

## Jurors: Parties in Ky. fraud case eavesdropping

A federal judge threatened to charge lawyers and witnesses in a high-profile fraud trial with contempt of court on Tuesday after jurors said they thought parties in the case were following them and eavesdropping.

The case has been closely followed in Kentucky and the horse racing industry because two of the defendants' part-ownership of 2007's Horse of the Year, Curlin.

U.S. District Judge William Bertelsman told attorneys they should stay away from jurors during recesses from the trial of three lawyers accused of defrauding clients out of \$60 million of a diet-drug settlement.

"If someone is doing this, they will find themselves in real trouble," Bertelsman said.

Defense attorneys, federal prosecutors and an attorney for plaintiffs in a related civil case told the judge that any contact with jurors outside the courtroom on lunch breaks was inadvertent.

The defendants, William Gallion, Shirley Cunningham Jr. and Melbourne Mills, remain in custody and have not been allowed to leave the courthouse, so they would not have had any contact with jurors, a lawyer said.

"We know where the defendants were," Mills' attorney Jim Shuffett said.

Angela Ford, an attorney representing more than 400 former clients of the three men, said jurors may see her during lunch breaks, but any contact is accidental. The judge told all the parties to "go somewhere far away" for lunch.

The trio is accused of keeping millions of dollars that should have gone to plaintiffs in a \$200 million settlement of a class-action lawsuit over the diet drug fen-phen, which was recalled after some studies indicated it could cause heart damage.

The defendants have argued their payment from the settlement was typical for class-action suits.

An expert on class actions, Atlanta attorney **Richard Robbins**, testified for the defense that he would not have dispersed payments himself, as the three attorneys did, but it was not illegal or unethical.

"I would not have done this particular procedure," he said.

The trial is in its fifth week and the judge expects it to last one more week.

Along with the criminal charges, Gallion, Cunningham and Mills were also sued by their former clients. A state judge awarded the plaintiffs \$42 million and has indicated he will force the sale of Curlin and other assets to settle the debt. Gallion and Cunningham bought Curlin for \$57,000 in 2005, but later sold an 80 percent interest.

Curlin won last year's Preakness, the \$6 million Dubai World Cup in March and is scheduled to race in Saturday's Stephen Foster Handicap at Churchill Downs.