

# Health Care Enforcement and White Collar Defense Alert: SJC Limits Corporate Criminal Liability

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On May 19, 2010, Massachusetts' Supreme Judicial Court ("SJC") in a unanimous decision ruled that a nursing home could not be convicted of involuntary manslaughter or criminal neglect of a resident based upon a theory of collective knowledge *unless* one of its employees could be found individually liable for each such crime. This decision is not only significant for corporate defendants facing criminal liability, but it might also be extended to provide similar protection to those same defendants in civil False Claims Act cases. Furthermore, the decision may lead prosecutors to broaden their targets to include individuals who participate in the wrongdoing.

## ***Commonwealth v. Life Care Centers of America, Inc.***

The Massachusetts case, *Commonwealth v. Life Care Centers of America, Inc.*,<sup>1</sup> involved a resident who died in 2004 from injuries sustained when she fell down the facility's stairs while attempting to leave in her wheelchair. The resident was able to leave because she was not wearing a prescribed security bracelet ("WanderGuard") that would have both set off an alarm and temporarily locked the front doors when the resident was within a certain distance of those doors. The resident's physician's order for the WanderGuard had been inadvertently removed from her treatment sheets, and this led a substitute nurse, brought over from another unit due to short-staffing, to not check that the resident's WanderGuard was in place on the day in question (his usual practice was to check for the device only if there was an order for it on the treatment sheet). The resident, not wearing the WanderGuard, left the nursing home in her wheelchair through the doors, fell down eight steps, and died as a result of her injuries.

The grand jury indicted the nursing home on charges including involuntary manslaughter, and abuse, neglect, or mistreatment of a resident of a long-term care facility (a statute later repealed). In pre-trial proceedings, the prosecutor stated that the Commonwealth intended to establish the corporation's criminal liability by *aggregating* the knowledge and actions of multiple employees even if no single employee was criminally liable individually for either crime. The parties, before trial, requested appellate review as to the viability of the Commonwealth's aggregation theory.

Ruling in favor of the nursing home and against the aggregation concept, the SJC held that "a corporation acts with a given mental state in a criminal context only if *at least one employee* who acts (or fails to act) possesses the requisite mental state at the time of the act (or failure to act)."<sup>2</sup> Specifically addressing the involuntary manslaughter charge – which required proof of wanton or reckless conduct – the SJC stated:

By its theory of aggregation, the Commonwealth is attempting to promote conduct that is no more than negligent on the part of one or more employees into wanton or reckless conduct on the part of the corporation. This theory is illogical and such an argument cannot succeed. If at least

one employee did not act wantonly or recklessly, then *the corporation cannot be held to a higher standard of culpability by combining various employees' acts.*<sup>3</sup>

The SJC applied the same reasoning to the neglect charge.

## Implications for Corporate Defendants

The *Life Care Centers* decision will make it more difficult for the government to prosecute corporate defendants successfully. Corporations act only through their employees and agents, and the SJC's decision limits the scope of individual conduct that can be considered to impose corporate criminal liability: at least one individual must have possessed the requisite criminal intent for the crime charged in order for the corporation to be held liable.

Because the SJC engaged in a thoughtful review of federal case law on the collective knowledge doctrine, the court's ruling could have significance beyond the Commonwealth. Indeed, at least one federal court has looked skeptically at the government's attempt to rely on the collective knowledge doctrine. At a March 2010 sentencing hearing in *United States v. Modern Continental Corporation*,<sup>4</sup> a criminal prosecution arising out of the Massachusetts "Big Dig" construction project, Judge Woodlock expressed his concern with aggregating the conduct of individuals to establish corporate scienter where the individuals did not possess the requisite knowledge for a criminal conviction. In asking for additional briefing on the subject, Judge Woodlock informed the government that it could attempt to develop the collective knowledge theory but cautioned, "you may tell me it does not make any difference whether there are human beings who are individually responsible if we can cobble together enough human beings who did not know anything to say that the corporation knew something. Trust me; that will be an uphill fight for you, but you might want to make that argument."<sup>5</sup> Judge Woodlock expressed similar concerns in September 2009 in the Plea Hearing of Pharmacia & Upjohn.<sup>6</sup>

One additional area where the decision might provide particularly useful for corporate defendants is in defending civil false claims act cases. Among the points made by the SJC was that "[o]ur conclusion is consistent with the law governing corporate criminal liability in the civil context."<sup>7</sup> This broad statement will likely be used by providers to argue that the interpretation of the collective knowledge doctrine in criminal cases should also apply in all civil cases, including those where the theory of liability based on a False Claims Act (state or federal) where the government must prove that a corporate defendant acted with actual knowledge or deliberate ignorance or reckless disregard for the truth or falsity of the information. The question that will be asked is how the government can overcome its burden to prove such "knowledge" when the only evidence is that employees acted negligently.

Companies and other organizations should also bear in mind that this decision may encourage prosecutors to broaden their investigations and prosecutions, and to charge, or at least implicate, individuals along with corporate entities. Indicting the individual actors along with their employers will reduce the risk that a prosecution will be derailed by a corporate defendant's argument that the collective knowledge doctrine should not apply to impose corporate liability. Similarly, the government may find a need to include individuals as defendants in the civil False Claims Act cases. It is therefore advisable for companies to review their indemnity agreements

and insurance policies for executives and other individuals to make sure coverage is included for legal fees arising out of such investigations and prosecutions.

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## **Endnotes**

<sup>1</sup> SJC-10546, 2010 WL 1964627, at \*1 (Mass. May 19, 2010)

<sup>2</sup> *Id.* at 4 (emphasis added).

<sup>3</sup> *Id.* at 3 (emphasis added).

<sup>4</sup> No. 1:08-cr-10183 (D. Mass.)

<sup>5</sup> *Hearing Transcript* at 55:7-13. The government has submitted the requested briefing, arguing for application of the collective knowledge theory, but Judge Woodlock has not yet ruled on the issue.

<sup>6</sup> *Change of Plea Hearing Transcript* at 14.

<sup>7</sup> *Life Care*, 2001 WL 1964727 at \*5.

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