

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

D29696  
C/hu

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - December 16, 2010

A. GAIL PRUDENTI, P.J.  
DANIEL D. ANGIOLILLO  
ANITA R. FLORIO  
SANDRA L. SGROI, JJ.

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2009-09335

DECISION & ORDER

Delta Diagnostic Radiology, P.C., etc., respondent,  
v Country Wide Insurance Company, appellant.

(Index No. 16622/06)

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Jaffe & Koumourdass, LLP, New York, N.Y. (Jean H. Kang of counsel), for appellant.

In an action to recover assigned first-party no-fault benefits under an insurance contract, the defendant appeals, by permission, from an order of the Appellate Term, Second, Eleventh, and Thirteenth Judicial Districts, dated May 8, 2009, which affirmed an order of the Civil Court of the City of New York, Queens County (Lebedeff, J.), dated August 1, 2007, denying the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order dated May 8, 2009, is reversed, on the facts and in the exercise of discretion, with costs, the order of the Civil Court of the City of New York, Queens County, dated August 1, 2007, is reversed, and the defendant's motion for summary judgment dismissing the complaint is granted, without prejudice to the commencement by the plaintiff of a new action.

Contrary to the conclusion of the Appellate Term, under the circumstance of this case, the defendant insurer's submission of follow-up verification requests to the plaintiff medical provider on the 30th day after the defendant sent its initial verification requests was not premature or "without effect" (*see St. Vincent Medical Care, P.C. v Country-Wide Insurance Company*, \_\_\_\_\_AD3d\_\_\_\_\_, [decided herewith]).

Accordingly, the defendant's motion for summary judgment dismissing the complaint should have been granted.

PRUDENTI, P.J., ANGIOLILLO, FLORIO and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan  
Clerk of the Court