[J-16-2009]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

CASTILLE, C.J., SAYLOR, EAKIN, BAER, TODD, McCAFFERY, GREENSPAN, JJ.

MAX C. MALONEY, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF LINDA E. MALONEY,	:	No. 58 WAP 2008
v.	:	Appeal from the Order of the Superior Court entered March 7, 2008 at No. 346 WDA 2007, vacating the judgment of the Court of Common Pleas of Beaver County entered January 18, 2007 at No. 10369-2004 and remanding.
VALLEY MEDICAL FACILITIES, INC., D/B/A THE MEDICAL CENTER, BEAVER, HERITAGE VALLEY HEALTH SYSTEM, INC., BEAVER INTERNAL MEDICINE ASSOCIATION, TRI-STATE MEDICAL GROUP, INC., BRIGHTON RADIOLOGY ASSOCIATES, P.C., MAURICE PRENDERGAST, M.D., AND, RICHARD E. BRENNAN, M.D.	:	
APPEAL OF: MAURICE PRENDERGAST, M.D., BEAVER INTERNAL MEDICINE ASSOCIATION AND TRI-STATE MEDICAL GROUP, INC.	:	ARGUED: March 4, 2009

OPINION

MR. JUSTICE SAYLOR **DECIDED: NOVEMBER 24, 2009**

Appeal was allowed to consider whether a plaintiff's release of principals whose potential liability was vicarious also discharges the plaintiff's claims against the agent, regardless of an express reservation of rights.

Appellee commenced the present medical malpractice action grounded on an asserted failure to timely diagnose and treat osteosarcoma in his wife, Linda Maloney. He alleged, among other things, medical negligence on the part of Appellant Maurice Prendergast, M.D. (an internist) and Richard E. Brennan, M.D. (a radiologist), as well as vicarious liability on the part of institutional defendants associated with these physicians.

Following settlement discussions, Appellee entered into a settlement with Dr. Brennan, funded by such physician's primary liability insurer and the Medical Care Availability and Reduction of Error Fund in its capacity, effectively, as an excess insurer. See generally Carrozza v. Greenbaum, 591 Pa. 196, 219-20 n.23, 916 A.2d 553, 568 n.23 (2007) ("For judgments in excess of the provider's primary insurance, up to a statutory limit, the MCARE Fund satisfies the judgment."). Appellee executed a joint tortfeasor release surrendering all claims "in any way connected with all medical professional health care services rendered by the above named Health Care Providers." Joint Tortfeasor Release, Oct. 24, 2006, ¶1. Notably, the "above named Health Care Providers" included the institutional defendants associated with Dr. Prendergast, namely, Appellants Beaver Internal Medicine Association and Tri-State Medical Group, Inc. (hereinafter "Employers"),[1] but not Dr. Prendergast himself. See id. Further, a second paragraph of the release was included to expressly reflect a reservation of rights against Dr. Prendergast. See Id. at ¶2 ("It is understood that I, Max C. Maloney, am not hereby releasing any claims or demands that I have against Maurice D. Prendergast, M.D. However, I am agreeing to limit my potential recovery against Maurice D.

[1] Parenthetically, the parties do not specifically develop why Employers were included among the parties benefitting from a release of liability deriving from claims against Dr. Brennan. Appellee's brief suggests, however, that Employers' corporate structure may have been such that one or both bore a principal/agent relationship with both Drs. Prendergast and Brennan.

Prendergast, M.D. pursuant to the provisions in paragraphs 3, 4, 5, 6, and 7.").[2] The intent was also expressed in the release that it was to comply with and be interpreted in accordance with the Uniform Contribution Among Tortfeasors Act.[3]

Thereafter, Dr. Prendergast and Employers filed motions for summary judgment, each asserting that the language of the release discharged all direct and derivative claims arising from Dr. Prendergast's conduct, based on the common-law rule governing releases. See Mamalis v. Atlas Van Lines, Inc., 522 Pa. 214, 560 A.2d 1380 (1989) (holding the release of an agent operates to release the principal from vicarious liability claims, regardless of any attempted reservation of rights);[4] Pallante v. Harcourt Brace Jovanovich, Inc., 427 Pa. Super. 371, 629 A.2d 146 (1993) (applying Mamalis to require that the release of an agent follows, as a matter of law, from the release of a

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[2] Ensuing provisions of the release effectuated a pro-rata reduction of any verdict against Dr. Prendergast, measured by any liability attributed to the settling defendants, and a hold-harmless commitment. The remaining claims against Dr. Prendergast were also limited to the primary limits of his insurance coverage.

[3] Act of July 9, 1976, P.L. 586, No. 142 §2 (codified at 42 Pa.C.S. §§8321- 8327) (the "UCATA").

[4] The UCATA abrogated the broader common-law rule that payment by one tortfeasor would release all others regardless of the parties' intent, insofar as it applied to joint tortfeasors. See 42 Pa.C.S. §8326 ("A release by the injured person of one joint tort-feasor . . . does not discharge the other tort-feasors unless the release so provides, but reduces the claim against the other tort-feasors in the amount of the consideration paid for the release or in any amount or proportion by which the release provides that the total claim shall be reduced if greater than the consideration paid."). Mamalis held, however, that the UCATA did not extend to vicarious-liability claims, and thus, the common-law rule would be maintained in that setting at least where the express release was of the agent. See Mamalis, 522 Pa. at 221, 560 A.2d at 1383 ("We hold that absent any showing of an affirmative act, or failure to act when required to do so, by the principal, termination of the claim against the agent extinguishes the derivative claim against the principal.").

principal). Employers also contended that the express language of the release foreclosed all claims against them.

The common pleas court granted the respective motions, initially crediting the argument that the release encompassed all claims against all of the institutional defendants, including Employers. As to Dr. Prendergast himself, the court determined that the common-law release rule applied, per Mamalis and Pallante.

On appeal, the Superior Court agreed that the release encompassed all claims against Employers. See Maloney v. Valley Med. Facilities, Inc., 946 A.2d 702, 706 (Pa. Super. 2008). However, the intermediate appellate court differed with the common pleas court's reasoning and holding concerning Dr. Prendergast. In this regard, the Superior Court initially stressed the application of traditional contract principles to releases, including the policy of effectuating the intention of the parties via enforcement of the ordinary meaning of release terms. See id. at 706, 708 (citing, indirectly, Buttermore v. Aliquippa Hosp., 522 Pa. 325, 328-29, 561 A.2d 733, 735 (1989)). The court then distinguished Pallante, and inferentially Mamalis, as follows:

> In Pallante, we explained that the reason for the rule that release of the principal also releases the agent is that "the law seeks to protect an injured party's right to payment for a single injurious act from either a vicariously liable principal or an independently liable agent." Here, a jury might well consider to be multiple rather than singular acts of negligence Appellee Prendergrast's [sic] alleged misdiagnosis of Mrs. Maloney's condition, and his repeated failure to treat or even to disclose the existence of [a] bone cyst during the fourteen years prior to her death. This set of circumstances bears no resemblance to the single injury examined in Pallante, nor is the trial court's resolution of this matter congruent with its responsibility to implement the intent of the parties.

Maloney, 946 A.2d at 708 (internal citations omitted). Based on this reasoning, the Superior Court vacated the judgment as to Dr. Prendergast and remanded for further proceedings consistent with its opinion. See id.

Presently, Dr. Prendergast and Employers argue that the Superior Court disregarded Mamalis' holding that a release's purported reservation of a claim is ineffective in the vicarious liability scenario. See Mamalis, 522 Pa. at 221, 560 A.2d at 1383 ("A claim of vicarious liability is inseparable from the claim against the agent since any cause of action is based on the acts of only one tortfeasor."). Further, according to Appellants, the decision is irreconcilable with Pallante. See Pallante, 427 Pa. Super. at 377, 629 A.2d at 149 (finding Mamalis' reasoning "equally as applicable to instances of the release of the principal as it is to [the] release of the agent"). Appellants also indicate that, in 1999, the American Law Institute approved the same rule as that enunciated in Mamalis. See RESTATEMENT (THIRD) OF TORTS: APPORTIONMENT OF LIABILITY §16 Reporter's Note, cmt. d (1999) ("Release of both the agent and the vicariously liable party upon a settlement with one of those parties is logically required [since o]nly one measure of responsibility will be assigned to all such parties."). Likewise, Appellants observe that the Subcommittee Note to the 2003 Revision of the Pennsylvania Suggested Standard Civil Jury Instructions opines that Mamalis and Pallante prevent subjecting an agent to duplicative actions by his principal and the original plaintiff. See PENNSYLVANIA SUGGESTED STANDARD CIVIL JURY INSTRUCTIONS §4.20 (2008). Finally, Appellants submit that the Superior Court's decision may expose Dr. Prendergast to claims exceeding Appellee's actual damages should he be subject to a claim asserted by the MCARE Fund under indemnity and/or equitable subrogation theories, see generally, Judge v. Allentown and Sacred Heart Hosp. Ctr., 506 Pa. 636, 638-39, 487 A.2d 817, 818 (1985), in addition to litigation underlying the present appeal.

In opposition, like the Superior Court, Appellee relies on the general requirement to give effect to explicit release terms, such as those preserving claims against Dr. Prendergast. See Brief for Appellee at 10 ("Plaintiff settled his claims with one set of defendants, and signed a joint tortfeasor release that explicitly preserved, in the clearest possible language, his right to pursue claims against defendant Maurice Prendergrast [sic], M.D. That is what the parties agreed to, that is what the release says, and that is the partial settlement that the Trial Court approved."). Appellee recognizes the holding of Mamalis, indicating that it represents "sound policy [and] settled law." Id. at 13. Appellee explains, however, that Mamalis' central rationale focused on the inseparability of a claim of vicarious liability and that against the agent. See Mamalis, 522 Pa. at 221, 560 A.2d at 1383 (reasoning that "[a] claim of vicarious liability is inseparable from the claim against the agent since any cause of action is based on the acts of only one tortfeasor"). Appellee also develops Mamalis' concern with a "circle of indemnity," as follows:

> [Mamalis] noted that if the plaintiff were permitted to proceed against the principal, the principal would in turn seek indemnification from the . . . settling plaintiff, because it is unlikely that the agent would settle unless the plaintiff agreed to reimburse the agent, in the event any other defendant sought contribution from the agent. "If plaintiff agrees to indemnify the agent for any claim by the principal in a release, then the settling plaintiff can gain no more than what he received under the release -- the settlement amount agreed to by the agent." [Mamalis, 522 Pa. at 222,] 560 A.2d at 1383. This is what courts in other jurisdictions have called the "circle of indemnity." See, e.g., J&J Timber Co. v. Broome, 932 So.2d 1 (Miss. 2006). This circle can only be broken by a rule that bars claims against a vicariously liable principal after a primarily liable agent is released.

Brief for Appellee at 13.

Appellee contends that the above rationale does not extend to the present circumstances, since the case does not involve the release of an agent in a single-tort case, but rather, involves multiple separate acts of negligence and multiple tortfeasors. Further, according to Appellee, the circle-of-indemnity phenomenon does not apply where the written release is of the principal rather than the agent. See Brief for Appellee at 14 ("Permitting [Appellee] to pursue claims against Dr. Prendergrast [sic] is not a futile act, but rather a meaningful and important way of preserving his, and his family's, right to fair compensation. There is every reason to craft careful, considered rules that will both give effect to the parties' intentions and serve the ends of justice."). Although Pallante extended the common-law rule of Mamalis to the scenario entailing a matter-of-law release of an agent based on a written release of a principal, Appellee does not challenge the decision. Rather, he distinguishes Pallante based on the fact that there is no indication that the language of the written release included a reservation of rights, and on the ground that Mamalis' single-tort logic does not extend to scenarios encompassing allegations of multiple acts of negligence.[5]

In response to Dr. Prendergast's claim of exposure to excessive liability, Appellee suggests that the claim is grounded on a chain of factual and legal speculation. In this regard, Appellee notes that the Judge case referenced by

[5] Appellee also offers extensive arguments to the interpretation that the release expressly preserves claims against Dr. Prendergast, and that only direct claims were released and not vicarious liability claims. Appellants' do not challenge the former contention, and it seems plain enough that the intent of the release was to preserve claims against Dr. Prendergast to the extent of his primary insurance coverage, in light of the express reservation of rights. On the latter point, however, Employers were awarded summary judgment and dismissed as defendants relative to all counts, including the vicarious liability claims. Appellee did not file a cross-petition for allowance of appeal from the Superior Court's decision affirming the judgment in this regard, and the dismissal of the vicarious liability claims represents the law of the case.

Appellants involved the MCARE Fund's predecessor, and that it is not clear that the MCARE Fund possesses the same authority to pursue indemnity and/or equitable subrogation claims. Further, Appellee indicates that there are no facts of record indicating that the MCARE Fund would sue a physician it effectively insures. Appellee also notes there are many layers of complexity in assessing the MCARE Fund's ability to proceed against Dr. Prendergast, including the impact of the pro-rata release and the availability of equitable defenses based on the fact that the MCARE Fund wrote the release, and the release purports to protect Dr. Prendergast from excess liability. See supra note 2.

Addressing the Restatement, Appellee observes, in the first instance, that it does not necessarily reflect the law of Pennsylvania. In this regard, Appellee explains that the referenced section addresses the percentage allocation of responsibility between settling and non-settling tortfeasors, an issue governed by settled Pennsylvania law, see, e.g., Charles v. Giant Eagle Markets, 513 Pa. 474, 481-82, 522 A.2d 1, 4-5 (1987), and not at issue in this appeal. According to Appellee, the commentary referenced by Appellants is also inapplicable, since, by its own terms, it applies to "[r]elease of both the agent and the vicariously liable party upon a settlement with one of those parties . . .." RESTATEMENT (THIRD) OF TORTS: APPORTIONMENT OF LIABILITY §16 Reporter's Note, cmt. d. Appellee argues that the comment does not apply to a released party who has not contributed to a settlement. See Brief for Appellee at 26 ("The reporter's note is premised on the notion that the non-settling defendant's share of responsibility has been discharged, and that has manifestly not occurred here."). Appellee also observes that the comment does not address the multiple-tort scenario presented by his claims.

Respecting the Pennsylvania Suggested Jury Instructions, Appellee explains that the note referenced by Appellants is appended to a standard instruction on a principal's

right to indemnification from an agent. See PENNSYLVANIA SUGGESTED STANDARD CIVIL JURY INSTRUCTIONS §4.20 (2008). Appellee indicates the charge and note do not address the issue presently before this Court, the effect of contract language expressly preserving claims against an agent, or the application of the rule in scenarios involving multiple torts and tortfeasors. In any event, Appellee observes that the standard jury instructions are advisory and that the law is reflected in the actual decisions of the courts.

Finally, Appellee offers the following policy argument similar to the amicus submission by the Pennsylvania Association of Justice:

> The partial settlement arrived at between [Appellee], Dr. Brennan, and various corporate entities and practice groups provides a powerful illustration of the wisdom of giving effect to the intention of the parties, in releases that partially settle malpractice cases. Some defendants and insurers -- including the MCARE Fund -- wanted to settle; Dr. Prendergrast's [sic] insurers did not. The partial settlement allowed the MCARE Fund to protect its own assets from a potential future liability, and to protect both Dr. Brennan and Dr. Prendergast from a potential liability that could have exceeded the limits of available insurance coverage. These benefits are in addition to the obvious, and universally acknowledged, more general benefits that flow from the amicable resolution of disputes.
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> If [Appellants'] position is adopted, however, no careful plaintiff's attorney would ever accept a joint tortfeasor release in a case where the remaining defendant shared a common principal with another, released defendant. This is an increasingly common occurrence, as medical providers consolidate and hospital-based chains and large corporate healthcare systems increasingly dominate the landscape. Many medical providers work under the aegis of a network associated with large medical centers.

Brief for Appellee at 28.

As noted, we accepted review to determine whether the common-law rule requiring release of a principal upon release of an agent applies in the reverse scenario.[6] This question is one of law, and, thus, our review is plenary. Upon our review of the parties' respective positions, we find Appellee's to be persuasive.

As developed above, Mamalis sharply distinguished contribution among joint tortfeasors from the system of vicarious liability and indemnity. See Mamalis, 522 Pa. at 221, 560 A.2d at 1383 ("A claim of vicarious liability is inseparable from the claim against the agent since any cause of action is based on the acts of only one tortfeasor."). This aspect of its rationale is broad and can reasonably be read as extending to the present scenario.[7] Other passages of the decision, however, including

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[6] Federal courts sitting in diversity are divided in their predictions concerning this Court's resolution of this question. Compare Rutherford v. Gray Line, Inc., 615 F.2d 944 (2d Cir. 1980) (predicting this Court would hold that a release of a secondarily liable tortfeasor does not effectuate a release of a primarily liable tortfeasor), with Reis v. Barley, Snyder, Senft & Cohen LLC, 484 F.Supp.2d 337, 349 (E.D. Pa. 2007) (reasoning that, "in the absence of any other persuasive caselaw or data," the release of a principal releases the agent).

[7] This and other lines of Mamalis' reasoning have been subject to reasonable differences among courts. See, e.g., Woodrum v. Johnson, 559 S.E.2d 908, 914 (W. Va. 2001) ("If there were practical significance to this 'single share' theory, . . . it would necessarily prohibit an injured plaintiff from maintaining an action solely against a derivatively liable defendant. But this Court has consistently repudiated such an approach, taking the position that a plaintiff is permitted to sue the principal either alone or together with the agent." (citations omitted)); see also Saranillio v. Silva, 889 P.2d 685, 699 (Haw. 1995) (positing that reasoning similar to Mamalis' "confuses a release with the theory of satisfaction," since it has the unstated premise that a compromise of one claim necessarily represents full satisfaction of all claims (citation omitted)).

For a contrary perspective concerning the Mamalis Court's decision to depart from the plain language of the UCATA in its determination that the parties subject to vicarious liability are not joint tortfeasors for purpose of the statute's provisions governing releases, see Saranillio, 889 P.2d at 694-98 (explaining that the relevant version of the UCATA defines "joint tortfeasors" broadly to encompass "two or more persons jointly or (continued . . .)

the holding, are crafted more narrowly. See id. ("We hold that absent any showing of an affirmative act, or failure to act when required to do so, by the principal, termination of the claim against the agent extinguishes the derivative claim against the principal.").

What is most apparent from Mamalis' reasoning, however, is that it was directed to a simple fact pattern involving a single principal, a single agent, a single event, and consequences of the release of the party bearing primary liability upon settlement. See id. at 216-17, 560 A.2d at 1381. The Court simply did not consider the extension of the rule to complex factual scenarios such as the present one. Notably, the axiom that decisions are to be read against their facts, see Commonwealth v. McCann, 503 Pa. 190, 195, 469 A.2d 126, 128 (1983), prevents the wooden application of abstract principles to circumstances in which different considerations may pertain.

As Appellee develops, particularly in the medical malpractice arena, the landscape of claims and defendants can be very complex, given the potential involvement of multiple caregivers, an insurance scheme incorporating private and governmental elements, and oftentimes the high stakes attendant to claims of serious bodily injury or death. It is evident that the interests of justice are not advanced by the extension of an inflexible common-law rule to such scenarios,[8] at least where a number

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(. . . continued)
severally liable in tort for the same injury to person or property"; persons subject to vicarious liability fall squarely within this definition; and courts are obliged to given effect to the plain terms of a statute). See generally V. Woerner, Annotation, Release of (or Covenant Not to Sue) Master or Principal as Affecting Liability of Servant or Agent for Tort, or Vice Versa, 92 A.L.R.2d 533 (1963).

Further, consideration of the above differences is beyond the scope of the present appeal.

[8] Various courts and commentators have expressed concern with results under the common-law rule which they have considered harsh. See, e.g., Saranillio, 889 P.2d at (continued . . .)

of the policy considerations underlying them (for example, the absence of alleged fault on the part of the party subject to release as a matter of law) are not present.[9] Accord Hill v. McDonald, 442 A.2d 133, 138 n.5 (D.C. 1982) ("Certainly, as a matter of logic, it is hard to see how a principal could still be held vicariously liable after the release of its agent, the only real wrongdoer. But the converse is not at all obvious."). As Appellee persuasively argues, there is a substantial likelihood that such an extension would impede settlements, undermining the strong public policy favoring the voluntary compromise of claims. See Nationwide Ins. Co. v. Schneider, 599 Pa. 131, 143, 960 A.2d 442, 449 (2008); cf. Woodrum, 559 S.E.2d at 916 (discussing reasons favoring a recognition of partial settlements).

We also agree with Appellee that the primary-limits, pro-rata carve out, and hold-harmless provisions of the release, see supra note 2, diminish the weight of Dr. Prendergast's concerns about excessive liability exposure. In this regard, a specific assessment of the degree to which recovery overlaps is very difficult in the settlement

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(. . . continued)
698 (reasoning that "elimination of the [common-law] rule removes a trap that has ensnared many unwary plaintiffs (and their attorneys), leaving them to suffer the harsh consequence of foregoing full recovery for their injuries"); James F. Thaxter, Comment, Joint Tortfeasors: Legislative Changes in the Rules Regarding Releases and Contribution, 9 HASTINGS L.J. 180, 182 (1958) ("The rule has been a dangerous trap for unwary litigants and attorneys . . . [I]n many cases they have applied it with oftimes harsh and, perhaps, unjust results."). See generally Russ v. General Motors Corp., 906 P.2d 718, 722 (Nev. 1995) ("[T]he harsh common law rule of release must yield to 'more enlightened' cases that promote the administration of justice."); 4 Corbin on Contracts §931, at 355-57 (Supp. 1990) (discussing cases which abandon the "archaic and senseless strictures of the early common law" governing the rule of release "in favor of the modern approach of giving effect to the intentions of the parties").

[9] Direct liability claims were asserted against Employers in Appellee's complaint; however, this appeal is limited to consideration of the vicarious liability claims.

context, where claims and defenses are being compromised in favor of a prompt and certain resolution. The resolution of claims may also depend upon factors extraneous to the merits, such as the amount of available insurance coverage,[10] or the plaintiff's assessment of a particular defendant's resources. The following observations from Kellen v. Mathias, 519 N.W.2d 218 (Minn.App. 1994), encapsulate this point:

> Certain situations may arise where a plaintiff might settle with a principal, but not intend to release the agent. For example, the settlement may represent the principal's solvency rather than the fair value of the claim; or the settlement may represent a compromise due to uncertainty as to whether the principle of respondeat superior legally holds the defendant vicariously liable for the acts of the other defendant. Thus, a plaintiff should not be deprived of a cause of action against an active tortfeasor when the plaintiff has not intentionally surrendered the claim.

Id. at 222-23.[11]

In the pre-trial settlement context, the amount of a plaintiff's damages are uncertain, since they have not been determined by a factfinder. Again, the pro-rata

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[10] The opinion in Milton Hershey Med. Center v. Commonwealth, MCARE Fund, 573 Pa. 74, 821 A.2d 1205 (2003), cited by Madame Justice Greenspan in her responsive opinion, presents a very good illustration of the reality that many of these cases are about reaching multiple sources of insurance coverage.

Notably, Milton Hershey did not involve a dispute over the enforceability of a contractual reservation-of-rights. Thus, the suggestion, in Justice Greenspan's responsive opinion, that such decision provided this Court with an opportunity to limit Mamalis' effect on contractual reservations, see Concurring and Dissenting Opinion, slip op. at 6 n.6, lacks foundation. Indeed, Milton Hershey expressly left open a claim asserting that access to the employer's insurance should be made available based on principles of quasi-contract. See id. at 87-88, 1213-14.

[11] It is interesting to note that the settling agent in Mamalis had filed bankruptcy proceedings, see Mamalis, 522 Pa. at 216, 560 A.2d at 1381, but the Mamalis Court did not discuss this as a potential consideration in the plaintiff's settlement calculus.

release and hold-harmless provisions of the release afford Dr. Prendergast credit for the amount of Employers' settlement, and under prevailing law Appellee would be entitled to a single satisfaction of such damages as would be determined by a factfinder in any event. See generally Ryan v. Berman, 572 Pa. 156, 169, 813 A.2d 792, 800 (2002) ("Pennsylvania law prescribes that a plaintiff is generally entitled to only a single satisfaction for her loss.").[12]

In the scenario entailing a plaintiff's surrender of vicarious liability claims only and express preservation of claims against an agent, we hold that the parties to a settlement should be afforded latitude to effectuate their express intentions. To the extent the Superior Court's decision in Pallante holds to the contrary, see Pallante, 427 Pa. Super. at 377, 629 A.2d at 149 ("Given the supreme court's decision that principal and agent are not joint tortfeasors, we conclude that the release of the principal acts as a release of the agent."), it is disapproved.[13]

In her Concurring and Dissenting Opinion, Justice Greenspan describes this Opinion as "creat[ing] an exception contrary to the rules of vicarious liability" and our mandate as a "pragmatic fashioning of a remedy for the present parties." Concurring and Dissenting Opinion, slip op. at 1. Further, she characterizes our approach of permitting the effectuation of the parties' intentions as inapt, since their attorneys should

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[12] As to Appellant's other arguments, Appellee is correct that the suggested jury instructions are not controlling and merely reflect the developed state of the law to the date of their publication. The Restatement provisions referenced by Appellant are discussed further below in our address of Justice Greenspan's responsive opinion.

[13] The Superior Court's effort to distinguish Pallante is insufficient. Under its reasoning, claims entailing a single act of negligence on the part of a tortfeasor would be subject to a different rule than claims entailing multiple acts of negligence on the part of a single tortfeasor. See Maloney, 946 A.2d at 708. Such a division yields potential confusion and does not address the more fundamental concerns also pertaining in the single-act paradigm.

have been aware that Mamalis facially applied (at least in Justice Greenspan's view) to a release of a principal to also require a release of the agent despite the express reservation of rights. See id. at 4. Additionally, the Concurring and Dissenting Opinion posits that our analysis conflates joint-and-several liability with vicarious liability, explaining that the distinction is based on the mechanism by which liability is attached (contribution to the plaintiff's injury, on the one hand, versus legal imputation, on the other). See id. at 6-9. Justice Greenspan contends that the rules of vicarious liability, as delineated in Mamalis and applied in Pallante, foreclose reservations of rights in the principal/agent setting, drawing support from a comment to Section 16 of the Restatement Third of Torts, Apportionment of Liability. See id. at 7-8. In this regard, the Concurring and Dissenting Opinion maintains that this Court must endorse Pallante, since, in Justice Greenspan's words, "the proverbial cat has been out of the bag for two decades." See id. at 6. Justice Greenspan nevertheless agrees with the fashioning of an "exception" for express reservations of rights against an agent when settling with and releasing a principal, albeit limited to the medical malpractice setting. See id. at 12-13.

We have substantial differences with Justice Greenspan's perspective. Since this appeal presents a matter of first impression in this Court, the applicable "rule of vicarious liability" is unsettled. Thus, we do not view our decision as creating an "exception"; rather, we merely determine appropriate limits of Mamalis.[14] Significantly, the Concurring and Dissenting Opinion does not address the core principle, upon which we have relied (and upon which the parties' attorneys were free to rely), that the holding

[14] While certainly our decision is "court-created," as Justice Greenspan repeatedly observes, Mamalis, in the first instance, represents a court-created limitation on parties' ability to freely contract in the settlement of their claims. Our "court-created" recognition of Mamalis' logical limits therefore represents a lessening, and not an expansion, of court involvement in the consensual resolution of claims.

of a decision is to be read against its facts. See McCann, 503 Pa. at 195, 469 A.2d at 128. Here, Mamalis, a decision which expressly arose in the context of an agent release, simply does not provide controlling authority as pertains to the materially different circumstances surrounding the release of principals. Notably, as well, Justice Greenspan does not acknowledge the various passages of Mamalis which were directed expressly to the agent-release scenario.

With regard to the asserted conflation of joint-and-several and vicarious liability principles, the use of the term "joint and several liability" fosters some confusion, particularly when considered in relation to the vicarious liability setting. See Restatement (Third) of Torts, Apportionment of Liability §13, Comment c. For this reason, the Third Restatement authors decided to merely use the words "legal imputation" in such context. See id. Notably, under either conception of joint-and-several or vicarious liability, the substantive impact is the same as concerns a plaintiff with a meritorious cause against the agent -- the principal and agent are each liable to the plaintiff in the full amount of the claim, albeit there may be only a single satisfaction.

Some of the underlying confusion results from the fact that the word "joint" is sometimes used to refer to the mechanism by which the parties became liable (each "jointly" contributing to the injury) and is sometimes used differently to reflect the fact that the parties have become jointly liable by whatever means. See Crowell v. City of Phila., 531 Pa. 400, 409 n.6, 613 A.2d 1178, 1182 n.6 (1992). Although Mamalis highlighted the distinction between liability based on one's own acts versus liability imputed by law, see Mamalis, 522 Pa. at 220-21, 560 A.2d at 1383, the opinion did not recognize that joint-and-several liability imposed on joint tortfeasors shares some characteristics with vicarious liability. Joint tortfeasors generally are jointly-and-severally liable for the entire amount of a verdict, albeit that a jury may assign only a

portion of fault to each. The policy justification for allocating 100 percent liability (from the plaintiff's perspective) to one who bears only, say, 40 percent of the responsibility is that, as between an innocent injured party and a culpable defendant, the defendant should bear the risk of additional loss. See Harsh v. Petroll, 584 Pa. 606, 620, 887 A.2d 209, 217 (2005). Thus, joint-and-several liability can be regarded as employing a form of legal imputation like that involved in the application of vicarious liability. The primary difference is simply that the imputation is of 60 percent of the damages in the above example of joint-and-several liability (since the defendant bears 40 percent of the responsibility of his own accord), whereas the general rule is 100 percent in the case of vicarious liability. The fact that a similar form of legal imputation exists in both scenarios, however, weakens the portion of Mamalis' reasoning to the degree it rests on the fact of imputation alone (which appears to be Justice Greenspan's focus) to distinguish the treatment of joint-and-several and vicarious liability in the settlement context.[15]

As to the Restatement, initially Comment d to Section 16 does lend some support to the concurring and dissenting position. The Restatement, however, also contains specific provisions relative to settlements which stress the application of principles of contract law, under which the effectuation of the intentions of the parties to an agreement is the most salient feature. For instance, comments f and g to Section 24 indicate as follows:

> Settlement agreements are contracts and subject to contract law in their interpretation. The primary focus is on the intent

[15] Mamalis' reasoning is stronger in those passages of the opinion in which the agent-release scenario is addressed specifically.

> of the parties to the agreement and ordinary effect should be given to that intent. . . .
>
> . . . When a settlement agreement specifies the parties who are released, the agreement is subject to contract-interpretation principles.

Restatement (Third) of Torts, Apportionment of Liability §24 cmt. g. Thus, the Restatement sets up the same conflict as we resolve here between enforcing a default rule or the manifest intention of the parties regarding settlement.[16]

In developing her position that the "cat is out of the bag," Justice Greespan's reasoning is that, because the Superior Court has long embraced a broad application of Mamalis, the ordinary jurisprudential principle that decisions are to be read against their facts can no longer apply in this Court's review. See id. at 5-6. However, the Concurring and Dissenting Opinion references no decisions to support such a theory of judicial review. For very good reasons, our decisional law generally develops incrementally, within the confines of the circumstances of cases as they come before the Court. For one thing, it is very difficult for courts to determine the range of factual circumstances to which a particular rule should apply in light of the often myriad possibilities. The United States Court of Appeals for the Seventh Circuit expressed a similar thought in this way:

> Judicial opinions are frequently drafted in haste, with imperfect foresight, and without due regard for the possibility

[16] Wooden enforcement of the idea that vicarious liability cannot result in a division of any kind for any purposes and under any circumstances, even pursuant to a voluntary agreement of the parties, would mean that judicial approval could never be lent to a three-way settlement between a plaintiff, an agent-defendant, and his employer relative a claim entailing vicarious liability, where both defendants contribute directly to the settlement. Again, we find that the public policy prevailing in Pennsylvania of encouraging the voluntary settlement of claims militates against such inflexible rules.

> that words or phrases or sentences may be taken out of context and treated as doctrines. We shouldn't like this done to our opinions and are therefore reluctant to do it to the opinions of other courts. No court, even a federal court in a diversity suit, is obliged to treat a dictum of another court (or, for that matter, its own dicta) as binding precedent.

Northwestern Nat'l Ins. Co. v. Maggio, 976 F.2d 320, 323 (7th Cir. 1992).[17]

It is also an unfortunate reality that the length of time it takes for a matter to reach this Court is dependent upon many factors, including litigants' preferences and selection via a discretionary screening process entailing review of thousands of cases annually to accept only those few hundred considered to meet the prevailing criteria for review. For example, for whatever reason, the non-prevailing party in the intermediate appellate court may chose not to seek further review (as appears to have been the case with Pallante). If the issue is raised by a litigant, it may not be chosen for review for any number of reasons, such as where it is not adequately raised, preserved, or framed. Even when review is sought and a question has been adequately raised and preserved, but this Court denies review, we are not somehow estopped from considering the issue in a future case. For example, the Court recently overruled a twenty-year-old

[17] In interpreting the statutory definition of "joint tortfeasor" under the UCATA, Mamalis departed from the definitional language of the statute providing that "[a]s used in this subchapter 'joint tortfeasors' means two or more persons jointly or severally liable for the same injury to persons or property, whether or not judgment has been recovered against all or some of them." 42 Pa.C.S. §8322. Specifically, Mamalis displaced the focus from the statutory litmus centered on the fact of liability alone in favor of the Court's own focus on the mechanism by which the parties became liable (actual contribution to the plaintiff's injury versus legal imputation). See id. at 220-21, 560 A.2d at 1383-84; see also supra note 7. Whatever the merits of Mamalis' reasoning in this regard, we decline to expand its ultimate legal effect upon settlement agreements to circumstances involving the release of principals. Thirty years ago, with the passage of the UCATA, the Legislature clearly shifted the tide away from the common-law rule pursuant to which "[a] release of one tortfeasor also necessarily worked a release of all others, regardless of the parties' intent." Mamalis, 522 Pa. at 218, 560 A.2d at 1382. The salutary reasons underlying its decision in this regard also support ours here.

Commonwealth Court precedent decision as to which it had previously denied review twenty years before. See Insurance Fed'n of Pa. v. Commonwealth, Dep't of Ins., 585 Pa. 630, 638, 889 A.2d 550, 555 (2005) (overruling Prudential Prop. and Cas. Ins. Co. v. Muir, 99 Pa. Cmwlth. 620, 513 A.2d 1129 (1986), appeal denied, 514 Pa. 637, 522 A.2d 1106 (1987)). Simply put, contrary to Justice Greenspan's position, there is no cat-out-of-the-bag doctrine limiting our review.[18]

Finally, Justice Greenspan's approach of limiting the effect of the holding of this case to the medical malpractice context is consistent with the principle that the holding of a decision is to be read against its facts. Thus, if there are material distinctions to be made with regard to other settlement scenarios which would impact on the extension of the above reasoning, litigants are certainly free to bring them to our attention in future cases outside the medical malpractice context.

The order of the Superior Court is affirmed.

Mr. Chief Justice Castille, Messrs. Justice Eakin and Baer, Madame Justice Todd and Mr. Justice McCaffery join the opinion.

Madame Justice Greenspan files a concurring and dissenting opinion.

[18] Indeed, the Concurring and Dissenting Opinion does not develop the review principle by which Justice Greenspan is able, on the one hand, to maintain that this matter was finally settled by this Court long ago contrary to Appellee's position, yet, on the other hand, support the outcome of this decision. Justification for such a facially discordant position ordinarily would require some discussion of the doctrine of stare decisis and its exceptions.