CITY OF PHOENIX V. FIELDS AND *BACKUS V. STATE*: UNDOING *DEER VALLEY*'S DAMAGE

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INTRODUCTION

In the 2007 case *Deer Valley Unified School District No. 97 v. Houser*, the Arizona Supreme Court held that claims against the State[1] must strictly adhere to Arizona's notice of claim statute, which requires that a claim "contain a specific amount for which the claim can be settled and the facts supporting that amount."[2] While the *Deer Valley* decision created a powerful statutory affirmative defense for the State—entire cases could be dismissed for minor defects in the notice—,it also created "confusion and uncertainty among claimants, public entities, lawyers, and state and federal courts."[3] The confusion, however, was short-lived. In the first few months of 2009 the Arizona Supreme Court published two opinions involving the notice of claim statute that, taken together, wipe out the State's questionable strategy of using the statute as an affirmative defense against injured citizen-claimants who may not have *strictly* adhered to the statute's requirements. Ironically, while *Deer Valley* "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,"[4] *City of Phoenix v. Fields*[5] and *Backus v. State*[6] largely restore reasonableness to the statute's interpretation and application. Although the Arizona Supreme Court avoided an overt resurrection of the reasonableness standard it explicitly rejected in *Deer Valley*, the result is practically the same: a clear return to a reasonable interpretation of the notice of claim statute. For many Arizona practitioners, the result is a surprise.[7]

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1. This Case Note uses "State" to mean any public entity, such as the State of Arizona, cities within Arizona, public schools, and the like.

2. 152 P.3d 490, 493 (Ariz. 2007) (quoting ARIZ. REV. STAT. ANN. § 12-821.01(A) (2007)).

3. John F. Barwell, Case Note, *Notice of Claims and the "Sum Certain" Requirement: The Fallout from* Deer Valley, 50 ARIZ. L. REV. 1205, 1205 (2009).

4. *Id.*

5. 201 P.3d 529 (Ariz. 2009) (en banc).

6. No. CV-08-0284-PR, 2009 WL 703269 (Ariz. Mar. 19, 2009).

7. Those who predicted that future decisions regarding the notice of claim statute would favor the State turned out to be wrong. *See, e.g.*, Justin Pierce, *Arizona*

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

In its current form, Arizona's notice of claim 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."[8] The purpose of the statute is "to allow the public entity 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."[9] Examining past judicial treatment of the statute sheds light on the tension between the language and purpose of the statute.[10]

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

In *Hollingsworth v. City of Phoenix*,[11] 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 claim statute.[12] 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 . . . ."[13] This early version of the statute did not indicate whether a specific sum must be included in a claim letter. Prior to *Hollingsworth*,

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Supreme Court Gives Huge Victory to Public Employers, ARIZ. EMP. L. LETTER (M. Lee Smith Publishers & Printers), Apr. 2007, ¶ 15.

> [I]t's probably 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*], when that day comes, the court most likely will apply the statute's language strictly . . . . So always remember the notice of claim statute as a defense to any lawsuit that comes your way.

Id.

8. ARIZ. REV. STAT. ANN. § 12-821.01(A) (2008).

9. 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)).

10. This Section is largely reprinted from the author's previous case note discussing the problems caused by *Deer Valley* and is provided here for appropriate context. *See* Barwell *supra* note 3, at 1205–08.

11. 793 P.2d 1129, 1131 (Ariz. Ct. App. 1990). At the time *Hollingsworth* was decided, the notice of claim statute was codified as Arizona Revised Statute section 12-821 (1984).

12. *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).

13. *Hollingsworth*, 793 P.2d at 1131 (quoting ARIZ. REV. STAT. ANN. § 12-821(A)).

however, Arizona courts required claimants to include a "sum certain" for which they would be willing to settle their claims.[14]

The issue in *Hollingsworth* was whether the claimant's notice provided enough information for the city to determine the settlement amount.[15] 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."[16] 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.[17] This, the court determined, would still provide "the city with an opportunity to arrive at a responsible settlement."[18] 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."[19] 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.

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

The 1994 amendment to the notice of claim statute[20] created new obstacles and problems for citizens seeking to redress injuries caused by the negligence of a public entity.[21] 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.[22]

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.[23] 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

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14. *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.*

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

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.* at 1133.

20. 1994 Ariz. Legis. Serv. 436 (West).

21. *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").

22. *Id.* at 259.

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

requirement. In *Young v. City of Scottsdale*,[24] the Arizona Court of Appeals again considered whether a claim satisfied the statute despite the fact that it lacked a "specific amount."[25] The claimant in *Young* was injured after tripping on an ill-maintained sidewalk.[26] 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.[27] 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."[28] 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.

C. Deer Valley *and the End of the Reasonableness Standard*

In 2007, the Arizona Supreme Court in *Deer Valley* "reject[ed] and disapprove[d] *Young*'s conclusion that the statute includes a reasonableness standard."[29] Chief Justice McGregor's opinion summarized the history of Arizona's notice of claim statute and determined that the 1994 amendment does not codify *Hollingsworth* as the Arizona Court of Appeals concluded nine years earlier in *Young*.[30] The court noted that the "fundamental principles of statutory construction do not allow us to ignore the clear and unequivocal language of the statute."[31] 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."[32]

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.[33] 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."[34] The school district did not respond to her letter, and she

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24. 970 P.2d 942 (Ariz. Ct. App. 1998).
25. *Id.* at 945.
26. *Id.* at 943.
27. *Id.* at 945–46.
28. *Id.*; *see also supra* note 10 and accompanying text (stating the statute's purposes).
29. Deer Valley Unified Sch. Dist. No. 97 v. Houser, 152 P.3d 490, 496 (Ariz. 2007).
30. *Id.* (citing *Young*, 970 P.2d at 945, 946).
31. *Id.* (internal quotation marks omitted).
32. *Id.* at 493 (quoting ARIZ. REV. STAT. ANN. § 12-821.01(A) (2007)).
33. *Id.*
34. *Id.* at 492.

subsequently filed a wrongful termination suit against the school district in superior court.[35]

The school district moved to dismiss the case because the notice letter failed to satisfy the statute.[36] Specifically, the school district asserted that the notice lacked a "specific amount . . . and the facts supporting that amount."[37] 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."[38]

After applying its new strict and literal standard for interpreting Arizona Revised Statute (A.R.S.) 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."[39]

While this decision unequivocally required claimants to demand precise dollar amounts rather than educated or reasonable damage estimates, it raised additional questions that plagued lower courts.[40] One such question was whether the statute also applies to class-action lawsuits filed against a public entity.[41] Another question pertained to the statute's fact requirements,[42] which *Deer Valley* oddly mentioned and then avoided in a seemingly innocuous footnote.[43]

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35. 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).

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

37. *Id.* (citing § 12-821.01(A)).

38. *Id.*

39. *Id.* at 493–94.

40. Brief for Ariz. Trial Law. 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 review due to the confusion created by the interpretations [of *Deer Valley*] . . . by public entities."); Barwell, *supra* note 3, at 1209 ("The confusion stems from what the Arizona Supreme Court did not decide in *Deer Valley*").

41. *See* City of Phoenix v. Fields, 201 P.3d 529, 532 (Ariz. 2009) (noting that previous cases addressing the notice of claim statute "did not address the required form of a class claim").

42. Arizona's notice of claim 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." ARIZ. REV. STAT. ANN. § 12-821.01(A) (2007).

43. Deer Valley Unified Sch. Dist. No. 97 v. Houser, 152 P.3d 490, 494 n.3 (Ariz. 2007).

> 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.

However, after two years of *Deer Valley* havoc, the Arizona Supreme Court addressed both questions in *Fields* and *Backus*, respectively. Its conclusions in each were necessarily careful and calculated. *Fields* blocks a public entity from raising a *Deer Valley* affirmative defense after participating in litigation,[44] and *Backus* interprets the "supporting-facts" requirement of A.R.S. section 12-821.01(A) as met when a notice of claim provides facts "that the *claimant* regards as adequate to permit the public entity to evaluate the specific amount claimed."[45]

II. *FIELDS* BACKS THE COURT INTO A CORNER

The return to reasonableness started with *Fields*, where the court unanimously held that Arizona's notice of claim statute applies to class-action lawsuits filed against a public entity.[46] In *Fields*, the court's strict interpretation of the statute as evinced in *Deer Valley* appears to have forced the court into a corner, finding the plaintiff's waiver argument as the only way to preserve its "strict and literal"[47] stance in *Deer Valley* while also providing for a just outcome in *Fields*.

The *Fields* court held that although the plaintiffs failed to satisfy A.R.S. section 12-821.01(A), the defendants—the City of Phoenix and the City of Phoenix Employees' Retirement System Board—waived the defense because they "substantially participated in [the] litigation before raising their notice of claim statute defenses."[48] Specifically, the defense "motion for summary judgment finally raising the absence of a settlement demand was filed more than four years after the date of the original complaint and more than three years after class certification."[49]

Prior to *Fields*, the Arizona Supreme Court had addressed class actions in the context of the notice of claim statute just once, and that was to hold that the 1984 version of the statute,[50] which did not address class claims, "does not bar class actions against public entities."[51] However, that case "did not address the required form of a class claim. Nor, because it was decided under the 1984 Act, did [that case] involve the requirement in section 12-821.01(A), added in the 1994 revision, that a notice include a 'specific amount' for which the claim can be settled."[52] This was the issue in *Fields*.[53]

Id.

44. *Fields*, 201 P.3d at 536.

45. *Backus*, 2009 WL 703269 at *5 (emphasis added).

46. *Fields*, 201 P.3d at 534.

47. *See* Barwell, *supra* note 3, at 1208.

48. *Fields*, 201 P.3d at 536.

49. *Id*.

50. The 1984 version of the statute was codified as A.R.S. section 12-821 (1984).

51. Andrew S. Arena, Inc. v. Superior Court, 788 P.2d 1174, 1177 (Ariz. 1990).

52. *Fields*, 201 P.3d at 532.

53. Specifically, the issue was how the statutory requirement to include a specific amount for which the claim can be settled applied to class-action suits given that a claim cannot be settled for a class until the class has been certified, but the notice of claim must be filed before certification of a class. *See infra* note 63 and accompanying text.

The legal saga in *Fields* began in 2002, when a group of former and current City of Phoenix employees filed a notice of claim with the appropriate public entities "on behalf of themselves and others similarly situated."[54] While the notice alleged that the employees ("the Class") were improperly denied benefits, it did not contain a sum certain for which the Class claims could be settled.[55] It did, however, demand three sums of money for respective damages. Specifically, the notice demanded: (1) an amount "not less than 10 million dollars"; (2) "an amount which Claimants believe is greater than 50 million dollars and less than 100 million dollars"; and (3) attorney's fees "in an amount not less than $1,500,000."[56] More than four years later, after both parties substantially engaged and participated in litigation, the defendants finally raised the absence of a settlement demand as a defense in a motion for summary judgment.[57] The Class, however, argued that because the defendants failed to assert this defense in a timely fashion, they waived it.[58] The Superior Court disagreed, but still ruled in favor of the Class, determining "that the settlement demand requirement of § 12-821.01(A) does not apply to class actions."[59] The city sought special-action relief in the court of appeals, which vacated the lower court's order and held that the statute does apply to class actions.[60] The appeals court further held that the notices filed by the Class did not comply with the statute for failure to include "a specific amount for which the claim can be settled."[61] The Arizona Supreme Court granted review because the issue "is of first impression and statewide importance."[62]

Justice Hurwitz's thorough analysis and discussion recognized the complications involved in applying the notice of claim statute to class claims.[63] Based on these complications, Justice Hurwitz noted that "it is simply not possible for those filing a . . . class claim under the notice of claim statute to set forth a 'specific amount' for which the claim of the *entire* class 'can be settled'"[64]

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54. *Fields*, 201 P.3d at 531. The public entities were the City of Phoenix and the City of Phoenix Employees' Retirement System Board.

55. *Id.*

56. City of Phoenix v. Fields, 193 P.3d 782, 784 (Ariz. Ct. App. 2008).

57. *Fields*, 201 P.3d at 536. Notably, the defendants filed their motion for summary judgment on March 5, 2007, just seven days after the court filed its *Deer Valley* opinion creating the notice-of-claim defense. *See supra* text accompanying notes 29–39.

58. *Fields*, 201 P.3d at 531. The Arizona Court of Appeals held in 2008 that "when a governmental entity has taken substantial action to litigate the merits of the claim that would not have been necessary had the entity promptly raised the defense," then that defense is waived. Jones v. Cochise County, 187 P.3d 97, 105 (Ariz. Ct. App. 2008).

59. *Fields*, 201 P.3d at 531.

60. City of Phoenix v. Fields, 193 P.3d 782, 788 (Ariz. Ct. App. 2008).

61. *Id.* at 789–90 (quoting ARIZ. REV. STAT. ANN. § 12-821.01(A)).

62. *Fields*, 201 P.3d at 532.

63. *Id.* at 533. These complications include: "Persons filing a claim with a public entity do not yet represent a class; subsequent court certification of the class is required before the claimants attain representative capacity. Before certification, the putative representatives have authority to settle only their individual claims. Even after certification, non-representative class members generally must be given an opportunity to exclude themselves from the class. No settlement binds remaining class members until approved by the trial court after appropriate notice and hearing." *Id.* (citations omitted).

64. *Id.*

However, this determination backed the court into a corner. A finding that A.R.S. section 12-821.01 is inapplicable to class actions would fly in the face of *Deer Valley*, which mandates a strict and literal interpretation of the statute.[65] Since the statute states that it "appl[ies] to *all* causes of action[,]"[66] *Deer Valley*'s strict interpretation means that it must apply to class actions. Also, because *Deer Valley* "reject[ed] and disapprove[d] *Young*'s conclusion that the statute includes a reasonableness standard,"[67] the court was unable to apply one in *Fields* without undermining *Deer Valley*.[68] The court's only option was to reconcile class actions with its strict interpretation and application of the statute as per *Deer Valley*.

In so doing, the *Fields* court held that the proper reading of A.R.S. section 12-821.01(A) in the context of a class claim "requires a putative class representative to include in his notice of claim a 'specific amount' for which his *individual* claim can be settled."[69] Therefore, since the notices filed by the class representatives in *Fields* did not contain amounts for which they would settle their individual claims, the notices failed to satisfy the statute.[70]

However, such an abrupt ending after more than four years of litigation would have amounted to a severe and unjust blow to the nearly 1200 affected members of the Class.[71] Therefore, the court determined that the defendants' conduct in the litigation waived their ability to raise the notice of claim statute defenses.[72] The court noted that if the defendants "had promptly sought judicial resolution of their section 12-821.01(A) defense, the plaintiffs would have been

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

66. ARIZ. REV. STAT. ANN. § 12-821.01(F) (2007) (emphasis added).

67. *Deer Valley*, 152 P.3d at 496.

68. While it is understandable that the Arizona Supreme Court would be hesitant to overrule *Deer Valley* just two years after it drastically changed the legal landscape of Arizona's claims-notice provisions, the opinion notably instigated considerable debate and opposition. *See, e.g.*, Barwell, *supra* note 3, at 1214 (arguing that *Deer Valley* operates to "abrogate or interfere with an injured citizen's right to redress wrongs suffered due to the negligence of the State"); Philip Beatty, Comment, *The* Deer Valley *Aftermath: Manufactured Digits Thwart Original Purpose of Arizona's Claims-Notice Statute*, 40 ARIZ. ST. L.J. 1031, 1054–55 (2008) (concluding that under *Deer Valley*, "claims will be inflated and less likely to be settled up front; the claims process will be more costly due to increased litigation; legitimately injured plaintiffs will be denied recovery due to minor procedural missteps; and more legal malpractice cases will find their way in to an overcrowded court system").

69. *Fields*, 201 P.3d at 534 (emphasis added). The notice should also include "a statement that, if litigation ensues, the representative intends to seek certification of a plaintiff class." *Id*. This notice will serve to satisfy the notice requirement for future class members yet to be identified. *Id.*

70. *Id.*

71. City of Phoenix v. Fields, 193 P.3d 782, 785 (Ariz. Ct. App. 2008) ("As presently constituted, the class consists of approximately 1,167 members.").

72. *Fields*, 201 P.3d at 536; *see also* Jones v. Cochise County, 187 P.3d 97, 104–05 (Ariz. Ct. App. 2008) (finding waiver of the deficient-notice defense when the government entity substantially participated in litigation).

spared considerable expense and the judicial system a significant expenditure of its resources."[73]

Notably, Arizona's appellate courts have already embraced the *Fields* waiver doctrine.[74] While *Fields* dealt the first blow to the state by destroying a public entity's ability to participate in litigation and then suddenly invoke a *Deer Valley* defense, *Backus* delivered a smashing knockout to state entities poised to use *Deer Valley* as a broad affirmative defense to civil tort liability.

III. *BACKUS* AND THE 'RETURN' OF REASONABLENESS

In 2008, 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."[75] In each case, the court of appeals interpreted the statutory language of A.R.S. section 12-821.01 to find that the claim letters complied with the statute.[76] 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.[77]

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.[78] The inmate's daughter sent a notice of claim to ADOC within the 180-day window as required by A.R.S. section 12-821.01(A).[79] "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.[80]

The State responded by letter more than sixty days later,[81] 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.[82] While the State asserted in its letter that it would investigate "and possibly resolve" the claim, it "did not ask for any additional

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73. *Fields*, 201 P.3d at 536.

74. *See* Kelly v. State, No. 1 CA-CV 07-0784, 2009 WL 449240, at *5–6 (Ariz. App. Feb. 24, 2009) (citing *Fields* and holding that "the State waived any defense it could have raised to the notices of claim by its conduct").

75. Backus v. State, Nos. 1 CA-CV 07-0640, 1 CA-CV 07-0671, 2008 WL 2764601, at *1 (Ariz. Ct. App. July 17, 2008), *vacated*, Backus v. State, No. CV-08-0284-PR, 2009 WL 703269 (Ariz. Mar. 19, 2009).

76. *Id.*

77. *Id.* at *2.

78. *Id.* at *1.

79. *Id.*

80. *Id.*

81. Under a strict reading of the statute, the claim was rejected after the sixtieth day, and the daughter could have immediately filed suit. ARIZ. REV. STAT. ANN. § 12-821.01(E) (2008).

82. *Backus*, 2008 WL 2764601, at *1. Suspiciously, the State's letter also encouraged the claimant to not file suit before the twelve-month statute of limitations deadline. *Id.*

information concerning the facts allegedly supporting the liability claim."[83] 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."[84]

In the companion *Johnson* case, a 35-year-old mother serving a two and one-half-year prison sentence in ADOC died after she was allegedly refused adequate medical treatment.[85] 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.[86]

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.[87] In its answer, the State denied liability but did not raise any specific defect in the claimant's notice of claim.[88] However, the Arizona Supreme Court issued its *Deer 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 Arizona Revised Statute § 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."[89] Primarily at issue in both cases was the Arizona Supreme Court's dictum in footnote three of the *Deer Valley* opinion.[90]

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 any statutory interpretation by the courts should not require claimants to guess as to the sufficiency of a claim.[91] The court's examination of both the statute's language 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*."[92] Since the claimants in both cases stated some facts, the trial courts' dismissals were reversed.[93] Additionally, the court of appeals noted, "[i]f

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83. *Id.*
84. *Id.* at *2.
85. *Id.*
86. *Id.*
87. *Id.*
88. *Id.*
89. *Id.* (alteration in original).
90. *See* Deer Valley Unified Sch. Dist. No. 97 v. Houser, 152 P.3d 490, 494 n.3 (Ariz. 2007).
91. *Backus*, 2008 WL 2764601, at *6.
92. *Id.* at *7.
93. *Id.* at *8.

the State in good faith truly wanted further information . . . it certainly could have asked for it."[94]

Upon review, the Arizona Supreme Court essentially agreed and issued an opinion that effectively terminated the State's ability to apply the notice of claim statute as a liberal and broad defense. The court noted that the "claims statutes . . . advance the overarching policy of holding a public entity responsible for its conduct."[95] If the statute allowed a public entity to challenge claims on the basis of insufficient supporting facts, then claimants risk losing their rights to file suits as they scramble to gather as many facts as they can within the narrow 180-day statutory window.[96] Likewise, affording a public entity such a broad and subjective defense encourages satellite litigation that "frustrates one of the goals of [the statute], which is to encourage public entities and claimants to resolve claims without resorting to litigation."[97]

Therefore, the Arizona Supreme Court determined that the best approach "is to allow a claimant to decide what facts support the amount claimed and to disclose those facts as part of the notice of claim."[98] Specifically, the court held "that a claimant complies with the supporting-facts requirement of [the statute] by providing the factual foundation that the claimant regards as adequate to permit the public entity to evaluate the specific amount claimed."[99] Furthermore, the court cautioned lower courts and public entities that claimants are not required to provide an exhaustive list of facts and that courts should not scrutinize a claimant's facts to determine their sufficiency.[100]

The court recognized that this standard "may raise concerns that a claimant, deliberately or carelessly, will fail to provide facts in his possession that would assist the public entity in evaluating the claim."[101] However, the court quickly pointed out that claimants have no incentive to withhold facts.[102] Unrepresented claimants tend to provide an abundance of facts, and claimants' lawyers are aware of the need to disclose facts necessary for the State to evaluate the claim in the context of inducing settlement.[103] In addition, the court offers that "the professional obligations of claimants' lawyers will deter them from submitting incomplete or inaccurate information in claim letters."[104] Finally, in those cases where a public entity legitimately believes the facts provided are

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94. *Id.* at *7.
95. Backus v. State, No. CV-08-0284-PR, 2009 WL 703269, at *2 (Ariz. Mar. 19, 2009).
96. *Id*. at *4.
97. *Id*. at *5.
98. *Id*.
99. *Id*.
100. *Id*.
101. *Id*.
102. *Id*. at *6.
103. *Id*.
104. *Id*. In addition, "[a] decision by a claimant or an attorney to misrepresent the facts supporting the amount claimed may result in the information submitted to the public entity being admissible at trial to impeach the testimony of the claimant." *Id*.

insufficient, the court noted that "nothing prevents it from taking steps to obtain additional information."[105]

In granting claimants wide latitude in determining what facts support their amounts claimed, the court took a significant step back from the strict and literal stance it assumed in *Deer Valley*. There, the court determined that the statute's "clear and unequivocal" language requires not only a sum certain, but also "facts supporting that amount."[106] Although the *Deer Valley* court did not definitively answer what constitutes "supporting facts," it did say the statute requires that "claimants explain the amount identified in the claim by providing the government entity with a factual foundation to permit the entity to evaluate the amount claimed."[107] After *Backus*, however, it is clear that the supporting-facts requirement is satisfied when the claimant supplies facts that he or she considers adequate to support the amount claimed. This reflects at least a partial retreat from *Deer Valley*'s strict and literal interpretation. The *Backus* court's analysis of the parties' opposing interpretations of the supporting-facts requirement helped awaken the court to the problems associated with its strict and literal interpretation.[108] Contrary to what the court suggested in *Deer Valley*, *Backus* determined that the statute's supporting-facts language "is *not* clear and unequivocal."[109] Therefore, allowing claimants to put forth facts that they believe are adequate to support the amount claimed—or, put another way, blocking the State from challenging the adequacy of a claimant's facts—is a reasonable interpretation in light of the statute's purposes.

CONCLUSION

The court's holdings in *Fields* and *Backus* equate to an abrupt ending to the state's broad and liberal use of *Deer Valley* as an all-encompassing affirmative defense against civil tort liability. While *Deer Valley* does require claimants to strictly adhere to the notice statute's "sum certain" requirement, *Fields* and *Backus* thwart the State from invoking *Deer Valley* as a sweeping defense in all other

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105. *Id*. The court also noted that such additional steps are not required. *Id*. Interestingly and perhaps unfittingly, *Deer Valley*'s strict "sum certain" requirement is unaffected by the *Fields* court's gentle suggestion to public entities that they are welcome to ask claimants for additional supporting facts. Based on the reasonable interpretation of the statute's supporting-facts requirement elicited in *Backus*, it should follow that when a claimant fails to perfectly or clearly state a specific sum for which she will settle her claim, the public entity could easily ask her for one. *See* Barwell, *supra* note 3, at 1214 ("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.") (citing CAL. GOV'T CODE § 910.8 (West 2005)). However, *Deer Valley*'s strict requirement that a claimant's notice must include a specific sum remains intact, in keeping with the court's view that the statute unambiguously requires an exact amount.

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

107. *Id*.

108. *Backus*, 2009 WL 703269 at *4 ("Because the statute is susceptible to more than one reasonable interpretation, . . . we must consider other factors to reach the interpretation that best furthers the intent of the legislature.").

109. *Id.* (emphasis added).

respects. This result not only supports the purposes of the claims-notice statute, but it also purports a reasonable application of the statute that gives injured citizen-claimants a fair opportunity to redress wrongs suffered due to the negligence of the state. Although the Arizona Supreme Court avoided an overt resurrection of the reasonableness standard it explicitly rejected in *Deer Valley*, the result is practically the same: a clear return to a reasonable interpretation of the notice of claim statute that ensures claimants a fair bite.