

SUPREME COURT OF ARIZONA

CITY OF MESA; GUSTAVO WILLIAMS,)	Case No. CV-23-0284-PR
))
Petitioners,)	Court of Appeals
)	No. 1 CA-SA 23-0154
v.))
)	Maricopa County
THE HONORABLE TIMOTHY RYAN,)	Superior Court
Judge of the SUPERIOR COURT OF)	No. CV 2022-014378
THE STATE OF ARIZONA,)	(Hon. Timothy Ryan)
In and for the COUNTY OF MARICOPA,))
))
Respondent Judge,))
))
PHILIP ROGERS,))
))
Real Party in Interest,))
))

BRIEF OF *AMICI CURIAE*
LEAGUE OF ARIZONA CITIES AND TOWNS, ARIZONA COUNTIES
INSURANCE POOL, ARIZONA MUNICIPAL RISK RETENTION POOL,
AND ARIZONA SCHOOL RISK RETENTION TRUST, INC.
IN SUPPORT OF PETITIONER CITY OF MESA

[WITH CONSENT]

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INTEREST OF AMICI CURIAE

Pursuant to Rules 14 and 16, Ariz. R. Civ. App. P, this amici curiae brief (“**Brief**”) is submitted by the League of Arizona Cities and Towns (“**League**”), the Arizona Counties Insurance Pool (“**ACIP**”), the Arizona Municipal Risk Retention Pool (“**AMRRP**”), and the Arizona School Risk Retention Trust, Inc. (“**ASRRT**”) (collectively “**Amici**”). This Brief is being filed with the written consent of Petitioners City of Mesa and Gustavo Williams, and Respondent Philip Rogers as the Real Party in Interest. No other person or entity authored this Brief or made a monetary contribution for its preparation or submission.

Founded in 1937, the League is a voluntary membership organization of all 91 incorporated Arizona municipalities. The League advocates for its members’ interests before the legislature and courts. The League is advised by its Amicus Committee, which identified this case for statewide significance. ACIP provides insurance coverage, adjudicates claims, manages risk, and provides consultation services for 13 of Arizona’s 15 counties. AMRRP is a self-insurance and risk management pool, owned and operated by 77 cities and towns that have more than 16,000 employees. ASRRT is a non-profit risk-retention pool that provides liability coverage and related services to nearly 250 Arizona public school districts and community colleges.

Amici respectfully submit this Brief in support of the City of Mesa (“City”) because this Court’s interpretation A.R.S. § 12–821.01(A) has important legal and practical consequences for public entities in Arizona. Amici can provide its unique perspective and additional information about this important issue to complement what has already been presented by the parties.

Public entities in Arizona are presently secure in the knowledge that if they are sued for damages, a claimant will have a statutory obligation to file a proper notice of claim in advance of litigation — and that notice of claim will include a precise amount for which they can settle the matter. This dollar amount is an essential term to any potential settlement agreement. When the dollar amount is definite and certain, it allows the parties to settle meritorious claims without the burdens and expense of litigation. When the dollar amount is indefinite or uncertain, it is neither a “specific amount” under A.R.S. § 12–821.01(A) nor a valid settlement offer under basic contract principles.

INTRODUCTION

Arizona law unequivocally requires a notice of claim to contain a specific amount that will settle the matter if agreed to by the public entity. *See* A.R.S. § 12–821.01(A). Hundreds of public entities and their employees rely upon a sum certain demand because it tells them the precise amount to avoid costly and lengthy litigation.

The Court of Appeals correctly concluded that Rogers’ notice of claim failed to meet this simple mandate. *See City of Mesa v. Ryan*, 256 Ariz. 350 (Ct. App. 2023), review granted (May 7, 2024). His notice of claim provides in relevant part: “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.” *Id.* at ¶ 4. The \$1 million demand on its own is an unqualified and specific dollar amount, but the notice of claim does not state with any certainty that the City can settle the matter for \$1 million. The \$1 million amount is just one of two alternative demands¹—and the second demand of “applicable policy limits” is indefinite, uncertain, and cannot be calculated from the face of the notice of claim. *Id.* at ¶¶ 12-16.

Amici agrees with the decision of the Court of Appeals and urges this Court to affirm. Rogers’ failure to strictly comply with A.R.S. § 12-821.01(A) is fatal to his claims. *See, e.g., Deer Valley Unified Sch. Dist. No. 97 v. Houser*, 214 Ariz. 293 (2007) (requiring strict compliance and rejecting reasonableness standard); *Falcon ex rel. Sandoval v. Maricopa Cnty.*, 213 Ariz. 525, 527 (2006) (requiring strict compliance and rejecting actual notice and substantial compliance); *Humphrey v.*

¹ “Demands” in the plural form could be used because Rogers’ notice of claim says he is willing to accept “whichever are greater of” his alternative demands. When this Court granted review, it rephrased the issue with “whichever is greater” in the singular. This Brief analyzes the plain language of the notice of claim (“whichever are greater”) in the plural; however, the notice of claim is defective regardless of whether the singular or plural is used.

State, 249 Ariz. 57, 63, ¶ 21 (Ct. App. 2020) (holding that claims for negligence were barred as a matter of law because a notice of claim did not state a specific amount for which the claims could be settled).

Endorsing Rogers’ notice of claim would subvert the plain language of A.R.S. § 12-821.01(A) and radically depart from prior notice of claim cases, and defy basic contract law principles. Such an outcome would also have far-reaching implications for public entities in Arizona that rely on an orderly and predictable notice-of-claim process to evaluate and address claims in a manner consistent with government budgeting and financial restraints. Accordingly, this Court must affirm the decision of the Court of Appeals.

ARGUMENT

A. A.R.S. § 12-821.01(A) REQUIRES A SUM CERTAIN.

Under the Arizona Constitution, the Legislature may restrict the right to sue public entities and employees, and to prescribe the manner in which such a suit may be maintained. *See* ARIZ. CONST. ART. IV, PT. 2 § 18 (“The legislature shall direct by law in what manner and in what courts suits may be brought against the state.”); *Landry v. Sup. Ct.*, 125 Ariz. 337, 338 (Ct. App. Div. 2 1980) (interpreting ARIZ. CONST. ART. IV, PT. 2 § 18). Consistent with that constitutional authority, the Legislature adopted A.R.S. § 12-821.01. The statute expressly requires claimants to file a notice of claim that contains a specific amount for which the claim can be

settled. *See* A.R.S. § 12-821.01(A) (“The claim *shall* also contain a specific amount for which the claim can be settled and the facts supporting that amount.”) (emphasis added). This specific amount furthers the purposes of the statute by providing the public entity the opportunity to evaluate the claim, make budgeting or financial arrangements, and possibly settle in that amount prior to litigation. *See Falcon*, 213 Ariz. at 527 , ¶ 9.

In *Deer Valley*, this Court analyzed a notice of claim against a school district that demanded the following in relevant part: (1) economic damages “in an amount anticipated to be approximately \$35,000.00 per year or more going forward over the next 18 years”; (2) compensatory damages “in an amount no less than \$300,000.00; and (3) general damages “in an amount of no less than \$200,000.00.” 214 Ariz. at 295, ¶ 3 (citations omitted). *Deer Valley* concluded that the plain language of A.R.S. § 12-821.01(A) “unmistakably instructs claimants to include a particular and certain amount of money that, if agreed to by the government entity, will settle the claim.” *Id.* at 296, ¶ 9 (citation omitted). The claims against the school district were barred because the notice of claim lacked any clear aggregate amount that would settle the matter. *Id.*, ¶¶ 10, 11. By using imprecise and uncertain language (like “approximately,” “or more going forward,” “similar appropriate pay increases,” and “no less than”), the school district could not readily identify a specific dollar amount that would settle the matter. *Id.*

While not binding on this Court, federal courts have also considered the sum certain requirement of A.R.S. § 12-821.01(A) on similar facts. For example, in *Glynn v. City of El Mirage*, a notice of claim offered to settle for “a reasonable lump sum payment of \$510,000 (inclusive of all economic and emotional distress damages)” and a reimbursement of “attorneys’ fees incurred in this dispute.” No. CV-23-00612-PHX-MTL, 2023 WL 6795080, at *7 (D. Ariz. Oct. 13, 2023) (citation omitted). The federal district court concluded the notice of claim violated A.R.S. § 12-821.01(A) because it lacked a *specific monetary amount* for the attorneys’ fees. *See id.* According to the court, the demand for an unspecified amount of attorneys’ fees “introduce[d] uncertainty to the settlement offer, particularly when those fees could total a substantial amount.” *Id.* at *8 (citation omitted).

These decisions make sense. Without a precise dollar amount, the public entity cannot realistically treat the notice of claim as an offer of settlement under A.R.S. § 12-821.01(A) or basic contract principles. *See James v. City of Peoria*, 253 Ariz. 301, 302 (2022) (using “settlement offer” and “notice of claim” interchangeably); *Hill-Shafer P’ship v. Chilson Family Trust*, 165 Ariz. 469, 473 (1990) (stating a distinct intent that is common to both parties must exist without doubt or difference before any agreement can be formed); RESTATEMENT (SECOND) OF CONTRACTS §§ 17, 18 (discussing the manifestation of mutual assent and offers

that are so uncertain as to preclude binding acceptance); RESTATEMENT (SECOND) OF CONTRACTS § 20 (stating there is no mutual assent if parties attach materially different meanings to their manifestations and “neither party knows or has reason to know the meaning attached by the other”) (citation omitted).

Even employing a liberal construction, there is nothing in Rogers’ notice of claim that could possibly be construed as a particular or certain amount of money that, if agreed to by the City, would settle the matter. Rogers proposes “whichever are greater” of two alternatives, not a sum certain. The first demand—\$1 million—is conditional on the second demand. The second demand is not an amount at all, but rather a generic reference to “applicable policy limits.” Neither is a sum certain. *See, e.g., City of Phoenix v. Fields*, 219 Ariz. 568, 573, ¶ 17 (2009) (“Some form of settlement demand for a sum certain is required by § 12–821.01(A).”).

Even if one assumes that “policy limits” refers to insurance policies,² the notice of claim does not specify which policies are “applicable” to this matter, nor

² In the municipal context, “policy limits” can refer to a few different things, including non-insurance matters, such as council policy limits on the types of claims or amounts for which municipal officers or employees are authorized to settle on behalf of the city. *See, e.g., BULLHEAD CITY, ARIZ., BULLHEAD CODE § 3.08.080 (1986)* (policy on the self-insurance trust fund and the maximum dollar amount for which the city manager has authority to settle without council approval); *CITY OF CHANDLER, ARIZ., CHANDLER CODE § 5-6 (2012)* (policy limiting the dollar amount for which the city attorney has authority to settle without council approval); *CITY OF AVONDALE, ARIZ., AVONDALE CODE § 2-14 (2022)* (policy limiting the dollar amount for which the city attorney has authority to settle without council approval);

is it apparent. Public entities have multiple insurance policies. Each of their policies is a typically collection of coverages—and each coverage has a limit—which can apply both individually and in the aggregate. As a result, there can be multiple limits within one policy. To further complicate things, a limit may be expressed as a single limit or as split limits, with different maximums for each.

Even if the City could on its own identify “applicable” policies, how would it calculate the precise settlement amount in such a manner that Rogers is guaranteed to accept it? The notice of claim does not say. While Rogers is correct that his notice of claim does not say he could or would reject the City’s calculations or determinations, it also does not say that he would *accept* them. Moreover, any limit is simply the *most* the insurer *might* pay if the claim is covered. Insurance policies, by their terms, give insurers discretion to decide whether to settle or litigate. The interests of an insurer are not necessarily aligned with what the best interests of its public entity insured. Apart from considerations of defense costs, an insurer generally cannot do any worse than paying the policy limit. Information learned

CITY OF AVONDALE, ARIZ., AVONDALE CODE § 2-76 (2022); CITY OF TEMPE, ARIZ., TEMPE CODE § 26A-22(a), (b), (d) (2021) (policy limiting the dollar amount for which the city procurement officer has authority to settle without council approval); CITY OF SURPRISE, ARIZ., SURPRISE CODE § 4.2(e)(3) (2010) (policy limiting the dollar amount for which the city attorney and city manager have authority to settle without council approval); TOWN OF GILBERT, ARIZ., GILBERT CODE § 2-61(b)(2) (2018) (policy limiting the dollar amount for which the town manager has authority to settle without council approval).

through discovery may further benefit the insurer. Consequently, the insurer generally has an interest to proceed with litigation, not settle a matter before litigation, contrary to the purpose of the notice-of-claim statute.

Here, the only thing that is reasonably certain is that \$1 million is the *minimum* amount of money that *may* settle the matter. There is no certainty about the *maximum* amount of money that *would* settle the matter, much less a specific amount. To the extent Rogers argues the City could have identified “applicable” policies and performed acrobatics to calculate a settlement amount, the law places no such burden on the City. *See Yahweh v. City of Phoenix*, 243 Ariz. 21, 23, ¶ 12 (Ct. App. 2017) (“Public entities in Arizona are not duty-bound to assist claimants with statutory compliance.”); *see also Backus v. State*, 220 Ariz. 101, 107 ¶ 28 (2009) (a public entity is not required to request additional facts when a claimant’s notice of claim is deficient.).

At best, the second alternative is an invitation to negotiate, which is not sufficient to comply with A.R.S. § 12-821.01. *See, e.g., Deer Valley*, 214 Ariz. at 296, ¶ 10. In *Yahweh*, a former city employee’s notice of claim stated he would sue the city for various claims in the amount of \$1.5 million and instructed the city to contact his lawyer to obtain an agreeable resolution. 243 Ariz. at 22, ¶ 3. The employee’s claims were barred because his notice of claim did not express a willingness to accept a *specific sum* for the purpose of settlement. *Id* at 23, ¶ 9. The

reference to \$1.5 million was simply how much he would seek during litigation. As a result, the court interpreted the reference to \$1.5 million as an invitation to bargain. *Id.*, ¶ 10.

Here, there is nothing in Rogers’ notice of claim that could possibly be construed as a particular and certain amount of money that, if agreed to by the City, would settle the matter. Any attempt to tease out Rogers’ true willingness to settle and the precise settlement amount would have been little more than a guessing game. Accordingly, this Court should affirm.

B. PROVIDING A SPECIFIC AMOUNT IS NOT DIFFICULT.

As *Deer Valley* recognized, compliance with the notice of claim statute is not difficult. 214 Ariz. at 296, ¶ 9. “[T]he statute does not require that claimants reveal the amount that they will demand at trial if litigation ensues but simply requires that claimants identify the specific amount for which they will settle and provide facts supporting that amount.” *Id.*

Some public entities in Arizona make it *even easier* for claimants by supplying a standard notice of claim form.³ Claimants are obviously not required to use these

³ See e.g., CITY OF CHANDLER, ARIZ., Claims Against the City of Chandler For Damages to Persons or Personal Property (2019), <https://www.chandleraz.gov/sites/default/files/City-of-Chandler-Law-Risk-Management-Claim-Form-Dec-2019.pdf> (“Please state a specific amount for which you will settle your claim. \$ _____”); MARICOPA COUNTY, ARIZ., Notice of Claim

forms, but many of them do. A standard form typically asks claimants to write a single dollar amount for which their claims can be settled. Claimants are not asked to provide a line-item accounting for each possible damage claim should litigation ensue. They are only asked to provide a specific amount *for which they are willing to settle*. See *Jones v. Cochise Cnty.*, 218 Ariz. 372, 378, ¶ 19 (Ct. App. 2008) (concluding the notice of claim included a specific amount because it included dollar amounts that were “certain and not approximate” and said the claimants would settle for those specific amounts).

The City’s standard notice of claim form is no different. The form states: “WHAT IS THE SPECIFIC AMOUNT FOR WHICH YOUR CLAIM CAN BE SETTLED? \$ _____.”⁴ By filling in this blank, a claimant tells the City the *exact dollar amount* for which the matter could be settled. The City is not left to speculate about the potential settlement amount.

In contrast, Rogers’ notice of claim did not provide any particular dollar amount that would *unquestionably* settle the matter. Even if Rogers believes that compliance with A.R.S. § 12-821.01(A) is “often difficult,” it does not excuse his mistake. Allowing his claims to move forward without a valid settlement offer would

form, <https://www.maricopa.gov/DocumentCenter/View/16045/Claims-Form-PDF> (2014) (“Specific amount for which your claim can be settled: \$ _____.”)

⁴ City of Mesa, Ariz., Claims Against the City of Mesa (2024), <https://www.mesaaz.gov/home/showpublisheddocument/8997/635616512790730000>.

not only conflict with the plain language of the notice of claim statute and its obvious purpose, but it would also lead to absurd and untenable results—public entities could never be certain of a single sum for which they could settle and avoid litigation altogether.

CONCLUSION

For the reasons stated in this Brief, Amici respectfully urge this Court to affirm.

RESPECTFULLY SUBMITTED this 11th day of June 2024 by:

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CERTIFICATE OF COMPLIANCE

In accordance with Rule 16(b)(4) of the Arizona Rules of Civil Appellate Procedure, the undersigned certifies that the amici brief to which this certificate is attached: (1) is double-spaced and uses proportionately spaced typeface for the text and footnotes (14-point in Times New Roman); (2) contains 3551 words (by computer count), which does not exceed the word limit set by Rule 14(a)(4); (3) averages less than 280 words per page, including footnotes and quotations; and (4) does not exceed 20 pages.

DATED this 11th day of June 2024,

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