

COMMONWEALTH OF KENTUCKY  
FAYETTE CIRCUIT COURT  
DIVISION  
CIVIL ACTION NO. 08-CI-29

JAN 05 2009

JAN JOHNSON, ROBERT MCINTOSH,  
JAMES ARLEDGE and JOSEPH SEEKMAN

PLAINTIFFS

v.

COMPLAINT

RED MILE, INC.

DEFENDANT

Serve: 1400 LLC  
300 W. Vine Street, Suite 1100  
Lexington, Kentucky 40507

\*\*\*\*\*

Come the Plaintiffs, through counsel, for their Complaint against Red Mile, Inc. ("Red Mile"), and state as follows:

FACTS

1. Plaintiffs, Jan Johnson, Robert McIntosh, James Arledge and Joseph Seekman ("Plaintiffs"), were at all relevant times trainers of Standardbred race horses that were stabled at and/or competed at the track owned by the Defendant, the Red Mile.
2. Red Mile owns a Standardbred race track, as well as stables for horses, and runs races under the official supervision of the Kentucky Horse Racing Commission ("KHRC").
3. During the fall 2008 race meet, the Red Mile directed veterinarians ("Veterinarians") to extract blood from horses trained by the Plaintiffs in order to perform testing for the substance Erythropoietin, commonly known as "EPO."
4. Upon information and belief, the Veterinarians are employed by the KHRC, but were acting under the direction of Red Mile.

5. Upon information and belief, the Red Mile had a laboratory perform what is known as ELISA testing for EPO.
6. ELISA testing only determines whether there is a possibility a horse has EPO in its blood. There are accurate tests to determine if horses have EPO in their blood.
7. Upon information and belief, the ELISA screens for EPO resulted in at least five trainers, if not more, having horses in their care that might have EPO in their blood.
8. The Plaintiffs are four of the trainers who have horses that have tested as possible positives for EPO under the ELISA tests.
9. 811 KAR 1:090 sets forth the KHRC Testing Procedures for Standardbred horses (“KHRC Testing Procedures”).
10. Pursuant to the KHRC Testing Procedures, the Red Mile was required to extract split samples of blood so that confirmatory testing could be done in the event of an ELISA screening possible positive result.
11. Red Mile did not comply with the KHRC Testing Procedures nor was the testing done pursuant to the authority of KHRC.
12. After the screening test for EPO results were reported to the Red Mile, representatives of the Red Mile informed the Plaintiffs of these results. Although split samples of blood were allegedly drawn for the subject horses, and despite the fact that the ELISA test is nothing more than a screen and not a positive test result, representatives of the Red Mile threatened one or more of the Plaintiffs that if they actually requested true confirmatory testing of the split samples they would be punished or sanctioned, including, but not limited to, being banned for life from racing horses trained by them at the Red Mile’s facilities, having earned purses withheld, and having the ELISA screen results reported to other race tracks as positive

tests for EPO, while if they did not attempt to confirm the tests, they would not be further punished, although they would not receive the purses due for the horses with an EPO “positive”.

13. Upon information and belief, the Red Mile sent the blood plasma from the Plaintiffs’ horses to AIT Laboratories (“AIT”) for testing. Upon information and belief, AIT advised representatives of Red Mile that the ELISA test was only to screen the blood, that it did not show a “positive” for EPO and the Plaintiffs should not be adversely affected by the ELISA results.
14. In spite of knowing the ELISA screening did not equate to a positive finding for EPO, the Red Mile prohibited the Plaintiffs from racing the horses tested and withheld purses earned and payable to the Plaintiffs.
15. The Red Mile arbitrarily made the decision that the Plaintiffs’ horses who tested “positive” for EPO were not allowed to race at the Red Mile in spite of the fact that entry fees had been paid. Those entry fees had not been refunded to the Plaintiffs.
16. Upon information and belief, George Segal is one of the owners of Red Mile and he told a reporter for The Lexington Herald-Leader: “These guys [the Plaintiffs] will be punished, and the jurisdiction where they operated will be notified.” (See the articles in The Lexington Herald-Leader, October 4, 2008, attached as Exhibit 1).
17. The threats and adverse action taken by the Red Mile are inappropriate and punitive and are attempted to prevent the Plaintiffs from even attempting to exonerate themselves.
18. Upon being informed that they have had horses with possible positives under the ELISA screening tests, and despite the threats of punitive action being taken in the event of an attempt to obtain an exonerating confirmatory test, the Plaintiffs repeatedly demanded that

the Red Mile send the samples to the Commonwealth of Pennsylvania Equine Toxicology & Research Laboratories (“Laboratory”) for an accurate and true test. (See the letters from Plaintiffs’ counsel to Red Mile dated October 3, 6, 9, 14 and 21, 2008, attached as Cumulative Exhibit 2).

19. Finally, after these repeated demands, the samples were sent to the Laboratory for true and accurate confirmatory testing.
20. Representatives of the Red Mile have discussed the testing and test results with the press, and have been quoted as portraying the ELISA screening tests as “positive” tests for EPO, when, in fact, they are nothing more than screening tests.
21. Upon information and belief, representatives of the Red Mile have misrepresented that four trainers have had positive ELISA screens for EPO, when at least five trainers have had these results. Also upon information and belief, the fifth trainer who has had an ELISA screen that was positive for EPO is the trainer for one of the owners of the Red Mile, who also was one of the representatives who inaccurately portrayed the test results for the other trainers as having been “positive” for EPO, when they were nothing more than screening tests.
22. Upon information and belief, the EPO screens were undertaken by the Red Mile at the urging of the owner/representative who also owned horses that could have competed against horses trained by the Plaintiffs and who has a conflict between his interests as an owner of the Red Mile and those as an owner of horses.
23. Although the Red Mile may not have released the Plaintiffs’ names to the press as the trainers subject to the positive screening tests for EPO, their identities became well known in racing circles. Upon information and belief, representatives of the Red Mile are responsible for disclosing the Plaintiffs’ identities in racing circles and to representatives of

KHRC, and are portraying them as having “positive test results” for EPO, when this is not the case.

24. Upon information and belief, the Red Mile is not disclosing that one of its owners has a trainer who is in the same position as the named Plaintiffs with respect to the screening tests, and is inaccurately portraying the actual status with respect to the named Plaintiffs.
25. Each of the Plaintiffs remitted \$1,500 to the Laboratory, which did do an accurate test of the samples.
26. The Laboratory has now provided written test results for each of the Plaintiffs’ horses. A true copy of the letter from the Laboratory, along with the Laboratory Reports reflecting all blood tested was negative for EPO, is attached as Cumulative Exhibit 3.
27. Upon information and belief, a representative of the Red Mile stated it “was in uncharted waters” relating to its testing of horses that were not in competition and outside of KHRC regulations, and subsequently in its sanctioning of the Plaintiffs.
28. It was only after the Laboratory Reports were made available to Plaintiffs’ counsel, who subsequently forwarded them to the Red Mile, that the money earned by the horses testing “positive” for EPO was released to the Plaintiffs.
29. It was not an option for the Plaintiffs to not pay the fees required by the Laboratory since they were unable to get their purses released by the Red Mile, nor could they correct the defamatory misstatements made by the Red Mile, without getting the test results. In addition, Plaintiffs incurred considerable attorney’s fees in requiring the Red Mile to forward the blood samples to the Laboratory and to get the purse monies due them released.

**COUNT I**  
**FAILURE TO FOLLOW KHRC PROTOCOLS**

30. The Plaintiffs incorporate all prior paragraphs as if set forth fully herein.
31. The Red Mile has not followed KHRC requirements and protocols for testing the Plaintiffs' horses for EPO, including allowing for confirmatory testing.
32. As a result of the failure to follow KHRC protocols and requirements for testing for EPO, the Red Mile has damaged the Plaintiffs in amounts to be determined at trial, but amounts that exceed the jurisdictional limits of the Court.

**COUNT II**  
**DEFAMATION**

33. The Plaintiffs incorporate all prior paragraphs as if set forth fully herein.
34. The Red Mile, acting by and through its representatives, have made material, false and defamatory misrepresentations that the Plaintiffs' horses have tested positive for EPO and failed to disclose that other trainers at the Red Mile had a positive screen for EPO, have misrepresented that only four trainers have had positive screens, and have revealed their names within racing circles and to representatives of KHRC as having had positive test results for EPO.
35. While it is unknown to whom Red Mile representatives disclosed the names of Plaintiffs, the racing community has been able to identify who they are.
36. These statements are untrue and misleading and otherwise portray the Plaintiffs in a false light.
37. The Red Mile knew or should have known that their comments were untrue and misleading and otherwise portrayed the Plaintiffs in a false light, or its representatives made the representations recklessly and without regard to their truth and accuracy.

38. As a result of the defamatory statements of the Red Mile representatives, the Plaintiffs have been damaged in amounts to be determined at trial, but in amounts that exceed the jurisdictional limits of this Court.
39. Because the statements made by representatives of the Red Mile were untruthful, they defamed the business reputation of the Plaintiffs and were disseminated to others, the statements of the Red Mile representatives constitute libel per se.
40. The Red Mile's defamation was malicious, oppressive, reckless or grossly negligent as those terms are defined under Kentucky law, warranting punitive damages in an amount to be determined by the Jury.
41. Demand was made on the Red Mile to correct the misstatements made about the Plaintiffs after the Laboratory Reports were made available to them, but they refused to do so and thereby mitigate the harm to the Plaintiffs.

**COUNT III**  
**DAMAGES**

42. As a direct and proximate result of the unlawful actions of the Red Mile, and those acting on its behalf, these Plaintiffs have suffered the following specific damages:
- a. \$1,500 each for the sums paid to the Laboratory, which were in essence required by the Red Mile in order to have their earned purses released;
  - b. The attorneys' fees they incurred in forcing the Red Mile to send their horses' blood samples to the Laboratory and getting their earned purses released;
  - c. The purses their horses would have earned had they been permitted to race for the balance of the Red Mile meet;


- d. The entry fees paid to enter their horses into races which they were not permitted to participate in, without refunding the entry fees which are still wrongfully held by the Red Mile.
43. The damages incurred by each of the individual trainers exceeds the jurisdiction minimums of this Court.

WHEREFORE, the Plaintiffs respectfully request:

- A. Judgment against the Red Mile for all damages incurred, plus punitive damages, in amounts to be determined at trial;
- B. Pre- and post-Judgment interest at the highest rates allowed by law;
- C. Affirmative relief requiring the Red Mile to announce to the public the Plaintiffs' horses tested negative for EPO;
- D. Fees, costs and expenses, including reasonable attorneys' fees;
- E. Trial by jury on all counts so triable; and
- F. All other relief to which they may be entitled.

Respectfully submitted,

MILLER, GRIFFIN & MARKS, P.S.C.  
271 W. Short Street, Suite 600  
Lexington, Kentucky 40507  
Telephone: (859) 255-6676  
Facsimile: (859) 259-1562

By:   
THOMAS W. MILLER  
DAVID T. FAUGHN

ATTORNEYS FOR PLAINTIFFS

# Doping detected in four horses

## POSITIVE TESTS MIGHT BE FIRST IN KENTUCKY RACING

By Janet Patton

jpatt01@herald-leader.com

Four harness horses at The Red Mile for the Grand Circuit meeting have tested positive for illegal blood-doping agents, but their trainers are unlikely to be punished by the state.

This is thought to be the first time the dangerous drugs have been detected in racehorses in Kentucky.

The horses were among dozens tested by the Kentucky Horse Racing Commission at the request of the track, which instituted out-of-competition testing for the performance-enhancing drugs last week.

However, the names of the horses, trainers, and owners might never be made public because the testing comes under the regulatory gray area of "house rules" established by tracks to go beyond state regulations. Keeneland and Turfway have implemented such house rules to ban toe grabs on front horseshoes.

Blood-doping agents, commonly known as EPO, are illegal in racing horses but almost impossible to detect with normal post-race blood sampling. Kentucky has never detected EPO in regular testing or in surprise pre-race testing such as that done for the Kentucky Derby.

See DOPING, A5

Lex Herald 10/14/08

# DOPING | If confirmed, results to be made public

From Page A1

Jim Carroll, spokesman for the Public Protection Cabinet that houses the racing commission, said the state has no authority for out-of-competition testing and so cannot use the test results to charge anyone under the state's drug rules.

If the positive test results had come under the state's authority, the trainers could have faced multi-year suspensions even for a first offense and the horses could have been suspended from competition for up to 60 days.

Instead, they will probably go to tracks in other jurisdictions next week and continue racing.

The trainers could face challenges getting relicensed in Kentucky next year. Carroll said a record of the positive would be placed in each trainer's file.

Joe Costa, Red Mile president, said the four horses were from four different trainers. None of the trainers has yet requested that the other half of the split sample be sent for re-testing, so he declined to name them without confirmation.

The trainers, horses and owners racing at The Red Mile during the Grand Circuit are among the top competitors in harness racing. The horses that tested positive were scratched; one of the four will forfeit purse money.

Costa said the owners of the horses that tested positive were "shocked."

He said the owners were known in the industry for

their integrity. "They would rather not be in the horse business than have horses like that," Costa said.

Costa said that perhaps 100 horses have been tested by racing commission vets, who will continue sampling through the end of the meet Saturday. In some cases, the horses were tested days after they raced.

EPO augments red blood cell production, which enhances a horse's stamina. The drug's effects last for weeks but it generally can only be successfully detected a few days after being administered.

But, he said, the track's hands are tied after the horses and trainers leave Kentucky because The Red Mile has no jurisdiction to inform other tracks of its findings.

"I'm not sure exactly what we can do," Costa said. "The Red Mile has chosen to put itself in uncharted water."

He said the track asked for the out-of-competition testing to ensure the integrity of The Red Mile's racing, with some of the top trotters and pacers in the world competing there during the two-week Grand Circuit.

Costa said owners, who were required to sign a consent and waiver for testing to enter their horses, had been supportive.

George Segal, one of the racetrack's owners, said if the EPO positives are confirmed, the results will be made public. "These guys will be punished, and the jurisdiction where they operated will be

notified," Segal said. "We are serious about this."

It's unclear whether the Horse Racing Commission's indefinite suspension of two Ohio vets on Thursday was related to the positives. Commission investigators seized unknown substances and records from the vets' vehicle at The Red Mile.

"I did not ask the state to investigate any vet," Segal said. "It could have something to do with the testing for EPO. I can't tell you why they suspended them or why they searched any vet."

Reach Janet Patton at 1-800-950-6397, Ext. 3264, or (859) 231-3264.

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October 3, 2008

**FAXED & MAILED** (231-0217)

The Red Mile  
1200 Red Mile Road  
Lexington, Kentucky 40504

Dear Sirs:

David Faughn and I are representing Jan Johnson. On his behalf, we are asking that you provide to us as promptly as possible the following related to the testing of the 2-year old filly he trains, TRESBIEN VOLO:

1. All documentation in any way related to what we believe to be two tests of the blood of the filly, one of which purportedly is positive for EPO;
2. The split sample for any of the blood tests. Mr. Johnson is having his own tests performed by a highly proficient laboratory;
3. An identification of the laboratory who has done the testing and as much information as is available regarding that laboratory and its qualifications;
4. An identification of the person(s) who extracted the blood from the filly and any witnesses to that extraction;
5. Information and documentation regarding the chain of custody for all blood taken from the filly and all security measures that were taken to assure that the samples were not mixed up and no one had an ability to tamper with them;
6. Any documents executed by Mr. Johnson that are believed by you to represent a consent to extract blood from the filly;
7. Race results for the filly while at The Red Mile this meet; and
8. Any documents exchanged between The Red Mile and KHRA in any way related to the tests being done of the filly.

CUMULATIVE  
EXHIBIT 2

The Red Mile  
October 3, 2008  
Page 2

Mr. Johnson has described to me a conversation he has had with the judges who worked at The Red Mile this meet. It is his understanding that if he does not challenge the test results, there will be no consequence to him from either The Red Mile or KHRA. However, if he challenges the test results, there will be Draconian consequences. So that we fully understand the options that have been presented to Mr. Johnson, I would appreciate your explanation as to the alternatives available to him.

Sincerely,

A handwritten signature in cursive script that reads "Tom".

THOMAS W. MILLER

TWM/bs/red mile-100308

cc: Jan Johnson  
David T. Faughn, Esq.

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October 6, 2008

## FAXED & MAILED (231-0217)

The Red Mile  
1200 Red Mile Road  
Lexington, Kentucky 40504

Dear Sirs:

You have received letters from me regarding four trainers who I represent, Jan Johnson, Bob McIntosh, Jim Arledge and Joe Seekman. We have now arranged for the University of Pennsylvania School of Veterinary Medicine to test split samples, which you are required to have available. This is to request that for each of those trainers whose horses tested positive (identified in my previous letters and set forth below), that you send a split sample of blood for the tests that allegedly showed a positive for EPO, to:

University of Pennsylvania School of Veterinary Medicine  
The New Bolton Center Campus  
Department of Clinical Studies  
382 West Street Road  
Kennett Square, Pennsylvania 19348  
Attention: Professor Lawrence Soma  
(610-925-6265)

Sincerely,

  
THOMAS W. MILLER

TWM/bs/red mile-100608

cc: Cornelius Uboh, Ph.D.  
Jan Johnson  
Bob McIntosh  
Jim Arledge  
Joe Seekman

# MILLER, GRIFFIN & MARKS, P.S.C.

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October 9, 2008

## FAXED & MAILED (231-0217)

The Red Mile  
1200 Red Mile Road  
Lexington, Kentucky 40504

Re: *Jan Johnson*  
*Bob McIntosh*  
*Jim Arledge*  
*Joe Seekman*

Dear Sirs:

We have not received a response to my previous letters for the four trainers I represent, but I anticipate that the four split samples about which I have previously written you have been sent to the laboratory at the University of Pennsylvania. We will be calling today to confirm the samples have been sent.

It appears that there are now additional split samples in your possession based on calls that were received by several of my clients from Judge Williams. Specifically:

1. Jim Arledge had a 2-year old filly, FIRST TO KNOW, tested on the second Wednesday of the meet. She had finished last in her first race, so the decision was made to not race her again. At the time she was tested, the filly had not been out of her stall for 4 to 5 days waiting for her owner to pick her up. Jim has been told that she tested positive for EPO. There would be absolutely no reason to give a horse a drug that purportedly enhances its performance when not scheduled to race and out of training;
2. Joe Seekman was told by Judge Williams that the second test, from blood extracted a week after the first, on his same horse, ANNIE'S WESTERN CARD, was positive for EPO. This another case where it would be non-sensical for him to give EPO to a horse already in the cross hairs of the Red Mile and one that I understand he was told would not be permitted to race again at the track;

3. Bob McIntosh has also been told he had another horse with a positive EPO test. As I understand it, this horse was scheduled to run in a \$12,000 race. As with the other situations, the blood was withdrawn one week after the first series of blood tests where there was purportedly an EPO positive in his barn, so he would certainly not be doing anything improper knowing further tests were assured.
4. Jan Johnson received a call from Judge Williams, who said that the second test on his filly, TRESBIEN VOLO, showed a "hit" for EPO. Neither of us understand what that means and would like a further explanation. Like the other three, Jan absolutely denies ever giving the filly EPO and certainly would not be foolish enough to give her a second dose knowing The Red Mile was surely going to be testing her a second time, particularly when he had been told she would not be permitted to race again.

As with the other purported EPO positive tests, we need to know all of the circumstances relating to the withdrawal of the blood, how the samples were managed to guarantee their integrity and chain of custody and how the blood was being preserved. This is to request that you preserve the split samples for the last four tests, set forth above, and we will provide further direction on its disposition.

Although I have sent you numerous letters on behalf of these trainers, I have had no response. We do not know whether the split samples previously requested to be sent to the University of Pennsylvania have been shipped. We have no information about the withdrawal of the blood, who did it, under what circumstances and how it has been controlled. What we do know is that the allegations against my clients have been widely disseminated to other horsemen and race tracks in the United States and overseas. We also know that there was a representation that there would be cooperation in getting blood from several of these horses for the purpose of doing DNA testing, but the veterinarian who The Red Mile represented would be present to withdraw the blood was not at the track when the horses were made available.

Please let us know what is going on and address the numerous questions that I have raised.

Sincerely,



THOMAS W. MILLER

TWM/bs/red mile-100808

cc: Jan Johnson  
Bob McIntosh  
Jim Arledge  
Joe Seekman

# MILLER, GRIFFIN & MARKS, P.S.C.

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October 14, 2008

**FAXED & MAILED** (231-0217)

Mr. Joe Costa  
The Red Mile  
1200 Red Mile Road  
Lexington, Kentucky 40504

Re: *Jan Johnson/Bob McIntosh/Jim Arledge/Joe Seekman*

Dear Mr. Costa:

We appreciate your speaking with David Faughn earlier today. You have explained that all of the blood taken from my clients' horses has been sent to AIT Labs. You explained to David that you have contacted New Bolton to arrange for the shipment of these samples, but were told that Dr. Uboh and Dr. Soto are in Turkey and will not be returning until next week (I was aware they were leaving the country, but that does not affect the lab's ability to receive the samples). You have asked AIT Labs to coordinate with New Bolton to ship the samples once New Bolton is ready to receive them.

As set forth in my previous letters, I previously spoke directly to Dr. Uboh and he is expecting to receive the horses' blood. He knows the names of the horses and of the trainers involved. Therefore, AIT Labs should not delay in sending the samples. Attached is a copy of the letter previously sent to you that sets forth the exact address of New Bolton and the name to put on the shipping slip.

I understand that you have not specifically released the names of my clients to the press and thank you for that. However, someone has released their names as they are getting questions about it wherever they go.

We have not yet received responses to my other questions. Specifically, do you intend to withhold the purses earned by any of the horses at issue? We have also asked very specific questions about the process for removing the blood, who did it, how it was preserved and the chain of custody questions. We also request an identification of all other trainers whose horses tested positive for EPO. Please call either David Faughn or me to let us know the answers.

Mr. Joe Costa  
October 14, 2008  
Page 2

To reaffirm, my clients want the blood taken from their horses sent to New Bolton immediately.

Sincerely,

A handwritten signature in cursive script that reads "Tom Miller".

THOMAS W. MILLER

TWM/bs/costa-101408

Enclosure

cc: Jan Johnson  
Bob McIntosh  
Jim Arledge  
Joe Seekman  
David T. Faughn, Esq.

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October 21, 2008

**FAXED & MAILED** (231-0217)

Mr. Joe Costa  
The Red Mile  
1200 Red Mile Road  
Lexington, Kentucky 40504

Re: *Jan Johnson/Bob McIntosh/Jim Arledge/Joe Seekman*

Dear Mr. Costa:

We have again checked with the University of Pennsylvania, and the samples from my four clients' horses have never arrived. We reconfirmed the laboratory is expecting the samples, and Dr. Soma has given specific direction as to what is to be done with them pending his return (and that the samples "are important") so that they can be tested. There is absolutely no reason to delay forwarding the samples as we have requested on numerous occasions.

We have tried to reach you by phone and have called the AIT Lab where the blood purportedly is located on several occasions, but no one returns our call.

This is a grossly unfair situation to my clients who have been put out on a limb by the Red Mile and whose reputations are continuing to be tarnished for no good reason. I have been given specific direction by my clients to initiate a civil proceeding to require the blood work to be submitted for testing at the University of Pennsylvania. Unfortunately, we can only assume that the failure to forward the blood work, accompanied by the statements to the news media and others, means that there is bad faith being shown toward my clients. Therefore, that will be one of the claims made in the action.

Sincerely,

THOMAS W. MILLER

TWM: jmh

Mr. Joe Costa  
October 21, 2008  
Page 2

cc: Jan Johnson  
Bob McIntosh  
Jim Arledge  
Joe Seekman  
David T. Faughn, Esq.

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# Commonwealth of Pennsylvania



CORNELIUS E. UBOH, Ph.D.  
Director

## DEPARTMENT OF AGRICULTURE

EQUINE TOXICOLOGY & RESEARCH  
LABORATORIES

Attorney Thomas W. Miller,  
Miller, Griffin & Marks, P.S.C.  
271 West Short Street  
Security Trust Building, Suite 600  
Lexington, Kentucky 40507-1292

December 10, 2008

Dear Attorney Miller,

**RE: SPLIT SAMPLES #30012294; 30012281; 30012296 AND  
30012318 FROM AIT LABORATORIES**

We received the above samples from AIT Laboratories via Dr. Lawrence Soma as per your instructions for analysis to confirm the presence or absence of recombinant human erythropoietin (rhEPO) and/or Darbepoetin-alfa (DPO) by LC-MS/MS.

We have completed analyses on all four samples listed above. The results of the analyses are being forwarded to you under a separate cover via UPS for Next Day Delivery.

It is important to emphasize that our LC-MS/MS method for confirmation (the first in the world!) is limited to EPO and DPO and thus, does not cover all other possible third and fourth generation EPOs that may already be in the market for therapeutic use but are equally known to be abused by athletes. The EPO/DPO methods for confirmation and differentiation by LC-MS/MS were developed by our laboratory and have been published in peer reviewed scientific journals. It is our understanding that these samples were sent to us for confirmatory analyses of the initial screening test results by ELISA test kit for EPO and/or DPO. Thus, our analyses targeted EPO and DPO only.

If you have any questions, please feel free to contact me at 610-436-3501 or 610-436-3504 (fax). My e-mail address is [ubohcorn@vet.upenn.edu](mailto:ubohcorn@vet.upenn.edu). Thank you very much for giving us the opportunity to serve you and your Company.

Yours very sincerely,

Cornelius E. Uboh, Ph.D.  
Program Director

*Copy: Dr. Terrell  
AIT Labs*

CUMULATIVE  
EXHIBIT 3

# Commonwealth of Pennsylvania



CORNELIUS E. UBOH, Ph.D.  
Director

## DEPARTMENT OF AGRICULTURE

EQUINE TOXICOLOGY & RESEARCH  
LABORATORIES

December 3, 2008  
Thomas W. Miller, Esq  
Miller, Griffin & Marks, P.S.C.  
27 West Short Street  
Security Trust Building, Suite 600  
Lexington, Kentucky 40507-1292

Dear Attorney Miller:

**LAB REPORT # 1342-08**  
**SPLIT SAMPLE # 30012318 FROM AIT Laboratories**

The above plasma sample # 30012281 was received from AIT Laboratories on 10/29/2008 via Dr. Lawrence Soma of the University of Pennsylvania School of Veterinary Medicine at New Bolton Center Campus. The sample arrived in good condition. There were no visible signs of tampering with the sample and/or container.

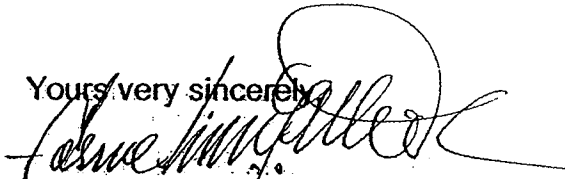
Sample # 30012281 for the horse named **Find A Happy Place** was analyzed by Liquid Chromatography/Mass Spectrometry (LC-MS/MS) for the presence or absence of recombinant human erythropoietin (rHEPO) and/or Darbepoetin-alfa (DPO).

The sample contained what appeared to be the chromatogram of the T9 peptide of darbepoetin with a retention time of 20.94/20.99 vs 21.48 min and the chromatogram of the T5 peptide of rhEPO with a retention time of 17.85 min vs 17.48. However, the spectrum of T9 (retention time of 220.94 min) and that of T5 (retention time of 17.85 min) from the sample #30012318 was not consistent with those of the authentic drug standard of darbepoetin alfa and rhEPO. Thus, the sample was declared **NEGATIVE** for the presence of rhEPO and/or Darbepoetin-alfa.

Please note that the remaining plasma in sample #30012318 will remain frozen under our custody but will be discarded after 30 days from the date of this report unless we are instructed otherwise by your office or Commission/Racetrack.

Thank you very much for giving us the opportunity to serve your Laboratory. If you have any questions, I can be reached at (610) 436-3501 or (610) 436-3504 fax.

Yours very sincerely,



Cornelius E. Uboh, Ph.D.

Director

PA Equine Toxicology and Research Laboratory

I, **Dr. Cornelius E. Uboh**, hereby certify that the above-referenced sample #79810 was tested in accordance with the Standard Operating Procedures (SOP) of the Pennsylvania Equine Toxicology and Research Laboratory and that the results satisfy the requirements for reporting a foreign substance finding or lack thereof.

PA Equine Toxicology and Research Laboratory is a fully accredited laboratory by American Association of Laboratory Accreditation (Certificate Number 0725-01).

# Commonwealth of Pennsylvania



CORNELIUS E. UBOH, Ph.D.  
Director

## DEPARTMENT OF AGRICULTURE

EQUINE TOXICOLOGY & RESEARCH  
LABORATORIES

December 3, 2008  
Thomas W. Miller, Esq  
Miller, Griffin & Marks, P.S.C.  
27 West Short Street  
Security Trust Building, Suite 600  
Lexington, Kentucky 40507-1292

Dear Attorney Miller:

LAB REPORT # 1344-08  
SPLIT SAMPLE # 30012281 FROM AIT Laboratories

The above plasma sample # 30012281 was received from AIT Laboratories on 10/29/2008 via Dr. Lawrence Soma of the University of Pennsylvania School of Veterinary Medicine at New Bolton Center Campus. The sample arrived in good condition. There were no visible signs of tampering with the sample and/or container.

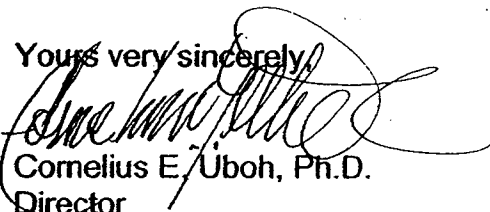
Sample # 30012281 for the horse named **Card Anniesuestein** was analyzed by Liquid Chromatography/Mass Spectrometry (LC-MS/MS) for the presence or absence of recombinant human erythropoietin (rHEPO) and/or Darbepoetin-alfa (DPO).

The samples was found to be **NEGATIVE** for the presence of rhEPO and Darbepoetin-alfa.

Please note that the remaining plasma in sample #30012281 will remain frozen under our custody but will be discarded after 30 days from the date of this report unless we are instructed otherwise by your office or Commission/Racetrack.

Thank you very much for giving us the opportunity to serve your Laboratory. If you have any questions, I can be reached at (610) 436-3501 or (610) 436-3504 fax.

Yours very sincerely,

  
Cornelius E. Uboh, Ph.D.  
Director

PA Equine Toxicology and Research Laboratory



**I, Dr. Cornelius E. Uboh, hereby certify that the above-referenced sample #79810 was tested in accordance with the Standard Operating Procedures (SOP) of the Pennsylvania Equine Toxicology and Research Laboratory and that the results satisfy the requirements for reporting a foreign substance finding or lack thereof.**

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# Commonwealth of Pennsylvania



CORNELIUS E. UBOH, Ph.D.  
Director

## DEPARTMENT OF AGRICULTURE

EQUINE TOXICOLOGY & RESEARCH  
LABORATORIES

December 3, 2008  
Thomas W. Miller, Esq  
Miller, Griffin & Marks, P.S.C.  
27 West Short Street  
Security Trust Building, Suite 600  
Lexington, Kentucky 40507-1292

Dear Attorney Miller:

LAB REPORT # 1341-08  
SPLIT SAMPLE # 30012296 FROM AIT Laboratories

The above plasma sample # 30012296 was received from AIT Laboratories on 10/29/2008 via Dr. Lawrence Soma of the University of Pennsylvania School of Veterinary Medicine at New Bolton Center Campus. The sample arrived in good condition. There were no visible signs of tampering with the sample and/or container.

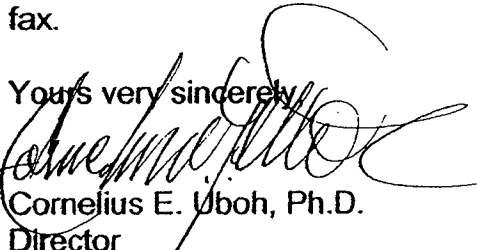
Samples # 30012296 for the horse named **Tresbein Volvo** was analyzed by Liquid Chromatography/Mass Spectrometry (LC/MS/MS) for the presence or absence of recombinant human erythropoietin (rhEPO) and/or Darbepoetin-alfa (DPO).

The sample was found to be **NEGATIVE** for the presence of rhEPO and Darbepoetin-alfa.


Please note that the remaining plasma in sample #30012296 will remain frozen under our custody but will be discarded after 30 days from the date of this report unless we are instructed otherwise by your office or Commission/Racetrack.

Thank you very much for giving us the opportunity to serve your Laboratory. If you have any questions, I can be reached at (610) 436-3501 or (610) 436-3504 fax.

Yours very sincerely,

  
Cornelius E. Uboh, Ph.D.  
Director

PA Equine Toxicology and Research Laboratory



I, **Dr. Cornelius E. Uboh**, hereby certify that the above-referenced sample #79810 was tested in accordance with the Standard Operating Procedures (SOP) of the Pennsylvania Equine Toxicology and Research Laboratory and that the results satisfy the requirements for reporting a foreign substance finding or lack thereof.

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# Commonwealth of Pennsylvania



CORNELIUS E. UBOH, Ph.D.  
Director

## DEPARTMENT OF AGRICULTURE

EQUINE TOXICOLOGY & RESEARCH  
LABORATORIES

December 3, 2008  
Thomas W. Miller, Esq  
Miller, Griffin & Marks, P.S.C.  
27 West Short Street  
Security Trust Building, Suite 600  
Lexington, Kentucky 40507-1292

Dear Attorney Miller:

**LAB REPORT # 1343-08**  
**SPLIT SAMPLE # 30012294 FROM AIT Laboratories**

The above plasma sample # 30012294 was received from AIT Laboratories on 10/29/2008 via Dr. Lawrence Soma of the University of Pennsylvania School of Veterinary Medicine at New Bolton Center Campus. The sample arrived in good condition. There were no visible signs of tampering with the sample and/or container.

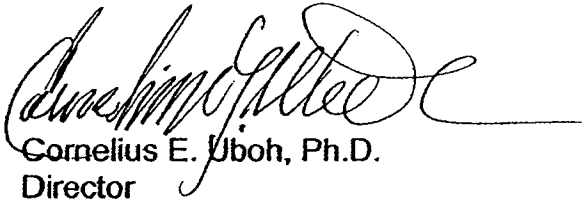
Sample # 30012294 for the horse named North Country Fair was analyzed by Liquid Chromatography/Mass Spectrometry (LC-MS/MS) for the presence or absence of recombinant human erythropoietin (rHEPO) and/or Darbepoetin-alfa (DPO).

The sample contained what appeared to be the T<sub>9</sub> peptide of darbepoetin alfa but its spectrum was not consistent with that of a T<sub>9</sub> peptide of darbepoetin alfa standard following digestions by the two enzymes used. Thus, the sample was declared **NEGATIVE** for the presence of rhEPO and Darbepoetin-alfa.

Please note that the remaining plasma in sample #30012318 will remain frozen under our custody but will be discarded after 30 days from the date of this report unless we are instructed otherwise by your office or Commission/Racetrack.

Thank you very much for giving us the opportunity to serve your Laboratory. If you have any questions, I can be reached at (610) 436-3501 or (610) 436-3504 fax.

Yours very sincerely,



Cornelius E. Uboh, Ph.D.

Director

PA Equine Toxicology and Research Laboratory

I, **Dr. Cornelius E. Uboh**, hereby certify that the above-referenced sample #79810 was tested in accordance with the Standard Operating Procedures (SOP) of the Pennsylvania Equine Toxicology and Research Laboratory and that the results satisfy the requirements for reporting a foreign substance finding or lack thereof.

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