

1 on the record.

2 MR. SOBEL: That's fine.

3 THE COURT: Those -- your motions were marked as  
4 exhibits.

5 All right. Plaintiff Anil and Renu Sehgal move to  
6 remove defendants from asking any inflammatory, irrelevant  
7 or prejudicial questions of non-party witness Kathy Fulton.

8 Defendant in turn quashed a subpoena on Global Liberty  
9 Insurance Company's vice president. Fulton works as a  
10 paralegal of the same firm as plaintiff Anil Sehgal which  
11 firm is representing both plaintiffs in this case.

12 Plaintiffs seek to bar defendants from questioning  
13 her as to any referrals to medical professionals she may  
14 have made to Mr. Sehgal after this accident. Testimony may  
15 be excluded where it is established that its probative value  
16 is outweighed by the danger that, quote, that the main issue  
17 would be obstructed by promulgation of trial and by the  
18 solid possibility of undue prejudice to the other side, end  
19 quote. That's from People v. Davis 43 NY2d 17, 27 1977.

20 Here there is no compelling reason to ask Fulton  
21 about any medical referral other than to intimidate, strike  
22 that -- intimate to the jury that the plaintiffs are, quote,  
23 working the system, unquote -- end quote, and that the  
24 expert is biased and, therefore, unbelievable.

25 Additionally, allowing defendants to delve into



1 how plaintiffs were referred to their doctors could open the  
2 door for plaintiffs to inquire as to how the defendants  
3 selected their own selected physicians. Defendants will now  
4 be precluded -- strike that. Defendants will now be  
5 prejudiced by the lack of Fulton's testimony in this regard  
6 as they will have the opportunity to examine and  
7 cross-examine all other witnesses on plaintiff's evidence  
8 which is the actual injuries which is the actual issue in  
9 this case.

10 Similarly, requesting defendant's Vice President  
11 of Claims to testify would result in the jury being  
12 presented with inappropriate evidence questions as to the  
13 existence of insurance during the course of a trial are of  
14 little probative value and substantially prejudice the  
15 affected party. That's from Lynch v. Ford, 60 AD2d 880  
16 1978.

17 Further, the line of testimony would likely result  
18 in a mistrial. See, for example, A. Johnson versus  
19 Lazarowitz -- strike that -- Lazarowitz, 4 AD3d 334 2004.  
20 Accordingly, both motions in limine are granted, okay.

21 MR. MURPHY: Judge, may I just clarify?

22 THE COURT: Oh, I just want to note in light of  
23 the fact that you asked -- you move by order to show cause  
24 before Justice Lane, tried contacting his chambers. He --  
25 they are unavailable for the rest of the week. They are not

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1 available. Nobody. We called the motions to see if there  
2 is a decision and there is none. While I can't ask for that  
3 motion to decide, it will be moot by the time -- if it  
4 hasn't been decided by the time Justice Lane considers it.

5 MR. MURPHY: If I may, Judge, just to clarify the  
6 decision, my original motion was to prevent that line of  
7 questioning throughout the trial. Is that your decision or  
8 is it just in regards to --

9 THE COURT: Well, I guess my question is -- I  
10 thought about that because I think why would -- either of  
11 you calling this witness?

12 MR. MURPHY: No. No, of course, not for me. But  
13 my question was: My motion was to preclude the line of  
14 questioning throughout the trial, that it's prejudicial for  
15 him to bring up working the system throughout the trial. I  
16 understand that decision applies to calling Kathy Fulton,  
17 but does that apply to rest of the witnesses? Is he allowed  
18 to inquire throughout the trial?

19 THE COURT: Is that your understanding? Just that  
20 one question. I do see it. I understand it was Miss Kathy  
21 Fulton, but I see it as a global issue, I believe, in this  
22 case, any questions in that regard, but I will hear you on  
23 it, if you wish.

24 MR. SOBEL: Your Honor, it is my understanding  
25 this was solely about Kathy Fulton, nothing else. A typical

1 question any attorney asks in the course of a deposition is  
2 when you went to see Dr. Smith how did you come to learn of  
3 Dr. Smith and then they'll say oh, my cousin went there, my  
4 mother. Somebody else went there.

5 THE COURT: So my coworkers told me about it,  
6 that's it.

7 MR. SOBEL: That will be fine. That's all I  
8 asked.

9 THE COURT: Why my coworkers told me about it?

10 MR. MURPHY: I think the issue he wanted to call,  
11 just to ask that question to create animosity of  
12 impropriety. Those cases I stated are 2012/2011 Second  
13 Department cases. These are -- expressed or implied are  
14 improper and can lead to a mistrial. I do believe that's  
15 going to be --

16 THE COURT: I have to review your papers again. I  
17 wasn't aware that we were talking about somebody other than  
18 Miss Fulton.

19 MR. MURPHY: I made the issue, like you said, a  
20 global issue, Judge, where --

21 THE COURT: See, I think maybe you pose that in  
22 the order to show cause and I think what you should have  
23 done, when I asked you for motions in limine while that  
24 motion is pending and you could have checked to see if it  
25 was decided, as I just did, to make sure I wouldn't -- you



1 know. I don't know what is in the order to show cause. You  
2 had opposition to it but didn't have the motion. You could  
3 have renewed it, submitted it here as a trial motion, which  
4 is more appropriate in the trial posture.

5 MR. MURPHY: Absolutely.

6 THE COURT: So I wasn't aware of that. Maybe that  
7 was true with that motion --

8 MR. MURPHY: Motion to quash. We were supposed to  
9 make it timely. As soon as we got the subpoena, we made the  
10 motion to quash right away. At that time Judge Lane was the  
11 IAS judge but my motion to you, motion in limine, was bigger  
12 than that but my motion is basically that --

13 THE COURT: I think to ask the question but to go  
14 into it any further other than -- I don't know why you would  
15 ask that question.

16 MR. MURPHY: They want to suggest impropriety.

17 THE COURT: Not to ask anything else from what I  
18 can see. Do you have a copy of that --

19 COURT OFFICER: Judge, I got to.

20 MR. MURPHY: I'm sorry. On top of my affirmation  
21 is attached to my papers, if that's what you are asking for.

22 THE COURT: I don't know what I'm asking for. You  
23 mention this other order to show cause. I'm wondering if  
24 there is something there.

25 MR. MURPHY: Perhaps we can re-address it briefly  
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1 tomorrow?

2 THE COURT: We'll see. Whatever you can -- and I  
3 will let you argue it. As far as I can see, you know, it  
4 includes anything dealing with who, what and I think it's  
5 irrelevant.

6 MR. MURPHY: Thank you.

7 MR. SOBEL: Thank you.

8 THE COURT: Have a nice day.

9 MR. MURPHY: Thank you, Judge.

10 MR. SOBEL: Thank you.

11 (Whereupon, the matter was adjourned to June 18,  
12 2014.)

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