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September 16, 2009 - THE "I NEVER RECEIVED IT IN THE MAIL" DEFENSE

I have a hearing on this issue this morning. Here is the law as stated in my most recent research in Wilfred Hernandez, Plaintiff, v. Merchants Mutual Insurance Company, et al. , 25912/02, Supreme Court of the State of New York, Bronx County (December 6, 2006):

"It is settled law that a properly addressed and stamped envelope placed in a U.S. mailbox is presumed to have been received by the addressee. (See generally Nassau Ins. Co v. Murray, [1978]; Morrison Cohen Singer & Weinstein, LLP v. Brophy,[1st Dept. 2005]). To be afforded such a presumption, however, a party must present either "proof of actual mailing or proof of a standard office practice or procedure designed to ensure that items are properly addressed and mailed." (Residential Holding Corp. v. Scottsdale Ins. Co., [2nd Dept. 2001]; see also Murray, supra, 46 NY2d at 829). The Appellate Division recently held that testimony which included a description of a mailing procedure such as a certificate of mailing, and a mail ledger signed, dated, and stamped by a U.S. postal worker, sufficiently described office procedures designed to ensure that mailings are done properly creating a presumption of mailing. (Residential Holding Corp., supra,). On the other hand, where a defendant insurance company submitted an affidavit by its employee who merely stated that the insurer "wrote directly to the insured," unsupported by either a proof of mailing or proof of standard office practice, the Court found that plaintiff's denial of receipt "raise[d] questions of fact about the effectiveness of defendant's purported notice of cancellation that must await determination at trial." (Tracy v. William Penn Life Ins. Co., 3rd Dept. 1996]).

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