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U.S. BANKRUPTCY COURT

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN

In re:

Case Number:

L & J TRUCKING, INC.

WF7-83-00713

Debtor.

OPINION AND ORDER ALLOWING  
PROOF OF CLAIM AS TIMELY

Debtor L & J Trucking, Inc., filed a bankruptcy petition under Chapter 7 of the Bankruptcy Code, 11 U.S.C. § 101 et seq., on May 4, 1983. The Wisconsin Department of Industry, Labor and Human Relations (DILHR) was listed as a creditor based on the initial determination that unemployment compensation taxes were owed to DILHR. On June 1, 1983, it received a notice from this Court stating that this case was a no-asset case and that no claims had to be filed unless creditors were subsequently notified. On July 27, 1984, a notice was issued to creditors informing them that there were assets in the estate and that claims had to be filed by October 29, 1984.

DILHR independently became aware that assets were available in early January, 1985. It filed a claim shortly thereafter on January 25, 1985. The Trustee in this case objected to the DILHR claim on the basis that it was untimely. On June 6, 1985, DILHR moved for an extension of time for filing its claim to the date that it was actually filed. The basis of this motion is DILHR's

claim that it failed to receive the notice-of-asset letter from the Court. A hearing on this matter was held June 19, 1985.

Bankruptcy Rule 9006(e) provides that service of notice by mail is complete upon mailing. There is a long-established presumption that properly mailed articles are received by the addressee. See Hagner v. United States, 285 U.S. 427 (1932); In re Smith, 42 B.R. 927 (Bankr.D.Mass. 1984). However, this presumption only arises upon proof of proper mailing. In re Smith, 42 B.R. 927 at 931. This proof requires a demonstration that: 1) the letter was addressed properly; 2) sufficient postage was attached to the letter; and 3) the letter was properly deposited in the mail. Id.

Under the circumstances of the present case this presumption never arises. By letter dated April 9, 1985, a deputy clerk in the Bankruptcy Court's office notified the Trustee that an incorrect post office box number for DILHR was included on the Court's mailing matrix. Because of this address mistake the presumption of receipt cannot arise.

In an affidavit accompanying DILHR's motion, DILHR Attorney Peter W. Zeeh stated that he and another attorney from the Department were unable to locate the notice-of-asset letter after a thorough search of DILHR files and records. He also noted that in over 99 percent of the cases, mail that is received is placed in the appropriate file. Based on these statements and the incorrect DILHR address on the mailing matrix, the Court is con-

vinced that DILHR did not receive notice that assets were available for distribution.


Based on the above finding the Court concludes that service never occurred in this case. Bankruptcy Rule 3002(5) provides that in cases where assets are discovered, the Clerk shall notify the creditors of that fact and that they may file proofs of claim within 90 days after the mailing of the notice. Since notice was not provided to DILHR, its 90 day period did not begin to run in July, 1984, nor did it expire on October 29, 1984. The Court concludes that the January 25, 1985, DILHR notice of claim was timely.<sup>1</sup>

ORDER

The Trustee is directed to include the DILHR wage claim in the distribution previously ordered by the Court on June 19, 1985.

Dated: July 1, 1985.

BY THE COURT:

  
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William H. Frawley  
U. S. Bankruptcy Judge

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<sup>1</sup> It should be noted that this decision does not address the issue of the proper procedure for enlarging deadlines for filing proofs of claim.

cc: Attorney Richard E. Bender  
Attorney Edward Zappen  
Attorney Peter W. Zeeh