



HORSES

# Ky. appeals court rules against man who alleged vets falsified Keeneland horse X-rays

BY JEREMY CHISENHALL

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File Photo: Keeneland sales ring. DAVID COYLE KEENELAND PHOTOS



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A Kentucky appeals court has agreed with a Fayette Circuit Court judge's decision to throw out a lawsuit from a man who claimed Keeneland caused him damages by misdating X-rays for horses he purchased.

A lawsuit [filed in March 2019](#) alleged veterinarians at the Hagyard Equine Medical Institute in Lexington falsified the dates on X-ray images of horses sold at Keeneland public auctions "in order to make it appear the X-rays were taken within three weeks of the sale. In fact, those X-rays were older than that," the suit alleged.

As a result of the altered X-ray dates, any potential buyer who was "bidding on horses at the Keeneland sale was, in essence, the functional equivalent of playing Russian roulette," the class-action complaint claimed.

But a ruling made Friday by the Kentucky Court of Appeals said that the man who filed the lawsuit lied in his complaint and didn't suffer any actual damages as a result of his claimed issues. The appeals court affirmed a judge's previous decision to throw the lawsuit out.

Tom Swearingen's claims that the X-rays were misdated ultimately wound up having no effect on Swearingen or the other horse buyers, the appeals court ruled. Swearingen and his attorneys were the filers of the complaint who attempted to represent a class of others who bought horses at Keeneland auctions.

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Swearingen claimed in his lawsuit that he wouldn't have bought any of the 24 horses he purchased from January 2007 to September 2016 if he'd known the X-rays were misdated.

But Swearingen and the other buyers “did not suffer any traditionally quantifiable or calculable damages, did not purchase any injured horse in reliance upon an incorrectly dated x-ray, did not lose money on a horse purchased and, seemingly, had no regrets regarding their purchase,” the appeals court ruled.

One of the veterinarians admitted to altering X-ray dates, but said the changes weren’t significant because the X-rays accurately showed the conditions of each horse. Swearingen admitted in a deposition that the X-rays were accurate, regardless of when they were taken, according to court records.

There were concerns about the legitimacy of Swearingen’s claims from the beginning of the litigation process, the appeals court stated in its ruling.

During a deposition, Swearingen admitted that regardless of when the X-rays were taken, they accurately depicted the health and condition of the horses he bid on, according to court records.

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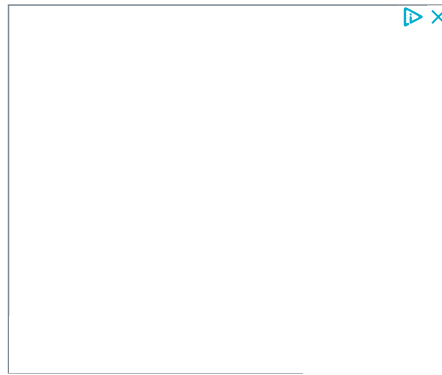
Swearingen also admitted he had never relied on a digital X-ray at the repository when buying a horse, according to court records. He also said he had not viewed an X-ray or gotten a veterinarian to review an X-ray at the Keeneland Repository during the years in question.

Swearingen also “could not articulate any damages he had suffered because of the alleged back-dating of radiographs,” the appeals court wrote in its ruling.

Only one horse bought by Swearingen had a problem, which Swearingen’s veterinarian said was caused by transport, according to court records.

Swearingen and his attorneys attempted to submit an amended lawsuit after Swearingen’s deposition, a complaint which the appeals court said changed the factual basis of Swearingen’s claims. But a trial court denied Swearingen the opportunity to change his complaint and dismissed his lawsuit.

In his appeal, Swearingen claimed the trial court should have let him file an amended complaint. He also claimed the trial court shouldn’t have dismissed his class action claims.



The suit had been filed against Hagyard and veterinarian Drs. Michael T. Hore, Robert J. Hunt, Dwayne Rodgerson and Michael Spirito, whom the suit says were partners at Hagyard. The accounting firm Dean Dorton Allen Ford, which provided computer and information technology services for Hagyard, was also named as a defendant.

In addition, “John Does 1-100” who represented unidentified sellers and consignors of horses sold at Keeneland, were listed as defendants.

Keeneland hadn’t been listed as a defendant in the lawsuit.

If Swearingen and his counsel wanted to petition for a rehearing, they’d have to do so by March 3, according to court records.

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