

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

D15875  
W/gts

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - June 11, 2007

HOWARD MILLER, J.P.  
GLORIA GOLDSTEIN  
STEVEN W. FISHER  
JOSEPH COVELLO, JJ.

2006-04511

DECISION & ORDER

Nella Lane Daniels, etc., respondent, v  
Richard E. Armstrong, et al., appellants,  
et al., defendant.

(Index No. 3097/04)

---

Feldman, Kleidman & Coffey, LLP, Fishkill, N.Y. (Andrew S. Regenbaum and  
Jennifer E. Coroian of counsel), for appellants.

Goldsmith, Richman & Harz, LLP, New York, N.Y. (Christina Ctorides of  
counsel), for respondent.

In an action to recover damages for medical malpractice and wrongful death, etc., the defendants Richard E. Armstrong, Richard E. Armstrong, M.D., P.C., and St. Luke's Cornwall Hospital appeal, as limited by their brief, from so much of an order of the Supreme Court, Orange County (Slobod, J.), dated March 30, 2006, as denied their motion pursuant to CPLR 3101(d)(2) to compel the plaintiff to disclose a certain report completed by a medical expert with whom she consulted.

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

The Supreme Court properly denied the appellants' motion to compel production of a report completed by a medical expert with whom the plaintiff consulted. The plaintiff established that the report was prepared solely in anticipation of litigation (*see* CPLR 3101[d][2]; *Kephart v Burke*, 306 AD2d 924, 925; *Santariga v McCann*, 161 AD2d 320, 322). Further, the appellants failed to establish that they had a substantial need for the report in the preparation of their case and

July 31, 2007

Page 1.

DANIELS v ARMSTRONG

could not, without undue hardship, obtain the substantial equivalent of the report by other means (*see* CPLR 3101[d][2]; *Heimanson v Farkas*, 292 AD2d 421, 422; *Martinez v KSM Holding*, 294 AD2d 111, 111-112; *DeGourney v Mulzac*, 287 AD2d 680).

The appellants' remaining contentions either are without merit or do not require reversal.

MILLER, J.P., GOLDSTEIN, FISHER and COVELLO, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court