**[J-15A-2016 and J-15B-2016] [MO: Baer, J.]**
**IN THE SUPREME COURT OF PENNSYLVANIA**
**WESTERN DISTRICT**

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| MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, P.L.L.C. | : | No. 8 WAP 2015 |
| | : | Appeal from the Order of the Superior Court entered June 17, 2014 at No. 1470 WDA 2012, vacating the Judgment of the Court of Common Pleas of Allegheny County entered August 22, 2012 at No. AR 10-007964 and remanding. |
| v. | : | |
| LAW FIRM OF MALONE MIDDLEMAN, P.C., AND CANDACE A. EAZOR AND RICHARD EAZOR, AS EXECUTORS OF THE ESTATE OF RICHARD A. EAZOR | : | |
| | : | ARGUED: October 6, 2015 |
| APPEAL OF: LAW FIRM OF MALONE MIDDLEMAN, P.C. | : | RESUBMITTED: January 20, 2016 |
| MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, P.L.L.C. | : | No. 9 WAP 2015 |
| | : | Appeal from the Order of the Superior Court entered June 17, 2014 at No. 1484 WDA 2012, vacating the Judgment of the Court of Common Pleas of Allegheny County entered August 22, 2012 at No. AR 10-007964 and remanding. |
| v. | : | |
| LAW FIRM OF MALONE MIDDLEMAN, P.C., AND CANDACE A. EAZOR AND RICHARD EAZOR, AS EXECUTORS OF THE ESTATE OF RICHARD A. EAZOR | : | |
| | : | ARGUED: October 6, 2015 |
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***CONCURRING OPINION***

**CHIEF JUSTICE SAYLOR** **DECIDED: APRIL 25, 2016**

I join the majority opinion and write to address the following concerns pertaining to the *quantum meruit* aspect of this litigation.

Relying on its precedent, the Superior Court indicated a predecessor law firm may only proceed under a *quantum meruit* theory against its former client, but not against a successor law firm. *See Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C. v. Law Firm of Malone Middleman, PC*, 95 A.3d 893, 897 (Pa. Super. 2014) (citing, *inter alia*, *Mager v. Bultena*, 797 A.2d 948 (Pa. Super. 2002), and *Fowkes v. Shoemaker*, 443 Pa. Super. 343, 661 A.2d 877 (1995)); *see also id.* at 898 ("Until our supreme court holds otherwise, we will not recognize a claim for *quantum meruit* by a former attorney against a subsequent attorney." (bolding omitted)). The difficulty, as I see it, is that this puts the client in an untenable position where, as here, the client has already paid the attorney fee in full to the successor law firm. In this regard, and as the majority notes, *quantum meruit* is an equitable doctrine. *See* Majority Opinion, *slip op.* at 4 n.4. As such, I would be particularly cautious about a *quantum meruit* framework under which an excessive payment obligation was ultimately imposed upon the client.[1]

I am also circumspect concerning the degree to which the present decision may be construed as suggesting, if only implicitly, that Meyer Darragh has abandoned its *quantum meruit* claim by failing to raise it in its brief or by not filing a protective cross-petition for allowance of appeal. *See, e.g.*, *id.* at 8 ("Meyer Darragh did not seek allowance of appeal from the Superior Court's denial of *quantum meruit* relief."); *id.* at 14 n.9 ("Meyer Darragh does not attempt to resurrect its *quantum meruit* claim against Malone Middleman in its brief to this Court."). Litigants are generally discouraged from

[1] Notably, a number of other jurisdictions have applied the *quantum meruit* principle to disputes between successive attorneys in contingency-fee cases. *See, e.g.*, *Melat, Pressman & Higbie, L.L.P. v. Hannon Law Firm, L.L.C.*, 287 P.3d 842, 847 (Colo. 2012); *Searcy, Denney, Scarola, Barnhart & Shipley, P.A. v. Poletz*, 652 So. 2d 366, 368 (Fla. 1995); *Nunn Law Office v. Rosenthal*, 905 N.E.2d 513, 519 (Ind. Ct. App. 2009); *Somuah v. Flachs*, 721 A.2d 680, 688 (Md. 1998); *Reynolds v. Polen*, 564 N.W.2d 467, 471 (Mich. Ct. App. 1997).

briefing issues not accepted for review. In a decision announced shortly before Malone Middleman petitioned for review, moreover, this Court reaffirmed that protective cross-appeals are disfavored and that "a successful litigant need not file a protective cross-appeal on pain of waiver." *Lebanon Valley Farmers Bank v. Commonwealth*, 623 Pa. 455, 464, 83 A.3d 107, 113 (2013); *see also Basile v. H&R Block, Inc.*, 601 Pa. 392, 399, 973 A.2d 417, 422 (2009) ("An appellee should not be required to file a cross appeal because the Court below ruled against it on an issue, as long as the judgment granted Appellee the relief it sought" (quoting Pa.R.A.P. 511, Note)). Presently, Meyer Darragh prevailed at the common pleas level on its *quantum meruit* claim and obtained a verdict of more than $14,700. *See Meyer, Darragh, Buckler, Bebenek & Eck v. Law Firm of Malone Middleman, PC*, No. AR10-007964, Non-Jury Verdict (C.P. Allegheny July 25, 2012), *reproduced in* R.R. 335a. In the Superior Court, although that theory for recovery was disapproved, an alternate – and mutually exclusive – legal theory, giving Meyer Darragh an even larger recovery, was endorsed in a ruling which this Court now reverses.

It is possible that, in electing not to file a cross-petition for allowance of appeal, Meyer Darragh relied to its detriment upon this Court's pronouncements in *Lebanon Valley* and *Basile*.[2] Thus, my present joinder should not be construed as foreclosing Meyer Darragh's ability to request *nunc pro tunc* relief in the form of leave to cross-petition for allowance of appeal in light of today's holding.

Justice Dougherty joins this concurring opinion.

[2] It is simply not clear how *Lebanon Valley*'s guidance translates into scenarios, such as this, where remedies are mutually exclusive, and into the discretionary appeals context, where the Court is generally confined according to the issues accepted for review.