

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

D33659  
H/ct

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Submitted - January 4, 2012

DANIEL D. ANGIOLILLO, J.P.  
ANITA R. FLORIO  
JOHN M. LEVENTHAL  
PLUMMER E. LOTT, JJ.

2011-03764

DECISION & ORDER

Doreen D. Gallo, respondent, v SCG Select Carrier  
Group, L.P., et al., appellants, et al., defendants.

(Index No. 3149/08)

LeClair Ryan, New York, N.Y. (Anthony S. McCaskey and Sarah K. Hook of  
counsel), for appellants.

Manuel A. Romero, P.C., Brooklyn, N.Y. (Jonathan M. Rivera of counsel), for  
respondent.

In an action to recover damages for personal injuries, the defendants SCG Select  
Carrier Group, L.P., Antonio F. Fernando, and Eagle Global Logistics (EGL, Inc.), appeal from an  
order of the Supreme Court, Kings County (Rothenberg, J.), dated March 3, 2011, which denied their  
motion to strike the note of issue and to compel the plaintiff to provide certain disclosure.

ORDERED that the order is reversed, on the law, with costs, and the motion of the  
defendants SCG Select Carrier Group L.P., Antonio F. Fernando, and Eagle Global Logistics (EGL,  
Inc.), to strike the note of issue and to compel the plaintiff to provide certain disclosure is granted.

The appellants timely moved, inter alia, to strike the note of issue within 20 days of  
its service (*see* 22 NYCRR 202.21[e]), and clearly demonstrated that the plaintiff's certificate of  
readiness contained misstatements concerning the status of discovery. Since the appellants made  
a clear showing that discovery was not complete and that the case was not ready for trial, the  
Supreme Court should have granted their motion to strike the note of issue and to compel the  
plaintiff to appear for a neurological examination (*see* 22 NYCRR 202.21[e]; *Brown v Astoria Fed.*

January 17, 2012

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GALLO v SCG SELECT CARRIER GROUP, L.P.

*Sav.*, 51 AD3d 961, 962; *Gregory v Ford Motor Credit Co.*, 298 AD2d 496, 497; *Drapaniotis v 36-08 33rd St. Corp.*, 288 AD2d 254; *Spilky v TRW, Inc.*, 225 AD2d 539, 540).

ANGIOLILLO, J.P., FLORIO, LEVENTHAL and LOTT, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court