

No. 27
BCC 10-20-15
2:02 P.M. ABBOTT/Masinovsky

#27 Offer of settlement accepted in the case of Vanessa Vidal-Nieves, individually and as personal representative of the Estate of Lorenzo Nieves, Jr., versus Pinellas County, in accordance with the confidential memorandum from County Attorney James L. Bennett dated October 20, 2015.

Motion	-	Commissioner Long
Second	-	Commissioner Gerard
Vote	-	5 – 0



Pinellas County

315 Court Street, 5th Floor
Assembly Room
Clearwater, Florida 33756

Staff Report

File #: 15-376, Version: 1

Agenda Date: 10/20/2015

Subject:

Offer of settlement in the case of Vanessa Vidal-Nieves, individually and as personal representative of the Estate of Lorenzo Nieves, Jr. - wrongful death action.

Recommended Action:

Approval to accept an offer of settlement in the case of Vanessa Vidal-Nieves, individually and as personal representative of the Estate of Lorenzo Nieves, Jr.

Staff Member Responsible:

James L. Bennett, County Attorney
Jack A. Powell, Sr. Assistant County Attorney

Distribution:

Virginia Holscher, Bureau Director, Risk Management

Discussion:

It is recommended that the Board of County Commissioners accept the offer of settlement in the case of Vanessa Vidal-Nieves, individually and as personal representative of the Estate of Lorenzo Nieves, Jr. as outlined in the confidential memo of October 20, 2015.



Pinellas County

315 Court Street, 5th Floor
Assembly Room
Clearwater, Florida 33756

Staff Report

COMMISSION AGENDA:

27

File #: 15-376, **Version:** 1

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Subject:

Offer of settlement in the case of Vanessa Vidal-Nieves, individually and as personal representative of the Estate of Lorenzo Nieves, Jr. - wrongful death action.

Recommended Action:

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Discussion:

It is recommended that the Board of County Commissioners accept the offer of settlement in the case of Vanessa Vidal-Nieves, individually and as personal representative of the Estate of Lorenzo Nieves, Jr. as outlined in the confidential memo of October 20, 2015.

Staff Member Responsible:

James L. Bennett, County Attorney
Jack A. Powell, Sr. Assistant County Attorney

Distribution:

Virginia Holscher, Bureau Director, Risk Management

RELEASED 12-18-15

TO: The Honorable Chairman and Members of the
Board of County Commissioners

FROM: James L. Bennett, County Attorney *JLB*

SUBJECT: Offer of settlement in the claim of Vanessa Vidal-Nieves, individually
and as personal representative of the Estate of Lorenzo Nieves, Jr.

DATE: October 20, 2015

Recommended Action: Approval to accept an offer of settlement in the total amount of \$190,000.00, and authorization for the County Administrator or his designee to execute such documents as necessary to effectuate this global settlement of all claims against Pinellas County, in the claim of Vanessa Vidal-Nieves, as personal representatives of the Estate of Lorenzo Nieves, Jr.

Discussion: Plaintiff, the wife and widow of the decedent, alleges that on or about February 4, 2015, Pinellas County employee Michelle Marshall negligently operated her motor vehicle on Southbound I-275, south of the Gandy Boulevard overpass, and moved, without using her turn signal, from the middle travel lane into the leftmost travel lane. Ms. Marshall admitted in her recorded statement to the Florida Highway Patrol that she did not see Mr. Nieves riding his Harley Davidson motorcycle in the leftmost travel lane. Mr. Nieves, in order to avoid colliding with Ms. Marshall's vehicle, took evasive action onto the left shoulder where his motorcycle struck a disabled vehicle. Mr. Nieves was thrown approximately 102 feet from his motorcycle and was pronounced dead at the scene.

The Florida Highway Patrol conducted a Traffic Homicide Investigation and determined that Ms. Marshall made an improper lane change in violation of Florida Statute Section 316.085(2), and cited her for same. Ms. Marshall pled to the charge in Pinellas County Traffic Court on May 20, 2015, receiving a fine in the amount of \$525.00.

Damages

Property damage: Plaintiff seeks damages, which include the total loss of the 2004 Harley Davidson FLHRCI – Road King motorcycle. While no value is claimed by the Plaintiff, research indicates a pre-accident value range between \$5,500.00 - \$9,999.00.

Medical expenses: None.

Funeral expenses: \$1,825.00.

Non-economic damages: Lorenzo Nieves, Jr., was born in New York City and served twenty (20) years in the United States Air Force as a Jet-Engine Mechanic before retiring. While he was alive, he received a pension of approximately \$1,200.00 per month. At the time of his death, he was fifty-eight (58) years old and a resident of St. Petersburg, Florida. He had been married to Mrs. Nieves for almost fifteen (15) years. He had four (4) grown children of his own, all over the age of twenty-five (25). Mr. Nieves was employed as a Molder for Bic Graphics for the last sixteen (16) years and was making approximately \$18.00 per hour.

Mr. Nieves had a life expectancy of approximately twenty-five (25) additional years at the time of his death. Damages in this case are controlled by Florida Statute 768.21, the Wrongful Death Statute. His wife, Vanessa, and his four (4) children are deemed survivors under this statute; therefore, they are entitled to the value of lost

support and services from the date of Mr. Nieves' death, with interest, and future loss of support and services from the date of death and reduced to present value. As the surviving spouse, Vanessa Nieves is also entitled to recover for loss of her husband's companionship and protection and for mental pain and suffering from the date of injury.

Vanessa Nieves, as the personal representative for the Estate, is also entitled to recover loss of the prospective net accumulations of an estate, which might reasonably have been expected but for the wrongful death, reduced to present money value.

Plaintiff has not quantified these damages. However, Plaintiff's counsel contends that all those numbers added together will far exceed the available statutory sovereign immunity cap of \$200,000.00.

Plaintiff initially demanded \$200,000.00 to settle all claims against the County and agreed to include Ms. Marshall in any release to be executed.

Negotiations were undertaken between Plaintiff's counsel and the County Attorney's Office, which resulted in a settlement figure agreed upon by the Plaintiff's counsel and his client in the total amount of \$190,000.00. County Administration, Risk Administration, and County Attorney staff met and reached the conclusion to recommend that this global settlement offer be accepted by the Board of County Commissioners. It is, therefore, our recommendation that the Plaintiffs' offer of settlement be accepted.

JLB:JAP

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