

Increased Enforcement Action in the Food and Beverage Industry: Are You at Risk of Criminal Prosecution?

Several recent food litigation cases demonstrate that the government is escalating charges against food processors under the Federal Food, Drug and Cosmetic Act (FDCA). The good news is that processors can avoid litigation by following some simple steps.

On September 19, 2014, after a seven-week trial in Albany's U.S. District Court for the Middle District of Georgia, a jury convicted Stewart and Michael Parnell, two former executives of Peanut Corporation of America (PCA), of multiple felony counts stemming from a massive salmonella outbreak in 2009 that killed nine people, sickened 714 others and resulted in one of the largest food recalls in U.S. history.

The trial involved allegations that PCA officials were so eager to ship peanut butter and peanut paste to customers that food safety concerns took a backseat to profits. In fact, an FDA inspection of PCA's Blakely, Ga., processing plant revealed poor sanitation and conditions that allowed salmonella to spread, including gaps in the roof, roaches and rodents.

The jury found 60-year old Stewart Parnell, the former chief executive of PCA, guilty of 67 felony counts, including conspiracy, wire fraud, obstruction of justice, and knowingly introducing both adulterated and misbranded food into interstate commerce in violation of the FDCA. Fifty-five-year-old Michael Parnell, a food broker who worked on behalf of PCA, was convicted of 30 counts relating to the falsification of test results that revealed the presence of food-borne contaminants, such as salmonella, in PCA products. However, the jury acquitted Michael Parnell of shipping salmonella-tainted food. Lastly, the jury convicted a third defendant, Mary Wilkerson, the receptionist and former quality control manager, of one count of obstruction of justice.

The Parnells are expected to spend the rest of their lives in federal prison, as their sentences are estimated to be between 27 and 33 years each. Wilkerson faces a maximum of 10 years in prison and a \$250,000 fine.

What are the implications for food processors? The PCA case was one of the first

POSTED:

Nov 10, 2014

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times that a food processor was criminally tried under the FDCA, and there are no signs that the government is slowing down. In fact, over the past few years, the government has had an increased focus on the prosecution of food safety cases.

For example, last year, prosecutors charged the owners of Jensen Farms, a cantaloupe farm in Colorado, with federal misdemeanors related to a 2011 listeria outbreak. The owners pled guilty to the charges and were sentenced to six months home detention and \$150,000 restitution. Importantly, unlike the PCA case, the government had no evidence that the owners of Jensen Farms knew about the contamination of the cantaloupes prior to shipment and sale to customers.

A few months ago, two executives of Quality Egg LLC were charged with selling the eggs responsible for a 2010 salmonella outbreak that sickened as many as 62,000 people and led to a recall of over 550 million eggs. The government charged the executives with introducing adulterated food into interstate commerce, a misdemeanor with a maximum sentence of one year in jail, and charged the company, Quality Egg LLC, with felonies for introducing misbranded food into interstate commerce and bribing a USDA inspector to approve shell eggs that should have been held back for failing to meet federal standards. The executives pled guilty and are awaiting sentencing. In a plea agreement, Quality Egg LLC agreed to pay a fine of \$6.8 million.

This type of trouble can be avoided by following a few simple steps. First, implement a compliance program at all levels of your organization. Second, ensure food safety standards are up to date and followed by your employees. Third, keep good records should regulators come knocking on your door. Lastly, and most importantly, train your employees so they understand the role they play in protecting public health.

If you would like to know more about the information in this alert, Reinhart's attorneys specializing in food and beverage law would be glad to help you.

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