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No. 08-1234

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IN THE  
Supreme Court of the United States

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Ionia Management S.A., Petitioner

v.

United States of America, Respondent

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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BRIEF FOR RESPONDENT

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Team 26

*Attorney for Respondent*

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## **Questions Presented**

- I. Is the district court's instruction on corporate criminal liability, authorizing a corporation to be held liable for the actions of its agents and employees, who are acting within the scope of their employment and for the benefit of the employer, authorized by 100 years of precedent and statutory law?
  
- II. Is the same district court's instruction on corporate criminal liability authorized by general principles of criminal law, whose principles are to give deterrence and retribution to a corporation that would otherwise be found not guilty, thus not deterring the actions of the agents and employees?

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### **Statement of Jurisdiction**

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1) (1988). The judgment of the 2<sup>nd</sup> Circuit Court of Appeals was entered on September 1, 2008. The petition for a writ of certiorari was filed on October 15, 2008. This writ of certiorari was granted on December 12, 2008.

### **Statement of the Case**

Defendant Ionia Management S.A. (“Ionia”) was convicted in a jury trial on September 6, 2007 on 18 counts: thirteen counts of violating the Act to Prevent Pollution from Ships (“APPS”) and associated regulations, 33 U.S.C. § 1908(a) (2008); three counts of falsifying records in violation of 18 U.S.C. § 1519 (2002); one count of obstructing justice in violation 18 U.S.C. § 1505 (2004); and one count of conspiring to commit these offenses in violation of 18 U.S.C. § 371 (1994).

Specifically, Ionia was accused of improperly disposing of hazardous waste while sailing in international waters, and subsequently omitting or falsifying its actions regarding these activities in the statutorily required “Oil Record Book”. Guiding the decision of the District Court are the principles set forth in *New York Cent & Hudson R.R. Co. v. United States*, 212 U.S. 481 (1909). A petition for a writ of certiorari was filed by petitioners, Ionia Management, on October 15, 2008, and this Court granted the writ of certiorari on December 12, 2008. The matter is now before this honorable Court.

### **Statement of Facts**

Ionia Management S.A. is a company that is incorporated in Liberia and headquartered in Piraeus, Greece. (Indictment ¶ 1.) Ionia is a ship management company, who operates a fleet of

commercial tanker vessels. (Indictment ¶ 1.) Included in those vessels is the M/T Kriton, an oil tanker vessel responsible for transporting oil and petroleum to the United States. (Indictment ¶ 3.)

During a normal sail of a tanker vessel, build ups of bilge occur. (Indictment ¶ 6.) This occurs when the fuel oil used to power the ship creates the by product of bilge, a normal condition on oil tanker vessels. According to international law known as the MARPOL Protocol, the bilge can either be cleaned on the ship with an Oily Water Separator and Oil Content Monitor, or the bilge can be offloaded in a port of call in the United States to a licensed remover.

(Indictment ¶ 6,7.) During the sail to the ports of the United States, the M/T Kriton, with agents and employees of Ionia, tried to eliminate large quantities of bilge from the ship in an unlawful manner. (Indictment ¶ 11.) The agents and employees of Ionia onboard the M/T Kriton routinely discharged oil, oil sludge, oil residues, oily mixtures, bilge slops and bilge water directly into the ocean with a flexible hose. (Indictment ¶ 12.) MARPOL strictly forbids this dumping.

(Indictment ¶ 7.) In addition to the illegal dumping, the agents and employees on board the M/T Kriton also tried to cover up these acts. They filtered sea water through the flexible house, trying to hide the fact they were dumping the bilge into the ocean. (Indictment ¶ 13.)

Also consistent with MARPOL is a requirement that the agents and employees of oil tanker vessels need to record the disposal of this waste in a record book. 33 U.S.C. § 1908(a). This record book was also supposed to include any emergency, accidental or other discharges of waste. (Indictment ¶ 9.) The agents and employees onboard the M/T Kriton knowingly falsified the record books, trying to hide the illegal dumping of bilge into the ocean. (Indictment ¶ 16,17.)

The agents and employees on board the M/T Kriton knowingly tried to subvert the law. They acted within the scope of their employment and for the benefit of their employer, Ionia Management S.A. (Indictment ¶ 11.) The United States contends that pursuant to MARPOL and

*New York v Hudson Railroad*, Ionia Management S.A. should be responsible for the actions of their agents and employees.

### **Summary of the Argument**

The Government contends that the relevant elements of the jury charge were authorized by and comport with precedent established by this Court. The Government further contends that the charge was consistent with its federal statutory law with in identifying the appropriate mens rea level required to convict Ionia on the merits. Finally, the Government asserts that the jury instruction was consistent in applying the principles of corporate criminal liability. Because these principles serve the important purpose of extending to corporate entities uniquely deterrent and retributive effects associated exclusively with criminal violations, there is no need for this Court to revisit its holding in *New York Central*.

The jury charge was authorized by Supreme Court precedent because it instructed the jurors that they could find Ionia criminally liable if they were satisfied that the elements of the two pronged test, expounded by this Court in *New York Central*, were met. The primary effect of *New York Central*'s holding was to serve notice to the corporate community that corporate entities could be held vicariously liable for the actions of their agents. This Court also implied in *New York Central* that for a corporate entity to be held liable for the actions of its employees, a two-pronged inquiry must be satisfied: namely, that a corporation could be found liable of a criminal offense if a prosecutor could prove that an employee or employees of the corporation committed a crime (1) within the scope of his or her employment and (2) for the benefit of the corporation. Furthermore, at no point in *New York Central* did this Court attempt to limit the title or duties of the "employee(s)" through which a federal court could find a corporation liable. As such, the Government submits that the jury charge explicitly included both of these prongs in

its instruction. Furthermore, there was no need to include an instruction attempting to qualify through job title, duties, experience, etc. the classification of “employee” that could ultimately allow for a vicarious criminal charge against the corporation. Because there is no Supreme Court holding extending this provision to criminal liability, the Government contends that it was more than appropriate for the District Court to omit any mention of it from the jury charge.

The jury charge was further authorized by the use of the appropriate mens rea requirement in the instruction. Ionia was convicted in part under the Act to Prevent Pollution from Ships statute which states in its criminal liability provision that “Any person who *knowingly* violates (shall be punished).” 33 U.S.C. § 1908. Because the District Court included this mens rea element in its jury charge, accompanied by an appropriate definition, the Government contends that the charge was authorized by the APPS statute. Furthermore, the Government asserts that the charge was authorized by the statute because the statute defined the meaning of “person” within the provisions of the statute to also mean “corporation.” Finally, it has been established in federal courts that corporations can be fixed with imputed knowledge of the crimes of their agents, and thus the Government contends that the mens rea element of the statute cannot compromise the imposition of liability on Ionia.

The District Court’s analysis of corporate criminal law was consistent with the principles of criminal and was further justified by serving the important purposes of retribution of offending corporations and as a deterrent factor for those who could potentially violate statutes in the future. It is a well-settled in criminal jurisprudence that to convict a person or entity of a criminal offense it is necessary to prove an actus reas and a mens rea. The Government contends that both elements were properly presented in the jury charge and, as such, the jury was able to adequately set forth the elements that characterized each element and rule accordingly.

Finally, the Government feels it has presented a compelling argument for maintaining the current criminal liability system for corporations in the face of mounting support for a reversion to civil liability schemes. Criminal liability serves to punish offending corporations and deter potential offenders much more effectively than its civil counterpart. This is due to the stigmatizing and humiliating effect that attaches with a much greater force to offenders than civil liability. The Government asserts that no person or association, especially those such as corporations that are capable of great fame and generating generous profits, wants the black eye associated with a criminal charge. Therefore that person or association would exercise a greater level of diligence to ensure that such offenses would not take place, and that this diligence would not be present where the civil liability is an option. Thus, the Government asserts that there is no reason for this Court to review its holding in *New York Central*, as it ensures that these deterrent and retributive factors will continue to influence corporations and deter their potential misconduct for generations to come.

Taken together, the Government feels that these arguments should compel this Court to find that the jury charge was appropriate and that corporate criminal liability should continue to remain a mainstay and bulwark in this Court's jurisprudence.

### **Argument**

#### **I. The District Court's charge that a corporation can be held criminally liable for the actions of its agents was directly authorized by Supreme Court precedent and authorized by federal statutory law as it is affected by the general principles of criminal liability.**

The District Court's ruling on the jury charge featured analysis that adhered extensively to the principles set forth by this Court. Thus, its breakdown of the law and its application in the present case was proper. The District Court relied upon the oft-quoted and influential provisions first set forth in this Court's seminal case regarding corporate criminal liability, *New York*

*Central & Hudson River Railroad Co. v. United States*, in its analysis of the jury charge. Though a century has passed since this Court handed down its ruling in this case, the decrees set forth in the Supreme Court’s analysis of its issues continue in the present to be the most prominent source of law regarding corporate criminal liability in this Court’s jurisprudence. As such, the District Court’s analysis of the jury charge was not only authorized by Supreme Court precedent, but was required. Thus, it is the United States’ position that there can be little doubt as to the line of authority utilized by the District Court in its overview of corporate criminal liability and its subsequent analysis of the jury charge.

Furthermore, the jury charge was consistent with the criminal liability provisions outlined in the Act to Prevent Pollution from Ships (“APPS”) statute and various other statutes under which the jury convicted Ionia. 33 U.S.C. § 1908(a). Consistent with the statute, the jury charge informed the jurors that to find Ionia liable they would have determine that Ionia “knowingly authorized”. Because this is the mens rea requirement listed in the APPS and its related statutes, the Government asserts that the District Court was authorized to include these provisions in the jury charge.

**A. The District Court’s analysis of corporate criminal liability was authorized by *New York Central & Hudson River Railroad Co. v. United States* and its progeny.**

The District Court’s analysis of the jury charge focused on provisions promulgated by this Court in *New York Central* and as such were authorized by Supreme Court precedent. Although the District Court cited several 2<sup>nd</sup> Circuit cases to illustrate its position, the rules lifted from these cases were borrowed from this Court’s decision in *New York Central*. In turn, these rules have enjoyed widespread acceptance and adherence in this Court’s jurisprudence over the last century since this Court’s decision in *New York Central*.

One century ago, this Court found that corporate entities could be held criminally liable for the misconduct of its employees when they violated the applicable sections of certain Federal statutes. *New York Central*, 212 U.S. at 495 – 496. In this seminal case, a manager of the defendant railroad company was convicted of providing favorable shipping rates to sugar companies through the use of rebates. *Id.* at 490. The conviction was the result of a violation of a congressional act which, along with prohibiting the improprieties that resulted in the conviction of the corporate agent, specified that such violations “shall also be held to be a misdemeanor committed by such corporation, and, upon conviction thereof, it shall be subject to like penalties as are prescribed in said acts.” *Id.* at 491. (emphasis added). The statute went on to state that acts or omissions of any person acting for or employed by the corporation, when performed within the scope of his or her employment, would also be deemed the act of the corporate carrier itself. *Id.* at 491-492. The defendant corporation claimed that these provisions violated the Due Process Clause of the 14<sup>th</sup> Amendment, due to Congress’ perceived inability to punish a corporation for criminal offenses that the corporation itself did not authorize. *Id.* at 492. Instead, the Court held that it was entirely permissible to extend criminal liability to a corporation because the “knowledge and purposes (of its agents) may well be attributed to the corporation for which the agents act.” *Id.* at 495.

In coming to this decision, the Court borrowed principles from the tort law provision of respondeat superior, but acknowledged that it was willing to take a step further and utilize these principles to impose criminal liability on corporations “in the interest of public policy.” *Id.* at 494. The Court noted that “in actions for tort, the corporation responsible for damages for the acts of its agent within the scope of his employment. *Id.* at 493; citing *Lake Shore & M. S. R. Co. v. Prentice*, 147 U.S. 101, 109 (1893). *New York Central* further held that a corporation could

still be responsible for damages “although done wantonly or recklessly or against the express orders of the principal.” *New York Central*, 212 U.S. at 493. The Court further noted that such liability could be found regardless of whether the corporation actually participated in the tortious act itself, and that “because the act is done for the benefit of the principal, while the agent is acting within the scope of his employment in the business of the principal. . . justice requires that the (principal) be held responsible...” *Id.* at 493; *Lothrop v. Adams*, 133 Mass. 471, 475 (1882). Finally, the Court addressed the notion of authorization, stating that “. . . a corporation is held responsible for acts which the agent has assumed to perform for the corporation when employing the corporate powers actually authorized.” *New York Central*, 212 U.S. at 494. The Court found that these provisions, while commonly associated with tortious liability, extended to holding a corporation criminally liable where the crime consisted of purposely doing things prohibited under a statute. *Id.* at 494-495. Through this extension, the Court effectively promulgated a new standard by which to find corporate entities liable for the actions of their employees.

Under this standard, the Court found that if an agent, regardless of his rank or title in the corporation, formed the necessary state of mind, then the mens rea of this individual could be imputed to the corporate entity itself. *Id.*; see also<sup>1</sup>. The Court then effectuated a two prong test to determine whether the corporate entity which employed the offending workers should be held criminally liable for their violations of certain statutory provisions: If an employee, with the necessary level of intent, committed a crime (1) within the scope of his or her employment and (2) for the benefit of the corporation, it would be possible to find the corporate entity itself criminally liable. *New York Central*, 212 U.S. at 495; see also<sup>2</sup>. Furthermore, the Court

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<sup>1</sup> V.S. Khanna, *Corporate Criminal Liability: What Purpose Does It Serve?*, Harv. L. Rev. 1477, 1489 (1996) (outlining the scope of corporate criminal liability in the United States).

explicitly severed ties with the antiquated rules advising that corporations themselves could not be held liable for crimes of intent. *New York Central*, 212 U.S. at 496.

The Court has consistently applied this standard for analyzing corporate criminal liability from the time of its inception in *New York Central* to the present day. Though the Court rarely directly quoted the language contained within the test, subsequent cases heard by this Court illustrate the notion that the intent requirement and the two-prong test figured prominently and ultimately guided this Court in its decisions to impute criminal liability upon the corporate entity. *United States v. A & P Trucking Co.*, 358 U.S. 121, 126 (1958) (in imposing criminal liability on a corporation: “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*”) (emphasis added). Furthermore, and as illustrated by the District Court’s analysis in this case, lower federal courts and state courts have also been consistent in applying this standard. *United States v. George F. Fish, Inc.*, 154 F.2d 798, 801 (2d Cir. 1946); *United States v. American Radiator & Standard Sanitary Corp.*, 433 F.2d 174, 204-05 (3d Cir. 1970) *cert. denied*, 401 U.S. 948 (1971); *Apex Oil Co. v. United States*, 530 F.2d 1291, 1295 (8<sup>th</sup> Cir. 1976).

Moreover, at no point in the *New York Central* did this Court articulate a separate test that would have the effect of exempting the corporate entity from criminal liability if it were found that the offending actions were carried out by non-managerial employees. *See*<sup>3</sup>. Nor has this Court ever limited the extent to which corporate entities can be prosecuted when the corporation can prove it had policies prohibiting its employees from engaging in the conduct which eventually led to the corporation being held criminally liable. *Id.* If anything, this Court in *New York Central* implied that such an argument would prove fruitless. In this case, the Court,

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<sup>2</sup> Erik Paulson, *Imposing Limits on Prosecutorial Discretion in Corporate Prosecution Agreements*, 82 N.Y.U L. Rev. 1434, 1447 (2007).

<sup>3</sup> Khanna, *supra* note 1 at 1483-87

in referring to how the Court's decision was based upon principles derived from tort law, stated that "a corporation may be held responsible for the acts of its agent within the scope of employment. . . And this is the rule when the act is done by the agent in the course of employment, although done. . . against the express orders of the principal." *New York Central*, 212 U.S. at 493.

Turning to the jury charge in question, the United States contends that the key elements of the District Court's charge comport with the provisions set forth in *New York Central* and its progeny. As such, the jury charge was authorized by this Court's rulings on corporate criminal liability. The District Court's charge to the jury provided a general instruction on corporate criminal liability that read "As a legal entity, a corporation can only act vicariously through its agents; that is, through its directors, officers, and employees or other persons authorized to act for it" and that "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 authority to perform." *United States v. Ionia Mgmt.*, 526 F.Supp.2d 319, 324 (D. Conn. 2007), *aff'd*, 999 F.3d 999 (2d Cir. 2008). Not only is much of this language lifted directly from *New York Central*, but has been quoted extensively by this Court when hearing similar cases. *New York Central*, 212 U.S. at 495; see also *United States v. Dotterweich*, 320 U.S. 277, 281 (1948) in stating ("But the only way in which a corporation can act is through the individuals who act on its behalf. . .").

In regards to the actual substance of the passage, the Government asserts that the provision asserting that criminal liability extends to those acts of the agent done on behalf and for the benefit of the corporation directly correlates to the second prong of this Court's two prong test introduced through *New York Central*. The second prong states if an employee with the

requisite level of intent commits a crime for the benefit of the corporation, then the corporation can itself be held liable. *New York Central*, 212 U.S. at 495. In turn, the second part of this passage, which instructs that a corporation can be held liable for the acts of its agents directly relating to the performance of the duties the employee has authority to perform, correlates to the first prong of the test. *Id.* The first prong holds that if an employee with the requisite level of intent commits a crime in the scope of his employment, then the corporation can be held liable. *Id.* Because the language of the District Court’s general instruction regarding corporate criminal liability either (1) is borrowed directly from the *New York Central* itself or (2) correlates with the key provisions and tests announced in the case, Supreme Court Precedent authorized the instruction.

This general instruction laid the foundation for the rest of the jury charge, providing further confirmation that its provisions were authorized by Supreme Court precedent. The District Court instructed that the jury must find that “Ionia, through its agents, was in charge of operating (equipment). . . (before finding liability)” before each description of the misconduct of the employees that could ultimately result in Ionia’s liability. *Ionia Mgmt.*, 526 F.Supp.2d at 325-326. Such an instruction merely states that the jury could find Ionia criminally liable if it determined that it was in charge of operating the equipment in question. This instruction comports with the provisions promulgated by *New York Central* and several subsequent cases decided by this Court, namely that a corporate entity can be held liable through the actions of its employees and agents regardless of whether the corporate entity specifically authorized the action. *New York Central*, 212 U.S. at 495; *A & P Trucking Co.*, 358 U.S. at 126; *Dotterweich*, 320 U.S. at 281.

Though the jury charge was presented in a slightly different fashion than the corporate criminal liability test as it was laid out in *New York Central*, the Government asserts such a difference did not impact the charge to the point that it was not within the purview of this Court's views of corporate criminal liability. In clarifying its earlier general instruction, the court's jury charge instructed that to find Ionia guilty the jury had to find that the acts of Ionia's employees were performed "within the scope of their employment," and continued to define this "term." *Ionia Mgmt.*, 526 F.Supp.2d at 325. The court then instructed that agents can still be within the "scope of employment" if they (1) *acted for the benefit of the corporation* and (2) the agent was acting within his authority. *Id.* (emphasis added). This effectively broadened the scope of employment prong to include the second "benefit prong" of the test (as opposed to allowing the benefit to stand independent of the scope prong), however, the Government contends that either way the effect remains the same. Before the jury could convict Ionia of the criminal charges, it would still have to find that its employees acted within their scope of employment and for the benefit of the corporation.

Finally, the District Court was not required to include instructions regarding "managerial ceilings" and derivations from company policy through which the jury could limit Ionia's criminal liability under the statute. Though this Court did not thoroughly analyze this whether corporate policies prohibiting its agents from engaging in such offenses should alleviate punishment upon the corporation in *New York Central*, the government contends that either its perceived omission from this case or its potential inclusion in the analysis of tort liability make it abundantly clear that such instructions have no place in the world of corporate criminal liability. *New York Central*, 212 U.S. at 493. Thus, the government asserts that any of Petitioner's

contentions that its liability should be limited due to the implementation of company policies prohibiting the dumping are unfounded and should not be considered by this Court.

As such, and through its analysis of the aforementioned facts and case authority, the Government asserts that Supreme Court precedent authorized the jury charge and as such was presented in an appropriate fashion by the District Court.

**B. The District Court’s jury charge comports with the general principles of criminal law applied by this Court to the relevant statutes.**

In providing the jury charge, the District Court was required to outline the process by which the jury could ultimately find Ionia guilty under the APPS statute. Due to the criminal nature of the charge, the District Court provided a mens rea requirement which the jury would consider in deciding whether Ionia was guilty of the accusations. Because this mens rea category was provided in the statute and this Court has authorized its use in corporate criminal liability cases, the jury charge was authorized by federal statutory law.

The jury charge provided the statutory guidelines under which the jury could ultimately find Ionia guilty of criminal charges. Each of the statutes Ionia was accused of violating contained a mens rea requirement, and as such the District Court included the appropriate mens rea level which the jury would have to find existed with respect to Ionia’s actions. Despite the differences between the various statutes, each one required that a jury or court find that the person or entity who violated the statute did so “knowingly”: “A person who knowingly violates MARPOL protocol. . . thereunder commits a class D felony.” 33 U.S.C.A. § 1908(a) (“MARPOL”); “Whoever knowingly. . . falsifies. . . shall be fined under this title, imprisoned not more than 20 years, or both.” 18 U.S.C. § 1519; “Whoever, with intent to avoid. . . willfully. . . falsifies. . . shall be fined under this title, imprisoned. . .” 18 U.S.C. § 1505; “If two persons conspire either to commit any offense against the United States. . . or any agency thereof, each

shall be fined or imprisoned.” 18 U.S.C. § 371. Therefore, according to the statutes under which Ionia was ultimately convicted, the government had to prove to the jury that Ionia’s employees knowingly violated the statute and Ionia could be found criminally liable.

Accordingly, in regards to the APPS statute, the District Court inserted the mens rea requirement of “knowingly” into the jury charge. *Ionia Mgmt.*, 526 F.Supp.2d at 324. Specifically, the pertinent section of the jury charge instructed that in order for the jury to convict Ionia of violating the APPS statute, the government had to prove “. . . 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. . .” *Id.*

Aside from attaching the correct mens rea term and its definition, the terms within the jury charge must comply with federal standards. Generally, when a federal crime imposes liability on a “person,” as the APPS statute does, the government is required to prove that the corporate defendant comes within the statutory scheme at issue to impose vicarious criminal liability. Accordingly, in the case sub judice, the “definitions” section of the APPS statute provides a notification that, unless informed otherwise, at all times within the statute the word “person” should be defined as “an individual, firm, public or private corporation, partnership, association, State, municipality commission, political subdivision of a State, or any interstate body.” 33 U.S.C. § 1901 (a)(10) (2008).

In further regards to criminal liability, it is well settled that the government can vicariously convict a corporate entity of “knowingly” violating a statute when the corporation itself did not specifically authorize and therefore violate the statute on purpose. Ordinarily, criminal offenses are required to have a mens rea, with this theory is based on the “contention that an injury can amount only when inflicted by intention.” *Staples v. United States*, 511 U.S.

600, 605 (1994); quoting *Morissette v. United States*, 342 U.S. 246, 250 (1952). However, this Court has recognized that deeply rooted in the common law is the principle that ignorance of the law provides no defense to violation. See *Cheek v. United States*, 498 U.S. 192, 199 (1991). As such, some courts have rationalized that while some level of deliberateness is required to find the defendant guilty under a specific mens rea, the defendant need not always fully appreciate the illegality of his conduct, and thus defendants can be found guilty of “knowingly violating” a statute even when they did not know or understand that their authorization would violate the statute. *United States v. Wilson*, 133 F.3d 251, 261 (4<sup>th</sup> Cir. 1997); see also *United States v. Int’l Minerals & Chem. Corp.*, 402 U.S. 558, 562 (1971).

Thus, federal courts have found that even when the statute in question contains a specific intent requirement, it is still possible to find corporate entities criminally liable under the statute. See *Int’l Minerals*, 402 U.S. at 562; *United States v. Singh*, 518 F.2d 236, 251 (4<sup>th</sup> Cir. 2008); *United States v. Sun-Diamond Growers*, 138 F.3d 161, 173 (D.C. Cir. 1998). The 4<sup>th</sup> Circuit has found that the government does not have to prove that “that the corporation, presumably as represented by its upper level officers and managers, had intent separate from that of its lower level employees to violate the antitrust laws.” *United States v. Basic Constr. Co.*, 711 F.2d 570, 571 (4<sup>th</sup> Cir. 1983), *cert. denied*, 464 U.S. 956 (1983). In this case, the conviction of the defendant corporation was based on violations in which two lower level employees acted purportedly without the knowledge of their employer corporation. *Id.* at 573. Despite the fact that the statute under which the corporation was held liable contained a specific intent requirement, the 4<sup>th</sup> Circuit held that the corporation could still be held liable under that mens rea so long as the requirements of the two pronged test articulated in *New York Central* were met. *Id.* at 575. The 4<sup>th</sup> Circuit also cited several cases from other circuits coming to similar conclusions.

see *United States v. Koppers Co.*, 652 F.2d 290, 298 (2d Cir. 1980), *cert. denied*, 454 U.S. 1083 (1981); *United States v. Hilton Hotels Corp.*, 467 F.2d 1000, 1004-07 (9th Cir. 1972), *cert. denied*, 409 U.S. 1125 (1973); *American Radiator*, 433 F.2d at 204-05.

Applying the aforementioned law, the Government asserts that the jury charge was appropriate and authorized by federal statutory law. Like the vast majority of federal criminal statutes, the APPS statute required that the government prove beyond a reasonable doubt that the defendants acted with a specific mens rea. 33 U.S.C. § 1908(a). In the case of the APPS statute itself, the Government was required prove that Ionia, through its agents, knowingly violated the provisions of the statute. *Id.* Accordingly, upon being read to the jury, the court instructed that, in order to find Ionia guilty, the jury would have to find that Ionia “through its agents, knowingly. . . failed. . .” *Ionia Mgmt.*, 526 F.Supp.2d at 324 (emphasis added). The Government contends that by inserting the knowingly requirement, the District Court satisfied the elements of the APPS statute.

The Government further contends that the jury charge did not overstep its bounds with regards to terms and definitions. Generally, when a federal crime imposes liability on a “person,” as the APPS statute does, the Government must prove that the corporate defendant comes within the statutory scheme at issue to impose vicarious criminal liability. Here, the APPS statute provides a notification that, unless informed otherwise, at all times within the statute the word “person” should be defined as “an individual, firm, public or private corporation, partnership, association, State, municipality commission, political subdivision of a State, or any interstate body.” 33 U.S.C. § 1901 (a)(10). As such, the Government asserts that because there is no provision indicating otherwise in 33 U.S.C. § 1908, it is apparent that “person” as used in

this statute can refer to a corporation. Therefore, pursuant to statutory definitions, a corporation such as Ionia can be found guilty as a person within the meaning of the statute.

Regarding the issue of charging a corporation with a criminal violation that requires a mens rea requirement, the Government asserts that caselaw speaks for itself. Ionia can be found vicariously liable even though the APPS statute contains a specific intent requirement. As covered in the previous section, *New York Central* laid the foundation for allowing courts to find corporate entities liable for the actions of their agents. *New York Central*, 212 US at 495. Though the corporation in that case was convicted under a statute that more closely resembled a strict liability standard than a specific intent standard, the ruling effectively set the stage for vicarious liability for corporate entities under statutes requiring specific intent. *Id.* at 491. As the 4<sup>th</sup> Circuit illustrated in *United States v. Basic Constr. Co.*, the specific intent requirement, whether it is knowingly or willingly, does not impede federal courts from finding corporate entities vicariously liable for the actions knowingly undertaken by their agents. 711 F.2d at 571. As such, the Government asserts that the court interpreted the APPS statute correctly when it conveyed to the jury that Ionia could be found criminally liable through the acts of its employees despite the specific intent requirement. Essentially, as far as intent is concerned, the jury charge needed to provide nothing more than the appropriate mens rea requirement to allow the jury to find Ionia guilty under the statute. By requiring the jury to find that Ionia “knowingly” violated the statute, the jury charge did just that.

Because the jury charge comports with the mens rea standards required by federal criminal statutes, the Government contends that the jury charge was authorized by federal statutory law.

**II. The District Court’s instruction on corporate criminal liability is consistent with general principles of criminal liability and the court should not revisit its holding in *New York Central & Hudson River Railroad v. United States*.**

Corporate criminal liability is an integral part of society. It has been used to police the activities of the corporation and the employees and agents within. Corporate criminal liability was implemented in the early 1900’s in the landmark decision of *New York Central*. The Supreme Court held that corporations are to be held responsible for the actions of their agents, and thus liable to the government for criminal sanctions when “an act or omission that was specifically authorized by the corporation would be within the scope of the agent’s employment.” *New York Central*, 212 U.S. at 495. Further, the Court stated that “even if the act was not specifically authorized, it may still be in the scope of an agent’s employment if (1) the agent acted for the benefit of the corporation and (2) the agent was acting within his authority. *Id.* These principles have been appropriately interpreted since this precedent was put in place in the early 1900’s. It is important that corporation be held liable to the government criminally for crimes it and its agents commit and it is consistent with the general principles of criminal law.

**A. Corporations need to be held vicariously liable for the actions of their agents to serve as deterrence and retribution for criminal conduct committed by their agents.**

Two main purposes of criminal law are deterrence and retribution. *Harmelin v. Michigan*, 501 U.S. 957, 959 (1991). These long standing principles are driving forces which lead to implementation of criminal statutes against corporations and to why it is important to hold someone accountable for their actions. Statutes are put into place to deter action, and punishment is instilled as retribution for that action. There should be no distinction between individuals and corporations.

Corporations need to be held vicariously liable for the actions of their employees, even if those actions were specifically outlawed by the corporation. Deterrence should be the driving force of holding a corporation liable. There are certain legally imposed sanctions that corporate liability and corporate punishment can have, that cannot be achieved if the corporation was only held liable civilly. While some penalties do overlap, the driving force of criminal penalties include cash fines, probation, debarment, loss of license and other related penalties.<sup>4</sup> Imprisonment is not an option for corporations; however this should still not prevent the government from imposing criminal sanctions against the corporations.

Corporations need to have this deterrence factor. While cash fines can be and are applied to corporations, along with other penalties for criminal violations, it is important to distinguish these from civil penalties. Criminal penalties impose a stigma upon the corporation. While monetary values may be the same between the fines criminally and the fines civilly, the stigma associated with a company that has broken the law can be overwhelming. Reputation is an extremely important factor in corporations. As defined in the corporate sense, reputation deals with “reluctance of others, such as customers and workers, to deal with the corporation in the future.”<sup>5</sup> Depending on the type of business, the loss of customers and workers could be substantial with pending criminal charges hanging over the head of the corporation. That in turn should lead the corporation to better train its agents and employees not to break the law.

A loss in reputation can also lead to a sense of urgency and a deterrent coming from inside the company. Having criminal charges will in turn lead to a loss in the reputation, and in turn the value of the company.<sup>6</sup> As shareholders invest in the corporation, they invest their own

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<sup>4</sup> *Id.* at 1497.

<sup>5</sup> *Id.* at 1499.

<sup>6</sup> *Id.*

money and in turn receive shares of stock, which is used as the equity of the corporation. The shareholders are now the owners of the corporation. If the corporation is committing crimes and the corporation is criminally liable for the crimes it has committed, it would benefit the shareholders to report these crimes. It would behoove the corporation to try to get all of their employees to fall in line with the appropriate measures to make sure that these crimes do not continue. If the corporation is held liable and criminal charges were pending, the value of the company would go down. This would have a direct impact on the corporation and the shareholders, causing a loss in value to the corporation, and a loss in reputation among the community. The shareholders of the corporation itself will help to hold the company liable.

Ionia's shareholders should not want a loss of reputation to their corporation. In turn, they should encourage the employees to act responsibly and in accordance with the law.

Therefore, Ionia's shareholders will maintain the value in their stock.

**1. There are not enough deterrence and retribution principles in only holding the employee or agent of the corporation responsible for the actions they commit.**

Employees and agents act for the corporation, whether told directly to act this way, or by trying to benefit the corporation and acting within the scope of their authority. Many of the individuals who break the law, even while doing it for the corporation will be held liable. That being said, the corporation should also be held responsible for actions of its employees, even those who break the law. An individual acting on behalf of the corporation or an individual acting for the benefit of the corporation within his authority may not have enough money to properly pay back society for the wrongs he has caused on behalf of the corporation. Certain monetary fines on the individual will not serve as a deterrent for the corporation to stop committing the illegal acts and as a retribution for the wrongs which were committed. Finding

only the individual criminally responsible will not achieve the goals of deterrence and retribution on the corporation.

Using Ionia Management as an example, if merely the agent was held responsible for the acts he committed in violation of MARPOL, that person could have a large monetary fine implemented against him, he could lose his license as an employee of the Ionia, along with other penalties. This would not deter Ionia. Ionia could simply hire another employee to act on its behalf and commit these crimes. Not holding Ionia liable for these crimes is not a proper deterrent for the crimes which were committed. The individual employee or agent acting on behalf of Ionia may have limited assets. Holding Ionia liable for its employees' actions opens up the possibility of implementing a more substantial fine or other penalty. This should help to serve the main principles of criminal sanctions, deterrence and retribution.

**2. Deterrence and Retribution are driving forces in criminal law, and if they are supposed to be applied to an individual, they should be applied to a corporation.**

Corporations receive many benefits that individuals do. They are their own legal entity. They have limited liability, up to the value on the corporation. They have a separate tax system. As such, they are their own legal entity, with all of the rights and privileges that go along with it. There is no reason why a corporation should not be subject to the punishments that are imposed on individuals. Because the corporation can have all of the benefits of being a legal entity, the corporation should also be prepared to deal with the downfalls of breaking the law. The corporation should be responsible to those it has harmed, and this can only be done with the threat of pending criminal sanctions for breaking the law. Without the criminal sanctions, the corporation will receive all of the benefits of being its own entity, without any of the downside.

**B. Corporations fulfill the requirements for the elements of a crime, the actus reas and the mens rea, when the agent commits the illegal act.**

To be held liable for the act of the agent, the corporation must authorize the act, or have the agent acting for the benefit of the corporation and within his authority to do so. *New York Central*, 212 U.S. at 495. These procedures for holding the corporation liable still have the principles of corporate criminal law, the actus reas of the crime, actually committing the act, and the mens rea of the crime, the requisite state of mind.<sup>7</sup>

The actus reus of the crime is implemented onto the corporation when the employee or the agent of the corporation has committed that act. This is simply imputed to the corporation when the illegal act has taken place, provided that the agent was authorized to do the act, or was acting within the scope of his employment with the authority to do so. Once the agent has committed the illegal act, it has been held that the corporation has committed the act. *Id.*

The mens rea of the crime is also implemented to the corporation when the employee or agent had the appropriate state of mind to commit the illegal act. Further, even when the employee or agent does not know that a crime has been committed, the mens rea can be imputed onto the corporation “on the basis of collective knowledge of the employees as a group.”<sup>8</sup> This simply means that it is important for a corporation to educate and train employees and agents so that they have a better understanding of when a crime could have been committed, and can guard against it in the future.

It is important that for the corporation to be held liable, consistent with the long standing principles of criminal law, that the corporation be deemed to have the actus reus and the mens rea for the appropriate crime. For individual liability, both elements of the crime would be

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<sup>7</sup> *Id.* at 1489

<sup>8</sup> *Id.*

necessary. The same is true of the corporation. While the corporation itself does not actually commit the crime, as they are not a person, they are still deemed to have these elements or an actus reus and a mens rea when their employee or agent commits these acts.

The standard for determining the actus reus and the mens rea of the corporation should not be overturned. Long standing principles of precedent throughout the past 100 years have provided the appropriate standard for determining the appropriate actus reus and mens rea of the corporation. These principles should be observed to continue to hold the corporation liable for the crimes committed by the employees or agents of the corporation.

Even if the court was to review these long standing principles of actus reus and mens rea as an elements to the crime, further criminal law principles hold that strict liability can be imposed for certain crimes. Strict liability, only involving the act, could be a different, yet appropriate standard for determining the legal culpability of the corporation. It would also still follow the general principles of criminal law, and make the corporation strictly liable for the acts of the employee or agent who committed the crime. Then, the corporation would not need the requisite intent, and the mens rea element of the crime would become moot. Either with a mens rea component, or merely strict liability for the corporation, the long standing principles of criminal law would still be followed.

### **Conclusion**

For these reasons, the decision of the United States District Court for the District of Connecticut, holding that corporations can be held vicariously liable for the actions of their agents and employees, acting within the scope of their employment and for the benefit of the corporation, be affirmed.