

## MEETING MINUTES ATTACHED TO COMPLAINT CAN DEMONSTRATE THAT A CLAIM HAD ACCRUED FOR NOTICE OF CLAIM PURPOSES

February 3, 2023 | Law Alerts | News



*Las Ventanas I, LLC v. Arizona Department of Environmental Quality*

Arizona Court of Appeals, Division One

February 3, 2023

JSH Attorneys: [Justin Ackerman](#) & [Ashley Caballero-Daltrey](#)

The Arizona Court of Appeals issued a memorandum decision addressing accrual of claims for the purposes of Arizona's Notice of Claim Statute. The Court also addressed the standards for amendment of a complaint in notice of claim cases.

Las Ventanas purchased a 160-acre parcel located in Goodyear, Arizona in 2013 in order to develop residential lots. The adjacent property formerly held a feed store. In 1991, workers learned that underground storage tanks leaked gasoline into the soil of the feed store property. ADEQ initially accepted cleanup responsibility but then cleanup activities stalled. In 2012 ADEQ informed the previous owner of the Las Ventanas parcel that it would resume cleanup efforts. In 2016, ADEQ sent a letter to the principal of Las Ventanas which detailed cleanup plans for the feed store property.

On March 29, 2019, ADEQ met with Las Ventanas to discuss the cleanup efforts. ADEQ prepared meeting minutes which stated that the principle of Las Ventanas had expressed his concerns regarding the contamination. 300 days later, Las Ventanas served a Notice of Claim on ADEQ and the Arizona Attorney General. After Las Ventanas received no response, it filed suit against ADEQ alleging negligence and estoppel because ADEQ failed to prevent contamination from spreading to its property. Las Ventanas quoted the meeting minutes from its meeting with ADEQ in the complaint.

ADEQ filed a motion to dismiss and argued that the claim was untimely. Las Ventanas opposed the motion and sought to add a continuing nuisance claim to its complaint. The superior court granted ADEQ's motion to dismiss and denied leave to amend as futile. It reasoned that Las Ventanas was aware of the contamination as early as March 29, 2019 and did not file a notice of claim within 180 days. Las Ventanas appealed.

The court of appeals affirmed, holding that the notice of claim was untimely and had accrued at the time of the meeting because Las Ventanas knew or should have known to investigate its claim at least as of that date. Las Ventanas first argued that the court could not have considered the meeting minutes in the context of a motion to dismiss. The court of appeals disagreed because Las Ventanas had quoted and attached the minutes to its complaint. It then argued that the minutes were ambiguous and did not specifically state who expressed concerns and therefore ADEQ could not prove that Las Ventanas definitively knew about the contamination. The court of appeals disagreed and found that the minutes showed that Las Ventanas had actual knowledge of the contamination and that it knew or should have known to investigate that contamination but nevertheless waited more than 180 days to file the claim. The court explained that even under alternative views of what the meeting minutes might mean, Las Ventanas was required to inquire and investigate its claim.

The court of appeals then determined that the superior court had properly denied Las Ventanas's motion for leave to file a second amended complaint. The new complaint still included the quotes from the meeting minutes and attached the meeting minutes as an exhibit. Nothing about the new complaint changed the fact the meeting had put Las Ventanas on notice to investigate its claims.

The court of appeals also explained that the continuing tort doctrine does not apply to extend the statutory limitations period for a notice of claim. Las Ventanas had argued that the continuing nuisance claim would restart the statute of limitations because of the continuing harm. However, the court of appeals held that the continuing tort doctrine does not apply to extend the statutory limitations period for a notice of claim under A.R.S. § 12-821.01, and thus, even a new continuing nuisance claim would be untimely.

---

[DOWNLOAD COURT DOCUMENT HERE](#)

[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.

[jackerman@jshfirm.com](mailto:jackerman@jshfirm.com) | 602.263.4552 | [jshfirm.com/jackerman](http://jshfirm.com/jackerman)

As part of the firm's appellate team, [Ashley Caballero-Daltrey](#) represents clients in federal and state appellate matters and dispositive motions. Before joining JSH, Ashley worked as a law clerk for Vice Chief Justice Ann Scott Timmer of the Arizona Supreme Court. She has extensive experience researching and drafting memos across several different areas of law, as well as completing dozens of research projects and memos in torts, civil procedure, government claims, contracts, and land use.

[adaltrey@jshfirm.com](mailto:adaltrey@jshfirm.com) | 602.263.4489 | [jshfirm.com/adaltrey](http://jshfirm.com/adaltrey)