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General Corporate Criminal Liability

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The general rule is that 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.[1]

The Employee Must Be Acting Within the Scope of Employment

Actual or Apparent Authority – An employee is considered to be acting within the scope of his or her employment if the employee has either actual or apparent authority to engage in a particular act.[2] 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.[3] For example, suppose an employee has *not* been given the authority to enter into contracts on behalf of the 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 the conduct engaged in by the employee if a third party reasonably believes that the employee was expressly authorized to take the action resulting in the criminal violation.[4]

Actual authority, on the other hand, is authority that a corporation intentionally and knowingly gives to an employee.[5] 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.[6] 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 objectives of the employment.'"[7] 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 such conduct.

Violation of Corporate Policy or Instructions – A corporation can also be criminally liable even in cases where an employee's conduct violates corporate policy.[8] The fact that an employee violates express instructions of supervisors or policy manuals does not shield the corporation from criminal responsibility.[9] Corporate policies and rules, however, may help deter employee misconduct and reduce the punishment received in the sentencing phase.[10] 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.[11]

For instance, in *United States v. Twentieth Century Fox Film Corporation,* the Second Circuit explained that a corporation's "compliance program, however extensive, does not immunize the corporation from liability when its employees, acting within the scope of their authority, fail to comply with the law."[12] Due to the existence of an outstanding consent decree between the film corporation and the government, the company had issued express instructions that employees were not to engage in "block-booking."[13] Block-booking occurs whenever anyone conditions the licensing of one film on the licensing of another film.[14] In particular, this practice is a criminal violation under the Sherman Anti-Trust Act.[15] Despite corporate policy, a sales manager for the defendant corporation had refused to release popular films to movie houses unless they also agreed to book less popular films.[16] On appeal, the corporation argued that it should not have been liable because the manager's conduct was contrary to corporate policy, but the appellate court rejected the argument.[17] Although the case was remanded back to the trial court because the corporation had been denied a jury trial, the court agreed that the corporation could be held accountable even for conduct which contradicted express corporate instructions.[18]

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.[19] This requirement, however, is satisfied regardless of whether the corporation receives an actual benefit.[20] A corporation is considered to have received a benefit if the employee engaged in criminal conduct with the intent to benefit the corporation.[21] Moreover, an intent to benefit the corporation does not have to be the sole, or even primary, motivation

for the employee's conduct.[22] The benefit requirement 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.[23] For example, one such case involved a convicted corporation arguing that it should not have been held accountable because the criminal activity was intended solely to benefit the employee in his own personal quest to climb the corporate ladder.[24] 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.[25] 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.

Breach of Fiduciary Duty as a Defense

On the other hand, a corporation will not be liable if its employee breaches a fiduciary duty.[26] The reasoning is that if an employee breaches a fiduciary duty, then he or she has not acted with the intent to benefit the corporation.[27] In *Standard Oil Co. v. United States,* the defendants corporation purchased oil from a third party.[28] Two corporate employees entered into an agreement with the seller to misrepresent the amount of oil which was being pumped from its wells.[29] This conduct violated state and federal law and unbeknownst to the defendant corporation, its employees were paid by the third party for their cooperation.[30] This scheme resulted in the defendant corporation ultimately paying again for the very same oil that it already should have received.[31] The court stated that the employees' only purpose was to illegally aid the third party in return for monetary compensation.[32] 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 that 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."[33]

Collective Knowledge Doctrine

Federal courts also have developed the doctrine of "collective knowledge" for use in determining the criminal liability of a corporation.[34] This doctrine aids the prosecution by imputing the knowledge of all employees to the corporation.[35] For instance, 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.[36] 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."[37] A corporation cannot plead ignorance as the corporation is considered to possess the collective knowledge of all its employees.[38]

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 by failing to make further inquiries.[39] Deliberately remaining ignorant to avoid knowledge of criminal conduct will subject a party to criminal liability.[40]

Although this doctrine was originally developed for individual defendants, it has been applied to corporations as well.[41] For example, *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 Translation Report (CTR).[42] The involved bank failed to require completion of a CTR when the customer made multiple daily withdraws in individual amounts less than $10,000.[43] In an attempt to explain its inaction, the bank argues that it could not have known the daily withdrawals collectively triggered the CTR filing requirement.[44] The court upheld jury instructions which stated that the defendant could be found to have acted willfully and knowingly if the failure to file a CTR was the result of some flagrant organizational indifference and a conscious decision to avoid learning about and observing the reporting requirements.[45] 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.

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.[46] Furthermore, agents outside of the corporation who are acting for the corporation also can criminally bind the corporation, even when executive officers and directors are ignorant of the criminal conduct.[47] 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. Subsequently, 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; (4) independent contractors.

Executive Officers and Directors –

Courts have historically held that corporate executives can criminally bind a corporation.[48] In one case, a

president of a corporation started a meat packing plant in Colorado.[49] 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).[50] The president remained in charge of the day-to-day operations of the plant for eight months.[51] 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.[52] The court upheld the conviction of the president and the corporation by imputing the president's conduct to the corporation.[53]

Another case involved a corporation that was engaged in the business of providing a governmental agency with bids for the renovation of foreclosed homes.[54] 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 percent kickback from the local contractors in return for rigging bids.[55] 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.[56]

Non-Executive Managers and Supervisors – Corporations are also criminally liable for the actions of their mid-level managers and supervisors. The Fourth Circuit held that a regional manager for a national corporation was an agent capable of creating criminal liability for the corporation.[57] In the case at issue, the managerial employee has falsified certain documents despite a duty to comply with FDA filing requirements.[58] Consequently, the appellate court upheld the criminal conviction of the corporation.[59]

A second case involved a branch manager who submitted false loan documents to a federal agency.[60] 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.[61] The court rejected the defendant's argument and stated that acts of an employee, performed while exercising delegated authority, may create criminal liability for the corporation.[62]

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.[63]

Similarly, one state court upheld the criminal liability of a car dealership based upon the conduct of a salesman.[64] 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.[65] The court noted that the agent in question had been given the authority to obtain financing and sell cars. In an attempt to ensure customers qualified for loans, the salesman misrepresented customers' incomes, current places of employment, work histories, and down payments.[67] As a result of the authority that had been granted to the salesman, the corporation was found criminally responsible for his conduct.[68]

A federal court also upheld the conviction of a corporation based upon the criminal conduct of low-level employees.[69] The corporation was convicted of criminal bid rigging in violation of the Sherman Act.[70] The corporation argues that it had a long standing and strictly enforced policy prohibiting such conduct.[71] 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.[72] 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.[73]

Independent Contractors – A corporation can also be criminally liable for the acts of independent contractors who are acting for the benefit of the corporation. In one case, a defendant corporation had been engaged in the business of distributing cosmetic products.[74] The defendant and an independent contractor entered into an agreement whereby the contractor would manufacture and distribute the defendant's products.[75] Without the defendant corporation's knowledge and in violation of the Food, Drug, and Cosmetic Act, the contractor used unapproved ingredients in the manufacturing process.[76]

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.[77] The defendant also argued that the contractor was not an agent of the corporation.[78] The court rejected those these two arguments, and stated that it was not concerned with the distinction between agents and independent contractors.[79] 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.[80] Moreover, the defendant corporation knew that if the product violated the law, then it would be subject to criminal liability.[81] 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.[82]

Personal Liability of Employees

General Areas of Liability

There are four general areas in which an employee can 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.[83] Second, corporate employees can incur liability under a theory of accomplice liability.[84] In a third situation, corporate employees who conspire to engage in criminal conduct on behalf of the corporation can be criminally liable.[85] Finally, criminal liability may result for those corporate officers who are in a responsible position in relation to the criminal conduct.[86]

Corporate Employees Who Directly Commit Criminal Violations – An employee will be criminally liable for actively and directly engaging in criminal conduct.[87] A corporate employee cannot hide from criminal liability merely by claiming the conduct occurred during the scope of employment.[88] In one case, for example, a corporation and its officers were convicted of wire and mail fraud.[89] The convicted employees had knowingly made misrepresentations to third parties about real estate owned by the corporation.[90] The appellate court upheld the convictions as there was sufficient evidence that the corporate employees had directly participated in the criminal conduct.[91]

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.[92] The Second Circuit upheld the conviction of a corporate president after considering how the president had instructed a subordinate to falsify income tax returns.[93] Although the executive did not actually falsify the returns, his instructions to do so were sufficient to uphold his conviction under an accomplice theory. [94]

The accomplice theory could be extended to supervisors who choose to take no action despite knowledge of a subordinate's criminal conduct.[95] In other words, inaction or deliberate indifference toward 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.[96]

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.[97] 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.[98] 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 the activities of the other participants in the agreement.[99] Mere association or communication with the members of a conspiracy, however, it is not enough to prove participation.[100] Neither knowledge nor approval of the object, purpose, or existence of a conspiracy is enough to show membership in that conspiracy.[101] The government must prove beyond a reasonable doubt that the defendant had a deliberate, knowing, and specific intent to join the conspiracy.[102]

In *United States v. Rodgers,* a corporate officer was convicted of mail fraud.[103] The defendant developed a scheme in which he and other defendants would collectively agree on who would be awarded government contracts.[104] 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.[105]

Criminal Liability For Corporate Officers Who Are in a Responsible Position

The RCO Doctrine and Strict Liability Crimes – The responsible corporate officer doctrine ("the RCO doctrine") originally emerged from the U.S. Supreme Court case of *United States v. Dotterweich*.[106] Approximately 32 years later, the Supreme Court reaffirmed the existence of the RCO doctrine in the *United States v. Park*[107] 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*).[108] 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.[109] A relationship must exist between the officer's corporate functions and the conduct in question to such a degree that the officer is not only responsible for solving the problem, but also under an affirmative "duty to implement measures that will insure that violations will not occur."[110] 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."[111]

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

Environmental Implications of the RCO Doctrine – In the context of environmental criminal law, there have been various attempts

to use the RCO doctrine to convict corporate officers.[112] Such attempts have occurred despite the fact that none of the environmental statutes most commonly relied upon by prosecutors are strict liability offenses.[113] While it is understandable that prosecutors would like to rely on the RCO 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 knowingly or negligent conduct).[114]

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 intended to benefit the corporation. Moreover, a corporation will be criminally liable even though the individual employee acted contrary to the corporate policy or instructions.

An employee also will be personally responsible for his or her criminal conduct if the employee directly acts, 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 officer is in a position to prevent the criminal activity, and the involved statute does not require a finding of *mens rea* in order for a criminal violation to occur.

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1. *See United States v. MacDonald & Watson Waste Oil Co.,* 933 F.2d 35, 42 (1st Cir. 991) (citing *Unites 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, 822-823 (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).
2. See United States v. Bi-Co Pavers, Inc., 741 F.2d 730, 737 (5th Cir. 1984).
3. *Id.*
4. *Id.*
5. Blacks Law Dictionary 35 (6th ed. 1990).
6. *C.I.T. Corp. v. United States,* 150 F.2d 85, 89-90 (9th Cir. 1945).
7. *Domar Ocean Transp., Ltd., Div. Of Lee-Vac, Ltd. v. Independent Refining Co.,* 783 F.2d 1185, 1190 (5th Cir. 1986) (quoting Prosser & Keeton, The Law of Torts 502 (5th ed. 1984)); *see also* 1 Kathleen Brickey, Corporate Criminal Liability § 3:01 (1984).
8. *United States v. Hilton Hotels Corp.,* 467 F.2d 1000, 1004 (9th Cir. 1972), *cert. denied,* 409 U.S. 1125, 93 S. Ct. 938 (1973).
9. *Standard Oil Co. v. United States,* 307 F.2d 120, 127 (5th Cir. 1962).
10. Daniel K. Webb et al., *Understanding and Avoiding Corporate and Executive Criminal Liability,* 49 Bus. Law. 617 (1994).
11. *Id.*
12. *United States v. Twentieth Century Fox Film Corp.,* 882 F.2d 656, 660 (2d Cir. 1989), *cert. denied,* 493 U.S. 1021, 110 S.Ct. 722 (1990).
13. Id. at 658.
14. *Id.*
15. *Id.*
16. *Id. at* 685-59.
17. *Id.* at 660.
18. *Id.* at 661 & 666.
19. *Standard Oil Co. v. United States,* 307 F.2d 120, 127 (5th Cir. 1962).
20. *Id.*
21. *See id.* at 128.
22. *See United States v. Gold,* 743 F.2d 743 F.2d 800, 823 (11th Cir. 1984), *cert. denied,* 469 U.S. 1217, 105 S. Ct. 1196 (1985).
23. *Id.*
24. *United States v. Gold,* 743 F.2d 399, 407 (4th Cir. 1985).
25. *Id.*
26. Michael E. Tigar, *It Does the Crime But Not the Time: Corporate Criminal Liability in Federal Law,* 17 Am. J. Crim. L. 211, 228 (1990).
27. *See Standard Oil Co. v. United States,* 307 F.2d 120, 127 (5th Cir. 1962); *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").
28. *See Standard Oil Co. v. United States,* 307 F.2d at 124.
29. *Id.*
30. *Id.*
31. *Id.*
32. *Id.* at 129.
33. *Id.* (quoting *Boyce Motor Lines v. United States,* 342 U.S. 337, 342 (1952); *United States v. Chicago Express Inc.,* 235 F.2d 785, 786 (7th Cir. 1956)).
34. *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).
35. *Id.; see also Apex Oil Co. v. United States,* 530 F.2d 1291, 1295 (8th Cir. 1976) (reviewing the conviction of a corporation, which had illegally transported and stored fuel oil in violation of the Water Pollution Control Act, and concluding that "the knowledge of the employees is the knowledge of the corporation"), *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)).
36. *See United States v. Bank of New England, N.A.,* 821 F.2d at 855.
37. *Id.* at 856.
38. *Id.*
39. *See United States v. Mapelli,* 971 F.2d 284, 286 (9th Cir. 1992); *United States v. Lara- Velasquez,* 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).
40. *See supra* note 39.
41. *See, e.g., 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); *United States v. St. Michael's Credit Union,* 880 F.2d 579, 584 (1st Cir. 1989).
42. *Id.* at 847.
43. *Id.*
44. *Id.* at 856.
45. *Id.* at 855.
46. *See Standard Oil Co. v. United States,* 307 F.2d 120, 127 (5th Cir. 1962).
47. 1 Kathleen Brickey, Corporate Criminal Liability, § 3:03 (1984).

48. *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).
49. *United States v. Cattle Kong Packing Co., Inc.,* 793 F.2d at 235.
50. *Id.* at 240.
51. *Id.* at 239.
52. *Id.*
53. *Id.* at 242.
54. *See United States v. Griffin,* 401 F. Supp. 1222, 1225 (S.D. Ind. 1975), *aff'd sub nom. United States v. Metro Management Corp.,* 541 F.2d 284 (7th Cir. 1976).
55. *Id.*
56. *Id.* at 1230.
57. *United States v. Automated Medical Laboratories, Inc.,* 770 F.2d 399, 406 (4th Cir. 1985).
58. *Id.* at 401.
59. *Id.* at 408.
60. *C.I.T. Corp. v. United States,* 150 F.2d 85, 89 (9th Cir. 1945).
61. *Id.*
62. *Id.* at 90.
63. *See Standard Oil Co. v. United States,* 307 F.2d 120, 127 (5th Cir. 1962).
64. *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,* 556 N.E.2d 1119 (Mass. 1991).
65. *Id.* at 1220.
66. *Id.* at 1221.
67. *Id.*
68. *Id.*
69. *See United States v. Basic Construction Co.,* 711 F.2d 570 (4th Cir. 1983), *cert. denied,* 464 U.S. 956, 104 S.Ct. 371 (1983).
70. *Id.*
71. *Id.*
72. *Id.*
73. *Id.* at 573.
74. *United States v. Parfait Powder Puff Co., Inc.* 163 F.2d 1008 (7th Cir. 1947), *cert. denied,* 332 U.S. 851, 68 S.Ct. 356 (1948).
75. *Id.* at 1009.
76. *Id.*
77. *Id.*
78. *Id.*
79. *Id.*
80. *Id.* at 1010.
81. *Id.*
82. *Id.*
83. *See United States v. Cattle King Packing Co.,* 793 F.2d 232, 237 (10th Cir. 1986), *cert. denied,* 479 U.S. 985, 107 S.Ct. 573 (1986).
84. Kathleen Brickey, *Criminal Liability of Corporate Officers for Strict Liability Offenses – Another View,* 35 Vand. L. Rev. 1337 (1982) [hereinafter Brickey].
85. *See United States v. Rodgers,* 624 F.2d 1303, 1308 (5th Cir. 1980), *cert. denied,* 450 U.S. 917, 101S.Ct. (1981).
86. *See United States v. Park,* 421 U.S. 658, 95, S.Ct. 1903 (1975).
87. *See United States v. Rodgers,* 624 F.2d at 1308.
88. *Cf. Moss v. Ole South Real Estate Inc.,* 933 F.2d 1300, 1312 (5th Cir. 1991) (although addressing civil liability for 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).
89. *United States v. Amrep. Corp.,* 560 F.2d 539, 543 (2d Cir. 1977), *cert. denied,* 434 U.S. 1015, 98 S.Ct. 731 (1978).
90. *Id.*
91. *Id.* at 547.
92. *See* 18 U.S.C.A. § 2 (West 1996); *see also United States v. Berger,* 456 F.2d 1349 (2d Cir. 1972), *cert. denied,* 409 U.S. 892, 93 S.Ct. 110 (1972).
93. *See United States v. Berger,* 456 F.2d at 1352.
94. *See id.*
95. *See supra* note 39; *See also* Brickey, *supra* note 84, at 1342 n. 10.
96. *See supra* note 95.
97. 18 U.S.C.A. § 371 (West 1996).
98. *United States v. Elam,* 678 F.2d 1234, 1247 (5th Cir. 1982).
99. *United States v. Alvarez*, 625 F.2d 1196, 1198 (5th Cir. 1980), *cert. denied,* 451 U.S. 938, 101 S.Ct. 2017 (1981).
100. *United States v. Galvan,* 693 F.2d 417, 429 (5th Cir. 1982).
101. *United States v. Glenn,* 828 F.2d 855, 859 (1st Cir. 1987).
102. *United States v. Jackson,* 700 F.2d 181, 185 (5th Cir.), *cert. denied,* 464 U.S. 842, 104 S.Ct. 139 (1983).
103. *See United States v. Rodgers,* 624 F.2d 1305, 1305 (5th Cir. 1980), *cert. denied*, 450 U.S. 917, 101 S.Ct. 1360 (1981).
104. *Id.* at 1308.
105. *Id.* at 1310.
106. *United States v. Dotterweich,* 320 U.S. 377, 64 S.Ct 134 (1943).
107. *United States v. Park,* 421 U.S. 658, 95 S.Ct. 1903 (1975).
108. *See United States v. Dotterweich,* 64 S.Ct. at 136; *United States v. Park,* 95 S.Ct. at 1912.
109. *United States v. Park,* 95 S.Ct. at 1908.
110. *Id.* at 1911.
111. *Id.* at 1913.
112. 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 responsible corporate officer" falls within this definition. *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 RCO 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 10th 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 RCO 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 impossible to note that the court did acknowledge 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"; and when notified by the supervisor about 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.")
113. *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 Substances 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 Control 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 or RCRA); 42 U.S.C.A. §§ 7401-7671q (West 1996)(Clean Air Act).

Broad application of the RCO doctrine clearly seems to contradict the *mens rea* requirements of 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 RCO doctrine would transform the CWA into a 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 RCO doctrine to CWA cases directly dispenses with the stated and required *mens rea* elements of the CWA.

114. *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 the 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 that 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 RCO 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 RCO doctrine in RCRA criminal proceedings. *See e.g., United States v. White,* 766 F.Supp. 873 (E.D. Wash. 1991); *see generally* Ronald M. Broudy, Note RCRA *and the Responsible Corporate Officer Doctrine: Getting Tough on Corporate Offenders by Sidestepping the Mens Rea Requirement,* 80 Ky. L.J. 1055 (1992)(discussing *MacDonald & Watson*).

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