

CORPORATE COUNSEL

Two Executives, Charged After Salmonella Outbreak, Lose Liability Challenge

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Two senior executives at an egg company in Iowa that was central to a nationwide salmonella outbreak in 2010 can be held criminally liable as "responsible corporate officers," a federal appeals court ruled Wednesday in a closely watched prosecution. The court upheld misdemeanor charges that included jail time.

Over opposition from business groups, a divided three-judge panel of the U.S. Court of Appeals for the Eighth Circuit ruled against Quality Egg owner Austin "Jack" DeCoster and his son, Peter DeCoster, the company's chief executive officer. The DeCosters, fighting the charges on due process and Eighth Amendment grounds, argued they didn't know they were releasing contaminated food into interstate commerce.

Federal food safety inspectors found that shoddy sanitation practices by the Iowa-based Quality Egg were the source of a salmonella outbreak that sickened tens of thousands of U.S. residents.

The U.S. Department of Justice also found that Quality Egg had bribed a safety inspector, falsified food safety records and misbranded its eggs. Prosecutors charged the company with several felonies, and they brought misdemeanor charges against the DeCosters individually under the U.S. Federal Food, Drug and Cosmetic Act's "responsible corporate officer" doctrine. The DeCosters pleaded guilty to one count of introducing adulterated food into interstate commerce.

Executives under that law's corporate officer doctrine can, and increasingly, do, face individual criminal liability for their company's violations, regardless of whether the government can prove they had actual knowledge of the wrongdoing.

The DeCosters appealed their sentence—three months each in prison—to the Eighth Circuit. Their attorneys at Sidley Austin argued that since the executives didn't knowingly sell contaminated food, their sentences were disproportionate and violated due process. Sidley partner Peter Keisler in Washington, D.C., who argued the appeal, did not return a request for comment.

Circuit Judge Diana Murphy, writing for the majority, cited the DeCosters' apparent negligence and Congress's intent to use the responsible corporate officer doctrine to protect "consumers 'who are wholly helpless' from purchasing adulterated food products which could make them ill."

"On this record, the DeCosters' three month prison sentences are not grossly disproportionate to the gravity of their misdemeanor offenses," Murphy wrote. Murphy called the three-month sentences "relatively short" and said the jail time would not "gravely damage" the executives' reputations.

Writing in dissent, Judge Clarence Beam said there's no precedent "that supports imprisonment without establishing some measure of a guilty mind on the part of these two individuals, and none is established in this case."

The Justice Department said it was pleased with the ruling.

"American consumers deserve to feel secure that the eggs that they eat are safe and produced in sanitary conditions," a DOJ spokesperson said in a statement. "The Department of Justice will continue to pursue and prosecute those whose criminal conduct compromises the safety of our food supply."

The ruling was sure to disappoint business groups that supported the DeCosters, including the U.S. Chamber of Commerce, which filed an amicus brief with the Pharmaceutical Research and Manufacturers of America.

"Prosecutions of corporate officers who lack any culpable state of mind with respect to a corporation's wrongdoing represent a sharp departure from fundamental principles in criminal law," the Chamber's lawyers at Wilmer Cutler Pickering Hale and Dorr wrote in the brief.

The National Association of Manufacturers and the Cato Institute expressed similar concern in a separate joint amicus brief.

"Executives would have to hope that one of their employees does not unwittingly commit a regulatory violation—or else they could face prison time," the organizations' lawyers at KaiserDillon wrote. "Such a regime would be contrary to basic notions of fairness and justice, contrary to law, and would put at risk the liberty of every executive."