

**COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA
CIVIL ACTION-LAW**

ELLIOTT GREENLEAF, P.C. :
Plaintiff : **NO. 2018-08557**
 : **(Coordinated with 2018-15845)**
v. :
RICHARD DEMARCO :
Defendant :

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

I. INTRODUCTION AND PROCEDURAL HISTORY

This matter involves opposing claims to a referral fee in the amount of \$11,330,804.15 from the settlement of a personal injury action in the amount of \$71,120,000.

Richard DeMarco (hereinafter also “DeMarco”) filed a Writ of Summons on April 27, 2018 and a Complaint on May 2, 2018 seeking declaratory relief against Elliott Greenleaf (hereinafter also “EG”) in the Court of Common Pleas of Philadelphia County docketed at April Term, 2018, No. 04064. Elliott Greenleaf filed its own Complaint seeking a declaratory judgment in the Court of Common Pleas of Montgomery County on May 1, 2018.¹ Elliott Greenleaf filed a Second Amended Complaint on March 26, 2019 asserting additional tort claims against DeMarco who filed an Answer, New Matter and Counterclaim on July 11, 2019. EG filed a response to DeMarco’s New Matter and Counterclaim on July 25, 2019.²

¹ The Honorable Garrett D. Page entered an Order on May 23, 2018 granting Elliott Greenleaf’s Motion for Coordination, Stay and Transfer of the Philadelphia action. DeMarco appealed that Order. The Superior Court affirmed Judge Page’s Order on January 22, 2019 which effectively consolidated the Philadelphia action with the instant matter.

² EG withdrew its tort claims prior to trial.

The undersigned conducted a bench trial on the parties' cross actions for declaratory relief on July 11 and July 12, 2022.³ The court makes the following findings based upon the evidence at trial:

DEAN PHILLIPS, ESQUIRE

- 1) Dean Phillips, Esquire (hereinafter "Phillips") testified he was employed as a shareholder of Elliott Greenleaf, P.C. located in Blue Bell, Pennsylvania, in 2014. (Trial Tr. vol. 1, 31, July 11, 2022)⁴
- 2) Phillips was admitted to practice law in Pennsylvania in 1980 and started his career in several judicial clerkships. (*Id.* at 32)
- 3) Phillips was chair of the torts and litigation section of EG in 2014. In that capacity, he was responsible for the screening and intake of new tort cases and monitoring their progress. (*Id.* at 33-34)
- 4) Phillips has no financial interest in the outcome of this dispute. (*Id.* at 35)
- 5) EG paid its employees and shareholders a non-guaranteed, discretionary bonus based upon factors such as, *inter alia*, the attorney's performance, the overall performance of the firm, the availability of profits to be distributed and origination of new business. (*Id.* at 35-37)
- 6) Richard DeMarco was an attorney employed at EG in 2014. He primarily handled zoning, general business and real estate matters. (*Id.* at 37)

³ Elliott Greenleaf is a plaintiff, defendant and counterclaim defendant. DeMarco is a plaintiff, defendant and counterclaim plaintiff. For purposes of clarity and simplicity, the court will refer to the parties specifically by name and not their various legal designations.

⁴ The Court will refer to the Notes of Testimony from the first day of Trial (July 11, 2022) as "Trial Tr., vol. 1" and the Notes of Testimony from the second day of Trial (July 12, 2022) as "Trial Tr., vol. 2." The Court admitted the Oral Deposition of Z.G., Byron Santos Gabriel (referred to as "Eddie"), and John Elliott at trial. These transcripts will be referred to as "Z.G. Oral Dep. Tr.," "B.S.G. Oral Dep. Tr.," and "Elliott Oral Dep. Tr." respectively.

7) DeMarco told Phillips about the Z.G. case involving severe injuries to a young woman (hereinafter referred to as “Z.G.”) resulting from a propane tank explosion in Philadelphia on July 1, 2014.⁵ (*Id.* at 41-42)

8) Phillips telephoned Benjamin Baer, Esquire (“Baer”), an associate of Saltz, Mongeluzzi, Barrett & Bendesky, P.C. a Philadelphia law firm specializing in catastrophic personal injury cases.⁶ (*Id.* at 44)

9) EG had previously referred 3-5 personal injury cases to SMBB. (*Id.* at 39)

10) EG was satisfied with SMBB’s work in those other cases. (*Id.* at 40)

11) Baer told Phillips his firm was representing other clients injured in the same propane tank explosion and was already investigating the accident. (*Id.* at 44)

12) Phillips, DeMarco, Baer and Andrew Duffy, a partner at SMBB, met to discuss referral of Z.G.’s case. SMBB was interested in the referral. (*Id.* at 45-46)

13) Phillips decided to “sign up” the clients before a referral to SMBB was made. He prepared a standard EG Contingent Fee Agreement and Power of Attorney for Z.G.’s brother, Byron Santos Gabriel (also referred to as “Eddie”), who signed the agreement as “Guardian-in-Fact of Minor Immigrant.” (*Id.* at 46-49, 53)

14) Phillips discussed percentages with SMBB before confirming the referral fee arrangement with Baer by email. (*Id.* at 52, 53)

15) EG and SMBB memorialized the referral fee agreement on August 6, 2014 by the following email exchange between Phillips and Baer:

On Aug. 6, 2014, at 12:59 PM, “Dean R. Phillips” DRP@Elliotttgreenleaf.com wrote:

⁵ The identity of the injured claimant will be referred to as “Z.G.”

⁶ Saltz, Mongeluzzi, Barrett & Bendesky, P.C. will hereinafter be referred to as “SMBB” or the referral firm since that was its name during the operative events. It is now named Saltz, Mongeluzzi & Bendesky, PC.

Ben, can you please confirm in writing our fee agreement in the [Z.G.] matter? My understanding is that you have agreed to pay my firm 1/3 of the legal fee unless the legal fee itself is 40% in which case my firm's share of the fee is 40%. We have also agreed that your firm will keep us in the loop on significant developments and that we will continue to interact with the Gabriel family.

Dean R. Phillips
Elliott Greenleaf & Siedzikowski P.C. 925
Harvest Drive
P.O. Box 3010
Blue Bell, PA 19422
215 977 1067
215 977 1099 (fax)

(*Id.* at Ex. P-2)

16) Later the same day, Baer responded:

From: Baer, Benjamin
Sent: Wednesday, August 06, 2014 8:59 PM
To: Dean R. Phillips
Cc: Richard C. DeMarco; Stuart S. Smith; Bendesky, Larry
Subject: Re: [Z.G.]/propane tank explosion case

Hi Dean,

Sorry for the delay in my response. Please allow this e-mail to confirm the fee agreement you outlined below.

Thanks,
Ben

Benjamin J. Baer, Esq.
Saltz Mongeluzzi Barrett & Bendesky

17) The last sentence of Phillips' email meant EG was confirming, with SMBB's permission, that EG would have an ongoing involvement with Z.G. EG expected SMBB "to keep us in the loop." Phillips testified further that "sometimes the referral attorney can be valuable in settlement negotiations and helping to talk to the client, but I was not—and I don't think anyone can fairly say that I was incurring an obligation on the firm to do those things."

Phillips always asked referral lawyers if they were comfortable with EG performing those activities “because you don’t want to mess with what they’re doing.” (*Id.* at 75)

18) Richard DeMarco was the only person employed at EG who had any contact with Z.G. or her brother. (*Id.* at 62)

19) Phillips left EG in February, 2015. (*Id.* at 55)

BENJAMIN BAER, ESQUIRE

20) Benjamin Baer obtained his license to practice law in Pennsylvania in 2007 and has been employed by SMBB since 2012. (*Id.* at 86)

21) Baer received a telephone call about the Z.G. case from Dean Phillips. A day or two later, a lunch meeting was held including Duffy, Phillips, DeMarco and Baer regarding the referral of Z.G.’s case to SMBB. (*Id.* at 87-88)

22) A subsequent meeting was held at EG’s Philadelphia offices with Eddie, DeMarco, Phillips and Duffy. (*Id.*)

23) SMBB was already aware of the tank explosion which injured Z.G. (*Id.* at 90)

24) Baer and Phillips had a telephone conversation about the referral fee in the case. Phillips followed up by sending an email to Baer at 12:59 p.m. on August 6, 2014. Baer spoke to SMBB’s managing partner, Larry Bendesky, Esquire, before confirming the fee agreement in a return email at 8:59 p.m. later that same day. (*Id.* at 94-95)

25) Z.G.’s brother, Eddie, signed a Contingent Fee Agreement with SMBB on behalf of his sister, Z.G. (*Id.* at 100). This document was not produced at trial.

26) Z.G. signed her own contingent fee agreement with SMBB in November 2014 after she turned eighteen years old and was discharged from the hospital. (*Id.* at 100; Ex. P-3).

27) Baer prepared and presented the SMBB contingent fee agreement to Z.G. (*Id.* at 101)

28) Baer's meeting with Z.G. and Eddie lasted approximately 30 minutes.

29) Baer's personal practice is to explain the terms of the contingent fee agreement to a client, including that language explaining that a referral attorney is entitled to a portion of the one attorneys' fee. (*Id.*)

30) Baer explained to Z.G. that the referring attorney or firm would receive a referral fee. (*Id.* at 101, 102, 124)

31) Neither Z.G. nor her brother ever objected to the fact that there was a referral fee. (*Id.* at 102)

32) The fee sharing language of SMBB's contingent fee agreement with Z.G. states as follows:

If you have been referred to our Firm, by another attorney, our Firm may divide our fee for legal services with the referring attorney. You, as the client, are only responsible to pay one fee to both our Firm and the attorney who referred you to our Firm.

(Id. at Ex. P-3)

33) Baer testified that the expression "by another attorney" was standard language used in SMBB's contingent fee agreements whether the referral came from an individual attorney or law firm. (*Id.* at 102-104)

34) Baer did not investigate which lawyer at EG originated Z.G. as a client. (*Id.* at 115)

35) Once SMBB accepted the case, it handled all aspects of investigation, pleadings, discovery and settlement discussions. DeMarco was not involved with those activities, nor was he or anyone else from EG expected to be involved. (*Id.* at 104-105) DeMarco was involved,

however, in one or more conversations trying to determine which entity or person filled the propane tanks. (*Id.* at 128-129)

36) The strategic litigation decisions were handled by SMBB. DeMarco was involved with Z.G. and her family as a “source of comfort.” (*Id.* at 127)

37) Baer provided Stuart Smith, Esquire, a lawyer employed by EG, with periodic updates regarding the progress of Z.G.’s case. (*Id.* at 105)

38) SMBB settled Z.G.’s case for \$71,120,000 on April 20, 2018 resulting in a referral fee of \$11,330,804.15. (*Id.* at 11)

39) SMBB stands ready to honor the referral agreement. SMBB has escrowed the money and will pay the referral fee. (*Id.* at 99)

RICHARD DEMARCO, ESQUIRE

40) Richard DeMarco was admitted to practice law in Pennsylvania in 1992. He started his career as a judicial law clerk and worked at Philadelphia law firms for a decade before joining EG. (Trial Tr., vol. 2, 98-102, July 12, 2022)

41) DeMarco was hired by John Elliott, Esquire, CEO (hereinafter also “Elliott”) on November 11, 2011. The terms of DeMarco’s employment were confirmed in a letter by Elliott to DeMarco as follows:

November 11, 2011

Richard C. DeMarco, Esquire
3139 S. Broad Street
Philadelphia, PA 19148

Dear Rich:

We enjoyed meeting with you yesterday, and are happy to extend you an offer to join us as Of Counsel at a salary of \$150,000 a year. You will be principally based in our Philadelphia office at Two Liberty Place.

You will be considered for a bonus in December 2012, and the Firm will review you for shareholder status no later than eighteen (18) months after you commence employment.

We look forward to working with you, and feel that you will work congenially and productively with our lawyers throughout our offices in Philadelphia, Blue Bell, Scranton, Wilkes-Barre, Harrisburg and Wilmington.

If you have any questions, please contact Fred or me.

Sincerely,

JOHN M. ELLIOTT

cc: Frederick P. Santarelli, Esq.

(Trial Tr., vol. 1 at 135, Ex. P-12)

42) DeMarco acknowledged the terms of his compensation at EG were set forth in Exhibit P-12. DeMarco did not have an employment contract with EG. (*Id.* at 135-136; Ex. P-12)

43) DeMarco was a full time employee of EG in 2014. As such, he was not permitted to have a side practice, and he agreed to devote his full time efforts to the firm. (*Id.* at 201)

44) EG paid DeMarco's legal malpractice premium while he was employed there. (*Id.* at 148-150)

45) DeMarco's compensation was a set salary and a discretionary bonus. (*Id.* at 138)

46) DeMarco did not receive a bonus every year while employed at EG. (*Id.* at 136)

47) DeMarco was not entitled to a set fixed percentage of fees from business origination. (*Id.* at 137)

48) DeMarco had an expectation that he would get a portion of originated business, but he was never told how or why EG paid a bonus or why they did not. (*Id.* at 138)

49) DeMarco became a “shareholder” of EG sometime after he was hired. However, there was no shareholder agreement at EG. His change in status from “of counsel” to “shareholder” did not change the terms of his employment. (*Id.* at 138-139)

50) DeMarco specialized in zoning and land use matters. He previously handled a handful of personal injury matters. (*Id.* at 140)

51) DeMarco brought the Z.G. case into the EG law firm. DeMarco’s client and friend, Elizabeth Casey, worked for a company with Z.G.’s brother, Eddie. DeMarco performed legal services for the company where Casey and Eddie worked. Casey reached out to DeMarco about Z.G.’s potential case. (*Id.* at 142-143)

52) DeMarco consulted with Phillips about the Z.G. case. (*Id.* at 142-144)

53) DeMarco asked Phillips for an EG contingent fee agreement. (*Id.* at 148)

54) Phillips gave DeMarco an EG contingent fee form with Phillips’ signature for Eddie to sign on behalf of his minor sister. (*Id.* at 152)

55) Phillips made the suggestion to refer Z.G.’s case to SMBB. (*Id.* at 145)

56) A lunch meeting was held with DeMarco, Phillips, Baer and Duffy in Philadelphia to discuss the case. (*Id.* at 145)

57) DeMarco attended the meeting while he was of counsel to the EG firm. Phillips attended the meeting while he was a shareholder at the EG firm. (*Id.* at 146)

58) DeMarco was present when Eddie signed a contingent fee agreement on behalf of his sister with SMBB. DeMarco explained the SMBB contingent fee agreement to Eddie. (Trial Tr., vol. 2 at 100)

59) Z.G. signed a contingent fee agreement with SMBB in the presence of DeMarco, Baer and Eddie. (*Id.* at 102-106)

60) DeMarco testified the clients were aware there was a referral fee in this case and never objected to it. (Trial Tr., vol. 1 at 168)

61) DeMarco testified he was “very confident” Z.G. and her brother understood two law firms would share in one attorneys’ fee which would not reduce her recovery. He was not confident they understood that the fee would be paid to EG if he no longer worked there. (Trial Tr., vol. 2 at 104-106)

62) DeMarco testified the referral fee would be paid to Elliott Greenleaf if Z.G.’s case settled while DeMarco was still employed there. (*Id.* at 109)

63) DeMarco testified that Z.G. “would have approved of payment [of the referral fee] to Elliott Greenleaf if I was still working there.” (Trial Tr., vol. 1 at 169)

64) DeMarco made the decision to leave EG in November 2016. He departed EG at the end of December 2016. (*Id.* at 136)

65) DeMarco spoke with Eddie about his decision to leave EG and whether Eddie wanted to remain with EG. (*Id.* at 170)

66) DeMarco testified that Eddie had no desire to remain with EG after DeMarco left. (*Id.* at 171)

67) DeMarco did not speak Spanish. He relied on Eddie to speak to Z.G. DeMarco could not communicate with Z.G. who only spoke Spanish at that time. (*Id.* at 173)

68) DeMarco prepared an exit memo on December 28, 2016 informing Frederick Santarelli, Esquire at EG (hereinafter “Santarelli”) of the cases he was taking to his new law firm. (*Id.* at 66-67)

69) DeMarco tried to follow up several times with Santarelli to reach an understanding about how to treat the referral fee in Z.G.'s case. Santarelli kept saying "it's all going to be worked out." (Trial Tr., vol. 1 at 190)

70) The parties did not reach an agreement about DeMarco's claim to an interest in the referral fee at the time of DeMarco's departure from EG. (Trial Tr., vol. 1 at 212; Trial Tr., vol.2 at 71)

71) DeMarco testified he clearly told Santarelli that Z.G. made a decision "to go with me" to his new firm. (Trial Tr., vol. 1 at 212)

72) DeMarco drafted the following letter dated December 1, 2016:⁷

[Z.G.]
5912 Palmetto Street
Philadelphia, PA

December 1, 2016
Elliott Greenleaf PC
Two Liberty Place
50 S. 16th Street, Suite 2960
Philadelphia, PA 19102

Re: [Z.G.] et al. v. UHaul et al., Court of Common
Pleas of Philadelphia County, Docket No. 151002106

Dear Sir or Madam:

I have been informed that Richard C. DeMarco, my attorney, is leaving Elliott Greenleaf, PC and moving over to Lauletta Birnbaum PC. Please know that Richard DeMarco is my attorney, and his client Ofir Komerian, who referred me to Mr. DeMarco, has also been extremely helpful to me. I signed a fee agreement with Elliott Greenleaf because it was Richard DeMarco's firm. It is my intention that Mr. DeMarco continue to represent me, and that he continue to represent me in my case referenced above. Consistent with this, the above case should transfer with Mr. DeMarco to his new firm, and wherever he goes. Note though that I am very happy with the representation that Saltz Mongeluzzi PC and Elliott Greenleaf have provided to me, and

⁷ The court will treat the December 1, 2016 letter as a discharge of EG, notwithstanding the absence of traditional terms such as "discharge" or "terminate."

that I do not wish to remove my case from Saltz Mongeluzzi. However, it is my intention that my legal interests transfer with Mr. DeMarco to Lauletta Birnbaum, and that the appropriate and proper compensation be paid to Mr. DeMarco upon the resolution of my case by Saltz Mongeluzzi.

Thank you for your attention to this matter. I am very grateful to the assistance of your firm has provided to me.

Very truly yours,

[Z.G.]

cc: Ofir Komerian
Benjamin Baer, Saltz Mongeluzzi
Lauletta Birnbaum PC

(Ex. P-4)

73) DeMarco gave the letter to Elizabeth Casey to obtain Z.G.'s signature. (*Id.* at 182-183)

79) DeMarco never discussed the letter with Z.G. He was not present when it was explained to her or when she signed it. (*Id.* at 180-183)

80) The signed letter was returned to DeMarco in the summer of 2017. (Trial Tr., vol. 1 at 177)

81) DeMarco never sent a copy of the December 1, 2016 letter to anyone at EG or SMBB before filing his Complaint on May 1, 2018. (*Id.* at 192)

82) DeMarco sent a letter by email to Robert J. Mongeluzzi, Esquire (hereinafter "Mongeluzzi") on January 29, 2018 which stated that he referred Z.G. to SMBB, that he left EG to go with a new firm, that he continues to represent Z.G. and her brother, and wanted to discuss how the referral fee "should be handled among the three firms."⁸ (Ex. P-27)

⁸ Santarelli testified he did not open DeMarco's email attachment which contained the letter and, therefore, had no knowledge or awareness of Z.G.'s intentions until after DeMarco commenced litigation. (Trial Tr., vol. 1 at 216-217) DeMarco's unanswered Request for Admission admits that the letter he prepared was not produced before May 1, 2018. The discrepancy of these dates is not material to the disposition of the legal issues.

83) Santarelli, Baer and Z.G. were copied on DeMarco's email letter to Mongeluzzi.

84) On April 25, 2018, Mongeluzzi sent a letter to Elliott, Phillips, Smith and DeMarco notifying them of the settlement and the expected amount of the referral fee. Mongeluzzi attached a copy of the August 6, 2014 email exchange between Phillips and Baer which he identified as "the referral fee agreement between our firms." (*Id.* at 219, Ex. P-28)

85) Mongeluzzi indicated that in light of DeMarco's assertion of an interest in the referral fee, SMBB would keep the funds in escrow until DeMarco's asserted interest in the referral fee was resolved. (*Id.* at 219)

86) DeMarco never had a referral fee agreement with SMBB in connection with Z.G.'s personal injury matter. (*Id.* at 195)

87) DeMarco never received any writing from EG indicating he was entitled to any portion of the referral fee from the Z.G. case. (*Id.* at 166)

88) After he left EG, DeMarco continued to work with Eddie regarding his relationship with his employer, Z.G. and Eddie's financial situation regarding high-interest loans, their depositions in the personal injury matter, and immigration issues. (Trial Tr., vol. 2 at 73-74)

FREDERICK SANTARELLI, ESQUIRE

89) Frederick Santarelli, Esquire has been the President of EG since 2015. He has been employed at EG since 1990. (*Id.* at 197)

90) Santarelli testified that DeMarco contacted him in 2011 and inquired about working at his firm. (*Id.* at 198)

91) Santarelli told DeMarco he would be paid a salary and there were no guaranteed bonuses. (*Id.* at 201)

- 92) Santarelli told DeMarco that bonuses were paid at the discretion of John Elliott.⁹
(*Id.* at 199)
- 93) DeMarco accepted the above terms. (*Id.* at 199)
- 94) DeMarco was a W-2 full time employee of EG while he was “of counsel” and also while he was a “shareholder.” (*Id.* at 201)
- 95) There was no shareholders’ agreement at EG. (*Id.* at 263)
- 96) EG did not allow any of its lawyers to have side practices. (*Id.* at 201)
- 97) EG did not pay origination fees. There were no promises or guarantees regarding payment of bonuses to EG employees. (*Id.* at 201, 204)
- 98) DeMarco told Santarelli about the Z.G. case. Santarelli recommended getting Phillips involved. Santarelli told John Elliott about the case and everyone agreed to refer it to SMBB. (*Id.* at 204-205)
- 99) DeMarco told Santarelli in late 2016 that he was leaving EG and going to a new firm. (*Id.* at 206)
- 100) Santarelli asked DeMarco to prepare an exit memo regarding cases he was handling. (*Id.* at 209)
- 101) DeMarco’s exit memo regarding the Z.G. case states as follows:
- This is a client of mine who had a catastrophic burn injury. At the recommendation of Dean Phillips, we referred her to Saltz, Mongeluzzi. Z.G. and Z’s [sic] brother want to continue to work with me. Z [sic] is okay with Saltz, Mongeluzzi continuing to represent her, but Fred and I should discuss the referral.
- (*Id.* at 209-210; Ex. P-25)
- 102) The cover email accompanying the exit memo from DeMarco to Santarelli on December 28, 2016 states, “We can talk further.” (*Id.* at 239)

⁹ John Elliott died in 2021. Trial Tr., vol. 1. at 133.

103) Santarelli told DeMarco he didn't have authority to make any promises about the referral fee and he would talk to John Elliott, the owner of the firm, if and when a fee was realized. Santarelli stated "as you know, John makes those decisions." (*Id.* at 211, 218, 266)

104) DeMarco did not provide Santarelli with a copy of the December 1, 2016 letter from Z.G. (*Id.* at 212)

105) DeMarco never told Santarelli that Z.G. or her brother wanted to terminate EG. (*Id.*)

106) Santarelli had no objection to DeMarco continuing to talk to Z.G. and her brother since DeMarco had introduced them to the firm and the case was already "referred out" to SMBB. (*Id.* at 213)

107) There was never an agreement between EG and DeMarco which provided DeMarco with a set percentage of the referral fee in Z.G.'s case. (*Id.* at 212)

108) Santarelli testified that paragraph 13 of EG's Contingent Fee Agreement and Power of Attorney signed by Eddie on behalf of Z.G. does not apply to a case already referred to another law firm.¹⁰ (*Id.* at 235-236)

JOHN ELLIOTT, ESQUIRE

109) John Elliott's discovery deposition was admitted into the evidentiary record.

¹⁰ Paragraph 13 of EG's Contingent Fee Agreement states as follows: "13. Should any part of this agreement be breached or otherwise terminated, the law firm shall be entitled to (1) withdrawal from your case, and (2) immediate reimbursement of costs, disbursements, and expenses and: (a) any payment of its fee according to the agreed percentage of whatever offer of settlement the law firm may have negotiated as of the date of breach or termination; or (b) to payment of the law firm's fee based upon time actually expended at the prevailing rates, whichever is greater. You agree that the law firm will be immediately entitled to an attorneys' charging lien against any proceeds payable to you and/or transferred to you as the result of your case. A lien is hereby granted and it is expressly agreed that this contract creates a lien against your claim, case and cause of action, and the funds or proceeds which you receive as a result, and you hereby expressly assign to the law firm any such monies or property which may become due and payable as a result of your claim, for all amounts due and payable to the law firm under this Agreement." Ex. P-1 (emphasis in original).

110) Elliott was chairman and CEO of EG for 25 years preceding his deposition on December 4, 2019. (John Elliott Dep. Tr., 13, Dec. 4, 2019)(Ex- P-39))

111) Elliott testified that bonuses were awarded to EG employees at his discretion based upon a multitude of factors. (*Id.* at 8-12)

112) Santarelli did not have authority, without Elliott's approval, to make financial commitments to other lawyers at EG. (*Id.* at 13)

113) Santarelli did not have authority to affect the terms and conditions of a lawyer's employment at EG. (*Id.* at 13-14)

ELIZABETH CASEY

114) Elizabeth Casey ("Casey") works for Prestige Design & Construction, LLC. (Trial Tr., vol. 2 at 28)

115) She has known Richard DeMarco for ten (10) to twelve (12) years. (*Id.* at 28-29)

116) DeMarco did all the zoning work for Prestige. (*Id.* at 29)

117) Z.G. worked for Prestige at one time before she worked for the food truck. (*Id.*)

118) Z.G.'s brother, Eddie, has worked for Prestige for a long time. Casey is pretty good friends with Eddie. (*Id.* at 30)

119) Casey recommended DeMarco to Eddie after learning about Z.G.'s accident. (*Id.* at 32)

120) Casey trusted DeMarco and "knew him to be well connected with other attorneys and with people within the City of Philadelphia." (*Id.*)

121) Casey attended one or two meetings shortly after the accident with DeMarco and other lawyers. (*Id.* at 34)

122) DeMarco told Casey he was leaving EG. He spoke to Eddie and explained that Eddie had a choice to stay at EG or go with him to his new firm. (*Id.* at 35-38, 54)

123) While DeMarco was still at EG, he gave Casey the December 1, 2016 letter to give to Eddie for Z.G. to sign. (*Id.* at 37-39)

124) Eventually, Casey got the signed letter back from Eddie and either she or her boss returned it to DeMarco. (*Id.* at 52)

125) Casey was aware that DeMarco was an employee at EG when he first got involved in the Z.G. case. (*Id.* at 45)

126) Casey did not witness Z.G. sign the letter. (*Id.* at 58; Ex. P-4)

Z.G.

127) Z.G.'s trial deposition was taken on June 15, 2022 and admitted into the record.

128) Z.G.'s brother, Eddie, had Z.G.'s permission and authority to find her a lawyer.

129) Eddie reached out to Richard DeMarco. (Z.G. Oral Dep. Tr., 9, June 15, 2022)

130) DeMarco had Z.G.'s consent to work with Benjamin Baer on her case. (*Id.* at 10)

131) Z.G.'s intention, as confirmed in a writing prepared for her (D-1),¹¹ was always that Richard DeMarco get the referral fee from SMBB. (*Id.* at 13)

¹¹ D-1 states as follows:

1. I signed the letter dated December 1, 2016, which is attached hereto as Exhibit "A", freely and without undue influence from anyone. When he left Elliott Greenleaf, Richard DeMarco explained to my brother Eddie and I that I could remain with the Elliott Greenleaf [firm] if I wanted to, but I did not know anyone at the Elliott Greenleaf law firm other than Richard DeMarco, who I always considered my attorney. The contents of the above referenced letter are true and accurate and represent my intentions with regard to the referral fee in my personal injury case. I have always intended that Richard DeMarco receive the referral fee in my case.

2. When Richard DeMarco left Elliott Greenleaf, I ended by relationship with the Elliott Greenleaf law firm, since I did not know anyone at the Elliott Greenleaf law firm other than Richard DeMarco. I have never spoken to anyone at the Elliott Greenleaf law firm or met anyone from that firm at any time, other than Richard DeMarco while he was employed there.

3. Richard DeMarco helped my brother Eddie and I with my case, and I always appreciated his efforts.

I verify that the above information is true and correct to the best of my knowledge, information and belief.

132) Z.G. did not recall who was with her when she signed D-1, whether anyone explained the document to her, or if anyone translated the document from English to Spanish for her benefit. (*Id.* at 17)

BYRON SANTOS GABRIEL

133) Byron Santos Gabriel's trial deposition was taken on June 15, 2022 and admitted into the record.

134) Z.G. came to the United States in 2014 when she was seventeen years old. (B.S.G. Oral Dep. Tr., 7, June 15, 2022)

135) Liz Casey put Eddie in touch with Richard DeMarco to assist him and his sister about her accident. (*Id.* at 10)

136) Eddie considered DeMarco to be the lawyer for his sister and him, along with Benjamin Baer. (*Id.* at 12)

137) Eddie signed a fee agreement on behalf of his sister. (*Id.* at 13)

138) Eddie and Z.G. wanted DeMarco to continue to work with them when DeMarco left E.G.

139) Liz Casey brought D-2 (letter dated December 1, 2016) to Eddie for his sister to sign. (*Id.* at 14)

140) Eddie was aware that when he signed P-1 (EG's Contingent Fee Agreement and Power of Attorney), that he was hiring the law firm to represent his sister regarding the food truck explosion. (*Id.* at 20-21)

141) Eddie was aware that a referral fee was involved in his sister's case and neither he nor his sister ever objected to it. (*Id.* at 28)

LAWRENCE J. FOX, ESQUIRE¹²

142) Lawrence J. Fox, Esquire was retained by DeMarco to provide his expert opinions with respect to the instant dispute. Fox Rept., 1, March 12, 2020.

143) Mr. Fox is a partner at Schoeman Updike Kaufman & Gerber LLP and a visiting lecturer in law at Yale Law School. See Fox Rept. at Ex. A.

144) Mr. Fox opined that “payment of a referral fee to [EG] would violate Pennsylvania Rule of Professional Conduct 1.5 (e) because a client must give informed consent to the payment of a referral fee.” (*Id.* at 6)

145) Mr. Fox opined that Z.G. “was never adequately advised concerning payment of a referral fee to [EG].” (*Id.* at 4)

146) Mr. Fox opined that “payment of any referral fee to [EG] would violate Pennsylvania’s Rules of Professional Conduct” because Z.G. objected to the payment of the referral fee to EG and her “wish is for Mr. DeMarco to receive the entire referral fee.” (*Id.* at 7)

147) Mr. Fox opined that the referral agreement was void at the beginning and is void now. (Fox Suppl. Rept., 2, June 17, 2020)

148) Mr. Fox believes EG is only entitled to *quantum meruit* because EG was discharged by Z.G. (Fox Rept. at 5)

JAMES C. SCHWARTZMAN, ESQUIRE

149) James C. Schwartzman, Esquire was retained by EG to render his expert opinions regarding the instant dispute. (Schwartzman Letter, 1, May 21, 2020)

¹² The reports and curriculum vitae of Lawrence J. Fox, Esquire, DeMarco’s professional responsibility expert, and James C. Schwartzman, Esquire, EG’s professional responsibility expert, were entered into evidence at the time of Trial. Trial Tr., vol. 1 at 15.

150) Mr. Schwartzman is a shareholder at the Law Firm of Stevens & Lee and serves as a Judge on the Court of Judicial Discipline. (*Id.* at Ex. A)

151) Mr. Schwartzman opined that Mr. Fox’s conclusion that payment of the referral fee to EG relied “upon a fundamental misstatement of Rule 1.5(e).” Mr. Schwartzman opined that Mr. Fox incorrectly determined that Rule 1.5(e) required a client’s informed consent. (*Id.* at 2)

152) Mr. Schwartzman opined that the text of Rule 1.5(e) is “clear and does not require the affirmative “consent of the client, much less what Mr. Fox terms ‘informed consent.’” (*Id.*)

153) Mr. Schwartzman opined that so long as the client does not give an affirmative statement of non-consent and the agreement is otherwise compliant with Rule 1.5, the principal attorney and referring attorney may both participate in the fee. (*Id.*)

154) Mr. Schwartzman opined that Baer’s “unrebutted testimony that he always advised clients, including the client here, of the existence of any referral agreement” and DeMarco’s admissions in the verified pleadings of Z.G.’s approval of the referral fee arrangement do not “prevent the Court from adjudicating rights under the Referral Fee Agreement.” (*Id.* at 3)

155) Mr. Schwartzman opined that Mr. Fox’s report is an improper expert opinion because it makes legal arguments regarding DeMarco’s rights under the referral fee agreement, which is “an issue for the Court to decide.” (*Id.*)

II. JUDICIAL ADMISSIONS¹³

156) “On August 6, 2014, Dean Phillips of Elliott Greenleaf confirmed the referral of Z.G.’s case to [SMBB] through an email.” DeMarco, Counterclaim ¶26, July 11, 2019 (emphasis added).

157) “Admitted that Elliott Greenleaf, in exchange for a referral fee, assumed obligations with respect to client contact and support that it did not perform.” DeMarco, Ans. To Second Amend. Comp., ¶23, July 11, 2019.

158) “DeMarco negotiated the referral and explained it to the client.” *Id.* at ¶24.

159) “The legal effect of Z.G.’s letter was to withdraw her approval of a payment to Elliott Greenleaf of the referral fee on her matter, directing that it go to DeMarco.” DeMarco, Counterclaim at ¶42 (emphasis added).

¹³ Admissions in pleadings judicially bind a party. See *Est. of Sacchetti v. Sacchetti*, 128 A.3d 273, 283 (Pa. Super. 2015)(“factual statements by a ‘party in pleadings ... made for that party’s benefit, are termed judicial admissions and are binding on the party.’” (citing *Cogley v. Duncan*, 32 A.3d 1288, 1292 (Pa.Super.2011))).

DeMarco filed Supplemental Conclusions of Law on August 12, 2022 alleging that paragraphs 23 and 24 of his Answer to EG’s Second Amended Complaint and paragraph 42 of his Counterclaim do not qualify as judicial admissions because they were neither clear and unequivocal nor consistent with the evidence presented at trial. However, the factual statements contained within the paragraphs are consistent with the evidence presented at trial: Paragraph 23 of DeMarco’s Answer factually admits that EG was the party to the referral fee agreement. Ex. P-2, P-28. Phillips’ testimony at Trial Tr., vol. 1 at 74-75; Baer’s testimony at 90-91; and DeMarco’s testimony at Trial Tr., vol. 2 at 109 where he stated “I would agree that if I was still at the Elliott firm, that the fee would be paid to Elliott Greenleaf.”

Paragraph 24 of DeMarco’s Answer factually admits that DeMarco negotiated the referral fee and explained it to Z.G. See DeMarco’s testimony at Trial Tr., vol. 2 at 104-106; Baer’s testimony at Trial Tr., vol. 1 at 101-102.

Paragraph 42 of DeMarco’s Counterclaim factually admits that Z.G. earlier approved the referral fee payment to EG. See DeMarco’s testimony at Trial Tr., vol. 1 at 169, ln. 3-9: [Q:] “Well, this is your verified pleading here. You would agree that it says ‘The legal effect of Z.G.’s letter was to withdraw her approval of a payment to Elliott Greenleaf of the referral fee on her matter.’ Isn’t that what it says? A. It says it, because she would have approved of a payment to Elliott Greenleaf if I was working there.”

Request for Admissions¹⁴

160) DeMarco admitted the following by virtue of never answering Requests for Admissions propounded to him on April 1, 2019 (See Ex. P-33):

1. [DeMarco] did not provide a copy of the December 1, 2016 Letter to anyone at Elliott Greenleaf prior to filing the DeMarco Complaint.
2. [DeMarco] did not provide a copy of the December 1, 2016 Letter to anyone at the [SMBB] firm prior to filing the DeMarco Complaint.
7. Prior to filing the DeMarco Complaint, [DeMarco] did not tell anyone at Elliott Greenleaf that Z.G. desired to discharge Elliott Greenleaf as her counsel.
9. [DeMarco] never had a written agreement with Z.G. setting forth the terms of [DeMarco's] compensation for representing her in connection with the Z.G. Personal Injury Matter.
11. [DeMarco] had no referral fee agreement with the [SMBB] law firm in connection with the Z.G. Personal Injury Matter.

III. LEGAL CONCLUSIONS

A. The August 6, 2014 Referral Fee Agreement Between Elliott Greenleaf and Saltz, Mongeluzzi, Barrett & Bendesky, P.C. is an Enforceable Contract

1) General contract principles establish that a contract is enforceable when the parties “have manifested an intent to be bound by the terms of the agreement ... the terms are

¹⁴ “Requests for admission, in contrast, are governed by Pa.R.C.P. 4014. They are requests submitted to the opposing party that certain matters be admitted or denied. Matters admitted under Pa.R.C.P. 4014 are ‘conclusively established’ unless they are withdrawn or admitted with court permission.” *Coleman v. Wyeth Pharms., Inc.*, 6 A.3d 502, 526 (Pa. Super. 2010); see also *Est. of Borst v. Edward Stover Sr. Testamentary Tr.*, 30 A.3d 1207, 1210 (Pa. Super. 2011); Pa.R.C.P. §4014(b).

sufficiently definite, and ... consideration existed. If all three of these elements exist, the agreement shall be considered valid and binding.” *Johnston the Florist, Inc. v. TEDCO Const. Corp.*, 657 A.2d 511, 516 (Pa. Super. 1995). Courts look to the language of the written contract to determine the intent of the contracting parties. *Volunteer Firemen's Ins. Servs., Inc. v. CIGNA Prop. & Cas. Ins. Agency*, 693 A.2d 1330, 1339 (Pa. Super. Ct. 1997)(referring to *Liazis v. Kosta, Inc.*, 618 A.2d 450, 454 (Pa. Super. 1992)).

2) “[T]he paramount goal of contractual interpretation is to ascertain and give effect to the intent of the parties.” *Stephan v. Waldron Elec. Heating & Cooling LLC*, 100 A.3d 660, 668 (Pa. Super. 2014)(quoting *RegScan, Inc. v. Con-Way Transp. Services, Inc.*, 875 A.2d 332 (Pa. Super. 2005) (internal citation omitted)). “When the words of the contract are unequivocal, they speak for themselves, and a meaning other than that expressed cannot be given to them.” *Id.* (referring to *Lindstrom v. Pennswood Village*, 612 A.2d 1048, 1051 (Pa. Super. 1992)). “As the parties have the right to make their own contract, we will not modify the plain meaning of the words under the guise of interpretation or give the language a construction in conflict with the accepted meaning of the language used.” *Profit Wize Mktg. v. Wiest*, 812 A.2d 1270, 1274-1275 (Pa. Super. 2002).

3) The referral fee agreement memorialized in the August 6, 2014 email exchange established EG and SMBB as parties to an enforceable contract. The email exchange confirmed the agreement between the two law firms that EG would receive a percentage of the legal fee realized by SMBB in Z.G.’s case.

4) Pennsylvania Rule of Professional Conduct 1.5(e) expressly allows for fee-splitting among lawyers who are not members of the same firm. Referral agreements are enforceable contracts in Pennsylvania. Upon entering into a referral agreement, the contract

bestows a property interest upon the referring counsel. See Pa.R.Prof.Con. 1.5(e); *Francis J. Bernhardt, III, P.C. v. Needleman*, 705 A.2d 875, 878 (Pa. Super. 1997).

5) The August 6, 2014 email exchange between Dean Phillips, Esquire and Benjamin Baer, Esquire is clear and unequivocal. It confirms the existence of a valid and enforceable referral fee contract between EG and SMBB.

6) Richard DeMarco is not a party to the referral fee agreement and does not have an equitable or legal interest in the referral agreement between EG and SMBB.

B. Pennsylvania Rule of Professional Conduct 1.5(e)

7) DeMarco asserts the August 6, 2014 referral agreement violates Rule 1.5(e) of the Pennsylvania Rules of Professional Conduct and, as such, is void as against public policy. He asserts Z.G. was not informed of the fee-sharing agreement and had no opportunity to object when it was made. DeMarco Findings of Fact and Conclusions of Law, at ¶ 134. He further asserts that Z.G. “objected through her Dec. 1, 2016 letter, which was received by [SMBB] prior to settlement of the case.” *Id.* at ¶136.

8) Rule 1.5 (e) provides as follows:

A lawyer shall not divide a fee for legal services with another lawyer who is not in the same firm unless:

- (1) the client is advised of and does not object to the participation of all the lawyers involved, and
- (2) the total fee of the lawyers is not illegal or clearly excessive for all legal services they rendered the client.

9) The Rules of Professional Conduct serve to regulate and supervise attorneys but do not give rise to causes of action. “The Rules of Professional Conduct do not carry the force of substantive law, nor do they broaden an attorney's duties in civil legal proceedings; instead, they are a basis upon which to sanction a lawyer through the disciplinary process.” *In re Adoption of M.M.H.*, 981 A.2d 261, 273 (Pa. Super. 2009); see also *SCF Consulting, LLC v. Barrack, Rodos*

& *Bacine*, 175 A.3d 273, 277, (Pa. 2017)(referring to *In re Estate of Pedrick*, 482 A.2d 215, 217 (Pa. 1984)).

10) Rule 1.5(e) requires only that the client is informed of the referral agreement and that no objection is made. “Unlike many other Rules, which require a client’s express consent after full disclosure of a particular aspect of representation, this Rule only requires that, after being apprised that more than one lawyer will participate in the fee, the client ‘does not object.’” Pa. Bar Assoc. Comm. on Legal Ethics and Professional Responsibility, Formal Op. 96-176, 2 (1997)(titled “Referral Fees and Fee Splitting Under Rule 1.5 of the Rules of Professional Conduct”).

11) “Because there is no requirement that the client be told anything more than the fact that a fee will be split, the Committee concludes that Rule 1.5(e) does not convey to the client the authority to manipulate or veto the specific terms of the referral or a split fee relationship.” *Id.* at 3.

12) “[T]he lawyer is not required under Rule 1.5 to secure an additional consent to the payment of a referral fee upon the conclusion of the matter and distribution of the proceeds, assuming the referral fee is entirely drawn from the previously agreed upon contingent fee.” *Id.* at 3.

13) SMBB and DeMarco properly informed Z.G. about the fee sharing arrangement and she never objected to it. Trial Tr., vol.1 at 101, 102, 124, 168; vol. 2 at 104-106; B.S.G. Oral Dep. at 28.

14) DeMarco did not produce Z.G.’s signed letter to EG or SMBB before he filed his complaint on May 1, 2018. Trial. Tr., vol. 1 at 192. Z.G.’s letter does not qualify as an

objection to the referral agreement under Rule 1.5(e). Even if this letter could be construed as an objection under Rule 1.5(e), it is untimely and waived.

15) DeMarco’s claim that the referral agreement is void because it violates public policy is conceptually and legally flawed. Abrogation of the referral agreement would preclude SMBB from dividing the legal fee with EG. It would not, however, entitle DeMarco to the fee. It only would prevent SMBB from sharing it with EG.

16) “[A]s a general matter, a challenger who asserts that clear and unambiguous contract provisions ... are void as against public policy carries a heavy burden of proof.” *Sayles v. Allstate Ins. Co.*, 656 Pa. 99, 219 A.3d 1110, 1122-123 (Pa. 2019)(internal citation omitted). “When considering whether a contract violates public policy, we are mindful that public policy is more than a vague goal which may be used to circumvent the plain meaning of the contract. Rather ‘[p]ublic policy is to be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interest.... It is only when a given policy is so obviously for or against the public health, safety, morals or welfare that there is a virtual unanimity of opinion in regard to it, that a court may constitute itself the voice of the community in so declaring [that the contract is against public policy].’” *Safe Auto Ins. Co. v. Oriental-Guillermo*, 214 A.3d 1257, 1261-1262 (Pa. 2019)(citing *Heller v. Pa. League of Cities and Municipalities*, 32 A.3d 1213, 1220-1221 (Pa. 2011)).

17) DeMarco failed to satisfy his burden of proof that the referral agreement violates public policy.

C. The December 1, 2016 Letter

18) DeMarco asserts that Z.G.'s letter dated December 1, 2016 terminated "any relationship that she had with EG" and directed "that the proper compensation be paid to Mr. DeMarco upon the resolution of [her] case by Saltz Mongeluzzi." DeMarco Findings of Fact and Conclusions of Law, ¶ 155 -157 Aug. 5, 2022; see also Exhibit P-4.

19) While a client can terminate her lawyer at any time and for any or no reason, she cannot void an enforceable referral agreement after performance by the referring law firm.

20) EG satisfied its performance obligation under the referral agreement when it referred Z.G.'s case to SMBB.

21) Z.G.'s desire that Richard DeMarco get the referral fee is irrelevant and does not affect the enforceability of the referral agreement. "To allow subsequent events, such as a mere change of heart, to upset the referral arrangement [between law firms] is inconsistent with basic contract law." *Idalski v. Crouse Cartage Co.*, 229 F. Supp. 2d 730, 739 (E.D. Mich. 2002).¹⁵

22) Z.G. is not a party to the referral agreement between EG and SMBB and has no legally cognizable interest in this dispute since the amount of her recovery remains unchanged

¹⁵ There does not appear to be any precedential appellate authority in Pennsylvania addressing a fact pattern similar to the case at bar. It is thus appropriate to turn to other jurisdictions which have analyzed this issue.

The Supreme Court of Alabama enforced a referral fee agreement where the client attempted to discharge referring counsel, void a referral agreement and direct a referral fee to a lawyer of the client's choosing. *Sirote & Permutt, PC v. C. Randall Caldwell, Jr.*, 2021 WL 4344363, *9 (Ala. 2021). In *Burrell v. Sperry Rand Corp.* 534 F. Supp. 680 (D. Mass. 1982)(decided on other grounds), the client terminated her relationship with referring attorneys before a settlement was reached. Referral counsel and client argued that discharged referral counsel was only entitled to *quantum meruit*. The court rejected that argument and stated "it is clear that [the client] has no legally cognizable interest in the dispute regarding the enforceability of the referral agreement." *Burrell*, 534 F. Supp. at 682. The court enforced the referral contract agreed to by the attorneys and stated "[w]hile [the client] may have strong feelings on where the [referral fee] should go, I know of no authority which allows a client, at the conclusion of the case, to alter the terms of a referral contract to suit her own desires. The reasons for not allowing the client such a prerogative appear self-evident." *Id.*

Similarly, the Court in *Idalski v. Crouse Cartage Co.*, 229 F. Supp. 2d 730, 739 (E.D. Mich. 2002) observed "it would be unwise as a matter of policy to permit a client by whim or fancy, or perhaps more nefarious motives, to undo a referral contract after the lawyers' work is finished but before final payment...client consent to a referral agreement is required only at the time the referral agreement is made and not also immediately prior to payment."

regardless of who gets the referral fee. See *Burrell v. Sperry Rand Corp.* 534 F. Supp. 680, 682 (D. Mass. 1982).

23) The letter dated December 1, 2016 does not affect the enforceability of the referral agreement between EG and SMBB.

D. DeMarco's Other Claims

24) The court also rejects DeMarco's argument that the use of the term "lawyer" as opposed to "law firm" in SMBB's standard contingent fee agreement must mean that SMBB actually contracted with DeMarco as the referring lawyer. This claim is not supported by the evidence. Moreover, the Court finds the use of the term "lawyer" instead of "law firm" on SMBB's standard contingent fee agreement has no legal significance in the circumstances presented here. Trial Tr., vol. 1 at 102-104.

25) The court also rejects DeMarco's claim that he is entitled to the referral fee since he continued "to interact with the Gabriel family" after EG was terminated. The term "interact with the Gabriel family" in the August 6, 2014 referral fee agreement was not a material term of the referral agreement between EG and SMBB.

26) Even if continued contact with Z.G. were a material term of the referral agreement, EG's alleged non-performance of this obligation is SMBB's claim to assert as the contracting party with EG. DeMarco has no standing to insert himself into the referral agreement and replace EG by providing gratuitous services to Z.G.

27) The court rejects the analysis and opinions contained in the two Fox reports. Mr. Fox makes no reference to any pleadings or motions in the case (unlike his counterpart, James Schwartzman, Esquire). His reports make no reference to any deposition testimony, admissions, documents or exhibits in the case. He fails to refer to the specific August 6, 2014 referral fee

agreement between EG and SMBB or its terms. There is no reference in the Fox reports to materials reviewed and relied upon or operative facts supporting his analysis. Mr. Fox refers to two appellate cases, each of which is inapposite, since they involve discharge of law firms actively handling a case and not the enforceability of a referral agreement where the referring law firm was discharged.¹⁶ Although Mr. Fox accurately quotes Rule 1.5(e), he misstates its application (“Payment of a referral fee would violate P.R.C. 1.5(e) because a client must give informed consent to the payment of a referral fee.”) Fox Rept., March 12, 2020 at 6 (emphasis added). His statement that the discharge of EG “took place before much of the litigation leading to the settlement” is factually inaccurate since production of the so-called discharge letter did not surface until the underlying personal injury case already settled.

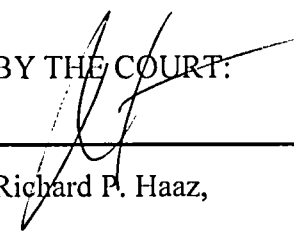
¹⁶ The two cases cited in the Fox report are *Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C. v. L. Firm of Malone Middleman, P.C.*, 179 A.3d 1093 (Pa. 2018) and *Angino & Rovner v. Jeffrey R. Lessin & Assocs.*, 131 A.3d 502 (Pa. Super. 2016). *Meyer* involved a *quantum meruit* claim by predecessor counsel (Meyer, Darragh) against successor counsel seeking apportionment of attorney’s fees obtained as a result of a settlement of a personal injury action. The *Meyer* court held that a predecessor law firm could bring a *quantum meruit* claim against a former client and also against successor counsel in limited circumstances “where the facts demonstrate unjust enrichment, that is, successor counsel has received and retained a benefit from predecessor counsel which would be unjust to retain without some payment to predecessor counsel.” *Meyer*, 179 A.3d at 1105. This case is factually and legally inapposite to the case at bar.

In *Angino & Rovner*, a law firm obtained a settlement in a personal injury case arising from a motor vehicle accident. The law firm made a UIM claim and the client discharged that firm before retaining a new firm to pursue that claim. The client, through the new firm, obtained a UIM award and predecessor law firm brought an action against successor law firm. On appeal, the Superior Court held the predecessor law firm’s claim was limited to *quantum meruit*. Again, this case is factually and legally inapposite.

His rebuttal report accusing Mr. Schwartzman of endorsing a client's "uninformed consent" is a misleading mischaracterization of Mr. Schwartzman's opinions.

An accompanying Decision to follow.

BY THE COURT:



Richard P. Haaz,

J.

September 2, 2022

E-filed on 9/2/22.

Service via e-filing by the Prothonotary to the parties of record.

Emailed to Court Administration- Civil Division.



Judicial Secretary