

ARIZONA COURT OF APPEALS HOLDS THAT NOTICE OF CLAIM SEEKING \$1,000,000 OR APPLICABLE POLICY LIMITS FAILS TO STATE A SUM CERTAIN

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City of Mesa v. Ryan

Arizona Court of Appeals

October 31, 2023

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In *City of Mesa v. Ryan*, No. 1 CA-SA 23-0154 (Oct. 31, 2023), the Arizona Court of Appeals reversed the denial of the defendant's motion to dismiss which was based on the Notice of Claim's (the "Notice") failure to state a sum certain demand for settlement. The Notice stated, "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." The Court of Appeals found this language presented two alternative amounts: "(1) a specific amount that [Plaintiff] 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 turn out to be "greater" than \$1,000,000."

Although the plaintiff later sought to amend the Notice to remove the language "the applicable policy limits," the Court of Appeals found that neither of the two alternatives presented in the Notice constituted a "sum certain." The Court reasoned that the \$1,000,000 amount, while a certain amount of money, was not a "sum certain" because it was merely an alternative amount that would only suffice to settle the claim if it were the greater of two amounts (one of which was indeterminate).

In reaching this decision, the Court rejected the plaintiff's argument that the sum was sufficiently certain because the "applicable policy limits" was a value that could be calculated from the face of the Notice. The Court acknowledged that a sum certain may be present if the reader may readily calculate the value from the face of the instrument, but found that rule was not satisfied in this case, where the Notice did not provide a means to readily compute the amount, did not state a specific amount for which the claim could be settled, and did not state a particular or certain amount of money.

The Court further reasoned that absent circumstances not present in this case, the offer to settle for "applicable policy limits" was not an offer to settle for a "specific amount" because there was a possibility that the defendant had several different policy limits, and the Notice did not state what the limit was, nor any simple computation by which it could determine which limit was the "applicable" limit. Indeed, the court noted that the possibility of several policy limits was "not a math problem," but was rather a legal issue that "might require an action for declaratory judgment."

Finally, the Court also found that the Plaintiff's untimely attempted amendment to the Notice (omitting the "applicable policy limits language), did not remedy his failure for stating a sum certain for two reasons. First, because a late compliance Notice cannot cure a defect in a timely but deficient Notice, and second, because the discovery rule did not save the amendment, as Plaintiff identified no new facts on which the amended demand was based, which justified the new streamlined demand.

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