

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

**57**

**CA 09-01040**

PRESENT: SMITH, J.P., PERADOTTO, CARNI, PINE, AND GORSKI, JJ.

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KIMBERLY M. LARSEN, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

NITIN S. BANWAR, M.D.,  
AND INTERLAKES ORTHOPAEDIC SURGERY, P.C.,  
DEFENDANTS-RESPONDENTS.

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FIX SPINDELMAN BROVITZ & GOLDMAN, P.C., FAIRPORT (STEVEN A. LUCIA  
OF COUNSEL), FOR PLAINTIFF-APPELLANT.

BROWN & TARANTINO, LLC, BUFFALO (ANN M. CAMPBELL OF COUNSEL), FOR  
DEFENDANTS-RESPONDENTS.

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Appeal from an order of the Supreme Court, Monroe County  
(Thomas A. Stander, J.), entered June 19, 2008 in a medical  
malpractice action. The order granted the motion of defendants for  
summary judgment dismissing the complaint.

It is hereby ORDERED that the order so appealed from is  
unanimously reversed on the law without costs, the motion is  
denied, and the complaint is reinstated.

Memorandum: Plaintiff commenced this action seeking damages  
for injuries she allegedly sustained as the result of defendants'  
medical malpractice. We agree with plaintiff that Supreme Court  
erred in granting defendants' motion seeking summary judgment  
dismissing the complaint. Where, as here, an expert's affidavit  
fails to address each of the specific factual claims of negligence  
raised in plaintiff's bill of particulars, that affidavit is  
insufficient to support a motion for summary judgment as a matter  
of law (see *Grant v Hudson Val. Hosp. Ctr.*, 55 AD3d 874; *Larsen v*  
*Loychusuk*, 55 AD3d 560). Thus, defendants' motion should have been  
denied, regardless of the sufficiency of plaintiff's opposing  
papers (see *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853;  
*Grant*, 55 AD3d at 875).

Entered: February 11, 2010

Patricia L. Morgan  
Clerk of the Court