

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

FIRST AMERICAN TITLE INSURANCE	:	
COMPANY,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 10-99-LPS-MPT
	:	
JAMES A. HEGEDUS, ET AL.,	:	
	:	
Defendants.	:	

MEMORANDUM ORDER

Pending before the Court is Defendants’ Motion to Vacate (“Motion”) this Court’s August 2, 2012 Order (D.I. 49) adopting the Report and Recommendation (“R&R”), issued by Magistrate Judge Thyng on June 21, 2012 (D.I. 47), denying Defendants’ Motion to Dismiss and Request for Relief (D.I. 17), which was construed by the Court as a motion for judgment on the pleadings with respect to Defendants’ counterclaims (*see* D.I. 41).

Having reviewed the Motion, IT IS HEREBY ORDERED that Defendants’ Motion (D.I. 51) is DENIED.

The Court adopted the R&R for two reasons: 1) its application of the law to the issues raised in the motion for judgment on the pleadings; and 2) Defendants did not timely object to the R&R. Nothing in Defendants’ Motion alters either of these grounds.

Defendants make no effort to argue that the R&R’s legal analysis is incorrect. Instead, they contend primarily that they did not receive a copy of the R&R. The Court understands that, consistent with the Court’s ordinary practice, copies of the R&R were sent to Defendants via U.S. Mail, at their address of record, just as copies of every other document docketed by the

Court have been sent to them. The Court presumes that these materials placed in the mail were received at the address to which they were sent. *See generally In re Cendant Corp. Prides Litig.*, 311 F.3d 298, 304 (3d Cir. 2002). Therefore, Defendants' claim that they did not receive the R&R does not provide a reason that "justifies [the] relief" sought by Defendants. Fed. R. Civ. P. 60(b)(6).

Defendants' additional allegation that Plaintiff engaged in improper *ex parte* contacts with Judge Thyng, and that Defendants have been deprived of due process, lack any evidentiary basis. Defendants' contention appears to rest on their belief that the Court did not mail the R&R to them. As explained above, the Court understands that the R&R was sent to Defendants by U.S. mail to their address of record.

IT IS HEREBY FURTHER ORDERED that the parties are to meet and confer and Plaintiff is to provide the Court, on behalf of all parties, a joint status report, **no later than October 5, 2012**, indicating the parties' availability for a pretrial conference and trial and the length of trial requested.

September 20, 2012


UNITED STATES DISTRICT JUDGE