

Country-Wide Ins. Co. v Preferred Trucking Servs. Corp.
2012 NY Slip Op 07036 [99 AD3d 582]
October 18, 2012
Appellate Division, First Department
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
As corrected through Wednesday, November 28, 2012

Country-Wide Insurance Company, Appellant, v Preferred Trucking Services Corp. et al, Defendants, and Filippo Gallina et al., Respondents.

—[*1] Thomas Torto, New York, for appellant.

Alexander J. Wulwick, New York, for respondents.

Order, Supreme Court, New York County (Marcy S. Friedman, J.), entered on or about August 10, 2011, which, insofar as appealed from, granted the motion of defendants Filippo and Sherri Gallina for summary judgment to the extent of declaring that plaintiff's disclaimer of coverage for its insured defendant Preferred Trucking Services Corp. (Preferred) was untimely, and that plaintiff was obligated to indemnify Preferred up to the policy limit of \$500,000, and denied plaintiff's cross motion for summary judgment declaring that it was not obligated to defend and indemnify Preferred in the underlying personal injury action, unanimously affirmed, without costs.

Plaintiff's disclaimer of coverage was untimely, since it came approximately four months after it learned of the ground for the disclaimer (*see First Fin. Ins. Co. v Jetco Contr. Corp.*, 1 NY3d 64, 68-69 [2003]; *Consolidated Edison Co. of N.Y. v Hartford Ins. Co.*, 203 AD2d 83, 84-85 [1st Dept 1994]). Plaintiff's argument that the disclaimer was timely because it had no basis for disclaiming coverage until it became apparent that the operator of the subject truck would not cooperate with the defense of the underlying personal injury action, is unavailing. Plaintiff's diligent conduct prior to the disclaimer, in attempting to secure the cooperation of both Preferred's owner and the operator of the truck, shows that plaintiff believed both had knowledge [*2] or information pertaining to the accident and the underlying litigation, and belies plaintiff's representation that its sole concern was with the testimony of the operator of the truck. Concur—Friedman, J.P., Moskowitz, Freedman, Richter and Abdus-Salaam, JJ. **[Prior Case History: 2011 NY Slip Op 32214(U).]**