

More relatives file suit in cremation case

BY BRIAN BUDDENHAGEN
NEWS-BULLETIN STAFF WRITER

The mother, brother and sister of the late Mary Ann Calles filed a second lawsuit against Presbyterian Hospital and Romero Funeral Home of Belen.

Calles's body was accidentally cremated in September; in that incident, the hospital released the wrong body to Romero's, which subsequently cremated Calles's remains.

Calles's mother and brother — Elizabeth and Thomas Martinez — and sister Mary Jane Silva filed a lawsuit Dec. 15.

This is the second lawsuit over the alleged mishandling of Calles's remains; in November, John and Marlene Calles — the deceased's husband and daughter — filed a complaint for damages.

In that suit, the Calleses charge the hospital and funeral home with negligence, negligence per se, negligent infliction of emotional distress, and breach of contract and warranties.

The new complaint is nearly identical, but also includes allegations of intentional infliction of emotional distress and breach of fiduciary duty.

It also outlines the same course

of events: that Calles died at the hospital Sept. 15; that the family made arrangements with Riverside Funeral Home of Belen; that specific instructions were given not to embalm or cremate the body; that, when Riverside workers went to retrieve the body, a hospital supervisor determined that the Calles's body had been released to Romero's, where it was cremated; and that the Office of the Medical Investigator of New Mexico was unable to identify the cremated remains.

The new complaint alleges that the defendants' conduct "was reckless, outrageous, and of the type which shocks the conscience and caused severe emotional distress to the family member of Mary Ann Calles," and that, "as a proximate result of the reckless conduct of defendants," the plaintiffs "suffered severe emotional distress."

It also explains that "a fiduciary is a person having a duty, created by his undertaking to act primarily for another's benefit in matters connected with such undertaking," and alleges that both Presbyterian and Romero's "breached this duty by not acting in the best interests of the family."

The family requests compensatory and punitive damages, as do

the Calleses.

A Presbyterian representative admitted to the hospital's mistake shortly after the incident; Dicky Romero, owner of Romero Funeral Home, indicated that his workers followed proper procedures in handling the body.

Romero's attorney, H. Brook Laskey, responded to the first lawsuit in an answer filed Dec. 14. In that response, Laskey requests a dismissal and asserts that damages "should be barred or reduced to the extent proximately caused by the negligence of Plaintiffs or third parties for whom this Defendant is not responsible."

The answer also states that the Calles's complaint "fails to state a claim upon which relief can be granted," that the claims for damages are unconstitutional under the United States and New Mexico constitutions, and that the alleged damages "resulted from independent intervening causes" for which Romero's should not be held responsible.