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SUPREME COURT
STATE OF ARIZONA

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.

Case No. CV-23-0284-PR

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

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

REAL PARTY IN INTEREST'S SIMULTANEOUS SUPPLEMENTAL BRIEF

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The Rephrased Issue

In its May 7, 2024 Minute Letter granting the petition for review, this Court directed the parties to address this rephrased issue: "Did the plaintiff's notice of claim comply with A.R.S. § 12-821.01(A) by offering to settle the matter for $1,000,000 or the applicable policy limits, whichever is greater?"

Legal Argument

1. A.R.S. § 12-121.01(A) requires a "specific amount"—which the Real Party in Interest provided in his notices of claim.

"Any amount that is fixed, settled, or exact" is the dictionary definition of the term "sum certain." *Black's Law Dictionary* 1736 (11th ed. 2019). "A sum certain is an amount that is unchanging, but that is fixed at a precise number, at least for the given time it is to be paid." Stephen Michael Sheppard, gen. ed., *The Wolters Kluwer Bouvier Law Dictionary Compact Edition* 1062 (2011).

Courts construing A.R.S. § 12-121.01(A) routinely say that it requires a claimant to state a "sum certain" amount when presenting a claim to a public entity or a public employee. That is very close to, but not precisely what, the statute says. In relevant part, the statute says that: "The claim shall also contain a specific amount for which the claim can be settled." A.R.S. § 12-821.01(A). A "specific amount" is not necessarily and strictly an exact or precise number.

Here, the notice of claim states: "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." (PSA-Appx. 028, 039). The final amount the claimant sought was specific. It was the greater of $1 million or the applicable policy limits.

The claimant assumed that there were, indeed, insurance policies covering the car vs. bicycle collision of November 19, 2021. That assumption was accurate. In fact, at the trial court, Lisa Lorts, a City of Mesa Risk Management Claim Analyst, avowed that the "City has several liability insurance policies, and it accordingly has several different policy limits." (PSA-Appx. 047, ¶ 2). Claim Analyst Lorts explained that the City had the following policy limits:

Self-insured retention limit:	$ 3 million
Automobile-liability policy limit:	$ 1 million
Excess-carrier maximum policy limit:	$50 million
Total applicable policy limits:	**$54 million**

(PSA-Appx. 047, ¶ 3-5).

Pardon the cliché, but this is not rocket science. The City of Mesa knew that the maximum of the applicable policy limits was $54 million. So, the City of Mesa had a choice. It could settle the claim for $54 million, which it did not do, or try to negotiate for a lower settlement amount, which it also did not do.

The City of Mesa cannot argue in good faith that it received a claim that lacked "a specific amount for which the claim can be settled." A.R.S. § 12-821.01(A). The City of Mesa, after all, had notice that the claim could be settled for the greater of $1

million or $54 million. That is a "specific amount." Of course, as is almost always true with Arizona public entities in wrongful-death and serious personal-injury cases, the City apparently did not investigate the "specific amount" stated in the notice of claim, refused to pay the demanded "specific amount," refused to negotiate at all, and refused to settle. The City just waited to ambush the claimant with a defense that it did not know what the "specific amount" was that the claimant was seeking when in fact, the City knew all along what that amount was.

The City of Mesa cannot claim it was paralyzed by lack of knowledge, uncertainty, or confusion about the "specific amount" for which the claim could be settled. The City knew that the "specific amount" of the applicable-policy-limits demand was $54 million. The claimant thus satisfied the "specific amount" requirement of A.R.S. § 12-821.01(A).

In the present case, the Court of Appeals acknowledged that, in its opinion, "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)." *City of Mesa v. Ryan*, 256 Ariz. 350, 355 ¶ 19 (App. 2023). What is the difference between one policy and two or more policies? In both situations, there are clear points of reference for the public entity that has received the notice of claim.

In our case, the Complaint was filed on October 28, 2022. (PSA-Appx. 009). On January 23, 2023, process was served on the City of Mesa. (IR-009). On February 13,

2023—just 21 days later—the City filed its motion to dismiss. (PSA-Appx 017). That motion to dismiss relied on a detailed Declaration that City of Mesa Risk Management Claims Analyst Lisa Lorts signed on February 9, 2023. (PSA-Appx 048).

Thus, without any appreciable effort and without conducting any discovery, the City of Mesa was able to provide the trial court with the exact figure of $54 million for the applicable policy limits just 21 days after having been served with the summons and complaint. And so, the City knew from the start the amount of the "specific demand" that the claimant was making in the notice of claim.

The claimant asked for a very "specific amount," which was $1 million or "the applicable policy limits, whichever are greater." (PSA-Appx. 028, 039). The City knew from the notice of claim that the $1 million amount was irrelevant, because, as it avowed to the trial court, it had $54 million in applicable policy limits. That was the "specific amount" the claimant was demanding.

The City of Mesa was immediately able to identify its applicable policy limits to get to the $54 million specific amount of the applicable policy limits. The City then presented the facts about that specific amount to the trial court. The City knew the specific amount demanded—it simply did not want to pay it, negotiate it, or ask for any clarification from the claimant. Instead, the City waited until the claimant filed a lawsuit and then, 21 days later, pounced on the supposed lack of a specific amount. But the City was able to identify for the trial court the $54 million specific amount with ease just 21

days after being served. This is not how a fair and equitable claim system operates. And that is not what A.R.S. § 12-821.01(A)'s "specific demand" language envisions.

The Court of Appeals regarded the claimant's "applicable policy limits" demand as a demand for two "alternative amounts"—

(1) a claim for "a specific amount" of $1 million and

(2) a claim for an "an unstated amount" (the applicable policy limits") for which the claimant "would prefer to settle for, were it available."

City of Mesa, 256 Ariz. at 353 ¶ 10.

That analysis is inaccurate. After all, the claimant only wanted one specific amount—the greater of $1 million or the applicable policy limits. Pay that, and the claim would be settled.

The Court of Appeals concluded that a notice of claim must, as *Deer Valley* memorably phrased the requirement, "'include a particular and certain amount of money that, if agreed to by the government entity, will settle the claim'" *City of Mesa*, 256 Ariz. at 353 ¶ 10 (quoting *Deer Valley Unified School Dist. No. 97 v. Houser*, 214 Ariz. 293, 296 ¶ 9 (2007)). Within the meaning of A.R.S. § 12-821.01(A), the claimant in our case asked for a particular and certain amount of money, which the City was promptly able to identify for the superior court as the applicable policy limits of $54 million. The City knew what that specific amount was, told the trial court what it was, just did not want to pay it or negotiate about it with the claimant.

When a public entity can easily understand what the specific amount demanded is through checking a few documents and doing some simple addition, it cannot argue that there was no "specific amount" demanded or that it did not understand what that "specific amount" might be.

As in all things legal and hypothetical, there can theoretically be claimants who take things too far. For instance, if employees of an Arizona public entity killed a young husband and father and his outraged and bereaved widow made a specific demand for the net worth of the city as recompense, the public entity might justifiably respond that it would have no idea what that specific amount might be. But that extreme situation does not confront us here.

Instead, we confront a case where the City of Mesa provided the facts about its applicable policy limits with its motion to dismiss. There was no delay, no hesitation, and no guessing. By February 9, 2023, just 17 days after the City of Mesa was served with the summons and complaint on January 23, 2023, a City claims analyst stated what the applicable policy limits were. Thus, by shuffling a few papers and using elementary-school math skills to add a few things together, the City knew that the applicable policy limits came to $54 million—and therefore knew that the specific amount demanded was $54 million. Nothing more was needed for a legitimate "specific demand" under A.R.S. § 12-821.01(A).

The Court of Appeals concluded that whether an insurance policy applies is not a

calculation but a legal question. *City of Mesa*, 256 Ariz. at 355 ¶ 18. Let us, however, turn from unanchored speculation to our case's actual facts. City of Mesa Risk Management Claim Analyst Lisa Lorts explained that the applicable policy limits were $54 million. (PSA-Appx. 047, ¶ 5). The claimant wanted the greater of $1 million or the applicable policy limits. The greater figure was $54 million. There was no legitimate dispute about that. And so, that was the specific amount the claimant demanded.

But assuming that, for the sake of argument, there might be a legal dispute on insurance policy limits, as the Court of Appeals apparently posits, that does not change the "specific amount" the claimant is seeking. The claimant is seeking the specific amount of the applicable policy limits. The City identified no legal dispute about the insurance policy limits, however, because there apparently is none for this simple motor-vehicle collision.

The requirements A.R.S. § 12-821.01(A) imposes, such as the "specific demand" requirement, are intended to let a public entity investigate and assess liability, allow the possibility of pre-litigation settlement, and help the public entity in financial planning and budgeting. *Falcon ex rel. Sandoval v. Maricopa County*, 213 Ariz. 525, 527 ¶ 9 (2006). The goal of the notice-of-claim system is not to defeat meritorious claims on technicalities, but "to encourage public entities and claimants to resolve claims without resorting to litigation." *Backus v. State*, 220 Ariz. 101, 106 ¶ 21 (2009).

"Arizona's notice of claims statute is not intended to abrogate or interfere with an

injured citizen's right to redress wrongs suffered due to the negligence of the State." John F. Barwell, *Notice of Claims and the "Sum Certain" Requirement: The Fallout from Deer Valley*, 50 Ariz. L. Rev. 1205, 1214 (2008). That, at least, is the publicly-touted justification.

On the other hand, a cynical student of A.R.S. § 12-821.01(A) and the cases construing it might conclude that the purpose of the statute "might have been to impede plaintiffs' lawsuits against public entities or to transfer liability to plaintiffs' attorneys who fail to meet the procedural intricacies of the statute." Phillip Beatty, *The Deer Valley Aftermath: Manufactured Digits Thwart Original Purpose of Arizona's Claim-Notice Statute*, 40 Ariz. St. L.J. 1031, 1045 (Fall 2008).

Be that as it may, finding that a claimant has satisfied the "specific demand" requirement by asking for a public entity's applicable policy limits is a "specific demand" that the public entity can understand. All that the public entity needs to do is check its own records or, if the public entity is sloppy in its recordkeeping, to ask its insurance carrier or carriers. In a system based on the principle that the notice-of-claim system exists to allow for reasonable investigation and assessment by the public entity, that is a justifiable, reasonable, and equitable expectation.

2. Reasonable calculation of damages is proper in notice-of-claim cases.

Some calculation is allowable in notice-of-claim cases. The City of Mesa and the Court of Appeals rejected the idea that calculation may be used in a notice-of-claim

case to determine the "specific amount" a claimant seeks. But this Court appears to have inherently approved the possibility of extensive calculation in the notice-of-claim case of *City of Phoenix v. Fields*, 219 Ariz. 568 (2009). In *Fields*, class-action plaintiffs seeking damages against the City had presented a notice of claim that supposedly did not containing a specific amount for which the claims of the members of the class could be determined and settled.

The City filed a motion for summary judgment arguing that the claimants had not met the "specific amount" notice-of-claim requirement. But the superior court denied the motion, finding that A.R.S. § 12-821.01(A)'s "specific amount" settlement-demand requirement did not apply to class actions. *Fields*, 219 Ariz. at 531 ¶ 4. The Court of Appeals, however, vacated the superior court's order, concluding that A.R.S. § 12-821.01(A) applies to class actions and that the class's notices were supposedly deficient because they had not specified "an amount for which the class claim could be settled." *Id*. at 531 ¶ 5.

This Court held that A.R.S. § 12-821.01(A) required some "form of settlement demand for a sum certain." *Fields*, 219 Ariz. at 534 ¶ 18. Thus, for a class action, a putative class representative must include a "specific amount" for which his individual claim can be settled. *Id*. at 534 ¶ 19. And because the class representatives had failed to state specific amounts for their class-representative claims, this Court concluded that they had failed to comply with the "specific amount" notice-of-claim requirement set

out in A.R.S. § 12-821.01(A). *Id*. at 534 ¶ 22.

But all was not lost. The class representatives argued that the City had waived any reliance on the "specific amount" notice-of-claim requirement by litigating the case actively for many months without raising the "specific amount" defense. *Fields*, 219 Ariz. at 534-36 ¶¶ 22-33. This Court held that there indeed had been waiver and remanded the matter for further proceedings consistent with its opinion. *Id*. at 537 ¶ 34.

For our case, the relevant ramification of *Fields* is that, if putative class representatives do file a notice of claim demanding a "specific amount" for a class settlement, the "specific amount" for each of the other members of the class is a matter preserved for later determination over the course of the class-action proceedings. *Fields*, 219 Ariz. at 534 ¶¶ 17-21.

If there can be a determination of a notice of claim's "specific amount" based on calculations made years *after* the original submission of the notice of claim in a class-action case, there can be a simple check of policy limits and a mathematical addition of those policy limits when a claimant submits a notice of claim in a non-class-action case.

3. The large amount that the claimant demanded does not affect or disqualify the demand's legitimacy under A.R.S. § 12-121.01(A).

The claimant clearly stated he sought the specific amount of "$1,000,000 or the applicable policy limits, whichever are greater." (PSA-Appx. 028, 039).

The $54 million demand was high. But a claimant is master of the specific amount the claimant demands. If the amount seems high to others, that does not affect

the validity of the claim. After all, A.R.S. § 12-821.01(A) "does not call for inquiry into the reasonableness of a sum certain demand." *Yollin v. City of Glendale*, 219 Ariz. 24, 32 ¶ 23 (App. 2008).

Perhaps the City of Mesa's claims functionaries, to the extent that they evaluated the liability and damages facts and did not merely look for a loophole to defeat the claim on technical grounds, were surprised by the large $54 million demand. Perhaps that is why they ignored it. But the notices of claim that the claimant served in this case provided detailed information on liability and damages. The City could and did simply choose to ignore that detailed information. That is, after all, its right. *See* A.R.S. § 12-821.01(E) ("A claim against a public entity or public employee filed pursuant to this section is deemed denied sixty days after the filing of the claim unless the claimant is advised of the denial in writing before the expiration of sixty days."). But the right to simply ignore a notice of claim and the information provided within it does not give the City any right to claim that the "specific amount" demanded was not "specific" enough when it was, in fact, specific.

Notably, in *Backus v. State*, this Court explained that a claimant complies with A.R.S. § 12–821.01(A) "by providing the factual foundation that the claimant regards as adequate to permit the public entity to evaluate the specific amount claimed." 220 Ariz. 101, 106-07 ¶ 23 (2009).

Thus, as long as a claimant "provides facts to support the amount claimed, he has

complied with the supporting-facts requirement of the statute, and courts should not scrutinize the claimant'' description of facts to determine the 'sufficiency' of the factual disclosure." *Id*. at 107 ¶ 23. If the claimant provides those facts that the claimant regards as supporting the claimed specific amount—as the claimant did in our case—that complies with A.R.S. § 12–821.01(A). *Id*. at 107 ¶ 29.

The $54 million demand was large, but it was specific, and the notices of claim set out facts supporting the "specific amount" that the claimant demanded. The specific amount demanded was therefore proper in its specificity and not subject to attack simply because of its rather large size.

DATED this 26th day of May, 2024.

AHWATUKEE LEGAL OFFICE, P.C.

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

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