

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

D16347
G/kmg

_____AD3d_____

Argued - May 31, 2007

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
STEVEN W. FISHER
MARK C. DILLON, JJ.

2006-10091

DECISION & ORDER

Dawn Moore, etc., respondent, v State of New York,
appellant.

(Claim No. 109392)

Andrew M. Cuomo, Attorney General, New York, N.Y. (Peter H. Schiff and Michael S. Buskus of counsel), for appellant.

Salenger, Sack, Schwartz & Kimmel, LLP (Pollack, Pollack, Isaac & DeCicco, New York, N.Y. [Brian J. Isaac and Michael H. Zhu] of counsel), for respondent.

In a claim, inter alia, to recover damages for medical malpractice, the defendant appeals from an order of the Court of Claims (Waldon, J.), dated August 17, 2006, which granted that branch of the claimant's motion which was for leave to amend the claim to add the total sum claimed and denied its cross motion to dismiss the claim as jurisdictionally defective.

ORDERED that the order is affirmed, without costs or disbursements.

In light of the recent amendment of Court of Claims Act § 11(b) (L 2007, ch 606, § 1), retroactively abrogating *Kolnacki v State of New York* (8 NY3d 277), the instant claim was not jurisdictionally defective notwithstanding the absence of an ad damnum clause.

The parties' remaining contentions need not be addressed in light of our determination.

RIVERA, J.P., FLORIO, FISHER and DILLON, JJ., concur.

ENTER:


Clerk of the Court

September 25, 2007

MOORE v STATE OF NEW YORK