

SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. ROY S. MAHON

Justice

**TERI LAURI, an infant by her Mother and Natural
Guardian, DONNA LAURI and DONNA LAURI,
Individually,**

Plaintiff(s),

- against -

**FREEPORT UNION FREE SCHOOL
DISTRICT and LAURIE KOLODNY,**

Defendant(s).

TRIAL/IAS PART 6

INDEX NO. 3640/03

**MOTION SEQUENCE
NO. 3**

**MOTION SUBMISSION
DATE: November 30, 2011**

The following papers read on this motion:

Order to Show Cause	X
Affirmation in Opposition	X
Reply Affirmation	X
Sur Reply	X

Upon the foregoing papers, the motion by plaintiffs for an Order directing defendants to disclose to plaintiffs any and all statements obtained from defendant Varsity Coach, Laurie Kolodny and/or Junior Varsity cheerleading coach, Stacy Guasto-Weaver, regarding their knowledge of the facts and circumstances surrounding the incident complained of in the complaint and copies of the Curriculum Vitae of either or both cheerleading coaches, or in the alternative, an Order compelling defendants to disclosure of any and all such statement, subject to any redactions, based upon the Court's determination as to their discoverability following an in camera inspection of such materials, and to disclose copies of the Curriculum Vitae of either or both cheerleading coaches, is determined as hereinafter provided:

This personal injury action arises out of a fall by the infant plaintiff during an cheerleading practice conducted by the defendant Laurie Kolodny a cheerleading coach for the defendant Freeport Union Free School District.

The plaintiffs seek certain alleged statements allegedly given by the defendant Laurie Kolodny and/or representatives of the defendant School District to the School District's insurance carrier. The defendant Freeport School District opposes such discovery on the grounds that such discovery constitutes material prepared for litigation.

In examining such an issue, the Court in **Pepsico, Inc. v Winterthur International America Insurance Company**, 13 AD3d 601, 786 NYS2d 356, (Second Dept., 2004) set forth:

"The burden of showing that specific material is conditionally immune from discovery under CPLR 3101(d) because it was prepared solely in anticipation of litigation, is upon the party asserting the immunity" (*Landmark Inc. Co. v Beau Rivage Rest*, 121 AD2d 98, 99, 509 NYS2d 819)."

Pepsico, Inc. v Winterthur International America Insurance Company, supra at 356

The defendants through the affidavit of Mark Lukasicwic, a litigation examiner for the New York Schools Insurance Reciprocal, the insurance carrier for the defendant School District have established that any statements obtained were in fact subsequent to a notice of claim being filed by the plaintiffs and in anticipation of litigation. As such, the defendants have made the requisite showing as set forth heretofore in *Pepsico v Winterthur International America Insurance Company, supra* and to the extent that the plaintiffs seeks such discovery, said application is **denied**.

To the extent that the plaintiffs seek the curriculum vitae of Laurie Ann Matheson, the assistant cheerleading coach, the defendants' have provided same in their opposition and that portion of the plaintiffs' application, is **denied as moot**.

To the extent that the plaintiffs seek the curriculum vitae of the defendant Laurie Kolodny, the defendants sur-reply sets forth that the defendants have provided same to the plaintiffs as set forth in the defendants' Exhibit E in the defendants' Opposition. The Court observes that the Exhibit E of the defendants' opposition submission only contains the curriculum vitae of Laurie Ann Matheson and not Ms. Kolodny. In light of the fact that the defendants' do not set forth any opposition to providing Ms. Kolodny's curriculum vitae and in their sur-reply set forth that the defendants have supplied the requested discovery, the defendants shall supply the curriculum vitae within twenty days of the date of this Order.

SO ORDERED.

DATED:

2/8/2011

..... *Rays. Mahon*
J.S.C.

ENTERED

FEB 15 2011

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**