

## ARIZONA SUPREME COURT HOLDS THAT A DEMAND FOR “POLICY LIMITS” DOES NOT SATISFY ARIZONA’S NOTICE OF CLAIM REQUIREMENTS

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*City of Mesa v. Ryan*  
Arizona Supreme Court  
October 17, 2024  
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The Arizona Supreme Court examined the issue of whether a demand for “policy limits” satisfies the “sum certain” requirement in the Arizona Notice of Claim Statutes and held that it does not.

The case arose from multi-vehicle car accident. Plaintiff Philip Rogers, who was riding a bicycle at the time, was allegedly injured by a vehicle driven by a City of Mesa police officer. Although Rogers timely filed notices of claim on the City, the notices contained a non-specific offer to settle for “\$1,000,000 or the applicable policy limits.” However, the City had several potentially applicable insurance policies and could not determine which of the policies the Notice of Claim referenced.

Rogers filed suit and the City moved to dismiss, arguing that Rogers’s notices of claim were insufficient because they did not contain a sum certain for which the case could be settled. The superior court denied the motion, and the City filed a petition for special action review, which the court of appeals granted. The court of appeals agreed with the City and reversed the superior court’s order, holding the sum certain requirement of the notice of claim statute was not met because the applicable policy limit language was ambiguous. Rogers then petitioned the Arizona Supreme Court for review.

The Arizona Supreme Court began its opinion by discussing the purpose behind the notice of claim statute and the requirement that claimants strictly comply with the statute. It explained that the sum certain requirement is “clear and unequivocal” and requires claimants to include a particular and certain amount of money that will settle the claim, even if that number is unreasonable.

The Court then explained that a notice of claim should definitively set forth an amount by which a public entity can settle a claim. It explained that in so doing, a notice can set forth a way to reasonably calculate the sum, such as requesting interest and including a method for calculating it. But in the case of insurance policies, that calculation is not straightforward. The insurance carriers rather than the City decide which layer of coverage applies. Moreover, questions on whether a particular layer applied (which is an issue of law) created ambiguity to the sum certain language of the notice of claim. Thus, in this case, the City’s risk management claims analyst could not determine which policy Rogers was specifically referring to, and the Court agreed that the City could not be certain. The Court also concluded that a claimant cannot have a “sum certain” if the claimant does not know how many policies the entity has or the monetary limits of the policies. Accordingly, the Court held that Rogers’s notice of claim was deficient because it lacked a sum certain.

The Court explained that “[w]hen qualifying language or conflicting methods of computation trigger alternate settlement amounts, the claimant has failed to state a ‘specific amount’ under § 12-821.01(A).” Thus, “[t]he takeaway from this case for future claimants is straightforward: failure to state an exact monetary figure in the notice of claim as the specific amount for which the claim can be settled raises a strong risk that the claim will be found statutorily noncompliant.”

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**Justin Ackerman** represents clients in federal and state appellate matters in cases involving excessive force, wrongful death, personal injury, bad faith, and premises liability. After graduating as the valedictorian of his class from Phoenix School of Law, Justin worked as a law clerk for the Hon. Michael J. Brown in Division One of the Arizona Court of Appeals. Following his clerkship, Justin has handled over 75 appeals, successfully arguing before the Arizona Court of Appeals, Arizona Supreme Court, and U.S. Court of Appeals for the Ninth Circuit. Justin has spoken at many seminars on appellate preservation topics and is recognized as a *Southwest Super Lawyers* Rising Star and Best Lawyers Ones to Watch in the area of Appellate Practice. He currently serves as the Chair of the Appellate Group at JSH.

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