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## Pa. Justices Keep Legal Malpractice Limits For Settlements

By **Matthew Santoni**

Law360 (July 20, 2022, 2:30 PM EDT) -- The Supreme Court of Pennsylvania won't undo a precedent that put limits on when plaintiffs could file legal malpractice suits over settlements, but still let a physician revive her case against attorneys who had her sign a settlement that released more claims than she'd intended.

In **Wednesday's ruling**, the justices said the Superior Court had erred in relying on 1991's *Muhammad v. Strassburger McKenna Messer Shilobod & Gutnik* when it upheld tossing most of Dr. Ahlam Khalil's malpractice claims against attorneys at Williams Cuker Berezofsky LLC.

Khalil had claimed her lawyers misrepresented to her that a settlement in a case over water damage at her condo wouldn't release her counterclaims against her insurer. The lower courts had said her malpractice claims were barred by the *Muhammad* case, which bars suits second-guessing settlements unless there are allegations of fraud.

"As our review of appellant's complaint demonstrates that she was not merely challenging the amount of her settlement in the water damage case, but rather alleged that appellees provided incorrect legal advice regarding the scope and effect the Travelers release, we hold that Muhammad's bar on lawsuits based on the adequacy of a settlement is not implicated in this case," Justice Debra Todd wrote for the majority. "Accordingly, we conclude further consideration of the wisdom of Muhammad is unnecessary at this time."

The entire court — with the exception of former Chief Justice Thomas G. Saylor, who heard arguments but retired before participating in the decision — revived Khalil's malpractice claims, finding that they were not barred by the prior precedent. But Justices David N. Wecht and Sallie Updyke Mundy both said they would have gone further and overturned *Muhammad v. Strassburger McKenna*.

Khalil had sued Gerald Williams, Beth Cole and their law firm Williams Cuker Berezofsky LLC in 2017, claiming a settlement they had her sign in a case over a 2007 water leak into her Philadelphia condominium was too broad and released claims against parties she didn't intend to let off the hook.

Khalil said the attorneys had gotten her to approve one version of the settlement proposal with an "asterisk" limiting the release of claims in a related lawsuit, but they allegedly gave the court a new version without those limits. The trial court dismissed her claims as barred by the so-called *Muhammad* doctrine, which bars malpractice claims based on "second-guessing" a settlement that had previously been agreed to, with exceptions for fraud or, as later cases established, bad legal advice about the consequences of the settlement.

The Superior Court had overturned the trial court on just part of the lawsuit, finding Khalil's allegations that her version of the settlement may have been swapped for one without the asterisk fell within the fraud exemption. But **on appeal**, the Supreme Court said the lower courts were mistaken not to find that her other claims fell under the other exemptions.

"The lower courts ignored ... other averments in appellant's complaint which did not allege fraud, but, rather, alleged legal malpractice by appellees in allowing appellant to enter into a settlement agreement in the water damage case that subsequently precluded her from raising her desired claims in the fees case, while repeatedly advising appellant that the settlement agreement would not

preclude those claims," Justice Todd wrote. "Appellant is entitled to relief based on the Superior Court's failure to apprehend the nature of her claims, and, notwithstanding the concurring Justices' eagerness to dispose of Muhammad, it is simply unnecessary for this court to consider doing so at this juncture."

Justice Wecht's **concurring opinion** agreed with the result, but blasted the Muhammad decision as "deeply flawed" and "unfortunate precedent," and said he would have tossed it out as Khalil's appeal had requested.

By limiting legal malpractice claims over settlements, Justice Wecht said the court had set a higher standard for negligence cases against lawyers than other professionals and had favored them over plaintiffs. The Muhammad court had intended to prevent letting parties' second thoughts discourage settlements, since settlements keep already-busy courts from being overwhelmed. But no other state had adopted a similar approach in the decades since the Muhammad decision, and they weren't suffering from a lack of deals or a glut of legal malpractice claims, he said.

"Muhammad was so illogical that it has become something rare in the law: a true national outlier. You can search from coast to coast, but you will not find another state where they kick legal malpractice plaintiffs out of court and call it 'public policy,'" Justice Wecht wrote. "It proves that the Muhammad court was wrong when it predicted that allowing post-settlement legal malpractice suits would 'create chaos in our civil litigation system.' Had there been any truth to that decades-old prognostication, I suspect we would have heard reports of bedlam and pandemonium from the other forty-nine states by now."

Merely finding that Khalil's case fell under one of the exemptions to Muhammad did not fix the doctrine's alleged deficiencies, Justice Wecht wrote, and the court should have disposed of the doctrine rather than wait for a "just-right" case that more directly challenges it.

Justice Mundy wrote a **separate concurrence** to agree with Justice Wecht.

"While discouraging litigation based on a mere desire to obtain more money the second time around has some appeal, as Justice Wecht notes the jurisdictions which have rejected a Muhammad-type rule have not been overburdened by those types of lawsuits," she wrote. "More fundamentally, there does not seem to be any reason injured clients should be barred from recovery if they can prove negligence, damages, and proximate causation, as in any other tort case."

Counsel for the law firm defendants declined to comment Wednesday.

"My client looks forward to proceeding in the trial court on her legal malpractice claims," said Khalil's attorney, Virginia Hinrichs McMichael, in a statement following the ruling. "Although we would have liked the Supreme Court to disavow Muhammad, we are nevertheless happy with the result."

Khalil is represented by Virginia Hinrichs McMichael of Appellate Law Group LLC.

Williams, Cole and Williams Cuker Berezofsky are represented by James R. Kahn of Margolis Edelstein.

The case is Khalil v. Williams et al., case number 24 EAP 2021, in the Supreme Court of Pennsylvania.

--Editing by Patrick Reagan.

*Update: This article has been updated with a response from Khalil's attorney.*