

The Barrier to Legal Malpractice Cases Arising Out of Class Action Settlements

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By Alesia S. Sulock & Josh J.T. Byrne

For a number of different reasons, courts have historically been reluctant to permit legal malpractice cases after a litigant settles an underlying case. In 1991, in *Muhammad v. Strassburger, McKenna, Messer, Shilobod and Gutnick*, 526 Pa. 541, 587 A.2d 1346 (Pa. 1991), rehearing denied, 528 Pa. 345, 598 A.2d 27 (Pa. 1991), cert denied ___ U.S. ___, 112 S.Ct. 196, (1991), the Pennsylvania Supreme Court recognized the important public policy of precluding clients from settling a case and then turning around and suing the lawyer who settled the case for legal malpractice. In *Muhammad*, the court held: “We 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 moneys.” The court continued: “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.” The rationale of *Muhammad* centered on the important public policy in encouraging settlements. The court recognized a cause of action arising from dissatisfaction with a settle-

ment threatened the long standing principle in favor of encouraging settlements since this cause of action would cause lawyers to 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.’”

Even before adopting *Muhammad*, Pennsylvania courts had long avoided second guessing settlements in many different contexts, but particularly in the context of legal malpractice actions. In *Mariscotti v. Tinari*, 335 Pa. Super. 599, 602, 485 A.2d 56, 58 (1984), which arose from an underlying marital settlement, the court held:

Whether she could have obtained a better settlement is anyone's guess. How much better, of course, is even more speculative. These issues cannot properly be left to the surmise of a jury. Because these issues are entirely speculative, they defeat any cause of action for malpractice of the attorney negotiating the settlement.

The rationale for precluding legal malpractice cases after settlement is even strong-

er when the settlement in the underlying action was part of a class action settlement. This is because Federal Rule 23 and its equivalents in most states require that settlements be court approved. Pennsylvania Rule of Civil Procedure 1714 is slightly less formal than Federal Rule 23, as Rule 1714 only requires “approval of the court after hearing,” whereas Rule 23 explicitly requires a “finding that the settlement is fair, reasonable, and adequate” after consideration of a number of factors. However, Pennsylvania courts have long looked to Rule 23 for additional guidance particularly as the notes accompanying the original Pennsylvania rule explicitly state that they incorporate the federal rule. See, *Milkman v. American Travellers Life Insurance*, No. 011925, 2002 WL 778272, at *4 (Pa. Com. Pl. 2002).

The Supreme Court of Delaware recently addressed this issue holding that the “finding in the underlying action that class representation was adequate precludes plaintiffs from now asserting a legal malpractice claim against defendants.” *Hernandez v. Baird Mandalas Brockstedt & Federico*, No. 204, 2024, 2025 WL 1304194, at *1 (Del. May 6, 2025). In *Hernandez*, the trial court determined that Delaware Superior Court Civil Rule 23 (like the federal rule) outlines the lengthy requirements necessary to establish, maintain, and ultimately settle a class action matter. This put Delaware in line with other courts, including the D.C. District in *Thomas v. Albright*, 77 F.Supp.2d 114,121 (D.D.C. 1999), which held an essential aspect of Rule 23 that the court must find, and class counsel must establish, that the settlement was fair to the class members and that class counsel adequately represented the class. The court noted that it is for this reason

that “courts have been very hesitant to allow individual class members to maintain legal malpractice actions against class counsel.”

Thus, the trial court in *Hernandez* also found that court approval of the settlement of a class action rests on the essential finding that class counsel has adequately represented the class members (citing *Wyly v. Weiss*, 697 F.3d 131, 142 (2d Cir. 2012) where the court determined that “class members could not establish a breach of duty as a matter of law” because a finding that the class had been adequately represented is implicit in the court’s ultimate approval of a class settlement).

The Delaware Supreme Court’s held that the plaintiff’s legal malpractice claim was barred by collateral estoppel, holding “the claims administrator’s decision in the underlying class action was a final adjudication on the merits by a court of competent jurisdiction as the claims process was an approved process set up by the court in the underlying action.” Therefore, a party’s belief that the claims process was not fair to them cannot serve as a basis for a legal malpractice claim—absent fraud or another basis to overcome the bar of collateral estoppel.

The class action settlement process enables the court to make a determination that the settlement of the class action is fair and adequate, which necessarily includes a finding that the class members were adequately represented by class counsel. In many cases, this will be a bar for legal malpractice claims arising out of class settlements.



Alesia S. Sulock, a shareholder with Marshall Dennehey, is a member of the professional liability department where she focuses her practice on the defense of claims made and suits brought against attorneys, including legal malpractice claims, Dragonetti suits, abuse of process claims and disciplinary matters. Contact her at assulock@mdwgcg.com.

Josh J.T. Byrne is a shareholder at the firm where he represents attorneys in civil and disciplinary matters. He is the chair of the Pennsylvania Bar Association's professional liability committee and co-chair of the amicus curiae brief committee, the co-chair of the Philadelphia Bar Association's professional responsibility committee, and former co-chair of the professional guidance committee. Contact him at jtbyrne@mdwgcg.com.