

Verdicts & Settlements

Attorneys help slain deputy's family settle with Broward sheriff

September 22, 2008

By: Review staff & VerdictSearch

Case: Joseph Fatta Jr. and Josephine Fatta as co-personal representatives of the estate of Todd Fatta v. Sheriff of Broward County, Florida

Case no.: 04-018794 03

Description: Wrongful death

Filing date: Dec. 2, 2004

Settlement date: Sept. 4, 2008

Judge: Broward Circuit Judge Jeffrey Streitfeld

Plaintiff lawyers: Andrew Yaffa, Fort Lauderdale, and Seth Miles, Coral Gables, Grossman Roth

Defense lawyers: Bruce Jolly, Purdy Jolly Giuffreda & Barranco, Fort Lauderdale; Judith Levine, Broward Sheriff's Office, Fort Lauderdale

Settlement: \$2 million

Details: Broward Deputy Todd Fatta was fatally shot while serving federal arrest and search warrants for Kenneth Wilk at his Fort Lauderdale home in 2004. Wilk, who shot Fatta through his protective vest, was the target of a multi-agency task force on child pornography. The sheriff's office violated its own policies by failing to deploy a SWAT team, knowing Wilk was armed and had a history of assaulting law enforcement officers. Sheriff's Sgt. Angelo Cedeno was injured in the attack. Wilk is appealing his 2007 murder and attempted murder conviction.

Plaintiff case: Fatta's parents claimed sheriff's officials failed to follow their own policies intended to protect officers in potentially dangerous situations. Yaffa said the evidence and witness testimony was overwhelmingly in his clients' favor.

Web Extra:

"If it didn't settle, it was going to be very embarrassing to the sheriff's office," he said.

Ruiling

Former Broward Sheriff Ken Jenne said in a deposition that Fatta wouldn't have died if the department's policies had been followed, and current Sheriff Al Lamberti conceded policies were violated.

"More than any case I have ever handled in the past, every single witness that came forward had something that was beneficial to the plaintiff's case," Yaffa said. "It was clear the Broward Sheriff's Office was in a state of disarray. Policies and procedures were breached, every allegation in the complaint would have been proven at trial from my perspective."

Defense case: In the BSO's answer to the complaint, the agency alleged all injuries and claims for damages were caused by Fatta's own negligence or the actions of others over whom the department had no control. The agency also argued Jenne, who was sheriff at the time, was protected by sovereign immunity.

The agency wanted to settle the case to bring closure for the Fattas, the sheriff's office and the community, said Levine, the department's general counsel.

"The sheriff said he didn't need a jury or the judge to tell him this is what needed to be done to bring closure and healing to the Fattas and the agency, to acknowledge there were issues we needed to address," she said. "We needed to take a step back and acknowledge what happened and settle what happened."

Outcome: The settlement was reached days before the case was set for trial. The department agreed to pay \$200,000 and back a legislative claims bill in Tallahassee for the balance.

The department has changed policies and named the new policies after Fatta. One is a mandate that a SWAT team and emergency medical workers accompany deputies on all forced entries.

The settlement also has a provision protecting BSO employees from retaliation for speaking out when policies aren't followed. Streitfeld added a provision to the consent judgment allowing him to enforce the settlement in case of future violations.

"You've got a judge who has the ability to look over BSO's shoulder," Miles said.

Comments: Yaffa and Miles said it was more important to the family to have closure than fight it out in court.



Andrew Yaffa and Seth Miles

"The family didn't want a trial. They wanted the truth," Yaffa said. "Once the truth came out and we were able to effect the changes to the policy that will mandate this doesn't happen again, that right there is a home run."

Levine said the agency wanted to let the community know it has improved. The department was plagued by scandal in recent years, including a federal corruption conviction for Jenne.

The department also reached a \$1.8 million settlement this month in an inmate's jail beating.

"It's an entirely new administration and an entirely different focus on how things should be handled in the best interests of the agency and the best interests of the community," Levine said. Lamberti "wants an open and transparent administration."

Post verdict: The BSO agreed to help the Fatta family on the claims bill and set up an ad hoc committee to investigate SWAT team policies.

BSO's professional standards committee director Roy Vrchota, who is overseeing the ad hoc committee, said it plans to compile policy recommendations to help reduce the likelihood of future officer injuries and deaths in similar situations.

— Alana Roberts

Reader's comments

*said:*The BSO deputy that was killed was working on a federal task force operation. I wonder if the federal government would have any additional liability? The FBI does in fact have its own SWAT..but I think they use local law enforcement assets (swat teams) more often. If this operation was ultimately supervised by the justice department wouldn't the fed be liable as well? Many times, the federal law enforcement agencies will deputize local law enforcement officers to be able to aid in say border patrol operations, US marshals' prisoner escort and babysitting, etc. What are the responsibilities and liabilities of the justice department when an officer is injured while working on a federal case or assisting the feds? *Sept. 22 at 8:58 a.m.*

Motor Vehicle

Palm Beach Circuit Court

Family of drunken son killed crossing street awarded \$1.1 million

The family of a drunken man who was killed after leaving a bar near Florida State University recovered \$1.1 million.

Timothy Waterbury, 23, left the Late Night Library bar in the early-morning hours and was struck while crossing Gaines Street by a vehicle driven by fellow student Alexander Crum.

Waterbury's counsel argued Crum was speeding in a 30-mph zone and should have known the area would be congested with people leaving the bar at that time.

Defense counsel noted Waterbury's blood-alcohol level was .25. The jury found Waterbury 38 percent liable, which reduced the \$1.8 million award.

Case: Estate of Waterbury v. Crum

Case No.: 2001CA 003062

Plaintiff lawyers: Barry S. Balmuth, West Palm Beach; Bill Bone, Larmoyeux & Bone, West Palm Beach; William B. King and Jack Scarola, Searcy Denney Scarola Barnhart & Shipley, West Palm Beach

Defense lawyers: Michael Balducci and David S. Knight, Kubicki Draper, West Palm Beach

Miami-Dade Circuit Court

City not liable for crash by woman who stole police car

A jury rejected a claim that the city of Miami was liable in a collision caused by a woman who stole a police car.

Lazaro Rosales claimed he sustained herniated discs in the crash caused by Mellitta Heflin, who was handcuffed in the back seat of the police car when she squeezed her way through a 12-inch divider window into the front seat. The officer was just outside the car, and the motor was running.

The defense argued that even though Heflin was slender, it wasn't foreseeable that she could slip through the window and steal the car in a matter of seconds.

Rosales filed a notice of appeal.

Case: Rosales v. City of Miami

Case No.: 04-06883 CA 32

Plaintiff lawyers: Robert R. Coulombe Jr., Clark Robb Mason Coulombe & Buschman, Miami; Mario Serralta, Mario Serralta & Associates, Miami Lakes

Defense lawyers: Christopher A. Green and Kevin R. Jones, Miami city attorney's office

Medical Malpractice

Collier Circuit Court

Jury sides with hospital in emergency room heart attack

A jury rejected a claim that a Naples hospital ignored a patient's chest pains before a fatal heart attack.

Richard Hughes, who was in his 40s, coded while in the emergency room. He died in intensive care the next day.

His family claimed he went to the Cleveland Clinic Hospital with complaints of chest pains. A few hours after he arrived and was seen by a nurse, he suffered the heart attack. The defense argued he only indicated he was suffering from gastric distress, which was noted in the records. There was no record of him saying he had chest pains.

Defense counsel also argued a lab test performed in the emergency room was not consistent with a cardiac event. For example, his enzymes were not elevated.

Case: Estate of Hughes v. Hamann

Case No.: 112004CA0006160001XX

Plaintiff lawyers: H. Scott Bates and Craig R. Stevens, Morgan & Morgan, Orlando

Defense lawyers: Kevin W. Crews and Linda A. Epstein, Wicker Smith O'Hara, McCoy & Ford, Naples; Bonnie Navin and Paul R. Regensdorf, Stearns Weaver Miller Weissler Alhadeff & Sitterson, Fort Lauderdale.

Broward Circuit Court

Worker recovers for arm crushed by truck

A construction worker recovered \$658,673 after his arm was crushed between a truck and garbage bin.

Purnell Bhalai was at a Coral Gables work site where he was unhooking a cable loop from the bin when a truck with Miami-based Lopefra Corp. backed into him. His counsel argued Lopefra should have provided a spotter to direct its driver in reverse.

Defense counsel argued Bhalai shouldn't have been there because he wasn't asked to assist with the placement of the bin. The jury found him 20 percent liable, which reduced his \$823,342 award.

Case: Bhalai v. Amigo

Case No.: CACE 06012621

Plaintiff lawyers: Brian Denney and John A. Shipley, Searcy Denney Scarola Barnhart & Shipley, West Palm Beach

Defense lawyer: Gordon Lea, Law Office of Jason Gelinias, Fort Lauderdale

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