

CORPORATE CRIMINAL RESPONSIBILITY

(The defendant) (One of the defendants) in this case is a corporation.

A corporation is not a live person, of course, and therefore it can act only through its agents. To prove that a corporation is guilty of a criminal offense that was committed by one of its agents, the Commonwealth must prove three things beyond a reasonable doubt:

***First:* That a specific person is guilty of this offense — that is, he or she committed all of the elements of this offense, as I (have defined them to you) (will define them to you in a moment);**

***Second:* That such person, when he or she committed this offense, was engaged in some particular corporate business or project; and**

***Third:* That the accused corporation had given that person authority and responsibility to act for it, and on its behalf, in handling that particular corporate business or project.**

It is *not* necessary that the person who committed the crime was a director, or an officer, or even an employee of the corporation. It is *not* necessary that those in control of the corporation directly requested or authorized the crime or approved of it afterwards. Those factors can be

relevant to your decision, but they are not necessary for the corporation to be found guilty of this charge.

The corporation is guilty if it put the person who committed the crime in a position where he (she) had enough power and authority to act for the corporation in the corporate project he (she) was involved in when he (she) committed this offense.

Some of the factors you may consider on that issue are: how much authority and control that person exercised over corporate matters; how much control others in the corporation exercised over that person in corporate matters; whether and how corporate funds were used in the crime; and, finally, whether there was a repeated pattern of criminal conduct that might indicate corporate toleration or approval after the fact of that person's criminal acts.

Commonwealth v. Angelo Todesca Corp., 446 Mass. 128, 133-134, 136, 842 N. E. 2d 930, 937 (2006) (approving three elements as outlined in model instruction); *Worcester Ins. Co. v. Fells Acres Day School, Inc.*, 408 Mass. 393, 408-409, 558 N.E.2d 958, 969 (1990); *Commonwealth v. L.A.L. Corp.*, 400 Mass. 737, 511 N.E.2d 599 (1987) (close corporation); *Commonwealth v. Beneficial Fin. Co.*, 360 Mass. 188, 254-281, 275 N.E.2d 33, 71-86 (1971), cert. denied sub nom. *Farrell v. Massachusetts*, 407 U.S. 910, and sub nom. *Beneficial Fin. Co. v. Massachusetts*, 407 U.S. 914 (1972) (publicly-held corporation). G.L. c. 4, § 7, Twenty-third (in construing statutes, "[p]erson" or "whoever" shall include corporations, societies, associations and partnerships").