

1 David L. Abney, Esq. (009001)
2 **AHWATUKEE LEGAL OFFICE, P.C.**
3 Post Office Box 50351
4 Phoenix, Arizona 85076
5 (480) 734-8652
6 abneymaturin@aol.com
7 Appellate Counsel for Real Party in Interest

8 Mark P. Breyer, Esq. (016862)
9 Richard Reed, Esq. (027550)
10 **BREYER LAW OFFICES, P.C.**
11 3840 East Ray Road
12 Phoenix, Arizona 85044
13 (480) 505-2160, mark@breyerlaw.com
14 Richard.reed@breyerlaw.com
15 Attorneys for Real Party in Interest

11 **SUPREME COURT**
12 **STATE OF ARIZONA**

13 CITY OF MESA; GUSTAVO WILLIAMS,

14 Petitioners,

15 v.

16 THE HONORABLE TIMOTHY RYAN,
17 Judge of the SUPERIOR COURT OF THE
18 STATE OF ARIZONA, in and for the
19 County of MARICOPA,

20 Respondent Judge,

21 PHILIP ROGERS,

22 Real Party in Interest.
23
24
25

Case No. _____

Arizona Court of Appeals
Case No. 1 CA-SA 23-0154

Maricopa County Superior Court
Case No. CV 2022-014378
(Hon. Timothy Ryan)

PETITION
FOR REVIEW

Table of Contents

Page

Table of Citations

3

Introduction to the Issues

5

The Operative Facts

6

1. The City of Mesa and its police officer are liable.

6

2. Issues of fact concerning the content of the March 12, 2022 notice of claim and of the July 14, 2023 amended notice of claim.

7

Procedural History

7

Reasons Why the Court Should Grant the Petition

9

1. The claimant made a valid sum-certain demand.

9

2. There is no reason why the relation-back doctrine should not apply.

13

3. This petition presents purely legal issues of recurring statewide importance requiring appellate guidance.

15

Conclusion

17

Certificate of Compliance

17

Certificate of Service

17

1 **Table of Citations**

2 **Cases**

3 **Page**

4 *A. Miner Contracting, Inc. v. City of Flagstaff*, No. 1 CA-CV
14-0249, 2015 WL 5770613 (Mem. Dec. Ariz. App.
5 Oct. 1, 2015) 11

6 *Backus v. State*, 220 Ariz. 101 (2009) 14-15

7 *Deer Valley Unified Sch. Dist. No. 97 v. Houser*, 214 Ariz. 293
8 (2007) 5, 10

9 *Donovan v. Yavapai County Community College Dist.*, 244 Ariz. 608
10 (App. 2018) 10

11 *Falcon ex rel. Sandoval v. Maricopa County*, 213 Ariz. 525 (2006) 14

12 *James v. City of Peoria*, 253 Ariz. 301 (2022) 15

13 *Jones v. Cochise County*, 218 Ariz. 372 (App. 2008) 6

14 *Motes v. Gila Valley, Globe & Northern Railway Co.*, 8 Ariz. 50
15 (Terr. 1902) 14

16 *Mountainside Mar LLC v. City of Flagstaff*, No. 1 CA-CV 18-0049,
17 2019 WL 3235025 (Ariz. App. Mem. Dec. July 18, 2019) 10-11

18 *Pinal County v. Fuller*, 245 Ariz. 337 (App. 2018) 13

19 *Yollin v. City of Glendale*, 219 Ariz. 24 (App. 2008) 10, 12

21 **Statute and Rules**

22 A.R.S. §12-821.01 8

23 A.R.S. § 12-821.01(A) 5-7, 9, 15

24 A.R.S. § 12-331 17

25

1	A.R.S. § 12-332	17
2	A.R.S. § 12-341	17
3	A.R.S. § 12-342	17
4	1984 Ariz. Sess. Laws ch. 285, § 1 (2nd Reg. Sess.)	14
5	Ariz. R. Civ. App. Proc. 21	15
6	Ariz. R. Civ. App. Proc. 23(d)(3)	16
7		
8		
9	Other Materials	
10	<i>Black's Law Dictionary</i> 1541 (11th ed. 2019)	13
11	<i>Restatement (Second) of Contracts</i> § 24 (1981)	10
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

Introduction to the Issues

1
2 “Compliance with this statute is not difficult.” *Deer Valley Unified School*
3 *District No. 97 v. Houser*, 214 Ariz. 293, 296 ¶ 9 (2007). The statute it is “not
4 difficult” to comply with is A.R.S. § 12-821.01(A). From the perspective of hundreds
5 of claimants and hundreds of lawyers, there is no comment this Court has ever made
6 that is more ironic.
7

8 Compliance with A.R.S. § 12-821.01(A), in fact, is often difficult. Even great
9 lawyers and diligent self-represented claimants have repeatedly tripped over its many
10 requirements. That is why Westlaw reports that there are 481 cases within in its
11 coverage that have cited to and discussed the statute. There are surely scores, if not
12 hundreds, of other cases outside the Westlaw system’s coverage where claims have
13 died because of supposed noncompliance with A.R.S. § 12-821.01(A).
14

15 The main issue here is whether claimant Philip Rogers made a proper sum-
16 certain demand by providing a notice of claim stating: “Based upon the totality of the
17 circumstances, this matter can be settled at this time for \$1,000,000 or the applicable
18 policy limits, *whichever are greater.*” (May 16 and 18, 2022, Appx 028) (emphasis
19 added). The superior court judge said yes; the Court of Appeals said no. Who is right?
20
21

22 A secondary, but highly important issue, is whether there can be relation back
23 when a claimant files an amended notice of claim beyond the original 180-day
24 deadline for a notice of claim that was filed within the 180-day deadline. On June 23,
25

1 2022, Rogers filed an amended notice of claim with a simplified sum-certain demand,
2 as follows: “To reaffirm, our client Mr. Rogers has authorized us to [settle] any and all
3 claims arising from this incident against Officer Williams, the City of Mesa, Mesa
4 Police Department, or any other officer or employee for the total sum of \$1,000,000.”
5 (S-Appx 026). If there can be relation back for pleadings, why can there not be relation
6 back for notices of claim? Who would be unfairly prejudiced by that?
7

8 **Standard of Review**

9 Appellate courts review de novo a trial court’s determination concerning the
10 compliance of an A.R.S. § 12-821.01(A) notice of claim. *Jones v. Cochise County*, 218
11 Ariz. 372, 375 ¶ 7 (App. 2008).
12

13 **The Operative Facts**

14 **1. The City of Mesa and its police officer are liable.**

15 Liability is evident. On November 19, 2021, City of Mesa Police Officer
16 Gustavo Williams ran a red left-turn signal, and turned in front of, and struck,
17 Wallington-Caravello’s Lexus sedan. (S-Appx 030). Officer Williams’s patrol car then
18 hit the bicycle Philip Rogers was operating north in the crosswalk on the eastern side
19 of Dobson Road. (S-Appx 026, 030).
20

21 The impact threw Rogers and his bicycle far from his original direction of travel
22 and far from the point of initial impact. (S-Appx 024). Rogers suffered severe, lasting
23 injuries. (S-Appx 024-025).
24
25

1 So if this Court denies the petition for review and grants no relief, a claim to
2 which the City of Mesa and its police officer have no substantive defense will die.

3 **2. Issues of fact concerning the content of the March 12, 2022 notice of claim**
4 **and of the July 14, 2023 amended notice of claim.**

5 In the initial May 16, 2022 notice of claim, Rogers made this sum-certain
6 demand: “Based upon the totality of the circumstances, this matter can be settled at this
7 time for \$1,000,000 or the applicable policy limits, *whichever are greater.*” (Appx
8 028) (emphasis added). On June 23, 2022, Rogers filed an amended notice of claim
9 that contained another, modified sum-certain demand, as follows:
10

11 To reaffirm, our client Mr. Rogers has authorized us to [settle] any and
12 all claims arising from this incident against Officer Williams, the City of
13 Mesa, Mesa Police Department, or any other officer or employee for the
total sum of \$1,000,000.

14 (S-Appx 026).

15 **Procedural History**

16 The procedural history is brief. On October 26, 2022, Philip Rogers filed the
17 Complaint against the City of Mesa, the City of Mesa Police Department, and officer
18 Gustavo Williams. (S-Appx 005).
19

20 On February 13, 2023, the Defendants filed a motion to dismiss, claiming that
21 Rogers’s original March 16 and 18, 2022 notices of claim against them had allegedly
22 failed to assert a sum-certain demand against them, in violation of A.R.S. § 12-
23 821.01(A), although the notices of claim had, as Defendants acknowledged, stated:
24
25

1 “Based on the totality of the circumstances, this matter can be settled at this time for
2 \$1,000,000 or the applicable policy limits, whichever are greater.” (Appx 018 at 2:7-8).

3 On February 27, 2023, Rogers filed his response to the motion to dismiss. (Appx
4 049). Defendants filed their reply on March 2, 2023. (Appx 082). On May 23, 2023,
5 the trial court held oral argument on the motion to dismiss. (S-Appx 030).
6

7 During the May 23, 2023 oral argument, by stipulation of the parties, the trial
8 court dismissed the City of Mesa Police Department as a defendant. (S-Appx 033).

9 In an Under Advisement Ruling filed on July 14, 2023, the trial court denied the
10 motion to dismiss, explaining that:
11

12 The Court has read and considered Defendant’s Motion to Dismiss filed
13 February 15, 2023, the response filed February 27, 2023, the reply filed on
14 March 2, 2023 and the argument of counsel.

15 The Notice of Claims plaintiff served on defendants complied with
16 A.R.S. §12-821.01. A.R.S. §12-821.01 requires a party making a claim
17 against the State to file a Notice of Claim that “shall contain facts sufficient
18 to permit the public . . . entity to understand the basis upon which liability is
19 claimed,” and “shall also contain a specific amount for which the claim can
20 be settled and the facts supporting the amount.” The Court finds that plaintiff
21 has satisfied this requirement.

19 For the reasons set forth in plaintiff’s response,

20 **IT IS ORDERED** denying the motion.

21 (S-Appx 028).
22

23 On July 27, 2023, the Defendants filed “Defendant City of Mesa and Gustavo
24 Williams’ Answer to Plaintiff’s Complaint.” (S-Appx 014). On July 31, 2023, the City
25

1 of Mesa and Gustavo Williams filed the Petition for Special Action.

2 In an Opinion filed October 31, 2023, the Court of Appeals held that the original
3 demand to settle for \$1,000,000, or for the applicable policy limits, whichever was
4 greater, was not a proper sum-certain demand under A.R.S. § 12-821.01(A)'s terms
5 because it was supposedly not a demand for a specific amount. *Opinion* ¶¶ 17-19. The
6 Court of Appeals also held that a curative notice of claim does not relate back to an
7 original supposedly defective notice of claim. *Opinion* ¶ 20.

9 **Reasons Why the Court Should Grant the Petition for Review**

10 **1. The claimant made a valid sum-certain demand.**

11 Philip Rogers served the initial notice of claim on the Mesa City Clerk on May
12 16, 2022 (Appx 026) and on Officer Williams on May 18, 2023 (Appx 018). Each
13 initial notice of claim had this identical sum-certain demand: "Based upon the totality
14 of the circumstances, this matter can be settled at this time for \$1,000,000 or the
15 applicable policy limits, whichever are greater." (Appx 028, 039).
16
17

18 In his July 14, 2023 Under Advisement Ruling (S-Appx 028), Judge Ryan
19 concluded that Rogers had satisfied the sum-certain demand requirement of A.R.S. §
20 12-821.01(A), which states that: "The claim shall also contain a specific amount for
21 which the claim can be settled and the facts supporting that amount."
22

23 The initial notices of claim provided that the Defendants could settle for \$1
24 million or for the applicable policy limits, whichever was greater. A claimant complies
25

1 with the sum-certain requirement if the claimant makes an “offer.” *Yollin v. City of*
2 *Glendale*, 219 Ariz. 24, 31 ¶ 19 (App. 2008). “An offer is the manifestation of
3 willingness to enter into a bargain, so made as to justify another person in
4 understanding that his assent to that bargain is invited and will conclude it.” *Id.*
5 (quoting *Restatement (Second) of Contracts* § 24 (1981)).
6

7 “No more is required” for a sum-certain demand than a statement to the effect
8 that a claimant will accept a certain sum as a full and final settlement of the claim.
9 *Donovan v. Yavapai County Community College Dist.*, 244 Ariz. 608, 611 ¶ 9 (App.
10 2018). The sum-certain requirement is simply an instruction “to include a particular
11 and certain amount of money that, if agreed to by the government entity, will settle the
12 claim.” *Deer Valley*, 214 Ariz. at 299 ¶ 9.
13

14 In *Mountainside*, for instance, the sum-certain demand was for a sum “in the
15 amount of \$1,024,991.00 for unlawfully assessed and collected development fees” and
16 “for any interest earned by the City from the date of payment . . . to the date of refund.”
17 *Mountainside Mar LLC v. City of Flagstaff*, No. 1 CA-CV 18-0049, 2019 WL 3235025
18 at *1 ¶ 4 (Ariz. App. Mem. Dec. July 18, 2019). This Court held that a notice of claim
19 that provides a public entity “a way to compute a precise settlement amount based on
20 information uniquely available to the [public entity] and with no indication that [the
21 claimant] could reject the [public entity’s] calculation,” the notice of claim has
22 “adequately complied with the statute.” *Mountainside*, 2019 WL 3235025 at *3 ¶ 15.
23
24
25

1 Here, the notice of claim demanded the greater of \$1 million or the applicable
2 policy limits. The applicable policy limits represents a sum that the City could compute
3 or determine using readily-ascertainable information uniquely available to it. Rogers’s
4 demand never indicated that Rogers could or would reject the City’s calculation or
5 determination of the applicable policy limits. Under *Mountainside*, the sum-certain
6 demand for the applicable policy limits in the present matter constituted a sum-certain
7 demand.
8

9 In *A. Miner Contracting, Inc. v. City of Flagstaff*, No. 1 CA-CV 14-0249, 2015
10 WL 5770613 at *2 ¶ 12 (Mem. Dec. Ariz. App. Oct. 1, 2015), the Court of Appeals
11 explained that it was, in fact, “possible to satisfy [the sum-certain] requirement by
12 requesting an unspecified amount of ‘additional accrued interest’ if the method for
13 calculating the additional interest is clearly identified in the notice. In such a case, the
14 public entity is given a meaningful opportunity to consider its financial planning and
15 budgeting when considering whether to settle the claim.” *Miner*’s commentary on that
16 point was dicta, but it was a fair and reasonable explication of the law that should help
17 inform this Court’s analysis and decision.
18
19

20 Here, Rogers supplied a method for determining or calculating what was owed
21 by demanding the applicable policy limits—an amount the insured could determine or
22 compute precisely based on insurance-policy information that was uniquely available
23 to it. Rogers made a proper sum-certain demand. Given the terms of the initial notice
24
25

1 of claim, Judge Ryan did not fail to exercise discretion which he had a duty to exercise
2 and did not fail to perform a duty required by law as to which he had no discretion.

3 All that the claims personnel for the City of Mesa had to do to determine the
4 amount of the policy limits was to look at the declarations pages for its insurance
5 policies. If the claims personnel were too busy to look at a few documents, they could
6 just call the City of Mesa's insurer or insurers for the information.
7

8 Indeed, at oral argument on the motion to dismiss, the City of Mesa's lawyer
9 appeared to have a clear idea of the policy coverage in mind when he stated that: "The
10 amount [demanded] in this case could be anywhere between one million and 54 million
11 with several different amounts in between." (S-Appx 037). Later in the oral argument,
12 the City of Mesa's lawyer again acknowledged that the applicable policy limits "could
13 have been \$54 million." (S-Appx 051). Since the demand in the initial notice of claim
14 was for "1,000,000 or the applicable policy limits, whichever are greater" (Appx 005),
15 the City apparently knew that it could settle for \$54 million.
16
17

18 The notice-of-claim act itself naturally "anticipates that government entities will
19 investigate claims, and the supporting facts requirement is intended to be a relatively
20 light burden on claimants, just enough to facilitate the government's investigation."
21 *Yollin v. City of Glendale*, 219 Ariz. 24, 32 ¶ 25 (App. 2008). Finding and looking at
22 insurance-policy declarations is a featherweight burden. It is an equally light burden
23 for a City claims adjuster to call the City's insurer or insurers and ask what the liability
24
25

1 policy limits are for an accident that one of the City’s policy officers caused.

2 **2. There is no reason why the relation-back doctrine should not apply.**

3 “Relation back” is the “doctrine that an act done at a later time is, under certain
4 circumstances, treated as though it occurred at an earlier time.” *Black’s Law*
5 *Dictionary* 1541 (11th ed. 2019). The Court of Appeals, however, rejected Roger’s
6 argument that the June 23, 2022 amended notice of claim with a demand for the total
7 sum of \$1,000,000 could relate back to the time of the original notices of claim.
8 *Opinion* ¶ 20.

9
10 As support for its refusal to apply the relation-back doctrine to the later notice of
11 claim, the trial court relied on *Pinal County v. Fuller*, 245 Ariz. 337, 343 ¶ 21 (App.
12 2018), which had held that a late but compliant notice of claim supposedly does not
13 cure a defect in a timely but deficient notice of claim.
14

15 But, why not apply the relation-back doctrine in notice-of-claim situations? The
16 original notices of claim were due on May 18, 2022, and were timely filed on May 16
17 and 18, 2022. *Opinion* ¶ 3. The simpler, amended \$1 million notice of claim was filed
18 the following month, on June 23, 2022. *Opinion* ¶ 5. In *Fuller*, the Court of Appeals
19 refused to apply the relation-back doctrine to notice of claim cases.
20

21 This Court has apparently never refused to apply the relation-back doctrine to
22 notices of claim. For this Court, this is therefore an issue of interest and importance
23 across Arizona and is a new issue.
24
25

1 But for Arizona law, the relation-back doctrine is nothing new. In 1902, this
2 Court first acknowledged that the “general rule is that an amendment relates back to
3 the time of the filing of [an] original petition, so that the running of the statute of
4 limitations against the amendment is arrested thereby.” *Motes v. Gila Valley, Globe &*
5 *Northern Railway Co.*, 8 Ariz. 50, 54 (Terr. 1902). That general principle remains
6 unchanged after the passage of 121 years. There is no reason why it should not apply to
7 notices of claim as well as to judicial petitions and complaints.
8

9 After all, the notice-of-claim’s purposes are:

- 10 (1) to allow the public entity to investigate and assess liability;
- 11 (2) to permit a pre-litigation possibility of settlement; and
- 12 (3) to assist the public entity in financial planning and budgeting.

13
14 *Falcon ex rel. Sandoval v. Maricopa County*, 213 Ariz. 525, 527 ¶ 9 (2006).

15 Applying the relation-back doctrine is consistent with holding public entities
16 liable for the harms they cause. In 1984, when the Arizona Legislature adopted the
17 notice-of-claim statutes, it explained that:
18

19 [I]t is hereby declared to be the public policy of this state that public
20 entities are liable for acts and omissions of employees in accordance with
21 the statutes and common law of this state. All of the provisions of this act
22 should be construed with a view to carry out the above legislative purpose.

23 *Backus v. State*, 220 Ariz. 101, 104 ¶ 9 (2009) (quoting 1984 Ariz. Sess. Laws ch. 285,
24 § 1 (2nd Reg. Sess.).

25 “The statutes governing claims against public entities ‘advance the overarching

1 policy of holding a public entity responsible for its conduct.” *James v. City of Peoria*,
2 253 Ariz. 301, 305 ¶ 21 (2022) (quoting *Backus*, 220 Ariz. at 104 ¶ 9). Applying the
3 relation-back doctrine here would help the City in settling the claim and in financial
4 planning and budgeting because the amended notice of claim *reduces* the sum-certain
5 demand from: (1) \$1 million or the applicable policy limits, whichever are greater (2)
6 to a simpler and apparently far smaller sum-certain demand of \$1 million.
7

8 **3. This petition presents purely legal issues of recurring statewide importance**
9 **requiring appellate guidance.**

10 When deciding whether to accept special-action jurisdiction, the Court of
11 Appeals correctly concluded that how to interpret the sum-certain demand specificity
12 requirement of A.R.S. § 12-821.01(A) presents “a purely legal question of statewide
13 importance that commonly recurs.” *Opinion* ¶ 8. Those reasons apply with equal force
14 when deciding whether to grant the petition for review.
15

16 In addition, the City has admitted this case (1) “squarely presents an important,
17 straightforward, and recurring issue of law with no underlying factual disputes” [and]
18 (2) “this Court has not addressed this precise issue before, and guidance from this
19 Court would benefit governmental entities, plaintiffs, and trial judges.” *PSA* at 4.
20

21 The City correctly acknowledged that whether the notice of claim was specific
22 enough “is a pure issue of law” that the Court of Appeals had “never addressed in a
23 published decision” and “is an issue that governmental entities deal with frequently,”
24 meaning that “guidance from” the appellate court “is needed.” *PSA* at 5.
25

1 In its reply in support of the petition for special action, the City emphasized that
2 this (1) is a “pure, straightforward legal question that affects all Arizona public entities
3 and public employees;” (2) is a legal issue that “is certain to recur;” (3) “there is a
4 dearth of caselaw concerning disjunctive and undefined notice-of-claim demands;” and
5 (4) appellate guidance is needed. *Reply in Support of PSA* at 3.
6

7 The City urged the Court of Appeals to “seize the opportunity to address the
8 issue presented in this case.” *Reply in Support of PSA* at 5. The City also avowed to the
9 Court of Appeals that “this case presents a straightforward and important issue of
10 statutory interpretation with no underlying factual disputes.” *Reply in Support of PSA*
11 at 7. Even more emphatically, the City declared that “this case presents a recurring,
12 straightforward issue of statutory interpretation that affects all of Arizona’s public
13 entities and public employees” and resolving the sum-certain demand issue “would be
14 a simple task.” *Reply in Support of PSA* at 12. “Because there is a lack of on-point
15 caselaw,” the City argued the Court of Appeals “should take this opportunity to clarify
16 this important issue.” *Reply in Support of PSA* at 13.
17
18

19 In addition to these cogent reasons to grant the petition for review, we submit
20 that grant of the petition for review is necessary because, as the City and the Court of
21 Appeals acknowledged, no Arizona decision controls the point of law in question.
22 Ariz. R. Civ. App. Proc. 23(d)(3). In addition, the Court of Appeals has incorrectly
23 decided important issues of law. *Id.*
24
25

1 **Conclusion**

2 For the reasons set forth above, Real Party in Interest Philip Rogers asks the
3 Court to grant the petition for review. If this Court grants the petition for review,
4 Rogers also asks the Court to award to him the reasonable costs they have incurred in
5 prosecuting this petition, in accordance with A.R.S. §§ 12-331, 12-332, 12-341, and
6 12-342, and under Ariz. R. Civ. App. Proc. 21.
7

8 **DATED** this 30th day of November, 2023.

9 **AHWATUKEE LEGAL OFFICE, P.C.**

10 /s/ David L. Abney, Esq.
11 David L. Abney
12 Appellate Counsel for Real Party in Interest

13 **Certificate of Compliance**

14 This document: (1) uses Times New Roman 14-point proportionately spaced
15 typeface for text *and* footnotes; (2) contains 3,161 words (by computer count); and (3)
16 averages less than 280 words per page, including footnotes and quotations.

17 **Certificate of Service**

18 On this date, this document was electronically filed with the Clerk of the Arizona
19 Supreme Court and copies of it were delivered to:

- 20 • Hon. Timothy Ryan, **MARICOPA COUNTY SUPERIOR COURT**, East Court Building,
ECB 814, Phoenix, AZ 85003, (602) 372-3081, Respondent Judge [via TurboCourt].
21 • Duncan J. Stoutner, Esq., Alexander J. Lindvall, Esq., **MESA CITY ATTORNEY’S**
22 **OFFICE**, MS-1077, Post Office Box 1466, Mesa, Arizona 85201, (480) 644-2343,
23 duncan.stoutner@mesaaz.gov, alexander.lindvall@mesaaz.gov, Attorneys for City
of Mesa.

24 /s/ David L. Abney, Esq.
25 David L. Abney

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

CITY OF MESA; GUSTAVO WILLIAMS, *Petitioners,*

v.

THE HONORABLE TIMOTHY RYAN, Judge of the SUPERIOR COURT
OF THE STATE OF ARIZONA, in and for the County of MARICOPA
Respondent Judge,

PHILIP ROGERS, *Real Party in Interest.*

No. 1 CA-SA 23-0154
FILED 10-31-2023

Petition for Special Action from the Superior Court in Maricopa County
No. CV2022-014378
The Honorable Timothy J. Ryan, Judge

JURISDICTION ACCEPTED; RELIEF GRANTED

COUNSEL

City of Mesa Attorney's Office, Mesa
By Duncan J. Stoutner, Alexander J. Lindvall
Counsel for Petitioners

Breyer Law Offices, P.C., Phoenix
By Mark P. Breyer, Richard Reed
Co-Counsel for Real Party in Interest

Ahwatukee Legal Office, P.C., Phoenix
By David L. Abney
Co-Counsel for Real Party in Interest

MESA/WILLIAMS v. HON RYAN/ROGERS
Opinion of the Court

OPINION

Judge Andrew M. Jacobs delivered the opinion of the Court, in which Presiding Judge Michael J. Brown and Chief Judge David B. Gass joined.

J A C O B S, Judge:

¶1 The City of Mesa and Officer Gustavo Williams ask us to exercise our special action jurisdiction to review the superior court’s denial of their motion to dismiss plaintiff Philip Rogers’ personal injury suit against them. They moved to dismiss Rogers’ suit because his notice of claim against them did not state a specific amount for which his claim could be settled. Because the superior court incorrectly applied A.R.S. § 12-821.01(A) by denying Mesa’s motion to dismiss where Rogers’ claim sought “\$1,000,000 or [Mesa’s] applicable policy limits, whichever are greater,” we accept special action jurisdiction and reverse the denial of Mesa’s and Williams’ motion to dismiss.

FACTS AND PROCEDURAL HISTORY

¶2 This case arises from an automobile accident on November 19, 2021. That day, Mesa Police Officer Gustavo Williams was driving his patrol car south on Dobson Road approaching its intersection with University Drive. Williams ran the red left-turn signal and struck a car driving north on Dobson Road. Williams’ patrol car also hit and injured Philip Rogers, who was riding his bicycle north in the crosswalk on the eastern side of Dobson Road. The investigating police officer’s report noted that Williams violated Arizona traffic law when he failed to follow the traffic-control device and yield the right-of-way.

¶3 Rogers’ causes of action against Mesa and Williams accrued on November 19, 2021. Rogers’ deadline under A.R.S. § 12-821.01(A) to serve defendants with notices of claim was thus May 18, 2022, 180 days later. Rogers timely served notices of claim on Mesa on May 16, 2022, and Williams on May 18, 2022.

¶4 Rogers’ notices of claim set forth facts alleging that Williams injured him, making Williams liable (and Mesa vicariously liable) for Williams’ acts. To satisfy A.R.S. § 12-821.01(A)’s requirement of stating “a

MESA/WILLIAMS v. HON RYAN/ROGERS
Opinion of the Court

specific amount for which the claim can be settled,” Rogers wrote: “Based upon the totality of the circumstances, this matter can be settled at this time for \$1,000,000 or the applicable policy limits, whichever are greater.”

¶5 On June 23, 2022, Rogers sought to amend his notices of claim to remove the reference to “the applicable policy limits.” His amended notice of claim stated: “To reaffirm, our client Mr. Rogers has authorized us to [settle] any and all claims arising from this incident against Officer Williams, the City of Mesa, Mesa Police Department, or any other officer or employee for the total sum of \$1,000,000.”

¶6 The notices of claim did not lead to resolution of Rogers’ claims. Rogers then sued Mesa and Williams, seeking damages for his injuries. Defendants moved to dismiss Rogers’ suit, arguing that his original notices of claim failed to state “a specific amount for which the claim can be settled.” Mesa explained in its motion that it has several different policy limits, and that the answer to the question of which limit or limits might apply is not within its control. The superior court denied defendants’ motion in an order reciting that Rogers’ notice “satisfied [the] requirement” of stating “a specific amount for which the claim can be settled and the facts supporting the amount,” but without explaining why it did.

¶7 Mesa and Williams petitioned this court by special action to review the superior court’s ruling. We accept jurisdiction and reverse, because “\$1,000,000 or the applicable policy limits, whichever are greater” was not “a specific amount for which the claim [could have been] settled.”

DISCUSSION

I. This Matter Presents a Purely Legal Issue of Statewide Importance Appropriately Addressed by Special Action.

¶8 Whether to accept jurisdiction of a special action is “highly discretionary,” but is “appropriate ‘in matters of statewide importance, issues of first impression, cases involving purely legal questions, or issues that are likely to arise again.’” *Prosis v. Kottke*, 249 Ariz. 75, 77 ¶ 10 (App. 2020) (quoting *State ex rel. Romley v. Martin*, 203 Ariz. 46, 47 ¶ 4 (App. 2002)). How to interpret the specificity requirement in A.R.S. § 12-821.01(A) is a purely legal question of statewide importance that commonly recurs. Resolving it here also aids efficient resolution of this matter. We thus accept jurisdiction of this special action.

MESA/WILLIAMS v. HON RYAN/ROGERS
Opinion of the Court

II. As a Matter of Law, Rogers’ Notices of Claim Did Not State a Specific Amount for Which His Claim Could Be Settled, as A.R.S. § 12-821.01(A) and Precedent Interpreting It Require.

A. The Claim Statute’s Plain Meaning Requires Reversal.

¶9 We interpret statutes by construing their words in their natural and ordinary meanings. *See J.L.F. v. Ariz. Health Care Cost Containment Sys.*, 208 Ariz. 159, 162 ¶ 15 (App. 2004). “When the statute’s language is clear and unambiguous, we must give effect to that language without employing other rules of statutory construction.” *Parsons v. Ariz. Dep’t of Health Servs.*, 242 Ariz. 320, 323 ¶ 11 (App. 2017).

¶10 Arizona Revised Statute Section 12-821.01(A) is clear as written and should be taken to mean what it says. It requires that a claim “contain a specific amount for which the claim can be settled.” A.R.S. § 12-821.01(A). Rogers’ notice presented two alternatives we measure against that clear language: (1) a specific amount that he might settle for – \$1,000,000; and (2) an unstated amount he would prefer to settle for, were it available – Mesa’s “applicable policy limits,” if they turn out to be “greater” than \$1,000,000.

¶11 Neither alternative in Rogers’ notice complies with A.R.S. § 12-821.01(A). As the Arizona Supreme Court has explained, the “specific amount” language in that statute “unmistakably instructs claimants to include a particular and certain amount of money that, if agreed to by the government entity, will settle the claim.” *See Deer Valley Unified School Dist. No. 97 v. Houser*, 214 Ariz. 293, 296 ¶ 9 (2007). While \$1,000,000 is “a particular and certain amount of money,” Rogers’ notice does not state that Mesa can settle the lawsuit for that amount. Rather, it was one of two alternative amounts, the greater of which would suffice. The second alternative – Mesa’s “policy limits,” if they turn out to exceed \$1,000,000 – is not “a particular and certain amount of money,” and thus fails to comply with the plain language of A.R.S. § 12-821.01(A) and *Deer Valley’s* explanation of it.

B. Cases Concerning Amounts Which Were Omitted When Required by a Statute or Rule, But Which Were Readily Calculable, Show Why Rogers’ Notice Did Not “Include a Particular and Certain Amount of Money.”

¶12 Rogers points to other authority to suggest that where the amount of a claim can be calculated from the face of a notice of claim,

MESA/WILLIAMS v. HON RYAN/ROGERS
Opinion of the Court

though that amount was omitted from the notice, the notice is nonetheless sufficiently specific.

¶13 We reject Rogers' argument that our unpublished decision in *A. Miner Contracting, Inc. v. City of Flagstaff* shows that Mesa's policy limits are "a particular and certain amount of money" satisfying the claim statute. 2015 WL 5770603, at *2 ¶ 8 (Ariz. App. Oct. 1, 2015) (mem. decision). There, a notice of claim offered settlement for "\$1,825,042.55 plus accrued interest." *Id.* at *1 ¶ 4. Rogers is right that in *A. Miner* we suggested that it would be possible for the phrase "plus accrued interest" to be consistent with the claim statute, if the matter were one of simple calculation with points of reference "clearly identified in the notice." *Id.* *2 ¶ 12. Yet in *A. Miner*, we affirmed the dismissal of the claim at issue, precisely because "the relevant documents . . . contain[ed] different interest rates and accrual dates," so that "it was impossible for the City to determine the precise amount for which Miner would settle its claim." *Id.* *2 ¶¶ 10, 12. Thus, *A. Miner* does not present a case where an unstated amount was still "a particular and certain sum of money."

¶14 *A. Miner* and cases in analogous areas suggest this rule: where an instrument is required to state a specific amount by statute or rule, and a reader may readily calculate from the face of the instrument the amount required to be stated, the instrument should be read as stating the required amount, making it valid. Our judgment renewal statute requires the statement of the precise amount of the renewed judgment. Yet in *Fay v. Harris*, the Arizona Supreme Court held that a judgment renewal which contained math errors on its face that a reader could readily observe and correct "did comply with the terms of the [judgment renewal] statute." 64 Ariz. 10, 13 (1945). As the Court reasoned, "the data appeared on the face of the [judgment renewal] affidavit [] from which the exact balance could be determined." *Id.* From that premise, the Court concluded that the renewing party had renewed the judgment for the correct balance "rather than the incorrect balance claimed . . ." *Id.* at 14.

¶15 Arizona Rule of Civil Procedure 68 also provides a helpful analogy. That rule authorizes sanctions against a party who declines to accept an offer of judgment and then does worse at trial than the amount of the rejected offer – provided the original offer stated a specific sum. *See* Ariz. R. Civ. P. 68(b) (requiring offers of judgment to "specifically state the sum of money to be awarded . . ."). But where an offeror fails to apportion a sum offered among multiple parties, so the face of the offer does not allow the reader to derive the amount assignable to each beneficiary, that offer of judgment is invalid because it lacks the specificity Rule 68 requires.

MESA/WILLIAMS v. HON RYAN/ROGERS
Opinion of the Court

Greenwald v. Ford Motor Co., 196 Ariz. 123, 124 ¶ 3 n.2, 125-26 ¶¶ 8, 10 (App. 1999) (rejecting defendant’s request for post-trial sanction of \$294,618.40 in expert fees where offer of judgment “lack[ed] apportionment as to the beneficiaries . . . [and thus did] not conform to the required specificity of the rule . . .”).

¶16 Our unpublished decision in *Mountainside Mar LLC v. City of Flagstaff*, upon which Rogers relies, is consistent with the rule suggested by those cases. See 2019 WL 3235025, at *1 ¶ 4 (Ariz. App. July 18, 2019). There, a claimant requested by claim letter the principal amount of \$1,024,991 of “unlawfully assessed and collected development fees,” to which the claim letter added a request for “any interest earned by the City from the date of payment . . . to the date of refund.” *Id.* We found that notice sufficient because it “provided the City a way to compute a precise settlement amount . . .” *Id.* at *3 ¶ 15. As with all of these cases, the ability to readily compute the sum certain – here, from a notice of claim – is why the instrument contained the specificity required, thus making it effective. Because Rogers’ May 2022 notices of claim do not provide a means to readily compute the amount for which he would settle, the notices do not state “a specific amount for which the claim can be settled,” as the statute requires, or “a particular and certain amount of money,” as *Deer Valley* explained that requirement. Thus, Mesa’s and Williams’ motion to dismiss should have been granted.

C. The Offer to Settle for “Applicable Policy Limits” Is Not an Offer to Settle for a “Specific Amount,” Absent Circumstances Not Present Here.

¶17 Rogers argues his notice of claim seeking to settle for Mesa’s “applicable policy limits” is for a specific amount under A.R.S. § 12-821.01(A) because Mesa knows its own insurance policies. As he puts it, his notice of claim “implicitly supplied a method for calculating what was owed by demanding the applicable policy limits – an amount the insured could compute precisely based on the insurance policy information that was uniquely available to it.”

¶18 Rogers’ argument fails because whether an insurance policy applies is not a calculation at all. To the contrary, it is a legal question. See *Sparks v. Republic Nat’l Life Ins. Co.*, 132 Ariz. 529, 534 (1982) (explaining “[t]he interpretation of an insurance contract is a question of law to be determined by the Court independent of the findings of the trial court.”); *Benevides v. Ariz. Prop. & Cas. Ins. Guar. Fund*, 184 Ariz. 610, 613 (App. 1995) (noting “[i]nterpretation of insurance contracts is a question of law for this

MESA/WILLIAMS v. HON RYAN/ROGERS
Opinion of the Court

court to decide.”). Worse, it is often a complicated legal question. Whether a policy is “applicable” is a question that can take years to litigate in an action for declaratory judgment. See *Keggi v. Northbrook Prop. and Cas. Ins. Co.*, 199 Ariz. 43, 44 ¶ 1 (App. 2000) (reviewing history of complex action for declaratory judgment to determine applicable insurance coverage from each insurance company); *Czapski v. Maher*, 896 N.E.2d 394, 396-99 (Ill. App. Ct. 2000) (vacating the trial court’s grant of summary judgment that found no applicable insurance coverage because there was no initial determination of liability after two years of litigation).

¶19 If a notice of claim referred to a clear point of reference, such as the limits in a single policy understood to be applicable, such a reference might satisfy A.R.S. § 12-821.01(A) for the reasons suggested in paragraphs 12 to 15 above. But the matter before us is not like that. Here, as Rogers explains, at oral argument in the superior court, Mesa stated “[t]he amount [demanded] in this case could be anywhere between one million and 54 million with several different amounts in between.” The possibility of several different “applicable” policy limits illustrates that Mesa did not control the answer to the question, that it was not a math problem, and that determining the “applicable” limit might require an action for declaratory judgment, as is commonly the case. Mesa’s limit was neither stated in Rogers’ notice, nor determinable by simple computation. Rogers’ notice thus did not comply with the claim statute. Thus, Mesa’s and Williams’ motion to dismiss should have been granted.

D. Rogers’ Untimely Attempt to Amend His Notice of Claim to Remove the Offer to Settle for “Applicable Policy Limits” Does Not Correct the Notice’s Failure to State the “Specific Amount” for Which He Would Have Settled.

¶20 Finally, Rogers argues that his June 23, 2022 amended notice of claim was timely because in it he made a “narrower sum-certain demand” that he asserts was proper because “the statutory discovery rule of A.R.S. § 12-821.01(B) applied.” This suggestion fails for two reasons. First, a “late[] compliant notice of claim . . . does not cure the defect in” a timely but deficient notice of claim. *Pinal Cnty. v. Fuller*, 245 Ariz. 337, 343 ¶ 21 (App. 2018). Second, the discovery rule does not apply because Rogers points to no new facts he learned before his untimely amended claim justifying the new, streamlined demand. Thus, rather than making a new demand resting on new information, Rogers cut half of the content from a demand he had already made in his timely notice of claim. He did not know at the time of his original or amended notice of claim what limits

MESA/WILLIAMS v. HON RYAN/ROGERS
Opinion of the Court

Mesa's multiple insurance policies contained, or which limit or limits applied. The amended notice does not fix the original notice.

CONCLUSION

¶21 For the reasons stated, we take jurisdiction, reverse, remand, and direct the dismissal of Rogers' complaint.



AMY M. WOOD • Clerk of the Court
FILED: AA