
Docket No. 08-1234

IN THE
Supreme Court of the United States

OCTOBER TERM 2008

Ionia Management, S.A.,
Petitioner,

v.

United States,
Respondent.

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

BRIEF FOR RESPONDENT

#4
Attorneys for Respondent

QUESTIONS PRESENTED

- I. Is the district court's instruction to the jury regarding corporate criminal liability authorized by both United States Supreme Court precedent and federal statutory law?

- II. Is the district court's instruction on corporate criminal liability consistent with general principles of criminal law established through case precedent and should this Court revisit its holding in *New York Central & Hudson River Railroad v. United States* since the established vicarious criminal liability law is fairly applied to Ionia Management?

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit may be found at *Ionia Mgt. S.A. v. U.S.*, 999 F.3d 999 (2d Cir. 2008). The opinion of the United States District Court of Connecticut may be found at *U.S. v. Ionia Mgt., S.A.*, 526 F.Supp.2d 319 (D. Conn. 2007).

STANDARD OF REVIEW

This court should apply a harmless error standard of review to the issue of the propriety of the jury instruction in this case. When applying this standard of review, this Court shall disregard any error, defect, irregularity or variance which does not affect the substantial rights of the defendant. FED. R. CRIM. P. 52(a). Jury instructions are subject to harmless-error review, if such an instruction “does not necessarily render a criminal trial fundamentally unfair or an unreliable vehicle for determining guilt or innocence.” *Neder v. U.S.*, 527 U.S. 1, 9 (1999).

STATEMENT OF THE CASE

The defendant, Ionia Management, was convicted by a jury in the United States District Court of the District of Connecticut for violations of the Act to Prevent Pollution from Ships (APPS), falsifying records in connection with a federal investigation, obstruction of justice and conspiracy. *U.S. v. Ionia Mgt. S.A.*, 526 F.Supp.2d. 319, 321 (D. Conn. 2007).

At trial the Government introduced evidence showing that Ionia’s agents were acting under direct orders from their superiors. *Id.* at 325.

After the jury’s guilty verdict was returned, the defendant filed a Motion for a Judgment of Acquittal, or in the alternative, a New Trial and after consideration of the relevant facts and evidence, the district court denied said motion. *Id.* at 322.

Ionia argues that the guilty verdict should be set aside because the jury misapplied the law regarding vicarious corporate criminal liability. *Id.* The district court adopted language

substantially the same as the Government's proposed jury instructions defining corporate criminal liability. *Id.* at 323. Those instructions are as follows:

You have been instructed that Ionia, as a corporate entity, is legally responsible for the acts or omissions of its agents or employees under certain circumstances. You must find that the Government has proven beyond a reasonable doubt that acts attributable to Ionia were acts or omissions of its agents performed "within the scope of their employment" with Ionia as I will not define that term.

An act or omission that was specifically authorized by the corporation would be within the scope of the agent's employment. Even if the act or omission was not specifically authorized, it may still be within 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. It is not necessary that the Government prove that the corporation was actually benefitted, only that the agent intended it would be.

If you find that the agent was acting within the scope of his employment, the fact that the agent's act was illegal, contrary to his employer's instructions, or against the corporation's policies will not necessarily relieve the corporation of responsibility for the agent's act. You may consider whether the agent disobeyed instruction or violated company policy in determining whether the agent intended to benefit the corporation, and/or was acting within his authority.

In determining whether an agent was acting for the benefit of the corporation, you are instructed that the Government need not prove that the agent was only concerned with benefitting the corporation. It is sufficient if one of the agent's purposes was to benefit the corporation.

Id. at 324-325.

The defendant appealed the denial of their motion by the district court to the Second Circuit Court of Appeals, and the Court of Appeals affirmed and adopted the district court's decision. *Ionia Mgt S.A. v. U.S.*, 999 F.3d 999 (2d Cir. 2008). The defendant now appeals on the same grounds to this honorable court.

SUMMARY OF THE ARGUMENT

This Court should affirm the decision of the Second Circuit Court of Appeals and deny Ionia Management's request for a verdict of acquittal, or in the alternative a new trial, because the instructions given to the jury by the district court were authorized and supported by United States Supreme Court precedent and federal statutory law. The instruction in question directed

the jury as to the proper elements of agency and vicarious liability. The jury was instructed that under the law, a corporation can be held vicariously liable for the acts of its agents when those agents act on behalf of, and for the benefit of, the corporation and those acts are directly related to the performance of the authorized duties of the employee. This instruction reflects a clear parallel to the holdings of this Court in prior corporate criminal liability cases. Therefore, this Court should affirm the decision of the Second Circuit Court of Appeals and deny the defendant's request for a verdict of acquittal or a new trial.

This Court should affirm the decision of the Second Circuit Court of Appeals and deny Ionia Management's request for a verdict of acquittal, or in the alternative a new trial, because the jury instruction given by the district court judge regarding criminal vicarious liability was proper. The jury instruction was consistent with general principles of criminal law established by case precedent. The jury instruction advised the jury that the government must prove beyond a reasonable doubt that Ionia Management's employees violated a criminal law while acting within the scope of their employment for the benefit of their employer, which is consistent with current standards of criminal law. Furthermore, this Court should not revisit its decision in *New York Central & Hudson River Railroad Company* because the decision is fairly applied. The decision in *Hudson* is consistent with the needs of public policy and changing the decision in *Hudson* would violate theories of *stare decisis*. Therefore, this Court should affirm the decision of the Second Circuit Court of Appeals and deny the defendants request for a verdict of acquittal or a new trial.

ARGUMENT

I. The district court's instruction to the jury regarding corporate criminal liability is authorized by both United States Supreme Court precedent and federal statutory law.

This court should affirm the holding of the United States Court of Appeals for the Second Circuit denying Ionia Management's request for a new trial or a judgment of acquittal. The trial court did not error in its jury instruction regarding corporate criminal liability because that instruction is consistent with this Court's precedent case law and federal statute. The defendant argues that the instructions presented to the jury in this case amounted to a misapplication of this Court's corporate criminal liability jurisprudence and is therefore entitled to an acquittal or a new trial. However, such a position is inconsistent with this Court's review of the propriety of a jury instruction.

This Court has consistently held that jury instructions are subject to harmless-error analysis. *See, e.g., Clemons v. Mississippi*, 494 U.S. 738 (1990); *Carella v. California*, 491 U.S. 263 (1989) (per curiam); *Pope v. Illinois*, 481 U.S. 497 (1987); *Rose v. Clark*, 478 U.S. 570 (1986). Even a jury instruction that omits a necessary element of the offense is subject to harmless-error review, because such an instruction “does not necessarily render a criminal trial fundamentally unfair or an unreliable vehicle for determining guilt or innocence.” *Neder v. U.S.*, 527 U.S. 1, 9 (1999). The defendant contends that a variance exists between this Court's precedent case law and the district court's instruction, and thus the defendant's substantial rights may have been affected. But, “[a]ny error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.” FED. R. CRIM. P. 56(a). And there is no evidence in record to show that the defendant objected to the district court's instruction at trial. This would

seem to be a clear indication that the defendant's substantial rights were not threatened and any error of law in the proffered instructions is harmless.

A. United States Supreme Court Case Law Supports the Jury Instruction Regarding Corporate Criminal Liability

The district court was correct when it instructed the jury that a corporate agent's actions are attributable to the corporation when that agent acts pursuant to the authority granted to him by the corporation and for the benefit of the corporation. Specifically, the district court submitted to the jury that "corporations can only act vicariously through its agents...and may be held criminally liable for the acts of its agents 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." *Ionia Mgt. S.A.*, 526 F.Supp.2d. at 324(citing Jury Instruction [Doc # 164] at 10). Such an instruction clearly complies with the standards for corporate criminal liability established long ago by this Court in *N.Y. Central & Hudson River R.R. v. U.S.*, 212 U.S. 481 (1909) and reaffirmed by *U.S. v Wise*, 370 U.S. 405 (1962).

One hundred years ago, this Court took up the *New York Central & Hudson River Railroad* case which set the precedent for holding corporations criminally liable under the common law doctrine of *respondeat superior* and since that time this Court has stood firm on its original holding. 212 U.S. at 481. At issue in *Hudson*, the facts of which are discussed in greater detail later in this brief, was whether the defendant railroad company could be held liable for the criminal actions of its authorized agents. This Court found that "the act of the agent, while exercising the authority delegated to him...may be controlled, in the interest of public policy, by imputing his act to his employer and imposing penalties upon the corporation for which he is acting in the premises." *Id.* at 307. This Court reasoned that "since a corporation

acts by its officers and agents, their purpose, motives, and intent are just as much those of the corporation as are the things done.” *Id.* at 306.

Prior to this case courts had not clearly extended criminal liability to corporate entities, but this Court’s decision in *Hudson* set a clear standard imputing such liability to criminal acts of corporate agents. See Kathleen F. Brickey, *Corporate Criminal Accountability: A Brief History and an Observation*, 60 WASH. U. L. Q. 393, 396 (1981).

Later in *U.S. v. Wise*, this honorable body was presented with a similar situation where the issue presented asked whether a corporation was responsible for the actions of its officers. 370 U.S. at 407. The corporate officers in that matter were indicted for violations under the Sherman Act. *Id.* The Act imposes criminal sanctions on any one who is found to be in violation of the statute. *Id.* The defendant asserted that the law creates a distinction between officers acting on their own and officers who act solely for the benefit of the corporation. *Id.* This Court found no such distinction existed under the Act and citing to its prior ruling in *Hudson River*, held that a corporation is criminally responsible for the acts of its officers. *Id.* at 408.

In both of the above cases corporate agents violated a particular federal statute, those agents were found to be acting within the scope of their employment, and by their actions the principle corporate entity was held vicariously liable for those actions of its agents.

The defendant will argue that the jury instructions at issue in this case should have included language that indicated that a corporation was only vicariously liable through the acts of its senior managerial employees, and that such an omission is a misapplication of this Courts holding in *Hudson*. Such an argument, however, creates an erroneous implication. It must be noted that in the above cited cases, no distinctions were made regarding the position of the agent

or his level of responsibility. These cases simply refer to agents acting within the scope of their employment, and that the illegal actions of those agents may create a criminal liability for the corporation who has authorized them.

Similar to the above cases, in this case the jury found that authorized Ionia Management officers were acting within the scope of their employment when they violated a federal pollution prevention statute. The instructions provided to the jury perfectly mimicked the language of *Hudson River* and *Wise*. Those instructions make clear to the jury that the Government must prove beyond a reasonable doubt that the acts attributable to the defendant were acts performed by the defendant's agents within the scope of their employment. *See Ionia Mgt. S.A.*, 526 F.Supp.2d. at 324.

Further, the district court's instructions clarified that even if an act was not specifically authorized it may still be within the scope of that agent's employment if the agent acted for the "benefit of the corporation." *Id.* Such language comes almost directly from that of *Hudson* where this Court stated that "while the agent is acting within the scope of his employment in the business of the principle, and justice requires that the latter shall be held responsible for damages to the individual who has suffered such conduct." *Hudson*, 212 U.S. at 306. These comparisons show a clear parallel between this Courts settled precedents in *Hudso* and *Wise* and the instructions proffered to the jury in present matter.

This Court should affirm the holding of the Second Circuit Court of Appeals because the language of the jury instruction given by the district court was entirely consistent with longstanding United States Supreme Court case law regarding corporate criminal liability, and therefore the defendant is not entitled to a verdict of acquittal or a new trial.

B. Federal Statutory Law Supports the Jury Instruction Regarding Corporate Criminal Liability

Not only is the district courts instruction to the jury authorized under this Courts precedent case law, it is supported by federal statutory law.

The Act to Prevent Pollution from Ships (APPS), of which the defendant is accused of violating through the actions of its agents, states in pertinent part that “[a] person who knowingly violates...this chapter or the regulations issued thereunder commits a class D felony.” 33 U.S.C. § 1908(a) (emphasis added).

The defendant corporations in *Hudson* and *Wise* both faced criminal liability through the illegal action of their agents, and in both cases vicarious corporate liability was attributable to the corporation via the language of the particular violated statute.

In *Hudson*, the defendant’s agents were found guilty of violating the Elk Act, a federal statute which imputed to a corporation the criminal act of its officers, thus making that corporate principle liable thereafter. 212 U.S. at 489. Just as in *Hudson*, the crime perpetrated by the defendant’s officers consisted in purposely doing the thing prohibited by the APPS. Under this Courts holding in *Hudson*, “there is no good reason why corporations may not be held responsible for and charged with the knowledge and purpose of their agents, acting within the authority conferred on them.” *Id.* at 307. Again, the instructions posed to the jury by the district court mimic this language.

In *Wise*, a similar situation arose, but the agents in question were in violation of the Sherman act which imposed criminal sanctions on “every person” who violated its provisions. 370 U.S. at 407. This Court held that under the clear language of that statute, corporations were included as “every person” and that it was liable for “every person” acting within the scope of their employment who violated the statute. *Id.*

Furthermore, the district court's instructions invoke an important public policy reflected in both *Hudson* and *Wise*. If the district court could not instruct the jury as it did and the violated statute requires *all persons* to refrain from certain practices, many such offenses might go unpunished if the corporate entity could not be held liable for the actions of its agents.

These two cases together set a clear standard by this Court that a statute may explicitly or implicitly hold a corporation liable if its agents violate the statute while acting with the scope of their employment. Where the APPS statute in this case specifically states "a person" just as the statute did in *Wise*, it stands to reason that it was proper for the district court to apply the same statutory construction regarding vicarious criminal liability imputed to the defendant for its agents' violation of APPS in its jury instructions.

This Court should affirm the holding of the Second Circuit Court of Appeals because the language of the jury instruction given by the district court is entirely consistent with the federal APPS statute and this Court's prior statutory interpretation of vicarious criminal corporate liability, and therefore the defendant is not entitled to a verdict of acquittal or a new trial.

II. The district court's instruction on corporate criminal liability is consistent with general principles of criminal law established through case precedent and this Court should not revisit its holding in *New York Central & Hudson River Railroad v. United States* since the established vicarious criminal liability law is fairly applied to Ionia Management.

This Court should affirm the holding of the United States Court of Appeals for the Second Circuit denying Ionia Management's request for a new trial or a judgment of acquittal because the trial court's jury instruction on vicarious criminal liability was consistent with general principles of criminal law and followed precedent established in *Hudson*. It is well established that a corporation is responsible for the actions taken by the corporation's employees, whether those actions are criminal or civil, and therefore Ionia Management must take

responsibility for the actions of its employees aboard its vessel. Since Ionia Management's employees were acting within the scope of their employment and for the benefit of their employer, Ionia Management is responsible for all criminal activity that was committed by its employees.

A. General Principles of Criminal Law Support the Jury Instruction Given on Vicarious Criminal Liability

According to general principles of criminal law, corporations, although not capable of being imprisoned for criminal acts, are able to commit crimes and torts through the actions of its employees. *Hudson*, 212 U.S. at 494. It is a well established principle of law that the actions of an agent, whether fraudulent or a misrepresentation, are held to be the actions of the principle if the agent is acting within the scope of his employment. *Fidelity and Guaranty Insurance Underwriters, Inc. v. Jasam Realty Corp.*, 540 F.3d 133, 140 (2d Cir. 2008). According to this Court, since a corporation acts through its agents, officers, and employees, the actions and intentions of the agents are imputed to the corporation as if the corporation had acted on its own. *Hudson*, 212 U.S. at 492-493. In determining whether a corporation will be held vicariously liable for the criminal actions of its employees a two factor test is applied. *U.S. v. Potter*, 463 F.3d 9, 25 (1st Cir. 2006). First, during the time of the criminal act, the employee must be "performing acts of the kind which he is authorized to perform." *Id.* Secondly, the criminal actions of the employee must be "motivated – at least in part – by an intent to benefit the corporation. *Id.* If these two elements are established, then the corporation can be held responsible for the actions of its employee, regardless of whether the corporation maintained a rule or compliance requirement against such behaviors. *Id.*; *U.S. v. Twentieth Century Fox Film Corporation*, 882 F.2d 656, 660 (2d Cir. 1989).

In order for a corporation's employee to be acting within his scope of employment, the employee's actions do not necessarily need direct approval from a supervisor or the president of the corporation. *Potter*, 463 F.3d at 25. Instead, the employee is only required to be performing actions of the type that is normally approved for the individual to perform his employment. *United States v. Cincotta*, 689 F.2d 238, 241-242 (1st Cir. 1982). According to *U.S. v. Demauro*, 581 F.2d 50, 54 n. 3 (2d Cir. 1978), in order for an employee's criminal actions to be within the scope of his employment, the conduct must be "the kind which he is authorized to perform, occurs substantially within the authorized limits of time and space, and is actuated at least in part, by a desire to serve the master." In *J.C.B. Super Markets, Inc. v. U.S.*, 530 F.2d 1119, 1121 (2d Cir. 1976), a grocery store's food stamp license was suspended for thirty days after a cashier and a manager were caught accepting food stamps for items that were not allowed under the food stamp program. The Second Circuit Court of Appeals determined that although the actions of the manager and the cashier may be against the law and therefore not beneficial for the corporation, the acceptance of food stamps was still included in the scope of the employees' employment, and therefore was attributable to the corporation. *Id.* at 1122. The *J.C.B.* Court explained that "[i]f the fact[] that [the cashier and manager] were not authorized to make illegal sales would exculpate the employer, it would be practically impossible to impose any penalties...." *Id.* Therefore, under general principles of criminal law, if an employee is acting within the scope of his employment authority and is acting on behalf of the corporation, a corporation can be held vicariously liable for the criminal acts of that employee. *Id.*

Under the general principles of criminal vicarious liability, an employee must be acting in a manner that is motivated by an intent, at least in part, to benefit the corporation. *Potter*, 463 F.3d at 25. It is not necessary that the actions of the employees be solely motivated by a want to

benefit the corporation. *Id.* In addition, the reality of the benefit to the corporation is not relevant in determining whether the agent was acting in a manner to benefit the corporation. *J.C.B.*, 530 F.2d 1122. Although the criminal actions of an employee may be seen as detrimental to the corporation rather than helpful, the intent of the employee is what is examined to determine if the employee was acting to benefit the corporation. *Id.* In *Demauro*, a bank was found liable for the actions of its employees in engaging in a money laundering scandal. *Demauro*, 581 F.2d at 52. Accordingly, the Second Circuit Court of Appeals determined that due to the fact that the employees were accepting bribes for the money laundering services, it could be argued by the company that the employees were not acting for the benefit of the bank. *Id.* at 53. However, in *J.C.B.*, the Second Circuit Court of Appeals found that when a grocery store cashier and manager were taking food stamps for improper items, that action, although illegal, was for the benefit of the corporation since the employees were receiving no benefit for their actions. *J.C.B.*, 530 F.2d at 1122. Furthermore, even if a corporation has a policy against the actions of the employee, the corporation can still be liable for the employee's criminal actions if the employee was motivated by an intent to benefit the corporation. *Twentieth Century Fox*, 882 F.2d at 660.

According to the general principles associated with criminal vicarious liability, a corporation's policies against an agent taking a particular action will not prevent the corporation from being held liable for those actions. *Twentieth Century Fox*, 882 F.2d at 660. According to the *Modern Federal Jury Instructions – Criminal*, a jury is allowed to consider “the fact that the agent disobeyed instructions or violated company policy in determining whether the agent intended to benefit the corporation, or was acting within this authority.” *Modern Federal Jury Instructions – Criminal*, ¶ 2.01, Instr. 2-7 (2007). Accordingly, if a corporation has a policy

against a certain criminal behavior that an employee engages in, that policy will not save the corporation from its liability for the actions of its employee. *Twentieth Century Fox*, 882 F.2d at 660. However, the policy of a corporation that condemns inappropriate behavior by an employee may show that the employee was not acting within the scope of his employment, saving the corporation from liability. *Potter*, 463 F.3d at 26. Therefore, consistent with general principles of criminal law established through well-maintained precedent, this Court should affirm the decision of the Second Circuit Court of Appeals in denying Ionia Management's request for a verdict of acquittal or a new trial because the jury instruction given by the district court judge on criminal vicarious liability was proper.

The jury instruction given by the district court judge on criminal vicarious liability was consistent with general principles of criminal law and therefore this Court should affirm the decision of the Second Circuit Court of Appeals denying Ionia Management's request for a verdict of acquittal or a new trial. The jury instruction (see above) given by the district court judge is completely inline with current principles of criminal law, which is established through respect to current court precedent, statutory language, and model jury instructions. First, the jury instruction explained that Ionia Management could be held liable for the actions of its employees in accordance with current Supreme Court precedent established in *Hudson*. The district court further explained to the jury that in order for the defendant, Ionia Management, to be held criminally responsible for the illegal actions of its employees, the jury must find that the employees were acting within the scope of their employment. According to the persuasive precedent established in *Potter* and the binding precedent established in *J.C.B.*, a corporation may be held criminally responsible for the actions of its employees if the employees are acting within the scope of their employment. Since the employees for Ionia were acting at the request

of their supervisor and engaging in logging and recordkeeping that was normally expected of them, the jury instruction given by the district court follows the general principles of criminal law in describing what actions will be considered as within the scope of employment. The district court also advised that the actions must be for the benefit of the corporation, which is established as a required element of criminal vicarious liability in *J.C.B.* and *Demauro*. The employees of Ionia Management would have no other reason to falsify log books in violation of the law other than to protect Ionia from criminal charges. However, even if the employees had a personal motive in attempting to falsify the record books kept by Ionia Management, the district court, in accordance with *J.C.B.*, advised the jury that benefitting Ionia need not be the only intention of the employees, but rather just one of the intentions. Finally, the district court advised that company policies against certain behavior would not save the defendant from criminal liability, but could however demonstrate that the employees were not acting within the scope of their employment. This general principle of criminal law is supported by the *Modern Federal Jury Instructions – Criminal* and by precedent established in *Twentieth Century Fox*. Therefore, under general principles of criminal law established through case precedent and model jury instructions, the district court’s jury instruction on criminal vicarious liability is proper.

Ionia Management will argue that the district court’s jury instruction of vicarious criminal liability was improper for two main reasons. First, Ionia will argue that according to theories of criminal law, only a manager or other high ranking official can serve as an employee to hold a corporation responsible for the employees criminal actions. According to *U.S. v. Koppers Company, Inc.*, 652 F.2d 290, 298 (2d Cir. 1981), “a corporation [can] be held criminally liable for the acts of its managerial agents.” Ionia Management will argue that this

language shows that only the actions of a manager can be imputed to a corporation, and therefore the district court's jury instruction was improper since it failed to advise the jury of this requirement. Secondly, Ionia will argue that holding a corporation responsible for the actions of its employees is a violation of due process and therefore the jury instruction was unconstitutional and a violation of general principles of criminal law.

However, Ionia's arguments fail in two key ways. First, in *Koppers*, the Second Circuit Court of Appeals declined the invitation to extend the managerial terminology to only the actions of "high managerial agents." *Koppers*, 652 F.2d at 298. Furthermore, in *U.S. v. Fish*, 154 F.2d 798, 801 (2d Cir. 1946), the Second Circuit Court of Appeals made it clear that there shall be no distinctions made between agents, managers, officers, or other individuals holding different responsibilities in applying vicarious criminal liability. Therefore, the district court did not err by not including the "managerial" language as Ionia suggest. Secondly, Ionia Management's argument that a corporation should not be held responsible for the actions of its employees is against the general principles of modern criminal law. Other criminal sanctions, such as felony murder and conspiracy, attribute the actions of one individual to another individual. These examples make it clear that it is not a violation of due process to impute liability to Ionia for the actions of its agents and therefore the jury instruction given by the district court judge was not unconstitutional.

This Court should affirm the holding of the Second Circuit Court of Appeals because the jury instruction given by the district court was consistent with general principles of criminal law established by case precedent, and therefore Ionia Management is not entitled to a verdict of acquittal or a new trial.

B. *New York Central & Hudson River Railroad Company v. United States* is Established Precedent which is Fairly Applied and Should not be Revisited by this Court

In 1909, this Court decided the case of *New York Central & Hudson River Railroad Company* which raised the question of whether or not a corporation could be held criminally responsible for the actions of its hired agents or employees. In *Hudson*, the railroad company and the assistant traffic manager were convicted under the Elkins Act for illegal rebates granted by the assistant traffic manager. 212 U.S. at 489. This Court, following principles of agency law, determined that the actions of an employee who is serving as an agent for a corporation can be imputed to the corporation under the theory of vicarious criminal liability. *Id.* at 494. According to the *Hudson* Court, if a corporation were not held responsible for the criminal actions of its employees, “many offenses might go unpunished and acts committed in violation of law where...the statute requires all persons, corporate or private, to refrain from certain practices, forbidden in the interest of public policy.” *Id.* at 495. Furthermore, this Court stressed that failure to impute criminal activities of a corporation’s employee to that corporation would violate public policy because it would be upholding an old theory that corporations cannot commit crimes, and therefore no one would be held responsible for their actions. *Id.* at 496. Since this Court issued its ruling in *Hudson*, it has become well established precedent that is fairly applied to corporations in light of public policy.

Hudson has become the precedent that is applied in the federal circuit courts of appeals when the question of vicarious liability is discussed. Every circuit court of appeals has accepted that *Hudson* is the established precedent holding that corporations are responsible for the criminal actions of its employees. *See generally U.S. v. Am. Radiator & Standard Sanitary Corp.*, 433 F.2d 174 (3d Cir. 1970); *U.S. v. Automated Med. Labs., Inc.*, 770 F.2d 399 (4th Cir. 1985); *Standard Oil Co. of Tex. v. United States*, 307 F.2d 120 (5th Cir. 1962); *Cont’l Baking*

Co. v. U.S., 281 F.2d 137 (6th Cir. 1960); *Apex Oil Co. v. U.S.*, 530 F.2d 1291 (8th Cir. 1976); *U.S. v. Hilton Hotels Corp.*, 467 F.2d 1000 (9th Cir. 1972). Since 1909, *Hudson* has controlled the basis of all decisions regarding whether a corporation can be held criminal liable for the actions of its employees, and changing that precedent now would violate the well established principle of *stare decisis*. According to the Ninth Circuit Court of Appeals,

Stare decisis is the policy of the court to stand by precedent; the term is but an abbreviation of *stare decisis et quieta non movere* — "to stand by and adhere to decisions and not disturb what is settled." Consider the word "decisis." "Rather, under the doctrine of stare decisis a case is important only for what it decides — for the "what," not for the "why," and not for the "how." Insofar as precedent is concerned, stare decisis is important only for the decision, for the detailed legal consequence following a detailed set of facts.

I.R.S. v. Osborne, 76 F.3d 306 (9th Cir. 1996). This Court should not revisit its holding in *Hudson* since revisiting this opinion would violate the principle the well established principle of *stare decisis* and would lead to utter confusion among the different circuit courts of appeals. By revisiting this opinion and changing the current law of criminal vicarious liability, corporations and the government would be equally confused as to what laws apply to them, what laws apply to their employees, and what and who can be prosecuted. Revisiting this Court's holding in *Hudson* would lead to mass chaos among the federal circuit courts of appeals and would violated the principle of *stare decisis*, therefore this Court should decline to revisit the decision in *Hudson*.

This Court should also decline to revisit its holding in *Hudson* because public policy supports corporations being responsible for the criminal actions of its employees. 212 U.S. at 495. According to this Court's ruling in *Hudson*,

We see no valid objection in law, and every reason in public policy, why the corporation, which profits by the transaction, *and can only act through its agent and officers*, shall be held punishable by fine because of the knowledge and intent of its agents to whom it has intrusted [sic] authority to act in the subject-matter...

and whose knowledge and purposes may well be attributed to the corporation for which the agents act.

Id. at 495 (emphasis added). Since corporations are unable to act without the employment of agents and officers, it is a clear mandate of public policy that the corporation remains liable for the criminal actions that are taken by the corporation's employees. If the corporation was allowed to escape liability simply because it had not itself acted illegally, it would be impossible to enforce the laws and mandates that are placed on corporations to require corporations to act morally. Failure of this Court to enforce the holding rendered in *Hudson* would allow a corporation to have immunity from the criminal actions of its employees that provide a benefit to the corporation. This benefit would have severe public policy problems because corporations would not longer worry about being held responsible for its actions and would encourage its employees to behave illegally. Ionia Management asks this Court to revisit its holding in *Hudson* because it wishes to violate the law, without fear of punishment for its actions. Revisiting the holding in *Hudson* would be detrimental to society as a whole and would lead to a world where corporations run free without fear of prosecution for their actions. Therefore, this Court should refuse to revisit its holding in *Hudson* and deny the defendant's request for a verdict of acquittal or its request for a new trial, thereby affirming the Second Circuit Court of Appeals decision.

Ionia will argue that this Court should revisit and reverse its holding in *Hudson* because vicarious criminal liability as applied in *Hudson* is inconsistent with this Court's holding in the civil context. Ionia Management will argue that this Court has found in multiple civil cases that vicarious civil liability should only be applied to high level managerial employees, and even then only in certain situations. *See generally Kolstad v. American Dental Association*, 527 U.S. 526 (1999); *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998); *Burlington Industries, Inc. v.*

Ellerth, 524 U.S. 742 (1998). Ionia Management will argue that since the Supreme Court has reached these determinations in the civil context, especially regarding punitive damages which are comparable to criminal punishments, then the holding in *Hudson* should be reviewed to reflect these new viewpoints. However, Ionia's argument does not address the serious public policy concerns and the long-standing requirement of *stare decisis* that should be considered by this Court.

This Court should decline Ionia's request to revisit its holding in *Hudson* because public policy dictates that the holding in *Hudson* is necessarily to protect society from overzealous corporations and because the mandates of *stare decisis* require this Court to follow the precedent established in *Hudson*. Therefore, this Court should affirm the decision of the Second Circuit Court of Appeals and deny Ionia Management's request for a verdict of acquittal, or in the alternative a new trial.

CONCLUSION

For the foregoing reasons, the Government respectfully requests that the Court affirm the decision of the district court and deny the Defendant's motion for a verdict of acquittal, or in the alternative a new trial.