

Cantaloupe Farmers in Listeria Case Seek Probation

STEVEN K. PAULSON, Associated Press

DENVER (AP) — Two Colorado cantaloupe farmers who pleaded guilty to charges related to a deadly listeria outbreak in 2011 are asking a federal judge for probation, saying jail time for them is excessive because justice has been served with the federal government's imposition of new food guidelines.

Attorney William Marler, who represents 24 people who died from the outbreak, said Thursday he believes probation is adequate. He said farmers, retailers and the federal government learned valuable lessons and there are now new regulations in place that will reduce the likelihood of a repeat tragedy.

Attorneys for Eric and Ryan Jensen, the two brothers who owned and operated Jensen Farms in Holly, Colo., said in federal court filings on Tuesday that jail time would be excessive.

The 2011 listeria outbreak traced to tainted fruit from the Jensens' farm caused 33 deaths and sent scores of people to hospitals. Officials have said people in 28 states ate the contaminated fruit and 147 were hospitalized.

Prosecutors are expected to make their recommendations before a sentencing hearing on Jan. 28. The U.S. Food and Drug Administration has said the rare move to charge the Jensens was intended to send a message to food producers in the wake of the deadliest case of foodborne illness in the nation in a quarter century.

The Jensens pleaded guilty last year to misdemeanor counts of introducing adulterated food into interstate commerce, which carry penalties of up to six years in prison and \$1.5 million in fines.

"This case has already prompted a new awareness of food safety law and the strict liability imposed on producers and food processors. Any desired respect for the law has been accomplished," attorneys for the Jensens argued in their federal court filings.

"There are many voices in the national dialogue which question the reasonableness of a law which would punish well-meaning small farmers for an event which was truly an accident. Many of those voices see this incident, if handled punitively, as a harbinger of the end of small American family farmers. This irretrievable piece of Americana has already been damaged; it need not be destroyed," their attorneys told the court.

The Jensens said probation would allow them to try to raise more money for restitution. Attorneys say the two men have already filed bankruptcy that provided

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nearly \$4 million to victims and their families. Marler and other attorneys are suing retailers and auditors involved in the case after a bankruptcy judge estimated damages at \$50 million.

Federal investigators said the melons likely were contaminated in the farm's packing house because of dirty water on the floor and old, hard-to-clean equipment. The Jensens said they were given a clean bill of health before the outbreak by their independent auditors.

The two men apologized to their victims. A statement from the Jensens' attorneys after the guilty pleas said the brothers were shocked and saddened by the deaths, but the guilty pleas do not imply any intentional wrongdoing or knowledge that the cantaloupes were contaminated.

The phone number for the Jensens has been disconnected, and the wife of a man who died from eating the tainted cantaloupe did not return a call seeking comment.

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