NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2014 CA 0171

W. CARL REYNOLDS, P.C., AND
REYNOLDS, McARTHUR & HORNE

VERSUS

MARJORIE A. McKEITHEN, MARTIN BOHMAN,
AND McKEITHEN, McKEITHEN & BOHMANN,

DATE OF JUDGMENT: MAY 06 2015

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
NUMBER 548,851, SECTION 27, PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE TODD HERNANDEZ, JUDGE

* * * * * *

Aub A. Ward
Baton Rouge, LA

Counsel for Plaintiffs-Appellants
W. Carl Reynolds, P.C., and
Reynolds, McArthur & Horne

Edward J. Walters, Jr.
Darrel J. Papillion
Baton Rouge, LA

Counsel for Defendants-Appellees
Marjorie A. McKeithen, Martin S.
Bohman, and McKeithen, McKeithen
& Bohman, APLC

* * * * * *

BEFORE: GUIDRY, PETTIGREW, WELCH, THERIOT, AND CHUTZ, JJ.

Disposition: AFFIRMED.

Welch, J., Concurs in part and Dissents in part

Pettigrew, J., Dissents for Reasons assigned by J. Welch

CHUTZ, J.

Plaintiffs-appellants, W. Carl Reynolds, P.C. and his law firm, Reynolds, McArthur & Horne (the Reynolds firm), appeal the trial court's judgment dismissing their claims of entitlement to a portion of the attorney fee paid to defendants, Marjorie A. McKeithen, Martin Bohman, and their law firm, McKeithen, McKeithen & Bohman (the McKeithen firm), in a settlement of a medical malpractice lawsuit. We affirm.

I. PROCEDURAL AND FACTUAL BACKGROUND

In April 1996, Stephen Phares went to the emergency room of Christus Schumpert Medical Center in Shreveport, Louisiana, complaining of back pain. He underwent back surgery the following day. Phares subsequently consulted with W. Carl Reynolds, a Georgia attorney, regarding a potential medical malpractice claim. On November 14, 1996, Phares and his wife, Cindy, signed a medical negligence employment contract, hiring the Reynolds firm to represent them in their malpractice claim.

In early January 1997, the Reynolds firm retained the McKeithen law firm, licensed to practice law in Louisiana, to act as local counsel on the Phareses' medical malpractice case. In a "hand-shake" agreement, the parties originally decided that the Reynolds firm would receive two-thirds and the McKeithen firm would receive one-third of any attorney fee generated as a result of the Phareses' medical malpractice claim. They subsequently modified their verbal agreement, initially agreeing that the McKeithen firm would receive forty percent and the Reynolds firm would receive sixty percent of any attorney fee and later modified it to a fifty-fifty fee arrangement.

The Phareses' claim was submitted to a medical review panel and a lawsuit was filed, with a jury trial scheduled to convene on September 18, 2006. Before trial was held, the parties agreed to submit the malpractice claim to mediation. On

February 22, 2006, as a result of the mediation, a settlement was entered into in which one health care provider agreed to pay $100,000.00 to the Phareses and a second provider agreed to pay $60,000.00 to the Phareses (the mediation settlement). The $72,000.00 attorney fee generated as a result of the settlement was disbursed, with the Reynolds firm receiving sixty percent and the McKeithen firm forty percent.

Following the mediation settlement, the Phareses asserted a claim against the Louisiana Patient's Compensation Fund (PCF). On June 20, 2006, the Phareses terminated the Reynolds firm's services and soon after hired Martin Bohman of the McKeithen firm to represent them. A contingency fee contract setting the attorney fee at forty percent was executed between the Phareses and the McKeithen firm.

The parties do not dispute that in August 2006, the Phareses settled their claim against the PCF for $600,000.00 (the PCF settlement). The McKeithen firm received a contingency fee of $240,000.00 from the settlement.

The Reynolds firm filed this lawsuit against the McKeithen firm on October 26, 2006. The petition also named Bohman and Marjorie McKeithen, the attorney who had entered into the "hand-shake" agreement with the Reynolds firm to act as local counsel for the Phareses, as defendants in their respective individual capacities. In its petition, the Reynolds firm averred entitlement to a share of the $240,000.00 contingency fee the McKeithen firm received as a result of the Phareses' settlement with the PCF.

A bench trial was held on May 10, 2013. At the conclusion of the Reynolds firm's case-in-chief, the McKeithen firm urged that the Reynolds firm had not sustained its burden of proof entitling it to any relief. The trial court dismissed the Reynolds firm's claims to relief under a theory of quantum meruit,[1] after which the

[1] A claim of unjust enrichment, which was also dismissed, has not been challenged on appeal.

McKeithen firm put on its defense of the other claims asserted by the Reynolds firm.

On August 29, 2013, the trial court issued written reasons for judgment, dismissing all of the Reynolds firm's claims against the McKeithen firm with prejudice. On October 17, 2013, the trial court issued a judgment in conformity with its ruling from which the Reynolds firm appeals.

In its appeal, the Reynolds firm asserts the trial court erred in its conclusions that: (1) the termination of the attorney-client relationship between the Reynolds firm and the Phareses divested the Reynolds firm of any rights to the PCF settlement; (2) the McKeithen firm did not breach any fiduciary duty it owed to the Reynolds firm and, therefore, was not responsible to the latter for damages; and (3) the Reynolds firm alternatively was not entitled to a portion of the attorney's fee generated from the PCF settlement under principles of quantum meruit.

II. JOINT VENTURE THEORY

A. Breach of Agreement

Where a retained attorney employs or procures the employment of another attorney to assist him in handling a case involving a contingency fee, the agreement regarding the division of the fee is a joint venture, which gives the parties to the contract the right to participate in the fund resulting from the payment of the fee by the client. ***Duer & Taylor v. Blanchard, Walker, O'Quin & Roberts***, 354 So.2d 192, 194-95 (La. 1978); ***Scurto v. Siegrist***, 598 So.2d 507, 509-510 (La. App. 1st Cir.), writ denied, 600 So.2d 683 (La. 1992). A suit by an attorney against another attorney to recover a portion of the fee collected by the latter party from the client pursuant to such an agreement is not a suit to recover the attorney fee but is one for breach of the agreement to share in the fund resulting from the payment of the fee. ***Duer***, 354 So.2d at 195.

The joint venture theory has been utilized to apportion the attorney fee equally between the attorneys where the attorneys failed to execute a contract between themselves as to how a fee should be divided between them. See ***McCann v. Todd***, 203 La. 631, 14 So.2d 469, 471 (La. 1943) (holding that attorneys who undertake jointly to prosecute a lawsuit are entitled, in the absence of any agreement to the contrary, to share equally in the compensation, and it is immaterial which attorney furnishes the most labor or skill). The courts have also applied the joint venture theory to uphold an agreement to share fees where two attorneys executed a single contingency fee contract with the client based on the fact that neither attorney has been discharged and both were actively involved in the case and remained responsible to the client. See ***Dukes v. Matheny***, 2002-0652 (La. App. 1st Cir. 2/23/04), 878 So.2d 517, 520, writ denied, 2004-1920 (La. 11/8/04), 885 So.2d 1132 (and the cases cited therein). However, in ***Brown v. Seimers***, 98-694 (La. App. 5th Cir. 1/13/99), 726 So.2d 1018, 1023, writ denied, 99-0430 (La. 4/1/99), 742 So.2d 556, the court upheld the trial court's refusal to apportion attorney's fees equally between attorneys who were engaged in a joint venture when their arrangement commenced, but one of the attorneys was subsequently prohibited from working on the case due to the loss of his license to practice law.

In this case, although over the course of the joint venture the parties changed the specific percentage of the attorney fee each was to receive in the Phareses' medical malpractice claim, they always agreed on a particularized division of the fee. Therefore, this is not a situation where the parties agreed to split a fee but did not agree on the amount of the division of the fee.

The trial court found, and the parties do not dispute, that the firms were clearly engaged in a joint venture throughout the vast majority of the Phareses' representation. Once the Reynolds firm was terminated by the Phareses, the joint

venture ceased. Thus, at the time of the PCF settlement, the Reynolds firm was no longer engaged in a joint venture with the McKeithen firm. As such, there was no breach of the joint venture by the McKeithen firm so as to permit the Reynolds firm to recover a percentage of the $240,000.00 attorney fee the McKeithen firm received as a result of the PCF settlement.

The Reynolds firm suggests that the PCF settlement was already "earned" by the joint venture before the Phareses terminated the Reynolds firm. Thus, it contends the fact that the fee was not collected until after the PCF settlement is not determinative of its entitlement to a portion of the fee in accordance with the joint venture agreement it had with the McKeithen firm prior to the Phareses' termination of the Reynolds firm. But as the Reynolds firm concedes, after the mediation settlement in which one of the health care providers tendered $100,000.00 to the Phareses for their injuries, the only issue remaining before the PCF was damages. See ***McDougal v. Blanch***, 95-1377 (La. App. 1st Cir. 4/4/96), 672 So.2d 398, 401, writ denied, 96-1129 (La. 6/7/96), 674 So.2d 973.

According to Bradley J. "B.J." Survant, the "go-to" attorney in the Reynolds firm's lead representation of the Phareses, he had not placed any value on Stephen Phares's future medical expenses and had not prepared any future medical expense evidence. Although Survant recalled a general discussion about future medical expense at the mediation on February 22, 2006, he admitted that he had no specifics to offer. Survant conceded that he had no "plan" for addressing a potential Medicare claim against the proceeds from the PCF settlement. He believed he had furthered the Phareses' claims against the PCF because he had tendered Stephen's medical record to a PCF adjustor on February 13, 2006. But Bohman testified that he had asked Survant to send the medical record to the PCF so as to put the PCF on notice of the Phareses' claims. This evidence establishes that the Reynolds firm had done nothing to determine the Phareses' damages,

which was the only relevant issue before the PCF. Thus, because the Reynolds firm failed to do any work on the sole issue before the PCF, the trial court's finding that the Reynolds firm had not earned a portion of the PCF settlement fee was not manifestly erroneous. Accordingly, the trial court did not err in refusing to apportion the fee resulting from the PCF settlement on an equal basis under the joint venture theory.

B. Breach of Fiduciary Duty

The Reynolds firm also contends that because the law firms were engaged in a joint venture, they each owed a fiduciary duty to one another. Because the evidence showed Bohman was aware that the Phareses were contemplating termination of the Reynolds firm and failed to inform anyone at the Reynolds firm, the Reynolds firm asserts that Bohman deliberately undermined the Reynolds firm's representation of the Phareses, urging at trial that Bohman actively encouraged the Phareses to discharge the Reynolds firm. These acts by Bohman, according to the Reynolds firm, were a breach of the fiduciary obligation Bohman owed to the joint venture between the two law firms and, therefore, the McKeithen firm is liable to the Reynolds firm for its damages as a result of the breach.

But the trial court specifically found that the totality of the evidence did not support the conclusion that Bohman did anything to foster the Phareses' distrust or dissatisfaction with Reynolds. Indeed, the trial court concluded that the evidence actually established Bohman did not favor terminating the Reynolds firm, and that it was the Phareses who no longer desired representation from the Reynolds firm.

The trial court's factual determination that Bohman did not actively undermine Reynolds or encourage the Phareses to terminate Reynolds is a factual determination governed by the manifest error standard of review. See ***Stobart v. State, Dep't of Transp. and Dev.***, 617 So.2d 880, 882 (La. 1993). Under that

standard, this court may only reverse if we find no reasonable evidentiary basis in the record for the finding such that the finding is manifestly erroneous.

Both of the Phareses testified that Bohman did not convince them to terminate Reynolds. Stephen squarely stated that he told Bohman he wanted to terminate the Reynolds firm because he was tired of not hearing from the firm. He explained that he felt like he had been "abandoned" by the Reynolds firm's attorneys. Rarely did anyone at the Reynolds firm call him or apprise him of what was going on with his lawsuit. Likewise, Bohman testified that he tried to discourage Stephen from terminating the Reynolds firm. Bohman said that he informed Stephen that he was also their attorney and that the Phareses would benefit from his representation even while the Reynolds firm was representing them. Accordingly, a reasonable factual basis supports the trial court's conclusion that Bohman did not actively encourage the Phareses to terminate Reynolds.

Moreover, the Louisiana Supreme Court has held that, as a matter of public policy and pursuant to its authority to regulate the practice of law, no cause of action will exist between co-counsel based on the theory that co-counsel have a fiduciary duty to one another to protect each other's interest in a fee. ***Scheffler v. Adams and Reese, LLP***, 2006-1774 (La. 2/22/07), 950 So.2d 641, 653. Thus, the trial court properly rejected the Reynolds firm's claim that the McKeithen firm, through Bohman, breached a fiduciary duty it owed to the Reynolds firm by failing to notify it that the Phareses were considering termination of its representation.

III. QUANTUM MERUIT

At the conclusion of the Reynolds firm's case-in-chief, the trial court granted relief to the McKeithen firm on the Reynolds firm's alternative claim of entitlement to a portion of the fee generated from the PCF settlement on the basis of quantum meruit. Preliminarily, we note that defense counsel moved for "a directed verdict," which is appropriately granted in a jury trial. See La. C.C.P. art.

1810. La. C.C.P. art. 1672B provides the basis for an involuntary dismissal at the close of a plaintiff's case in an action tried by the court without a jury. Nevertheless, the error is one of form rather than substance, as the ultimate object of both motions is the same. See ***Gillmer v. Parish Sterling Stuckey***, 2009-0901 (La. App. 1st Cir. 12/23/09), 30 So.3d 782, 785 n.2. On appeal, an involuntary dismissal should not be reversed in the absence of manifest error by the trial court. ***Robinson v. Dunn***, 96-0341 (La. App. 1st Cir. 11/8/96), 683 So.3d 894, 896, writ denied, 96-2965 (La. 1/31/97).

The Reynolds firm contends that under the theory of quantum meruit, it is entitled to its "full share of the proceeds of the [PCF] settlement," since all or substantially all of the legal services necessary to accomplish the settlement had occurred prior to its discharge. Pointing out that it had represented the Phareses for nearly ten years at the time it was terminated, the Reynolds firm urges that it participated in every stage of litigation, including the mediation settlement.

In the absence of a joint venture agreement, an attorney fee may be divided on a quantum meruit basis. ***Dukes***, 878 So.2d at 521. On a quantum meruit basis, an attorney may receive payment only for the services it actually performed and the responsibilities it actually assumed. See ***Dukes***, 878 So.2d at 521. Indeed, the phrase quantum meruit means "as much as he deserved." ***Barham & Arceneaux v. Kozak***, 2002-2325 (La. App. 1st Cir. 3/12/04), 874 So.2d 228, 237, writ denied, 2004-0930 (La. 6/4/04), 876 So.2d 87. The considerations for determining a quantum meruit fee are: the time and labor required; the novelty and difficulty of the issue; the skill required; the likelihood that acceptance of the work might prevent the attorney from accepting other opportunities; and the experience, reputation, and abilities of the attorney. ***Dukes***, 878 So.2d at 521; Rules of Professional Conduct, Rule 1.5(a). A trial court's award of attorney fees pursuant

to quantum meruit is subject to the manifest error standard of review. ***Barham & Arceneaux***, 874 So.2d at 245.

As we have already noted, when there is an approved settlement by the health care provider with the claimant, liability of the health care provider cannot be contested by the PCF. The only issue that can be litigated between a claimant and the PCF is the amount of damages. ***McDougal***, 672 So.2d at 401. The term "liability" encompasses negligence and causation of the original harm. ***Id.***

By dismissing the Reynolds firm's quantum meriut claim at the conclusion of its case-in-chief, the trial court was not clearly wrong or manifestly erroneous in implicitly finding that the Reynolds firm's act of tendering the medical records on February 13, 2006, had been done in order to place the PCF on notice of the Phareses' claim. The record is devoid of any other evidence showing an expenditure of time, labor, or effort by the Reynolds firm, and it is undisputed that the Reynolds firm was compensated for all of its efforts before it was terminated, which would have included the tender of Stephen's medical record to the adjustor to notify the PCF of the Phareses' claims. Mindful that an attorney may receive payment only for the services actually performed and the responsibilities actually assumed, we cannot say the trial court's factual conclusion that the Reynolds firm was not entitled to any portion of the attorney fee from the PCF settlement on the basis of quantum meruit was manifestly erroneous.

IV. DECREE

For these reasons, the trial court's judgment dismissing the Reynolds firm's claims is affirmed. Appeal costs are assessed against plaintiffs-appellants, W. Carl Reynolds, P.C. and his law firm, Reynolds, McArthur & Horne.

AFFIRMED.

W. CARL REYNOLDS, P.C., AND REYNOLDS, McARTHUR & HORNE

VERSUS

MARJORIE A. McKEITHEN, MARTIN BOHMAN, AND McKEITHEN, McKEITHEN & BOHMAN

NUMBER 2014 CA 0171

COURT OF APPEAL

FIRST CIRCUIT

STATE OF LOUISIANA

FEW

WELCH, J., concurring in part and dissenting in part.

JTP

I agree that the trial court did not err in refusing to apportion the attorney fees generated from the PCF settlement on an equal basis under the joint venture theory because the parties' agreement on the division of the fee throughout their joint venture was clear and because the joint venture had ceased prior to the PCF settlement. I further agree that the trial court did not err in rejecting the Reynolds law firm's breach of fiduciary duty claim.

However, I find that the Reynolds firm presented sufficient evidence in its case-in-chief to establish its entitlement to a portion of the $240,000.00 attorney fees resulting from the PCF settlement on a quantum meruit basis by a preponderance of the evidence. Thus, I conclude the trial court committed legal error in dismissing that claim at the close of the Reynolds firm's case-in-chief. The record establishes that the Reynolds firm participated in the joint representation of the Phareses until it was terminated less than two months before the PCF settled the Phareses' damage claim for $600,000.00. Throughout its representation of the Phareses, the Reynolds firm participated in every stage of the proceedings to prosecute the medical malpractice claim to its ultimate successful conclusion.

The record shows that the Reynolds firm obtained Mr. Phares' medical records and prepared lengthy reports detailing the treatment Mr. Phares received at Schumpert. A 34-page document was introduced into evidence detailing all of the Reynolds firm's efforts to obtain Mr. Phares' medical records from 1999 through

2005. The Reynolds firm developed the theory of liability through its in-house medical professionals and retained experts to establish the elements of the Phareses' malpractice claim against the healthcare providers; it drafted the complaint and a position paper in the medical review panel proceedings; it drafted the pleadings in the underlying lawsuit; it took depositions of the Phareses and of Dr. Ragan Green, Dr. Eustace Edwards, and Dr. Wendall Wall, all of whom treated Mr. Phares during his stay at Schumpert, and it conducted all discovery in the trial court. Specifically, the Reynolds firm retained two medical experts, including Dr. Marshall Matz, who expressed the opinion that Mr. Phares received negligent medical care while being treated at Schumpert and that negligent medical care caused Mr. Phares to sustain severe permanent neurological injuries.

Prior to the mediation, by letter dated January 25, 2006, Martin Bohman of the McKeithen firm apprised Bradley Survant of the Reynolds firm that the PCF was unofficially monitoring the Phareses' case through an adjuster, Jennifer Keel, with whom Mr. Bohman had previously worked. Mr. Bohman apprised Mr. Survant that because the PCF had already been put on notice and was monitoring the case, they needed to insure that the PCF received copies of updated medical records as soon as possible, as the PCF claims committee met on a certain day each month, and Ms. Keel would have benefit of the updated medical records to get a package put through to the claims committee. Mr. Bohman asked Mr. Survant to send Mr. Phares' updated medical records directly to Ms. Keel. On February 13, 2006, as requested, Mr. Survant sent Mr. Phares' medical records to Ms. Keel and informed her of the scheduled mediation. Thus, the documentary evidence does not support Mr. Bohman's claim that he asked Mr. Survant to send the medical records merely to put the PCF on notice of the Phareses' claims.

The record reflects that shortly following the mediation, on March 21, 2006, Mr. Survant wrote a letter to Mr. Bohman in which he stated that the Reynolds

firm was relying on Mr. Bohman to do whatever was necessary to finalize the settlement and to initiate or do whatever else was necessary to pursue the PCF. Mr. Survant asked Mr. Bohman to apprise him if he could provide any information and noted that he was still in the process of obtaining updated medical information and would produce it upon its receipt. Several days later, Mr. Bohman wrote to Mr. Survant acknowledging that he received Dr. Matz's report, reviewed it, and expressed his concern that the report referenced one of the physicians that had been let out of the litigation, a matter the PCF could use against them at a later date. Mr. Bohman noted that the report contained "excellent language" concerning the breach of the standard of care with respect to the entity responsible for one of the doctors and the hospital, and, if Dr. Matz was comfortable to testifying as to causation with respect to those two entities, they were "in good shape." Later, in May 2006, a request was made on behalf of Mr. Bohman to the Reynolds firm for numerous documents, including copies of all medical bills for Mr. Phares, all copies of medical letters, and a copy of the Phareses-Reynolds representation contract.

On May 16, 2006, Mr. Bohman wrote a letter to Mr. Survant asking whether he had an updated report from Dr. Matz addressing causation in light of the dismissal of one of the defendants from the litigation as per his March 24th letter. Mr. Bohman stressed that they needed that report for causation, and that if Dr. Matz was not prepared to testify, he needed to know that in advance of the entry of the PCF's counsel into the lawsuit. The following day, Mr. Bohman wrote a letter to Mr. Survant indicating that he learned that Mr. Survant had in fact spoken to Dr. Matz and that Dr. Matz was going to amend his opinion to reflect causation. Mr. Bohman stated that the PCF had requested that the report be provided to it, and he had spoken to Ms. Keel, who was waiting on such a report. Mr. Bohman asked Mr. Survant to forward the report at his earliest convenience so that he could

forward it to the PCF. The letter also advised that Ms. Keel had not received complete and updated medical records, and Mr. Bohman requested that Mr. Survant send the complete copies of medical records so he could send them to Ms. Keel.[1]

On May 18, 2006, Mr. Bohman sent the Reynolds firm a check for $43,200.00, representing the Reynolds firm's 60% share of the $72,000.00 attorney fees generated as a result of the settlement with the healthcare providers in accordance with the parties' fee split agreement. The letter confirmed that during a conference call the previous day, the two firms agreed to a fee split wherein the Reynolds firm would receive 60% of the fees from the primary settlement and the McKeithen firm would receive 40%. The letter further confirmed that "from this point forward," the firms would each receive 50% of the fees generated, with the McKeithen firm receiving an additional amount over and above that amount in the event that the work performed by the McKeithen firm exceeded more than 50% of the total work performed.

On May 19, 2006, Mr. Bohman wrote to Mr. Survant to apprise him that he had received and reviewed the most recent report of Dr. Matz that Mr. Survant provided to him and the report seemed to address all of the issues. He also asked Mr. Survant to provide him with a final copy of Dr. Matz's report and to inquire whether Dr. Matz would be available for a deposition, anticipating that the PCF would want to depose Dr. Matz in advance of a trial. Soon thereafter, in June 2006, the Phareses terminated the Reynolds firm's representation.

At trial, Mr. Bohman was asked what he supplied to the PCF after the Reynolds firm's termination that led to the settlement with the PCF. Mr. Bohman

---

[1] The documentary evidence submitted by the McKeithen firm reflects two reports by Dr. Matz dated February 21, 2006. In the second report, the paragraph relating to one of the doctors is revised. Also in the second report, Dr. Matz states that in his opinion, the negligence of two of the doctors and the staff of Schumpert and the delay occasioned thereby proximately caused severe permanent neurological injuries to Mr. Phares, and that had surgery been performed when indicated, Mr. Phares would have had a profoundly better outcome.

responded that his firm did a work-up on Mr. Phares' future medical care and related benefits, did a proposal for an annuity, made some recommendations concerning potential implants for Mr. Phares, and had a number of conversations with the PCF adjuster. Mr. Bohman stated that he could not truthfully answer this question because he would leave something out and that there was "a lot of work" that went into it. He also stated that his firm incurred costs between the time of the Reynolds firm's termination and the PCF settlement, but he could not tell the court what they were and could not say whether the costs were more than $5,000.00.

Based on my review of the record, I disagree with the majority that it is devoid of any evidence showing an expenditure of time, labor, or effort by the Reynolds firm following the mediation. Additionally, I disagree with the majority's conclusion that the sum of $43,200.00, representing attorney fees received by the Reynolds firm from the healthcare provider settlement, adequately compensated the Reynolds firm for its efforts in prosecuting the Phareses' malpractice claim. The Reynolds firm brought in the McKeithen firm to jointly represent the Phareses in prosecuting the medical malpractice claim. Although the Reynolds firm may have yielded a lead counsel role to Mr. Bohman towards the end of that joint representation, the Reynolds firm participated in every stage of the proceedings in prosecuting the malpractice claim, including the medical review panel proceedings, the lawsuit against the healthcare providers, the settlement of the claim with two of the healthcare providers, and it assisted in pursuing the claim against the PCF. The Reynolds firm was discharged less than two months before the PCF settled the damage claim with the Phareses for $600,000.00, at a time when recovery of excess damages from the PCF was imminent. Moreover, the Phareses recovered $760,000.00 on their malpractice claim and the malpractice claim generated attorney fees in the amount of $312,000.00. The $43,200.00 attorney fees that the Reynolds firm received is approximately 14% percent of the

total attorney fees resulting from the Phareses' representation, while the McKeithen firm received 86% percent of the attorney fees generated from the Phareses' representation.

Furthermore, I believe that the majority errs in treating the settlement of the medical malpractice action and the PCF settlement as isolated incidents in determining whether the Reynolds firm is entitled to any portion of the attorney fees resulting from the PCF settlement. It is beyond dispute that the Reynolds firm's efforts contributed to the Phareses' settlement with one of the healthcare providers for $100,000.00, which made it then possible to pursue the PCF for excess damages. I also disagree with the majority's position that the Reynolds firm did nothing to contribute to the settlement with the PCF. It is clear that the work generated by the Reynolds firm, in developing the theory of the case, compiling Mr. Phares' medical records, and obtaining the causation opinion of Dr. Matz all contributed to the ultimate settlement of the Phareses' damage claim against the PCF.

In concluding that the Reynolds firm did nothing to further the Phareses' claim against the PCF (except to send Mr. Phares' medical records to the PCF prior to the settlement) the majority states that the only issue that could be litigated between the PCF was the "amount of the damages" because the admission of liability encompassed negligence and causation of the original harm. However, the payment by a healthcare provider of the statutory cap of $100,000.00 only admits liability and establishes proof of liability for malpractice and for damages of at least $100,000.00. In a subsequent trial against the PCF for excess damages, the malpractice claimant has the burden of proving that the admitted malpractice caused damages in excess of $100,000.00. **Graham v. Willis-Knighton Medical Center**, 97-0188 (La. 9/9/97), 699 So.2d 365, 372. Thus, the admission of liability by the settling defendant in this case did not relieve the Phareses of the burden of

proving medical causation in order to recover excess damages against the PCF. The record establishes that Mr. Survant obtained the expert medical opinion on causation and Mr. Survant had that opinion revised at the request of Mr. Bohman as the case proceeded against the PCF.

Based on the entire record, I find that the $240,000.00 attorney fees resulting from the PCF settlement should be equitably allocated between the Reynolds and the McKeithen law firms using the principles of quantum meruit. See **Wheat v. State Farm Fire and Casualty Company**, 583 So.2d 1, 4 (La. App. 1st Cir.), writs denied, 583 So.2d 1145 (La. 1991). The phrase "quantum meruit" means "as much as he deserved." **Barham & Arceneaux v. Kozak**, 2002-2325 (La. App. 1st Cir. 3/12/04), 874 So.2d 228, 237, writ denied, 2004-0930 (La. 6/4/04), 876 So.2d 87. Quantum meruit encompasses far more than simply the hours spent by an attorney on his client's case, and includes the ultimate results obtained as well as the particular benefit to the case derived for each unit of time devoted to the case. *Id.*

Because the record is complete, a *de novo* allocation of the fee is appropriate. The record demonstrates that the bulk of the Reynolds firm's work in this case occurred in the early stages of its representation of the Phareses and its work-product was instrumental in establishing the liability of the settling healthcare provider for $100,000.00, making it possible to then pursue the PCF for excess damages. Mr. Survant obtained the medical causation opinion of Dr. Matz, which gave the Phareses the opportunity to satisfy their burden of proving medical causation with respect to damages in excess of $100,000.00 against the PCF. It is equally clear that Mr. Bohman was instrumental in negotiating the underlying settlement with the healthcare providers and in thereafter pursuing the Phareses' claim against the PCF. The McKeithen firm, although hired as local counsel, subsequently took on a lead role in prosecuting the Phareses' claim to a successful conclusion. Under all of the circumstances of this case, considering the efforts of

each law firm and the results obtained, I would apportion the attorney fees generated from the PCF settlement 60% to the McKeithen firm and 40% to the Reynolds firm.