CRIMINAL LIABILITY OF CORPORATIONS
(Based on Conduct of High Managerial Agent)
PENAL LAW 20.20 (2)(b)

The _____ count is (*Specify*).

I shall instruct you first on the definition of the crime of *(charged crime)*. Then I shall define for you when a corporation may be found guilty of a crime. Finally, I shall put both definitions together and list for you the elements you must find have been proven beyond a reasonable doubt in order to find *[the corporate defendant]* guilty of that crime.

[*NOTE: Here read the statutory definition of the crime and any defined terms as set forth in CJI for that crime. If that crime has been already been defined, a cross-reference to that is sufficient.]*

Our law defines the circumstances under which a corporation may be criminally liable for the conduct of a person or persons acting in behalf of the corporation. Specifically, the law states that a corporation is guilty of an offense when the conduct constituting the offense is engaged in, authorized, solicited, requested, commanded or recklessly tolerated by[1] a high managerial agent acting within the scope of his or her employment and in behalf of the corporation.[2]

The term "high managerial agent" has its own special meaning in the law. I will first define the term "agent" and then the term "high managerial agent."

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[1] At this point, the statute states "the board of directors or by...". That phrase is omitted here because this charge applies only to instances where alleged liability is based upon the conduct of a high managerial agent.

[2] Penal Law § 20.20 (2) (b).

An AGENT is any director, officer or employee of a corporation, or any other person who is authorized to act in behalf of the corporation."[3]

A HIGH MANAGERIAL AGENT is an officer of a corporation or any other agent in a position of comparable authority with respect to the formulation of corporate policy or the supervision in a managerial capacity of subordinate employees.[4]

[Note: Add when there is a claim that the conduct constituting the offense was recklessly tolerated:

A person recklessly tolerates conduct constituting an offense when that person:

by his/her toleration, creates or contributes to a substantial and unjustifiable risk that the conduct will occur or continue,

and when he or she is aware of and consciously disregards that risk,

and when that risk is of such nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.[5]

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[3] Penal Law § 20.20 (1) (a).

[4] Penal Law § 20.20 (1) (b). *See People v Congregation Khal Chaisidei Skwere Inc.*, 232 AD2d 919, 921 (3d Dept 1996) (executive director of defendant corporation high managerial agent); *People v Guido*, 132 AD2d 707 (2d Dept 1987) (foreman employed by defendant carting corporation high managerial agent); *People v Deitsch*, 97 AD2d 327 (2d Dept 1983) (corporate president, president's brother, and foreman of warehouse operated by defendant corporation, who together ran corporate business and supervised its employees, all high managerial agents).

[5] Penal Law § 15.05 (3). If applicable, the following statutory language may be added: "A person also acts recklessly when he or she

[Note: Add if appropriate:

As you know, the People contend that [the defendant corporation] is liable based on the conduct of a person who is not here on trial. You must not speculate on the present status of that person. You must not draw any inference from his/her absence. And, you must not allow his/her absence to influence your verdict. You are here to determine whether the People have proven beyond a reasonable doubt that [the corporate defendant] on trial is guilty of a charged crime.]

In order for you to find [the corporate defendant] guilty of this crime, the People are required to prove, from all of the evidence in the case beyond a reasonable doubt, each of the following elements:

> *Note: At this point the elements of the crime charged against the corporation must be integrated with the theory of corporate liability. What follows are two examples of an integrated charge of corporate liability for grand larceny. The first example is where corporate liability is premised on the conduct of a high managerial agent. The second example is where corporate liability is premised on the high managerial agent having authorized, solicited, requested, commanded or recklessly tolerated conduct constituting the offense.*

(A) The theory of the prosecution is that a high managerial agent engaged in the conduct constituting the crime:

1. *That on or about (date), in the county of (County), (specify alleged high managerial agent) wrongfully took, obtained, or withheld (specify property) from its owner;*

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creates such a risk but is unaware of that risk solely by reason of his or her voluntary intoxication."

2. *That (specify alleged high managerial agent) did so with the intent to deprive another of the property or to appropriate the property to himself/herself [or to a third person];*

3. *That the value of the property exceeded (specify amount) dollars;*

4. *That (specify alleged high managerial agent) was a high managerial agent of the corporation; and*

5. *That when (specify alleged high managerial agent) did so, he/she was acting within the scope of his/her employment and in behalf of the corporation.*

(B) The theory of the prosecution is that a high managerial agent authorized, solicited, requested, commanded or recklessly tolerated conduct engaged in by another person that constituted the crime:

1. *That on or about (date), in the county of (County), (specify person) wrongfully took, obtained, or withheld (specify property) from its owner;*

2. *That (specify person) did so with the intent to deprive another of the property or to appropriate the property to himself/herself [or to a third person];*

3. *That the value of the property exceeded (specify amount) dollars;*

4. *That (specify alleged high managerial agent) was a high managerial agent of the corporation;*

5. *That (specify alleged high managerial agent) authorized, solicited, requested, commanded or recklessly tolerated conduct constituting that offense; and*

6. *That when* *(specify alleged high managerial agent)* *did so, he/she was acting within the scope of his/her employment and in behalf of the corporation.*

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find [the corporate defendant] guilty of the crime of Grand Larceny in the (*Specify*) Degree as charged in the _____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the [corporate defendant] not guilty of the crime of Grand Larceny in the (*Specify*) Degree as charged in the _____ count.