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Fen-phen lawyers are jailed

Judge says trio charged with fraud are flight risks

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COVINGTON - Lawyers Shirley Cunningham Jr. and William Gallion went from the winner's circle of the Preakness three months ago to a Boone County jail cell Friday.

A federal judge threw the co-owners of the horse that captured the second leg of the Triple Crown in jail after they asked for a delay in their trial on charges that they defrauded their clients out of \$65 million.

A co-defendant in the case, fellow lawyer Melbourne Mills Jr., was also jailed.

"The court finds that there is a serious risk that the funds will be moved offshore and that with these funds at their disposal, the defendants will flee to a country with which the United States has no extradition treaty or otherwise disappear," U.S. District Judge William Bertelsman wrote in an order issued later in the day.

If the lawyers are found guilty of conspiracy to commit wire fraud, they each face 20 years in prison.

"Therefore, they have a tremendous motive to stonewall," Bertelsman wrote in the order. "As stated in this proceeding, the court believes that there is a tremendous public interest in concluding this case in an expeditious manner."

Bertelsman reluctantly agreed to move the trial from Oct. 15 to Jan. 7, but said the defendants would have to remain in jail on no bond. They had been free on their own recognizance since their indictment in June.

The judge's order seemed to surprise lawyers involved in the case. Mills' defense attorney had asked Bertelsman two months ago if his client could take a previously scheduled cruise to Japan and Korea in September.

The lawyers were placed in separate cells away from the general population. Deputies said they were served tomato soup, a ham and cheese sandwich, macaroni salad and yellow cake for dinner.

The federal indictment alleges that the three defendants stole from about 400 Kentuckians who had won a \$200 million settlement from the makers of the diet drug combination of fenfluramine and phentermine, known as fen-phen.

U.S. Food and Drug Administration pulled the popular diet drug off the market in 1997 after it was linked to heart damage.

The fen-phen victims should have gotten \$133 million, with the lawyers entitled to the remainder. Instead, the victims got \$45.5 million, according to court documents.

The lawyers' former clients have sued in Boone Circuit Court to get the money back. In the civil case, Senior Judge William Wehr has ruled that the three must repay \$42 million, in addition to \$20 million controlled by an Edgewood-based trust.

Wehr also has ruled that Cincinnati lawyer Stan Chesley, a fourth defendant in the civil suit, wasn't entitled to the entire \$20 million in legal fees he received for helping broker the fen-phen settlement. A decision on how much

Chesley, who has not been criminally charged, must return has not been made.

The judge who presided over the case, Joseph "Jay" Bamberger, was forced to retire from the bench in 2006, in part for his handling of the settlement.