

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
NORTHEASTERN DIVISION**

<b>CITY OF HUNTSVILLE,</b>	)	
<b>d/b/a HUNTSVILLE UTILITIES,</b>	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Case No.: CV-02-VEH-1296</b>
	)	
<b>PROLIANCE ENERGY,</b>	)	
<b>LLC; HARRY BUSH; and</b>	)	
<b>BRIANE HOUSE,</b>	)	
	)	
<b>Defendants.</b>	)	

**ORDER GRANTING IN PART AND DENYING  
IN PART MOTION FOR ENTRY OF JUDGMENT**

Before the Court is the Motion for Entry of Judgment (doc. 338), filed by the Plaintiff City of Huntsville. In the motion, the Plaintiff requests that the Court enter judgment based upon the Verdict (doc. 332) rendered by the duly empaneled jury in this matter on February 10, 2005. The primary dispute relating to the motion is whether, pursuant to 18 U.S.C.A. 1964(c), the Court should treble the jury’s award of compensatory damages.

Section 1964(c), title 18, provides that “[a]ny person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including reasonable attorney’s fees....” 18

U.S.C.A. § 1964(c). While this provision makes the trebling of damages mandatory, the only damages which are required to be trebled are those sustained “by reason of a violation of section 1962.” The provision cannot be construed as authorizing, much less requiring, the trebling of damages sustained due to other causes.

At the conclusion of the trial, the jury found for Huntsville on all claims except conversion and entered a general verdict in the amount of \$8,231,668. The difficulty here arises from the fact that the verdict of \$8,231,668 includes damages on Huntsville’s claim of intentional interference with prospective business relations, a claim that arose from a wholly separate factual transaction than did any of Huntsville’s RICO claims. Because the jury could not find for Huntsville on the tortious interference claim unless it found that Huntsville incurred some damage arising therefrom, some portion of the \$8,231,668 verdict necessarily includes damages that were not sustained “by reason of a violation of section 1962” of RICO.

This places the Court under a conflicting mandate. On one hand, section 1964(c) requires the Court to treble the damages related to violations of section 1962, and on the other, the Court lacks authority to treble that portion of the damages having no relation to violations of section 1962. It is clear that an error has occurred because the Court is incapable of fully discharging its obligations under section 1964(c). The analysis must proceed, therefore, to the question of which party must

bear the cost of the error.

Huntsville argues that Proliance must suffer the consequences of the error. It argues that Proliance waived its right to complain about the trebling of the general verdict because it failed to object to the verdict form prior to the form's submission to the jury and again failed to object to the general verdict before the Court released the jury. In support of this argument, Huntsville cites cases involving inconsistent verdicts. In that situation, the rule is well-settled that "all challenges to the consistency of special verdicts must be raised before the jury is excused." *See Golub v. J.W. Gant & Associates*, 863 F.2d 1516, 1521 (11th 1989).

This line of cases is inapplicable here, however, because this is not a situation where Proliance is attacking the jury's verdict on the basis that the verdict is logically indefensible. To the contrary, in its opposition to trebling the damages, Proliance is not attacking the verdict at all. Instead, Proliance argues that it is under no obligation to object on the ground that the proposed verdict form is unfavorable to the Plaintiff because it does not segregate damages to allow for trebling. Indeed, Proliance notes that it submitted a proposed special interrogatory that would have asked the jury to make a specific finding of damages sustained by the Plaintiff "by reason of a violation of section 1962." Proliance therefore argues that the current dilemma is one of Huntsville's making and the consequences of the difficulty should fall upon the

Plaintiff, not the Defendant.

The Court agrees with Proliance for the following reasons. First, Huntsville has failed to present the Court with any authority for the proposition that a court may treble damages under section 1964(c) even where the damage amount indisputably includes damages unrelated to RICO violations.<sup>1</sup> Second, the matter is not susceptible to a routine analysis of which party waived the error because both parties are equally responsible for the error. Either side could have avoided the current difficulty by bringing the deficiency in the verdict form to the Court's attention during the conference on the jury charge. Third, the Plaintiff has the burden of proof for its case, including its entitlement to damages, and the Court is of the opinion that the obligation to have the jury produce the necessary predicate for an award of treble damages falls within the Plaintiff's burden. Fourth, because both parties are equally responsible for the problem with the verdict form, it is sensible to place the risk of error on the party with greater incentive to avoid the error. As this is an error that will occur only in the event that the Plaintiff prevails, the Plaintiff has the inherent incentive to ensure that this outcome is free of error. Furthermore, if the burden of

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<sup>1</sup>The case cited by the Plaintiff, *Arabian Am. Oil Co. v. Scarfone*, 939 F.2d 1472, 1478-79 (11th Cir. 1991), stands for the inapposite proposition that treble damages are available and mandatory even where RICO damages are identical to breach of contract damages, notwithstanding the rule that punitive or exemplary damages ordinarily are not available for a breach of contract.

error were placed with the defendant, plaintiffs would have an incentive to submit deficient verdict forms in hopes of reaping the windfall of trebling all of their damages rather than only the damages attributable to RICO violations. Thus, placing the risk of error with the defendants would tend to undermine compliance with section 1964(c).

Accordingly, the Court will deny the Plaintiff's request to enter a judgment that includes trebling the jury award of compensatory damages as to Proliance.

As to Harry Bush, however, the situation is different. Huntsville did not sue Harry Bush for tortious interference with prospective business relations. The difficulties that attend the trebling of damages as to Huntsville do not attend the issue of trebling damages as to Harry Bush. To the extent that Proliance argues that a plaintiff may not recover both punitive damages and treble damages on RICO and state law claims arising from the same facts, the Court rejects the argument. As authority, the Court relies on *Kemp v. AT&T*, 393 F.3d 1354, 1357 (11th Cir. 2004), where the Eleventh Circuit permitted an award of punitive damages despite the fact that treble damages also were awarded. Admittedly, in that case the Eleventh Circuit did not address the specific argument that Proliance has raised. Even so, the Court relies on the outcome in *Kemp*, along with the persuasive authority of *Neibel v. Transworld Assurance Co.*, 108 F.3d 1123, 1130-31 (9th Cir. 1997) and *HBE Leasing*

*Corp. v. Frank*, 22 F.3d 41 (2d Cir. 1994), in which the Ninth and Second Circuits permitted the plaintiffs to recover both punitive damages under state law claims and treble damages under RICO. Accordingly, the Court will treble the compensatory damages awarded against Harry Bush.

A judgment consistent with this Order will be entered by separate document.

**DONE** and **ORDERED** this the 21st day of April, 2005.



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**VIRGINIA EMERSON HOPKINS**  
United States District Judge