ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY

CITY OF MESA & GUSTAVO WILLIAMS v. HON. TIMOTHY RYAN/PHILLIP ROGERS
CV-23-0284-PR

PARTIES:

Petitioner/Real Party in Interest/Plaintiff: Philip Rogers ("Rogers")

Respondent/Defendants: City of Mesa ("Mesa") & Gustavo Williams ("Williams") (collectively, "the City Defendants")

FACTS:

The Accident and Resulting Lawsuit. In November 2021, Rogers was riding his bicycle northbound on Dobson Road in Mesa. Mesa Police Officer Williams was driving a Mesa Police Department patrol vehicle southbound on the same street when he went through a red left-turn signal and struck a car driving northbound. Williams' vehicle also collided with Rogers, throwing him from his bicycle and seriously injuring him.

Before being able to sue a public entity, a potential plaintiff must first submit a "notice of claim" to that entity. A.R.S. § 12-821.01(A). In May 2022, Rogers served a timely notice of claim on Mesa. Among other things, the notice contended that Mesa was liable for the conduct of Williams under the doctrine of *respondeat superior*. It then went on to say that "this matter can be settled at this time for $1,000,000 or the applicable policy limits, whichever are greater." Mesa did not respond to the notice.

In October 2022, Rogers filed a negligence action in superior court against the City Defendants, again alleging that Mesa was vicariously liable for Williams' negligence. The City Defendants moved to dismiss, arguing that by demanding "$1,000,000 or the applicable policy limits," Rogers' notice of claim did not comply with A.R.S. § 12-821.01(A), which requires a notice of claim to offer "a specific amount" for which the claim can be settled.

Specifically, the City Defendants argued that the notice's demand for the policy limits of its insurance policies made the amount of the offer undeterminable. Relying on a declaration from a Mesa Risk Management Analyst, they contended that Mesa has multiple insurance policy limits with different layers of coverage that are applicable only in certain circumstances. Again relying on the declaration, the City Defendants said that its insurance carrier, rather than Mesa itself, determines which layer of coverage applies to a particular claim.

In response, Rogers argued that his notice of claim implicitly supplied a method of calculation. He contended that because Mesa was aware of its own insurance policies, it had the ability to precisely compute the amount available for Rogers' claim under the policy.

In July 2023, the superior court denied the City Defendants' motion to dismiss, explaining. that "[f]or the reasons set forth in [Rogers'] response," his notice of claim complied with A.R.S. § 12-821.01(A). The City Defendants then filed a special action in the Court of Appeals challenging the ruling.

The Court of Appeals' Decision. The Court of Appeals accepted special action jurisdiction and reversed the denial of the motion to dismiss on the ground that the notice of claim failed to comply with the statutory requirement that it "contain a specific amount for which the claim can be settled."

It noted that Rogers' notice presented two alternatives: (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 turned out to be "greater" than $1,000,000. The court ruled that neither alternative complied with the statute.

It explained that while the first of the two alternative offers, $1,000,000, was a "particular and certain amount of money," it did not satisfy the statute because "Rogers' notice does not state that Mesa can settle the lawsuit for that amount." Instead, the notice said that Rogers would not settle for less than the "applicable policy limits" if those limits were greater than $1,000,000.

It also ruled that Rogers' offer to settle for Mesa's "applicable policy limits" was not a "specific amount" as required under the statute. The court acknowledged that "[i]f 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" the requirements of the notice-of-claim statute. But it indicated that this was not the case here.

It noted that rather than a simple calculation, the applicability of an insurance policy with different policy limits was instead a "complicated legal question" that might require Mesa to file a declaratory judgment action to resolve it. Based on that, it held that because the relevant policy limit was not stated in Rogers' notice and was not determinable by simple calculation, Rogers' notice of claim did not comply with the notice-of-claim statute.

ISSUE:

The Court has asked the parties to address the following 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?"