NOTICE OF CLAIMS AND THE "SUM CERTAIN" REQUIREMENT: THE FALLOUT FROM *DEER VALLEY*

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INTRODUCTION

In *Deer Valley Unified School District No. 97 v. Houser*,[1] the Arizona Supreme Court held that claims against a public entity must strictly adhere to Arizona's notice of claims statute, which requires that a claim must "contain a specific amount for which the claim can be settled."[2] The decision abrogated seventeen years of case precedent that set "reasonableness" as the standard to measure whether a notice of claim against a public entity satisfies the statute.[3] After the 2007 *Deer Valley* decision, public entities defending claims brought against them by citizens moved to dismiss the lawsuits by asserting that a claimant's noncompliance with the statute bars the claim altogether.[4] While the decision gave the State a powerful weapon to protect itself from civil tort liability,[5] *Deer Valley* has caused confusion and uncertainty among claimants, public entities, lawyers, and state and federal courts.

I. BACKGROUND: EVOLUTION OF ARIZONA'S NOTICE OF CLAIMS STATUTE

In its current form, Arizona's notice of claims statute states, in part, that a "claim shall contain facts sufficient to permit the public entity or public employee to understand the basis upon which liability is claimed. The claim shall also contain a specific amount for which the claim can be settled and the facts supporting that amount."[6] The purpose of the statute is "to allow the public entity

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1. 152 P.3d 490 (Ariz. 2007).
2. ARIZ. REV. STAT. ANN. § 12-821.01(A) (2007).
3. Brief for Ariz. Trial Lawyers Ass'n as Amicus Curiae Supporting Appellant at 8, Backus v. State, Nos. 1 CA-CV 07-0640, 1 CA-CV 07-0671, 2008 WL 2764601 (Ariz. Ct. App. July 17, 2008).
4. Backus v. State, Nos. 1 CA-CV 07-0640, 1 CA-CV 07-0671, 2008 WL 2764601, *4 (Ariz. Ct. App. July 17, 2008).
5. *See, e.g.*, *id.* at *2 (addressing the State's motion to dismiss a claimant's lawsuit for failing to comply with section 12-821.01(A)).
6. § 12-821.01(A).

to investigate and assess liability, to permit the possibility of settlement prior to litigation, and to assist the public entity in financial planning and budgeting."[7] Examining past judicial treatment of the statute sheds light on the tension between the language and purpose of the statute.

A. 1990: The Hollingsworth *"Reasonableness" Standard*

In *Hollingsworth v. City of Phoenix*,[8] the Arizona Court of Appeals considered whether a claim brought against a public entity must contain a "sum certain" in order to satisfy the notice of claims statute.[9] At the time, the statute required that "[p]ersons who have claims against a public entity or public employee shall file such claims . . . within twelve months after the cause of action accrues. Any claim which is not filed within twelve months . . . is barred and no action may be maintained . . . ."[10] This early version of the statute did not indicate whether a specific sum must be included in a claim letter. Prior to *Hollingsworth*, however, Arizona courts required claimants to include a "sum certain" for which they would be willing to settle their claims.[11]

The issue in *Hollingsworth* was whether the claimant's notice provided enough information for the city to determine the settlement amount.[12] There, the court noted that the claimant "clearly stated that an educated estimate of the total value of the claim was not less than $125,000.00."[13] The court determined that a "sum certain" requirement was unnecessary in light of the many variables that make damages difficult to ascertain, and instead allowed the claimant's "educated estimate" to suffice.[14] This, the court determined, would still provide "the city with an opportunity to arrive at a responsible settlement."[15] The court additionally concluded that "[r]equiring claimants to state an exact damage figure is simply unrealistic," and may actually "delay[] notification or encourage[] quick unrealistic exaggerated" demands.[16] After *Hollingsworth*, the State could no longer challenge claims on a strict technicality if the notice of claim reasonably met the purposes of the statute.

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7. Falcon *ex rel.* Sandoval v. Maricopa County, 144 P.3d 1254, 1256 (Ariz. 2006) (quoting Marineau v. Maricopa County, 86 P.3d 912, 915–16 (Ariz. Ct. App. 2004)).

8. Hollingsworth v. City of Phoenix, 793 P.2d 1129, 1131 (Ariz. Ct. App. 1990). When *Hollingsworth* was decided, the notice of claims statute was codified as Arizona Revised Statute section 12-821 (1984).

9. *Id.* at 1130–31. A "sum certain" pertains to a stated amount for which a claim can be settled. The term first appeared in *Dassinger v. Oden*, 606 P.2d 41, 43 (Ariz. Ct. App. 1979).

10. *Hollingsworth*, 793 P.2d at 1131 (quoting § 12-821(A)).

11. *See Dassinger*, 606 P.2d at 43. The *Dassinger* court noted that the "sum certain" requirement was also interpreted into the language of the Federal Tort Claims Act by federal courts dealing with similar challenges. *Id.*

12. *Hollingsworth*, 793 P.2d at 1132.

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.* at 1133.

B. The 1994 Amendment and Young*'s Affirmation of Reasonableness*

The 1994 amendment to the notice of claims statute[17] created new obstacles and problems for citizens seeking to redress injuries caused by the negligence of a public entity.[18] These hurdles include: (1) a new 180-day time limit to file a notice of claim with the appropriate agency; (2) a heightened requirement for setting forth facts related to the claim; and (3) a requirement to establish and factually support a monetary figure for which the claimant will settle.[19]

While the first two requirements were new to the notice of claim landscape, the third one, requiring an injured party to establish a specific amount for which it will settle a claim, was the same issue analyzed in *Hollingsworth*. Before the 1994 amendment, the *Hollingsworth* court determined that "reasonableness" would govern whether a claimant's demand was sufficiently specific to satisfy the statute.[20] After the Arizona legislature added the "specific amount" requirement to the statute, Arizona courts continued to apply the *Hollingsworth* rationale when determining whether a claim notice satisfied the requirement. In *Young v. City of Scottsdale*,[21] the Arizona Court of Appeals again considered whether a claim that lacked a "specific amount" nonetheless satisfied the statute.[22] The claimant in *Young* was injured after tripping on an ill-maintained sidewalk.[23] The court noted that although the claim letter lacked a specific sum, Young "argued that it met the reasonableness standard adopted in *Hollingsworth*" by providing an estimate of the claim's value.[24] In the absence of any legislative history rejecting the *Hollingsworth* reasonableness standard, the court found that the 1994 amendment actually codified *Hollingsworth*, and that the "'specific amount' requirement must be interpreted in light of the statute's purposes . . . ."[25] This rationale preserved the State's ability to evaluate a claim while also minimizing a plaintiff's need to come up with an arbitrary figure simply to satisfy the statute.

II. ALONG COMES *DEER VALLEY*

In 2007, the Arizona Supreme Court "reject[ed] and disapprove[d] *Young*'s conclusion that the statute includes a reasonableness standard."[26] Chief Justice McGregor's exhaustive opinion summarized the history of Arizona's notice

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17. 1994 Ariz. Legis. Serv. ch. 162 (West).

18. *See generally* Andrew Becke, *Two Steps Forward, One Step Back: Arizona's Notice of Claim Requirements and Statute of Limitations Since the Abrogation of State Sovereign Immunity*, 39 ARIZ. ST. L.J. 247, 259–64 (2007) (discussing "three types of hurdles to injured parties with legitimate claims").

19. *Id.* at 259.

20. *Hollingsworth*, 793 P.2d at 1132.

21. 970 P.2d 942 (Ariz. Ct. App. 1998).

22. *Id.* at 945.

23. *Id.* at 943.

24. *Id.* at 945–46.

25. *Id.*; *see also supra* note 7 and accompanying text (discussing statute's purposes).

26. Deer Valley Unified Sch. Dist. No. 97 v. Houser, 152 P.3d 490, 496 (Ariz. 2007).

of claims statute and determined that the 1994 amendment does not codify *Hollingsworth* as the Arizona Court of Appeals concluded nine years earlier in *Young*.[27] The court noted that the "fundamental principles of statutory construction do not allow us to ignore the clear and unequivocal language of the statute."[28] The court found the statute's text clear and unequivocal: a "claim shall also contain a specific amount for which the claim can be settled and the facts supporting that amount."[29]

In *Deer Valley*, the court analyzed whether a notice of claim that contains "qualifying language" such as "*approximately* $35,000 per year *or more* going forward over the next 18 years" and similar phrases satisfied the statute's "specific amount" requirement.[30] The claimant in *Deer Valley* sought to collect monetary damages from her previous employer, Deer Valley Unified School District No. 97, for wrongful termination. She filed a claim letter with the school district that outlined several interrelated claims and demanded, among other things, compensatory damages of "no less than $300,000" and general damages of "no less than $200,000."[31] The school district did not respond to her letter, and she subsequently filed a wrongful termination suit against the school district in superior court.[32]

The school district moved to dismiss the case because the notice letter failed to satisfy the statute.[33] Specifically, the school district asserted that the notice lacked a "specific amount . . . and the facts supporting that amount."[34] The superior court denied the motion, the court of appeals declined to accept jurisdiction, and the Arizona Supreme Court granted review because the issue "involve[d] a matter of public significance that occurs often and has important legal and practical consequences for political subdivisions of the state."[35]

After applying its new strict and literal standard for interpreting Arizona Revised Statute section 12-821.01, the court found that the claim letter failed to comply with the statute because the claimant's "repeated use of qualifying language makes it impossible to ascertain the precise amount for which the [school district] could have settled her claim."[36] While this decision unequivocally requires claimants to demand precise dollar amounts rather than educated or reasonable damage estimates, it raised additional questions that have plagued lower courts ever since.[37]

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27. *Young*, 970 P.2d at 945, 946.

28. *Deer Valley*, 152 P.3d at 496 (internal quotations omitted).

29. *Id.* at 493 (quoting ARIZ. REV. STAT. ANN. § 12-821.01(A) (2007)).

30. *Id.*

31. *Id.* at 492.

32. A claim is deemed denied if the State fails to respond within sixty days, at which point the claimant is free to file suit in court. § 12-821-01(E).

33. *Deer Valley*, 152 P.3d at 492.

34. *Id.* (citing § 12-821.01(A)).

35. *Id.*

36. *Id.* at 493–94.

37. Brief for Ariz. Trial Lawyers Ass'n as Amicus Curiae Supporting Appellant at 3, Backus v. State, Nos. 1 CA-CV 07-0640, 1 CA-CV 07-0671, 2008 WL 2764601 (Ariz. Ct. App. July 17, 2008) (As of May 6, 2008, "[t]here [were] ten cases pending appellate

III. THE HOLE IN *DEER VALLEY*

The confusion stems from what the Arizona Supreme Court did not decide in *Deer Valley*. Because the court based its decision on a finding that the claim letter lacked a "specific amount,"[38] it did not address two other requirements listed in the statute: "the facts supporting that amount" and "facts sufficient to permit the public entity . . . to understand the basis upon which liability is claimed."[39] Since *Deer Valley*, these fact requirements have been the subject of considerable confusion and litigation.[40] The problem is rooted in a two-sentence footnote where the court, in dictum, wrote:

> Because [the claimant's] letter does not include a specific sum, we need not reach the [school district's] argument that [the claimant's] letter also fails to provide facts supporting the amount claimed. We note, however, that the claim letter does not provide *any* facts supporting the claimed amounts for emotional distress and for damages to [claimant's] reputation.[41]

While the court passed on its opportunity in *Deer Valley* to establish what would satisfy the statute's requirement to provide facts "supporting" the amount claimed and facts "sufficient to permit the public entity . . . to understand the basis upon which liability is claimed,"[42] the public entities themselves are quick to argue that the court's new strict and literal interpretation applies to every aspect of the statute.[43] Claimants, on the other hand, argue that *Deer Valley* does not establish

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review due to the confusion created by the interpretations [of *Deer Valley*] . . . by public entities.").

38. *Deer Valley*, 152 P.3d at 493–94.

39. § 12-821.01(A).

40. *See, e.g.*, Backus v. State, Nos. 1 CA-CV 07-0640, 1 CA-CV 07-0671, 2008 WL 2764601, at *2 (Ariz. Ct. App. July 17, 2008) ("[O]ur supreme court made it clear it was only addressing that portion of the statute that requires the claimant to identify a specific amount for which the claim could be settled. In the wake of that opinion, however, the trial courts have been flooded with motions to dismiss arguing that the notices of claim filed by the injured parties are insufficient as a matter of law for allegedly failing to comply with the statute.") (internal citations omitted).

41. *Deer Valley*, 152 P.3d at 494. Notably, the claimant in *Deer Valley* also alleged "economic damages arising as a result of her [termination]." *Id.* at 492. The court's omission of this claim from its comment in footnote three suggests that its observation that "the claim letter does not provide *any* facts" is limited to the claims of emotional distress and damages to the claimant's reputation. *Id.* at 494 n.3; *contra* Adams v. Shuttleport Ariz. Joint Venture, No. CV 07-2170-PHX-JAT, 2008 WL 3843585 (D. Ariz. Aug. 14, 2008) ("The Arizona Court of Appeals recently interpreted *Deer Valley* to 'provide [ ] no guidance on what may or may not be sufficient facts beyond the one narrow circumstance of no facts at all.'") (quoting *Backus*, 2008 WL 2764601, at *5).

42. § 12-821.01(A).

43. *Backus*, 2008 WL 2764601, at *5 ("The State contends that [footnote three] implies an objective measure or standard by which the sufficiency of facts supporting the proposed settlement amount in a notice of claim is judged."); Yollin v. City of Glendale, 191 P.3d 1040, 1047 (Ariz. Ct. App. 2008) ("[The city] contends that [claimant's] two page letter and one hundred pages of medical records fail to meet the supporting facts requirement.").

any precedent regarding the sufficiency of facts contained in a notice of claim.[44] So far, Arizona's appellate courts are leaning toward fairness by considering the statute's purpose: to foster the government's ability to evaluate the claim.[45] In *Yollin v. City of Glendale*,[46] the Arizona Court of Appeals reasoned that *Deer Valley* merely indicated that notice is insufficient when no facts in the complaint support the amount claimed.[47] In addition, the *Yollin* court noted that "[t]he claim statute anticipates that government entities will investigate claims, and the supporting facts requirement is intended to be a relatively light burden on claimants, just enough to facilitate the government's investigation."[48] However, the Arizona Supreme Court's strict construction of the notice of claims statute in *Deer Valley* suggests that it may be more difficult for injured citizens with valid claims against a public entity to recover. In fact, defense attorneys who specialize in employment law anticipate that "it's only a matter of time before the court is called on to address what it means to include 'facts to support' the proposed settlement amount. Based on the language in [*Deer Valley*], . . . the court most likely will apply the statute's language strictly" and will require facts "to prove that [a claimant] isn't just pulling a 'specific sum' out of thin air and expecting the public entity to take [a claimant's] word for it that [he or she] has suffered damages."[49]

IV. POST *DEER VALLEY*: CONFUSION AND FAIRNESS

Since the 2007 *Deer Valley* decision, Arizona's appellate courts have been called on to sort out a number of issues that were either created, or not answered, by the Arizona Supreme Court. As defense attorneys work to turn possible claim deficiencies into statutory affirmative defenses, plaintiff's attorneys aim to focus the courts' attention on the purpose and intent of the notice statute.

A. The Prisoner Death Cases: Reconciling Deer Valley *and the Notice of Claim Statute*

In *Backus v. State*,[50] the Arizona Court of Appeals considered two separate cases in which "the State successfully contended [in the trial court] that the claim letters submitted on behalf of the plaintiffs did not contain sufficient facts to support the specific amount demanded in settlement."[51] In each case, the court of appeals interpreted the statutory language of section 12-821.01 and found

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44. *Backus*, 2008 WL 2764601, at *5.

45. *See, e.g.*, *Yollin*, 191 P.3d 1040, 1047. *See also supra* note 7 and accompanying text (discussing the purposes of section 12-821).

46. *Id.* at 1040.

47. *Id.* at 1048.

48. *Id.* (citing Deer Valley Unified Sch. Dist. No. 97 v. Houser, 152 P.3d 490, 493 (Ariz. 2007)).

49. Justin Pierce, *Arizona Supreme Court Gives Huge Victory to Public Employers*, ARIZ. EMP. L. LETTER (M. Lee Smith Publishers & Printers), April 2007, at ¶ 15. Pierce concludes with this advice for employers: "So always remember the notice of claim statute as a defense to any lawsuit that comes your way." *Id.*

50. Backus v. State, Nos. 1 CA-CV 07-0640, 1 CA-CV 07-0671, 2008 WL 2764601 (Ariz. Ct. App. July 17, 2008).

51. *Id.* at *1.

that the claim letters complied with the statute.[52] Significantly, in both cases, the Arizona Supreme Court had not yet decided *Deer Valley* when the respective claimants initially filed their suits in superior court.[53]

In the *Backus* case, a prisoner died as a result of an infection after Arizona Department of Corrections (ADOC) personnel allegedly failed to provide adequate medical care.[54] The inmate's daughter sent a notice of claim to ADOC within the 180-day window as required by section 12-821.01(A).[55] "For the sole purpose of putting a damage amount on the life of [the deceased prisoner]," the daughter used mortality tables to calculate $507,400 in damages.[56]

The State responded by letter more than sixty days later,[57] and asked the claimant to do two things: (1) postpone filing suit "in order to allow the State additional time to investigate" and (2) provide documents that establish the claimant's "standing" to sue and that grant permission to review the deceased prisoner's medical records.[58] While the State asserted in its letter that it would investigate "and possibly resolve" the claim, it "did not ask for any additional information concerning the facts allegedly supporting the liability claim."[59] The claimant filed suit before the twelve-month statute of limitations expired, and the State moved to dismiss the complaint "for failure to comply with [the statute] because . . . [the claimant] had not stated in her notice of claim any facts to support the specific amount for which she was willing to settle her claim."[60]

In the companion *Johnson* case, a 35-year-old mother serving a 2.5-year prison sentence in ADOC died after she was allegedly refused adequate medical treatment.[61] The deceased prisoner's mother filed a notice of claim pursuant to the statute claiming a precise amount of $2 million and setting forth, as supporting facts, the delayed treatment, the cause of death, an allegation that the delay of treatment led to her death, a statement that she would have soon returned to a productive life in society, and that she left behind six dependent children.[62]

About seven months after she filed the notice of claim with ADOC, the claimant filed a complaint for negligence and wrongful death against the State.[63] In its answer, the State denied liability, but did not raise any specific defect in the claimant's notice of claim.[64] However, the Arizona Supreme Court issued its *Deer*

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52. *Id.*
53. *Id.* at *2.
54. *Id.* at *1.
55. *Id.*
56. *Id.*
57. Under a strict reading of the statute, the claim was rejected after the 60th day, and the daughter could have immediately filed suit. ARIZ. REV. STAT. ANN. § 12-821.01(E) (2008).
58. *Backus*, 2008 WL 2764601, at *1. Notably, the State's letter also encouraged the claimant to not file suit before the twelve-month statute of limitations deadline. *Id.*
59. *Id.*
60. *Id.* at *2.
61. *Id.*
62. *Id.*
63. *Id.*
64. *Id.*

Valley opinion just ten days after the State filed its answer, and the State then moved to dismiss the lawsuit because the notice failed "to comply with A.R.S. § 12-821.01[(A)], as interpreted by the Arizona Supreme Court in *Deer Valley* . . . , in that it fail[ed] to contain facts supporting the specific amount for which the claim [could] be settled with the State."[65] Primarily at issue in both cases was the Arizona Supreme Court's dictum in footnote three of the *Deer Valley* opinion.

To determine a standard for compliance with the fact requirements in the notice of claim statute, the court of appeals looked first to the purposes of the statute. The court determined that "[a]ny statutory interpretation by the courts" should not require claimants to guess as to the sufficiency of a claim.[66] The court's examination of both the statute's wording and purpose led the court to conclude that as long as a notice of claim "contain[s] *any* facts to support the proposed settlement amount, regardless of how meager, then such notices me[e]t not only the literal language of the statute but also any requirement that may be implied from *Deer Valley*."[67] Since the claimants in both cases stated some facts, the trial courts' dismissals were reversed.[68] Additionally, the court of appeals noted, "[i]f the State in good faith truly wanted further information . . . it certainly could have asked for it."[69]

B. Confusion in the Courts

While the appeals court decision in the combined *Backus* and *Johnson* cases appears straightforward and well-reasoned, other courts are coming to conflicting, opposing, and mistaken conclusions. In a case before the federal district court in Arizona, the State successfully argued that the claimant failed to provide enough facts to support both the claim and the specific amount.[70] The claimant had stated a specific amount of $300,000 for "loss of employment, loss of income, loss of future employment opportunities, loss of reputation and mental distress and emotional distress along with fear for his physical safety and for his life."[71] The court held "that these are general categories of damages" and that the claimant "does not address the value of each, nor how the value was determined."[72] While *Backus* clearly established that "any facts" are sufficient,[73] the district court found that the notice "fail[ed] to provide facts sufficient to understand the basis of liability" and that it "[did] not meet the statutory

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65. *Id.* (alteration in original).
66. *Id.* at *6.
67. *Id.* at *7.
68. *Id.* at *8.
69. *Id.* at *7.
70. Adams v. Shuttleport Ariz. Joint Venture, No. CV 07-2170-PHX-JAT, 2008 WL 3843585, at *4–5 (D. Ariz. Aug. 14, 2008) (the district court also found that the claimant failed to file his notice of claim within the 180-day statutory period).
71. *Id.* at *5.
72. *Id.*
73. *Backus*, 2008 WL 2764601, at *8.

requirement for sufficient facts supporting the specific amount . . . ."[74] The holding creates potential for future confusion because section 12-821.01(A) does not require a claimant to provide "sufficient" facts to support the amount. The district court erroneously grafted the word "sufficient" from the preceding sentence in the statute dealing with the "basis upon which liability is claimed." The Arizona Court of Appeals in *Backus* specifically addressed this issue by observing that "where the legislature has specifically used a term in certain places within a statute and excluded it in another place, courts will not read that term into the section from which it was excluded."[75] The federal decision was handed down less than one month after *Backus* and the judge cited *Backus* in his opinion. He was aware, therefore, that the state court had not only interpreted its own statute, but had also refused to graft "sufficient" into the third sentence of the statute.[76] The federal judge did so anyway.

Adding to the confusion as to what facts are necessary to ensure that a claim will survive summary judgment in a given court, claimants must also be careful to consider the factual details alleged in the claim notice. In *Hernandez v. State*,[77] the Arizona Supreme Court held that the facts contained in a notice of claim can be used for impeachment purposes.[78] In that case, the claimant was injured at a state park when he fell fourteen feet from a retaining wall while taking a shortcut to a store.[79] The State used the claimant's notice letter against him at trial because the facts in the notice differed somewhat from his deposition and trial testimony.[80] The claimant argued that the letter was inadmissible because it was part of a settlement negotiation,[81] but the trial court admitted portions of the notice for impeachment purposes.[82] In light of that ruling, "a claimant understandably might be more cautious and circumspect in attempting, relatively soon after an injury to provide specific facts supporting a particular element of damages, particularly when doing so could lead to later attempts to impeach trial testimony relevant to those damages."[83] To avoid a *Hernandez*-type problem, claimants may be inclined "to offer as little factual information as possible."[84] However, the

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74. *Adams*, 2008 WL 3843585, at *4–5. Notably, the Arizona Court of Appeals in *Backus* did not consider what would constitute "facts sufficient to permit the public entity . . . to understand the basis upon which liability is claimed." ARIZ. REV. STAT. ANN. § 12-821.01(A) (2008).

75. *Backus*, 2008 WL 2764601, at *5 (internal quotations and citations omitted) (rejecting the State's argument urging the court to "read the term 'sufficient' into the third sentence").

76. *Adams*, 2008 WL 3843585, at *5.

77. 52 P.3d 765 (Ariz. 2002).

78. *Id.* at 769.

79. *Id.* at 766.

80. *Id.* at 766–67. "Hernandez stated in his notice of claim that there was a trail connecting the stores, the drop-off was twenty-five feet, and he fell off a cliff, not a retaining wall." Keith A. Swisher, *The Limits of Rule 408 After Hernandez*, 35 ARIZ. ST. L.J. 1437, 1441 (2003).

81. ARIZ. R. EVID. 408.

82. *Hernandez*, 52 P.3d at 767.

83. Jones v. Cochise County, 187 P.3d 97, 103 (Ariz. Ct. App. 2008).

84. Swisher, *supra* note 80, at 1471.

notice of claims statute, coupled with the Arizona Supreme Court's decision in *Deer Valley*, does not allow this option.[85]

If the Arizona Supreme Court revisits the notice of claim dilemma it might bring some clarity to the current illogical and unpredictable landscape that *Deer Valley* created. Perhaps a return to *Hollingsworth*'s "reasonableness" standard will most clearly and easily accomplish the statute's purpose.

Alternatively, the Arizona legislature could amend the statute to prevent the State from sitting on a factually inadequate claim letter in the hopes of asserting a *Deer Valley*-type affirmative defense that will forever bar a citizen with a legitimate claim from a just recovery. Other states offer their citizens a fairer bite. In California, for example, the State has twenty days to notify the claimant if her claim fails to comply with the notice of claim statute.[86] Likewise, claimants in Maine are also afforded some leeway in filing a notice of claim against a public entity. Maine's statute provides, in part: "A claim filed under this section shall not be held invalid or insufficient by reason of an inaccuracy in stating the time, place, nature or cause of the claim, or otherwise, unless it is shown that the governmental entity was in fact prejudiced thereby."[87]

Whether through judicial interpretation or a legislative amendment, affording claimants an opportunity to provide a public entity with additional facts, through a more flexible application of the notice of claims statute, will allow citizens with valid claims against the State an opportunity for a fair recovery.

CONCLUSION

Deer Valley has caused confusion and uncertainty among claimants, public entities, lawyers, and state and federal courts. Arizona's notice of claims statute is not intended to abrogate or interfere with an injured citizen's right to redress wrongs suffered due to the negligence of the State. This, however, is exactly what *Deer Valley* has caused. In 1990, the Arizona Supreme Court recognized the legislative intent of Arizona's policy in allowing tort claims against public entities—immunity for the government should be the exception and liability should be the rule.[88] In the spirit of holding the State liable for the acts or omissions of its public entities, Arizona courts previously applied a "reasonableness" standard in measuring whether a notice of claim satisfies the statute.[89] The time has come for Arizona to return to a state of reasonableness.

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85. Becke, *supra* note 18, at 261; *see also Jones*, 187 P.3d at 103.
86. CAL. GOV'T CODE § 910.8 (West 2005).
87. ME. REV. STAT. ANN. tit. 14, § 8107(4) (2008).
88. City of Tucson v. Fahringer, 795 P.2d 819, 820–21 (Ariz. 1990).
89. *See* Hollingsworth v. City of Phoenix, 793 P.2d 1129, 1131 (Ariz. Ct. App. 1990).