



## After Stillbirth, Courts Try to Put a Price on a Mother's Anguish

By WILLIAM GLABERSON | August 23, 2011

Eight months pregnant, suffering from abdominal pain, the woman had been sent home after three visits to Wyckoff Heights Medical Center in Brooklyn with a prescription for a painkiller. She lost her baby during labor at home when the head got stuck in the birth canal. A court upheld a \$1 million malpractice verdict this year, ending lengthy appeals by the hospital.

In the Bronx, a mother delivered a stillborn child at Lincoln Medical and Mental Health Center; the staff had overlooked “the ominous pattern” of fetal distress and delayed an emergency Caesarean for too long, a state investigator found. The hospital’s lawyers have offered \$500,000 to settle her malpractice suit.

These two cases are among the first to move through the legal system after New York’s highest court changed state law in 2004 and allowed mothers to sue for their emotional suffering when they claim that medical carelessness caused a stillbirth. With their different price tags on elemental maternal loss, the cases offer a rare view of the legal system’s first computations to set a new value on this singular type of suffering.

They also shed light on the often macabre computations that lawyers make in trying to fix a dollar figure. As these cases represent uncharted territory in the state, the grim comparisons have gone especially far afield. Lawyers sought, among other analogies, to compare the trauma of a stillbirth to that of being attacked by a dog or to a passenger’s spending nine minutes of anguish knowing a plane is going down.

Jeff S. Korek, the lawyer for the woman suing Lincoln, is arguing that the Brooklyn case — which took 14 years to reach this point — set a \$1 million standard that should be accepted in the Bronx.

But during recent settlement negotiations with a judge, which a reporter observed, lawyers for the city’s Health and Hospitals Corporation said they would not offer \$1 million. So high a price, they said, would have a “huge impact on the office” by encouraging demands for similar amounts.

While it was impossible to determine how many such cases are winding through the system, and requests for such numbers were not answered, future payouts could be large if \$1 million was established as the norm.

The Bronx mother, Vivian Acevedo, 24, who works in a clothing store, fought back tears recently as she said she had turned down the \$500,000 offer. She had held the body of her baby boy in the hospital, she said.

“I want to go to trial and finish this the right way,” she said, “because I don’t ever want this to happen to someone else.”

Matthew Gaier, a personal-injury lawyer who is not involved in either of the cases, said New York’s new stillbirth suits were “trying to cull the essence of the suffering the person has experienced: What is a mother’s misery worth?”



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American courts have long resisted awards for nonfinancial injuries like emotional suffering, because fixing a value is subjective. Some legislatures have set limits on such awards. But there have been exceptions, and for years many states, including Connecticut, New Jersey and Ohio, allowed mothers to sue claiming stillbirths were caused by malpractice.

New York courts long prohibited such suits unless the mother was physically injured. But in its 2004 ruling, the state's Court of Appeals overruled precedent and said it was unfair to leave a devastated woman who lost a baby with no legal recourse, even if she suffered no physical harm.

The case at Wyckoff Heights Medical Center that ended with the \$1 million award, from 1997, was among the first to go to trial. The Brooklyn mother, Lucia Ferreira, now 39, said in an interview that at the hospital she had felt she did not matter as her pregnancy spiraled toward its horrifying end.

"The case helped me have a voice," she said. "If it wasn't for that, things would have been pushed under the rug."

Her lawyer, Robert F. Danzi, said the trial centered on "an epidemic of error" that included failing to properly examine Ms. Ferreira at all on her final visit before the stillbirth.

Wyckoff's general counsel, David N. Hoffman, said in an interview that Ms. Ferreira "perhaps should have been handled differently," adding that it was unclear whether the hospital or a doctor was at fault.

The \$1 million verdict was in 2005. The hospital's appeals lasted until February, and the award stood.

Appeals in injury cases can be ghoulish. Over time, the process sets ranges of values — severed legs are "worth" one sum, paraplegia another — as courts approve some verdicts and slash others as excessive.

Because the lawyers agreed that Ms. Ferreira's case was the first stillbirth suit to reach a New York appeals court since the law was changed, the Appellate Division of State Supreme Court in Brooklyn, the battle was critical. Lawyers for the hospital argued that the \$1 million award for past suffering had been "fueled by compassion and sympathy" and was "markedly excessive."

With no precedents in New York, the hospital lawyers said, appeals judges should compare the \$1 million with awards for other types of emotional injuries and with stillbirth cases in other states.

In a New York case of a 16-year-old who had been chased and bitten by two dogs, the hospital's lawyers pointed out, an appeals court had approved \$200,000 for suffering. In a Texas case where the mother had been "wanting to die" after a stillbirth, the award had been \$200,000; in Louisiana, just \$100,000.

Ms. Ferreira's appeals lawyer, Arnold E. DiJoseph III, offered different computations. The hospital, he argued, had offered irrelevant comparisons with the stillbirth awards in distant places and with dog-bite cases. "Oranges," he argued. "And we are dealing with apples."

Mr. DiJoseph's idea of comparable cases: \$3 million for the suffering of a woman who had been mistakenly shot and \$1 million for a passenger's nine minutes of terror in a plane before it crashed, killing her.



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When the Brooklyn appeals court settled on \$1 million for Ms. Ferreira in February, it found that the amount was “reasonable compensation” for her past anguish.

In June in Bronx Supreme Court, Mr. Korek met with lawyers for Lincoln in Ms. Acevedo’s case. He made his argument that the Brooklyn ruling had set a \$1 million benchmark.

Mr. Korek said later that one goal was to put a high price on medical carelessness that could lead to heartache. “The only way to do that,” he said, “is not to take cheap money so they can write it off as a cost of doing business.”

Officials at the Health and Hospitals Corporation declined to be interviewed. During the negotiations, their lawyers said the Bronx court and the appeals court in Manhattan that reviews Bronx cases would not necessarily agree that the suffering of one mother was worth the same as that of another.

The hospital lawyers suggested they might eventually increase their offer to \$750,000. But they told Mr. Korek they were willing to take the chance that \$1 million was not the price of a stillbirth in the Bronx. “We will see you in court,” one of the hospital’s lawyers said.