***ARIZONA SUPREME COURT***
***ORAL ARGUMENT CASE SUMMARY***

Deer Valley Unified School District v. Maricopa
County Superior Court and Hon. Robert Houser and Pamela McDonald
CV-06-0275-PR; 1 CA-SA 06-0143 (ORDER)

**PARTIES AND COUNSEL:**

*Petitioner:* Mary Ellen Simonson and Justin Pierce of Lewis & Roca represent Deer Valley.

*Respondent:* Marshall Martin represents Pamela McDonald, Real Party in Interest.

*Amicus Parties*: Gary Verburg and Stephen Craig, City of Phoenix Attorneys' Office, represent the City of Phoenix.

William Sims and Brad Woodford of Moyes Storey for Arizona Municipal Risk Retention Pool. John Richardson, DeConcini McDonald Yetwin & Lacy, for the Pima County Community College District, the Graham County Community College District aka Eastern Arizona College, and Yuma-LaPaz Counties Community College aka Arizona Western College. Christopher Thomas, Director of Legal Services, Arizona School Boards Association.

**FACTS:**

Before suing a public entity for damages, a plaintiff must file a notice of claim "with the person or persons authorized to accept service for the public entity ··· as set forth in the Arizona rules of civil procedure within one hundred eighty days after the cause of action accrues." Ariz.Rev.Stat.("A.R.S.") §12-821.01(A)(2003). A.R.S. §12-821.01, was amended in 1994 to mandate that notices of claim include three things: (1) "facts sufficient to permit the public entity or public employee to understand the basis upon which liability is claimed"; (2) "the claim shall *also* contain a *specific amount* for which the claim can be settled"; and (3) "facts supporting that amount." (emphasis added).

This petition asks this Court to grant review and clarify the extent of specificity needed to comply with the statute's requirements and to direct the trial court to dismiss the claim on grounds

that the notice of claim was fatally defective because it did not satisfy the notice requirements of the statute.

On September 6, 2005, the District received from McDonald a notice of claim letter pursuant to A.R.S. §12-821.01, alleging that the District wrongfully terminated her as an assistant principal in violation of the Arizona Employment Protection Act when it refused to renew her contract and instead offered her a position as a teacher at another school within the District. The letter identified McDonald's damages as follows:

> "She has lost her previous salary of $68,000 per year and an additional $7,000.00 per year for summer school. In addition, Ms. McDonald anticipated a $6,000.00 raise for this coming school year and *similar appropriate pay increases thereafter.* As a teacher in the District she will earn $36,800.00 this year."
> (Emphasis added).

McDonald stated that she "anticipated" all economic damages "to be approximately $35,000.00 per year *or more* going forward over the next 18 years." (Emphasis added). Finally, she claimed amounts of "*no less than* $300,000" for emotional distress, and "*no less than* $200,000" for damage to her reputation.

The District did not respond to either of McDonald's two informal letters seeking settlement or to her notice of claim. On March 2, 2006, she filed a complaint in Maricopa County Superior Court alleging wrongful termination.

The District moved to dismiss the claim on the grounds that the notice of claim was fatally defective because it did not satisfy the requirements of §12-821.01. The District relied upon *Howland v. State*, 169 Ariz. 293, 818 P.2d 1169 (App. 1991), which stated that bare allegations that the State had violated various statutory and constitutional provisions, for which plaintiff was seeking "the sum of not less than $50,000" were simply not sufficient within the meaning of §12-821.01.

In its motion to dismiss McDonald's complaint, the District pointed out that McDonald's notice of claim did not set forth the "specific amount" and the settlement demand amount was incalculable due to equivocal language in the letter demanding for a settlement to include: (1) "similar appropriate pay increases thereafter," (2) an amount "anticipated to be approximately $35,000 per year or more going forward over the next 18 years," (3) "no less than $300,000" for emotional distress, and (4) "no less than $200,000" for reputational damages.

The District pointed out that a notice of claim is insufficient where it contains no sum certain setting forth the amount for which plaintiff would have settled. *Hollingsworth v. City of Phoenix,* 164 Ariz. 462, 793 P.2d 1129 (App. 1990); *See also, Dassinger v. Oden*, 124 Ariz. 551, 606 P.2d 41 (App. 1979) (both cases interpreting a former, less specific notice of claim statute). The District also noted that *Young v. City of Scottsdale,* 193 Ariz. 110, 114, ¶13, 970 P.2d 942, 946 (App. 1998), is the only published decision interpreting the notice of claim statute after the 1994 amendment. *Young* held that the legislature, in amending the notice of claim statute in 1994, intended to codify *Hollingsworth. Young* interpreted the "specific amount" requirement to require the claimant to simply put forth a "reasonable estimate" of the claim's value. *Young* noted that it was not following the exact language of the amended statute, stating "This claim letter did not state a 'specific amount' . . . [H]owever, this claim letter . . . satisfied the purposes of the claim statute because . . . the letter provided a reasonable estimate of the value of the claim." *Id.*

After oral argument on the District's motion to dismiss, Judge Houser took the motion under advisement. On June 6, 2006, the Judge issued an order denying the motion. The District filed a special action in the court of appeals. That court's order summarily declined to accept jurisdiction on July 11, 2006.

**ISSUE:**

"When a Notice of claim requires a public entity to calculate a settlement amount using components of "approximately $35,000.00 or more going forward over the next 18 years" plus account for "similar appropriate pay increases thereafter," does the notice include "a *specific amount for which the claim can be settled*"; and is a mere "no less than $300,000.00" for "emotional distress" and "no less than $200,000" for "damage to the [plaintiff's] reputation" a sufficient statement of *"facts supporting that amount" and "a specific amount"* to meet the requirements of A.R.S. § 12-821.01 (1994)?"