

American Corporate Counsel Association Houston Chapter

WINTER 1999 No.015

GENERAL CORPORATE CRIMINAL LIABILITY

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I. Criminal Liability of The Corporation

A. General Rule

Corporations have been subject to criminal liability for almost a century.¹ In 1909, the Supreme Court found that a corporation could be held responsible for the criminal acts of its employees if the acts occur while in the scope of employment.² A corporation will be criminally liable for the illegal acts of its employees if the employees are acting within the scope of their authority and their conduct benefits the corporation.³ Being a legal entity, a corporation can only act through its agents, and it is through this concept, that the employee's act and intent is imputed to the corporation.⁴

B. The Employee Must Be Acting Within The Scope Of Employment

1. Actual or Apparent Authority

An employee is considered to be within the scope of his or her employment if the employee has either actual or apparent authority to engage in a particular act.⁵ An employee is considered to have apparent authority if the employee engages in conduct which a

third party reasonably believes the employee has authority to perform.⁶ For example, suppose an employee has not been given the authority to enter into contracts on behalf of his employer; but because of the employee's conduct and status within the company, a third party reasonably believes that the employee possesses the express authority to contractually bind the corporation. In such a scenario, the company then would be contractually liable for contracts entered into by the employee on behalf of the corporation. Likewise, a corporation would be criminally liable for conduct engaged in by the employee if third parties reasonably believe that the employee was expressly authorized to take the action resulting in the criminal violation.⁷

Actual authority, on the other hand, is authority that a corporation intentionally and knowingly gives to an employee.⁸ The determination of an employee's actual authority focuses on the functions delegated to the employee and whether the conduct at issue falls within those general functions.⁹ Moreover, "[a]cts committed by a servant are considered within the scope of employment when they 'are so closely connected with what the servant is employed to do, and so fairly and reasonably incidental to it, that they may be regarded as methods, even though quite improper ones, of carrying out the objectives of the employment.'"¹⁰ In other words, if an employee's criminal conduct is reasonably related to his or her duties as an employee, the corporation most likely will be criminally liable for his

or her conduct. The "within the scope of employment" requirement is overall, a relatively low threshold that is often satisfied by merely showing that the act occurred while the individual was performing a job-related activity.¹¹

2. Violation Of Corporate Policy Or Instructions

A corporation may also be criminally liable even though the employee's conduct violates corporate policy.¹² The fact that an employee violates express instructions of supervisors or policy manuals does not shield the corporation from criminal responsibility.¹³ Corporate policies and rules may help deter employee misconduct and reduce the punishment received in the sentencing phase.¹⁴ Regardless, corporate rules and policies cannot define the scope of an employee's authority so as to shield the corporation completely from all criminal liability.¹⁵

For example, the Second Circuit upheld the conviction of a corporation despite policies and instructions that employees were not to enter into "tying" agreements.¹⁶ A tying agreement is one in which a seller agrees to sell its product only on the condition that the buyer also purchase a separate product.¹⁷ This type of agreement is a criminal violation under the Sherman Act.¹⁸ In *United States v. Twentieth Century Fox Film Corporation*, a sales manager for the defendant would not release popular films to the purchasers unless the purchasers also bought less popular films.¹⁹ The corporation had express instructions that its employees were not to engage in

this type of conduct.²⁰ Even though the corporation argued that it should not be liable because the employee's conduct was contrary to corporate policy, the court rejected its argument.²¹ The court reasoned that the employee was responsible for the distribution of films, and that the tying agreement benefitted the corporation by creating more revenue.²² Although the case was remanded back to the trial court for a new trial, the court stated that the corporation could be criminally liable for conduct which contradicted express corporate instructions.²³

Similarly, in *United States v. Portac, Inc.*, a corporation's conviction was upheld despite the fact that the manager of the employee who committed the act told the employee that such conduct was not permitted by the corporation.²⁴

C. The Employee's Conduct Must Occur For The Benefit Of The Corporation

In order for a corporation to be criminally liable, the employee's conduct must be for the benefit of the corporation.²⁵ This requirement, however, is satisfied regardless of whether the corporation receives an actual benefit.²⁶ A corporation is considered to have received a benefit if the employee engages in criminal conduct with the intent to benefit the corporation.²⁷ Moreover, an intent to benefit the corporation does not have to be the sole, or even primary, motivation for the employee's conduct.²⁸ The benefit requirements is satisfied even when the employee's conduct is performed for his or her own personal gain, and the corporation somehow benefits from the conduct as well.²⁹ For example, one such case involved a convicted corporation arguing that it should not be held accountable because the criminal activity was intended solely to benefit the employee in his own personal quest to climb the corporate ladder.³⁰ The court rejected this argument and ruled that the corporation still received a benefit in light

of the fact the employee's promotions were conditioned on the success of the corporation.³¹ Therefore, as long as the employee intended to benefit the corporation or the corporation received an incidental benefit from the employee's conduct, the corporation is deemed to have received a benefit.

D. Breach Of Fiduciary Duty As A Defense

On the other hand, a corporation will not be liable if its employee breaches a fiduciary duty.³² The reasoning is that if an employee breaches a fiduciary duty, then he has not acted with the intent to benefit the corporation.³³ In *Standard Oil Co. v. United States*, the defendant corporation purchased oil from a third party.³⁴ Two corporate employees entered into an agreement with the seller which allowed the seller to misrepresent the amount of oil which was being pumped from its wells.³⁵ This conduct violated state and federal law, and unbeknownst to the defendant corporation, its employees were paid by the third party for their cooperation.³⁶ This scheme resulted in the defendant corporation subsequently paying again for the very same oil that it already should have received.³⁷ The court stated that the employees' only purpose was to illegally aid the third party in return for monetary compensation.³⁸ The court held that when a statute requires the "presence of a culpable intent as a necessary element of the offense, the corporation does not acquire the knowledge or possess the requisite state of mind essential for responsibility, through the activities of unfaithful servants whose conduct was undertaken to advance interests of parties other than their corporate employer."³⁹

E. Collective Knowledge Doctrine

As already stated, since corporations are incorporeal entities, they may act only through their agents. Federal courts also have developed the doctrine of "collective knowledge" for use in determining the criminal liability of a corporation.⁴⁰ This doctrine allows

a corporate intent to be established by looking at the knowledge of various agents and employees of an organization even where no single employee possesses the requisite knowledge.⁴¹ Overall, it aids the prosecution by imputing the knowledge of all employees to the corporation,⁴² the corporation's knowledge is the totality of what all of its employees know.⁴³ For example, suppose that Employee A knows one fact about a situation, B knows a second relevant fact, and C knows a third relevant fact. If all of the facts collectively would amount to a criminal violation, then the corporation is considered as knowing all of the facts needed to impose criminal liability.⁴⁴ One court has reasoned that application of this doctrine is appropriate in a corporate context because "corporations compartmentalize knowledge, subdividing the elements of specific duties and operations into smaller components."⁴⁵ A corporation cannot plead ignorance as the corporation is considered to possess the collective knowledge of all its employees.⁴⁶

F. Willful Blindness Doctrine

"Willful blindness" is a doctrine which can create criminal liability for a corporation due to the corporation's deliberate disregard of criminal activity. Traditionally, the doctrine applies whenever a person becomes suspicious of criminal conduct, yet deliberately chooses to remain ignorant in order to avoid by failing to make further inquiries.⁴⁷ Deliberately remaining ignorant in order to avoid knowledge of criminal conduct will subject a party to criminal liability.⁴⁸

Although this doctrine was originally developed for individual defendants, it has been held to apply to corporations as well.⁴⁹ For instance, in *United States v. Bank of New England, N.A.*, a bank customer was allowed to withdraw more than \$10,000 per day without filing a federally required Currency Transaction Report (CTR).⁵⁰ The involved bank failed to

require the completion of a CTR when the customer made multiple daily withdrawals in individual amounts less than \$10,000.⁵¹ As a result, the bank argued that it could not have known that the daily withdrawals collectively triggered the CTR filing requirement.⁵² The court upheld jury instructions which stated that the defendant possessed the requisite knowledge if the failure to file a CTR was the result of some flagrant organizational indifference.⁵³ Therefore, if circumstances occur which would lead a reasonable person in a supervisory position to inquire into the legality of certain suspect conduct, the corporation will be deemed to have knowledge of the resulting criminal violations.

G. Liability from Mergers and Dissolutions

Under certain circumstances, a corporation may be criminally liable for acts previously committed by a corporation with which it has merged.⁵⁴ Prosecution under these circumstances is based on derivative corporate liability and can pose a danger to the new corporation, especially when a major reorganization has taken place and broad personnel changes have occurred. In certain cases, corporations have had to defend against conspiracies that took place before the merger.⁵⁵ When evaluating whether a corporation will be held liable for the acts of the predecessor corporation, courts often apply state law governing successor liability.⁵⁶

H. Who Can Criminally Bind A Corporation

A corporation can be criminally liable for the conduct of any employee, regardless of the employee's status or position within the corporation.⁵⁷ Furthermore, agents outside of the corporation who are acting for the corporation also may criminally bind the corporation, even if executive officers and directors were ignorant of the criminal conduct.⁵⁸ The only limitation is that the employee or agent must have been acting within the scope of his or her authority, as well

as acting with the intent to benefit the corporation. As a result, a corporation can be held liable for the conduct of a broad range of employees and agents; (1) executive officers and directors; (2) non-executive managers and supervisors; (3) low-level, menial employees; and (4) independent contractors.

1. Executive Officers And Directors

Courts have historically held that corporate executives can criminally bind a corporation.⁵⁹ In one case, a president of a corporation started a meat packing plant in Colorado.⁶⁰ He established specific policies and practices designed to misrepresent certain aspects about meat in the plant (e.g., misdating the meat and attempting to avoid federal inspection of meat returned by dissatisfied purchasers).⁶¹ The president remained in charge of the day to day operations of the plant for eight months.⁶² After this initial period, he remained in close contact with the plant through phone calls and periodic visits in order to confirm that his policies and practices were being followed.⁶³ The court upheld the conviction of the president and the corporation by imputing the president's conduct to the corporation.⁶⁴

Another case involved a corporation that was engaged in the business of providing a governmental agency with bids for the renovation of foreclosed homes.⁶⁵ Although it was a federal offense for corporations in that particular industry to receive kickbacks from local contractors, the president of the defendant corporation developed a scheme in which he would receive a 10% kickback from the local contractors in return for rigging the bids.⁶⁶ The court held that both the president and the corporation were criminally liable due to the president's participation in the illegal conduct during the scope of his employment.⁶⁷

2. Non-Executive Managers and Supervisors

Corporations are also criminally liable for the actions of its mid-level managers and supervisors. The Forth Circuit held that a regional manager for a national corporation was an agent capable of creating criminal liability for the corporation.⁶⁸ In the case at issue, the managerial employee had falsified certain documents despite a duty to comply with FDA filing requirements.⁶⁹ Consequently, the appellate court upheld the criminal conviction of the corporation.⁷⁰

Another case involved a branch manager who submitted false loan documents to a federal agency.⁷¹ The defendant argued that corporations should only be criminally liable for the conduct of high-level managerial agents who are responsible for making corporate policy.⁷² The court rejected the defendant's argument and stated that an employee creates criminal liability for a corporation if he represents the corporation.⁷³

3. Low-Level Employees

The Fifth Circuit has stated that not only may executive officers create criminal liability for a corporation, a corporation also can be criminally liable for the actions of subordinate and even menial employees.⁷⁴

For example, one state court upheld the criminal liability of a car dealership based upon the conduct of a salesman.⁷⁵ The court explained that in order to determine the criminal liability of the corporate defendant, it must focus on the authority of the corporate agent to engage in the particular act at the time the criminal conduct took place.⁷⁶ The court noted that the agent in question had been given the authority to obtain financing and sell cars.⁷⁷ In an attempt to ensure customers qualified for loans, the salesman misrepresented customers' incomes, current places of employment, work histories, and down payments.⁷⁸ As a result, the corporation was criminally responsible for the conduct of the salesman.⁷⁹

A federal court also upheld the conviction of a corporation based upon the criminal conduct of low-level employees.⁸⁰ The corporation was convicted of criminal bid rigging in violation of the Sherman Act.⁸¹ The corporation argued that it had a long standing and strictly enforced policy prohibiting such conduct.⁸² The corporation also stated that the illegal activities were committed by two relatively minor officials and were done without the knowledge of high level corporate officers.⁸³ The court rejected these two arguments by holding that as long as the employees were acting within the scope of their actual or apparent authority, and with the intent to benefit their employer, the corporation is criminally liable for the actions of its employees.⁸⁴

4. Independent Contractors

A corporation may also be criminally liable for the acts of independent contractors who are acting for the benefit of the corporation. In one case, the defendant corporation had been engaged in the business of distributing cosmetic products.⁸⁵ The defendant and the independent contractor entered into an agreement whereby the contractor would manufacture and distribute the defendant's products.⁸⁶ Without the defendant's knowledge and in violation of the Food, Drug, and Cosmetic Act, the contractor used unapproved ingredients in the manufacturing process.⁸⁷

On appeal, the defendant corporation argued that it had not participated in the commission of the crime, and therefore the contractor should be the only responsible party.⁸⁸ The defendant also argued that the contractor was not an agent of the corporation.⁸⁹ The court rejected these two arguments, and stated that it was not concerned with the distinction between agents and independent contractors.⁹⁰ The court noted that the defendant corporation, for its own benefit, had elected to assign responsibility for manufacturing and distributing the

product to the contractor.⁹¹ Moreover, the defendant corporation knew that if the product violated the law, then it would be subject to criminal liability.⁹² The court affirmed the conviction and explained that the defendant could not avoid criminal liability simply by transferring the manufacturing and distribution functions to an independent contractor.⁹³ The overall premise is that a corporation should not be able to avoid liability by simply farming out to others likely to attract legal liability.

II. Personal Liability of Employees

A. General Areas of Liability

There are four general areas in which an employee may be held personally liable for criminal conduct performed within the scope of employment. The first instance occurs when an employee is a direct participant in criminal conduct.⁹⁴ Second, corporate employees may be liable under a theory of accomplice liability.⁹⁵ In a third situation, corporate employees who conspire to engage in criminal conduct on behalf of the corporation can be criminally liable.⁹⁶ Finally, criminal liability may result for those corporate officers who are in a responsible position in relation to the criminal conduct.⁹⁷

B. Corporate Employees Who Directly Commit Criminal Violations

An employee will be criminally liable for actively and directly engaging in criminal conduct.⁹⁸ A corporate employee cannot hide from criminal liability merely by claiming the conduct occurred during the scope of employment.⁹⁹ In one case, for example, a corporation and its officers were convicted of wire and mail fraud.¹⁰⁰ The convicted employees had knowingly made misrepresentations to third parties about real estate owned by the corporation.¹⁰¹ The appellate court upheld the convictions as there was sufficient evidence that the corporate employees had directly participated in the criminal conduct.¹⁰²

C. Employees May Be Convicted Under An Accomplice Theory

Either by aiding and abetting or encouraging another to commit a criminal act, an employee may be criminally liable for indirectly participating in a crime committed by a subordinate or co-worker.¹⁰³ The Second Circuit upheld the conviction of a corporate president after considering how the president had instructed a subordinate to falsify income tax returns.¹⁰⁴ Although the executive did not actually falsify the returns, his instructions to do so were sufficient to uphold his conviction under an accomplice theory.¹⁰⁵

The accomplice theory could be extended to supervisors who choose to take no action despite knowledge of a subordinate's criminal conduct.¹⁰⁶ In other words, inaction or deliberate indifference towards the criminal conduct of subordinates could lead to criminal liability for the supervisor. Under this theory, a supervisor has an affirmative duty to take corrective action whenever the supervisor has knowledge of criminal conduct perpetrated by subordinates.¹⁰⁷

D. Employees Who Engage in A Conspiracy Will Be Criminally Liable

A conspiracy occurs whenever two or more people agree to commit an offense, and one of those persons takes an affirmative act in furtherance of the goals of the conspiracy.¹⁰⁸ In prosecuting a scheme that involves separate roles for co-conspirators, the government need not prove that each participant directly interacted with each of the other conspirators.¹⁰⁹ Furthermore, the Government need not prove that each co-conspirator knew all of the details of the agreement, participated in all of its operations, joined the agreement at the same time, or became aware of all of the activities of the other participants in the agreement.¹¹⁰ Mere association or communication with the members of a conspiracy, however, is not enough to

prove participation.¹¹¹ Neither knowledge nor approval of the object, purpose, or existence of a conspiracy is enough to show membership in that conspiracy.¹¹² The government must prove beyond a reasonable doubt that the defendant had a deliberate, knowing, and specific intent to join the conspiracy.¹¹³

In *United States v. Rodgers*, a corporate officer was convicted of mail fraud.¹¹⁴ The defendant developed a scheme which he and other defendants would collectively agree on who would be awarded government contracts.¹¹⁵ The appellate court upheld the officer's conviction because the mails were used to further the conspiracy of preventing the government from allocating bids on a competitive basis.¹¹⁶

E. Criminal Liability for Corporate Officers Who Are in A Responsible Position

1. The RICO Doctrine and Strict Liability Crimes

The responsible corporate officer doctrine ("the RICO doctrine") originally emerged from the United States Supreme Court case of *United States v. Dotterweich*.¹¹⁷ Approximately thirty-two years later, the Supreme Court reaffirmed the existence of the RICO doctrine in *United States v. Park*.¹¹⁸ In both cases, the Court held that a corporate officer could be liable for the criminal acts of the corporation, despite the officer never having been aware of the criminal conduct at issue (i.e., despite the officer having no guilty mind, or in other words, no *mens rea*).¹¹⁹ In *Park*, the Court noted that a corporate officer cannot be convicted under this doctrine merely because of his or her position within the company.¹²⁰ A relationship must exist between the officer's corporate functions and the conduct in question to such a degree that the officer was not only responsible for solving the problem, but also under an affirmative : "duty to implement measures that will insure that violations will not occur."

¹²¹ Basically, the Court rationalized

that the corporate officer could be held personally accountable for the criminal acts of the corporation as long as the officer had the "power to prevent or correct violations."¹²²

Although the RICO doctrine seems to expose corporate officers to potential and substantial criminal liability, the Supreme Court has yet to apply the RICO doctrine beyond cases involving misdemeanor punishments for strict liability offenses (i.e., offenses where the mere occurrence of an act or event result in criminal liability). For example, both *Dotterweich* and *Park* involved misdemeanor violations of a strict liability statute (i.e., the Food, Drug, and Cosmetics Act) which required no *mens rea* for a criminal conviction.

2. Environmental Implications of the RICO Doctrine

In the context of environmental criminal law, there have been various attempts to use the RICO doctrine in order to convict corporate officers.¹²³

Such attempts have occurred despite the fact that none of the environmental statutes most commonly relied upon by prosecutors are strict liability offenses.¹²⁴ While it is understandable that prosecutors would like to rely on the RICO doctrine whenever seeking the conviction of a corporate officer, most environmental criminal statutes impose heightened requirements that preclude application of strict liability (e.g., by requiring either knowing or negligent conduct).¹²⁵

III. Conclusion

A corporation will be criminally liable for the illegal conduct of any employee or agent, regardless of his or her position in the corporation, if the employee or agent is (1) acting within the scope of his or her actual or apparent authority, and (2) the conduct benefits the corporation. It is not necessary for the corporation to receive an actual benefit from the employee's conduct, because the benefit element is satisfied as long as the employee attended to benefit the corporation. Moreover, a corporation

will be criminally liable even though the individual employee acted contrary to corporate policy or instructions.

An employee also will be personally responsible for his or her criminal conduct if the employee directly participates in , instructs, aids, abets, encourages, or conspires with another employee or subordinate to engage in criminal activity. Corporate officers also can be liable under the "responsible corporate officer" doctrine if the involved statute does not require a finding of *mens rea* in order for a criminal violation to occur.

1. See Pamela H. Bucy, *Corporate Ethos: A Standard for Imposing Corporate Criminal Liability*, 75 MINN. L. REV. 1095, 1096 (1991) [hereinafter Bucy].
2. See *New York Cent. & Hudson River R.R. Co. v. United States*, 212 U.S. 481, 492 (1909).
3. See *United States v. MacDonald & Watson Waste Oil Co.*, 933 F.2d 35, 42 (1st Cir. 1991) (citing *United States v. Cincotta*, 689 F.2d 238, 341-42 (1st Cir. 1982), *cert. denied*, 459 U.S. 991, 103 S.Ct. 347 (1982); *United States v. Gold*, 743 F.2d 800, 822-23 (11th Cir. 1984), *cert. denied*, 469 U.S. 1217, 105 S.Ct. 1196 (1985)). See also *Standard Oil Co. v. United States*, 307 F.2d 120, 127-28 (5th Cir. 1962).
4. See Joseph S. Hall, *Corporate Criminal Liability*, 35 AM. CRIM. L. REV. 549, 550 (1998) [hereinafter Hall].
5. See *United States v. Bi-Co Pavers, Inc.*, 741 F.2d 730, 737 (5th Cir. 1984).
6. See *id.*
7. See *id.*
8. BLACK'S LAW DICTIONARY 35 (6th ed. 1990).
9. See *C.I.T. Corp. v. United States*, 150 F.2d 85, 89-90 (9th Cir. 1945).
10. *Domar Queen Transp., Ltd., Div. Of Lee-Vac, Ltd. v. Independent Refining Co.*, 783 F.2d 1185 (5th Cir. 1986); see also 1 KATHLEEN BRICKEY, CORPORATE CRIMINAL LIABILITY § 3:01 (1984).
11. See Bucy, *supra* note 1, at 1148; see also *Developments in the Law – Corporate Crime: Regulating Corporate Behavior Through Criminal Sanctions*, 92 HARV. L. REV. 1227, 1250 (1979).
12. See *United States v. Hilton Hotels Corp.*, 467 F.2d 1000, 1004 (9th Cir. 1972), *cert. denied*, 409 U.S. 1125 (1973).
13. See *Standard Oil Co. v. United States*, 307 F.2d at 127.
14. See Daniel K. Webb et al., *Understanding and Avoiding Corporate and Executive Criminal Liability*, 49 Bus. Law 617 (1994).
15. See *id.*; Hall, *supra* note 3 at 553.
16. See *United States v. Twentieth Century Fox Film Corp.*, 882 F.2d 656, 660 (2nd Cir. 1989), *cert. denied*, 493 U.S. 1021 (1990).
17. See *id.* at 658.
18. See *id.*
19. See *id.*
20. See *id.* at 660.
21. See *id.*
22. See *id.*
23. See *id.* at 661.

24. 869 F.2d 1288 (9th Cir. 1989).
25. *See Standard Oil. Co. v. United States*, 307 F.2d at 127.
26. *See id.*
27. *See id.* at 128.
28. *See United States v. Gold*, 743 F.2d at 823.
29. *See id.*
30. *United States v. Automated Medical Laboratories, Inc.*, 770 F.2d 399, 407 (4th Cir. 1985).
31. *Id.*
32. Michael E. Tigar, *It Does the Crime But Not the Time: Corporate Criminal Liability in Federal Law*, 17 Am. J. Crim. L. 211, 288 (1990).
33. *See Standard Oil Co. v. United States*, 307 F.2d at 127; *see also Union City Barge Line, Inc. v. Union Carbide Corp.*, 823 F.2d 129, 138 (5th Cir. 1987)(explaining that “an employer is not liable for an employee’s criminal acts, committed outside her or his scope of employment, if those actions injure the employer”).
34. *See id.* at 124.
35. *See id.*
36. *See id.*
37. *See id.*
38. *See id.* at 129.
39. *Id.*
40. *See United States v. Bank of New England, N.A.*, 821 F.2d 844, 855 (1st Cir. 1987), *cert. denied*, 484 U.S. 943, 108 S.Ct. 328 (1987).
41. *See* Martin J. Weinstein & Patricia B. Ball, *Criminal Law’s Greatest Mystery Thriller: Corporate Guilt Through Collective Knowledge*, 29 NEW ENG. L. REV. 65, 69 (1994).
42. *See id.*; *see also Apex Oil Co. v. United States*, 530 F.2d 1291, 1295 (8th Cir. 1976)(stating “the knowledge of the employees is the knowledge of the corporation,” while reviewing the conviction of a corporation which had illegally transported and stored fuel oil in violation of the Water Pollution Act), *cert. denied*, 429 U.S. 827, 97 S.Ct. 84 (1976); *but see United States v. One Parcel of Real Estate*, 852 F.Supp. 1013, 1040 (S.D. Fla. 1994)(stating that “knowledge of an illegal act is imputed to the corporation only if the agent is acting within the scope of his employment and for the benefit of the employer”)(citing *Grand Union Co. v. United States*, 696 F.2d 888 (11th Cir. 1983)).
43. *See* Weinstein, *supra* note 41, at 76.
44. *See United States v. Bank of New England, N.A.*, 821 F.2d at 855.

45. *Id.* at 856.
46. *See id.*
47. *See United States v. Mapelli*, 971 F.2d 284, 286 (9th Cir. 1992); *United States v. Lara-Valasquez*, 919 F.2d 946, 951 (5th Cir. 1990); *United States v. de Luna*, 815 F.2d 301, 302 (5th Cir. 1987); *United States v. Jewell*, 532 F.2d 697, 700-01 (9th Cir. 1976), *cert. denied*, 426 U.S. 951, 965 S.Ct. 3173 (1976).
48. *See id.*
49. *See, e.g., United States v. Bank of New England, N.A.*, 821 F.2d at 853.
50. *See id.* at 847.
51. *See id.*
52. *See id.* at 856.
53. *See id.* at 855.
54. *See Hall, supra* note 4, at 556.
55. *See United States v. Michigan Carton Co.*, 552 F.2d 198, 201 (7th Cir. 1977); *see also United States v. Wilshire Oil. Co.*, 427 F.2d 969, 973-74 (10th Cir. 1970).
56. *See Hall, supra* note 4, at 556-57.
57. *See Standard Oil Co. v. United States*, 307 F.2d at 127; *see also United States v. Basic Const. Co.* 711 F.2d 570, 573 (4th Cir. 1983)(disavowing the notion that corporations can only be held liable for the actions of high managerial agents).
58. *See* 1 KATHLEEN BRICKEY, CORPORATE CRIMINAL LIABILITY § 3:03 (1984).
59. *See e.g., United States v. Cattle King Packing Co., Inc.*, 793 F.2d 232, 239 (10th Cir. 1986), *cert. denied*, 479 U.S. 985, 107 S.Ct. 573 (1986); *United States v. Carter*, 311 F.2d 934, 942 (6th Cir. 1963), *cert. denied*, 373 U.S. 915, 83 S.Ct. 1301 (1963).
60. *See United States v. Cattle King Packing Co., Inc.*, 793 F.2d at 235.
61. *See id.* at 240.
62. *See id.* at 239.
63. *See id.*
64. *See id.* at 242.
65. *See United States v. Griffin*, 401 F.Supp. 1222, 1225 (S.D. Ind. 1975), *aff'd*, *United States v. Metro Management Corp.*, 541 F.2d 284 (7th Cir. 1976).
66. *See id.*
67. *See id.* at 1230.

68. *See United States v. Automated Medical Laboratories, Inc.*, 770 F.2d at 406.
69. *See id.* at 401.
70. *See id.* at 408.
71. *See C.I.T. Corp. v. United States*, 150 F.2d 85, 89 (9th Cir. 1945).
72. *See id.*
73. *See id.* at 90.
74. *See Standard Oil Co. v. United States*, 307 F.2d at 127.
75. *See Commonwealth v. Duddie Ford, Inc.*, 551 N.E.2d 1211 (Mass.App.Ct. 1990), *aff'd in part and rev'd in part on other grounds*, 566 N.E.2d 1119 (Mass.1991).
76. *See id.* at 1220.
77. *See id.* at 1221.
78. *See id.*
79. *See id.*
80. *See id.*
81. *See id.* at 572.
82. *See id.*
83. *See id.*
84. *See id.* at 573.
85. *See United States v. Parfait Puff Co., Inc.*, 163 F.2d 1008 (7th Cir. 1947), *cert. denied*, 332 U.S. 851, 68 S.Ct. 356 (1948).
86. *See id.* at 1009.
87. *See id.*
88. *See id.*
89. *See id.*
90. *See id.*
91. *See id.* at 1010.
92. *See id.*

93. *See id.*
94. *See United States v. Cattle King Packing Co.*, 793 F.2d at 237.
95. *See* Kathleen Brickey, *Criminal Liability of Corporate Officers for Strict Liability Offenses – Another View*, 35 VAND. L. REV. 1337 (1982) [hereinafter Brickey].
96. *See United States v. Rodgers*, 624 F.2d 1303, 1308 (5th Cir. 1980), *cert. denied*, 450 U.S. 917, 101 S.Ct. 1360 (1981).
97. *See United States v. Park*, 421 U.S. 658, 95 S.Ct. 1903 (1975).
98. *See United States v. Rodgers*, 624 F.2d at 1308.
99. *See generally Moss v. Ole South Real Estate, Inc.*, 933 F.2d 1300, 1312 (5th Cir. 1991)(although addressing illegal housing discrimination, the court explained that a corporate officer is not immune from liability simply because the act was done on behalf of the corporation).
100. *See United States v. Amrep. Corp.*, 560 F.2d 539, 543 (2nd Cir. 1977), *cert. denied*, 434 U.S. 1015, 98 S.Ct. 731 (1978).
101. *See id.*
102. *See id.* at 547.
103. *See* 18 U.S.C.A. § 2 (West 1996); *see also United States v. Berger*, 456 F.2d 1349 (2nd Cir. 1972), *cert. denied*, 409 U.S. 892, 93 S.Ct. 110 (1972).
104. *See United States v. Berger*, 456 F.2d at 1352.
105. *See id.*
106. *See supra* note 46; *see also* Brickey, *supra* note 95, at 1342 n. 10.
107. *See id.*
108. *See* 18 U.S.C.A. § 371 (West 1996).
109. *See United States v. Elam*, 678 F.2d 1234, 1247 (5th Cir. 1982).
110. *See United States v. Alvarez*, 625 F.2d 1196, 1198 (5th Cir. 1980), *cert. denied*, 451 U.S. 938 (1981).
111. *See United States v. Galvan*, 693 F.2d 417, 429 (5th Cir. 1982).
112. *See United States v. Glenn*, 828 F.2d 855, 859 (1st Cir. 1987).
113. *United States v. Jackson*, 700 F.2d 181, 185 (5th Cir.) *cert. denied*, 464 U.S. 842 (1983).
114. *See United States v. Rodgers*, 624 F.2d at 1305.
115. *See id.* at 1308.

116. *See id. at 1310.*

117. *See United States v. Dotterweich*, 320 U.S. 277, 64 S.Ct. 134 (1943).

118. *See United States v. Park*, 95 S.Ct. 1903.

119. *See United States v. Dotterweich*, 64 S.Ct. at 136; *United States v. Park*, 95 S.Ct. at 1912.

120. *See id.* at 1908.

121. *See id.* at 1911.

122. *See United States v. Park*, 95 S.Ct. at 1913.

123.

The Clean Water Act (CWA), located within the Federal Water Pollution Control Act, serves as the primary vehicle for imposing criminal liability upon “any person” who is an unauthorized water polluter. *See* 33 U.S.C.A. §§ 1251-1387 (West 1996). When defining the term “person,” Congress specifically stated that “any reasonable corporate officer” is within the definition. *See* 33 U.S.C.A. 1319 (c)(6). Unlike few other federal criminal laws, the CWA imposes criminal liability for the occurrence of negligent, as well as knowing conduct. *See* 33 U.S.C.A. § 1319 (c)(1)-(3). *See also* 42 U.S.C.A. § 7413 (5)(c)(4)(West 1996)(Clean Air Act). Due to the inclusion of the phrase “any reasonable corporate officer” within the definition of those persons subject to criminal liability for CWA violations, it is not too surprising that there has been some question as to whether the principles of the RICO doctrine apply to corporate officers accused of CWA violations. *See United States v. Brittain*, 931 F.2d 1413 (10th Cir. 1991). This question is further complicated because the CWA “does not define a ‘responsible corporate officer’ and the legislative history is silent regarding Congress’s intention in adding the term.” *Id.* at 1419.

The Tenth Circuit, however, confronted this issue when reviewing the conviction of a public utility director for CWA violations. In an attempt to determine the applicability of the RICO doctrine, the court explained, “We think that Congress perceived this objective [i.e., protecting the Nation’s waters] to outweigh hardships suffered by ‘responsible corporate officers’ who are held criminally liable in spite of their lack of ‘consciousness of wrongdoing.’ We interpret the addition of ‘responsible corporate officers’ as an expansion of liability under the Act.” *Id.* at 1419. Moreover, the court added, “Under this interpretation, a ‘responsible corporate officer,’ to be held criminally liable, would not have to ‘willfully or negligently’ cause a permit violation. Instead, the willfulness or negligence of the actor would be imputed to him by virtue of his position of responsibility.” *Id.* at 1419. (It should be noted that Congress has amended § 1319 (c) by eliminating willful conduct). In spite of the court’s comments, it is important to note that the court did acknowledge that the defendant was not merely convicted because of his position of responsibility. For instance, the evidence indicated that the defendant “had primary operational responsibility for the treatment plant”; he physically observed both of the... permit violations in question”; the “defendant repeatedly instructed [the plant supervisor] not to report violations, he had replied, “Don’t worry about it.” *Id.* at 1420. *See generally York Center Park District v. Krilich*, 40 F.3d 205, 208 (7th Cir. 1994)(“Corporate officers are not automatically liable for their firms’ legal transgressions.).

124.

See e.g., 7 U.S.C.A. §§ 136-136y (West 1996)(Federal Insecticide, Fungicide, and Rodenticide Act); 15 U.S.C.A. §§ 2601-2692 (West 1996)(Toxic Substance Control Act); 16 U.S.C.A. §§ 1531-1544 (West 1996)(Endangered Species Act of 1973); 33 U.S.C.A. §§ 1251-1387 (West 1996)(Federal Water Pollution Act and Clean Water Act); 42 U.S.C.A. §§ 6901-6992k (West 1996)(Solid Waste Disposal Act, commonly referred to as either the Resource Conservation and Recovery Act of RCRA); 42 U.S.C.A. §§ 7401-7671q (West 1996)(Clean Air Act).

Broad application of the RICO doctrine clearly seems to contradict the mens rea requirements of the statutes like the CWA. For example, a prosecutor could avoid proving that the corporate officer actually knew about the conduct violating the CWA, while more easily arguing that the corporate officer surely must have known of the corporate wrongdoing simply because of the nature of his or her position. Theoretically, the RICO doctrine would transform the CWA into pseudo strict liability statute, thereby allowing a corporate officer to be held criminally liable for failing “to exercise some control over the situation that produced the violation.” Norman Abrams, *Criminal Liability of Corporate Officers For Strict Liability Offenses - A Comment on Dotterweich And Park*, 28 U.C.L.A. L. REV. 463, 466 (1981). Basically, application of the RICO doctrine to CWA cases directly dispenses with the stated and required mens rea elements of the CWA.

125.

See e.g., 7 U.S.C.A. § 1361(b) (FIFRA); 15 U.S.C.A. § 2615(b) (TSCA); 16 U.S.C.A. § 1540(b) (ESA); 33 U.S.C.A. § 1319(c) (FWPCA); 42 U.S.C.A. § 6928(d) (SWDA). It is important to recognize that debate surrounding the RICO doctrine has not been limited to CWA criminal cases. Another environmental statute regularly appearing in the middle of this debate is the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act (RCRA). *See* 42 U.S.C.A. § 6901 *et. seq.* Unlike the CWA, RCRA does not include the “responsible corporate officer” within its definition of who may be held criminally responsible for statutory violations. *See* 42 U.S.C.A. § 6903 (15).

Despite the fact the RCRA statute neither imposes strict criminal liability nor specifically defines possible offenders as including the responsible corporate officer, attempts have been made to apply the RICO doctrine in RCRA criminal proceedings. Because of the absence of any mention of the responsible corporate officer, or because of an inclination to strictly enforce the statutory mens rea requirements, courts have been reluctant to permit the use of the RICO doctrine in RCRA criminal proceedings. *See e.g., United States v. MacDonald & Watson Waste Oil Company*, 933 F.2d 35 (1st Cir. 1991), *cert. denied*, 459 U.S. 991, 103 S.Ct. 347 (1982); *United States v. White*, 766 F.Supp. 873 (E.D. Wash. 1991).•