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Tully Rinckey PLLC attorneys Nicole Smith and Graig Zappia discuss a lawsuit filed by a family of a Navy Yard victim with Brendan McGarry of Military.com

Family of Navy Yard Victim Plan to Re-file Lawsuit

An attorney representing the family of one of the victims of the Washington Navy Yard shooting said he plans to refile a lawsuit arguing the U.S. military and contractors committed "gross negligence." The complaint seeking \$37.5 million for the estate of Mary Frances DeLorenzo Knight is expected to be filed on April 10 in either state or federal court in Tampa, according to Sidney Matthew, the attorney representing her surviving family members. Knight, a 51-year-old Navy civilian and educator, was among the 12 people gunned down in the Sept. 16 shooting at the Washington Navy Yard in one of the deadliest mass shootings on a U.S. military facility in history. The gunman, Aaron Alexis, a Navy reservist who was killed by police, had a security clearance to access the complex despite a history of mental illness and brushes with the law. "Neither the government contractors nor the Navy followed the existing rules," Matthew said. "That is gross negligence." His comments came the same week the Defense Department released multiple investigations that concluded the incident could have been prevented. The reviews revealed "troubling gaps" in the military's security clearance system and installation management practices, Defense Secretary Chuck Hagel said in announcing recommendations for improvement. A little more than a month before the shooting, on Aug. 7, Alexis complained to a police officer in Newport, R.I., of "being followed, hearing voices, and of being under attack by vibrations and microwaves," according to the Pentagon's internal review. The information was shared with naval police and with supervisors at his employer, The Experts

Inc., a subcontractor to Hewlett-Packard Co. on a Navy information-technology contract, but neither forwarded it to Pentagon officials who oversee the security clearance system. "Had this information been reported, properly adjudicated, and acted upon, Alexis' authorization to access secure facilities and information would have been revoked," the Navy's internal report stated. When the author of that report, Adm. John Richardson, was asked if the investigations identify particular individuals who were negligent, he said, "the primary responsibility and accountability for this incident rests with Aaron Alexis, who used his access to get inside the defenses and do harm to his fellow workers." Matthew, the Knight family's attorney, called that response "pure baloney." "It's not true," he said. "People should not buy into that." Under existing rules, both the Navy and the contractors were required to submit a report about the August incident to the Pentagon's Joint Personnel Adjudication System, a database used by officials at the Consolidated Adjudications Facility to make determinations on security clearance eligibility, Matthew said. What's more, security workers at the Navy Yard, where some 9,000 people work and which was targeted by terrorists in 1983, never patted down Alexis or checked the contents of his bag, either manually or with a metal detector, Matthew said. The security procedure is standard practice across the country at court houses, stadiums, even Smithsonian museums, he said. "It's not a system problem," he said. "It's a people-being-negligent problem." In one of the biggest policy changes, Hagel said the department will begin continuous and automated record checks of personnel with access to defense facilities or information. Until now, it relied on periodic "reinvestigations" in which a previously completed background check was updated every five years for a top secret clearance, 10 years for a secret clearance or 15 years for a confidential clearance. Hagel also said he will consider recommendations to reduce by 10 percent the number of people who hold security clearances, about 2.5 million individuals; reassess whether it should rely on the Office of Personnel Management to conduct background investigations of its employees and contractors; and do more to de-stigmatize the process for seeking mental health treatment. Matthew said he initially filed the lawsuit in October under the Federal Tort Claims Act, but he withdrew it after government attorneys asked for the statutory 180-day window before initiating a complaint. He said the updated filing will include information from the

government investigations. Attorneys unaffiliated with the lawsuit said the case is likely to go to trial or be settled. "There are a lot of good facts on behalf of the plaintiff here, when you look at it just from an evidence standpoint," Graig Zappia, a partner at the Albany, N.Y.-based law firm Tully Rinckey PLLC, said in a telephone interview. "You have many layers of individuals where liability could be pointed." Nicole Smith, an associate attorney at the firm who worked for nearly a decade as a background investigator for a government contractor, said Alexis' employer should have had a facility security officer who reported his behavior before the shooting. Similarly, his discharge paperwork from the Navy included information that should have been reported, she said. "Those are two important pieces of information that had they been flagged appropriately, he would have had a clearance pulled," she said. The Navy Yard shooting was the second deadliest on a U.S. military base after the 2009 massacre at Fort Hood, Texas. A shotgun-wielding Alexis shot Knight at close range as she walked out of a fourth-floor break room, Matthew said. Knight, one of the top cyber-security specialists at Naval Sea Systems Command, held two master's degrees and also taught as an adjunct professor at Northern Virginia Community College, he said. The lawsuit is being filed in Florida, where her sister, the executor of her estate, lives, Matthew said. Knight had two daughters, one of whom she saw get married just weeks before she died, he said. "A fabulous, fabulous lady, just loved by everybody," Matthew said. "This was so senseless."