



**STORAGE NAME:** h3513.CJS

**DATE:** 4/3/2015

**Florida House of Representatives  
Summary Claim Bill Report**

**Bill #:** HB 3513; Relief/Estate of Victor Guerrero/Pasco County

**Sponsor:** Nuñez

**Companion Bill:** CS/SB 36 by Judiciary, Diaz de la Portilla

**Special Master:** Parker Aziz

**Basic Information:**

<b>Claimants:</b>	Estate of Victor Guerrero, which includes Lara Guerrero, Kevin Guerrero, Michael Guerrero, and David Guerrero.
<b>Respondent:</b>	Pasco County
<b>Amount Requested:</b>	<p>\$1,500,000.00, which will be apportioned as follows:</p> <ul style="list-style-type: none"><li>• \$90,000 to the Estate of Victor Guerrero</li><li>• \$405,000 to Lara Guerrero</li><li>• \$345,000 to Kevin Guerrero</li><li>• \$330,000 to Michael Guerrero</li><li>• \$333,000 to David Guerrero</li></ul>
<b>Type of Claim:</b>	Local equitable claim; Result of a settlement agreement.
<b>Respondent's Position:</b>	Pasco County will not oppose, obstruct or delay the passage of the claims bill or direct its representatives, agents or lobbyist to oppose, obstruct or delay the passage of said claims bill in the amount of \$1,500,000.00.
<b>Collateral Sources:</b>	None reported.
<b>Attorney's/Lobbying Fees:</b>	The terms of the bill limit the total award of attorney fees, lobbying fees, costs and other similar expenses relating to this claim to no more than 25 percent of the total amount awarded under the bill.
<b>Prior Legislative History:</b>	This is the first time House Bill 3513 by Representative Nuñez and Senate Bill 36 by Senator Diaz de la Portilla has been introduced to the Legislature.

**Procedural Summary:** On December 10, 2008, Lara Guerrero, as the Personal Representative of the Estate of Victor M. Guerrero, filed a Complaint in the 6th Judicial Circuit Court, in and for Pasco

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County, Florida, with respect to the accident that took place on May 1, 2008, between Daniel Whipple, a Pasco County employee, and her late husband, Victor M. Guerrero, that resulted in Mr. Guerrero's death. During the litigation, Pasco County strongly contested liability and requested a mistrial twice during the trial based on the fact that witnesses were overly emotional and crying on the stand.

The matter was tried during the week of February 6, 2012, through February 10, 2012, before the Honorable W. Lowell Bray, Jr. During the trial, Lara Guerrero, Michael, David and Kevin Guerrero, Victor Guerrero's sons, and, despite Pasco County's objections, Lara Guerrero's father and three children testified, in addition to several experts proffered by each side.<sup>1</sup>

On February 10, 2012, the jury returned a verdict assessing Daniel Whipple, the Pasco County employee 90% at fault for the accident that resulted in the death of Victor Guerrero and finding Victor Guerrero 10% at fault for his death for failing to wear a helmet while riding his motorcycle. The jury awarded the stipulated amount of \$1,095,127.30 to the Estate as damages, \$1,500,000 in damages to Lara Guerrero and \$1,750,000 each to Victor Guerrero's three sons from a prior marriage. After accounting for Mr. Guerrero's contributory negligence as determined by the jury, the total amount of the award was reduced by 10% and totaled \$7,060,614.57.

Pasco County filed a Motion for New Trial on February 20, 2012, stating that the jury verdict was the result of improper rulings on evidence, improper arguments of Plaintiff's counsel, and was the result of passion, sympathy, and emotion, as opposed to the evidence presented.<sup>2</sup> The Petitioners opposed the motion for a new trial stating that none of the reasons put forth by Pasco County were sufficient to warrant a new trial. Additionally, the Petitioners filed a Renewed Motion for Directed Verdict and/or for Judgment Notwithstanding the Verdict requesting that the jury finding that Victor Guerrero was contributorily negligent for failing to wear a helmet be put aside.

On April 11, 2012, Judge Bray denied Pasco County's motion for new trial/remittitur and the Petitioners' motion for directed verdict/judgment notwithstanding the verdict. Judge Bray did grant the Petitioners' Motion for Entry of Final Judgment against Pasco County but denied it without prejudice as to Star Insurance Company.<sup>3</sup> Additionally, in July of 2013, Judge Bray awarded the Estate \$45,148.95 in costs plus interest, to be paid by Pasco County.

On May 10, 2012, Pasco County filed a Notice of Appeal in the Second District Court of Appeal. In their initial brief, the County addressed whether the trial court abused its discretion in denying Pasco County's motion for new trial or remittitur of the jury's award for pain and suffering damages to the decedent's sons. Part of this assessment included the fact that the award given to the sons by the jury was substantially more than what was asked for at trial; the Petitioners' counsel asked for \$500,000 for each son for loss of companionship, pain and suffering following their father's death, but the jury awarded \$1,750,000 for each son. Pasco County submitted that the verdict in

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<sup>1</sup>Kevin Guerrero did not come in person to the trial so the transcript of his deposition was read aloud. Michael and David Guerrero were present and testified in person at trial. Lara Guerrero's children and father were not allowed to testify as the effect Victor Guerrero's death had on them personally but only could testify as to what they observed about Lara's behavior following Victor Guerrero's death.

<sup>2</sup> Pasco County submitted that the trial court erred in the following ways: allowing testimony from the Pasco County Risk Manager and Driver Safety Review Board Chairwoman Jane Calano and the redacted memorandum of the Board finding Daniel Whipple at fault for the accident; excluding testimony that Lara Guerrero entered into a romantic relationship with police officer Robert Tungate shortly after Victor Guerrero's death; denying Pasco County's request that highly emotional witnesses and spectators leave the courtroom; allowing Lara Guerrero's children to testify; and allowing Plaintiff's counsel to commit two "Golden Rule" violations in closing argument.

<sup>3</sup> Star Insurance Company, Pasco County's insurer, posits that because the sovereign immunity statute prohibits the County from paying over \$200,000, Star cannot be obligated to pay sums in excess of the county's self-insured retention amount of \$1,000,000.

favor of the Guerrero sons was the product of improper influence of emotion, sympathy, and passion at the trial level and that the amount of damages proved and injury suffered by the sons was not sufficient to support the verdict.

The Second District Court of Appeals filed their opinion on October 2, 2013, affirming, per curiam, the jury verdict.

Pasco County has previously paid the applicable aggregate sovereign immunity limit amount of \$200,000 for this incident. Of the \$200,000, \$186,766.38 was paid to the Claimant following the entry of final judgment, and \$13,223.62 was paid to the Claimant's auto carrier to satisfy its subrogated property damage claim. Of the \$186,766.38, \$7,937.99 went to Lara Guerrero; \$6,761.99 went to Kevin Guerrero, Victor's youngest son who was a minor at the time of his father's death; \$6,467.99 each went to Michael and David Guerrero, Victor Guerrero's oldest and middle sons who were not minors at the time of their father's death; and \$1,764.00 went to Victor's estate. The remaining \$157,366.42 was used to pay attorney's fees and cost; \$5,000 of which was held in trust to cover future costs and probate fees.

On March 6, 2015, Pasco County and the Guerrero family reached a settlement for the amount of \$1,500,000 in addition to the amount previously paid. The settlement apportions the amount as follows: \$90,000.00 to the estate of Victor Guerrero, \$405,000.00 to Lara Guerrero, \$345,000 to Kevin Guerrero, \$330,000.00 to Michael Guerrero, and \$330,000.00 to David Guerrero.

**Facts of Case:** 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 time of the accident there were female prisoners working on either side of the road as well as another company doing work on the road; as a result, there were signs on the road at this time warning drivers that inmates were working and construction was occurring. 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. 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. 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.<sup>4</sup> According to the medical examiner that performed Mr. Guerrero's autopsy, Mr. Guerrero also suffered from a fracture to his sternum, some rib injuries, and some lung injuries; none of which were immediately fatal. Emergency personnel responded to the scene of the accident, and Mr. Guerrero was airlifted to St. Joseph's Hospital in Tampa where he was subsequently pronounced dead by Doctors Barry and Lyon.

Mr. Guerrero is survived by his wife of two years, Lara Guerrero. He had lived with Lara and her three children since 2000. 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—once Mr.

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<sup>4</sup> Pursuant to § 316.211(3)(b), F.S., a person over 21 years of age may operate or ride upon a motorcycle without wearing protective headgear securely fastened upon his or her head if such person is covered by an insurance policy providing for at least \$10,000 in medical benefits for injuries incurred as a result of a crash while operating or riding on a motorcycle. Victor Guerrero was over the age of 21 and had at least \$10,000 in medical benefits for injuries incurred as a result of a crash and was therefore compliant with the statute.

Guerrero traveled to South Carolina and twice his sons returned to Florida. Prior to moving to South Carolina in 2007, Mr. Guerrero's sons and their mother resided in the Tampa area.

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.<sup>5</sup> Additionally, the Florida Highway Patrol conducted a Traffic Homicide Investigation following the accident. In his report, Corporal R.J. Kraus, who conducted the investigation, concluded that the crash was due to Daniel Whipple's error and that Daniel Whipple violated Florida Statute § 316.22 which in part states: "The driver of a vehicle intending to turn left within an intersection or into an alley, private road, or driveway shall yield right-of-way to any vehicle approaching from the opposite direction, or vehicles lawfully passing on the left of the turning vehicle, which is within the intersection or so close thereto as to constitute an immediate hazard."

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 honorably 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.

Both the Petitioner and Respondent obtained valuations from economists to determine the present value of the total economic loss incurred as a result of Victor Guerrero's death. The Petitioner retained Dr. F.A. Raffa who concluded that as of June 6, 2011, the present value of the total economic loss to the Guerrero family due to Victor Guerrero's death was \$1,094,258. The Respondents retained Dr. Stephen E. Durham who initially stated that as of June 2011, the present value of the total economic loss due to Victor Guerrero's death was \$741,649; however, Dr. Durham did further calculations taking into account information about Victor Guerrero's benefits as a Tampa police officer that he had not in his first valuation and determined that the present value of the total economic loss was \$1,084,315 as of May 11, 2011. The parties then stipulated to an economic loss to the Estate of \$1,095,127.30.

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 would be paid from the County's general fund.

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<sup>5</sup> The jury was informed of the Board's finding but not that Daniel Whipple's driving privileges were suspended. Pasco County objected to that information being made available to the jury arguing that it was privileged and too prejudicial. However, that argument was not preserved for appeal, and the information in memorandum is not a basis for my findings.

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**Recommendation:** The bill needs to be amended to reflect the settlement agreement and the appropriate apportionment. I respectfully recommend that House Bill 3513 be reported **FAVORABLY**.

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Parker Aziz, Special Master

Date: April 3, 2015

cc: Representative Nuñez, House Sponsor  
Senator Diaz de la Portilla, Senate Sponsor  
Michael Billmeier, Senate Special Master