

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 COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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**BRIEF FOR RESPONDENT**

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TEAM 5

COUNSEL FOR RESPONDENT

## **QUESTIONS PRESENTED**

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

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## STATEMENT OF THE CASE

As a condition of a three-year probation term imposed by the Eastern District of New York on October 27, 2004, Ionia adopted a compliance program to ensure adequate employee training and full disclosure of safety operations to the Coast Guard. United States v. Ionia Mgmt. S.A., 526 F. Supp. 2d 319, 327 (D. Conn. 2007). The compliance program included maintenance of an Oil Record Book (“ORB”), which tracked all discharges and disposals from the M/T Kriton (“Kriton”). Id. The maintenance of ORB entries and management of the engine room crew fell to the Chief Engineers. Id. at 326.

The Kriton carried aboard an oily water separator to prevent pollution from any discharges. Id. at 325. The duties of the engine room crew normally included operating the separator equipment and any engine room fixtures and hoses. Id. at 326. However, Second Engineer Edgardo Mercurio testified that his Chief Engineer specifically told him to pump waste overboard without using the separator. Id. Following these instructions, the engine room crew used a bypass hose to pump oily waste “directly into the ocean.” Id. Meanwhile, the chief engineers continued to record entries in the ORB indicating that the separator was being used and operating normally. Id. at 325-26.

Four separate indictments charged Ionia with counts of violating the Act to Prevent Pollution from Ships (“APPS”), 33 U.S.C. § 1908(a), falsifying records connected to a federal investigation, 18 U.S.C. § 1519, obstruction of justice, 18 U.S.C. § 1505, and conspiracy, 18 U.S.C. § 371. Ionia Mgmt., 526 F. Supp. 2d at 321. Ionia was convicted by a jury trial in the U.S. District Court for the District of Connecticut on September 6, 2007. Id. The district court instructed the jury that a corporation is criminally liable for “the acts of its agent done on behalf and for the benefit of the corporation, and directly related to the performance of the duties the

employee has authority to perform.” Id. at 324. It explained the government’s burden of proving “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.” Id. at 325. The instructions defined an act within the scope of employment as “[a]n act or omission that was specifically authorized by the corporation,” or, if not authorized, then undertaken “for the benefit of the corporation” and “within [the agent’s] authority.” Id.

The jury instructions said that a corporation may be liable even for the acts of its agents in violation of corporate policy: “the fact that the agent’s act was illegal, contrary to his employer’s instructions, or against the corporation’s policies will not necessarily relieve the corporation of responsibility for the agent’s act.” Id. However, the policies may be relevant “in determining whether the agent intended to benefit the corporation, and/or was acting within his authority.” Id. at 325. They further specified that the intent to benefit the corporation need not be the agent’s sole motivation, so long as it was one of the agent’s purposes. Id. The district court denied Ionia’s motion for a judgment of acquittal or new trial on December 12, 2007. Id. at 321. The Court of Appeals for the Second Circuit affirmed Ionia’s conviction on September 1, 2008. Ionia Mgmt, S.A. v. United States, 999 F.3d 999 (2d Cir. 2008).

#### SUMMARY OF THE ARGUMENT

The district court properly instructed the jury regarding Ionia’s potential criminal liability for the actions of its employees. The court’s instructions were in line with Supreme Court precedent. The Supreme Court’s decision in *New York Cent. & Hudson River R.R. Co. v. United States* established that a corporation can be held criminally responsible for the acts of its employees as long as two conditions are met: (1) the employee must be acting within the scope of his employment; and (2) the employee must be acting at least in part to benefit his employer.

Both conditions were satisfied in this case. Ionia's employees were acting within the scope of their employment when they falsified the oil record book and failed to use the oil pollution prevention and discharge equipment. *New York Central* states that as long as a corporation gives permission for an employee to act within a certain subject matter of activities it can face criminal charges for any actions that an employee takes within that authorized sphere. Because the district court's instructions echoed this jurisprudence its jury instructions on the legal requirements for proving an employee's scope of employment it did not violate Supreme Court precedent.

Additionally, the facts support the notion that the finding of guilt against Ionia was proper. Ionia authorized its employees to maintain the oil record book; falsifying records falls within the subject matter of maintaining the book. Similarly, Ionia authorized its employees to maintain and operate the oil pollution equipment aboard the M/T Kriton; choosing not to use the equipment or using it improperly falls within the subject matter of operating the equipment. Because its employees were acting within the scope of their employment, Ionia is not precluded from criminally responsibility for their actions.

In addition to the scope of employment requirement, an employee must act to benefit his employer for vicarious criminal liability to attach. The Court ruled in *New York Central* that whether a benefit is actually conferred is immaterial. All that matters is that the employee was acting, at least in part, to benefit the corporation and was not acting solely for his own self interests. The district court's jury instructions did not deviate from the Supreme Court's jurisprudence in this area. Moreover, the evidence in the case properly allowed the jury to infer that Ionia's employees were acting to benefit their employer. Failing to maintain the oil record book or use the pollution control equipment conferred little benefit to the employees but

significantly profited Ionia by allowing it to dock at U.S. ports without the expense of following U.S. law.

The district court's instructions on corporate criminal liability were also authorized by federal statutory law. Federal law states that "[i]n determining the meaning of any Act of Congress, unless the context indicates otherwise ... the words 'person' and 'whoever' include corporations ... as well as individuals." 1 U.S.C. § 1 (2006). Ionia was convicted of violating the Act to Prevent Pollution from Ships, falsifying records in connection with a federal investigation, obstruction of justice, and conspiracy. Because none of the statutory language associated with the aforementioned crimes indicated that it intended to preclude potential corporate criminal liability the district court did not err in instructing the jury about corporate liability for the crimes.

Furthermore, the jury instructions under which Ionia was convicted adhered to established principles of determining criminal intent. Punishing corporations for their agents' criminal acts is consistent with every traditional rationale of criminal law: deterrence, rehabilitation, disabling offenders from engaging in future violations, and expressing the community's moral sensibilities. The holding of *New York Central*, which supports the district court's jury instructions, established a standard for corporate criminal liability that properly considers the special features of corporations as entities. It contemplated that while corporations may be guilty of many (if not most) crimes, there remains a class of distinguishably "human" crimes as well. That holding has supported a century of effective corporate criminal jurisprudence and need not be revisited.

## ARGUMENT

### I. THE COURT SHOULD AFFIRM PETITIONER IONIA’S CONVICTION BECAUSE THE DISTRICT COURT’S INSTRUCTION ON CORPORATE CRIMINAL LIABILITY WAS CONSISTENT WITH SUPREME COURT PRECEDENT.

The district court properly instructed the jury in the instant case regarding the law governing corporate criminal liability. A corporation can be held criminally responsible for the acts of its employees. New York Cent. & Hudson River R.R. Co. v. United States, 212 U.S. 481, 494 (1909). A corporation will be criminally liable for an employee’s action as long as two conditions are met.

#### A. Corporate criminal liability will not attach unless an employee is acting within the scope of his employment.

An employee must be acting within the scope of his authority and employment with a corporation in order for it to be criminally liable for his actions. Id. at 493–94; *see also* United States v. A.P. Trucking Co., 358 U.S. 121, 126 (1958).

A corporation is held responsible for acts not within the agent's corporate powers strictly construed, but which the agent has assumed to perform for the corporation when employing the corporate powers actually authorized, and in such cases there need be no written authority under seal or vote of the corporation in order to constitute the agency or to authorize the act.

N.Y. Cent. & Hudson River R.R. Co., 212 U.S. at 493–94 (citing Wash. Gaslight Co. v. Lansden, 172 U.S. 534, 544 (1899)). Thus, a corporation need not explicitly authorize an employee’s actions for it to be criminally liable for those activities. Indeed, an employee can act against his employer’s direct orders and the corporation may still face criminal liability. Id. at 493. As long as a corporation gives permission for an employee to act within a certain subject matter of activities it can face criminal charges for any actions that an employee takes within that authorized sphere. For example, the employees in *New York Central* were empowered by the railroad to establish, file, and publish cargo shipping rates. Id. at 494. As such, “the subject-

matter of making and fixing rates was within the scope of the authority and employment” for the railroad’s employees. Id. Although they were not given permission to break the law, New York Central’s employees were acting within the scope of their employment when they gave illegal shipping rebates to the railroad’s customers because the reimbursements effectively lowered cargo shipping rates. New York Central was criminally liable for its employees’ actions because distributing rebates changed the railroad’s cargo shipping rates, and setting shipping rates was within the scope of the employees’ employment.

Here, Ionia’s employees were tasked with operating the oil pollution prevention and discharge equipment for the M/T Kriton. Their duties also required them to maintain an oil record book for the Kriton. Thus, the subject matter areas of operating the pollution prevention equipment and maintaining the record book were within the Ionia employees’ scope of employment. Though Ionia claims that its employees were not authorized to discharge oil or falsify records, the employees were acting within the scope of their employment when they did so. The situation is analogous to *New York Central*, where the Court determined that giving rebates was within the broader subject area of fixing shipping rates. In the instant case, discharging oil falls within subject area of operating the oil pollution and prevention equipment. Falsifying the oil record book falls within the subject area of maintaining the book. Thus, Ionia could be held liable for its employees’ actions because they acted within the scope of their employment. The argument that the employees were not acting within their employment therefore cannot be a basis for finding that the district court erred when it instructed the jury on corporate criminal liability.

Furthermore, the district court’s instruction regarding scope of employment was authorized by Supreme Court precedent and thus cannot provide the basis for overturning Ionia’s

convictions. The district court told the jury members that they must find that the “acts attributable to Ionia were acts or omissions of its agents performed ‘within the scope of their employment.’” United States v. Ionia Mgmt. S.A., 526 F. Supp. 2d 319, 325 (D. Conn. 2007). This is clearly consistent with the Supreme Court’s precedent in *New York Central*. Additionally, the district court defined “an act or omission that was not specifically authorized” as within the scope of an individual’s employment if “the agent was acting within his authority.” Id. The court went on to instruct that “the fact that the agent’s act was illegal, contrary to his employer’s instructions, or against the corporation’s policies will not necessarily relieve the corporation of responsibility for the agent’s act.” Id. These statements are in line with Supreme Court precedent. The Court in *New York Central* expressly stated that a corporation could face criminal liability for an employee’s actions as long as he was acting “within the scope of his employment,” and despite the fact that the employee was acting “against the express orders” of the corporation. N.Y. Cent. & Hudson River R.R. Co., 212 U.S. at 493. Thus, the district court did not err in instructing the jury regarding corporate criminal liability for an employee acting within the scope of his employment.

B. Corporate criminal liability will not attach unless an employee is acting to benefit the corporation.

In order for a corporation to be criminally liable for an agent’s actions, the employee must not only be acting within the scope of his employment; he must also be acting with the intent to benefit the corporation. Id. Whether a benefit is actually conferred is immaterial. Id. All that matters is that the employee was acting, at least in part, to benefit the corporation and was not acting solely for his own self interests. Id. at 495.

Here, Ionia’s employees were accused of not properly operating oil pollution prevention equipment and failing to maintain an oil record book. Although the government did not present

direct evidence that the employees' actions were done to benefit the corporation, the jury could have reasonably concluded that the employees acted to save Ionia the time and expense of maintaining and using the oil pollution prevention equipment. The jury could also reasonably conclude that the employees acted in order to allow the M/T Kriton to continue to dock at ports in the United States. Either way the employees acted to benefit Ionia. Additionally, it would have been difficult for the jury to conclude that the employees acted for their own self benefit by failing to use the oil pollution prevention equipment and maintain the oil record book. There was no obvious personal gain for the employees if they chose not to follow the law. More significantly, even if the employees did receive some personal gain for breaking the law Ionia also benefited. The argument that the employees were not acting with the intent to, at least in part, benefit Ionia therefore cannot be a basis for finding that the district court erred when it instructed the jury on corporate criminal liability.

Furthermore, the district court's instruction regarding the requirement that an employee must act with the intent to benefit his corporation was authorized by Supreme Court precedent and thus cannot provide the basis for overturning Ionia's convictions. The district court told the jury members that they must find that Ionia's employees "acted for the benefit of the corporation." Ionia Mgmt., 526 F. Supp. 2d at 325. The court went on to instruct the jury that it "is not necessary that the government prove that the corporation was actually benefited, only that the agent intended it would be." Id. Finally, the court stated that the government did not need to prove that an employee was "only concerned with benefiting the corporation" because it was "sufficient if one of the agent's purposes was to benefit the corporation." Id. These instructions were clearly in line with Supreme Court precedent. The Court in *New York Central* expressly stated that a corporation could face criminal liability for an employee's actions if he was acting

“for the benefit of the principal.” N.Y. Cent. & Hudson River R.R. Co., 212 U.S. at 493. The Court never stated that the corporation needed to receive an actual benefit—it was sufficient for an employee to simply act for the employer’s benefit. Id. The Court explained that the purpose of the rule was to prevent corporations from potentially benefiting from their employees’ unlawful actions. Id. at 494–95. The fact that an employee may receive benefits in addition to the corporation is therefore immaterial when applying the Supreme Court’s rule. Thus, the district court did not err in instructing the jury regarding the requirement that an employee must act with the intent to benefit his employer, at least in part, in order for the corporation to be criminally liable for his actions.

II. THE COURT SHOULD AFFIRM PETITIONER IONIA’S CONVICTION BECAUSE THE DISTRICT COURT’S INSTRUCTION ON CORPORATE CRIMINAL LIABILITY WAS CONSISTENT WITH FEDERAL STATUTORY LAW.

Petitioner Ionia was convicted of: violating the Act to Prevent Pollution from Ships, 33 U.S.C. § 1908(a); falsifying records in connection with a federal investigation in violation of 18 U.S.C. § 1519; obstructing justice in violation of 18 U.S.C. § 1505; conspiracy in violation of 18 U.S.C. § 371. United States v. Ionia Mgmt. S.A., 526 F. Supp. 2d 319, 321 (D. Conn. 2007). Federal law states that “[i]n determining the meaning of any Act of Congress, unless the context indicates otherwise ... the words ‘person’ and ‘whoever’ include corporations ... as well as individuals.” 1 U.S.C. § 1 (2006). Because Congress clearly intended for the government to be able to prosecute corporations under the four statutes listed above the district court did not err in instructing the jury that Ionia could be convicted for violating the four laws.

A. A corporation can be held criminally liable for violating the Act to Prevent Pollution from Ships, 33 U.S.C. § 1908(a).

The district court correctly instructed the jury that a corporation could be held criminally liable for violating the Act to Prevent Pollution from Ships. The relevant statute states that “[a]

person who knowingly violates ... this Act, or the regulations issued thereunder commits a class D felony.” 33 U.S.C. § 1908(a) (2006). For the purposes of the Act, a person is defined as “an individual ... [or] public or private corporation.” 33 U.S.C. § 1901(a) (2006). Thus, it is clear that Congress intended the law to apply both to corporations and individuals. Because a corporation can only act through its agents, Congress must have intended for corporations to be criminally liable when their employees violated the act. If this was not Congress’ intent, then corporations could never be found guilty of violating the Act to Prevent Pollution from Ships, and the language in 33 U.S.C. § 1901(a) would be unnecessary and extraneous. Thus, because the district court did not err in instructing the jury that Ionia could be found guilty of violating 33 U.S.C. § 1908(a), Ionia’s convictions under the statute were proper.

B. A corporation can be held criminally liable for falsifying records under 18 U.S.C. § 1519.

The district court correctly instructed the jury that a corporation could be held criminally liable for falsifying records in connection with a federal investigation in violation of 18 U.S.C. § 1519. The relevant statutory language states that “[w]hoever knowingly alters ... falsifies, or makes a false entry in any record ... with the intent to impede, obstruct, or influence the ... proper administration of any matter within the jurisdiction of any department or agency of the United States” will be guilty of violating the law. 18 U.S.C. § 1519 (2006). Per 1 U.S.C. § 1, the word “whoever” in 18 U.S.C. § 1519 must be interpreted to encompass corporate entities unless the statute’s context indicates otherwise.

Here, nothing in 18 U.S.C. § 1519 indicates that Congress did not intend for the statute to apply to corporations. Indeed, the statute’s legislative history strongly suggests that Congress meant to regulate corporate entities. 18 U.S.C. § 1519 was codified as part of the Sarbanes-Oxley Act of 2002. Congress passed Sarbanes-Oxley in response to corporate accounting scandals at a

number of large corporations, including Enron and WorldCom. As such, it would seem unlikely that Congress intended 18 U.S.C. § 1519 to apply to individuals but not to the corporations that were the target of the broader legislation. Thus, Ionia could be convicted of violating the statute. In light of these facts, the district court did not err when it instructed the jury regarding corporate criminal liability for violations of 18 U.S.C. § 1519.

C. A corporation can be held criminally liable for obstruction of justice under 18 U.S.C. § 1505.

The district court's instruction that a corporation could face criminal liability for obstruction of justice in violation of 18 U.S.C. § 1505 was not erroneous. The statute states that “[w]hoever corruptly ... obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States” will be guilty of violating the law. 18 U.S.C. § 1505 (2006). Nothing in the language of 18 U.S.C. § 1505 indicates that only individuals can violate the statute. Therefore, as was the case with 18 U.S.C. § 1519, 1 U.S.C. § 1 requires the word “whoever” in 18 U.S.C. § 1505 to be interpreted to include corporations within its scope. Thus, Ionia could be convicted of violating the statute, and the district court did not err in so instructing the jury.

D. A corporation can be held criminally liable for conspiracy under 18 U.S.C. § 371.

The district court did not err by instructing the jury in the instant case that Ionia could be found guilty of conspiracy in violation of 18 U.S.C. § 371. The conspiracy statute states that “[i]f two or more persons 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 is guilty of the crime of conspiracy. 18 U.S.C. § 371 (2006). The statutory language does not exclude criminal liability for a corporation because its employees are the conspirators. United States v. Peters, 732 F.2d

1004, 1008 (1st Cir. 1984). To determine otherwise would serve to insulate corporations from liability for conspiracies involving employees acting on behalf of their corporate employer. United States v. Hughes Aircraft Co., 20 F.3d 974, 978–79 (9th Cir. 1994). The language of the conspiracy statute does not provide sufficient context to determine that Congress did not intend for the definition of a “person” found in 1 U.S.C. § 1 to apply here. Because nothing in the context of the conspiracy statute suggests that the word “persons” does not include corporations the district court properly instructed the jury on corporate criminal liability for conspiracy.

III. THE DISTRICT COURT’S INSTRUCTION ON CORPORATE CRIMINAL LIABILITY WAS CONSISTENT WITH GENERAL PRINCIPLES OF CRIMINAL LAW AND THE COURT NEED NOT REVISIT ITS HOLDING IN *NEW YORK CENTRAL & HUDSON RIVER R.R. CO. v. UNITED STATES*.

The jury instructions under which Ionia was convicted adhered to established principles of determining criminal intent. Punishing corporations for their agents’ criminal acts is consistent with every traditional rationale of criminal law: deterrence, rehabilitation, disabling offenders, and sharpening the community’s moral sense. See Henry M. Hart, Jr., *The Aims of the Criminal Law*, 23 Law & Contemp. Probs. 401, 401 (1958). The holding of *New York Central* properly defined the limits of corporate criminal liability, while still allowing for consideration of corporations’ unique status as artificial entities, and therefore need not be reconsidered. See *N.Y. Cent. & Hudson River R.R. Co.*, 212 U.S. 481, 494 (1909).

A. The district court’s jury instructions applied the *respondeat superior* doctrine consistently with general principles of criminal law.

Federal courts assign corporate liability for crimes of intent based on the doctrine of *respondeat superior*. Charles J. Walsh & Alyssa Pyrich, *Corporate Compliance Programs as a Defense to Criminal Liability: Can a Corporation Save Its Soul?*, 47 Rutgers L. Rev. 605, 619 (1995). The Model Penal Code (“MPC”) approach, under which only acts by high-level officials

subject the corporation to liability, is in the minority in the United States. Vikramaditya Khanna, Corporate Crime Legislation: A Political Economy Analysis, 82 Wash. U. L.Q. 95, 99–100, n.9 (2004). In most states and at the Federal level, corporations can be liable for the actions of any employee within the scope of employment and with intent to benefit the corporation. Michael Tigar, It Does the Crime But Not the Time: Corporate Criminal Liability in Federal Law, 17 Am. J. Crim. Law 211, 216 (1990). This broader approach to corporate criminal punishment—which the district court applied in its jury instructions—serves a wider range of purposes than that of the MPC. See United States v. Ionia Mgmt. S.A., 526 F. Supp. 2d 319, 324–25 (D. Conn. 2007).

Under the MPC, “corporate criminal liability follows management guilt.” Gerhard Mueller, Mens Rea and the Corporation: A Study of the Model Penal Code Position on Corporate Criminal Liability, 19 U. Pitt. L. Rev. 21, 25 (1958). This approach limits its scope to crimes of which management itself had actual knowledge—those which could have been specifically deterred by corporate officers. Tigar, supra, at 216. But deterrence is only one of the traditional rationales for punishing crime. Others include rehabilitating offenders, disabling them from perpetrating future offenses, and “sharpening the community’s sense of right and wrong.” Hart, supra, at 401.

Moreover, the MPC approach assumes that managers measure every transaction based on informed, rational calculations. Tigar, supra, at 216. This leaves a “gap in the deterrent power of criminal sanctions,” failing to account for corporate decisions made from short-term concerns and based on limited information. Id. The broader rules of *respondeat superior* liability encourage officers to take responsibility for their corporate culture and “make clear at every level that the enterprise does not want the proceeds of illegality.” Id.

Here, the district court’s jury instructions stated that a corporation’s agents may include “directors, officers, and employees or other persons authorized to act for it.” Ionia Mgmt., 526 F. Supp. 2d at 324. This inquiry properly makes the corporation responsible for its sphere of actual authority, encouraging a law-abiding culture at all levels rather than limiting liability to those with a particular title. The instructions also said that corporate rules and policies will not necessarily relieve the corporation of liability for the illegal acts of its agents within the scope of their employment. Id. at 325. However, they allowed the jury to consider an agent’s violation of corporate policies in determining whether he or she intended to benefit the corporation or acted within the scope of employment. Id. This instruction properly makes corporate policies factually relevant—depending, for example, on the corporation’s sincerity or level of enforcement—rather than reducing them to legal formalities. Corporations therefore have an incentive to ensure that their policies become a set of living principles being actively applied, rather than a dusty stack of paperwork.

B. The holding of *New York Central* appropriately considered the special features of corporations as entities and need not be revisited.

The corporation has long been characterized as “an artificial being, invisible, intangible, and existing only in contemplation of law.” Trs. of Dartmouth College v. Woodward, 17 U.S. (4 Wheat.) 518, 636 (1819). This Court has therefore acknowledged it “true that there are some crimes, which in their nature cannot be committed by corporations.” N.Y. Cent. & Hudson River R.R. Co., 212 U.S. at 494. The Court has also recognized that illegal corporate behavior in some areas, such as antitrust, “is often difficult to distinguish from the gray zone of socially acceptable and economically justifiable business conduct.” United States v. U.S. Gypsum Co., 438 U.S. 422, 441 (1978). But when a corporation benefits from the acts of employees to whom it

entrusted authority within a certain area, “no valid objection in law” bars corporate criminal liability. *N.Y. Cent. & Hudson River R.R. Co.*, 212 U.S. at 495.

Criminal punishment generally proceeds on the assumption that human beings “are capable of rationally choosing to obey rather than break the law.” Tigar, *supra*, at 215. This assumption is especially appropriate for corporations, whose crimes often benefit the entity and are borne out of a demonstrable economic calculation (whether at the level of management or other agents). *Id.* If it is true that “[c]ourts look both backward and forward in the application of law”—backward to the Constitution and statutes as previously applied, but forward to the ends the law seeks to serve—then the Court in *New York Central* appropriately looked forward in perceiving the benefits of corporate criminal liability. Hart, *supra*, at 429.

One fundamental purpose of criminal law is to define the minimum conditions of community responsibility and hold individuals to it. Hart, *supra*, at 410. The Court did this in *New York Central* by extending corporate civil liability for the acts of agents, even when “done wantonly or recklessly or against the express orders of the principal,” into the criminal law as well. 212 U.S. at 493. This places the burden of guaranteeing employees’ lawful conduct on those best able to regulate it—the corporations who hire, train, and discipline those employees.

Though the concept of “intent” applies less easily to corporations than to human beings, “recklessness” is more straightforward. The criminal law punishes reckless conduct when “unawareness of the duty, in the understanding of the community, [is] generally blameworthy.” Hart, *supra*, at 417. The holding of *New York Central* extended this principle to corporations, recognizing that “interstate commerce is almost entirely in their hands, and to give them immunity from all punishment because of the old and exploded doctrine that a corporation cannot commit a crime would virtually take away the only means of effectually controlling the

subject-matter.” N.Y. Cent. & Hudson River R.R. Co., 212 U.S. at 495–96. Given their enormous reach into areas of public concern, corporations should be charged with maintaining awareness of their agents’ ability to stay within the laws.

Corporate criminal liability under the *respondeat superior* doctrine benefits both the public and corporations themselves. Rather than choosing between the offending agent or the entire firm, law enforcement can “realize important economies of scale by simultaneously pursuing both.” John Coffee, Jr., “No Soul to Damn; No Body to Kick”: An Unscandalized Inquiry Into the Problem of Corporate Punishment, 79 Mich. L. Rev. 386, 387 (1981). Placing responsibility on the corporation as a whole removes a burden from managers, who may be less able to manage the risks of employee misconduct than an overall corporate culture of compliance can. See Khanna, *supra*, at 121. Because corporate compliance programs remain factually relevant to determining the agent’s intent and scope of employment, a serious corporation with effective safeguards can “convince a prosecutor to forego bringing a criminal case.” Tigar, *supra*, at 234. This is why the holding of *New York Central* remains serviceable: it encourages corporations to match their culture to community standards of conduct, while maintaining reasonable limits on their responsibility for rogue agents.

#### CONCLUSION

The district court followed well established Supreme Court precedent when it instructed the jury regarding Ionia’s criminal liability for its employees’ actions. The court properly instructed that the jury needed to find that Ionia’s employees were acting in the scope of their employment and for the benefit of their employer. The court’s instructions on how to determine scope of employment and if an employee was acting to benefit his employer were also correct. In addition to Supreme Court precedent, the court’s instructions were authorized by 1 U.S.C. § 1.

The court's instructions properly applied the doctrine of *respondeat superior* in a manner consistent with general principles of criminal law. The holding of *New York Central*, which underpinned the jury instructions, appropriately considered the special features of corporations as entities and therefore need not be revisited.

For the foregoing reasons, Respondent respectfully submits that the District Court and the Second Circuit Court's judgments should be affirmed.

Respectfully submitted,  
This the 20<sup>th</sup> day of February, 2009.

Team 5  
ATTORNEYS FOR THE RESPONDENT