

Bulletin 201

Counting statutory notice

August 27, 1993

Several provisions of the Insurance Code and rules promulgated thereunder require insurers to provide insureds with a statutorily prescribed notice period prior to the insured taking some action, typically the cancellation or nonrenewal of a policy. Insurers are reminded that a "day" for counting statutory notice purposes must be a full 24 hour period. For example, a notice provision within the Automobile Cancellation Control Act, 24-A, M.R.S.A. Section 2915 states in relevant part:

No notice of cancellation of a policy shall be effective unless received by the named insured at least . . . 10 days prior to the effective date of cancellation. . . . A postal service certificate of mailing to the named insured at the insured's last known address shall be conclusive proof of receipt on the 5th calendar day after mailing.

In order to give the insured a full ten 24-hour days of notice, the statutorily deemed date of the insured's receipt of the notice must be excluded in counting the statutorily required 10 days notice. Accordingly, if a certificate of mailing indicated a mail date of December 1st, the 5th calendar day after mailing would be December 6th. December 6th would be the date the insured would be deemed to have received the notice. Ten 24-hour days of notice would require that the cancellation be effective no earlier than December 17th. Insurers in the practice of counting the statutorily deemed receipt date as one day of notice, in effect give their insureds only 9 days and several hours worth of notice.

The Maine Supreme Court recently affirmed this position in *Valley Forge Insurance Co. v. Concord Group Insurance Co.* (Dec. No. 6482, Docket No. AND-919214, 4-6-93), stating, "We find the statutorily required 10 days. . . is to be calculated by excluding the day of receipt. . . and including the whole of the tenth day."

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