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### EFFORTS TO SHORTEN SETTLEMENT WINDOW IN CLAIM REJECTED BY ARIZONA SUPREME COURT

8.1.22

A mother's claim against the City of Peoria for an incident resulting in the death of her son was not invalidated due to the inclusion of a shortened settlement window in her notice of claim. The Arizona Supreme Court in *James v. City of Peoria*, No. CV-21-0125-PR (Ariz. Jul. 18, 2022), found that a notice of claim otherwise in compliance with A.R.S. §12-821.01 is not invalid because it attempts to set a deadline for settlement prior to the sixty-day period outlined by the statute. The action was a legal nullity.

#### Background Facts

On October 10, 2018, a 12-year-old referred to as "I.M." was killed when a car struck him near 77th Avenue and Peoria Avenue as he walked home from school. On March 26, 2019, James, I.M.'s mother, delivered a notice of claim to the City of Peoria's Clerk Office. It was delivered by a licensed process server in a timely manner under the requirements of the applicable statute. In addition to her notice of claim, in which she included all of the relevant facts as well as the requested settlement amount, she also attached a ten-page letter penned by her attorney that was entitled, "Notice of Claim" (pursuant to A.R.S. §12-821.01). The letter included the following points:

- Details regarding the basis for the city's liability in the death of her son
- The nature of her claim
- A settlement offer for \$10,071,016.72
- Stated that the offer to settle was valid for thirty days from the date of the letter

The City never responded to James' notice of claim or letter. On October 10, 2019, James brought a claim against the City for wrongful death. This was more than six months after she originally filed the Notice of the Claim. The City filed a motion to dismiss. The trial court concluded that James' claim was barred by the statute as

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her notice of claim failed to keep the settlement offer open for at least sixty days. It dismissed James' claim with prejudice because the statutory 180-day time period to file a valid notice of claim had passed.

The Court of Appeals affirmed stating that, "James failed to comply with the language and purpose of the notice of claim statute by providing a thirty-day settlement offer window. Although James was at liberty to issue a general settlement offer that included a shorter window for acceptance doing so meant that this contract offer was ineligible to concurrently serve as her notice of claim under the statute." The Supreme Court of Arizona granted review to determine whether a notice of claim is invalid under A.R.S. §12-821.01, if it provides that a settlement offer will terminate in less than sixty days.

### The Applicable Statute

Arizona Revised Statute section 12-821.01(A) sets forth the requirements for a valid notice of claim when bringing suit against a public entity. In pertinent part it states:

- Claimant shall file claims with the person or persons authorized to accept service for the public entity within one hundred eighty days after the cause of action accrues
- The claim shall contain facts sufficient to permit the public entity to understand the basis on 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
- Any claim that is not filed within one hundred eighty days after the cause of action accrues is barred and no action may be maintained thereon
- If the claim fails to comply with any requirement in A.R.S. § 12-821.01(A), the claimant's claims are statutorily "barred and no action may be maintained thereon." A.R.S. § 12-821.01(A)

In the case at hand, the City did not dispute that James filed and served proper notice in a timely manner. Instead, it argued that the letter attached to the notice wherein a thirty-day window was given to accept or reject her settlement offer invalidated the notice of claim because the statute requires sixty days to consider a settlement offer.

Section 12-821.01(E) clearly creates a deadline (60 days) within which a public entity may provide a response to the claimant's settlement offer. Once a claimant fulfills the requirements for serving a notice of claim and provides the information required by the statute, a valid claim exists. The burden then shifts to the public entity to respond to the notice of claim. It has sixty days to consider the basis of the claim as well as the settlement offer contained therein. If the public entity does not respond within the sixty-day deadline, the claim is deemed denied. The public entity can also shorten this window by denying the claim before the expiration of the sixty days. The statute does not address a claimant who provides a window shorter than 60 days. It does not require anything from the claimant other than filing a notice of claim and providing a settlement offer within that claim.

### What is the Effect of a Settlement Offer That Terminates in Less Than Sixty Days?

The Court of Appeals addressed this question pursuant to contract law principles. They found that James' letter, which included an offer to compromise within thirty days, was a contract offer. This being the case, it found that the offer could not concurrently serve as her notice of claim under the statute and therefore invalidated her claim altogether.

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The Supreme Court disagreed with this analysis. It found that the lower court should have relied on statutory interpretation rather than contract law principles in determining the validity of James' notice of claim. The court stated, "Any attempt by a claimant to shorten the public entity's statutory sixty-day response period is a legal nullity." In reality, no matter what James stated in her letter, she did not have the legal authority to force the City to respond to her offer within thirty days. Thus, her thirty-day deadline to accept her settlement offer had zero effect and did not change the statutory sixty-day deadline imposed on the City. It is for this reason that the Court found that James' thirty-day deadline did not invalidate her otherwise valid notice of claim. "There is no need to look to secondary statutory principles when the statute itself is clear." *State v. Burbey*, 243 Ariz. 145, 147.

The Court also determined that this finding was also in line with the legislative purpose of the statute. Back in 1984, the legislature clearly indicated that its purpose in adopting these statutes addressing situations in which public entities are liable for acts or omissions was to provide claimants a clear avenue to hold such entities and their employees accountable. In addition, it wanted to give public entities the opportunity to intelligently assess claims and settle before engaging in litigation if possible. "Section 12-281.01 allows the public entity to investigate and assess liability . . . permit the possibility of settlement prior to litigation, and assist the public entity in financial planning and budgeting." *Deer Valley Unified Sch. Dist. No. 97 v. Houser*, 214 Ariz. 293, 295 (2007).

### Conclusion

The thirty-day deadline in James' notice of claim did not invalidate the City's statutory right to respond within sixty days. James had no legal authority to alter the deadline and her attempt to do so was a legal nullity. As such, it did not invalidate the rest of her notice of claim and the City was permitted to accept James' offer to settle the claim within sixty days. The trial court's grant of summary judgment in favor of the City was reversed and the dismissal of James' complaint with prejudice was reversed and remanded. The Court of Appeals memorandum decision was also vacated.