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RESPONSIBILITY?**

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# **SOME RELIEF FROM TRAINER RESPONSIBILITY?**

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## Some Relief from Trainer Responsibility?

A recent jury verdict in Orange County, California has the potential for bringing some measure of relief to horse trainers whose horses have tested positive in racing for drugs. Traditionally, under racing rules, these trainers have been found guilty under racing's trainer responsibility rules, even where the trainers had no intent to violate racing's drug rules. In some states, the trainer is responsible for a drug positive regardless of any fault. In others, the trainers are presumed responsible, unless they can establish affirmatively that they were not at fault. As a practical matter, trainers are almost never successful in rebutting this trainer responsibility presumption.

The California case involved swimmer Kicker Vencill. Vencill tested positive for steroids. As a result of the positive test, Vencill was suspended from competitive swimming for two years. This caused him to miss the 2003 Pan Am Games and made him ineligible for the 2004 Olympics.

Vencill, at the time of the test, was taking a multivitamin named Super Complete manufactured by Ultimate Nutrition of Farmington, Connecticut. After the positive test for steroids, Vencill had a laboratory test the Super Complete vitamins. The laboratory test showed that the Super Complete vitamins were contaminated with steroid precursors. Vencill sued United Nutrition. A jury found that Ultimate Nutrition was responsible for the drug positive, and in May of 2005 awarded Vencill \$578,635.

This decision could have clear applicability to trainers in horse racing. We have seen in recent years ephedra positives likely caused by contaminated vitamin supplements. For example, trainer Gary Contessa had six horses test positive in New York in 2003 for ephedra which was in an herbal vitamin supplement that he fed his horses. See "Sixth Contessa Horse Positive for Ephedra," Daily Racing Form, February 12, 2003. In 1994, six California trainers had horses test positive for scopolamine, due to hay and bedding contaminated with jimson weed. While the trainers were eventually exonerated, their horses were disqualified from the purses in these races. In a series of morphine positives in California, trainers have alleged that the positives were due to contaminated feed. See Rob Fernas, "Dose of Reality," Los Angeles Times, July 4, 2001 Part 4, Pg. 1.

The Vencill case now gives the trainers a small measure of relief from the trainer responsibility rule. While they may not escape punishment from trainer responsibility, (For

example, while the scopolamine trainers escaped punishment, Contessa did receive a penalty for the ephedra positives.) they should have a right under Vencill to sue the manufacturer or distributor for damages for selling a contaminated product. There is the potential for significant damages for a trainer who might suffer a significant loss of earnings due to a loss of a purse, losses due to any suspension or fine, and losses due to damage to the trainer's reputation. Relief may also be available to the owners who lost purses due to drug positives caused by contaminated products.

The Vencill case clearly does not get rid of the trainer responsibility rule, but it should give a trainer and/or a horse owner the right to sue for damages when the drug positive was caused by a contaminated product.

Summaries of the Vencill case can be found at Almond, "Swimmer Wins Lawsuit Against Dietary-Supplement Maker," San Jose Mercury News, May 15, 2005; Fox, "Banned Swimmer Wins Case Over Supplements," Associated Press May 14, 2005; Wharton, "Verdict for Swimmer Could Be a Test Case," Los Angeles Times, May 13, 2005, Part D Pg. 1; Albano, "Vencill Wins Lawsuit Against Supplement Manufacturer," Orange County Register, May 12, 2005.