

## Stillborn Fetus: \$2,000,000 Jury Verdict Upheld, Parents Were Denied Right To Proper Burial.

The mother was admitted to the hospital twenty-one weeks pregnant.

She experienced complications of her pregnancy throughout her stay. However, according to the New York Supreme Court, Kings County, no malpractice allegations for mismanaging her pregnancy were raised in the lawsuit.

Three days after admission she delivered a stillborn fetus weighing 400 grams. The attending physician would later testify the fetus never lived.

The next day the remains were sent to the hospital's pathology department for disposal. The reason given for sending the remains to the pathology department, and for not offering them to the parents, was the age and size of the remains.

The hospital never disclosed to the parents or to the court what became of the remains after they were sent to the pathology department.

The parents sued the hospital for denying them their common-law right to bury the stillborn fetus, known as the right of sepulcher, and for mishandling the fetus, that is, for never obtaining informed consent from the parents to dispose of the remains.

The jury awarded the parents \$2 million. The court upheld the verdict over objections to the legal basis for the lawsuit and the size of the award

### **Fetus Was Non-Living Issue Ruled Irrelevant**

The court agreed with the parents' attorney's argument that once the fetus was delivered the fetus had a physical existence separate from the mother. Even if not a living existence it was a symbolic existence which had a profound importance to the parents which the hospital had a legal obligation to recognize.

The fact this fetus never lived, unlike the short-lived fetuses in the legal case precedents, should not bar these parents from suing for damages, the court ruled. ***Emeagwali v. Brooklyn Hosp. Center, 2006 WL 435813 (N.Y. Sup., February 22, 2006).***

***This case can be decided for the parents based on the common-law right of sepulcher even if state statute laws do not expressly mention a right to sue.***

***The common law clearly says that living persons have a right to burial and the surviving next of kin have the right to the preservation of the remains for the purpose of burial.***

***The attending physician testified that this fetus, stillborn at 21 1/2 weeks and weighing only 400 grams, never showed signs of life.***

***However, the parents, as next of kin, should have a right of sepulcher whether or not the fetus was ever alive after delivery.***

***The cultural imperative to bury one's dead is rooted in thousands of years of civilization.***

***The next of kin have the absolute right to possession of a deceased's body for preservation and burial.***

***The next of kin have the right to sue any person who unlawfully interfered with their rights or who improperly dealt with the deceased's body.***

NEW YORK SUPREME COURT  
KINGS COUNTY  
February 22, 2006