



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
12/31/14	SM	Fav/1 amendment
3/10/15	JU	Fav/CS
4/7/15	CA	Favorable
	FP	

December 31, 2014

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 36** – Judiciary Committee and Senator Miguel Diaz de la Portilla
Relief of Estate of Victor Guerrero

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR \$6,873,838.19 BASED ON A JURY AWARD AGAINST PASCO COUNTY TO COMPENSATE THE ESTATE OF VICTOR GUERRERO FOR HIS DEATH IN A COLLISION WITH A COUNTY VEHICLE.

FINDINGS OF FACT:

On May 1, 2008, Victor Guerrero, a 48-year old, off-duty Tampa police officer, was traveling southbound on U.S. Highway 41 on his motorcycle. Highway 41 is a north-south thoroughfare in Pasco County and is a two-lane, undivided highway with a 55 mph speed limit in the area where Mr. Guerrero was driving. At the same time, Daniel Whipple, a Pasco County employee, was driving a Pasco County truck northbound on Highway 41 on his way to inspect a subdivision off of that road. The weather was clear and the view was not obstructed. As Mr. Guerrero approached Mr. Whipple, Mr. Whipple made a left hand turn into the southbound lane.

As Mr. Whipple turned, the Pasco County truck he was driving and Mr. Guerrero's motorcycle collided in the southbound lane. Mr. Whipple stated that he simply did not see the motorcycle. Mr. Guerrero's motorcycle struck the side of the Pasco County pickup truck, and Mr. Guerrero was ejected from the motorcycle. Mr. Guerrero was not wearing a helmet

at the time of the accident and died as a result of a brainstem laceration which occurred as a result of the incident.

A witness to the accident testified that Mr. Whipple's vehicle turned in front of Mr. Guerrero's motorcycle. The witness testified that Mr. Guerrero did not have an opportunity to avoid the collision. The witness did not believe that the motorcycle driver, Mr. Guerrero, did anything wrong. In addition, the Tampa Police Department investigator believed that Mr. Whipple violated section 316.122, Florida Statutes, by making an improper left turn.

Following the accident, Pasco County's Driver Safety Review Board conducted an internal investigation relating to the accident, and found that Daniel Whipple was negligent in causing the accident, citing mistakes due to carelessness. The Board recommended that Daniel Whipple's driving privileges, as extended to County vehicles and equipment, be suspended. The jury was informed of the Board's finding but not that Daniel Whipple's driving privileges were suspended.

Mr. Guerrero is survived by his wife of 2 years, Lara Guerrero, with whom he had lived since 2000 with her three children. Mr. Guerrero is also survived by three sons from a prior marriage, Michael, David, and Kevin, aged 21, 19, and 15 at the time of their father's death, respectively. At the time of Mr. Guerrero's death, his sons lived in South Carolina with their mother and had lived there for less than one year. Mr. Guerrero had seen his sons three times after their move. Mr. Guerrero traveled to South Carolina once and his sons returned to Florida twice. Prior to moving to South Carolina in 2007, Mr. Guerrero's sons and their mother resided in the Tampa area.

The Guerrero estate (the "estate" or "claimant") filed a lawsuit against Pasco County and, on February 10, 2012, the jury returned a verdict for \$7,845,127.30. The parties stipulated to economic damages of \$1,095,127.30. The jury awarded Lara Guerrero \$1,500,000 and award \$1,750,000 to each of the three children. The jury verdict for noneconomic damages was less than sought for Mrs. Guerrero (counsel suggested \$2,500,000 in noneconomic damages for Mrs. Guerrero) and more than sought each of the children (counsel suggested \$500,000 in noneconomic damages for each of the children). The verdict amount was reduced by ten percent for comparative negligence due to Mr. Guerrero's failure to wear

a helmet. The verdict form gave the jury the option to apportion liability to Mr. Guerrero for speeding but the jury did not do so. The Second District Court of Appeal affirmed the final judgment.

Following the trial, Michael and Kevin Guerrero have remained in South Carolina with their mother. Michael is currently employed at an auto body shop, and Kevin graduated from Northeastern Technical College in May of 2013 after obtaining an Associate in Arts Degree. Kevin currently works at the Food Lion. David was discharged from the United States Marine Corps in January 2013 and is currently in the Reserves. David currently resides in Florida and will begin the Hillsborough Community College Law Enforcement Academy in January 2015. Lara Guerrero moved out of the Tampa area after the home she, Victor, and her three children lived in was foreclosed following Victor's death. She currently resides in Fleming Island, Florida with her boyfriend, daughter, and boyfriend's son. Lara Guerrero has been employed sporadically since Victor Guerrero's death but is not currently employed. Prior to Victor's death, Lara Guerrero was employed by the Home Depot for over fifteen years.

In December, 2014, the House and Senate special masters held a joint hearing on this contested claim. The Guerreros and Pasco County submitted documents from pretrial discovery, from the trial, from the appellate record, and supplemented the record after the hearing with other documents. The Guerreros testified at the hearing. At the hearing, Pasco County presented expert testimony that Mr. Guerrero would not have died if he had been wearing a motorcycle helmet. Pasco County also presented expert testimony that Mr. Guerrero was speeding and that the accident would not have occurred if Mr. Guerrero had been driving a safe speed.

The Guerreros presented expert testimony that Mr. Guerrero would have died even if he had been wearing a helmet and presented evidence that Mr. Guerrero was not speeding.

Pasco County opposes a claim bill in this case. The County argues that Mr. Guerrero was speeding and not wearing a helmet and that he would have avoided the accident had he not been speeding and would have survived the accident had he been wearing a helmet. The County further argues that jury

verdict was excessive and unduly influenced by emotional testimony in the case.

A medical examiner testified at the trial and his trial testimony, including testimony presented outside the presence of the jury, was provided for the hearing. The medical examiner stated that Mr. Guerrero would have died from the accident even if he was wearing a helmet. A second expert witness presented by the estate testified that Mr. Guerrero would have died whether or not he had been wearing a helmet. He testified that no helmet could have prevented Mr. Guerrero's death. Pasco County's expert testified that Mr. Guerrero would have survived if he had been wearing a helmet.

Both sides presented evidence relating to whether or not Mr. Guerrero was speeding at the time of the accident. The claimant's expert testified that Mr. Guerrero was travelling between 51 and 58 miles per hour. The Pasco County expert testified that Mr. Guerrero was traveling between 66 and 83 miles per hour.

Pasco County has paid \$200,000 of the final judgment. Of that \$200,000, \$186,776.38 was paid to the claimant and \$13,223.62 was paid to the claimant's automobile insurance carrier to satisfy its subrogated property damage claim. Pasco County was insured by a Public Entity Excess Liability Policy issued by Star Insurance Company which has liability limits of \$1,000,000 for each covered accident or occurrence. The Policy is subject to a self-retention limit of \$1,000,000 which is eroded by certain costs and expenses incurred by the County in the defense or payment of a covered claim. Approximately \$690,000 remains of Pasco County's self-insured retention limit which must be exhausted before Star Insurance Company's duty to indemnify the County is triggered. The self-insured retention and any amount above the \$1,000,000 insurance policy would be paid from the County's general fund.

The \$186,776.38 paid to the claimant was divided as follows:

Mrs. Guerrero: \$7,937.99

Kevin Guerrero: \$6,761.99

Michael Guerrero: \$6,467.99

David Guerrero: \$6,467.99

Estate: \$1,764.00

Attorneys (including \$5,000 in trust for future costs and probate fees): \$157,386.42.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding to determine whether Pasco County is liable in negligence for the death of Mr. Guerrero and, if so, whether the amount of the claim is reasonable.

Section 316.122, Florida Statutes, requires the driver of a vehicle turning left to yield to oncoming traffic. Mr. Whipple, a Pasco County employee, failed to do so. Pasco County is liable as Mr. Whipple's employer.

Each side presented evidence relating to whether Mr. Guerrero would have died if he had been wearing a helmet. Given the conflicting testimony, the jury's finding apportioning most of the damages to the County but some of the damages to Mr. Guerrero was reasonable.

Similarly, there was conflicting expert testimony regarding Mr. Guerrero's speed at the time of the accident. However, an eyewitness saw the accident and believed that the driver of the truck, Mr. Whipple, was at fault. Given the conflicting expert testimony, the jury's apparent reliance on an eyewitness and finding that speed was not a factor was reasonable.

Pasco County objects to various evidentiary rulings made by the trial judge at trial. Specifically, the County objects to the admission of the Driver Safety Review Board finding that Mr. Whipple was at fault. The jury's finding of fault was reasonable in this case. An eyewitness saw the accident and believed that Mr. Whipple was at fault. Given eyewitness testimony, it is reasonable for the jury to find Mr. Whipple at fault even if one assumes the trial court erred in admitting the finding of the Driver Safety Review Board.

The County also argues that the jury was unduly influenced by emotional testimony at trial and that the jury award was excessive. Those issues were raised, or could have been raised, by the County on appeal, reviewed by the court under

an abuse of discretion standard, and rejected. The jury appears to have exercised independent judgment from that of the lawyers in the case. It awarded less than was asked for to Mrs. Guerrero and more than was sought to each of the three children. It is difficult to place a monetary value on the loss of a husband or a father but it is reasonable for a jury to determine that surviving children should receive more than a surviving spouse.

ATTORNEYS FEES:

The claimant's attorneys have agreed to limit their fees and lobbyist fees to not more than 25 percent of any amount awarded by the Legislature.

RECOMMENDED
AMENDMENT:

This bill provides post-judgment interest at the rate of 4.75 percent. While paying post-judgment interest in claim bills is not unprecedented, the general practice is not to include post-judgment interest. This bill provides for a lump sum payment to the estate of Victor Guerrero but the jury made separate awards to the estate, to Lara Guerrero, and to each of the three children.

The recommended amendment removes references to post-judgment interest and apportions the claim to the estate, Mrs. Guerrero, and the three children as follows:

- Estate: \$962,337.34 (14%)
- Mrs. Guerrero: \$1,312,903.09 (19.1%)
- Kevin Guerrero: \$1,532,865.92 (22.3%)
- Michael Guerrero: \$1,532,865.92 (22.3%)
- David Guerrero: \$1,532,865.92 (22.3%)

I arrived at those amounts by calculating the percentage of the total award that the jury awarded to each claimant and multiplying those percentages by the total dollar amount of the bill.

RECOMMENDATIONS:

The undersigned recommends that the bill be reported favorably.

Respectfully submitted,

L. Michael Billmeier, Jr.
Senate Special Master

cc: Debbie Brown, Secretary of the Senate

CS by Judiciary:

The committee substitute reduces the amount appropriated by the claim bill to \$1.5 million. The committee substitute also apportions the appropriation among the Estate of Victor Guerrero and his survivors.