

A woman's car was set on fire by vandals. When she submitted a claim of loss for the car to her insurance company, the insurance company refused to pay, asserting that the woman's policy had lapsed due to the nonpayment of her premium. The woman sued the insurance company for breach of contract.

At trial, the woman testified that she had, in a timely manner, placed a stamped, properly addressed envelope containing the premium payment in the outgoing mail bin at her office. The woman's secretary then testified that every afternoon at closing time he takes all outgoing mail in the bin to the post office. The insurance company later called its mail clerk to testify that he opens all incoming mail and that he did not receive the woman's premium payment.

The woman and the insurance company have both moved for a directed verdict.

For which party, if either, should the court direct a verdict?

- A. For the insurance company, because neither the woman nor her secretary has any personal knowledge that the envelope was delivered to the post office.
- B. For the insurance company, because the mail clerk's direct testimony negates the woman's circumstantial evidence.
- C. For the woman, because there is a presumption that an envelope properly addressed and stamped was received by the addressee.
- D. For neither the woman nor the insurance company, because under these circumstances the jury is responsible for determining whether the insurance company received the payment.

Explanation:

Presumptions

(conclusions drawn when party proves underlying facts)

Conclusive Must be accepted as true & cannot be overcome by other evidence

Eg, child under certain age cannot commit intentional tort

Rebuttable May be overcome if opposing party produces sufficient contrary evidence

Eg, witness presumed competent to testify, person presumed sane

A **presumption** is a conclusion that must be drawn once a party proves an underlying fact or set of facts. Most presumptions are **rebuttable**, meaning that they can be overcome if the opposing party produces **sufficient evidence** to **contradict the presumed fact**. Once this occurs, the **presumption vanishes** and the fact finder (eg, jury) must weigh the evidence to decide the issue.*

Here, the woman produced evidence that the envelope containing her premium payment was properly addressed, stamped, and mailed. This created a presumption that the insurance company received it. But it was rebutted by the insurance company's mail clerk, who testified that he opens all incoming mail and did not receive the woman's payment. And since the presumption disappeared, the jury is responsible for determining whether the payment was received. As a result, the court should not direct a verdict for *either* party (**Choices B & C**).

*This **bursting-bubble** approach does not apply to conclusive presumptions or in federal diversity cases, where state law governs the effect of a presumption.

(Choice A) Lay witness (ie, nonexpert) testimony must be based on the witness's **personal knowledge**. Here, the woman's testimony (envelope placed in outgoing mail) and her secretary's testimony (outgoing mail taken to post office) were based on their personal knowledge. And together, that evidence is sufficient to show that the envelope reached the post office and to trigger the rebuttable presumption that the insurance company received it.

Educational objective:

Rebuttable presumptions can be overcome by contrary evidence produced by the opposing party. Once this occurs, the presumption disappears and the fact finder must weigh the evidence to decide the issue.

References

Fed. R. Evid. 301 (presumptions in civil cases).

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