

No. 08-1234

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2008

IONIA MANAGEMENT S.A.,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE SECOND CIRCUIT COURT OF APPEALS

BRIEF FOR THE RESPONDENT

TEAM NUMBER: 25

QUESTION PRESENTED

Under the Act to Prevent Pollution from Ships and this Court's corporate criminal liability jurisprudence, was the district court's jury instruction proper when it stated that Petitioner may be held criminally liable for the acts of its agents done within the "scope of employment" and "for the benefit" of the corporation?

Under established principles of American criminal law, was the district court's jury instruction which was based on the corporate criminal liability doctrine set forth in *New York Central & Hudson River Railroad v. United States* satisfactory, or should the doctrine be revisited?

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BRIEF FOR THE RESPONDENT

STATEMENT OF THE CASE

This Court is being asked to affirm the conviction of Petitioner, Ionia Management (“Ionia”), stemming from Ionia’s violations of the Act to Prevent Pollution from Ships (“APPS”) and related unlawful conduct. The issues are: (1) whether the district court’s instruction on corporate criminal liability was authorized by federal statutory law and this Court’s decision in *New York Central & Hudson River Railroad v. United States*; (2) whether the *New York Central* decision should be revisited; and (3) whether the district court’s corporate criminal liability instruction was consistent with general criminal law principles.

Ionia, a ship management company, controlled the oil tanker, M/T Kriton (“Kriton”). *United States v. Ionia Management*, 526 F.Supp.2d 319, 322 (D. Conn. 2007). As an oil tanker,

the Kriton was subject to the federal regulations of the APPS. *Id.* at 321. Under the APPS, Ionia, through the Kriton crew, was responsible for ensuring that the ship's oily wastes were cycled through the oil prevention and discharge equipment, including the Oil Water Separator and Oil Content Monitor, before being dumped in the ocean. *Id.* at 324. Additionally, Ionia was in charge of fully and accurately maintaining an Oil Record Book in which the requisite disposal and discharge operations were recorded. *Id.* at 325.

But contrary to the dictates of the federal regulations, the Kriton crew, under Ionia management, disposed of oily wastes directly into the ocean, falsified its Oil Record Book, and lied to the United States Coast Guard while in U.S. ports about?. *Id.* at 325-26. The Kriton's Second Engineer testified that the Chief Engineer "specifically instructed him not to use the oily water separator," but instead to "pump the oily waste overboard without utilizing the oil pollution prevention equipment." *Id.* at 325. Then, together, the Chief Engineer and Second Engineer directed the engine room crew "to connect the bypass hose and dispose of the waste directly into the ocean." *Id.* This illegal dumping continued even under the management of a new Chief Engineer. *Id.* The new Chief Engineer instructed his subordinates to continue to dump the Kriton's oily waste directly overboard. *Id.*

The Kriton crew also engaged in records falsification to cover up their illegal dumping. *Id.* The chief engineers were specifically in charge of accurately maintaining the ship's oil record books, but instead the engineers made entries which/that "falsely indicated that the pollution prevention equipment was functioning normally and was being utilized." *Id.* at 325-26. Per APPS, a ship's oil record books are required to be available for inspection by the Coast Guard when the ship entered U.S. ports. *Id.* at 326. When the Coast Guard boarded the Kriton in New Haven Harbor, the crew presented these falsified oil record books to them. *Id.*

Additionally, Ionia was on probation at the time of its APPS violations. *Id.* at 327. The Eastern District of New York had sentenced Ionia to a three-year term of probation in 2004 for making false statements or entries in violation of 18 U.S.C. § 1001. *Id.* As a special condition of probation, Ionia was required to adhere to a compliance program. *Id.* The mandated compliance program required Ionia, among other things, to designate a corporate compliance manager, retain an outside auditing firm, permit the firm to regularly inspect Ionia vessels, and accurately complete and disclose a “Compliance Program Checklist” (“CPC”) to the Coast Guard. *Id.* The Kriton crew falsified the required CPC and presented the false document to the Coast Guard at ports in Florida and New York. *Id.* at 327-28.

Four indictments were brought against Ionia from the District of Connecticut, Southern District of Florida, Eastern District of New York, and the District Court of the Virgin Islands. *Id.* at 321-22. The latter three indictments were transferred to the District of Connecticut to be consolidated for trial. *Id.* at 322. Ionia was charged with eighteen counts: thirteen counts of violating the APPS and related regulations, 33 U.S.C. § 1908(a); three counts of falsifying records in connection with a federal investigation in violation of 18 U.S.C. § 1519; one count of obstructing justice in violation of 18 U.S.C. § 1505; and one count of conspiring to commit these offenses in violation of 18 U.S.C. § 371. *Id.* at 321.

On September 6, 2007, a jury found Ionia guilty on all eighteen counts. *Id.* The Second Circuit affirmed the decision of the district court, and this Court granted certiorari to review the appellate decision and to resolve questions regarding corporate criminal liability that have emerged since this Court’s *New York Central* holding.

SUMMARY OF THE ARGUMENT

This Court should affirm the conviction of Ionia and uphold the corporate criminal liability doctrine set forth in *New York Central & Hudson R.R. v. United States*, 212 U.S. 481 (1909). The *Ionia* Court's jury instructions on corporate criminal liability were accurate and unambiguous because they were (1) consistent with Supreme Court precedent; and (2) consistent with both the Act to Prevent Pollution from Ships as well as similar federal statutory regulations that contain a *mens rea* requirement. Furthermore, the *New York Central* decision should be upheld because corporate criminal liability satisfies traditional principles of criminal law.

The jury instructions are consistent with this Court's precedent because they meet the requirements established in *New York Central* and correctly describe "scope of employment" and the requirement that the agent be acting for the benefit of the corporation in order for liability to be imputed to the corporation. The jury instructions are also consistent with federal statutory regulation. The district court correctly applied principles of agency to the Act to Prevent Pollution from Ships which defines "person" to include a "corporation" and defined "knowingly" to mean "intentionally or voluntarily" which is consistent with other federal statutes.

The doctrine of corporate criminal liability as set forth in *New York Central* and applied in *Ionia* should be upheld because the imputation of an agent's mental state to the corporation is consistent with criminal complicity doctrine and satisfies the *mens rea* element of a criminal offense and because the imputation of an agent's actions taken within the "scope of employment" for the benefit of the corporation satisfies the actus reus component. Additionally, corporate criminal liability serves to advance critical policy objectives and is supported by the utilitarian doctrine of deterrence. Accordingly, this Court should affirm the judgment of the Second Circuit Court of Appeals.

ARGUMENT

I. This Court should affirm the Second Circuit’s decision in *Ionia Management, S.A. v. United States* as the district court’s jury instructions regarding corporate criminal liability are consistent with Supreme Court precedent.

The decision in *New York Central & Hudson River Railroad v. United States* (“*New York Central*”) drastically altered the landscape for corporate criminal liability when the United States Supreme Court ruled that corporations could be found criminally liable for acts committed by their employees. 212 U.S. 481, 492-93 (1909). Because they conform to the requirements established in *New York Central* and its progeny, the jury instructions as dictated by the district court are appropriate in regards to corporate criminal liability. As a result, the Second Circuit was correct to affirm the denial of Petitioner’s request for a Rule 29 judgment of acquittal and a Rule 33 motion to vacate the judgment. *United States v. Ionia Management, S.A., et al*, 526 F. Supp. 2d 319, 322 (D. Conn., 2007).

In its explanation of extending civil laws of agency to criminal law, the Court in *New York Central* quoted Mr. Chief Justice Field in *Telegram Newspaper Co. v. Commonwealth*, 172 Mass. 294, 297 (1899) to have said, “There is no more difficulty in imputing to a corporation a specific intent in criminal proceedings than in civil.” In *New York Central*, the Court found New York Central & Hudson River Railroad Co. guilty of violating the Elkins Act because they provided rebates to the American Sugar Refining Company. *Id.* at 489. The rebates were established between the traffic managers and the agent for the American Sugar Refining Company. *Id.* at 490. Through the extension of agency principles to criminal law, the Supreme Court affirmed the conviction of New York Central & Hudson River Railroad Co. based on the acts of its agents. *Id.* at 496-97.

Based on the Court’s decision to extend civil laws of agency into the criminal sphere, the Court set forth a two-part test that requires that the employee was acting within the scope of his or her employment and for the benefit of the company in order for the corporation to be held liable for the acts of the employee. *Id.* at 493. Because the employees in *Ionia* were acting within the scope of their employment when they neglected to use the measures in place to prevent oil pollution and because this same behavior benefited the company by saving the time that it would take to utilize the oil pollution prevention equipment, the District Court was correct to deny Petitioner’s motions under Rule 29 and Rule 33.

a. The district court’s description of “scope of employment” is consistent with the rule outlined in *New York Central*.

In order for a corporation to be held criminally liable for the acts of one of its employees, the employee must be acting within the scope of his or her employment. *New York Central* at 493. *See also United States v. A & P Trucking Co.*, 358 U.S. 121, 126 (1958) (where a partnership violated the Motor Carrier Act, the Court found that partnerships are liable in the same way that corporations are for acts committed by their agents). In *Continental Baking Co. v. United States*, 281 F. 2d 137, 149 (6th Cir. 1960), the Court explained that, “the criminal act is directly related to the performance of the duties which the officer or agent has the broad authority to perform, the corporate principal is liable for the criminal act also, and must be deemed to have authorized the criminal act.” *Id.* (citing *New York Central* at 493-94).

In *Continental Baking Co.*, the District Court for the Western District of Tennessee found the company guilty of violating the Sherman Anti-Trust Act for price fixing bakery products. *Id.* at 141. The price fixing was discussed between depot managers and competitors and the corporation tried to argue that price fixing was outside of the authority of the depot managers, thus relieving them of any liability. *Id.* at 149. One of the managers suspected of such price

fixing was in charge of making and approving price changes. *Id.* at 150. Though the case was remanded and reversed due to the district court's reversible error in jury instruction, the Sixth Circuit found that the corporation would be liable for those acts because price changes were clearly within the manager's authority, whether or not the price change was legal. *Id.*

Similarly, the Supreme Court has applied principles of agency found in the First Restatement to appropriately define the phrase, "scope of employment." *See Meyer v. Holley*, 537 U.S. 280, 286 (2003). The Court explained that an employee acting within the scope of his employment is typically acting on behalf of his employer. *Id.*

In *Meyer*, an interracial couple sued a real estate company and its president under the Fair Housing Act for racially discriminating against them and refusing to sell them the house they wanted to purchase. *Id.* at 283. The District Court dismissed the couple's claims, explaining that the couple's claims did not state an adequate vicarious liability claim against the president of the company. *Id.* However, the Ninth Circuit reversed and ruled that the Fair Housing Act required a more extreme application of vicarious liability principles. *Id.* at 286. The Supreme Court vacated and remanded the case due to the Ninth Circuit's unprecedented and impermissible extension of vicarious liability principles. *Id.* at 289.

The Court in *Meyer* highlighted an important aspect of corporate criminal liability when it explained that a corporation could still be found liable for acts committed by an employee that the corporation did not authorize or even have knowledge of. *Id.* at 285. *See also Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 756 (1998) (where a supervisor creates a hostile work environment through the sexual harassment of a lower level employee, the company can be held vicariously liable under Title VII of the Civil Rights Act of 1964).

The district court in *United States v. Ionia Management Co.* clearly met the “scope of employment” prong in its jury instruction on vicarious corporate liability. The Court instructed,

As a legal entity, a corporation can only act vicariously through its agents; that is, through its directors, officer, and employees or other persons authorized to act for it. A corporation may be held criminally liable for the acts of its agent *done on behalf of and for the benefit of the corporation, and directly related to the performance of the duties the employee has the authority to perform.*

Id. at 324 (emphasis added). The definition of “scope of employment” as provided by the Sixth Circuit in *Continental Baking Co.* when citing to *New York Central* reads similarly, requiring that the agent’s acts be both “directly related to the performance of the duties” and also under the umbrella of the agent’s authority. *Continental Baking Co.* at 149. The italicized portions of the *Ionia* Court’s jury instructions reveal almost identical language.

Similarly, the *Ionia* Court’s instruction specifies that the agent act on behalf of the corporation. *Id.* Though this specific language was not recited in *New York Central*, the Court in *Meyer* clarified that an agent acting in the scope of his employment is typically acting on behalf of his or her employer. *Meyer* at 286.

Based on the explanations given in *Meyer*, *Continental Baking Co.*, and *New York Central*, the general jury instructions given in *Ionia* regarding corporate criminal liability is in accordance with Supreme Court precedence regarding the scope of employment prong of the *New York Central* test. As a result, this Court should affirm the district court’s decision in *United States v. Ionia Management Co.*

- b. The district court’s jury instructions are correct because they require that the agent be acting for the benefit of the corporation in order for the corporation to be liable for any wrongdoing.**

This Court in *New York Central* not only required that an agent be acting within the scope of his or her employment in order for a corporation to be found criminally liable, but also that the

agent be acting for the benefit of the corporation. *Id.* at 493. After establishing the existence of corporate criminal liability, the Court in *A & P Trucking* addresses the benefit requirement by stating, “The 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.”

The Fifth Circuit in *Standard Oil Co. of Texas v. United States*, 307 F. 2d 120, 128 (5th Cir. 1962) recognized the benefit requirement by citing to this specific *A & P Trucking* quote. The Fifth Circuit stated that, “and again the rationale is couched in the familiar concepts of civil tort law of (1) a purpose to benefit the corporation and (2) an act by an agent in line with his duties.” *Standard Oil Co.* at 128.

In *Standard Oil Co.*, the District Court for the Northern District of Texas found Standard Oil Co. of Texas and Pasotex Pipe Lime Co. guilty of violating the Hot Oil Act. *Id.* at 120. The Fifth Circuit reversed the decision of the lower court based on the fact that the agents of Standard Oil were not acting for the benefit of the company as they were either stealing oil from Standard or creating a situation where Standard had to pay twice the price for oil purchased from Thompson owned wells. *Id.* at 129.

The *Ionia* Court’s jury instructions required the jury to consider whether an employee was acting within the scope of his or her employment by acting on behalf of the employer in the performance of his or her duties. *Id.* at 324. Similarly, the Court provided instruction that the agent must also be acting for the benefit of the corporation. *Id.* This particular instruction follows the principles outlined in *A & P Trucking* and confirmed in *Standard Oil Co.* See *A & P Trucking* at 126; *Standard Oil Co.* at 128. Because the general corporate criminal liability instructions given by the *Ionia* Court are consistent with Supreme Court precedent, this Court should affirm the decision of the District Court for the District of Connecticut.

II. The district’s jury instructions are consistent with both the Act to Prevent Pollution from Ships as well as similar federal statutory regulations that contain a *mens rea* requirement.

The statute at issue, the Act to Prevent Pollution from Ships (“APPS”), 33 U.S.C. § 1901, *et seq.*, specifically addresses that corporations can violate its terms. However, the Petitioner argues that the district court’s jury instructions in this case are inconsistent with federal statutory regulation. Because there is controversy over the plain meaning of the statute, it is necessary that this Court analyze the ambiguity of the APPS. This Court has consistently ruled that the plain meaning of a statute should be analyzed by determining “whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute of the case.” *Barnhart v. Sigmon Coal Co., Inc.*, 534 U.S. 438, 450 (2002) (citing *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997)).

The plain meaning alone demonstrates that the APPS is unambiguous. Moreover, an analysis of the correct application of a *mens rea* element to a corporation in addition to the consistency with which federal statutes have applied criminal liability through the principle of *respondeat superior* demonstrates that the district court appropriately instructed the jury. The Petitioner’s position is clearly inconsistent with federal statutory regulations and this Court should find in favor of the Respondent.

a. The district court was correct to apply principles of agency to the APPS as the statute includes the term “corporation” in the definition of “person.”

This Court consistently looks to the ambiguity of the plain meaning of a statute in cases of statutory interpretation. *Barnhart* at 450 (citing *Robinson* at 340). In *Barnhart*, for example, this Court ruled that the Commissioner of Social Security could not “assign liability for retired miners’ private health care plan premiums to successors in interest of out-of-business signatory

operators.” *Id.* at 442. The Commissioner attempted to argue, despite the lack of ambiguity, that two differently worded provisions meant the same thing. The *Barnhart* Court concluded, however, that because the language was unambiguous, to follow the Commissioner’s reasoning would be erroneous. *Id.* at 454.

Moreover, this Court has stated, “a fundamental canon of statutory construction is that unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning.” *Perrin v. United States*, 444 U.S. 37, 42 (1979) (citing *Burns v. Alcala*, 420 U.S. 575, 580-81 (1975)). In *Perrin*, the Court analyzed the meaning of the term “bribery” in the Travel Act to determine whether Congress intended for the term to include commercial bribery. *Id.* at 38. The Court found that given the expansion of the types of behavior that constituted bribery, the common understanding of the term “bribery” now included commercial bribery. *Id.* at 45.

The APPS specifically states, “A person who knowingly violates the MARPOL Protocol, Annex IV to the Antarctic Protocol, this chapter, or the regulations issued thereunder commits a class D felony...” 33 U.S.C. § 1908(a). Though the term “person” could provide support to Petitioner’s claim were it left unexplained, the APPS defines “person” as “an individual, firm, public or private corporation, partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.” *Id.* at § 1901(a)(10). Because the statute specifically defines “person” to include a corporation, the district court appropriately instructed the jury to determine whether or not the corporation was in violation of the APPS.

- b. The district court’s definition of “knowingly” as meaning “intentionally or voluntarily” is consistent with the analysis of “knowledge” in several federal statutes.**

A number of courts, including the Supreme Court, have used Black's Law Dictionary as the relevant legal authority in defining words in the legal context. *See Burgess v. U.S.*, 128 S. Ct. 1572, 1577 (2008) (where the Court needed a common definition of the term "felony" to define the phrase "felony drug offense" as used in the Controlled Substances Act, the Court consulted Black's Law Dictionary.) Black's Law Dictionary defines "knowing" as either "having or showing awareness or understanding; well-informed" or "deliberate; conscious."¹ Black's Law Dictionary (8th ed. 2004).

The Medicare anti-kickback statute, 42 U.S.C. § 1320a-7b(b)(1) and 1320a-7b(b)(2), requires a *mens rea* of knowledge and willfulness. The Second Circuit Court of Appeals analyzed a jury instruction which claimed a person acts "knowingly" when, "he acts intentionally and voluntarily, and not because of ignorance, mistake, accident, or carelessness. Whether the defendant acted knowingly may be proven by the defendant's conduct and by all of the facts and circumstances surrounding the case." *U.S. v. Mittal*, 36 Fed. Appx. 20, 21 (2d. 2002). *See also U.S. v. Wilson*, 133 F. 3d 251, 260 (4th Cir. 1997) (where the lower court applied the Clean Water Act's *mens rea* of "knowingly violates" to mean "intentionally" and "voluntarily" the Fourth Circuit only reversed the decision because the *mens rea* was not applied to all of the elements.) In *Mittal*, the district court used the aforementioned instructions to charge a doctor with receiving illegal Medicare kickbacks. *Id.* Dr. Mittal's request for jury instructions, which would have established his guilt only if he had intended to violate the specific statute, were denied. *Id.* at 20. The Court recognized that courts were split on whether or not knowledge and a specific intent to violate the actual statute needed to be shown, but they refused to address the issue based on the proof that Dr. Mittal had actual knowledge of the statute. *Id.* at 21.

¹Black's Law Dictionary defines "deliberate" as "intentional; premeditated; fully considered" or "unimpulsive; slow in deciding."

In *Ionia*, the District Court stated that in order to convict Ionia of violating the APPS, the Government was required to prove,

That Ionia, through its agents, was in charge of operating the oil pollution prevention and discharge equipment for the M/T Kriton, including the Oily Water Separator and Oil Content Monitor; [and] that for the M/T Kriton, Ionia, through its agents, knowingly, meaning intentionally or voluntarily, failed to fully and accurately maintain an Oil Record Book in which the required disposal and discharge operations were recorded.

Id. at 324-25. Based on the application of both the Medicare anti-kickback statute and the Clean Water Act as well as definition provided in Black’s Law Dictionary, the *Ionia* Court was correct in its definition of the *mens rea* concept of knowledge. Because the district court both applied and defined the *mens rea* term “knowingly” appropriately, the Court should affirm the ruling of the Second Circuit.

- c. **Because the APPS recognizes a corporation as a person and other federal statutory regulations recognize the district court’s definition of “knowingly,” the district court was correct to apply corporate criminal liability in the jury instructions.**

Under the principles of corporate criminal liability, a corporation can be found guilty when its agent knowingly or willfully commits a crime. *A & P Trucking*, at 125. In *A & P Trucking*, the Court applied the Motor Carrier Act to partnerships. The language of the Motor Carrier Act read, “any person knowingly and willfully violating any provision of this chapter, or any rule, regulation, requirement, or order thereunder, or any term or condition of any certificate, permit or license, for which a penalty is not otherwise herein provided, shall upon conviction thereof, be fined.” *A & P Trucking*, at 122-23 (quoting 49 U.S.C. § 322(a)). The Court continued, “The term “person” means any individual, firm, co-partnership, corporation, company, association, or joint-stock association.” *Id.* (quoting 49 U.S.C. § 303(a)). Under the theory of

respondeat superior, the Court ruled that a partnership could be found guilty based on the acts of its agents should the agents knowingly violate the statute at issue. *Id.* at 126.

Though the Motor Carrier Act differs from the APPS, the two statutes should be read similarly. In *Whitefield v. United States*, 543 U.S. 209, 212 (2005), this Court determined that although the Money Laundering Control Act, 18 U.S.C. § 871, and a drug conspiracy statute, 21 U.S.C. § 846, addressed different topics, the similarity in language permitted the Court to apply the reasoning of the drug conspiracy statute to the Money Laundering Control Act. *Id.* at 212. Because of the analysis of the drug conspiracy statute, this Court ruled that the Money Laundering Control Act also did not require an overt act. *Id.*

Given the ruling in *Whitefield*, APPS should be read in the same way as the Motor Carrier Act. The APPS similarly requires that a person “knowingly violate” the statute. 33 U.S.C. § 1908(a). In addition, the APPS also includes corporation in the definition of “person.” 33 U.S.C. § 1901(10). Therefore, based on the similarity in language between the Motor Carrier Act and the APPS as well as the application of *respondeat superior* to corporations in criminal matters, the district court appropriately instructed the jury on matters of corporate criminal liability.

III. This Court should affirm its holding in *New York Central & Hudson River Railroad v. United States* and uphold the propriety of the *Ionia* jury instruction because corporate criminal liability is consistent with general principles of criminal law.

A corporation’s mind and will are manifested by the mind and will of its employees. Corporate criminal liability exists as a way to harness corporate power and keep it within the constraints of the law. This Court’s holding in *New York Central* was proper in its imputation of liability from employee to corporation, and the principle of corporate criminal liability finds support in general principles of criminal law.

This Court must affirm Petitioner’s conviction because (1) the *Ionia* jury instruction on corporate criminal liability satisfies the *mens rea* requirement for commission of the offense; (2) the jury instruction on “scope of employment” is a reasonable standard to both meet the *actus reus* requirement and to confine the range of acts legally attributable to a corporation; and (3) the utilitarian theory of punishment supports the aims of corporate criminal liability.

a. The *Ionia* jury instruction on corporate criminal liability satisfies the *mens rea* requirement for the commission of the offense.

The imputation of a culpable mental state, *mens rea*, from employee to corporation is a proper method of satisfying the requisite *mens rea* in a prosecution of the corporation. First, corporate criminal liability shares features of two other traditional forms of liability: accomplice liability and conspiracy liability. The idea that a person, through action or agreement, can be held liable for the actions of those he or she associates with is a well-accepted proposition. Secondly, common sense and necessity support this imputation. Since a corporation can only act through its employees and because a corporation’s sense of “will” is comprised of the will of its employees, imputing the employees’ mental state to the larger corporation both makes sense and is necessary to control corporate actions.

Mens rea as a prerequisite to criminal responsibility is foundational in the principles of Anglo-American criminal jurisprudence. *Dennis v. United States*, 341 U.S. 494, 500 (1951). In corporate criminal liability, as it has developed since *New York Central*, *mens rea* still plays an important role as “the intent of the agent is attributed to the corporation as a means to prove the entity’s own *mens rea*.” Peter J. Henning, *Individual Liability for Conduct by Criminal Organizations in the United States*, 44 Wayne L. Rev. 1305, 1311-12 (1998) [hereinafter Henning, *Individual Liability*].

The *Ionia* Court’s jury instruction, through its imputation of the mental state “knowingly” from agents to the corporation, correctly explained the doctrine of corporate criminal liability. The instruction on *mens rea* provided that the Government must prove “that . . . *Ionia, through its agents, knowingly* . . . failed to fully and accurately maintain and Oil Record Book . . .” *Ionia*, 526 F.Supp. at 325 (emphasis added).

Corporate criminal liability, based on the doctrine of *respondeat superior* (“let the master answer”) views corporations as principals, and “all employees—whether managers or subordinates—are considered agents of the corporation.” William S. Laufer, *Culpability and the Sentencing of Corporations*, 71 Neb. L. Rev. 1049, 1055(1992). Corporate criminal liability allows courts to attribute an agent’s knowledge, recklessness, and negligence to a corporation as “the best possible proxy of a corporation’s state of mind.” William S. Laufer, *Corporate Bodies and Guilty Minds*, 43 Emory L.J. 647, 654 (1994) [hereinafter Laufer, *Corporate Bodies*].

“[T]his proxy is supported by the principal’s delegation of power to the agent” and turns on the notion that “the person who is responsible in law . . . has chosen to delegate his duties, powers and authority to somebody else.” Laufer, *Corporate Bodies*, at 654-55. Some scholars have vocally opposed the idea of corporate criminal liability. But one opponent of the theory, Professor Gerhard Mueller, has acknowledged that *mens rea* may properly be imputed to a corporation if it is coming from agents within “the scope of trust and power.” Gerhard O.W. Mueller, *Mens Rea and the Corporation*, 19 U. Pitt L. Rev. 21, 40-41 (1957) [hereinafter Mueller, *Mens Rea*] (but concluding that corporate criminal liability goes too far when it “extends criminal liability of the corporation to independent acts of inferior employees, i.e., not those who are members of the inner circle” of upper management).

But the “scope of trust and power” casts a wide net because a corporation trusts and confers authority to a wide range of employees, far beyond the limits of upper management. Agents as well executives take the actions that constitute corporate action. As the *New York Central* Court recognized, “[s]ince a corporation acts by its officers and agents[,] their purposes, motives, and intent are just as much those of the corporation as are the things done.” 212 U.S. at 493 (quoting Joel Prentiss Bishop, *New Commentaries on the Criminal Law* § 417 (1892)). The Court continued with an apt example: “[i]f, for example, the invisible, intangible essence of air, which we term a corporation, can level mountains, fill up valleys, lay down iron tracks, and run railroad cars on them, it can intend to do it, and can act therein as well viciously as virtuously.” *Id.*

Then, from the actions of the agents, inferences can be made about the *mens rea* involved in the action. To infer *mens rea* from actions as such is an accepted practice in criminal law. Wayne R. LaFare, *Criminal Law* 241 (3d ed. 2000). And corporate criminal liability, in its practice of imputing *mens rea* from one person to another, shares the company of accomplice liability and conspiracy liability, which also engage in the practice.

i. Corporate criminal liability is consistent with principles of accomplice liability and conspiracy liability.

Vicarious criminal liability can be likened, by analogy, to the theories of accomplice liability and conspiracy liability. In both accomplice liability and conspiracy liability, the liability of one is imputed to another under certain constraints.

Accomplice liability imputes the primary actor’s liability to the accomplice. “The broad principle of accomplice liability holds a person liable for the acts of another if the person “(a) gave assistance or encouragement or failed to perform a legal duty to prevent [the crime] (b) with the intent thereby to promote or facilitate commission of the crime.” Henning, *Individual*

Liability, at 1307. The United States Code provides for expansive accomplice liability through 18 U.S.C. § 2(a). This provision states that one who “aids, abets, counsels, commands, induces, or procures” a crime to be committed is punishable as a principal.” *Id.* The result is that an accomplice may be held liable for acts which he did not personally commit.

Similarly, under conspiracy liability, a person may be held responsible for the actions of his “partners in crime” by being a party to a conspiracy agreement. Joshua Dressler, *Understanding Criminal Law* 487 (3d ed. 2001). According to the *Pinkerton* doctrine, a party to a conspiracy is responsible for any criminal act committed by an associate if it “(1) falls within the scope of the conspiracy; or (2) is a foreseeable consequence of the unlawful agreement.” *Id.* at 488 (citing *Pinkerton v. United States*, 328 U.S. 640, 647-48 (1946)). *See also* 18 U.S.C. § 371 (“If two or more people conspire to commit any offense against the United States . . . and one or more of such persons do any act to effect the object of the conspiracy” each shall be liable).

Conspiracy liability is distinguishable from corporate criminal liability, but they share somewhat of an underlying rationale: group accountability and punishment for group criminality. “The result of viewing conspiracy liability as a means to combat collective criminality is the adoption of broad liability rules to ensure that individuals are held accountable for the acts of other participants in the conspiracy.” Henning, *Individual Liability*, at 1316-17 n.39. *See also Callanan v. United States*, 364 U.S. 587, 593-94 (1961) (“Group association for criminal purposes often, if not normally, makes possible the attainment of ends more complex than those which one criminal could accomplish.”)

Corporate criminal liability is not novel in its imputation of *mens rea* from one person to another. Both accomplice liability and conspiracy liability hold actors liable in some circumstances for the acts of another. So does corporate criminal liability. But in addition to

mirroring general principles and rationale from accomplice and conspiracy liability, corporate criminal liability is also reinforced by necessity and common sense.

ii. Necessity and common sense support corporate criminal liability.

Corporate criminal liability respects the requirement of a *mens rea*, shares elements from other forms of criminal liability, and lastly, is an effective method based on both necessity and common sense. It has been said that for the law to be a useful tool, it “must accommodate pure theoretical logic to the demands of common sense.” *Standard Oil Co. v. United States*, 307 F.2d 120, 127 (5th Cir. 1962). “Common sense dictates that in both tort and criminal law the corporation is created by law with the power to violate the law.” Laufer, *Corporate Bodies*, at 653-54. And as a matter of necessity, corporate criminal liability is needed to ensure that federal and state legislation extends to corporations.

Corporate criminal liability is logical and necessary because: (1) the corporate business entity “is so common that such liability is necessary to effectuate regulatory policy”; (2) even when an individual agent could be convicted, it may be “unjust to single out one person for substantial punishment when the offense resulted from habits common to the organization as a whole”; (3) the fines should be “borne by those who received the fruits of the illegal enterprise so as to prevent unjust enrichment”; (4) prosecuting the corporation “serves to link that offense with the corporation in the public mind”; and (5) vicarious liability upon a corporation is “less severe . . . than if imposed upon a human principal” with the corporation’s loss “limited to the equity held in the corporation.” LaFave, *Criminal Law*, at 274-75.

Ionia’s liability is supported by these arguments. First of all, the regulatory policy at issue here is the APPS’s objective to protect the environment from pollution from ships. It makes much more sense on a macro-policy level to punish the corporations who are polluting—rather

than the individuals actors within the corporation. Additionally, this is a case where to single out one employee for falsifying the Oil Record Book when there was evidence that the falsification and underlying conduct (illegal dumping) was widespread would be greatly unfair. And there is evidence that it was financially profitable for Ionia to avoid using the proper dumping protocol so it follows that Ionia should bear the brunt of the fine. Furthermore, Ionia deserves the stigma of a conviction on its corporate record both to inform the public of its improper conduct and to deter it in the future from reengaging in the harmful practices. Lastly, the imputation of the liability to the Ionia diffuses its effect as compared to if it were imputed to a human principal.

But some scholars disagree and condemn corporate criminal liability for its imputation and blame-shifting. Jennifer Arlen, *The Potentially Perverse Effects of Corporate Criminal Liability*, 23 J. Legal Stud. 833, 835 (1994) (“Corporate criminal liability . . . is warranted when corporations are better able to sanction agents than is the state . . . [but] “not justifiable . . . when the state is as capable as the corporations of sanctioning the wrongful agent directly—as often is the case.”) Liability for the corporation can be justified, though, even when individual punishment is possible. Both common sense and necessity call for corporate criminal liability. Modern federal statutes need the doctrine just as Elkins Act did: to “mak[e] the law more effectual” and “to bring corporations within the provision of the law . . .” *New York Central & Hudson River R.R. Co. v. United States*, 212 U.S. 500, 504 (1909).

b. “Scope of employment” is a reasonable standard to satisfy the *actus reus* requirement and to constrain the acts legally attributable to the corporation.

Limiting the liability of imputable agent actions to those made within the “scope of employment” is a reasonable way to meet the *actus reus* requirement of criminal law principles as well as to restrict the sphere of actions that can be imputed to the corporation. It is also important in this area to restrict the availability of a “good faith” or “due diligence” defense to

prevent corporations from shielding themselves with shell compliance programs. Because the *Ionia* jury instruction properly explained the “scope of employment” restriction and limited a “good faith” defense to simply a factor to consider, the instructions should be affirmed.

The unlawful actions of *Ionia*’s agents were clearly within the “scope” of their employment. The engineers instructed their subordinates on how to dispose of the ship’s oily waste, and the engineers recorded entries in the ship’s Oil Record Book. The engine room crew disposed of the wastes as instructed. *Ionia*, 526 F.Supp.2d at 326. Simply because the engineers gave unlawful instructions and falsified records and because the crew illegally dumped the wastes, does not take their actions outside the “scope of employment.” See James R. Elkins, *Corporations and the Criminal Law: An Uneasy Alliance*, 65 Ky. L.J. 73, 117 (1976) (noting that “corporate wrongdoing generally involves regulatory offenses in which there is no real question of the employees’ conduct being within the scope of employment” but that the limitation would “apparently limit the corporation’s responsibility” for common law crimes).

The Petitioner contends that an affirmative defense should exist where a corporation has official policies prohibiting certain conduct on its books. See Ellen S. Podgor, *A New Corporate World Mandates a “Good Faith” Affirmative Defense*, 44 Am. Crim. L. Rev 1537, 1543 (2007) (concluding that providing a “good faith” affirmative defense will offer an additional incentive for corporations to promote compliance programs). But the danger here is that corporate policies can exist on paper as a subterfuge while corporate practices consistently violate the standards.

It is important that the law continues to reject a “good faith” or “due diligence affirmative defense because in many situations a corporation “stands to profit from criminal behavior on the part of subordinates” where “there are strong temptations for sub rosa encouragement of such

criminal behavior by management” and where “despite that encouragement, the corporation could make an apparently convincing case of due diligence.” Mueller, *Mens Rea* at 44.

In sum, the doctrine of corporate criminal liability satisfies both the *mens rea* and *actus reus* components of criminal law principles, is supported by critical policy objectives, and is also reinforced by a utilitarian theory of punishment.

c. A utilitarian theory of punishment supports corporate criminal liability because a corporation is best suited to deter illegal conduct by its agents.

Corporate criminal liability is supported by the utilitarian understanding that the threat or imposition of punishment can reduce crime. Dressler, *Understanding Criminal Law* 14.

Deterrence principles suggest that because a corporation could face large fines and the stigma of a criminal conviction due to the unlawful conduct of its agents, the corporation will be more cognizant and watchful of its employees and their actions.

Deterrence of the corporation itself is also important. Because corporate criminal liability limits the imputable actions to those within an agent’s “scope of employment” for “the benefit of the corporation,” the actions are often inextricably tied up with underlying corporate procedures and policies. To prosecute only the agent would be, in effect, to deter only the individual actor and to allow the corporation to escape liability for its part in the illegality.

In addition to simply deterring future unlawful conduct, critical subgoals of corporate deterrence include “[p]olicy revision, internal disciplinary control, and procedural action,” important measures to prevent corporate crime. Brent Fisse, *Reconstructing Corporate Criminal Law: Deterrence, Retribution, Fault, and Sanctions*, 56 S. Cal. L. Rev. 1141, 1159 (1982). Through these measures, the goal is that corporations will exercise care in delegating managerial authority, practice due diligence, and implement informal social control mechanisms.

Because corporate criminal liability serves deterrence principles, meets the traditional requirements of *mens rea* and *actus reus*, and reinforces vital public policy objectives, this Court's *New York Central* decision and the *Ionia* jury instructions should be affirmed.

CONCLUSION

The district court's jury instruction should be upheld and *Ionia*'s conviction affirmed because the APPS defines "person" to specifically allow corporations to be held liable for violating the statute and this Court's precedent, as well as federal statutory regulations, expressly include corporations as an entity capable of breaking the law at issue. Additionally, the doctrine of corporate criminal liability, especially as applied to the *Ionia* facts, satisfies the general principles of criminal law that an offense contain a *mens rea* and *actus reus*. Lastly, because corporate criminal liability provides enforcement of important policy goals and is supported by the utilitarian principle of deterrence, the District Court for the District Court of Connecticut appropriately instructed the jury in this regard. Therefore, *Ionia*'s conviction should be affirmed.

Respectfully submitted,

Team Number 25