Agency -- Criminal Liability of Corporation -- Imputation of Agents' Knowledge

John G. Golding

Follow this and additional works at: http://scholarship.law.unc.edu/nclr

Part of the Law Commons

Recommended Citation
Available at: http://scholarship.law.unc.edu/nclr/vol30/iss2/7

This Note is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Law Review by an authorized editor of Carolina Law Scholarship Repository. For more information, please contact law_repository@unc.edu.
Defendant trucking corporation was convicted of knowingly and willfully keeping false driver's logs in violation of a federal statute. The evidence indicated wide discrepancies between the false logs and the trip reports, both of which records were prepared by defendant's driver.\(^1\)

No single agent of the corporation other than the driver knew of these discrepancies, but one agent had knowledge of the information in the logs, and another knew the contents of the trip reports. Although reversing the conviction on other grounds, the court of appeals ruled that the partial information possessed by both agents could be attributed to the corporation to give it knowledge of the falsity of the logs.\(^2\)

It was once held that a corporation could not commit a crime,\(^3\) but now corporate bodies can be convicted for acts of misfeasance,\(^4\) violations of statutes,\(^5\) and crimes involving general and specific criminal intent,\(^6\) although some writers have criticized the last extension of criminal responsibility.\(^7\)

Because a corporation can act only through its agents or employees, rules of agency have been used in varying degree to attribute the \textit{mens rea} or guilty knowledge to the corporation in crimes involving intent.\(^8\)

\(^{1}\) Whether the driver in falsifying the logs was attempting to further the interests of his employer or to perpetrate a scheme to defraud them was not indicated by the facts or discussed in the opinion.

\(^{2}\) Inland Freight Lines v. United States, 191 F. 2d 313 (10th Cir. 1951).


\(^{4}\) E.g., Stewart v. Waterloo Turn Verein, 71 Iowa 226, 32 N. W. 275 (1887); State v. Western North Carolina R. R., 95 N. C. 602 (1886).

\(^{5}\) E.g., Stewart v. Waterloo Turn Verein, 71 Iowa 226, 32 N. W. 275 (1887); State v. Western North Carolina R. R., 95 N. C. 602 (1886).

\(^{6}\) E.g., Groff v. State, 171 Ind. 547, 85 N. E. 769 (1908); Commonwealth v. Sacks, 214 Mass. 72, 100 N. E. 1019 (1913).

\(^{7}\) E.g., Stewart v. Waterloo Turn Verein, 71 Iowa 226, 32 N. W. 275 (1887); State v. Western North Carolina R. R., 95 N. C. 602 (1886).

\(^{8}\) E.g., Stewart v. Waterloo Turn Verein, 71 Iowa 226, 32 N. W. 275 (1887); State v. Western North Carolina R. R., 95 N. C. 602 (1886).
superior has been withheld. Courts will impute to the corporation the knowledge and intent of its officers, and, in some cases, that of its superior agents acting within the scope of their employment; but they generally do not impute the intent of an ordinary employee unless his superior had knowledge of such intent or acquiesced in it. Lack of consent is a defense in almost all cases.

There has been a growing tendency, however, to broaden the area of corporate criminal liability, and to hold the company for deeds which were done by any of its agents acting within the scope of their employment, especially in cases where the public welfare is involved. It is said that public necessity requires that the corporation have a non-delegable duty to prevent violations of the law by its agents.


United States v. Empire Packing Co., 174 F. 2d 16 (7th Cir. 1949); Minnich v. United States, 101 F. 2d 477 (3d Cir. 1939).


People v. Raphael, 190 Misc. 584, 72 N. Y. S. 2d 748 (N. Y. City Ct. 1947). The courts, however, will often readily infer such knowledge from the general circumstances of the case. E.g., Paschen v. United States, 70 F. 2d 491, 503 (7th Cir. 1934); Zito v. United States, 64 F. 2d 772 (7th Cir. 1933); United States v. Wilson, 59 F. 2d 97 (W. D. Wash. 1932); United States v. Houghton, 14 Fed. 544 (D. N. J. 1882).


Holland Furnace Co. v. United States, 158 F. 2d 2 (2d Cir. 1946); John Gund Brewing Co. v. United States, 204 Fed. 17 (8th Cir. 1913). But orders forbidding such acts must have been given in good faith, United States v. Wilson, 59 F. 2d 97 (W. D. Wash. 1932); Thompson, "Law of Corporations" §5645 (3d ed. 1927).


"Within this field the machinery of criminal administration is utilized as an enforcing agency because the social interest far outweighs the individual's interest." Note, 60 Harv. L. Rev. 283, 285 (1946). See Dotterweich v. United States, 320 U. S. 277 (1943); New v. United States, 64 F. 2d 772 (7th Cir. 1933); Golden Guernsey Farms, Inc. v. State, 223 Ind. 606, 63 N. E. 2d 699 (1945).

Actually, the non-delegable duty concept seems to create a type of absolute liability closely akin to that imposed by the "dangerous instrumentality" rule in agency cases in the tort field. Compare United States v. Illinois Central R. R., 303 U. S. 239 (1938); United States v. Wilson, 59 F. 2d 97 (W. D. Wash. 1932); People v. Sheffield Farms-Slawson-Decker Co., 225 N. Y. 25, 121 N. E. 474 (1918),
quently, companies have been convicted where their agents acted without the knowledge or, in a few cases, consent of their superiors, and even against express orders and instructions. In a few instances it has been ruled that criminal liability can be imposed even when the agent has deliberately acted adversely to the interests of the principal.

Into this confused area of law, the instant case injects a new fiction: where knowledge is an ingredient of the crime, it can be found by imputing the sum total of the bits of information possessed by several agents to the "mind" of the corporation, and if such information, by fiction of the law integrated by the "corporate mind," gives notice of the criminal act of an agent, the corporation has the necessary guilty knowledge.

This theory is completely new to the field of criminal law. It is unsupported by the language of *New York Central & H. R. R. R. v. United States,* cited by the court to support the present decision. In that case, the imputation of partial [italics added] knowledge was never considered, the court merely holding the defendant railroad responsible for the knowledge of two of its agents where both agents had complete knowledge of the crime.

Examples of the use of the "corporate mind" fiction do appear, however, in some civil cases. In *United States v. National Exchange Bank,* the knowledge of a disbursing clerk as to the amount of a check drawn by him was imputed to his principal and when the check (which had been raised afterwards by a third party) was paid by a different agent, the claim by the principal of payment under a mistake of fact was denied, the court holding that the drawer and drawee were the same. There have been similar holdings, based upon the legal iden-

---

with Richman Brothers Co. v. Miller, 131 Ohio St. 424, 3 N. E. 2d 360 (1936) (tort case).
21 Old Monastery Co. v. United States, 147 F. 2d 905 (4th Cir.), cert. denied, 326 U. S. 734 (1945); accord, United States v. Empire Packing Co., 174 F. 2d 16 (7th Cir. 1949). But see 13 A. M. Jur. §1113 (1938).
22 Inland Freight Lines v. United States, 191 F. 2d 313 (10th Cir. 1951).
23 212 U. S. 491 (1909).
24 270 U. S. 527 (1926).
25 Id. at 534.
tity of principal and agent, but the theory has been sharply criticized as one which adds innocent knowledge to innocent knowledge to get guilty knowledge. As a result, most of the courts that espouse this approach do so with reservations, stating that before it will be imputed, the information must be obtained by the agent acting within the scope of his employment, that the agent must be involved in the transaction in connection with which the information is to be imputed, that the information must appear important to the agent in regard to his duties, or that the agent must have reason to believe the information should be reported or a duty to report it. Some decisions reject the "corporate mind" fiction entirely, and impute partial knowledge of an agent only to create estoppel against a principal seeking to obtain the benefits of a transaction which he has consummated in whole or in part by means of such agent.

The conflict and complications which have been created by the use of the "corporate mind" approach in civil cases would indicate that its importation into criminal law is not advisable. If it is deemed beneficial to broaden the criminal liability of corporations, a point of policy on which there is considerable doubt, it would appear wiser to achieve this end by increased application of the "non-delegable" duty concept, with its standard of absolute liability for acts of an agent, than to follow the circuitous route of conjuring up knowledge in the "mind" of the corporation, when it is clear that in actuality no such knowledge and no such "mind" exist.

JOHN G. GOLDING.

27 For an explanation of the rule and the policies upon which it is based, see Neal v. Cincinnati Union Stockyards Co., supra note 25.
28 Devlin, Fraudulent Misrepresentation: Division of Responsibility between Principal and Agent, 53 L. Q. Rev. 344, 362 (1937); Comment, 15 CAN. B. REV. 716 (1937).
29 Solow v. General Motors Truck Co., 64 F. 2d 105 (2d Cir. 1933).
31 RESTATEMENT, AGENCY, §275, comment d (1934).
33 Peebles v. Patapsco Guano Co., 77 N. C. 233 (1877); Irvine v. Grady, 85 Tex. 120, 19 S. W. 1028 (1892).
34 Punishment of the corporation itself by fine would not seem to be particularly effective in deterring an employee from committing criminal acts (especially in cases where the employee is deliberately acting adversely to the interests of his employer) unless the threat of fine causes the company to exercise stricter control over its employee. In addition, the reason for a broad application of respondeat superior in the tort field, i.e., the need to compensate an innocent third party for his losses, does not exist in the area of criminal responsibility. After all, any fine levied on the corporation is ultimately passed on to its stockholders in the form of lower profits or to the public in the form of higher prices. For further discussion of this point, see BALLANTINE, CORPORATIONS §114 (Rev. ed. 1946); Edgerton, supra note 15; Francis, supra note 7, at 322; Sayre, supra note 9, at 717.