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Wife of slain judge settles claims for \$5.2M

Lawyers for survivors of the other victims of the 2005 courthouse shooting say they are encouraged by the settlement
By Greg Land, Staff Reporter

The widow of the judge slain during the 2005 Fulton County Courthouse shootings has agreed to accept more than \$5.2 million to settle claims that, among other things, Fulton County Sheriff Myron E. Freeman and several deputies were negligent in providing security.

Claudia Barnes, the wife of the late Fulton Superior Court Judge Rowland W. Barnes, had filed one of several suits by family members of the victims of the violence blamed on Brian G. Nichols, accused of killing four people during an escape from the courthouse where he was standing trial for rape.

"The county is pleased to have resolved the case," said acting Fulton County Attorney Larry W. Ramsey Jr. on Thursday. He declined to elaborate.

A spokeswoman for Freeman, who came under criticism for his handling of the courthouse shootings and was defeated in a re-election bid Tuesday, said the sheriff would have no comment on the settlement.

"We're just glad to have this case behind us," said Barnes, referring to herself and two daughters.

"I think one important fact here is that no taxpayer went to fund that \$5 million," said Barnes' lead attorney, Thomas W. "Tommy" Malone. In two documents obtained under the Georgia Open Records Act, the county's insurer, Clarendon America, agrees to pay \$5 million to settle any and all claims against the county.

"There wasn't enough insurance coverage, and there's no amount of money that can compensate Mrs. Barnes and her family for the loss of Judge Barnes' life," Malone added.

Another document relates to Barnes' claims against the county regarding her accrued pension benefits during two stints of employment with the county. She is a judicial assistant to Fulton County State Court Judge John R. Mather, and the agreement provides an annuity fund of \$246,999 to be established in her name, and in return for which she releases the county from all claims.

That sum had been disclosed publicly July 16, when the Fulton County Commission announced that it had approved up to \$250,000 to help settle the suit.

Malone declined to say what percentage of the settlement amount he and his co-counsel would be paid, but he indicated that he had made special provisions in billing for the case.

"We recognized Judge Barnes' sterling reputation and our own affection for him and for his widow when considering our fees," he said.

"Tommy did a lot of work for us," Barnes said, "and he is really an excellent lawyer."

The settlement agreement with the county also mentions that Barnes will be retiring this month. She confirmed that she will leave her job at month's end, in part because Nichols' criminal trial is expected to begin around Sept. 1, and she is likely to be called to testify.

"I didn't think it was fair to Judge Mather and the county to stay on during the trial," she said, "and have to be gone three months or more."

The Barnes case was closed Aug. 1 in DeKalb County State Court, where suits are pending on behalf of the survivors of

court reporter Julie Anne Brandau and Sheriff's Department Sgt. Hoyt Teasley, who were killed at the courthouse, and U.S. customs agent David Wilhelm, whom Nichols is charged with killing in Buckhead in the hours after his escape.

Jury selection is under way for Nichols' trial. His lawyers have indicated they will seek an insanity defense.

Guidance for other cases

Two other suits seek damages for Cynthia Hall, the deputy Nichols is accused of attacking before seizing her gun, and court employees Susan Christy and Gina Clarke, whom Nichols is accused of holding at gunpoint in the judge's chambers before the shootings.

James E. Voyles, who represents Teasley's widow, Deborah Teasley, said was heartened to hear of Barnes' settlement.

"It's somewhat encouraging," said Voyles. "But I do think [Claudia Barnes] had an exceptionally strong case."

His client's case is somewhat different, given that Teasley was a sheriff's department employee, he said.

"There are issues of whether workman's compensation is an exclusive remedy ... and of qualified immunity" from liability regarding Freeman, he said.

"But I think we will prevail," said Voyles.

"[The settlement] just shows how the defendants view their liability in these cases" said Randy J. Ebersbach, also representing Clarke and Christy. "I believe we will prove our cases at trial and get a substantial award for our clients."

And, he added, it "looks like the voters have had enough of Sheriff Freeman as well."

Attorney Andrew M. Scherffius III, an attorney representing Brandau's family who is also involved Clarke and Christy's suits, declined to comment on the settlement's impact on his clients' cases.

Douglas R. Kertscher, who represents Wilhelm's widow, Candee Wilhelm, would only say that the settlement would lead him to ask DeKalb County State Court Judge J. Antonio DelCampo to move his client's trial, now scheduled for March 23, to an earlier date.

"We are continuing to prepare for trial," said Kertscher via e-mail.

D. Brandon Hornsby, who represents Hall, was heartened by word of the settlement.

"Fulton County has been turning its back on these victims for three years," he said, "so it's nice to see it start paying some attention to them for a change."

Hornsby, too, had some words for Freeman.

"The general public unceremoniously kicked the sheriff out of office, and there's a reason for that," he said. "That office bears responsibility for the courthouse shootings."

James N. "Jay" Sadd, who represented 37 of more than 40 plaintiffs in suits stemming from the 1996 Centennial Olympic Park bombings, said settlement in one of multiple, related suits may provide guidance for the remaining plaintiffs. But he cautioned that circumstances vary from case to case.

"Typically," he said, "when one case settles, that can give the other attorneys and plaintiffs an idea of the value of the other cases," he said.

But considerations such as lost wage claims, the age and health of the various plaintiffs and other factor may come into play, he said.

"But it's certainly a favorable development for others," he said.

Nonetheless, he said, were he in the position of the remaining plaintiffs' counsel, he would remain in pretrial posture rather than waiting—or pushing—for a settlement offer.

“The best strategy, to me, is to continue to prepare for trial and be ready to go to trial,” said Sadd. “When that is done in a professional and competent way, it puts the plaintiff in the best possible position even in the event that there is a settlement offer; if not, you're in the best position for trial.”

On a more personal note, Sadd said he was gratified that a settlement had been reached in the Barnes case.

“As a lawyer and somebody who knew and cared about Rowland Barnes, and who knows Claudia, I am happy to hear that this chapter of that sad story is coming to a close,” he said. “I just wish the remaining victims all the best.”

Claims of negligence

In September 2005, Barnes' lawyers notified county authorities that they intended to seek compensation because Freeman and his employees “were negligent in the most basic and ministerial of their responsibilities.”

The notice set out some of the alleged misconduct on the part of the sheriff's department, including the contention that Judge Barnes died with no deputy in his courtroom.

“Georgia law requires the sheriff or his or her designee to attend sessions of court,” the notice stated, citing O.C.G.A. § 15-16-10.

“Undoubtedly, the purpose of this statutory requirement is to afford a minimum of courtroom security. This basic obligation was breached. Over and above the obligation imposed by aware of the extreme risk of violence posed by Mr. Nichols, but took absolutely no action to guard against it.”

The notice cited several sheriff's office supervisors who, according to an internal affairs report, knew about the potential for violence posed by Nichols and failed to boost security in response.

According to an internal affairs investigation into the shootings, deputies already had identified Nichols as a possible danger before the March 11, 2005, violence because he had tried to hide two pieces of metal in his shoes. The pieces of metal, which could have been used as weapons, were discovered two days before the shootings.

In the notice, the lawyers also criticized the actions of the sheriff's department on the morning of March 11, saying certain deputies failed in their duties by not answering duress alarms and by not monitoring security cameras.



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