

No. 08-1234

---

IN THE  
Supreme Court of the United States

---

IONIA MANAGEMENT S.A.,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent,*

---

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

---

**BRIEF FOR THE PETITIONER**

---

*Attorneys for Petitioner*

Team 8

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....iii

STATEMENT OF THE ISSUES .....v

STATEMENT OF THE FACTS AND NATURE OF PROCEEDINGS .....1

STANDARD OF REVIEW .....2

SUMMARY OF THE ARGUMENT .....3

ARGUMENT .....4

**I. THE DISTRICT COURT’S INSTRUCTION ON CORPORATE CRIMINAL LIABILITY WAS NOT AUTHORIZED BY SUPREME COURT PRECEDENT AND FEDERAL STATUTORY LAW BECAUSE THE JURY INSTRUCTION WENT BEYOND THE TWO-PART TEST OF SCOPE OF EMPLOYMENT THAT WAS ESTABLISHED BY THE SUPREME COURT AND NEGLECTED THE FEDERAL STATUTORY LAW AT ISSUE.** .....4

    A. THE DISTRICT COURT ERRED IN FAILING TO TAKE INTO ACCOUNT OR INCORPORATE THE LANGUAGE OF THE ACT TO PREVENT POLLUTION FROM SHIPS INTO THE JURY INSTRUCTIONS FOR THE FIRST PART OF THE SUPREME COURT TEST CONCERNING AN AGENT HAVING THE AUTHORITY TO ACT. ....5

    B. THE DISTRICT COURT ERRED BY EXPANDING THE SECOND PART OF THE SUPREME COURT TEST REGARDING BENEFIT TO THE CORPORATION. ....8

        1. The district court erred in altering the requirement of actual benefit to one of intended benefit.....9

        2. The district court erred in changing the requirement of actual benefit to one of intended benefit.....10

        3. The district court not only erred in expanding the second part of the test, but also erred in not expanding it fairly to all parties involved.....11

**II. THE DISTRICT COURT’S JURY INSTRUCTION ON CORPORATE CRIMINAL LIABILITY WAS INCONSISTENT WITH GENERAL PRINCIPLES OF CRIMINAL LAW AND THE COURT SHOULD REVISIT ITS HOLDING IN NEW YORK CENTRAL & HUDSON RIVER R.R. CO. V. UNITED STATES.**

.....12

A. THE DISTRICT COURT’S JURY INSTRUCTION ON CORPORATE CRIMINAL LIABILITY WAS INCONSISTENT WITH GENERAL PRINCIPLES OF CRIMINAL LAW.....12

    1. Vicarious criminal corporate liability as applied by the district court is inconsistent with the fundamental principles of criminal law.....13

    2. A corporation should be entitled to assert in its defense the efforts it has made to prevent criminal activity by its employees.....15

B. THIS COURT SHOULD REVISIT ITS HOLDING IN NEW YORK CENTRAL & HUDSON RIVER R.R. V. UNITED STATES.....16

    1. The doctrine of corporate criminal liability laid out by this Court a century ago is outdated and should be reconsidered.....16

    2. The Court should assert a doctrine of corporate criminal liability that better serves to achieve the goals of criminal justice than does the current scheme.....17

    3. This Court should clarify that New York Central requires an actual, rather than merely intended, benefit be accrued to a corporation through the criminal acts of its agents in order for vicarious criminal liability to attach.....19

CONCLUSION.....20

.....20

**TABLE OF AUTHORITIES**

**Cases**

Chylinski v. Wal-Mart Stores, Inc.,  
150 F.3d 214 (2d Cir. 1998).....2

Dennis v. United States,  
341 U.S. 494 (1950).....19

Dollar Steamship Co. v. United States,  
101 F.2d 638 (1939).....17

Egan v. United States,  
137 F.2d 369 (1943).....16

Grand Union Co. v. United States,  
696 F.2d 888 (11th Cir. 1983).....6,7

Morissette v. United States,  
342 U.S. 246 (1952).....19

Morris v. Union Pacific R.R.,  
373 F.3d 896 (8th Cir. 2004).....15

New York Cent. & Hudson River R.R. Co. v. United States,  
212 U.S. 481 (1909).....passim

Standard Oil Co. of Texas v. United States,  
307 F.2d 120 (5th Cir. 1962).....11, 12

United States v. Carr,  
880 F.2d 1550 (2d Cir. 1989).....5, 6, 7

United States v. Hilton Hotels Corp.,  
467 F.2d 1000 (9th Cir. 1972).....17

United States v. Ionia Mgmt. S.A. et al.,  
526 F. Supp. 2d 319 (D. Conn. 2007).....passim

United States v. Mobil Oil Corp.,  
464 F.2d 1124 (5th Cir. 1972).....7

United States v. Ridglea State Bank,  
357 F.2d 495 (5th Cir. 1966).....14

United States v. Twentieth Century Fox Film Corp.,  
882 F.2d 656 (2d Cir. 1989).....16

Williams v. People of State of New York,  
337 U.S. 241 (1949).....16

**Statutes**

33 U.S.C. § 1901(a)(8) (2000) .....7, 8  
33 U.S.C § 1908(a) (2000).....3, 4, 6, 7

**Model Penal Code Provisions**

Model Penal Code § 2.02(1).....14  
Model Penal Code § 2.06.....14, 15  
Model Penal Code § 2.07.....18, 19

**Law Review Articles**

Harvard Law Review Assoc., Developments in the Law--Corporate Crime: Regulating Corporate Behavior Through Criminal Sanction, 92 Harv. L. Rev. 1231 (1979).....13  
Joseph S. Hall, Corporate Criminal Liability, 35 Am. Crim. L. Rev 549, 552 (1998)  
V. S. Khanna, Corporate Criminal Liability: What Purpose Does it Serve?,  
109 Harv. L. Rev. 1477 (1996).....11, 17  
Alan O. Sykes, The Economics of Vicarious Liability, 93 Yale L.J. 1231 (1984).....13

## **STATEMENT OF THE ISSUES**

1. Whether the district court's instruction on corporate criminal liability was authorized by Supreme Court precedent and federal statutory law.
2. Whether the district court's instruction on corporate criminal liability was consistent with general principles of New York Central & Hudson River Railroad v. United States.

## STATEMENT OF FACTS AND NATURE OF PROCEEDINGS

Petitioner, Ionia Management S.A. (“Ionia”), owns shipping vessels that sail in United States ports and other navigable waters under United States jurisdiction. United States v. Ionia Mgmt. S.A. et al., 526 F. Supp. 2d 319, 327 (D. Conn. 2007). The Act to Prevent Pollution from Ships (“APPS”) is a federal statute that is intended to prevent maritime and environmental hazards. Id. Ionia had established official policies, training, and general instructions to govern crew-members to ensure that APPS was followed. Id. at 326. Beginning in 2004, Ionia was part of a three year compliance program that required Ionia to have certain procedures in place such as a corporate manger, an outside auditing firm conducting regular inspections of vessels, and a review of internal corporate safety measures. Id. at 327. Consequently, Ionia’s corporate policies were intentionally stricter than those of other sea-going corporations.

In 2006, the crew of Kriton, one of Ionia’s vessels, allegedly violated APPS. See id. at 324. Certain crew-members were accused of discharging oily waste overboard without using the oily water separator as well as falsely entering into the oil record books that the pollution prevention system was being used when it was not. Id. at 325-26. The chief engineers were assigned the task of maintaining the oily record books while the engine room crew handled the task of operating the pollution prevention equipment. Id. at 326. According to one crew member, the second engineer, he was instructed by the chief engineer and subsequent chief engineer not to use the oily water separator and dispose of the waste into the ocean. Id. at 325. However, four other crew members of the Kriton testified that “Ionia has a strict policy against the improper discharge of oily waste and bilge water, and they were each trained and promised to abide by this policy.” Id. at 322. At the time of the alleged improper conduct of the crew

members, the Kriton was equipped with the proper pollution machinery that would discharge the waste if it had been used. See id. at 325. Furthermore, there was no evidence presented at trial that Ionia received an actual benefit from the illegal actions of these crew members.

Counsel for Ionia and counsel for the government each provided suggested jury instructions to the district court, which chose jury instructions substantially similar to the government's suggested instructions.<sup>1</sup> On September 6, 2007, the jury found Ionia vicariously liable for the acts of its employees. See id at 321-22. The second circuit affirmed the district court's decision. Ionia Mgmt. S.A. et al. v. United States, 999 F.3d 999 (2d Cir. 2008). Certiorari was granted by the Supreme Court on December 12, 2008.

### **STANDARD OF REVIEW**

Claims of error relating to jury instructions are reviewed de novo on appeal. Chylinski v. Wal-Mart Stores, Inc., 150 F.3d 214 (2d Cir. 1998).

---

<sup>1</sup> On the issue of vicarious corporate criminal liability the jury was instructed as follows: "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. 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. . . . Ionia, through its agents, was in charge of operating the oil pollution prevention and discharge equipment for the M/T Kriton, including the Oily Water Separator and Oil Content Monitor; [and] that for the M/T Kriton, Ionia, through its agents, knowingly, meaning intentionally or voluntarily, failed to fully and accurately maintain an Oil Record Book in which the required disposal and discharge operations were recorded. . . . The second element that the Government must prove beyond a reasonable doubt is that Ionia, through its agents, was in charge of operating the oil pollution prevention and discharge equipment for the M/T Kriton. 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 now 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 instructions 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." Ionia, 526 at 324-25 (citation omitted)

## **SUMMARY OF ARGUMENT**

The district court improperly exceeded the scope of the New York Central doctrine in its instructions to the jury at trial. The district court also failed to properly instruct the jury in line with the statutory language of 33 U.S.C. § 1901(a)(10) (2000) and 33 U.S.C. 1908(a) (2000), instructing the jury too broadly with regard to who may be held criminally liable under APPS.

Rather than addressing actual benefit incurred to a corporation by the illegal acts of its employees, the district court incorrectly instructed the jury that it could hold Petitioner liable for the acts of an employee if that employee intended some benefit to the corporation and that such benefit need not be the employees' sole intent. This scheme of liability was not in line with New York Central or with other Supreme Court precedent. The district court neglected to address the fact that a corporation should not be held liable for the actions of deceptive and disobedient employees.

The district court's jury instructions were not consistent with general principles of criminal law in that the scheme of corporate criminal liability laid out by the district court dispensed with the requirement of mens rea or an equivalent thereof. The district court also erred in instructing the jury as it did because the doctrines of respondeat superior and vicarious liability, while permissible in the civil context, are unnecessary and unjust when applied in the criminal context. The district court did not allow Petitioner to sufficiently defend itself, specifically with regard to the vigorous efforts Petitioner had made to ensure that its employees would obey the law.

This Court should revisit its holding in New York Central because that doctrine is outmoded and no longer relevant. This Court should adopt a doctrine of corporate criminal liability more like the one laid out in the Model Penal Code

## ARGUMENT

### I. THE DISTRICT COURT'S INSTRUCTION ON CORPORATE CRIMINAL LIABILITY WAS NOT AUTHORIZED BY SUPREME COURT PRECEDENT AND FEDERAL STATUTORY LAW BECAUSE THE JURY INSTRUCTION WENT BEYOND THE TWO-PART TEST OF SCOPE OF EMPLOYMENT THAT WAS ESTABLISHED BY THE SUPREME COURT AND NEGLECTED THE FEDERAL STATUTORY LAW AT ISSUE.

A landmark decision by the Supreme Court in 1908 made corporations liable for acts of their agents so long as the acts were within the scope of employment. New York Cent. & Hudson River R.R. Co. v. United States, 212 U.S. 481, 493 (1909). In defining scope of employment, the Supreme Court noted that (1) the agent must have the authority to act and (2) the agent's act must be done for the benefit of the corporation. Id. at 493. For over one hundred years, the Supreme Court has stood by its holding in New York Central. Since then, this Court has not directly addressed the limits of test to determine corporate criminal liability.

Over the past century, there have been numerous federal appellate and lower court decisions that have attempted to address legal arguments that have tried to expand or narrow the boundaries of this precedent. However, in 2007 one district court went beyond appropriate limits in its interpretation. In United States v. Ionia Mgmt. S.A. et al., 526 F. Supp. 2d 319 (D. Conn. 2007), the district court erred in failing to properly instruct the jury as to two-prong test established in New York Central and in neglecting to take into account the specific language of the statute at issue. The Second Circuit concisely stated the Supreme Court's method of review for challenged jury instructions. The Second Circuit described the Supreme Court analysis as follows:

First, we must focus on the specific language challenged to determine whether it passes muster. . . Next, we must 'review the instructions as a whole to see if the entire charge delivered a correct interpretation of the law. . . The charge must be viewed in its entirety and not on the basis of excerpts taken out of context, which might separately be open to serious question. . . Considering the charge as a

whole, we must attempt to discern what point of law the district court was, in fact, seeking to convey to the jury.

United States v. Carr, 880 F.2d 1550, 1554-55 (2d Cir. 1989) (citations omitted). The district court's jury instruction, in its entirety, did not correctly interpret the law. Therefore, Ionia, should not be held liable for the acts of its employees because the principles of agency were not properly applied.

**A. THE DISTRICT COURT ERRED IN FAILING TO TAKE INTO ACCOUNT OR INCORPORATE THE LANGUAGE OF THE ACT TO PREVENT POLLUTION FROM SHIPS INTO THE JURY INSTRUCTIONS FOR THE FIRST PART OF THE SUPREME COURT TEST CONCERNING AN AGENT HAVING THE AUTHORITY TO ACT.**

The first prong of the scope of employment test is whether the agent was acting within his authority. This Court has asserted that:

A corporation is held responsible for acts not within the agent's corporate power 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.

New York Central, 212 U.S. at 493-94 (emphasis added). However, the historic New York Central case presented a fairly straightforward fact pattern for determining whether the agent was acting within his authority. The agents involved were a general manager and an assistant manager who clearly had power to act on behalf of the corporation. Id. at 496. Additionally, the statute in question, the Elkins Act, left no room for exceptions because it specifically set forth that it applied to "any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation". Id. at 491 (emphasis added). Consequently, it was clear, based on the scope of the employment test and the statutory language that, in New York Central, the employees were acting within the scope of their authority. Id. at 496.

Since 1908, there have been numerous cases where it has been less than clear whether a corporation's agent had the authority to act. In these cases, appellate courts have not been consistent in their interpretations of this prong of the test. For instance, the Eleventh Circuit has taken a more expansive view of an agent's authority or power. The Eleventh Circuit decided a case where two check-out cashiers had accepted food stamps as payment for items that were not legally eligible for purchase with food stamps, but the head cashier was unaware of this activity and never participated. Grand Union Co. v. United States, 696 F.2d. 888, 890 (11th Cir. 1983). The statute at issue in Grand Union was The False Claims Act, which begins with the language, "any person" and does not go further to explain the authority that the person must possess. Id. The Eleventh Circuit held that, "liability of a corporation for a False Claims Act violation may arise from the conduct of employees other than those with 'substantial authority and broad responsibility.'" Thus, the district court erred when it focused solely on the head cashier's knowledge . . ." Id. at 891. The Eleventh Circuit did not expound upon its reasoning for the decision.

The Second Circuit and the Fifth Circuit have taken a narrower approach by requiring the agent to demonstrate some kind of authority. These two circuits have looked specifically to the language of a statute to determine whether the agent possessed authority to act on behalf of the corporation. In a Second Circuit case, United States v. Carr, the agent in question was a civilian employee alleged to have violated the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). Carr, 880 F.2d at 1550-51. The court stated,

The legislative history bears out appellants argument that CERCLA's reporting requirements should not be extended to *all* employees involved in a release. "The 'term person in charge' was deliberately designed to cover only supervisory personnel who have the responsibility for the particular vessel or facility and not to include other employees." . . . Indeed, as the Fifth Circuit has stated, 'to the extent that legislative history does not shed light on the meaning of 'persons in

charge,' it suggests at the very most that Congress intended the provisions of [section 311] to extend, not to every person who might have knowledge of [a release] (mere employees, for example), but only to people who occupy positions of responsibility and power.

Id. at 1554 (citing United States v. Mobil Oil Corp., 464 F.2d 1124, 1128 (5th Cir. 1972)).

Therefore, the Second Circuit and the Fifth Circuit in the absence of further direction from Supreme Court precedent looked to the specific language of the federal statutes and to legislative history to determine whether an agent had authority to act and found that there was a limit to such authority. Without further guidance by this Court, the Circuit Courts have been left to determine the boundaries of what “acting within his authority” means. Without direction, the Circuit Courts have tried to examine the statutes themselves. The problem with this approach is that the language of federal statutes are inconsistent and, as demonstrated in Grand Union, the first prong of the scope of employment test has become unclear to the point of being unworkable and must be clarified by this Court.

In the instant case, the district court erred in failing to examine or apply the language of the federal statute at issue to the jury instructions. The Act to Prevent Pollution from Ships (“APPS”) describes the actor simply as “a person”, without going further. 33 U.S.C. § 1908(a). However, the applicable definition section, § 1901(10), explains that “‘person’ means an individual, firm, public or private corporation, partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.” Id. § 1901(10). Consequently, the statute does not go as far to say “any person” as in the statute at issue in Grand Union, nor does the statute say “any person in charge” as was the case in Carr.

The language of APPS is also not comparable to that of the Elkins Act at issue in New York Central, which referred to “any director or officer thereof, or any receiver, trustee, lessee,

agent, or person acting for or employed by such corporation.” New York Central, 212 U.S. at 494 (emphasis added). APPS is much less explicit than the Elkins Act. The court below failed to address this and employed a general instruction which inferred more than the statute intended. The district court’s jury instruction stated, “[a]s 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.” Ionia, 526 F. Supp. 2d at 324 (emphasis added). However, the statutory language of APPS does not use this language to define who shall be held criminally liable. APPS defines person who shall be held accountable 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 (10). The jury instructions should have included reference to the APPS language by either using the exact statutory text or describing the same type of people that are to be held responsible. The respondent may argue that this analysis is simply semantics. However, in light of the fact that Supreme Court has not spoken to different levels of authority, the federal statute is the only guidance that the district court has. Furthermore, other Circuit Courts took the language into account when deciding what jury instructions were proper.

**B. THE DISTRICT COURT ERRED BY EXPANDING THE SECOND PART OF THE SUPREME COURT TEST REGARDING BENEFIT TO THE CORPORATION.**

In New York Central, this Court asserted that “liability is not imputed [on the principal] because the principal actually participates in the malice or fraud, but because the act is done for the benefit of the principal.” New York Central, 212 U.S. at 493. This was the Court’s concise explanation of “benefit of the principal,” which comprises the second prong of the scope of employment test. This one sentence is the only time in the New York Central opinion that the

this Court explained what “benefit of the principal” means. Nevertheless, the District Court expanded upon this assertion to a point that misconstrues the law on corporate criminal liability.

**1. The district court erroneously changed the benefit from solely applying to the corporation to also applying to the employee.**

In its jury instruction, the district court eviscerated the second prong of the scope of employment test. The court erroneously expanded the possible beneficiaries who could be affected in instructing the jury that:

[i]n 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 benefiting the corporation. It is sufficient if one of the agent’s purposes was to benefit the corporation.

Ionia, 526 F. Supp. 2d at 325. The Supreme Court’s opinion in New York Central did not suggest or warrant this extension of whom the benefit may pertain to. This Court said that an act is done for the benefit of the “principal” or the corporation. See New York Central, 212 U.S. at 493.

This extension resulted in a jury instruction which had the force of being erroneous. One of Ionia’s fundamental arguments at trial was that that the acts of Ionia’s employees in no way benefited the corporation. Ionia, 526 F. Supp. 2d at 325. The acts only benefited the employees because improper disposal of oil waste and falsification of records made the employees’ jobs easier. These acts were illegal, the equipment to properly dispose of waste was already installed, and appropriate policies were in place. See id. Four crew members testified ““that Ionia had a strict policy against the improper discharge of oily waste and bilge water, and they were each trained and promised to abide by this policy.”” Id. Consequently, if the benefit is supposed to be to the corporation, as this Court intended, it is difficult, if not impossible, to imagine how a reasonable jury could find beyond a reasonable doubt that this benefited the company. Id. at 325.

Perhaps if the appropriate disposal equipment and policies were not in place, Ionia would have received some benefit, but that is far from the case. All the employees needed to do was use the equipment that was already provided. In short, from a cost benefit analysis, it was not worth it to the Ionia to violate the law. The district court's erroneously broad jury instruction allowed the jury to find Ionia liable for actions for which Ionia should not have been held liable.

**2. The district court erred in altering the requirement of actual benefit to one of intended benefit.**

The court below erred in explaining to the jury that the benefit need not be "actual", but only "intended." The district court's jury instruction read, "[i]t is not necessary that the Government prove that the corporation was actually benefited, only that the agent intended it would be benefited." Ionia, 526 F. Supp. 2d at 325 (emphasis added). These words are nowhere to be found in the New York Central opinion nor did Supreme Court provide similar jury instruction. By changing the benefit from actual to intended, the district court diluted the government's burden. This is illustrated in the district court's statement that:

The Government also presented evidence from which one could infer that these employees were acting, with an intent to benefit Ionia. The jury could reasonably have concluded that the crew participated in the pump-outs and record falsification with the intention of, for example, (1) following orders and maintaining the chain of command aboard the Kriton; (2) saving Ionia the time and expense of properly maintaining and using the oil pollution prevention equipment; and (3) enabling the Kriton to continue to dock at U.S. ports despite having false records.

Id. at 326 (emphasis added). The key to these remarks by the district court is the use of the word "intent". The district court changed the requirement from one of objective actual knowledge to one of subjective intent. In corporate liability, there is both criminal and civil liability. Corporate criminal liability has the high burden, which is proof of beyond a reasonable doubt whereas corporate civil liability bears a lower standard, which is preponderance of the evidence.

See V. S. Khanna, Corporate Criminal Liability: What Purpose Does it Serve?, 109 Harv. L. Rev. 1477, 1512-13 (1996). The district court diminished the power of the beyond a reasonable doubt standard by changing the requirements. As Petitioner argued, “there was no actual benefit to be gained from illegally discharging oil waste, for the vessel’s pollution prevention equipment obviated the need to make illegal discharge.” Id. at 325 (emphasis added). Furthermore, based on the district courts own assertion there was no actual benefit, but only intended benefit, which is not sufficient to meet the Supreme Court precedent.

**3. The district court not only erred in expanding the second prong of the test, but also erred in not expanding it fairly to all parties involved.**

The district court went too far by expanding the second prong of the test beyond Supreme Court precedent and further erred by not broadening the test fairly to both parties. The district court in Ionia looked to decisions from the First Circuit and Ninth Circuit in formulating its jury instruction. See Ionia, 526 F. Supp. 2d at 323-24. However, the district court failed to acknowledge a relevant and important holding from the Fifth Circuit. In 1962, Standard Oil Co. of Texas v. United States, 307 F.2d 120 (5th Cir. 1962), involved a corporation’s affiliate being deceived by its own employees. Id. at 122. The affiliate’s employees were bribed to make false reports in violation of the Connally Hot Oil Act to aid another company. Id. at 124. The question was whether, despite this deception, the affiliate should be held liable for its employees’ actions. The Fifth Circuit held,

to say that acts done by servants actuated by such evil and specifically unlawful motives were the acts of the very corporations thus sought to be cheated or implicated in practices known to be in serious violation of law and, moreover, to impute not only accountability but ‘knowledge’ of such acts to corporations, would be to disregard every accepted notion of respondeat superior. . . the corporation does not acquire knowledge or possess the requisite ‘state of mind essential for responsibility, through the activities of unfaithful servants whose conduct was undertaken to advance the interests of parties other than their corporate employer.

Id. at 129. The Fifth circuit found the corporation not liable. Id. at 130.

The district court in the instant case failed to mention Standard Oil in its decision and did not acknowledge in the jury instruction that if the servants had been found to be unfaithful and did not act in the corporation's interest, then the corporation could not be found liable, despite the fact that the cases are similar. While Ionia's employees were not being bribed, the actions of the employees were unfaithful and detrimental to Ionia. As in Standard Oil, Ionia's employees acted for their own benefit and to the detriment of their employers. However, because the district court failed to offer this as a part of the jury instructions, the jury never had the chance to weigh this as a significant consideration. Consequently, Ionia should not be held liable as a result of the failure of the district court to provide jury instruction that correctly convey to the jury the current state of the law.

**II. THE DISTRICT COURT'S JURY INSTRUCTION ON CORPORATE CRIMINAL LIABILITY WAS INCONSISTENT WITH GENERAL PRINCIPLES OF CRIMINAL LAW AND THE COURT SHOULD REVISIT ITS HOLDING IN NEW YORK CENTRAL & HUDSON RIVER R.R. CO. V. UNITED STATES.**

**A. THE DISTRICT COURT'S JURY INSTRUCTION ON CORPORATE CRIMINAL LIABILITY WAS INCONSISTENT WITH GENERAL PRINCIPLES OF CRIMINAL LAW.**

At trial, the district court instructed the jury that it could hold Ionia criminally liable for the actions or omissions of any of its employees, even if the corporation had no intent to violate the federal statute and, in fact, acted with diligence to prevent any violations from occurring. These instructions on corporate criminal liability were substantially the same as the Government's proposed jury instructions. Ionia, 526 F.Supp.2d at 323. The district court's jury instruction ran counter to the general principles of criminal law, for "no penal system that

negates the mental element can find general acceptance.” Morissette v. United States, 342 U.S. 246, 254 n.14 (1952); See also Dennis v. United States, 341 U.S. 494, 500 (1950) (“The existence of mens rea is the rule of, rather than the exception to, the principles of Anglo-American criminal jurisprudence”).

Traditionally, there have been four rationales that have provided justification for criminal punishment: rehabilitation, incapacitation, deterrence, and retribution. Harvard Law Review Assoc., Developments in the Law--Corporate Crime: Regulating Corporate Behavior Through Criminal Sanction, 92 Harv. L. Rev. 1231, 1231 (1979). The first three of these have typically been applied on the basis of a criminal actor’s moral culpability. Id. at 1233. Retribution is used as a justification based on the notion that the good should prosper and the bad should suffer. Id. at 1234. The scheme of corporate criminal liability applied by the district court in its jury instructions does not fit within any of these rationales. In terms of the first three of these principles, Ionia was not morally culpable, specifically because of its ardent efforts to prevent criminal activity by its employees. The retributive goal of criminal punishment is not met here because Ionia behaved as a good corporate citizen, by making every effort to ensure that it and its employees would follow the law.

**1. Vicarious criminal corporate liability as applied by the district court is inconsistent with the fundamental principles of criminal law.**

The doctrines of respondeat superior and vicarious liability have long been employed in the civil tort context. Use of these doctrines in the civil context is based on the premise that a corporation is better able to absorb the impact of a monetary damage award than an individual employee. See Alan O. Sykes, The Economics of Vicarious Liability, 93 Yale L.J. 1231 (1984). Because the corporation is better able to absorb this impact, civil liability imposed on a

corporation allows the victim of the tort to recover damages where recovery might not otherwise be possible. See id. This premise does not apply in the criminal context.

Vicarious liability in the civil context allows for a third party who has suffered a loss to be compensated by a corporation better able to bear the financial cost than an individual employee of the corporation. See United States v. Ridglea State Bank, 357 F.2d 495, 499 (5th Cir. 1966). There is no such fair loss allocation present in the scheme of vicarious corporate liability in the criminal context. See id. A criminally culpable employee may well be deterred by the prospect of criminal punishment. See id. This deterrence scheme does not apply, however, to the corporation punished for the criminal activities of the disloyal employee.

An individual can only be held liable for the criminal conduct of another if he acts with sufficient culpability so as to cause an innocent person to engage in criminal conduct, if he is made specifically liable by statute, or if he is an accomplice. Model Penal Code § 2.06(2). Under the district court's construction of corporate criminal liability, a corporation may be held liable for the criminal conduct of another even if the corporation makes every effort to prevent such criminal conduct. The corporation may also be held liable if the perpetrator of the criminal conduct acted directly against the orders of the corporation and by deliberately bypassing the corporation's efforts to prevent the perpetrator's criminal conduct.

Under the Model Penal Code, an individual cannot be guilty of a criminal offense unless the individual acted purposely, knowingly, recklessly, or negligently. Model Penal Code § 2.02(1). Under the scheme of vicarious corporate criminal liability applied in the district court's jury instruction, the mens rea that would be required for an individual is entirely dispensed with when a corporation is charged with a crime. There are certainly instances in which a corporation should be held liable for the criminal actions of its employee, for example where a corporation

knowingly allows criminal activity by its employees to continue, or where a corporation willfully disregards the law by making no effort to prevent such criminal activity – essentially, those instances in which a corporation could be said to have had its own mens rea for the crime.

**2. A corporation should be entitled to assert in its defense the efforts it has made to prevent criminal activity by its employees.**

The district court instructed the jury that Ionia’s substantial efforts to prevent improper disposal of oil waste by its employees were insufficient to relieve Ionia from responsibility for the acts of its disobedient employees. Not allowing a corporation to assert considerable efforts it made to prevent the commission of a criminal offense by its employees is fundamentally unjust. An individual may assert as a defense his efforts to prevent a crime even when the individual had initially participated in the commission of the offense. Model Penal Code § 2.06. A corporation, however, may be held liable even when it has never participated in or acquiesced to the commission of a criminal offense.

When a corporation is involved, the intent inquiry depends in part on corporate policies and not solely on the intent of its employees. Morris v. Union Pacific R.R., 373 F.3d 896, 902 (8th Cir. 2004). The district court’s jury instruction did not address this necessary element of the intent inquiry. Rather, the district court instructed the jury that “the fact that the agent’s act was against the corporation’s policies will not necessarily relieve the corporation of responsibility for the agent’s act.” Not only did this instruction not address the important role of corporate policy in determining intent, but it was also unclear as to how the jury was to consider corporate policies. The jury was instructed that it might “consider whether the agent disobeyed instructions or violated company policy.” Ionia, F.Supp.2d at 325. Without further instruction as to the weight the jury was to attach to such disobedience and coupled with the instruction that corporate policy would not relieve Ionia of liability, the instruction regarding employee

disobedience was impermissibly vague.

Retribution is not the sole focus of modern criminal justice; for a punishment should fit not simply the crime, but the offender as well. Williams v. People of State of New York, 337 U.S. 241, 247-48 (1949). In this case, the punishment did not fit the offender. Ionia had made considerable and conscientious efforts to ensure proper disposal of oil waste as well as to train its employees in the operation of disposal systems it had put in place. Despite these extensive efforts, Ionia was punished just as if it had done nothing to ensure proper disposal, in fact, as though it had purposively disposed of waste improperly.

**B. THIS COURT SHOULD REVISIT ITS HOLDING IN NEW YORK CENTRAL & HUDSON RIVER R.R. V. UNITED STATES.**

**1. The doctrine of corporate criminal liability laid out by this Court a century ago is outdated and should be reconsidered.**

This Court asserted that a corporation may be held criminally liable for acts of its agents if those acts were within the scope of those agents' employment. New York Central, 212 U.S. 481. This doctrine of corporate criminal liability has remained virtually untouched for the past century. See United States v. Twentieth Century Fox Film Corp., 882 F.2d 656, 660 (2d Cir. 1989). The application of the New York Central doctrine has resulted in the disappearance of any distinction between the standards of imposition of criminal and those of civil liability on corporations. Egan v. United States, 137 F.2d 369, 379, cert. denied, 320 U.S. 788 (1943). This unjust and impractical result must be remedied by this Court in a reconsideration of the New York Central doctrine.

This Court has not addressed the parameters of corporate criminal liability in the modern era, leaving state and lower federal courts to rely on outmoded and inappropriate formulations to determine when a corporation should be held criminally liable for its employees' behavior. In

New York Central, the Court discussed Congress's need to regulate and control corporations engaged in interstate commerce. Id. at 496. This was at a time before civil corporate liability enforcement was widespread. V.S. Khanna, Corporate Criminal Liability: What Purpose Does it Serve?, 109 Harv. L. Rev. 1477, 1486 (1996). Therefore, in 1909, vicarious corporate criminal liability served a necessary purpose. Id. Over the past century, however, regulatory agencies and other vehicles of public civil enforcement have gained a great deal of power, obviating the need for corporate criminal liability as it was established in New York Central. The New York Central doctrine was appropriate and relevant in an era before regulatory agencies existed in the forms in which they exist today. However, in the modern era of regulation, the attachment of vicarious criminal liability to corporations is unnecessary and unjust.

**2. The Court should assert a doctrine of corporate criminal liability that better serves to achieve the goals of criminal justice than does the current scheme.**

The policies and practices of the corporation with regard to the offense should be more heavily considered than they are under the current scheme. As the law stands, a corporation may be liable even for the actions of an employee who disobeys direct orders in order to commit the criminal offense See United States v. Hilton Hotels Corp., 467 F.2d 1000 (9th Cir. 1972), cert. denied 409 U.S. 1125 (1973). A corporation may also be held liable for the criminal actions of an employee even if the corporation has taken substantial measures to prevent violations and an employee deliberately circumvents the safeguards in place. Dollar Steamship Co. v. United States, 101 F.2d 638 (9th Cir. 1939). While it is true that a corporation can only act through its employees, the actions of a corporations' high-level employees, particularly as evidenced in the corporations' policies and procedures, are much more directly in line with the corporate ethos than are the actions of low-level employees.

This Court should adopt a doctrine of corporate criminal liability akin to the one laid out in the Model Penal Code, which adds a third element to the two-part test laid out in New York Central. This additional element allows for a corporation to be held criminally liable for the act of an employee where “the commission of the offense was authorized, requested, commanded, performed or recklessly tolerated by the board of directors or by a high managerial agent acting in behalf of the corporation within the scope of his office or employment”.<sup>2</sup> Many states have adopted statutes requiring that criminal acts must be committed by high managerial agents in order for the corporation to be held liable for these acts.<sup>3</sup> Joseph S. Hall, Corporate Criminal Liability, 35 Am. Crim. L. Rev 549, 552 (1998). By applying the same standard, this Court will not only put an end to the unjust practice of imposing criminal sanctions on corporations that are diligent in their attempts to prevent criminal behavior on the part of their employees, but will also ensure that corporations that neglect to prevent criminal offenses perpetrated by their employees will be punished.

High managerial agents and corporate boards of directors have corporate duties with such a degree of responsibility that their conduct and behavior may be assumed to represent corporate policy. See Model Penal Code 2.07(4)(c). The behavior and actions of low-level employees who are not given such responsibility cannot be assumed to represent corporate policy. This is particularly true where a corporation has shown that the actions of low-level employees were performed in direct contravention to explicit corporate policies.

---

<sup>2</sup> “high managerial agent” means an officer of a corporation or an unincorporated association, or, in the case of a partnership, a partner, or any other agent of a corporation or association having duties of such responsibility that his conduct may fairly be assumed to represent the policy of the corporation or association. Model Penal Code § 2.07(4)(c).

<sup>3</sup> These states include Arizona, Arkansas, Colorado, Delaware, Illinois, Iowa, Kentucky, Missouri, Montana, New Jersey, New York, Ohio, Oregon, Pennsylvania, Tennessee, Texas, and Utah. Other states, including Minnesota and Idaho have adopted common law principles to similar ends. Hall, infra, at FN 18.

Though a corporation is a legal entity and cannot, therefore, have its own mental state, the actions and policy of the corporation and of its high-level managerial agents should be considered in lieu of mens rea. A corporation should not be bound by the actions of its agent or employee unless these actions were authorized, requested, commanded, performed, or recklessly tolerated by the corporation's board of directors or by a high managerial agent acting on the corporation's behalf or within the scope of his high managerial authority. See Model Penal Code § 2.07. In this case, the criminal actions of Ionia's low-level employees were not authorized, requested, commanded, performed, or recklessly tolerated by any of Ionia's high managerial agents. This fact, coupled with Ionia's explicit policies against the improper disposal of oil waste, shows that the illegal activities of Ionia's low-level employees were not in keeping with Ionia's principles. Since these activities were expressly prohibited and denounced by Ionia and its high managerial agents, Ionia should not have been held liable for them.

**3.** This Court should clarify that New York Central requires an actual, rather than merely intended, benefit be accrued to a corporation through the criminal acts of its agents in order for vicarious criminal liability to attach

The district court instructed the jury that Ionia was to be held liable for the acts of its employees if those employees intended to benefit Ionia. The jury was instructed that Ionia was to be held liable even if only "one of the agent's purposes was to benefit the corporation." Ionia, 526 F.Supp.2d at 325. This expansive jury instruction created an incredibly low burden for the government, for the government only needed to prove that benefitting the corporation was within the realm of the agents purpose in perpetrating the crime, regardless of competing interests or other, higher priority, purposes. This instruction unfairly diluted the government's burden. To prevent such dilution in the future, this Court should clarify that the standard already in place

requires that benefit to the corporation was the employee's only purpose and that benefit actually resulted.

**CONCLUSION**

For the foregoing reasons, Petitioner respectfully requests that this Court reverse the decision of the Second Circuit.

Respectfully submitted,

/s/ \_\_\_\_\_  
TEAM 8

Attorneys for Petitioner