

**SUPREME COURT  
STATE OF ARIZONA**

CITY OF MESA; GUSTAVO  
WILLIAMS,

Petitioners,

vs.

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.

Arizona Supreme Court No.:  
**CV-23-0284**

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

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

**AMICUS CURIAE BRIEF OF  
THE ARIZONA  
ASSOCIATION FOR JUSTICE**

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## INTRODUCTION

The issue before this Court is the meaning of “specific amount” under A.R.S. § 12-821.01(A). Precedent of this Court has not addressed the question as presented in this matter: whether an offer to settle a claim for *\$1 million or applicable policy limits, whichever is greater*, complies with the statute’s requirements. However, there are decisions from the Arizona Court of Appeals that suggest a disparity as to the interpretation of “specific amount.”

In this brief, Amicus Arizona Association for Justice offers an analysis of the rules of statutory construction, background on the notice-of-claim statute, and the meaning of “specific amount” in appellate cases. The brief then argues that upon providing an amount known or knowable to the government entity, the “specific amount” offered is not subject to judicial review.

A.R.S. § 12-821.01(A) provides the requirements to make a valid notice of claim, including requiring that:

The claim shall contain facts sufficient to permit the public entity, public school or public employee to understand the basis on which liability is claimed. ***The claim shall also contain a specific amount for which the claim can be settled and the facts supporting that amount.***

Emphasis added.

/ / /

## ARGUMENT

### I. Statutory Construction Principles

This Court interprets statutes based on “the plain meaning of the words the legislature chose to use, viewed in their broader statutory context.” *In re Drummond*, 543 P.3d 1022, 1025 ¶ 5 (2024) (quoting *Columbus Life Ins. Co. v. Wilmington Tr., N.A.*, 255 Ariz. 382, 385 ¶ 11 (2023)). See also *Backus v. State*, 220 Ariz. 101, 104 at ¶ 11 (2008) (“the best and most reliable index of a statute’s meaning is its language and, when the language is clear and unequivocal, it is determinative of the statute’s construction” (internal quotations and citations omitted)); *Hayes v. Cont’l Ins. Co.*, 178 Ariz. 264, 268 (1994) (“If a statute’s language is clear and unambiguous, we apply it without resorting to other methods of statutory interpretation.” (citation omitted)). The Arizona Supreme Court rejects the judicial creation of an exception to plain statutory wording. See *State v. Ring*, 131 Ariz. 374, 378 (1982). “When statutory language admits of only one interpretation, we go no further.” *Backus*, 220 Ariz. at 104, ¶ 11.

### II. Background on the Notice-of-Claim Statute

The purpose of the notice of claim is to “to give the government notice of potential liability, an opportunity to investigate claims, the chance to avoid costly litigation through settlement, and assistance in budgeting.” *Lee v. State*, 218 Ariz. 235, 238 ¶ 17 (2008). A notice of claim “allow[s] the public entity to investigate

and assess liability, ... permit[s] the possibility of settlement prior to litigation, and ... assist[s] the public entity in financial planning and budgeting.” *Deer Valley Unified Sch. Dist. No. 97 v. Houser* (“*Deer Valley*”), 214 Ariz. 293, 295 ¶ 6 (2007) (hereinafter “*Deer Valley*”) (quoting *Falcon ex rel. Sandoval v. Maricopa County*, 213 Ariz. 525, ¶ 9 (2006), quoting *Martineau v. Maricopa County*, 207 Ariz. 332, ¶ 19 (App. 2004)). Indeed, the Legislature wrote the statute in response to the abolition of the common-law defense of governmental immunity. *See Clouse ex rel. Clouse v. State*, 199 Ariz. 196, 199 ¶ 13 (2001); *see also In re Estate of Parker*, 217 Ariz. 563, 568–69 ¶ 29 (App. 2008) (declining to “judicially create” additional protections where the legislature has already created those it saw as adequate).

A claimant must strictly comply with the requirements of the statute, and compliance is “apparent on the face of the notice.” *City of Phoenix v. Fields* (“*Fields*”), 219 Ariz. 568, 575 ¶ 30 (2009). However, this Court will not review the *adequacy* of the facts supporting the settlement amount, so long as the claimant meets the literal language of the statute. *Backus*, 220 Ariz. at 106-07 ¶ 23. Additionally, this Court is “reluctant to interpret a statute in favor of denial or preemption of tort claims.” *Hayes*, 178 Ariz. at 272.

The Supreme Court’s analysis in *Backus* is helpful in this case. Just as the parties in *Backus* disagreed about the meaning of “facts supporting that amount” offered in settlement, parties here disagree about the meaning of “specific

amount.” The Supreme Court concluded that “the statutory language ... is not clear and unequivocal.” *Backus*, 220 Ariz. at 106 ¶ 16. To define “facts supporting that amount,” the Court agreed that “allowing a public entity to challenge the adequacy of a notice of claim in the trial court if the public entity regards the supporting facts submitted as insufficient can produce two negative results, neither of which furthers legislative intent.” *Id.* at ¶ 19. The first negative result is the elimination of a claimant’s opportunity to make a claim, considering the “claimant’s lack of knowledge” and the “relatively short time within which a claimant must file a notice of claim and bring a civil action.” *Id.* Second, the Court recognized the negative result of legal expenses and delay in resolving satellite litigation challenging the adequacy of the notice of claim. *Id.* ¶ 21. “Encouraging additional litigation frustrates one of the goals of § 12–821.01, which is to encourage public entities and claimants to resolve claims without resorting to litigation.” *Id.* Most importantly, however, the *Backus* ruling noted that the plain language of the statute does not require a claimant to set out facts “sufficient” to support the amount claimed. *Id.* at ¶ 22. If the legislature had intended to require that a notice contain facts “sufficient” to support the amount claimed, it would have said so. *Id.*

Based on the precedent of *Backus*, then, the Court should not add additional requirements or make a ruling that will encourage costly satellite litigation with respect to “specific amount.”

### III. Understanding the Meaning of “Specific Amount”

The plain language of the notice-of-claim statute requires a settlement offer set forth as a “specific amount.” The Legislature’s language in A.R.S. § 12-821.01 was “specific amount” rather than “number” or “sum certain.” Any “sum certain” criterion is a judicially added requirement that is not – and should not – be a barrier to a notice of claim. *Cf. Backus*, 220 Ariz. at 106 ¶ 22; *see also Yollin v. City of Glendale*, 219 Ariz. 24, 30 (App. 2008) (“we will not place additional burdens on citizens exercising their right to seek compensation for injuries caused by the government”). Nevertheless, many cases seem to equate “sum certain” with the required “specific amount.” *See, e.g., Fields*, 219 at 573 ¶ 17; *Deer Valley*, 214 Ariz. at 495 ¶¶ 16-17; *Yahweh v. City of Phoenix*, 243 Ariz. 21, 23 ¶¶ 9, 11, 12 (App. 2017); *Yollin*, 219 Ariz. at 31 ¶ 21; *Martineau v. Maricopa Cnty.*, 207 Ariz. 332, 336 ¶ 22 (Ct. App. 2004).

In the following subsections, this brief addresses the differences between “sum certain” and “specific amount.”

#### A. “Sum Certain” is Associated with Damages Caps in Federal Tort Claims Act Cases

The use of “sum certain” likely derives from the Federal Tort Claims Act, which limits the amount a claimant may seek in litigation to that which is set forth in a mandatory pre-litigation claim. *See* 28 U.S.C. § 2675(b) (“Action under this

section shall not be instituted for any sum in excess of the amount of the claim presented to the federal agency...”); *see also Blair v. I.R.S.*, 304 F.3d 861, 864 (9th Cir. 2002) (“A claim is deemed presented for purposes of 28 U.S.C. § 2675(a) when a party files (1) a written statement sufficiently describing the injury to enable the agency to begin its own investigation, and (2) a sum certain damages claim.” (internal quotations and citations omitted)). The Federal Tort Claim Act cases interpreting that law, however, are not appropriate guides to understand A.R.S. § 12-821.01.

The “sum certain” prerequisite to bringing a Federal Tort claim in federal jurisprudence concerns the value of damages claimed, a requirement that differs from the “specific amount” in the notice-of-claim statute. A “sum certain” states the total number or quantity of dollars that the claimant seeks in total damages for the alleged tort. Failure to provide that “sum certain” bars the claimant from later seeking those damages in litigation.

### **B. “Specific Amount” Modifies Settlement Offers**

In contrast to the Federal Tort Claims Act, the Arizona notice-of-claim statute requires offers of settlement for a “specific amount.” In drafting A.R.S. § 12-821.01, the Arizona Legislature did not limit the damages a claimant may seek in litigation against a government entity. Several appellate rulings agree that the “specific amount” set forth in a notice of claim is valid where it contains a

settlement offer for a “particular and certain” amount of money that, if agreed to by the government entity, will settle the claim. *See Fields*, 219 Ariz. at 571–72 (citing *Deer Valley*, 214 Ariz. at 296 ¶ 9); *see also Jones v. Cochise Cnty.*, 218 Ariz. 372, 375 ¶¶ 8-9 (App. 2008). These cases repeatedly hold that a notice of claim complies with the statutory requirement to make a settlement offer for a specific sum “as long as it gives [the government entity] the ability to reach an agreement ending the dispute through payment or satisfaction.” *Yollin*, 219 Ariz. at 28 ¶ 9 (internal quotations omitted).

The “specific amount” required by A.R.S. § 12-821.01(A) gives clear information so the recipient of the notice is able to ascertain the total number or quantity of dollars. Because “the specific amount” of A.R.S. § 12-821.01(A) must be that “*for which the claim can be settled,*” the purpose of the amount is to ensure a binding settlement offer. *See, e.g., Yollin*, 219 Ariz. at 30-31 ¶19 (“Because the language of the binding offer is definite... we hold that Yollin intended to be bound.”) Looking at the language of “specific amount” in statutory context, a “specific amount” is one known or knowable by the government entity, so that the entity may accept or reject the settlement offer. This approach is consistent with the analysis in *Deer Valley*, which clarifies that “specific” means “a clear aggregate,” but it is largely silent as to the meaning of “amount.” *Deer Valley*, 214 Ariz. at 296 ¶ 12; *see also Backus*, 220 Ariz. at 105-06 ¶ 12.

### **C. A Valid Notice of Claim Contains a Binding Settlement Offer**

Interpreting “specific amounts” to mean amounts that are known or knowable by the entity also comports with the purpose of the notice of claim statute. Where a notice of claim makes a settlement offer for a sum knowable to the government entity, the entity is in a position to assess the possibility of settlement and engage in financial planning. *See, e.g., Backus*, 220 Ariz. at 106 ¶ 21; *Deer Valley*, 214 Ariz. at 295 ¶ 6; *Yollin*, 219 Ariz. at 29; *Jones*, 187 P.3d at 376 ¶ 11.

Indeed, invoking policy limits as the “specific amount” to settle a claim does not prevent the government entity from either the assessment of the claim or financial planning. Government entities know the types of insurance coverage they own, and they know the limits of such coverage *from the face of their insurance policies*. Even if claimants do not know the government’s insurance limits, they may make specific and binding offers of settlement without stating the number of dollars, so long as the demanded funds are for unequivocal amounts. *Deer Valley*, 214 Ariz. at 296 ¶ 11.

### **D. A Notice of Claim Offers Settlement before Civil Discovery**

A claimant has limited information about the government entity’s conduct, policies, and procedures that relate to and may give rise to a claim, as well as any

insurance policies the government entity will disclose under Arizona Rules of Civil Procedure, 26.1(a)(10). This Court emphasized in *Backus*:

We remind litigants that the notice of claim statute is not intended to supplant the requirements of a disclosure statement under Rule 26.1 or the discovery procedures authorized by Rules 30 through 36 of the Arizona Rules of Civil Procedure.

220 Ariz. at 149 ¶ 32. “Claimants need not engage in the heavy burden of completing an entire investigation for the government...” *Yollin*, 219 Ariz. at 32 ¶ 25. *See also Havasupai Tribe of Havasupai Rsrv. v. Arizona Bd. of Regents*, 220 Ariz. 214, 231 ¶ 69 (App. 2008) (“a settlement demand in a notice of claim made pursuant to section 12–821.01 necessarily occurs prior to the commencement of litigation and usually is the first step in the process by which, if it chooses, the government may investigate and evaluate the claim and the settlement demand and negotiate a settlement.” (citing *Deer Valley*, 214 Ariz. at 295 ¶ 6)) The information contained in a defendant’s mandatory disclosure pursuant to Arizona Rule of Civil Procedure 26.1(a) is typically unavailable to an injured party bringing a notice of claim.

These cases show that a claimant is not required to conduct a public records request to learn information to bring a valid notice of claim. It follows that a claimant may state a “specific amount” by referencing insurance policy limits already known by the government entity without first making a public records

request to learn of the limits. After all, applicable policy limits are “a particular and certain amount of money.” *Deer Valley*, 214 Ariz. at 296 ¶ 9.

Consistent with this Court’s recognition that that notices of claim precede civil discovery, no case suggests that the “specific amount” must both be known by claimant and stated as a quantity in the notice of claim. Rather, the Court of Appeals repeatedly noted that a notice of claim is valid where it contains an unequivocal offer of settlement for an amount knowable by the government entity. *See, e.g. Mountainside Mar LLC v. City of Flagstaff*, No. 1 CA-CV 18-0049, 2019 WL 3235025, at \*1 ¶ 4 (Ariz. App. July 18, 2019) (mem. decision) (accepting as proper a notice of claim offering in settlement a sum plus interest earned over a defined period, because the City could compute the precise settlement amount); *A. Miner Contracting, Inc. v. City of Flagstaff*, No. 1 CA-CV 14-0249, 2015 WL 5770613, at \*2, ¶ 12 (Ariz. App. Oct. 1, 2015) (mem. decision) (noting that the specific amount requirement may be satisfied “by requesting an unspecified amount of additional accrued interest if the method for calculating the additional interest is clearly identified in the notice,” thus giving the public entity a “meaningful opportunity to consider its financial planning and budgeting when considering whether to settle the claim”).

The Court of Appeals reasoning in *Mountainside Mar* comports with the plain language in the statute:

[A]lthough Mountainside’s notice could have more simply indicated an interest rate or an overall amount of interest demanded, the notice provided the City a way to compute ***a precise settlement amount based on information uniquely available to the City*** and with no indication that Mountainside could reject the City's calculation. Thus, the notice adequately complied with the statute.

*Mountainside Mar*, 2019 WL 3235025, at \*3 (emphasis added). An unequivocal offer of settlement for a sum knowable to the government entity – such as insurance policy limits – thus complies with the statutory requirements. *See Yollin*, 219 Ariz. at 30-31 ¶¶ 16-17.

Just as the City of Flagstaff knew what interest it had earned on the disputed funds in *Mountainside Mar*, the City of Mesa is aware of its insurance coverage. Yet such amounts are not readily known or available to a claimant. Again, the notice of claim statute puts no obligation on the claimant to learn such information in advance of bringing a claim. A claimant is not required to state a dollar figure to comply with “specific amount,” but instead provide information such that the recipient of the claim is advised of the sum demanded for settlement. In other words, where a notice of claim identifies a knowable and unequivocal portion of a pool of funds – such as coverage limits of applicable insurance or even the salary paid to the City’s mayor – the notice complies with the statute. Such offers are “specific amounts” required of notices of claim, even without a stated dollar figure, because the government can readily ascertain the settlement amount demanded.

**IV. There is no Basis for Judicial Review of the “*Amount for which the claim can be settled*”**

As a final point, Amicus urges this Court to hold that the *amount* offered by a claimant in settlement is not subject to judicial review. As the *Backus* case demonstrates, the plain language of A.R.S. § 12-821.01(A), its purpose and history all limit judicial review of the contents a notice of claim. *See Backus*, 220 Ariz. at 106-07; *see also Havasupai Tribe v. Ariz. Bd. of Regents*, 220 Ariz. at 225-26. Nothing in the statute, its history, or purpose suggests that a claimant is limited in the amount they may offer to settle a claim.

Significantly, nothing in A.R.S. § 12-821.01(A) requires that the amount demanded for settlement be reasonable. *See Yollin*, 219 Ariz. at 32 ¶ 23. Such a requirement would create the very quagmire of satellite litigation that *Backus* decried. The notice of claim is a procedural prerequisite to litigation, and where a claimant brings a notice of claim, they are entitled to commence litigation *unless the government entity accepts the settlement offer*.

Amicus recognizes that the settlement offer for applicable policy limits—\$54 million—likely exceeds the total value of this case. But that is irrelevant. If, instead of offering settlement for “\$1 million or applicable policy limits,” the plaintiff had made an offer for \$54 million, there would be no issue as to the validity of the notice of claim. Such a notice of claim would comply with the City

of Mesa’s reading of A.R.S. § 12-821.01(A) to require a settlement offer for a “sum certain” quantity of dollars. After all, \$1 million, \$10 million, or \$100 million are all certain sums and specific amounts.

**CONCLUSION**

Amicus Arizona Association for Justice requests that the Court find that when a claimant indicates an amount known or knowable by the government entity—such as that entity’s insurance policy limits—and where payment of that amount will satisfy the entity’s liability, then the notice of claim satisfies statutory requirements. Thus, Amicus suggests that the proper rubric to determine whether a notice of claim indicates a “specific amount” for which the government entity may settle a claim is (1) the certainty and particularity required by *Deer Valley* as “specific”, and (2) the “amount” being knowable or known by the government entity. Such a ruling is consistent with the language of the statute, which requires a binding settlement offer, and will reduce costly satellite litigation challenging the validity of notices of claim.

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For all these reasons, Amicus Arizona Association for Justice asks that the Court reverse the ruling of the Court of Appeals and remand this case to the trial court for further proceedings.

RESPECTFULLY SUBMITTED this 11th day of June, 2024.

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