

or, in the alternative, reduce the fees awarded to Plaintiffs. First, as explained in Defendant's Brief on Equitable Relief and Attorney's Fees and in Defendant's Motion for Judgment as a Matter of Law, Plaintiffs have not succeeded in demonstrating that AQHA violated the antitrust laws and establishing the fact of damage. *See Sciambra v. Graham News (Sciambra II)*, 892 F.2d 411, 415 (5th Cir. 1990). Defendant will reserve further argument on these issues for its Renewed Motion for Judgment as a Matter of Law that will be filed following entry of any final judgment in favor of Plaintiffs.

Second, Plaintiffs' failure to recover any damages should defeat or greatly reduce the Plaintiffs' claim for attorney's fees. In setting attorney fees, courts should consider "the results obtained." *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-720 (5th Cir. 1974). If a plaintiff achieves only partial success at trial, full recovery of that plaintiff's attorney fees may be excessive. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983). The degree of a plaintiff's overall success goes to the reasonableness of a fee award. *Id.* In fact, "the most critical factor in determining the reasonableness of a fee award is the degree of success obtained." *Farrar v. Hobby*, 506 U.S. 103, 114 (1992).

The United States Supreme Court has expressly stated that when a plaintiff recovers only nominal damages because of his failure to prove an essential element of his claim for monetary relief, the only reasonable fee is usually no fee at all. *Farrar*, 506 U.S. at 104, 115. In *Farrar*, the Supreme Court noted that the plaintiff was a prevailing party because the Plaintiff established an actual violation of his civil rights. *Id.* at 113. However, the Plaintiff had requested \$17 million in damages but was awarded only nominal damages. *Id.* at 114. The Court noted that in some circumstances, even a plaintiff who formally prevails should receive no attorney's fees at all, and a plaintiff who seeks compensatory damages but receives nothing more than nominal

damages is often such a prevailing party. *Id.* at 115. The awarding of nominal damages highlights a plaintiff's failure to prove actual, compensable injury. *Id.*

While the *Farrar* case concerned a civil rights issue, the limited success doctrine for reducing attorney's fees has been applied equally in antitrust actions. In the Fifth Circuit specifically, the courts have clarified that an award of zero damages to a prevailing plaintiff in an antitrust action does not affect entitlement to reasonable attorney's fees, which concords with the dictate of the antitrust laws mandating recovery of attorney's fees for prevailing plaintiffs. *Sciambra v. Graham News*, 892 F.2d 411, 416-17 (5th Cir. 1990). However, the limited success doctrine dictates that an analysis of the reasonableness of those attorney's fees take into account a plaintiffs' failure to recover any damages. *See Louisiana Power & Light Co. v. Kellstrom*, 50 F.3d 319, 330 n. 23 (5th Cir. 1995); *United States Football League v. National Football League*, 887 F.2d 408 (2d Cir.1989).

In this case, the Plaintiffs sought damages of \$5.7 million, and Plaintiffs sought to treble those damages under the antitrust laws for a total of \$17.1 million. Yet the jury determined that Plaintiffs were entitled to no damages at all. Thus, the Plaintiffs failed to prove actual, compensable injury for which damages could be awarded. While the jury determined that AQHA violated the antitrust laws, the Plaintiffs' failure to establish actual, compensable injury resulted in a verdict in which Plaintiffs only partially prevailed. Because the most critical reasonableness factor is the degree of success obtained, and because Plaintiffs failed to achieve success in their claim for trebled damages, full recovery of their claimed attorney's fees would be unreasonable and excessive. *See Hensley*, 461 U.S. 436 (1983).

At the end of trial, Plaintiffs recognized that they had failed to establish the fact of damages and that the jury would not be swayed by their expert's attempt to correct a \$3 million

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of August, 2013, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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