that agent is an ineffective deterrent of future corporate crime. *Hilton Hotels Corp.*, 467 F.2d at 1007. The conviction and punishment of the corporation is the only appropriate and effective action to take in order to deter future criminal acts. *Id.* A business cannot be permitted to break the law simply because it personally did not participate or authorize in the infraction, the burden is on the corporation to see that its agents abide by the law. *A & P Trucking Co.*, 358 U.S. at 125-26. Because, a corporation can only act through its agents, it flows logically that the corporation is liable for acts of its agents if they acted within their authority and with the intent to benefit the corporation.

Public policy supports this approach to corporate criminal liability. Criminal statutes require all persons, corporate or private, refrain from certain practices in the interest of public policy. *N.Y. Cent.*, 212 U.S. at 495. Holding corporations criminally liable for actions of its employees when their actions are intended to benefit the corporation, even if there is no actual benefit, encourages employers to monitor more closely the activities of their employees and agents and increase incentives to monitor and deter illegal employee conduct. *United States v.*

Sun-Diamond Growers of California, 138 F.3d 961, 971 (D.C. 1998); *Standard Oil Co.* 307 F. 2d at 128. Furthermore, “[I]f the intent to benefit is present then the actual benefit is largely irrelevant.” *Beusch*, 596 F.2d at 877.

The criminal law must not permit an affirmative defense of reasonable diligence or due care for corporate crimes. Public policy supports the rationale that a corporation may be held liable even if the agent acted contrary to corporate policy. *N.Y. Cent.*, 212 U.S. 493; *Beusch* 596, F. 2d at 877-78. For the purpose of corporate liability, it is against public policy to simply relive a corporation of liability because the agent has acted irrespective or contrary to the corporations’ policy. *Beusch*, 596 F 2d, at 878.

The law prohibits acts that that pose a threat to the public. If the Court were to import a reasonable diligent standard on corporations, they would be able to hide behind the criminal acts of their agents. *Twentieth Century Fox* 882 F. 2d at 66. Furthermore, if the Court were change the long-standing principles of corporate criminal liability it would allow for a complete defense of due care, and corporations would be provided with another means to escape criminal liability. *President Coolidge Dollar S.S. Co. V. United States*, 101 F. 2d 638, 640 (9th Cir. 1939). In *The President Coolidge Dollar S.S. Co. v. United States*, the Ninth Circuit held that the corporation’s failure to prevent its agents from illegally dumping garbage violated 33 U.S.C.. §407, and that the company “having committed his ship to seas, a owner takes risk of much which he cannot easily control.” *Id.* If criminal law allowed for a corporation to claim a defense of diligence, the law in question would be changed from a law of prohibition to a law that requires due care. *President Coolidge*, 101 F. 2d 640.

b. Because Ionia Fails To Meet Prudential And Pragmatic Considerations That The Court Has Set Forth In Deciding Not To Follow Stare Decisis this court must not revisit the holding of New York Central Hudson River Rail Road v. United States

N.Y. Cent. is well established law and the Court must follow its stare decisis. The concept of stare decisis and the respect for precedent is indispensable. *Planned Parenthood*, 505 U.S. 845. In *Planned Parenthood v. Casey*, the Court determined when it is reexamining a prior decision there are several prudential and pragmatic considerations that it must take into consideration. *Id.* at 845-846. The first consideration is whether or not the central ruling is impractical and unworkable. *Id.* Secondly, the Court must look to see if principles of law developed so far that the law is nothing more than a remnant of an abandoned doctrine *Id.* The fourth consideration for the Court is whether it is possible for the rule be changed without causing serious hardship. *Id.* Finally, the last consideration is whether the central holding unjustifiable or irrelevant because the facts are significantly different. *Id.* Because the Ionia do not meet any of the considerations that this Court has placed into effect the decision of the Second Circuit Court of Appeals must be affirmed.

Ionia fails to meet the first two considerations, as the central holding of *New York Central* is presently followed by an overwhelming majority of the Circuit Courts, and has been for nearly a century. Therefore, the holding of *New York Central* is not only workable, and practical, but the holding is not doctrinal anarchism. For almost a century, the law from *New York Central* has been used to deter and punish corporations who violate the law through the acts of its agents. It is been well-established law that a corporation may be held vicariously liable for the criminal conduct of its employees, if the employees were acting within the scope of their employment and had the intent to benefit the company. *N.Y. Cent.*, 212 U.S. at 493-94; *Twentieth*

Century Fox, 882 F. 2d at 660-01; *Beusch*, 596 F. 2d. at 877-78; *Standard Oil Co.*, 307 F. 2d at 128-29. *Fish*, 154 F. 2d at 801

Furthermore, the imposition of criminal liability on corporations is supported by the United State Code. 1 U.S.C. §1. The United States Code has specified that the words “person” and “whoever” are to include corporations. *Id.* Because Congress has specifically included a corporation within the meaning of person, it shows that it intended corporations to be treated as entities. *Cf. A &P Trucking Co.*, 358 U.S. at 124-25, 79. The lower federal courts have followed the rule of law set forth by this Court’s holding in *New York Central*, for nearly a century without disparity between its holdings. The holding of *New York Central* still remains viable, it is not doctrinal anarchism, and is practical and workable.

It is impossible to change the holding of *New York Central* without causing serious hardship to the victims of corporate crimes. Corporations must be held accountable to society and the other victims of its crimes. This Court has held that “[T]he treasury of the business may not with impunity obtain the fruits of violations which are committed knowingly by agents of the entity in the scope of their employment. Thus, pressure is brought on those who own the entity to see it that their agents abide by the law” *A &P Trucking Co.*, 358 U.S. at 126. It is impermissible for a business to be allowed to break the law simply because its owners, partners, stockholders did not personally participate in the criminal action. *Id.* Moreover, if the well established law of *New York Central*, was to be abandoned, corporations would be provided with the means and opportunity to forever escape criminal liability. Corporate crimes are highly concealable and victims are often unaware of their injury, if the law was not to hold the corporation criminally liable, then the challenge would be to identify the guilty actor within the corporation which is a difficult task. *Hilton Hotels Corp.*, 467 F.2d at 1007; see also Stacey

Neumann Vu, *Corporate Criminal Liability: Patchwork Verdicts and the Problem of Locating a Guilty Agent*, 104 Colum. L. Rev. 459, 567.(discussing the problems with a narrow respondeat superior approach). A corporation must be liable for the actions of its employees. Simply punishing the actor, who acted on behalf of the corporation, would be ineffective at deterring future criminal acts of corporations and therefore undermine the intent of Congress. *Hilton Hotels Corp.*, 467 F.2d at 1007.

Lastly, the central holding in *New York Central*, is justifiable and similar to the case at bar. Since a corporation can only profit and act through its agents and officers it must be liable for the knowledge and intent of its agents, because it has entrusted them with the authority to act. *N.Y. Cent.*, 212 U.S. at 495. The purpose of the Elkins Act, which was violated in *New York Central* was to make the actions of the corporation the same as the acts of the agent, and to include both actions within the prohibitions and restrictions of its statute. *Id.*, at 497. Similarly, in the case at bar 1 U.S.C. § 1 makes clear congresses' intent to include corporations in the definition of person and whoever, consequently holding the Ionia criminally liable and within the scope of the criminal statutes.

Ionia fails to meet any of the prudent and pragmatic considerations, therefore the Court must not overrule *New York Central*. Because *New York Central* is still applicable and well established law, the instructions were consistent with the general principles of criminal law and therefore the decision of the Second Circuit must be affirmed.

CONCLUSION

These jury instructions assure that those who deliberately violate criminal statutes will be held accountable by jury's and judges in the United States. For the foregoing reasons, the Second Circuit Court of Appeals should be affirmed.

Respectively submitted,

Competition Number 21

Counsel for the Respondent