

Jonathan Marks Offers Tips to Food Company Executives in Light of FDA Crackdown

August 26, 2016

Food Outbreak and Product Recall partner Jonathan Marks was quoted in the *Cook County Record* regarding what food company executives need to consider following the recent Eighth Circuit Court of Appeals ruling in the *DeCoster* case. The court found that the owner and CEO of Quality Egg LLC were in violation of the federal Food, Drug and Cosmetic Act (FDCA) relating to a widespread salmonella outbreak. Jonathan stated, "The Eighth Circuit decision . . . reinforces that under the responsible corporate officer doctrine, food and restaurant company executives face the possibility of jail time for their company's food safety violations, even if they did not know contaminated food is being introduced or delivered into the marketplace and even if no one at the company is aware that contaminated food is being introduced or delivered into the marketplace. All that is required for criminal liability are food safety violations and evidence that the executive had authority to take steps to prevent the violations and failed to do so. With the US Department of Justice's recent announcement that it would partner with the FDA to aggressively enforce food safety laws through criminal investigations of companies and employees, the risks are real and significant."

He stressed that increased quality control measures are key to preventing infractions, stating, "Having a compliance program and hiring safety and quality managers are of course important, but given the current risks, they are not enough. Taking no additional steps is not an option. Executives must set the right tone, making it clear that safety and quality is a priority. They must ensure that they have the right people in positions of responsibility and those people have authority to stop production if an issue is discovered and authority to take necessary steps to protect the public. They should have mechanisms in place to allow full and frank reporting of issues, and a culture that encourages transparency concerning food safety issues. In connection with these efforts, the company should seek the advice of good legal counsel, including attorneys with white-collar criminal experience, not only in enhancing compliance systems but in establishing a crisis management plan to address a food outbreak before it happens. Such steps are increasingly important not only to protect the company but to minimize the heightened risks to senior executives." ("Jail Time for Maine Egg

Distributors Should Prompt Caution, Diligence From Other Food Execs, Attorney Says," August 26, 2016)

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