

June 15, 2007

Part Owners of Curlin Charged With Defrauding Clients

By **JOE DRAPE**

Two of the owners of the Preakness champion Curlin were indicted yesterday by a federal grand jury on a charge that they conspired to defraud their clients in a \$200 million lawsuit settlement with the maker of the diet drug fen-phen.

The grand jury in Covington, Ky., indicted the lawyers Shirley A. Cunningham Jr., 52, and William J. Gallion, 56, on one count each of conspiracy to commit wire fraud.

If convicted, each could receive a maximum of 20 years in prison and a \$250,000 fine. The federal sentencing guidelines are no longer mandatory, so it is unlikely they will receive the maximum penalty if they are found guilty.

The grand jury also handed up one forfeiture count each, which would require the defendants, if found guilty, to pay the federal government about \$65 million from the 2001 settlement.

Gallion and Cunningham together own a fifth of Curlin and were in the Pimlico winners' circle last month. They originally were the sole owners of Curlin, who was the runner-up in the Belmont and finished third in the Derby. But they sold 80 percent of the colt in February to Jess Jackson, the founder of Kendall-Jackson wines; Satish Sanan, a computer magnate; and George Bolton, an investment banker.

According to the indictment, a series of wire transfers of money were made to and from the lawyers' accounts into an escrow account. About \$20 million of the settlement money was put into a nonprofit entity that was created by the lawyers. They later became paid board members earning about \$60,000 a year, according to the indictment. The judge who presided over the original case also became a paid board member.

Cunningham and Gallion have denied wrongdoing and have said they were depending on a judge to set their fees.

A judge in Kentucky found in a civil suit that Cunningham and Gallion defrauded more than

400 clients out of \$64.4 million — money intended to pay for injuries caused by the diet drug, which was found to cause heart-valve damage.

When the plaintiffs sued a drug maker, they agreed to pay their lawyers 30 percent to 33 percent of any money that was recovered, plus expenses. In this case, that would have left the 440 clients to divide perhaps \$135 million. The clients, however, received only \$74 million and, on average, received less than 40 percent of what the settlement agreement specified, instead of the roughly 70 percent to which they were entitled.

Angela M. Ford represents the plaintiffs and argues that they own Curlin. She said that Gallion and Cunningham bought the colt with ill-gotten gains — they paid \$57,000 at the September yearling sale at Keeneland in 2005 — and had no legal right to sell the horse.