DR. AHLAM KHALIL, Appellant
v.
GERALD J. WILLIAMS ESQUIRE; BETH COLE ESQUIRE; WILLIAMS CUKER BEREZOFSKY, LLC, Appellees

No. 24 EAP 2021

No. J-84-2021

Supreme Court of Pennsylvania

July 20, 2022

ARGUED: December 8, 2021

Appeal from the Judgment of Superior Court entered on January 5, 2021 at No. 2549 EDA 2019, affirming in part, reversing in part and remanding the Order entered on July 12, 2019 in the Court of Common Pleas, Philadelphia County, Civil Division at No. 0825 May Term, 2013.

BAER, C.J., SAYLOR, TODD, DONOHUE, DOUGHERTY, WECHT, MUNDY, JJ.

OPINION

TODD, JUSTICE

In this appeal by allowance, we consider whether Appellant's legal malpractice claims against Appellees, her former attorneys, are barred under this Court's decision in *Muhammad v. Strassburger, McKenna, Messer, Shilobod & Gutnick*, 587 A.2d 1346 (Pa. 1991), in which we held that a plaintiff may not sue his attorney on the basis of the adequacy of a settlement to which the plaintiff agreed, unless the plaintiff alleges the settlement was the result of fraud. For the reasons set forth below, we hold that certain of Appellant's claims are not barred under *Muhammad*. Accordingly, we reverse, in part, and remand for further proceedings.

The instant case has a long and convoluted history. Appellant, Dr. Ahlam Kahlil, owned a unit in the Pier 3 Condominiums in Philadelphia. Appellant's individual unit was insured by State Farm Fire and Casualty Company ("State Farm"), and the Pier 3

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Condominium Association ("Pier 3") was insured under a master policy issued by Travelers Property Casualty Company of America ("Travelers"). In May 2007, Appellant sustained water damage to her unit as a result of a leak in the unit directly above hers, which was owned by Jason and Anne Marie Diegidio. Due to the water damage, Appellant eventually moved out of her unit and stopped paying her condominium fees.

In July 2008, Appellant filed a civil action against State Farm and Travelers, alleging breach of contract and bad faith, and against the Diegidios, alleging negligence (hereinafter, the "Water Damage Case").[1] A year later, Pier 3 filed a separate lawsuit against Appellant for her unpaid condominium fees and charges (hereinafter, the "Fees Case").[2] In that matter, Appellant filed several counterclaims against Pier 3, asserting, *inter alia*, that it failed to properly maintain the common area. She also filed a joinder complaint against the Diegidios, individually and as members of the condominium board,[3]and Wentworth Property Management ("Wentworth"), the company responsible for managing the building.

In April 2010, after the Water Damage Case had been listed for trial, Appellant retained Appellees Gerald J. Williams, Esq., and Beth Cole, Esq., to represent her in that case.[4] In May 2011, prior to trial, Appellant reached a settlement with Travelers for $17,500. In accordance therewith, Appellant was presented with a draft of a general release which provided, *inter alia*, that Appellant "release[d] and forever discharge[d] the

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said Releasee, and the Releasee's insured, **PIER 3 CONDOMINIUM (Releasee's Insured)**, of and from any and all claims." Draft Release in the Water Damage Case (Reproduced Record at 82a) (emphasis original).[5] Appellant, however,

was unwilling to sign any release unless it contained specific language that her settlement with Travelers would not prevent her from asserting her counterclaims and joinder claims in the Fees Case. Thus, Appellant maintained that, notwithstanding Appellees' repeated assurances that her settlement with Travelers would have no effect on her claims in the Fees Case, she refused to sign the Draft Release in the Water Damage Case.

As a result, Attorney Cole sent an email to Traveler's counsel, Monica O'Neill, Esq., proposing to include the following language: "This release does not include any claims in connection with Pier 3 Condominium Association Ahlam Khalil v. Jason Diegidio and Anne Marie Diegidio and Jane Doe and Wentworth Property Management, Philadelphia Court of Common Pleas, Docket No. 090701819." Email from Attorney Cole to Attorney O'Neill, 5/16/11 (R.R. at 76a). Attorney O'Neill replied that Travelers was "reluctant to make any reference to the other ligation since they're not involved in it. I have eliminated Pier 3 as a Releasee (since they are not a party in this matter) and have just added an informational sentence about their role as an insured." Email from Attorney O'Neill to Attorney Cole, 5/16/11 (R.R. at 77a). The revised release (hereinafter, "Travelers Release"),[6] identifies Appellant as the "Releasor," Travelers as the "Releasee," and Pier 3 as "Releasee's insured," and provides that Appellant:

> [does] . . . release and forever discharge the said Releasee, of and from any and all claims, including claims of bad faith, demands, damages, debts, dues, accounts, bonds, covenants, contracts, agreements, judgments, actions, causes of action, or suits at law or in equity, of whatsoever
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> kind or nature arising from the incident occurring at *3 North Columbus Boulevard, Philadelphia, Pennsylvania 19106*, which has been reported to have occurred on or about May 25, 2007, as more fully described in *Ahl[a]m Khalil v. The Travelers Property Casualty Company of America, Philadelphia Court of Common Pleas, Docket No. 080503145.* It is acknowledged that the Releasee's insured in the applicable policy of insurance is Pier 3 Condominium.

Travelers Release at ¶ 1 (R.R. at 86a) (emphasis original).

The Travelers Release further provides that it "is made as a compromise to avoid expense and to terminate all controversy and/or claims for injuries or damages against Releasee, and Releasee's Insured, and any affiliated or related people or entities, both known and unknown, including future developments thereof, in any way growing out of or connecting with said incident." *Id.* at ¶ 3. Additionally, the Travelers Release states that it "shall be a complete bar to all claims or suits against Releasee, Releasee's Insured, and any affiliated or related people or entities, both known and unknown, for injuries or damages of whatsoever nature resulting from or to result from said incident." *Id.* at ¶ 5. Notably, the release does not contain any language limiting its application to the Water Damage Case. Further, while the Travelers Release contains what purports to be Appellant's signature, she disputes its authenticity, as discussed below.

After settling with Travelers, Appellant proceeded to trial against the remaining defendants - State Farm and the Diegidios - in the Water Damage Case. During trial, Appellant agreed to settle her claims against the Diegidios and State Farm, for $50,000 and $40,000, respectively. On May 20, 2011, the trial court, by the Honorable Frederica Massiah-Jackson, conducted a colloquy on the record, at which Appellant confirmed her agreement to the terms of the settlements, as well as Appellees' agreement to represent Appellant in the Fees Case at no additional fee. Thereafter, the trial court marked the Water Damage Case as settled, and Attorney Cole entered her appearance in the Fees Case.

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Almost immediately, Appellant changed her mind about the settlements and refused to sign releases with State Farm and the Diegidios, or accept payments from any of the defendants. As a result, Attorney Cole withdrew her appearance in the Fees Case. On September 30, 2011, the trial court held a status hearing in the Water Damage Case, during which Appellant explained that she objected to the settlements because she believed that the release she signed with Travelers would impair her counterclaims in the Fees Case, despite her attorneys' assurances it would not. Ultimately, the trial court issued an order finding the settlements with State Farm and the Diegidios valid, and directed all defendants to pay their respective settlement amounts to the court for placement in escrow, where it currently remains. Appellant did not appeal that determination.

In April 2012, relying upon the language in the Travelers Release stating that the release barred all claims in connection with the incident that occurred in Appellant's condominium unit, Pier 3 and Wentworth moved to dismiss Appellant's counterclaims in the Fees Case. The trial court, by the Honorable George W. Overton, granted the motion, agreeing that Appellant's counterclaims were precluded by the Travelers Release. The case proceeded to a jury trial on Pier 3's claims for outstanding assessment fees, and, on July 19, 2012, the jury found in favor of Pier 3 for $109,000.

Appellant filed a motion for post-trial relief in the Fees Case, asserting, *inter alia*, that she entered into the Travelers Release through "unilateral mistake, mutual mistake, and/or fraud." Defendant/Counterclaim Plaintiff's Motion for Post-Trial Relief in the Fees Case, 7/30/12, at ¶ 55 (R.R. at 622a). Specifically, Appellant denied signing the Travelers Release, and claimed that the version she did sign contained a note "on the first page of the Settlement Proposal in her own handwriting that it was her understanding that the settlement proposal would in no way affect the additional claims she had against the

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Condominium Association and Wentworth" in the Fees Case. *Id*. at ¶ 29. According to Appellant, the release she signed contained the following language at the bottom of the first page, marked by an asterisk: "This release does not include any claims in connection with Pier 3 Condominium Association vs. Ahlam Khalil v. Jason Diegidio and Anne Marie Diegidio and Jane Doe and Wentworth Property Management, Philadelphia Court of Common Pleas, Docket No. 090701819." Unsigned Release with Asterisk in Water Damage Case (R.R. 84a).[7] The trial court denied the motion and entered judgment for Pier 3. Appellant appealed to the Commonwealth Court.[8] In the interim, Appellees moved to withdraw as counsel from the Water Damage Case, and the Commonwealth Court stayed the appeal in the Fees Case pending the disposition of the Water Damage Case.

On January 7, 2013, the trial court granted Appellees' motion to withdraw in the Water Damage Case, and ordered the case "settled, discontinued, and ended." Docket Entry in Water Damage Case (R.R. at 391a). Appellant filed a *pro se* motion for reconsideration, which the court denied. Appellant then filed a separate motion to vacate and/or set aside the stipulation for the 2011 settlements and releases with State Farm and the Diegidios, which the trial court also denied, concluding it lacked jurisdiction to vacate those settlements. Appellant appealed the trial court's orders, but the Superior Court quashed the appeal, finding, *inter alia*, that Appellant's attempt to litigate the validity of the 2011 settlements was untimely. Following the Superior Court's quashal of Appellant's appeal in the Water Damage Case, the Commonwealth Court relisted

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Appellant's appeal in the Fees Case. Ultimately, the Commonwealth Court concluded that, by signing the Travelers Release, Appellant had also released her counterclaims against Pier 3 and Wentworth in the Fees Case and, thus, was not entitled to relief.

In May 2013, Appellant filed a praecipe for writ of summons initiating the instant legal malpractice action against Appellees. Appellant filed a complaint on March 29, 2017, asserting claims of legal malpractice based on negligence; legal malpractice based on breach of contract; negligent misrepresentation; breach of contract; and fraudulent misrepresentation. Appellant alleged, *inter alia*, that Appellees failed to exercise ordinary skill and knowledge by allowing her to enter into a settlement agreement in the Water Damage Case - specifically, the Travelers Release - that would preclude her subsequent counterclaims against Pier 3 in the Fees Case; that Appellees breached their contractual duty to exercise ordinary skill and knowledge in representing her in connection with the Fees Case; that Appellees repeatedly and erroneously advised her that the Travelers Release would not affect her counterclaims in the Fees Case; and that Appellees breached their contractual duty to diligently and competently represent her interests in both the Water Damage and Fees Cases. Complaint at ¶¶ 39, 44, 45, 53, 64 (R.R. at 117a, 119a, 121a, 123a).

Appellant additionally alleged that Appellees fraudulently induced her into settling her lawsuit "at a discounted rate by agreeing to represent her at no cost" in the Fees Case, and then subsequently withdrawing as her counsel, *id*. at ¶ 39, and that "[t]he Release submitted to the [trial] court was different from the one signed by [Appellant] which had an asterisk," *id*. at ¶ 77.

Appellees responded by filing a motion for summary judgment, alleging that Appellant's "real" objective in filing her legal malpractice suit was "to revisit the amount of the settlements she agreed to [with State Farm and the Diegidios] in the [Water Damage]

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case." Motion for Summary Judgment at ¶ 39 (R.R. at 195a). Based on this assertion, Appellees argued that Appellant's claims were barred by this Court's decision in *Muhammad*.

In *Muhammad*, the plaintiffs retained a law firm to represent them in a medical malpractice action against a hospital and its physicians following the death of their child. The law firm negotiated a settlement, which the plaintiffs orally accepted, but, prior to signing a written agreement, changed their minds. The law firm representing the defendants filed a rule to show cause why the settlement agreement should not be enforced. The trial court enforced the agreement, ordered the defendants to pay the settlement funds, and instructed the prothonotary to mark the case settled. The plaintiffs hired new counsel and appealed the trial court's order, which the Superior Court affirmed.

Thereafter, the plaintiffs filed a legal malpractice case against the law firm that represented them in the medical malpractice case. The trial court granted the law firm's preliminary objections in the nature of a demurrer, and dismissed the action on the grounds that it was barred by the doctrine of collateral estoppel, based on the Superior Court's decision in the medical malpractice case. The Superior Court reversed, holding that the preliminary objections should not have been affirmed on the basis of collateral estoppel. This Court reversed the order of the Superior Court. Although we agreed that the plaintiffs' legal malpractice action was not barred by the doctrine of collateral estoppel, we held that the law firm's preliminary objections were properly granted due to the plaintiffs' failure to state a claim:

> This case must be resolved in light of our longstanding public policy which encourages settlements. Simply stated, we will not permit a suit to be filed by a dissatisfied plaintiff against his attorney following a settlement to which that plaintiff agreed, unless that plaintiff can show he was fraudulently induced to settle the original action. An action should not lie against an attorney for malpractice based on negligence

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> and/or contract principles when that client has agreed to a settlement. Rather, only cases of fraud should be actionable.

Muhammad, 587 A.2d at 1348. We elaborated:

> [W]e foreclose the ability of dissatisfied litigants to agree to a settlement and then file suit against their attorneys in the hope that they will recover additional monies. To permit otherwise results in unfairness to the attorneys who relied on their client's assent and unfairness to the litigants whose cases have not yet been tried. Additionally, it places an unnecessarily arduous burden on an overly taxed court system.
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> We do believe, however, there must be redress for the plaintiff who has been *fraudulently induced* into agreeing to settle. It is not enough that the lawyer who negotiated the original settlement may have been negligent; rather, the party seeking to pursue a case against his lawyer after a settlement must plead, with specificity, fraud in the inducement.

Id. at 1351 (emphasis original). The limited circumstance under which a plaintiff may file an action against his attorney challenging the adequacy of a settlement into which he was fraudulently induced to enter has been referred to as the *Muhammad* "fraud exception." In *Muhammad*, we specifically observed that Mrs. Muhammad, after agreeing to settle the lawsuit in exchange for $26,500, "decided - for reasons unknown at that time - that it just was not enough money." *Id.* at 1349.

Subsequently, in *McMahon v. Shea*, 688 A.2d 1179 (Pa. 1997) (plurality), this Court clarified that *Muhammad* does not bar a plaintiff's action against his attorney when the action does not challenge the amount of a settlement, but is based on the attorney's alleged failure to correctly advise the plaintiff regarding the law impacting a settlement. In *McMahon*, the plaintiff husband ("Husband") retained the defendant attorneys ("Defendants") to represent him in divorce proceedings. Husband was ordered to pay $791 per week to his wife ("Wife") and children. Husband appealed the order, and, prior to a hearing, he and Wife entered into a written settlement agreement which provided that

half of the sum Husband had been ordered to pay would be deemed child support, and the other half alimony. Wife subsequently filed a divorce complaint, and the parties, upon the advice of counsel, entered into a stipulation under which the previous agreement would be incorporated, but not merged, into the final divorce decree. After the divorce was final, Wife remarried, and Defendants, on behalf of Husband, filed a petition to terminate the order requiring the payment of alimony. The trial court denied the petition, holding that the parties' agreement survived the decree of divorce, and ordered Husband to pay alimony until the youngest child turned 21, was emancipated, or finished college. On appeal, the Superior Court affirmed.

Thereafter, Husband filed a civil complaint against Defendants, alleging that, by failing to merge the alimony agreement into the final divorce decree, they breached their duty to exercise reasonable care, skill, and diligence. Defendants filed preliminary objections, and the trial court, relying on *Muhammad*, granted the objections and dismissed Husband's complaint. The Superior Court reversed, holding *Muhammad* is not applicable where the "alleged negligence . . . involve[s] the failure to advise the client about well established principles of law and the impact of the agreement upon the client's future obligations." *McMahon v. Shea*, 657 A.2d 938, 942 (Pa. Super. 1995).

On appeal, this Court affirmed the Superior Court's decision. In an opinion announcing the judgment of the court ("OAJC"), Justice Zappala, joined by Chief Justice Flaherty and Justice Nigro, explained that the reasoning

of *Muhammad*:

> has no application to the facts of the instant case. There is no element of speculation as to whether a jury would return a verdict greater than the amount recovered by a settlement. Also, [Husband] is not attempting to gain additional monies by attacking the value that his attorneys placed on his case. Instead, [Husband] is contending that his counsel failed to advise him as to the possible consequences of entering into a legal agreement.

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McMahon, 688 A.2d at 1182. The OAJC concluded that "the analysis of *Muhammad* is limited to the facts of that case," and the "laudable purpose of reducing litigation and encouraging finality would not be served by precluding the instant action." *Id.*

Justice Cappy, in a concurring opinion joined by Justices Castille and Newman, disagreed with the OAJC's suggestion that *Muhammad* should be limited to the facts of that case, and suggested a continuing need for *Muhammad* in light of the policy on which it was based. However, he conceded:

> Today, the majority holds that when counsel fails to advise a client as to the controlling law applicable to a settlement contract, he may be subject to a malpractice claim based on a theory of negligence. In doing so, the court properly draws the legally relevant distinction between a challenge to an attorney's professional judgment regarding an amount to be accepted or paid in settlement of a claim, and a challenge to an attorney's failure to correctly advise his client about well established principles of law in settling a case. This is a reasonable and justifiable distinction.

Id. at 1183 (Cappy, J., concurring). Thus, all six Justices who participated in *McMahon* agreed that *Muhammad* is inapplicable where a plaintiff's claim is based not on the amount of a settlement, but on counsel's purported failure to correctly advise him regarding the applicable law pertaining to a settlement.

Returning to the case *sub judice*, significantly, in their motion for summary judgment based on *Muhammad*, Appellees focused on Appellant's putative challenge to the settlement amount in the Water Damage Case; they did not address Appellant's allegations that they were negligent in allowing her to enter into a settlement agreement in that case and sign a release with Travelers that, despite Appellees' alleged assurances to the contrary, barred her counterclaims against Pier 3 in the Fees Case.

Appellees further averred that Appellant's allegations of fraud were previously rejected by the Superior Court and the Commonwealth Court, and, thus, were barred by

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the doctrine of collateral estoppel. Moreover, Appellees argued that, even if collateral estoppel did not apply, Appellant failed to demonstrate the required elements to establish a fraud claim.

On July 12, 2019, the trial court, by the Honorable Angelo Foglietta, granted summary judgment in favor of Appellees and dismissed Appellant's action with prejudice, finding there were no genuine issues of material fact, and that Appellant's claims were barred as a matter of law under *Muhammad*, reasoning that "Appellant had consented to a settlement and then later attempted to second guess the amount of the settlement." Trial Court Opinion, 3/2/20, at 20. The court further determined that the *Muhammad* fraud exception did not apply because Appellant's claims that she did not actually sign the Travelers Release, but signed a different version of the release and that the releases somehow were switched, were previously rejected by the courts, and, thus, were precluded under the doctrine of collateral estoppel.[9] *Id.* at 21-22.

Notably, like Appellees in their motion for summary judgment, the trial court did not address Appellant's claims that Appellees were negligent in allowing her to enter into a settlement agreement in the Water Damage Case that would preclude her counterclaims against Pier 3 in the Fees Case, and, moreover, in specifically advising Appellant that the Travelers Release would not impact her counterclaims.

Appellant appealed to the Superior Court, asserting that the trial court erred in finding all of her claims barred by *Muhammad.* She stressed that she was not challenging the amount of her settlement in the Water Damage Case, but, rather, had alleged that Appellees gave her incorrect legal advice concerning the scope and effect of the Travelers Release. In support of her argument, Appellant relied on this Court's decision

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in *McMahon*, *supra*, as well as the Superior Court's decision in *Collas v. Garnick*, 624 A.2d 117 (Pa. Super. 1993), wherein the appellant signed a general release as part of the settlement of her motor vehicle personal injury action based on her attorney's incorrect assurance that the release would not preclude subsequent action against the manufacturer of the car's seat belt system. The *Collas* court found that *Muhammad* did not bar the appellant's legal malpractice action because the appellant alleged that she entered into the settlement as a result of her attorney's poor legal advice, and was not challenging the adequacy of the settlement amount.

Appellant additionally maintained that the trial court erroneously dismissed her fraud claim on the basis of collateral estoppel because her claim that she signed a different version of the release, which was switched with the Travelers Release submitted to the court, had not, in fact, been resolved in a prior action. *See* Concise Statement of Matters Complained of on Appeal Pursuant to Pa.R.A.P. 1925(b), 10/20/19, at 5.

The Superior Court, in a unanimous, published opinion, affirmed in part, reversed in part, and remanded. *Khalil v. Williams*, 244 A.3d 830 (Pa. Super. 2021). With regard to Appellant's allegations of fraud against Appellees, the Superior Court concurred with Appellant that the issue "was not actually litigated in the [Fees Case], and therefore, is not estopped from being raised in this matter," and it reversed the trial court's order in this respect and remanded. *Id.* at 844.

With respect to Appellant's remaining claims, the Superior Court acknowledged the holdings of *Collas* and *McMahon*, and agreed that *Muhammad* does not bar claims of attorney negligence in a settled case where the claims are based not on the amount of settlement, but on the attorney's failure to advise the client of the consequences of

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entering the settlement. *Khalil*, 244 A.3d at 839-40.[10] Nevertheless, the court held that Appellant failed to plead in her complaint facts that fit within the *Collas* and *McMahon* exception.

The Superior Court began by quoting the following select paragraphs from Appellant's complaint:

> 20. After [Appellant] refused to sign the release as presented to her by [Attorneys] Williams and Cole, [Attorney] Cole presented [Appellant] with a different settlement release that contained an asterisk which [Attorney] Cole purported that the release in [the water damage case] would not preclude[] [Appellant] from asserting [her] counterclaims and joinder action in [the Assessment fees case].
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> 21. Relying on the assurance and [advice] of [Attorneys] Williams and Cole, [Appellant] signed the aforementioned release containing an asterisk.

> 31. To [Appellant's] dismay, the release presented by counsel for [Pier 3 and Wentworth] was not the one presented to [Appellant] by [Attorney] Cole.
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> 32. The release presented by counsel for [Pier 3 and Wentworth] in the summary judgment motion in the [Fees Case] did not contain the aforementioned asterisk and was not the one signed by [Appellant].

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> 33. It became evident to [Appellant] that [Attorneys] Cole and Williams and/or counsel for [Pier 3 and Wentworth] **switched the release**. Nevertheless, [Appellant] would not have entertained a release without the assurances from [Attorneys] Williams and Cole that it would not affect her counterclaims and joinder claim in [the Fees Case].

Id. at 840 (alterations and emphasis original).

The Court then reasoned:

> As these averments show, Appellant pled facts alleging that she was the victim of fraud. More specifically, she alleged that the Travelers release that she signed was intentionally switched with one that she did not sign, thus leading to her claims in a separate case to be dismissed due to the fraud. While claims of fraud are not barred under *Muhammad*, they also cannot be styled as claims sounding in negligence and breach of contract after a settlement has been accepted by the client.
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> While she does allege that her attorneys gave her flawed legal advice about the effect of signing the Travelers release, Appellant then alleges that she refused to sign the release unless the language she wanted was added. [Complaint] at Paragraphs 19-20. Then, after she signed a release with the language she demanded, that release was intentionally switched and later used against her in a separate case. *Id.* at Paragraph 33. Put differently, Appellant is not alleging that it is her attorneys' negligence that caused her damages; instead, she is alleging that her damages-dismissal of her claims in a separate case-were caused by fraud.

Id. at 840-41.

Finally, the court distinguished the instant case from *Collas* and *McMahon*, noting that, in those cases,

> neither of the plaintiffs . . . alleged conduct of the sort that Appellant has alleged. Instead, in both of those cases, the plaintiffs claimed that their attorneys failed to correctly advise them about well-established principles of the law in settling the case, and that it was these misstatements about the effect of the settlements that placed the plaintiffs' claims outside the scope of the *Muhammad* bar against claims of negligence

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> against a former attorney after a settlement has been reached.

Id. at 841. The Superior Court ultimately concluded that "*Muhammad* applies to bar [Appellant's] claims sounding in negligence and contract against her former attorneys and their law firm," and it affirmed the trial court's dismissal of the first four counts of Appellant's complaint. *Id.*

Appellant filed a petition for allowance of appeal with this Court, and we granted review of the following issues:

> (1) Should the Court overturn *Muhammad v. Strassburger* . . . which bars legal malpractice suits following the settlement of a lawsuit absent an allegation of fraud?
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> (2) Did the Superior Court misconstrue the averments in [Appellant's] complaint and err as a matter of law when it held that [her] legal malpractice claims were barred by *Muhammad v. Strassburger*?

Khalil v. Williams, 260 A.3d 77 (Pa. 2021) (order).

Appellant argues that the Superior Court erred as a matter of law when it relied on *Muhammad* to affirm the trial court's grant of Appellees' motion for summary judgment and its dismissal of her claims. Specifically, she maintains that her claims were based upon Appellees' erroneous legal advice regarding the scope and effect of the Travelers Release, rather than her dissatisfaction with the amount of her settlement, and she contends that the lower courts mischaracterized her claims in this regard. She acknowledges that she alleged both fraud and negligence in her complaint, but asserts that the Superior Court "cherry-picked paragraphs from the complaint that address [her] fraud claims," Appellant's Brief at 35, ignoring most of the complaint's factual allegations related to her claims of legal malpractice, negligent misrepresentation, and breach of contract. *Id*. at 48. Appellant further submits that she presented ample evidence that

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Appellees breached their duty to her in negotiating the Travelers Release and advising her that it would not impact her subsequent claims in the Fees Case.

Appellant additionally suggests that this Court should overturn *Muhammad* due to "confusion and uncertainty about the viability and proper application" of the rule in the lower courts. *Id*. at 55. In support of her argument, she compares an unpublished non-precedential Superior Court decision with a precedential decision "to illustrate the divergence of views about *McMahon* revealed in both published and unpublished opinions."[11] *Id*. at 56 n.13. Appellant further avers that the *Muhammad* doctrine is unnecessary in light of the high burden of proof; that it unfairly provides an advantage to trial lawyers but not to non-trial lawyers; and that it has been rejected by most other jurisdictions.

Conversely, Appellees maintain that the lower courts properly dismissed Appellant's claims pursuant to *Muhammad*, stressing that Appellant's "decade-long obsessive attempts to relitigate the validity of the settlements and release through a multiplicity of lawsuits is exactly the type of socially unproductive, burdensome and needless litigation the Supreme Court condemned and expressly foreclosed in *Muhammad*." Appellees' Brief at 12. Appellees dispute Appellant's assertion that the Superior Court misconstrued her complaint to conclude that she did not allege negligence by her attorneys, and, indeed, they contend that it is clear from the record that Appellant's "true objective in bringing this professional liability claim was to revisit the amount of the

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settlements she agreed to in the [Water Damage] case, rather than any dissatisfaction with [Appellees'] handling of the underlying litigation." *Id*. at 15. Accordingly, Appellees contend that the instant matter is distinguishable from both *Collas* and *McMahon*, wherein the litigants claimed that their attorneys provided incorrect advice regarding the "well-established principles of law in settling the case[s]," which placed the claims "outside the bounds of *Muhammad*." *Id*. at 23. Appellees reiterate that Appellant alleged that she was the victim of fraud by claiming that the release she actually signed was switched with the Travelers Release.

Appellees further argue that this Court's decision in *Muhammad* should not be overturned, as it promotes finality in litigation and ensures that judicial resources are not

wasted, and they suggest that overturning *Muhammad* will result in a surge of litigation. Nevertheless, Appellees are not opposed to a clarification of the exceptions to the *Muhammad* doctrine. *Id.* at 33.[12]

Preliminarily, we note that, in reviewing the grant or denial of a motion for summary judgment, this Court's standard of review is *de novo,* and our scope of review is plenary. *Bourgeois v. Snow Time, Inc.*, 242 A.3d 637, 649 (Pa. 2020). We have explained that a trial court should grant summary judgment only in cases where the record contains no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Id.* at 649-50. It is the moving party's burden to demonstrate the absence of any

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issue of material fact, and the trial court must evaluate all the facts and make reasonable inferences in a light most favorable to the non-moving party. *Id.* at 650. The trial court must also resolve any doubts as to the existence of a genuine issue of material fact against the moving party and "may grant summary judgment only where the right to such a judgment is clear and free from doubt." *Id.* (citation omitted). An appellate court may reverse a grant of summary judgment only if the trial court erred in its application of the law or abused its discretion. *Id.* Under that standard, and following a comprehensive review of Appellant's March 2017 complaint, we conclude that the Superior Court erred in holding that Appellant's negligence and breach of contract claims were barred under *Muhammad*.

As noted above, in holding Appellant's claims were barred under *Muhammad*, both the trial court and the Superior Court focused on select, fraud-based averments in Appellant's complaint wherein she asserted that she did not sign the Travelers Release, but instead signed a different version of a release that she claims was switched with the Travelers Release. The lower courts ignored, however, 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.

For example, Appellant specifically alleged that:

> 39. [Appellees] failed to exercise ordinary skill and knowledge in representing [Appellant] as attorneys . . . by allowing her to enter into a settlement agreement that would preclude her counterclaims against [Pier 3 in the Fees Case].

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> 44. [Appellant] entered into two different contracts with [Appellees] to diligently and competently represent her interests in [the Water Damage Case and the Fees Case].
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> 45. [Appellees] breached the contracts and failed to exercise ordinary skill and knowledge in representing [Appellant] in the above-mentioned actions by allowing her to enter into a settlement agreement that would preclude her counterclaims against [Pier 3 in the Fees Case].
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> 53. [Appellees] repeatedly assured [Appellant] that none of the settlement agreement [in the Water Damage Case] will prejudice [Appellant's] recognizable defenses and claims in the Pier 3 [Fees C]ase.
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> 64. [Appellees] breached the contracts and failed to exercise ordinary skill and knowledge in representing [Appellant] in the above-mentioned actions as her attorneys by allowing her to enter

into a settlement agreement that would preclude her counterclaims against [Pier 3 in the Fees Case].

Complaint at ¶¶ 39, 44, 45, 53, 64.

These claims, which do not challenge the amount of the settlement, but instead are based on Appellees' alleged failure to properly advise Appellant of the consequences of signing the Travelers Release, are precisely the type of claims that the Superior Court recognized were permissible in *Collas, Kilmer, and Banks*, *supra*, and which this Court held are permissible in *McMahon*, *supra*. Although the Superior Court purported to distinguish the instant case from *Collas* and *McMahon* on the basis that, in those cases, the plaintiffs alleged only negligence and not fraud, the court offered no legal support for its determination in this regard. Indeed, a plaintiff is permitted to assert alternative causes of action. *See* Pa.R.Civ.P. 1020(c) ("Causes of action and defenses may be pleaded in the alternative.").

Moreover, we find the Superior Court's statement that, "[w]hile claims of fraud are not barred under *Muhammad*, they also cannot be styled as claims sounding in

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negligence and breach of contract after a settlement has been accepted by the client," *Khalil*, 244 A.2d at 840, to be confusing at best. If Appellant's claims are based on fraud, regardless of whether they also may be couched in negligence or contract, they are not barred by *Muhammad*. *See Muhammad*, 587 A.2d at 1351. Likewise, if Appellant's claims are based on negligence and challenge Appellees' legal advice, those claims also are not precluded by *Muhammad*. *See McMahon*, 688 A.2d at 1182 (OAJC); *id*. at 1183 (Cappy, J., concurring).

Finally, 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. Accordingly, we conclude further consideration of the wisdom of *Muhammad* is unnecessary at this time.[13]

For all of these reasons, we reverse the Superior Court's decision to the degree it affirmed the trial court's grant of summary judgment in favor of Appellees on Counts I through IV of Appellant's complaint, and we direct that the matter be remanded to the trial court for further proceedings consistent with this opinion. We affirm the Superior Court's

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decision reversing the trial court's grant of summary judgment in favor of Appellees on Count 5 (the fraud claim) of Appellant's complaint.

Affirmed in part and reversed in part. Case remanded. Jurisdiction relinquished.

Chief Justice Baer and Justices Donohue and Dougherty join the opinion.

Justice Wecht files a concurring opinion.

Justice Mundy files a concurring opinion. Former Justice Saylor did not participate in the consideration or decision of this matter.

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CONCURRING OPINION

WECHT, JUSTICE

I agree with the Majority that the trial court erred in dismissing Dr. Ahlam Khalil's fraud and negligence claims against her former attorneys. Unlike the Majority, however, I would overturn this Court's deeply flawed decision in *Muhammad v. Strassburger, McKenna, Messer, Shilobod & Gutnick*, 587 A.2d 1346 (Pa. 1991). It is high time that we overrule that unfortunate precedent.

In *Muhammad*, the plaintiffs sued multiple physicians after their newborn died following a

failed circumcision. Based on the advice of their attorneys, the plaintiffs settled their medical malpractice suit for a paltry $26,500.[1] Later, the plaintiffs sued the attorneys who represented them in the medical malpractice action, claiming that the attorneys were negligent in failing to, among other things, fully investigate their case and join all possible

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defendants to the litigation. The Muhammads alleged that their attorneys' failure to exercise ordinary skill and knowledge directly caused them to accept an inadequate settlement offer.

The Muhammads never got a chance to prove their case, because the trial court held (incorrectly) that the couple's legal malpractice claims were barred by the collateral estoppel doctrine. On appeal, the Superior Court reversed, finding that collateral estoppel did not apply. But instead of allowing the case to proceed to trial, this Court chose to intervene. In the decision that followed, this Court held that legal malpractice suits filed after a case has been settled are invalid as a matter of law, absent fraud.

The legal reasoning that the Court provided for immunizing attorneys from malpractice liability was almost shamefully thin. The *Muhammad* decision, which one neighboring appellate court has called "patently unfair,"[2] proclaims:

> This case must be resolved in light of our longstanding public policy which encourages settlements. Simply stated, we will not permit a suit to be filed by a dissatisfied plaintiff against his attorney following a settlement to which that plaintiff agreed, unless that plaintiff can show he was fraudulently induced to settle the original action. An action should not lie against an attorney for malpractice based on negligence and/or contract principles when that client has agreed to a settlement. Rather, only cases of fraud should be actionable.
>
> The primary reason we decide today to disallow negligence or breach of contract suits against lawyers after a settlement has been negotiated by the attorneys and accepted by the clients is that to allow them will create chaos in our civil litigation system. Lawyers would be reluctant to settle a case for fear some enterprising attorney representing a disgruntled client will find a way to sue them for something that "could have been done, but was not." We refuse to endorse a rule that will discourage settlements and increase substantially the number of legal malpractice cases. A long-standing

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> principle of our courts has been to encourage settlements; we will not now act so as to discourage them.[3]

None of this reasoning is persuasive. Take for instance the claim that "[l]awyers would be reluctant to settle a case for fear some enterprising attorney representing a disgruntled client will find a way to sue them" for malpractice. *Id*. at 1349. There is no reason to believe that allowing litigants to sue their settlement counsel for malpractice would discourage settlements. The power to accept or reject a settlement offer lies with the client, not the lawyer. And while lawyers often have a lot of influence over their client's decision to accept or reject a settlement offer, it's foolish to suggest that lawyers will, en masse, discourage their clients from accepting reasonable settlement offers simply because they fear they might be sued for malpractice in the future. Lawyers have plenty of reasons-and in many cases an ethical duty-to advise their clients to accept favorable settlement offers.[4]

Though the *Muhammad* rule does not encourage settlements in any meaningful way, it does protect negligent attorneys from civil liability. One of the most head-

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scratching aspects of the *Muhammad* decision is that it ignores our holding only two years earlier that an attorney must exercise ordinary skill and knowledge during settlement negotiations, just as he or she would during other stages of representation.[5] In other words, we have said that attorneys are legally required to approach settlement negotiations with a certain level of professional skill. But, if they fail to meet that legal obligation, the courts will turn a blind eye and the client will get no remedy unless he can show that his attorney committed fraud. To call that wise "public policy" is farcical.

In his concise yet sharp dissent, Justice Larsen was exactly right when he called the *Muhammad* rule a gift to litigators:

> The majority has just declared a "LAWYER'S HOLIDAY." . . . It's Christmastime for Pennsylvania lawyers. If a doctor is negligent in saving a human life, the doctor pays. If a priest is negligent in saving the spirit of a human, the priest pays. But if a lawyer is negligent in advising his client as to a settlement, the client pays. . . . Thus, "filthy lucre" has a higher priority than human life and/or spirit. The majority calls this "Public Policy." Maybe . . . Maybe not?? It sure expedites injustice. Should we change the law so that non-lawyers can be judges?
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> I dissent.[6]

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Though *Muhammad*, by design, deprives some plaintiffs of their day in court, the *Muhammad* majority bizarrely suggested that the rule was necessary to ensure that Pennsylvania courts remain open to all, as our Constitution requires.[7] The Court's theory seems to have been that allowing malpractice suits against settlement counsel would "undermine the current rate of settlements," and "[w]ithout settlement of cases, litigants would have to wait years, if not decades, for their day in court."[8] Thus, this Court reached the unbelievable conclusion that it had to kick some litigants out of court in order to ensure that no litigants are denied prompt access to the courts. This unwitting irony is almost too silly for words. To repeat it out loud is to ridicule it.

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Muhammad's open courts discussion was infirm from the start, but it has grown even worse with age. When *Muhammad* was decided in the 1990s, our precedent treated the constitutional right to a remedy as almost a nullity.[9] Just three years ago, however, this Court held that laws infringing on the remedies clause of the open courts provision must pass at least intermediate (and maybe even strict) scrutiny.[10] How could the *Muhammad* Court's risible rationale for denying some legal malpractice victims their right to a remedy possibly clear such a demanding constitutional hurdle when it can't even pass the straight-face test?

The closest thing to legal authority that the *Muhammad* Court invoked was an *American Bar Association Journal* article penned by U.S. Supreme Court Chief Justice Warren Burger, where he remarked "[i]t appears that people tend to be less satisfied with one round of litigation and are demanding a 'second bite of the apple' far more than in earlier times."[11] Veering widely from the text and thrust of Chief Justice Burger's article, the *Muhammad* Court conjured from it the proposition that "second bite" legal malpractice cases should be viewed "with a jaundiced eye" because "they require twice the resources

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as a single case, yet resolve only a single litigant's claims-thus denying access to the courts to litigants who have never had a single resolution of their dispute."[12]

Chief Justice Burger's article does not support *Muhammad's* rule. The article is not

even about legal malpractice claims. The quoted portion is discussing a rise in docketed appeals during the mid- to late- twentieth century.[13] When Chief Justice Burger stated that people were demanding a "second bite" more than they used to, he was observing that litigants were filing more appeals than ever before. The remark had nothing to do with legal malpractice suits, and the article of course does not endorse *Muhammad*'*s* lawyer-immunizing rule or anything even close to it.

The *Muhammad* opinion is regrettable not just in substance, but in style as well. The decision expresses extreme suspicion of, and at times even contempt for, "disgruntled" and "dissatisfied" litigants who file so-called "second bite" lawsuits seeking more money for already-settled claims.[14] Of course, that is an astonishingly one-sided description of what legal malpractice plaintiffs are doing. The Muhammads, for example, did not sue their attorneys just because they had a hunch that they could get more money. Rather, the Muhammads believed (and intended to prove at the trial they never got) that their attorneys failed to act with the ordinary level of skill and knowledge that the law requires. To manufacture from whole cloth a baseless rule precluding these lawsuits is shameful enough, but to imply that post-settlement legal malpractice plaintiffs are

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fabricating trivial complaints about their attorney's performance just because they want a second payday is another thing entirely.

The "second bite" label is also inapt. For one thing, it ignores the fact that not all settlements occur during litigation, meaning that, in some cases, the legal malpractice action will be the plaintiffs first court case. Yet *Muhammad* presumably still shields attorneys from liability when they negotiate private settlement agreements outside of the court system. More importantly, though, calling these "second bite" lawsuits is wrong because the plaintiffs are not suing twice for the same injury. The second lawsuit relates to a distinct tort committed by a different tortfeasor-a critical distinction that the *Muhammad* majority never recognized.

Take the Muhammads, for example. They first sued the medical providers who negligently caused the death of their newborn son; then, years later, they sued the lawyers who (allegedly) mishandled their medical malpractice case. Yet this Court was unable to see those two cases as separate matters. In the Court's mind, the legal malpractice case was no more than a pretext for seeking additional damages for the underlying medical malpractice claim. Indeed, it does not appear that the *Muhammad* majority ever even considered the possibility that the Muhammads' attorneys really might have been negligent, and that the couple might have suffered damages in the form of a lower settlement as a result.[15] If this holding did not startle readers thirty years ago, it surely should today.

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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." In fact, just the opposite. Every court that has ever been asked to adopt *Muhammad*'*s* reasoning has declined to do so.[16] Indeed, it appears that the only jurists in the nation who have any fondness for *Muhammad* are my learned colleagues in the Majority today.

My point here is not simply that *Muhammad* is unpopular and unpersuasive, though it's certainly both. The universal rejection of *Muhammad* also is notable

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substantively because 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."[17] 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.

Shortly after *Muhammad* became precedent, the unjust outcomes began. One of the earliest published decisions applying *Muhammad* involved a plaintiff who lost $250,000 because his divorce attorney negligently advised him to reopen a previously executed divorce settlement.[18] Per *Muhammad*, his legal malpractice suit against his attorney was dismissed at the preliminary objection stage. If you think I'm being critical of *Muhammad*, just imagine what that plaintiff must think about it.

Some Pennsylvania courts unsurprisingly tried their creative best to narrow *Muhammad*'s unfortunate holding. Take *Collas v. Garnick*, 624 A.2d 117 (Pa. Super. 1993), for example. There, the plaintiff filed a legal malpractice case against her former lawyer, who advised her to sign a general release as part of a settlement of her motor-vehicle related tort suit. The settlement agreement released and discharged the other driver "and all other parties, known or unknown, who might be liable for the damages sustained."[19] Based on her lawyer's assurance that the release would not preclude an action against the manufacturer of the car's seat belt system, the plaintiff signed the release. The plaintiff later sued the seat belt manufacturer, but her action was barred by the release, after which she filed a legal malpractice action against her former lawyer.

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Relying on *Muhammad*, the trial court dismissed the case. But the Superior Court reversed and held that *Muhammad* did not bar the plaintiff's action. The court explained that:

> The plaintiffs have not alleged an inadequacy of the settlement negotiated by their lawyer. Instead, they complain that their lawyer negligently gave them bad advice about a written agreement which they had been asked to execute. The fact that the written agreement was prepared as part of the settlement of their prior action was incidental; it did not relieve counsel of an obligation to exercise care in determining the effect of the agreement which his clients were being asked to sign. This was particularly so where, as here, the clients had specifically asked the lawyer regarding the effect of the release and had told him of their plans to file a second action for the wife-claimant's injuries. With respect to his advice regarding the agreement of release, counsel was required to exercise the same degree of care as he or she would have exercised in advising a client about a complex agreement not a part of the settlement of a legal action.[20]

Collas is but one of several examples from the mid-1990s of state and federal courts laboring left and right to distinguish *Muhammad* in order to avoid the unjust outcomes that the decision on its face demands.[21]

Our Court eventually revisited *Muhammad* *in McMahon v. Shea*, 688 A.2d 1179 (Pa. 1997) (OAJC).[22] There, a husband and wife entered into a written divorce settlement

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stating that child support and alimony payments would terminate when their youngest child turned twenty-one, was emancipated, or finished college, whichever happened last. Based on his attorneys' advice, the husband stipulated that the agreement would be incorporated-but not merged into-the final divorce decree. When his ex-wife later remarried, the husband tried to terminate the alimony payments, but did not succeed because the parties' agreement had survived the divorce decree.

After his petition was denied, the husband filed a legal malpractice suit against his attorneys claiming that they failed to merge his alimony agreement with the final divorce decree,

causing him to be responsible for alimony even after his ex-wife remarried. The trial court dismissed the malpractice complaint, but our Court reversed and distinguished *Muhammad*.

Unfortunately, there were only six Justices on the Court at the time, and they split 3-3, making the decision an OAJC.[23] The lead opinion found *Muhammad* to be inapplicable because the plaintiff-husband was dissatisfied not with his settlement amount but with his attorney's failure to provide correct advice about well-established principles of law in settling the case:

> The laudable purpose of reducing litigation and encouraging finality would not be served by precluding the instant action. [Plaintiff] merely seeks

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> redress for his attorneys' alleged negligence in failing to advise him as to the controlling law applicable to a contract.[24]

This quasi-legal sleight of hand is even less persuasive than the *Muhammad* Court's analysis. "The laudable purpose[s] of reducing litigation and encouraging finality" would, without question, be served by precluding an entire class of lawsuits-to the same extent that they were served in *Muhammad*, in fact. Furthermore, the *McMahon* OAJC never explained why settlement counsel should be held to ordinary standards of reasonable professional competence when advising a client as to controlling law, but then be exempt from those same standards when advising a client on the value of their case or on whether to accept or reject a settlement offer.[25] That is no doubt because it simply cannot be explained.

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The *McMahon* Court's artificial distinction appears driven foremost by a fervent desire to avoid admitting that *Muhammad* was wrongly decided. But now we must all pretend that there is some meaningful difference between challenging an attorney's legal advice and challenging the settlement amount directly, and that all cases either fall into the former category or the latter. The truth is not so simple.

The specific negligent acts alleged in a post-settlement legal-malpractice complaint seek to establish that the attorney breached his or her duty of care to the client. But a breach alone is not enough. The plaintiff also must establish that he or she suffered damages because of the attorney's breach.[26] One does this by convincing the jury that a non-negligent attorney would have achieved a different result, perhaps by negotiating a better settlement or perhaps by proceeding to trial and securing a verdict more favorable than the settlement was. Understood this way, a post-settlement malpractice plaintiff alleging that his or her attorney provided incorrect legal advice is of necessity still challenging the terms of settlement because the plaintiff will have to prove that the attorney's breach led to some adverse outcome.[27] Otherwise, the claim fails for want of damages.

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Given this Court's current path, however, we must stubbornly persist in advancing the outlandish claim that legal malpractice plaintiffs who identify a specific defect in their attorney's representation are not challenging the adequacy of their settlement. But of course they are! How else would they establish damages?[28]

In a sense, the client in *McMahon* was alleging the exact same thing that the clients in *Muhammad* were alleging, *i.e.*, that their attorneys negligently advised them to settle their cases on unfavorable terms. Why would we divide those cases into two distinct categories, with one being permissible and one forbidden? I still do not understand, and the reasons that the Court has given so far have all been entirely unconvincing. It's simply an arbitrary slicing.

It is also likely not even true that the claims in *Muhammad* stemmed from mere dissatisfaction with the value of the settlement, as this Court has suggested.[29] The *Muhammad* opinion unfortunately omits virtually all key

details about the substance of the couple's civil complaint, but a scholarly discussion of the case that appeared in the 1992 *Temple Law Review* fills in some of the details that the *Muhammad* majority itself failed to discuss:

> On November 7, 1977, Pamela and Abdullah Muhammad had a son at Magee-Women's Hospital in Pittsburgh. At the parents' request, a circumcision was performed on the baby, but the procedure failed to remove the entire foreskin. A second operation was then performed on December

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> 16, 1977, at Children's Hospital in Pittsburgh. During this second operation, the baby suffered a pulmonary edema as a result of the general anesthesia; he died three days later.
>
> In October 1978, the Muhammads retained the law firm of Strassburger, McKenna, Messer, Shilobod and Gutnick ("Strassburger") to represent them in a claim arising from the death of their son. In April 1979, Strassburger filed claims on the Muhammads' behalf against Children's Hospital, the urologist who performed the second operation, and the attending anesthesiologist ("Defendants"). Strassburger did not join agee-Women's Hospital or the physicians involved in the first circumcision operation. Strassburger took the deposition of Dr. Westman, the anesthesiologist, on April 22, 1981, nearly three and one-half years after the baby's death. During this deposition, Dr. Westman told Strassburger that the pulmonary edema that killed the baby was most likely the result of the anesthetic drug used in the operation. By this time, the two-year statute of limitations had run, and Strassburger was no longer able to join the drug's manufacturer as a defendant. The Muhammads' attorneys allegedly never told them of the doctor's revelation in this deposition.[30]

Like *McMahon*, today's Majority portrays the lawsuit in *Muhammad* as flimsy, substance-free speculation that the settlement was inadequate, and then distinguishes

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the case before us from those probably-distorted facts.[31] While I recognize that the Majority is simply continuing the project we began in *McMahon*-with the apparent goal being to narrow *Muhammad's* scope while preserving some small part of the rule-the plan is doomed to fail because there is nothing in *Muhammad* worth saving. To this day, this Court still has not offered a coherent limiting principle. Even if there were one to be had, I believe we should set our sights higher than merely limiting the reach of an indefensible rule. The scaffolding is in a shambles. It needs to be taken down rather than buttressed.

Also like *McMahon,* today's decision muddies and muddles the law. The nonbinding opinions in *McMahon* ventured conflicting theories about the scope of *Muhammads* exception. Depending on how you choose to interpret *McMahon,* the lead opinion created either (a) a narrow exception for attorneys who fail to advise their clients regarding "the controlling law applicable to a contract,"[32] or (b) a broader exception that applies when the attorney fails "to inform his or her client of all relevant considerations before the client enters and signs a complex legal agreement,"[33] or (c) a *sub silentio* limitation of *Muhammad* to its (largely undiscussed) facts.[34] On the other hand, the concurring Justices-who joined the *McMahon* OAJC in some respects but not in others-supported an exception for cases in which an attorney fails "to inform a client

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about the ramifications of existing law," but disagreed that *Muhammad* should be limited to its facts.[35]

Alas, today's decision adds no more clarity. The Majority tells us that the claims before us are not barred by *Muhammad* because they "are based on Appellees' alleged failure to properly advise Appellant of the consequences of signing the Travelers Release[.]"[36] But other parts of the Majority opinion suggest that *Muhammad* does not apply when the plaintiff alleges that the attorney "provided incorrect legal advice"[37] It is unclear to me which, if any, of the *McMahon* formulations the Majority is adopting today. Is the exception limited to advice about the consequences of entering a settlement, or does it also include advice about "the controlling law"?[38] And should *Muhammad* be limited to its facts? And what even were those facts? One would expect that a court would have more to say when revisiting a highly criticized, inconsistently applied doctrine cobbled together from a set of confusing nonbinding plurality opinions. But today's decision offers few additional insights.

Personally, I do not share the Majority's apparent optimism that we can tweak the *Muhammad* rule into coherence. Nor do we have to. We granted *allocatur* on two issues

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in this case: (1) whether *Muhammad* should be overturned; and (2) whether the Superior Court misconstrued Dr. Khalil's claims as entirely fraud-based, and then erred in applying *Muhammad* to those (supposedly fraud-based) claims.[39] The catch is that resolving either issue likely will moot the other one. If we begin by overturning *Muhammad*, we would also be throwing out the exception that is the subject of issue two. On the other hand, if we hold that Khalil's claims fall within *Muhammad*'s exception, then this isn't a *Muhammad* case at all and therefore is not a proper vehicle for reexamining that decision.

The only way that we could answer both questions presented is if we begin with issue one but decline to overturn *Muhammad*. Indeed, that seems to be issue two's reason for being. Dr. Khalil apparently wanted to offer the Court a second basis on which to reverse the Superior Court's decision below in the event that she cannot convince us to overturn *Muhammad* (which we obviously should do). What Dr. Khalil actually ended up giving the Court is a way to dodge the pivotal issue in this case. The Majority chooses to begin and end its analysis with *Muhammad*'s exception and ignores the overriding question of whether *Muhammad* ought to govern at all.

While it is not at all unusual for a court to moot one issue by resolving another, the Court today is choosing-completely voluntarily-to avoid weighing in on a question of utmost importance. When a litigant comes before the Court urging us to reconsider an obviously unjust decision that was poorly reasoned, inconsistently applied, and criticized both by the legal academy and by courts across the country, I do not believe we should skirt the issue so nonchalantly.

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How many more victims of legal malpractice will be thrown out of court-or, more likely, turned away by malpractice attorneys-while this Court waits for a not-too-hot, not-too-cold, just-right challenge to *Muhammad*? Such injustices easily can be avoided. The Court has in front of it today a well-argued appeal where the appellant has preserved a challenge to *Muhammad* and is explicitly asking us to overturn it. Regrettably, the Majority squanders this opportunity, claiming that it is "unnecessary" to even consider doing something about Pennsylvania's deeply unjust lawyers' holiday "at this juncture."[40]

I disagree with the path that the Court has chosen today. Nevertheless, I agree that Dr. Khalil's claims should proceed to trial. Thus, I concur in the result.

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CONCURRING OPINION

MUNDY, JUSTICE

I join the result reached by the majority. With that said, I am also aligned with Justice Wecht's view that the rule announced in *Muhammad v. Strassburger, McKenna, Messer, Shilobod & Gutnick*, 587 A.2d 1346 (Pa. 1991), should be disapproved, and that the present dispute offers a convenient vehicle to do so. 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. 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.

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Notes:

[1] *Khalil v. Diegidio, et. al.*, Docket No. 080503145 (Phila. Cnty. Court of Common Pleas).

[2] *Pier 3 Condominium Assoc. v. Khalil*, Docket No. 090701819 (Phila. Cnty. Court of Common Pleas).

[3] Appellant alleged that Jason Diegidio, as president of the condominium association, exerted undue influence to ensure that she would not be compensated for the damage to her unit.

[4] According to Appellees, the three law firms which previously represented Appellant in the case all successfully petitioned to withdraw as counsel. *See* Appellees' Motion for Summary Judgment in the Water Damage Case at 3, ¶ 6.

[5] The Reproduced Record is referred to herein as "R.R."

[6] The release is undated, but the trial court in the instant matter noted that it "is the **only executed** release that exists in the related Water Damage case." Trial Court Opinion, 3/2/20, at 5 (emphasis original).

[7] Although Appellant suggested in her motion for post-trial relief that the limiting language marked by an asterisk in the release that she signed was "in her own handwriting," Defendant/Counterclaim Plaintiff's Motion for Post-Trial Relief in the Fees Case at ¶ 29, the asterisked language in the release that she submitted as an exhibit is typewritten.

[8] The Commonwealth Court has exclusive appellate jurisdiction over matters relating to not-for-profit corporations, such as Pier 3, and their corporate affairs. *See* 42 Pa.C.S. § 762(a)(5); *Mayflower Square Condo. Ass'n v. KMALM, Inc.*, 724 A.2d 389, 391 n.3 (Pa. Cmwlth. 1999).

[9] The court suggested that the only way Appellant could challenge the lower courts' determination that the Travelers Release was enforceable would be "to plead and prove extrinsic fraud relating to procedural matters," which she failed to do. Trial Court Opinion, 3/2/20, at 22.

[10] The Superior Court also noted that, in *Kilmer v. Sposito*, it "distinguished an attorney's professional judgment in negotiating a settlement from the attorney's failure to advise a client correctly on the law pertaining to the client's interests, recognizing that under the latter scenario, the plaintiff's claims are not barred by *Muhammad*." *Khalil*, 244 A.3d at 840 (citing *Kilmer v. Sposito*, 146 A.3d 1275, 1279-80 (Pa. Super. 2016)); *see also Banks v. Jerome Taylor & Assocs.*, 700 A.2d 1329, 1332 (Pa. Super. 1997) (Where a litigant merely wishes to second guess a decision to settle "due to speculation that he or she may have been able to secure a larger amount of money, *i.e.* 'get a better deal,' the *Muhammad* rule applies." Where, however, "a settlement agreement is legally deficient or if an attorney fails to explain the effect of a legal document, the client may seek redress from counsel by filing a malpractice

action sounding in negligence.").

[11] Appellant compares the unpublished decision in *Abeln v. Eidelman,* 2015 WL 7573233, *2 (Pa. Super. 2015) ("*McMahon* did not serve to limit *Muhammad* to its facts, and *Muhammad* remains as controlling precedent until a true majority of the supreme court rules otherwise"), with the published decision in *Kilmer*, 146 A.3d at 1280 ("Even without supplying binding precedent, *McMahon* provides helpful guidance on the issue at bar, for the concurrence agreed with the [OAJC] where it distinguished 'between a challenge to an attorney's professional judgment regarding an amount to be accepted or paid in settlement of a claim, and a challenge to an attorney's failure to correctly advise his client about well established principles of law in settling a case. . . .'").

[12] The Pennsylvania Bar Association, the Philadelphia Bar Association, and the Allegheny County Bar Association filed a joint *amicus* brief in support of Appellees. *Amici* submit that *Muhammad* serves an important public policy purpose and, thus, should stand. However, they contend that, because the Superior Court found that Appellant's action sounded in fraud, which is an exception to the *Muhammad* rule, *Muhammad* does not apply to the facts of this case, and there is no "compelling need" for this Court to overturn *Muhammad* at this juncture. *Amicus* Brief at 4-5.

[13] Our decision to defer consideration of the continued viability of *Muhammad* until we are presented with a case in which is it is squarely implicated should not, as the concurrence suggests, be interpreted as a "fondness for *Muhammad*," Concurring Opinion (Wecht, J.) at 9, nor do we "skirt the issue . . . nonchalantly" as alleged in the concurrence, *id*. at 19. It is not our goal to "narrow *Muhammad's* scope while preserving some small part of the rule." *Id*. at 16. Rather, as explained herein, the Superior Court wholly misconstrued Appellant's complaint by focusing on only Appellant's fraud-based claims, while ignoring her legal malpractice claims wherein she clearly alleged that Appellees failed to properly advise her of the consequences of signing the Travelers Release. As such, 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.

[1] The Muhammads at first agreed to settle their case for a mere $23,000, but the trial court stepped in and suggested that the hospital raise its offer by $3,500, which it did.

[2] *Prande v. Bell*, 660 A.2d 1055, 1064 (Md. Ct. Spec. App. 1995), *abrogated on other grounds by Thomas v. Bethea*, 718 A.2d 1187 (Md. 1998).

[3] *Muhammad*, 587 A.2d at 1348-49.

[4] *See Prande*, 660 A.2d at 1064 ("It is unlikely that attorneys will stop recommending settlements out of concern over possible malpractice suits, because settlements are still in the best interests of the clients."). While I agree that settlements are crucial to the functioning of the court system, and that they are often best for all parties, I do not understand why this Court speaks about them like they are a critically endangered species in need of our protection and encouragement. The reality is that civil cases in Pennsylvania are *most often* resolved by settlements. Statewide civil caseload statistics from 2020 reveal that around 30,000 civil cases ended in settlements throughout that year. *See* 2020 Caseload Statistics of the Unified Judicial System of Pennsylvania at 24, *available at https://www.pacourts.us/Storage/media/pdfs/20220110/171116*-2020reportonline.pdf. During that same time, by contrast, there were 763 non-jury trials and only 198 jury trials. *Id.* In fact, there were far more settlements in 2020 than there were default judgments, arbitration board decisions, jury trials, and non-jury trials combined. *Id.* Put simply, there is no reason to believe that special rules preemptively encouraging settlements are needed, especially not when they come at the cost of denying some litigants redress for their injuries.

[5] *Rizzo v. Haines*, 555 A.2d 58, 65 (Pa. 1989) ("We believe that the necessity for an attorney's

use of ordinary skill and knowledge extends to the conduct of settlement negotiations."). Ironically, the *Rizzo* Court expressed the same pro-settlement fervor that the *Muhammad* Court did, though with opposite results. *Compare Rizzo,* 555 A.2d at 65-66 ("[T]he importance of settlement to the client and society mandates that an attorney utilize ordinary skill and knowledge."), *with Muhammad,* 587 A.2d at 1350 ("Were we, as a court, to encourage litigation that would undermine the current rate of settlements, we would do a grave injustice and disservice to the citizens of the Commonwealth.").

[6] *Muhammad,* 587 A.2d at 1352-53 (Larsen, J., dissenting) (capitalization and ellipses in original). To some, the dissent's penultimate sentence questioning whether non-lawyers should be judges may seem confusing. But with time I have come to appreciate the line. I believe that Justice Larsen was making the point that we as lawyers are not necessarily the most detached arbiters when making rules about how and when other lawyers can be sued. Rather, our legal training, years of experience as attorneys, and close social and professional relationships with other lawyers may influence our views. *See generally* Benjamin H. Barton, *Do Judges Systematically Favor the Interests of the Legal Profession?,* 59 Ala.L.Rev. 453, 456 (2008) ("Judges tend to come from a very select group of individuals who have thrived within the institution of legal thought and practice. As a result[,] judges take a particular set of deeply ingrained biases, thought-processes, and views of the world with them to the bench."). At the very minimum, we ought to recognize that judicial decisions favoring lawyers risk being viewed skeptically by the public.

How easy it is to imagine a group of passionate, well-intentioned physicians protesting that too many medical malpractice suits are filed by "dissatisfied" or "disgruntled" patients who "will find a way to sue them for something that 'could have been done, but was not.'" *Muhammad,* 587 A.2d at 1348-49. Perhaps a Court of seven physicians instead of seven lawyers would be inclined to erect substantive legal barriers preventing certain medical malpractice cases from ever being filed. Perhaps they would even announce that many suits against physicians should be viewed "with a jaundiced eye." *Id.* at 1350. If they were brave, they might even declare from on high that it is the "strong and historical public policy" of this Commonwealth to encourage Pennsylvanians to undergo lifesaving operations-and that disallowing malpractice suits against physicians who perform those procedures is therefore wise "public policy." *Id.* at 1349. Consider how you might view such a decision from such a court. And then remember that the biases of others are often easier to spot than our own.

[7] *See* Pa. Const. art. 1, § 11 ("All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay.").

[8] *Muhammad,* 587 A.2d at 1350.

[9] *See Freezer Storage, Inc. v. Armstrong Cork Co.*, 382 A.2d 715, 720 (Pa. 1978) (holding that Article I, § 11 does not prohibit "the Legislature from abolishing a right of action existing at common law without substituting some other means for redress").

[10] *Yanakos v. UPMC*, 218 A.3d 1214, 1223 (Pa. 2019) (OAJC) (applying intermediate scrutiny); *id.* at 1227 (Donohue, J., concurring and dissenting) ("[T]he right to a remedy in Article I, Section 11 is a fundamental right which can only be infringed when there is a showing of a compelling state interest and that the means chosen to advance it are narrowly tailored to achieve the end."); *see also id.* at 1243 (Wecht, J., dissenting) ("[T]he legislature may abrogate or modify a common law cause of action in response to a clear social or economic need, so long as the challenged legislation bears a rational and non-arbitrary connection to that need.").

[11] Warren E. Burger, *Isn't There a Better Way?*, 68 A.B.A.J. 274, 275 (1982).

[12] *Muhammad*, 587 A.2d at 1350.

[13] Burger, *supra* n.11, at 275 ("From 1950 to 1981 annual court of appeals filings climbed from over 2,800 to more than 26,000. The annual caseload per judgeship increased from 44 to 200 cases. That growth was 16 times as much as the increase in population.").

[14] *See*, *e.g.*, *Muhammad*, 587 A.2d at 1351 ("[W]e foreclose the ability of dissatisfied litigants to agree to a settlement and then file suit against their attorneys in the hope that they will recover additional monies.").

[15] *Accord* Kristine Heim Marino, *Legal Malpractice Law-the "Lawyer's Holiday:" for Victims of Legal Malpractice, Justice Goes on Vacation-Muhammad v. Strassburger, McKenna, Messer, Shilobod & Gutnick*, 587 A.2d 1346 (Pa. 1991), 65 Temp. L. Rev. 771, 781, n.87 (1992) ("The court did not seem to recognize that its decision may have the effect of barring some legitimate claims from gaining access to the courts.") (hereinafter, "Marino, Lawyer's Holiday"); Richard B. Cappalli, *What Is Authority? Creation and Use of Case Law by Pennsylvania's Appellate Courts,* 72 Temp. L. Rev. 303, 376 (1999) (criticizing the *Muhammad* majority for "paint[ing] with the broadest brush imaginable").

[16] *See, e.g., Filbin v. Fitzgerald,* 149 Cal.Rptr.3d 422, 433, n.10 (Cal.Ct.App. 2012) ("All other states which have considered Pennsylvania's stand have rejected it."); *Meyer v. Wagner,* 709 N.E.2d 784, 790 (Mass. 1999) (declining to adopt *Muhammad); Thomas v. Bethea,* 718 A.2d 1187, 1193 (Md. 1998) ("The *Muhammad* decision represents a distinct minority view. It is not only inconsistent with most of the cases decided prior to its rendition, none of which are even mentioned in the opinion, but it has been expressly rejected by all of the courts that have had the benefit of considering it."); *McWhirt v. Heavey,* 550 N.W.2d 327, 334-35 (Neb. 1996) (declining to adopt *Muhammad); Malfabon v. Garcia,* 898 P.2d 107, 110 (Nev. 1995) (declining to adopt *Muhammad); Baldridge v. Lacks,* 883 S.W.2d 947, 952 (Mo.Ct.App. 1994) (declining to adopt *Muhammad because* it would not "serve the interests of justice to do so"); *Grayson v. Wofsey, Rosen, Kweskin & Kuriansky,* 646 A.2d 195, 200 (Conn. 1994) (stating that, "like the majority of courts that have addressed this issue, we decline to adopt a rule that insulates attorneys from exposure to malpractice claims arising from their negligence in settled cases if the attorney's conduct has damaged the client"); *McCarthy v. Pedersen & Houpt,* 621 N.E.2d 97, 101 (Ill.App.Ct. 1993) (declining to adopt *Muhammad); Ziegelheim v. Apollo,* 607 A.2d 1298, 1304 (N.J. 1992) ("[W]e reject the rule espoused by the Pennsylvania Supreme Court. Although we encourage settlements, we recognize that litigants rely heavily on the professional advice of counsel when they decide whether to accept or reject offers of settlement, and we insist that the lawyers of our state advise clients with respect to settlements with the same skill, knowledge, and diligence with which they pursue all other legal tasks."); *see also* 4 Ronald E. Mallen & Jeffrey M. Smith, Legal Malpractice § 33.84 (2022) ("[M]ost courts expressly have refused to accept *Muhammad* or broadly protect lawyers from allegations of negligence."); J. Mark Cooney, *Benching the Monday-Morning Quarterback: The "Attorney Judgment" Defense to Legal-Malpractice Claims,* 52 Wayne L. Rev. 1051, 1084 (2006) ("Most courts-as well as the leading commentators-have rejected the broad *Muhammad* rule, and it has been described as 'a distinct minority view.'" (footnotes omitted)).

[17] *Muhammad*, 587 A.2d at 1349.

[18] *Martos v. Concilio*, 629 A.2d 1037, 1038 (Pa. Super. 1993).

[19] *Collas*, 624 A.2d at 119.

[20] *Id*. at 121.

[21] *See*, *e.g.*, *Wassall v. DeCaro*, 91 F.3d 443, 449 (3d Cir. 1996) (predicting that we would not apply *Muhammad* when an attorney "has neglected his role as steward, hopelessly delaying, and perhaps prohibiting, the system from properly resolving his client's case"); *McMahon v. Shea*, 657 A.2d 938, 941 (Pa. Super. 1995) (*en banc*) ("The salutary policy which formed the basis for the Supreme Court's

decision in *Muhammad* is not equally applicable where the lawyer's alleged negligence does not lie in the exercise of judgment regarding an amount to be accepted or paid in settlement of a claim, but, rather, in the failure to advise the client properly about well established principles of law and the impact of an agreement upon the substantive rights and obligations of the client."); *White v. Kreithen*, 644 A.2d 1262, 1265 (Pa. Super. 1994) (holding that *Muhammad* does not apply when a client effectively is forced to settle a case because of their attorney's negligence); *Builders Square, Inc. v. Saraco*, 868 F.Supp. 748, 750 (E.D. Pa. 1994) (same).

[22] Opinion Announcing the Judgment of the Court.

[23] Closely divided decisions with judges trying to make sense of *Muhammad's* holding were typical in this era. Before reaching our Court, for example, *McMahon* was decided by an *en banc* panel of the Superior Court that produced a five-judge majority opinion with four judges in dissent and a concurring statement. Notably, though, even the dissent in *McMahon* questioned the wisdom of *Muhammad*. The dissenting judges simply felt that they were bound by precedent. *See McMahon v. Shea,* 657 A.2d 938, 945, n.3 (Pa. Super. 1995) (Cavanaugh, J., dissenting) ("[T]he *stare decisis* doctrine does not preclude judicial statements which, while recognizing the governance of a supreme court majority, undertake to question the practical wisdom of the holding. The present rule is an example.").

[24] *McMahon,* 688 A.2d at 1182. Fans of comedy will get a chuckle out of the *McMahon* OAJC. At one point, the lead opinion blames the Superior Court for the unjust results that *Muhammad* caused, accusing that body of an "unwarranted expansion of *Muhammad[.]*" *Id*. There was of course no such expansion. *Muhammad,* as written, created an exceedingly broad liability shield for civil litigators who do not commit fraud. And the Superior Court's *post-Muhammad, pre-McMahon* jurisprudence actually tried to limit *Muhammads* reach, not expand it. *See supra* note 21. In one paragraph, the *McMahon* OAJC admitted that *Muhammad* established a broad rule; then, in another, the OAJC said it was the Superior Court's fault. *Compare McMahon,* 688 A.2d at 1181 ("[W]e held [in *Muhammad]* that a dissatisfied plaintiff may not file suit against his attorney following a settlement to which he agreed, unless that plaintiff can establish that he was fraudulently induced to settle the original action."), *with id.* at 1182 ("It appears that confusion has arisen in this area of the law due to the unwarranted expansion of *Muhammad* in *Miller v. Berschler,* 621 A.2d 595 (Pa. Super. 1993).").

[25] Estimating the settlement value of a case is extremely fact-dependent and far from an exact science. In some cases, though, an attorney could misestimate the value of a case by such a large margin that his or her conduct falls below that of all reasonably competent professionals. How could such instances be anything but a failure by the attorney to research and investigate all aspects of the case thoroughly? (Either because the attorney didn't understand the law, failed to research what similar cases had settled for in the past, or failed to appreciate some nuance of the case that made it more valuable than others.) *See Thomas,* 718 A.2d at 1194 ("The principle that a lawyer may be held liable for negligence in the handling of a case that was ultimately settled by the client, whether based on deficiencies in preparation that prejudiced the case and more or less required a settlement or on a negligent evaluation of the client's case, has been accepted by nearly every court that has faced the issue.").

[26] Though the *Muhammad* Court never mentioned them, the elements of a legal malpractice cause of action are well-established in this Commonwealth. *See Liberty Bank v. Ruder,* 587 A.2d 761, 764-65 (Pa. Super. 1991) ("The essential elements which must be demonstrated to state a cause of action for attorney malpractice are: the employment of the attorney or other basis for duty; the failure of the attorney to exercise ordinary skill and knowledge; and that such negligence was the proximate cause of damage to the plaintiff.").

[27] To be fair, Khalil's case is unique because she can argue that she suffered harm in the form of

her claims being dismissed in a separate case. But that's really just another way of saying that the amount of the settlement in the water damage case was insufficient, since there is presumably some dollar figure that Khalil would have accepted in exchange for settling all of her claims against Travelers. In any event, today's decision does not appear to be limited to situations with multiple overlapping suits, and most post-settlement legal malpractice cases will involve a plaintiff whose only conceivable damages are the diminished settlement amount.

[28] *See Schenkel v. Monheit*, 405 A.2d 493, 494 (Pa. Super. 1979) ("Proof of damages is as crucial to a professional negligence action for legal malpractice as is proof of the negligence itself.").

[29] *McMahon*, 688 A.2d at 1182 (distinguishing *Muhammad* because "Mr. McMahon is not attempting to gain additional monies by attacking the value that his attorneys placed on his case").

[30] Marino, *Lawyer's Holiday, supra* n.15, at 771-72 (footnotes omitted) (citing the Muhammads' amended complaint and brief in opposition to Strassburger's preliminary objections).

Notably, these details seem to line up with what little the *Muhammad* Court shared about the couple's complaint. While discussing the Muhammads' fraud claims, for example, the Court noted that "[t]he [Muhammads'] complaint alleges a failure to sue another hospital and a drug manufacturer (arguably negligence claims) as the basis for the fraud." *Muhammad*, 587 A.2d at 1352. Then, in the final footnote of the opinion, the Court remarked:

> It becomes obvious that by allowing suits such as this, which merely "second guess" the original attorney's strategy, we would permit a venture into the realm of the chthonic unknown. It is impossible to state whether a jury would have awarded more damages *if a suit had been filed against another potential party or under another theory of liability.* It is indeed possible that a smaller verdict would have been reached or a defense verdict ultimately would have been rendered. Thus, sanctioning these "Monday-morning-quarterback" suits would be to permit lawsuits based on speculative harm; something with which we cannot agree.

Id. at 1352 n.13 (emphasis added).

[31] *See* Majority Opinion at 21 *("Muhammads* bar on lawsuits based on the adequacy of a settlement is not implicated in this case.").

[32] *McMahon,* 688 A.2d at 1182.

[33] *Id.* (quoting *Miller v. Berschler,* 621 A.2d 595, 601 (Pa. Super. 1993) (Wieand, J., dissenting)).

[34] *Id.* ("[W]e find that the analysis of *Muhammad* is limited to the facts of that case.").

[35] *Id.* at 1183 (Cappy, J., concurring) (stating that attorneys should be held liable for failing "to inform a client about the ramifications of existing law"); *id.* at 1182-83 ("I join the majority except to the extent that the majority limits this court's decision in *[Muhammad]* to the facts of that case.").

[36] Majority Opinion at 20.

[37] *Id.* at 21.

[38] Perhaps there isn't much daylight between "the controlling law applicable to a contract" and "the consequences of signing" an agreement. One could argue that the interpretation of a contract-or, more specifically, knowing how a court will interpret the contract-is a matter of knowing "the controlling law." If that's the Majority's theory, it should say so. Leaving the precise scope of *Muhammads* exception in question benefits no one and will lead to many otherwise meritorious malpractice suits never seeing the light of day.

[39] Per Curiam Order, 8/3/2021, at 1 (granting

allocatur on two issues: "(1) Should the Court overturn [*Muhammad*,] which bars legal malpractice suits following the settlement of a lawsuit absent an allegation of fraud?" and "(2) Did the Superior Court misconstrue the averments in [Dr. Khalil's] complaint and err as a matter of law when it held that [Dr. Khalil's] legal malpractice claims were barred by [*Muhammad*]?").

[40] Majority Opinion at 21, n.13.
