

Judges grill both sides in DeCosters' egg sentence appeal

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Two of three judges hearing appeals of the jail sentences handed down to Austin "Jack" DeCoster and Peter DeCoster sounded uncomfortable yesterday with the concept of sending corporate officials to prison for a so-called strict liability case.

Lawyers were left arguing whether "this case is that case" or whether, as Department of Justice (DOJ) attorney Jeffrey E. Sandberg argued, the father and son were alone in their "mistaken judgement." Sandberg said the DeCosters were the only people in control of Quality Egg LLC when two of its Iowa egg farms were found responsible for a nationwide Salmonella outbreak that sickened thousands. Each DeCoster received a three-month prison sentence.

Judges Raymond W. Gruender and C. Arlen Beam peppered Sandberg and the DeCosters' attorney Peter D. Keisler with interruptions, turning much of the 30-minute oral arguments into sharp question-and-answer sessions. Much of it was over "strict liability" where there is not a finding of fault.

Kaiser, a former U.S. acting Attorney General, said the Due Process protections under both the Fifth and Eighth Amendments to the U.S. Constitution prohibit the imprisonment of someone without mens rea. Mens rea is a legal concept used to describe the mental state a person must be in while committing a crime for it to be considered intentional.

The DeCosters' attorney said most of the federal and state appeals courts that have taken up the issue have ruled mens rea must exist before someone can be imprisoned. Kaiser said the DeCosters knew of the increased risk their egg farms had for Salmonella and that they took actions that proved ineffective against that risk.

He did point out that the U.S. District Court found that even if all the actions suggested by the U.S. Food and Drug Administration (FDA) had been taken by the DeCosters, it's likely the outbreak would still have occurred.

Judge Diana E. Murphy presided over the 8th Circuit Court of Appeals session in St. Paul, MN, but she did not engage in the questioning. The three-judge panel is considering the DeCosters'

appeal of the three-month prison sentences imposed by U.S. District Court Judge Mark W. Bennett.

Judge Bennett sentenced the 81-year-old “Jack” DeCoster and his 51-year-old son, Peter, for the roles they played in allowing contaminated eggs to reach consumers in 2010.

Two Iowa egg production facilities they owned, Wright County and Hallandale egg farms, were responsible for a Salmonella Enteritidis outbreak that led to the largest shell egg recall in U.S. history — more than a half billion eggs.

In pleading guilty, the DeCosters and Quality Egg LLC accepted fines totaling \$7 million and another \$83,008 in restitution, but they would not accept jail sentences for their admission of holding corporate offices when their company allowed the contaminated eggs to enter the marketplace.

The corporate entity Quality Egg LLC pleaded guilty to two felony charges, including one for giving a cash bribe to a USDA egg inspector and another for having the intent to commit fraud by introducing misbranded eggs into interstate commerce. The company also pleaded guilty to the same misdemeanor as the DeCosters.

The National Association of Manufacturers, The Cato Institute, The Washington Legal Foundation, Chamber of Commerce of the United States, and the Pharmaceutical Research and Manufacturers of America are among the outside groups that have filed amicus or “friend of the court” briefs in the DeCoster case.

In addition, the sentencing reform movement in Congress might end up requiring proof of mens rea before a jail sentence could be imposed.