

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2016 CA 0359

 ADVANCED QUALITY CONSTRUCTION, INC.

VERSUS

 AMTEK OF LOUISIANA, INC. AND AEGIS SECURITY  
INSURANCE COMPANY

Judgment Rendered: OCT 28 2016

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On Appeal from the  
22nd Judicial District Court  
In and for the Parish of St. Tammany  
State of Louisiana  
Trial Court No. 2011-12280, Div. B

The Honorable August J. Hand, Judge Presiding

\* \* \* \* \*

John R. Walker  
Covington, Louisiana

Attorney for Appellants  
Defendants – Amtek of  
Louisiana, Inc. and Aegis  
Security Insurance Company

William O. Lape, III  
Covington, Louisiana

Attorney for Appellee  
Plaintiff – Advanced Quality  
Construction, Inc.

\* \* \* \* \*

BEFORE: PETTIGREW, McDONALD, AND DRAKE, JJ.

**DRAKE, J.**

A contractor, and its insurer, appeals a judgment awarding its former subcontractor attorney's fees following our remand of the matter to the trial court. For the reasons that follow, we amend the trial court's judgment to reduce the attorney's fees and costs award, and affirm as amended.

### **FACTS AND PROCEDURAL HISTORY**

This case involves a breach of contract claim in connection with a construction project. In the prior appeal of this matter, the general contractor, defendant/appellant Amtek of Louisiana, Inc., and its surety Aegis Security Insurance Company, appealed a judgment of the trial court following a two-day bench trial that awarded Amtek's former subcontractor, plaintiff/appellant Advanced Quality Construction, Inc. (AQC), \$106,811.73 in damages and statutory attorney's fees totaling \$10,681.17, pursuant to La. R.S. 38:2246. *Advanced Quality Constr., Inc. v. Amtek of Louisiana, Inc.*, 2014 CA 0334, 2014 WL 7331933 (La. App. 1 Cir. Dec. 23, 2014) (hereinafter *Amtek I*). In *Amtek I*, this court amended, and affirmed as amended, the portion of the trial court judgment awarding AQC its principal demand, less \$30,747.72 (which represented Amtek's costs of saw cutting and sealing concrete roadway joints following AQC's breach of the contract in that respect), for a damages award totaling \$76,064.01. *Amtek I*, 2014 WL 7331933, \*at 10, 12. This court also reversed the trial court's award of statutory attorney's fees to AQC, noting that it was legal error for the trial court to award AQC attorney's fees pursuant to La. R.S. 38:2246 since the trial court did not award AQC the full amount of its lien under the Public Works Act, La. R.S. 38:1 *et seq.* *Amtek I*, 2014 WL 7331933, \*at 11. Following a *de novo* review of the record, this court noted that AQC's subcontract with Amtek contained a clause providing a contractual basis for an award of "reasonable" attorney's fees. *Amtek I*, 2014 WL 7331933, \*at 12; *see Evans v. Lungrin*, 97-

0541 (La. 2/6/98), 708 So. 2d 731, 735. This court remanded the matter to the trial court to determine if any attorney's fees were due either party pursuant to the contractual provision providing for reasonable attorney's fees.<sup>1</sup> *Amtek I*, 2014 WL 7331933, \*at 12; *see* La. C.C.P. art. 2164.

In compliance with the remand, the trial court held a contradictory hearing on September 25, 2015, on AQC's motion to fix costs and attorney's fees. Amtek and Aegis objected to any award of attorney's fees in this case. At the close of the hearing, the trial court took the matter under advisement. After considering the testimony, exhibits, and evidence, the trial court awarded AQC attorney's fees and costs in the amount of \$97,664.74. The trial court issued written reasons for judgment on October 22, 2015, and signed a judgment in conformity therewith on November 16, 2015.

Amtek and Aegis appeal and, in the sole assignment of error, allege the trial court abused its discretion in awarding AQC \$97,664.74 in attorney's fees and costs.

### **LAW AND DISCUSSION**

It is well recognized in the jurisprudence of this state that as a general rule, attorney fees are not allowed except when authorized by statute or contract. *Killebrew v. Abbott Labs.*, 359 So. 2d 1275, 1278 (La. 1978); *Preis Gordon, APLC v. Chandler*, 2015-0958 (La. App. 1 Cir. 2/26/16), 191 So. 3d 31, 37-38, *writ denied*, 2016-0590 (La. 5/20/16), 191 So. 3d 1067. Amtek and AQC entered into a subcontract on November 12, 2010. The subcontract contained the following provision providing for a contractual basis for an award of attorney's fees:

If either party to this subcontract files suit in a court of competent jurisdiction to enforce the terms of this subcontract, the prevailing party shall be entitled to

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<sup>1</sup> Following the decision in *Amtek I*, Amtek filed an application for rehearing, which was denied. AQC and Amtek and Aegis filed respective applications for writs of certiorari with the Louisiana Supreme Court, which were also denied. *Advanced Quality Const., Inc. v. Amtek of Louisiana, Inc.*, 2015-0308, 2015-0321 (La. 4/24/15), 169 So. 3d 358, 359.

recover its reasonable attorney's fees in addition to any other damages.

*Amtek I*, 2014 WL 7331933, \*at 12.

It is well recognized that the Louisiana Supreme Court has full and exclusive authority to regulate all aspects of the practice of law, including the client-attorney relationship. *Chittenden v. State Farm Mut. Auto. Ins. Co.*, 2000-0414 (La. 5/15/01), 788 So. 2d 1140, 1148 (quoting *Succession of Wallace*, 574 So. 2d 348, 350 (La. 1991)). Further, “[c]ourts are vested with the responsibility of both monitoring and analyzing the attorney-client relationship, even when it is based on a written contract between the parties.” *In re Interdiction of DeMarco*, 2009-1791 (La. App. 1 Cir. 4/7/10), 38 So. 3d 417, 427. Part of any attorney-client relationship is the fee the attorney may charge the client for professional services. Any court-ordered reduction in an attorney's fee must rest upon a factual finding that the excessive fee amount was never earned. *DeMarco*, 38 So. 3d at 427. Specifically, unless the attorney-client contract produces an excessive, unearned, or incommensurate fee when measured by the factors in Rule 1.5(a) of the Louisiana State Bar Association Rules of Professional Conduct (RPC), the fee charged must be considered reasonable and enforceable. *DeMarco*, 38 So. 3d at 427.

RPC Rule 1.5(a) provides:

A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

The Louisiana Supreme Court has set forth ten factors to be considered in determining the reasonableness of attorney's fees: (1) the ultimate result obtained; (2) the responsibility incurred; (3) the importance of the litigation; (4) the amount of money involved; (5) the extent and character of the work performed; (6) the legal knowledge, attainment, and skill of the attorneys; (7) the number of appearances made; (8) the intricacies of the facts involved; (9) the diligence and skill of counsel; and (10) the court's own knowledge. *State, Dep't of Transp. and Dev. v. Williamson*, 597 So. 2d 439, 442 (La. 1992). Notably, these factors are derived from RPC Rule 1.5(a) and are applied on a case-by-case basis. *Williamson*, 597 So. 2d at 442 n.9; *see also Covington v. McNeese State Univ.*, 2012-2182 (La. 5/7/13), 118 So. 3d 343, 348, *writ denied*, 2012-2231 (La. 1/17/14), 130 So. 3d 338.

An appellate court must use the "clearly wrong" or "manifestly erroneous" standard of review in considering a trial court's consideration of the ten factors and factual findings relating to the reasonableness of an attorney's fee. *Whitney Bank v. NOGG, L.L.C.*, 2015-1399 (La. App. 1 Cir. 6/3/16), 194 So. 3d 819, 824. The "abuse of discretion" standard of review applies to an appellate review of an

amount awarded by a trial court as a reasonable fee after a finding that a contractual fee was clearly excessive. *Whitney Bank*, 194 So. 3d at 824. The trial court has much discretion in fixing an award of attorney's fees, and its award will not be modified on appeal absent a showing of an abuse of discretion. *Whitney Bank*, 194 So. 3d at 824.

### **Attorney's Fees**

Amtek and Aegis argue the trial court erred in its application of the ten factors in determining the reasonableness of the attorney's fees in this case, and further, abused its discretion by awarding clearly excessive attorney's fees. At the hearing, Amtek did not detail, by specific invoice or by specific charge, its objections to the fees and expenses billed by AQC; however, Amtek questioned witnesses and presented argument regarding certain types of fees and expenses it categorized as unreasonable and excessive, as awarded by the trial court.

Amtek and Aegis contend a review of the invoices submitted at the hearing of this matter by counsel for AQC, Willard O. Lape, III (Trey), reveals the sheer volume of time devoted to this case by Mr. Lape, his staff, and third parties Mr. Lape consulted was grossly disproportionate to the amount in dispute and the complexity of the case. Additionally, Amtek argues that third parties, consulted by Mr. Lape for advice and assistance with the case, were paid an unreasonable and excessive amount of attorney's fees for unnecessary, and often duplicative services. Finally, Amtek contends the invoices reveal unreasonable and excessive billing for secretarial tasks, as well as paralegal time for secretarial tasks.

In this matter, the trial court's written reasons illuminate the factors the court saw as important in the case, the facts to which the trial court applied those factors, and the weight assigned the factors. We note that while an attorney may choose to bill a client at a certain rate and work certain hours on various tasks, and the client agrees to pay said fees, upon review of a trial court's award of attorney's fees, an

appellate court may determine the fees are unreasonable and excessive in light of the Rule 1.5(a) factors and those factors enumerated by the supreme court.

The record reflects that Mr. Lape has represented AQC in this matter for over four years. At the outset of representation, Mr. Lape initially billed AQC for his services at a rate of \$150 per hour, which later increased to \$175 per hour in 2014, and \$185 per hour in 2015. At the hearing on AQC's motion to fix costs and attorney's fees, no attorney fee agreement between AQC and Mr. Lape was introduced into evidence. AQC president Corie Herberger testified at the hearing he did not recall if he signed an attorney fee agreement with Mr. Lape. Mr. Herberger stated that he reviewed each invoice submitted to him by Mr. Lape and testified that he believed each invoice was reasonable. The trial court stated that Mr. Lape charged "a reasonable hourly rate," which was "on the low side, with regard to prevailing market rates in this community." *See Covington*, 118 So. 3d at 350 (noting that the reasonable hourly rate is determined "according to the prevailing market rates in the relevant community" for attorneys of similar experience in similar cases). We find no error in the trial court's appreciation of Mr. Lape's hourly rate.

In determining the reasonableness of the attorney's fees sought by AQC, the trial court first examined the ultimate result obtained by AQC in this matter. In its written reasons, the trial court stated, "the ultimate result obtained by counsel for AQC was a good one," and "[a]lthough this Court's award was reduced on appeal, AQC prevailed in proving its entitlement to compensation for the work it performed." Although successful, we note that AQC did not recover all of the damages it sought, nor did it receive any attorney's fees on appeal. The trial court's original award of \$106,811.73 in damages and statutory attorney's fees equaling \$10,681.17, was amended by this court to a damages award totaling \$76,064.01, a reduction of approximately thirty percent. This court also reversed

the award of statutory attorney's fees. We also cast AQC with half of the costs of that appeal. *Amtek I*, 2014 WL 7331933, \*at 12.

The trial court also considered the extent and character of the work performed, the number of appearances made by Mr. Lape on behalf of AQC, the diligence and skill of Mr. Lape, as well as his legal knowledge, attainment, and skill. The trial court reasoned, “[a]lthough every lawsuit is adversarial to a certain extent, the record shows that AQC had to file a motion to compel written discovery responses. Counsel for AQC also tried alternative methods to obtain necessary documents. In addition to the main demand, there was a reconventional demand and an intervention.” The trial court went on to state:

This litigation resulted in a two-day trial, but the evidence submitted by counsel for AQC showed there was considerable preparation conducted, including speaking with persons identified in written discovery, obtaining documentation from the parish[,] and deposing several individuals. Although Amtek criticizes the amount of preparation undertaken as excessive, the court disagrees, finding the preparation for trial to be reasonable under the circumstances, detailed[,] and diligent.”

The trial court further stated, “[a]lthough the defendants challenge the familiarity of AQC's counsel with this type of litigation, the record in this case shows counsel for AQC performed with the requisite skill, knowledge[,] and diligence to prevail over intransigent opposition.”

The trial court also considered the amount of money involved in this case:

The amount of money involved is but one factor for the Court to consider. Although the amount of attorney fees charged may seem high compared to the amount of AQC's ultimate recovery, the Court notes the attorney fees span the work necessary to engage in pretrial and trial matters in the district court, the appeal in the appellate court, and writs taken to the Louisiana Supreme Court. The attorney fees requested by counsel for AQC span a period of over four years in this protracted litigation, from February of 2011 to August of 2015.



Based on our review of the record, we find that the trial court manifestly erred in its determination of the reasonableness of the attorney's fees award sought by AQC based on its application of these Rule 1.5(a) factors to the particular facts of this case. While we do not doubt that Mr. Lape and his staff performed the work billed by him on the invoices submitted into evidence, or that Mr. Lape was skillful and diligent on behalf of AQC, we hold the trial court manifestly erred in determining that certain fees were reasonable and abused its discretion in the amount awarded.

First, the trial court manifestly erred in determining that the fees charged by Mr. Lape for secretarial services were reasonable and abused its discretion in awarding those amounts as part of the attorney's fees award. The trial court noted that "the defendants point[ed] to no case law which shows that these type of activities are inconsistent with a reasonable attorney fee in this case." It is not unusual for attorneys to bill clients for secretarial services, and there is no rule prohibiting such billing practices or the recovery of fees for secretarial services. However, based on the application of the Rule 1.5(a) factors *to the particular facts of this case*, we find that in this instance, charges for secretarial tasks included in the calculation of the attorney's fees, is unreasonable. Furthermore, we note the invoices contain numerous entries where paralegal time was billed for tasks that are inherently secretarial, such as making copies, printing emails, making telephone calls, updating calendars, etc. Therefore, we subtract the following amounts from the total award of attorney's fees to adjust for the trial court's excessive award for secretarial tasks (whether by secretary or paralegal):

Ex. 1	Invoice # 1409	\$45.00	1.5	\$30/hr
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Secretary: Travel ... deliver demand letters....

Ex. 3 Invoice # 1448 \$30.00 1 \$30/hr

Secretary: printed, copied, letter and enclosures, prepared certified envelopes

Ex. 3 Invoice # 1448 \$30.00 1 \$30/hr

Secretary: printed, copied, letter and enclosures, prepared certified envelopes

Ex. 3 Invoice # 1448 \$6.00 0.2 \$30/hr

Secretary: Telephone call to Sara Strain re: financial documents

Ex. 3 Invoice # 1448 \$64.50 2.15 \$30/hr

Secretary: Travel...and pick up documents....

Ex. 8 Invoice # 1638 \$8.75 0.25 \$35/hr

Secretary: Organize file, create pleadings section

Ex. 15 Invoice # 2311 \$8.00 0.2 \$40/hr

Secretary: T/C to McHughes office re: Herberger contract, T/C to client re: signing contract

Ex. 22 Invoice # 2728 \$5.20 0.13 \$40/hr

Secretary: Finish sorting Amtek's Daily Logs

Ex. 23 Invoice # 2842 \$25.20 0.63 \$40/hr

Secretary: Make copy of documents and audio from meeting ... draft letter ... awaiting signature

Ex. 23 Invoice # 2842 \$30.80 0.77 \$40/hr

Secretary: Letter to Mr. Landreneau: dates for depositions

Ex. 23 Invoice # 2842 \$4.00 0.1 \$40/hr

Secretary: Called Mr. Landreneau's office for copy of discovery in word document; Called Corie to schedule appt to review discovery responses, LMTC

Ex. 24 Invoice # 2909 \$36.00 0.9 \$40/hr

Secretary: Change format of recordings; make copy of electronic file onto CD for Mr. Robichaux

Ex. 25 Invoice # 3060 \$64.00 1.6 \$40/hr

Secretary: Scan, copy, email, and mail Discovery to Mr. Landreneau

Ex. 31 Invoice # 3471 \$40.80 1.02 \$40/hr

Secretary: Pick up documents from St. Tammany Parish

Ex. 31 Invoice # 3471 \$20.00 0.5 \$40/hr

Secretary: Scan and make CD of documents received from St. Tammany Parish

Ex. 11 Invoice #1907 \$468.00 7.2 \$65/hr

Paralegal: Listened to recording of project meetings for comments re: wet cut, dry cut

Ex. 13 Invoice # 2213 \$162.50 2.5 \$65/hr

Paralegal: organized filed [sic], created pleadings index

Ex. 13 Invoice # 2213 \$65.00 1.0 \$65/hr

Paralegal: made copy of CD and drafted letter to Corie: added Rule 10.1 to calendar

Ex. 15 Invoice # 2311 \$13.00 0.2 \$65/hr

Paralegal: T/C to Clerk re: status of Motion to reset Status conference has been filed

Ex. 16 Invoice # 2470 \$65.00 1.0 \$65/hr

Paralegal: Organize file and update pleading index, T/C re: meeting

Ex. 16 Invoice # 2470 \$9.75 0.15 \$65/hr

Paralegal: T/C to Clerk to check service

Ex. 24 Invoice # 2909 \$42.25 0.65 \$65/hr

Paralegal: Make copies of Discovery, update Pleadings Index, and prepare file for meeting; call Landreneau's office for copy of Discovery

Ex. 24 Invoice # 2909 \$26.00 0.4 \$65/hr

Paralegal: Telephone calls with [Lloyd] Luton; copy file onto a CD for Mr. Robichaux

Ex. 24 Invoice # 2909 \$81.25 1.25 \$65/hr

Paralegal: Go through file and make copies for Discovery: telephone call with Sherry at AQC, re: documents needed for discovery

Ex. 25 Invoice # 3060 \$48.75 0.75 \$65/hr

Paralegal: Draft, print, copy, email and mail letter to Mr. Robichaux with copy of discovery responses and make a cd with all documents produced

Ex. 26 Invoice # 3194 \$81.25 1.25 \$65/hr

Paralegal: Finish scanning documents from [Lloyd] Lutton

Ex. 26 Invoice # 3194 \$11.05 0.17 \$65/hr

Paralegal: Schedule phone conference with Craig [Robichaux]

Ex. 26 Invoice # 3194 \$73.45 1.13 \$65/hr

Paralegal: Google Amtek employees

Ex. 26 Invoice # 3194 \$3.25 0.05 \$65/hr

Paralegal: Save and print joint layout plans from Lloyd Lutton's email

Ex. 26 Invoice # 3194 \$7.80 0.12 \$65/hr

Paralegal: Telephone call to US Attorney's office for more information on the date Miguel Mejia-Gabriel was incarcerated: LMTC

Ex. 26 Invoice # 3194 \$130.00 2 \$65/hr

Paralegal: Make copies of documents needed for deposition, organize file and update pleading index

Ex. 26 Invoice # 3194 \$6.50 0.1 \$65/hr

Paralegal: Call North Shore Reporters to confirm deposition dates

Ex. 26 Invoice # 3194 \$3.25 0.05 \$65/hr

Paralegal: Telephone call to Corie

Ex. 26 Invoice # 3194 \$3.25 0.05 \$65/hr

Paralegal: Called Mr. [Robichaux's] office re: moving Mr. Case's depo to today @ 1:00

Ex. 26 Invoice # 3194 \$52.00 0.8 \$65/hr

Paralegal: Receipt and review of email from Cheri, save and print insurance policy

Ex. 26 Invoice # 3194 \$6.50 0.1 \$65/hr

Paralegal: Telephone calls with Cheri re: Corie's appt. and Trey wants Corie to come in and listen to the recordings of the meetings

Ex. 27 Invoice # 3225 \$97.50 1.5 \$65/hr

Paralegal: Email to Kim to confirm Corie and Mr. King's deposition date, time and location, review emails for dates to notice Mr. Luton & Ms. Lee's deposition, scan, copy, email and mail Notice of Depositions; email Notice of Deposition to Northshore Reporters

Ex. 27 Invoice # 3225 \$137.80 2.12 \$65/hr

Paralegal: Draft letters to Travelers, CNA and Max Specialty Insurance Co., gather exhibits, call CNA for mailing address; review all three insurance policies for mailing addresses

Ex. 27 Invoice # 3225 \$4.55 0.07 \$65/hr

Paralegal: Print Answer to Petition for Intervention

Ex. 27 Invoice # 3225 \$27.30 0.42 \$65/hr

Paralegal: Proofread and print Supplemental public records request; scan and email Public Records request to Mr. Hagan

Ex. 27 Invoice # 3225 \$6.50 0.1 \$65/hr

Paralegal: Call Clerk to verify if date has been set for Status conference

Ex. 27 Invoice # 3225 \$11.05 0.17 \$65/hr

Paralegal: Receipt of email from Northshore Depositions with electronic copy of Amtek's depositions, save to file and forward a copy to Trey

Ex. 30 Invoice # 3374 \$3.25 0.05 \$65/hr

Paralegal: Make copies of the CD with the Meeting Recordings 2-22 to 10-25-11 received from [Lloyd] Luton; draft letter to Landreneau and Robichaux

Ex. 37 Invoice # 3981 \$32.50 0.5 \$65/hr

Paralegal: Copy exhibits for Motion; call Elda Ourso for time of Rule to Show Cause set for March 29th

Ex. 37 Invoice # 3981 \$37.05 0.57 \$65/hr

Paralegal: Call Elda Ourso; notify Consent Judgment forthcoming; call LA Supreme Court for Plaintiff's Attorney name....

Ex. 37 Invoice # 3981 \$71.50 1.1 \$65/hr

Paralegal: Telephone call to Clerk for fax number; telephone call to Kim ... Letter to Clerk to issue subpoena; telephone call to Elda Ourso to confirm hearing was removed from the docket; telephone call from Sheri @ clerk's office

Ex. 37 Invoice # 3981 \$199.55 3.07 \$65/hr

Paralegal: Research prices for index tabs to determine how we will complete the exhibit books....

Ex. 38 Invoice # 4050 \$97.50 1.5 \$65/hr

Paralegal: Scan and email page 2 of Contract to Marc at Covington Blue to blow up and put on form board; update Pleadings Index; check service of Subpoena to Robert Case

Ex. 38 Invoice # 4050 \$3.25 0.05 \$65/hr

Paralegal: Telephone call from Sheri at Clerk's office

Ex. 39 Invoice # 4243 \$5.20 0.08 \$65/hr

Paralegal: Telephone call to Elda Orso, status of judgment or reasons for Judgment

Ex. 41 Invoice # 4351 \$5.20 0.08 \$65/hr

Paralegal: Call Clerk, costs to file Judgment

Ex. 42 Invoice # 4472 \$32.50 0.5 \$65/hr

Paralegal: Telephone call to Cheri; requested a report of all costs paid relating to Amtek case; start to gather and print all invoices and costs to use when we file Motion to Fix

Ex. 43 Invoice # 4541 \$5.20 0.08 \$65/hr

Paralegal: Telephone call to Clerk for costs to file Notice of address change

Ex. 46 Invoice # 4812 \$11.70 0.18 \$65/hr

Paralegal: Call Clerk to see if Landreneau paid the "estimated Appeal costs; per Dec. 6th letter from clerk

Ex. 46 Invoice # 4812 \$8.45 0.13 \$65/hr

Paralegal: Receipt and review of email from Cheri, forward to Trey asking permission to respond, receipt and review of Trey's response; respond to Cheri's email and attach copy of judgment

Ex. 48 Invoice # 5041 \$1.95 0.03 \$65/hr

Paralegal: Scan and save Notice of Return Day for Appeal

Ex. 49 Invoice # 5077 \$16.25 0.25 \$65/hr

Paralegal: Order copy of record from 1st Circuit

Ex. 49 Invoice # 5077 \$1.30 0.02 \$65/hr

Paralegal: Double check to make sure deadline to file appellee brief was on the calendar

Ex. 50 Invoice # 5179 \$4.55 0.07 \$65/hr

Paralegal: Call Tonya to see if they need a copy of the Case Record from the 1st Circuit

Ex. 50 Invoice # 5179 \$18.20 0.28 \$65/hr

Paralegal: Make copy of Case Record on CD for Craig Robichaux

Ex. 50 Invoice # 5179 \$1.95 0.03 \$65/hr

Paralegal: Call 1st Circuit for costs to file Motion for Extension

Ex. 50 Invoice # 5179 \$84.50 1.3 \$65/hr

Paralegal: Print vol 2, vol 3 and 4 of the case record for Deb Henson; print another copy of the Case record for Trey

Ex. 52 Invoice # 5337 \$107.90 1.66 \$65/hr

Paralegal: Scan copy and mail Motion for Reinstatement of Oral Argument & Revised Appellee brief to Clerk, mail copy to Judge Hand, Mr. Robichaux and Mr. Landreneau; travel to post office to mail Motion & Brief to 1st Circuit; call Rod at First Circuit; revised brief was mailed today

Ex. 53 Invoice # 5507 \$1.95 0.03 \$65/hr

Paralegal: Respond to Kim Abbot's May 29th email

Ex. 55 Invoice # 5824 \$39.65 0.61 \$65/hr

Paralegal: Call Brian at Covington Blue ... email Marc the documents; phone call from Marc Lombardo ... call Marc to let him know that I would be emailing over the full documents ... email full documents to Marc

Ex. 62 Invoice # 6321 \$27.75 0.37 \$75/hr

Paralegal: Review file for transcript of recording of the Pre-Pour meeting; email copy of the recording transcript to Deb Henson; save and print 1st Circuit's Denial of Amtek's request for Rehearing; call Clerk to see if I can check out the record or does Trey need to

Ex. 65 Invoice # 6678 \$24.75 0.33 \$75/hr

Paralegal: Start to gather and print Trey's invoices to prepare for Motion to Fix

Ex. 65 Invoice # 6678 \$7.50 0.1 \$75/hr

Paralegal: Call Cheri to see if AQC paid Richard Lambert invoice and NS Reporters directly

Ex. 66 Invoice # 6794 \$41.25 0.55 \$75/hr

Paralegal: Travel to courthouse to file Motion to Compel....

Ex. 66 Invoice # 6794 \$7.50 0.1 \$75/hr

Paralegal: Call Clerk regarding costs as the notes on the fax confirmation are not legible....



Ex. 66      Invoice # 6794      \$7.50      0.1 \$75/hr

Paralegal: Call Julie, she will send notice for status conference set for July 15th

Ex. 67      Invoice # 6873      \$28.50      0.38 \$75/hr

Paralegal: Review file for new date of the Motion to Fix Atty Fees; call Julie, minute clerk...to verify date...call clerk for costs....

Ex. 67      Invoice # 6873      \$7.50      0.1 \$75/hr

Paralegal: Review file to see when Motion to Fix is set...calendar reminder....

Next, the trial court manifestly erred in determining that the totality of the fees charged by Mr. Lape for work done in this case by third parties was reasonable and abused its discretion in awarding those amounts as part of the attorney's fees award. The trial court noted that "the defendants point[ed] to no case law which shows that these type of activities are inconsistent with a reasonable attorney fee in this case." We do not disagree; however, some of the fees charged for work done by third parties is duplicative of work performed and charged by Mr. Lape, the trial attorney. Attorney's fees that are duplicative are not reasonable and are disallowed under Louisiana law. *See generally Thompson v. Gray & Co.*, 590 So. 2d 1318, 1320 (La. App. 1 Cir. 1991) (in calculating costs of recovery in workers' compensation context where no suit was filed, compensation carrier obligated to pay portion of attorneys' fees to injured employee's attorney, and said fees must relate to "*necessary services which actually benefitted or augmented recovery from the third person, rather than duplicative services....*" (citing *Moody v. Arabie*, 498 So. 2d 1081, 1086 (La. 1986) (superseded by statute, La. R.S. 23:1103(C), as amended by 1989 La. Acts No. 454, § 1, eff. Jan. 1, 1990).); e.g., *Health Educ. and Welfare Fed. Credit Union v. Peoples State Bank*, 2011-672 (La. App. 3 Cir. 12/7/11), 83 So. 3d 1055, 1062.

Mr. Herberger authorized Mark W. Mercante, an attorney with Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, to advise and assist Mr. Lape in this case. Mr. Mercante was never enrolled as an attorney in this case.<sup>2</sup> Following our review of the invoices submitted by Mr. Mercante and billed to AQC by Mr. Lape, we find that Mr. Mercante spent a great deal of time learning about the facts of the case, information already possessed by Mr. Lape, who was trial counsel. Mr. Mercante also engaged in numerous conferences with Mr. Lape, and reviewed the same documents that Mr. Lape would necessarily review, and in some cases, revise. While we appreciate that Mr. Lape valued the assistance of Mr. Mercante, much of what he did was necessarily duplicative; therefore, we find that the trial court manifestly erred in determining that certain entries representing duplicative work performed by Mr. Mercante were reasonable and abused its discretion in awarding such fees. We deduct these duplicative entries to adjust for the trial court's excessive award.

Ex. 2	Bill # 7289225	\$2,106.00	7.80	\$270/hr
Ex. 4	Bill # 7297022	\$2,781.00	10.3	\$270/hr
Ex. 5	Bill # 7297436	\$567.00	2.1	\$270/hr

Mr. Lape also consulted Richard C. Lambert, the engineer of the construction project on which this litigation centers. Exhibit 28 is an invoice Mr. Lambert billed to Mr. Lape for assembling and transmitting documents related to the construction project to Mr. Lape. It is not clear from the record what these documents represent, or why Mr. Lape paid the project engineer for these documents instead of receiving them through discovery or obtaining them from the public records, if available. Because we are unable to determine the specific service performed, or whether the work was reasonably necessary, we find the trial

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<sup>2</sup> We note that on Exhibit 3, Invoice # 1448, in an entry dated February 4, 2011, Mr. Lape lists Mr. Mercante as "co-counsel."

court manifestly erred and abused its discretion in including this amount in the award of attorney's fees.

Ex. 28 Invoice #LS 2012-02 \$1,012.50 6.75 \$150/hr

Project Engineer's time for Assembling and Transmitting  
Requested Documents for AQC vs. AMTEC

Mr. Herberger hired Kelly McHugh, a professional engineer, to work on AQC's case. Exhibit 14 is a copy of a check paid to Mr. McHugh directly by AQC as a "legal retainer." As a result, the trial court manifestly erred and abused its discretion in including this amount in the award of attorney's fees as it does not represent work performed by, billed, or paid to a third party by Mr. Lape. We deduct this amount to adjust for the trial court's excessive award.

Ex. 14 Item # 6037677 \$500.00

Check paid by AQC to McHugh directly as a "Legal  
Retainer"

Mr. Lape retained attorney Deborah M. Henson, for her professional writing services, to assist in the preparation of AQC's brief, and subsequent writ, to this court and the supreme court. Following our review of the invoices submitted by Ms. Henson and billed to AQC by Mr. Lape, we find that Ms. Henson spent a great deal of time learning about the facts of the case, information already possessed by Mr. Lape, who was trial counsel. Ms. Henson also engaged in numerous conferences with Mr. Lape, and reviewed the same documents that Mr. Lape would necessarily review, and in some cases, revise. While we appreciate that Mr. Lape valued the assistance of Ms. Henson, like Mr. Mercante before her, much of what she did was necessarily duplicative; therefore, we find that the trial court manifestly erred in determining that certain entries representing duplicative work performed by Ms. Henson were reasonable, and thus, abused its discretion in awarding such fees. We deduct these duplicative entries to adjust for the trial court's excessive award.

Ex. 51 [*Total invoice: 22.25 hours, \$150/hr \$3,337.50*]

May 10, 2014                    \$525.00      3.50 at \$150/hr

Review/organize record and materials emailed from client; begin reviewing pertinent pleadings in record.

May 11, 2014                    \$562.50      3.75 at \$150/hr

Continue review of record...

May 12, 2014                    \$799.50      5.33 at \$150/hr

Continue review of Appellant Brief...

May 13, 2014                    \$637.50      4.25 at \$150/hr

...research same and email client...review memo on attorney's fees sent to me by client...

May 14, 2014                    \$787.50      5.25 at \$150/hr

Receive/reply to email from client re: reference to attorney fee issue in trial transcript...review C.B. King's brief...scanning handwritten edits to me and looking for references in Appellant Brief and transcript...find transcript references to Amtek's attempts to claim....

Ex. 59 [*Total invoice: 5.08 hours, \$150/hr \$762.00*]

January 12, 2015                \$187.50      1.25 at \$150/hr

Review voicemail and materials emailed from client re: Amtek's Application for Rehearing to the 1<sup>st</sup> Circuit

Ex. 59 [*Total invoice: 13.83 hours, \$150/hr \$2,074.50*]

February 3, 2015                \$250.50      1.67 at \$150/hr

Send client pertinent rules for administrative preparation of aspects of Writ Application; assemble pertinent underlying pleadings for attaching to Writ Application....

February 11, 2015                \$112.50      0.75 at \$150/hr

TC with client re: pre-pour meeting and significance of same; review transcript of that meeting and email client with some comments re: same.

Ex. 61 [Total: 10.66 hours at \$150/hr \$1,599.00]

February 19, 2015      \$112.50      0.75 at \$150/hr

Receive/review Amtek's Writ Application to Louisiana Supreme Court; TC with Louisiana Supreme Court Clerk's Office to get docket numbers and verify timeliness of Amtek's writ.....

In further reviewing the invoices, we note numerous entries labeled as "research," "review documents," "put exhibit books together," and "review email." Several entries contain redacted descriptions, or in some cases, no description at all. This applies to entries for attorney, associate, paralegal, and secretarial services. Such general labels and entries containing redacted descriptions, or no descriptions at all, do not give the court sufficient information to determine the specific service performed, or whether the work was reasonably necessary. *E.g., Hanley v. Doctors Hosp. of Shreveport*, 35,527 (La. App. 2 Cir. 6/6/02), 821 So. 2d 508, 528. We deduct these entries to adjust for the trial court's excessive award.

Ex. 21      Invoice # 2644      \$1,140.00      19      \$60/hr

Paralegal: create chronology, reviewing documents, legal research

Ex. 24      Invoice # 2909      \$60.00      0.4      \$150/hr

Rescarch [sic]

Ex. 31      Invoice # 3471      \$48.75      0.75      \$65/hr

Paralegal: Review documents from St. Tammany Parish

Ex. 38      Invoice # 4050      \$471.25      7.25      \$65/hr

Paralegal: Respond to Kim Abbott's email; put exhibit books together

Ex. 38      Invoice # 4050      \$552.50      8.5      \$65/hr

Paralegal: Pack up Exhibits and our file; travel to court house for trial

Ex. 45      Invoice # 4775      \$45.00      0.3      \$150/hr

Research, email to Craig R.

Ex. 46	Invoice # 4812	\$43.55	0.67	\$65/hr
Paralegal: [redacted]				
Ex. 46	Invoice # 4812	\$30.00	0.2	\$150/hr
Review email [redacted]				
Ex. 46	Invoice # 4812	\$30.00	0.2	\$150/hr
Telephone call with [redacted]				
Ex. 46	Invoice # 4812	\$30.00	0.2	\$150/hr
Draft email to him				
Ex. 46	Invoice # 4812	\$45.00	0.3	\$150/hr
Discuss with paralegal				
Ex. 46	Invoice # 4812	\$15.00	0.1	\$150/hr
Revise email to [redacted]				
Ex. 46	Invoice # 4812	\$15.00	0.1	\$150/hr
Receive and review of email from [redacted]				
Ex. 46	Invoice # 4812	\$52.00	0.8	\$65/hr
Paralegal: [redacted]				
Ex. 46	Invoice # 4812	\$45.00	0.3	\$150/hr
[redacted; no description]				
Ex. 46	Invoice # 4812	\$30.00	0.2	\$150/hr
[redacted; no description]				
Ex. 47	Invoice # 4953	\$17.50	0.1	\$175/hr
Receipt and review of email forwarding necessary docs to her				
Ex. 47	Invoice # 4953	\$125.00	1	\$125/hr
Associate: Review record; research (MC)				
Ex. 47	Invoice # 4953	\$125.00	1	\$125/hr
Associate: Research (MC)				

Ex. 47 Invoice # 4953 \$218.75 1.75 \$125/hr

Associate: Research (MC)

Ex. 47 Invoice # 4953 \$250.00 2 \$125/hr

Associate: Draft memo (MC)

Ex. 47 Invoice # 4953 \$125.00 1 \$125/hr

Associate: Draft memo (MC)

Ex. 62 Invoice # 6321 \$92.50 0.5 \$185/hr

Additional emails, revisions

Based on the foregoing, from the trial court's award of attorney's fees, \$87,658.76, which it reduced by \$892.50 and \$163.80,<sup>3</sup> for a total of \$86,602.46, we subtract \$17,554.35 to adjust for the excessive award of attorney's fees (the total amount of the items subtracted by us on review). We amend the trial court's award of attorney's fees to **\$69,048.11**, and affirm as amended. Finally, we note that the interest on the award of attorney's fees runs from the date of the judgment

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<sup>3</sup> At the hearing, Mr. Lape stipulated to certain duplicative entries and overcharges. After awarding AQC \$87,658.76 in attorney's fees, the trial court then reduced that award by \$892.50, for a credit not reflected in the exhibits introduced at the hearing, and \$163.80, for certain overcharges, all of which are represented below.

Ex. 22 Invoice # 2728 \$892.50

first six entries are duplicative entries from Ex. 19

Ex. 25 Invoice # 3060 \$50.70 0.78 \$65/hr

Paralegal: Draft Notice of Depositions for Steve Price, Joe Niquiporo, and Robert (represents part of the \$163.80 credit)

Ex. 25 Invoice # 3060 \$18.20 0.28 \$65/hr

Paralegal: Draft Clerk Transmittal letter and telephone call to clerk (represents part of the \$163.80 credit)

Ex. 25 Invoice # 3060 \$94.90 1.46 \$65/hr

Paralegal: Draft letters to Lloyd Lutton and Christian Lee (represents part of the \$163.80 credit)

We note the trial court also added \$644.70 for an invoice reflected in Exhibit 35 that was mistakenly omitted from the final computation, which will be discussed in the "Costs" section below.

establishing the right to the award. *Sharbono v. Steve Lang & Son Loggers*, 97-0110 (La. 7/1/97), 696 So.2d 1382, 1388.

### Costs

The trial court awarded AQC \$10,417.58 in costs. Under La. R.S. 13:3666 and 13:4533, as well as La. C.C.P. art. 1920, the trial court has great discretion in awarding costs, including expert witness fees, deposition costs, exhibit costs, clerk costs, sheriff costs, and other related expenses. See *Suprun v. Louisiana Farm Bureau Mut. Ins. Co.*, 2009-1555 (La. App. 1 Cir. 4/30/10), 40 So. 3d 261, 267. A trial court's award of costs will not be disturbed upon review in the absence of an abuse of discretion. *Barrilleaux v. Franklin Found. Hosp.*, 96-0343 (La. App. 1 Cir. 11/8/96), 683 So. 2d 348, 361, *writ denied*, 96-2885 (La. 1/24/97), 686 So. 2d 864.

The only costs taxable against a litigant are those provided for by positive law. *Degruipe v. Houma Courier Newspaper Corp.*, 2000-0229 (La. App. 1 Cir. 3/28/02), 815 So. 2d 1074, 1081, *writs denied*, 2002-1202, 2002-1179 (La. 6/21/02), 819 So. 2d 342, 345. Taxable costs are defined narrowly by positive law in La. R.S. 13:4533 to include "costs of the clerk, sheriff, witness' fees, costs of taking depositions and copies of acts used on the trial, and all other costs allowed by the court[.]" *Reynolds v. Louisiana Dep't of Transp.*, 2015-1304 (La. App. 1 Cir. 4/13/16), 194 So. 3d 56, 59-60.

Cited above, La. R.S. 13:4533 provides that the "costs of taking depositions ... used on the trial ... shall be taxed as costs." Generally, "on the trial" has been held to include costs that are necessary to investigate and defend a lawsuit. *Reynolds*, 194 So. 3d at 60. More specifically as to depositions, in *Succession of Franz*, 139 So. 2d 216, 219 (La. 1962), the supreme court held that the phrase "used on the trial" means introduced and accepted into evidence. If a deposition is not so used at trial, the cost of that deposition, including the deponent's fee for



giving the deposition, may not be taxed as costs. *Franz*, 139 So. 2d at 219; *Moran v. Harris*, 93-2227 (La. App. 1 Cir. 11/10/94), 645 So. 2d 1248, 1250. A deposition may be taxed as costs even if only excerpts from the deposition are introduced and accepted into evidence. *Gauthier v. Wilson*, 2004-2527 (La. App. 1 Cir. 11/4/05), 927 So. 2d 383, 387, *writ denied*, 2005-2402 (La. 3/31/06), 925 So. 2d 1258. Travel expenses of a litigant in connection with taking his deposition are not properly taxed as costs. *Curry v. Vallot*, 271 So. 2d 711, 714 (La. App. 1 Cir. 1972).

The trial court found the costs presented were “consistent with those normally charged to clients, such as postage, copying[,] and mileage.” We do not dispute that those type of expenses are typically billed to a client. *See Dupre’ v. Maison Blanche, Inc.*, 97-0652 (La. App. 1 Cir. 4/8/98), 712 So. 2d 567, 572, *writ denied sub nom. Dupre v. Maison Blanche, Inc.*, 98-1239 (La. 6/19/98), 721 So. 2d 471.

However, we find that the trial court erred in taxing the following expenses as duplicative costs against Amtek and Aegis, and we subtract these amounts from the total amount of costs awarded to adjust for the trial court’s excessive award:

Ex. 21	Invoice # 2644	\$1.05	Copy costs (duplicate from Ex. 19)
Ex. 21	Invoice # 2644	\$9.45	Postage Various mailings (duplicate from Ex. 19)

A review of the record and prior appeal record in this case reveals that the only deposition introduced and accepted into evidence at trial was a page from the deposition of Robert Case (Plaintiff’s Exhibit A, introduced on April 8, 2013). Therefore, we conclude that the trial court erred and abused its discretion in taxing,

as costs, the court reporter fees for the depositions that were not used at trial. *See Barrilleaux*, 683 So. 2d at 361. We subtract the following expenses to adjust the trial court's excessive award:

Ex. 34	Invoice # 3709	\$855.70	Deposition of Steve Price
Ex. 29	Invoice #120920M4	\$411.00	Deposition of Christian Lee
Ex. 33	Invoice #121219L1	\$753.75	Deposition of [Lloyd] Luten

At the hearing, Mr. Lape stipulated that \$644.70, the amount of the invoice for the deposition of Robert Case and Joe Niquiporo, was inadvertently omitted from the final computation of costs. The trial court adjusted its award of costs by adding \$644.70 to the final amount. From the trial court's total cost award, \$10,417.58, plus the addition of \$644.70, for a total of \$11,062.28, we subtract \$2,030.95, to adjust for the excessive award of costs (the total amount of the items subtracted by us on review). We amend the trial court's award of costs to **\$9,031.33**, and affirm as amended.

#### **Answer to the Appeal**

AQC answered the appeal and requested additional attorney's fees for the work necessitated by the appeal. Additional attorney fees are usually awarded on appeal when a party appeals, obtains no relief, and the appeal has necessitated additional work on the opposing party's counsel, provided that the opposing party appropriately requests an increase. *Quick v. Terrebonne General Medical Center*, 2009-1101 (La. App. 1 Cir. 2/10/10), 35 So. 3d 287, 290-91. In the instant case, AQC properly requested additional attorney's fees in a timely filed answer to the appeal; however, because Amtek and Aegis have obtained relief on appeal, we find that an additional award of attorney's fees to AQC is not warranted.

**DECREE**

For the foregoing reasons, the November 16, 2015 judgment of the trial court is amended to reduce the award of attorney's fees and costs to **\$78,079.44**. In all other respects, the judgment of the trial court is affirmed. The answer to the appeal is denied. Costs of this appeal are assessed one-half to Amtek of Louisiana, Inc. and Aegis Security Insurance Company and one-half to Advanced Quality Construction, Inc.

**JUDGMENT AMENDED; AFFIRMED AS AMENDED; ANSWER TO APPEAL DENIED.**