

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D13243
O/cb

_____AD3d_____

Argued - November 17, 2006

ROBERT W. SCHMIDT, J.P.
FRED T. SANTUCCI
GABRIEL M. KRAUSMAN
REINALDO E. RIVERA, JJ.

2006-00794

DECISION & ORDER

Memuna Beckley-Kamara, etc., respondent, v
State of New York, appellant.

(Claim No. 110488)

Eliot Spitzer, Attorney-General, New York, N.Y. (Peter H. Schiff and Michael S. Buskus of counsel), for appellant.

Zucker & Ballen, P.C., Brooklyn, N.Y. (Gary A. Zucker of counsel), for respondent.

In a claim to recover damages for medical malpractice, the defendant appeals, as limited by its brief, from so much of an order of the Court of Claims (Marin, J.), dated November 18, 2005, as denied that branch of its motion which was to dismiss the claim for failure to state the “total sum claimed” pursuant to Court of Claims Act § 11(b), and directed the claimant to serve and file an amended claim stating, inter alia, the total sum claimed.

ORDERED that the order is affirmed insofar as appealed from, with costs.

Under the facts of this case, as properly found by the Court of Claims, the claimant’s failure to state the “total sum claimed” does not require dismissal of the subject claim (*see* Court of Claims Act § 11[b]; *Kolnacki v State of New York*, 28 AD3d 1176; *Morris v State of New York*, 27 AD3d 282, 283; *cf. Lepkowski v State of New York*, 1 NY3d 201, 208-209; *Mujica v State of New York*, 24 AD3d 898, 899).

December 26, 2006

Page 1.

BECKLEY-KAMARA v STATE OF NEW YORK

In light of this determination, we need not address the defendant's remaining contention.

SCHMIDT, J.P., SANTUCCI, KRAUSMAN and RIVERA, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer
Clerk of the Court