

No. 19-5109

**IN THE
SUPREME COURT OF THE UNITED STATES**

WAYNE. ENGLISH – PETITIONER

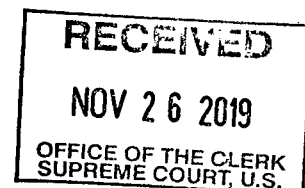
vs.

ROADHOUSE HOLDING INC., et al, - RESPONDENTS

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

CORRECTED PETITION FOR REHEARING

**Wayne English
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Mesquite, Texas 75181
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PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44.1, Wayne English ("English") respectfully petitions for rehearing of the Court's denial of his Writ of Certiorari issued on October 7, 2019. Based on recent developments and intervening grounds not previously presented, English moves this Court to grant this petition for rehearing and consider his case with merits briefing. Pursuant to Supreme Court Rule 44.1, this petition for rehearing is filed within 25 days of this Court's decision in this case. Mr. English is proceeding in forma pauperis under Rule 39.

The Delaware Bankruptcy Court has instituted a policy that discriminates against litigants and parties when they send time sensitive court documents via first class mail. After discovering his notice of appeal was docketed nine days after it was sent by certified first class mail, English contacted the court and the United States Postal Service. English identified that the bankruptcy court intercepts all first class mail and directs it to the court's mail receptacle in the Delaware post office. The court subsequently directs a courier service to retrieve the mail. No notice, disclosure, or public announcement is provided to the public that their first-class mailings will be delayed or intercepted. No mailings through FedEx, UPS, DHL, or any other third-party commercial carrier are intercepted, delayed, or require courier collection. The blocking of the postal service from completing delivery and the forwarding of English's appeal to the court's Delaware mail receptacle was the result of the instructions by the Court and placed the mail in the custody and control of the Court. Numerous parties are discriminated

against, denied due process, and are having court filings denied or dismissed as a direct result of the court's instruction. All other third party commercial carriers mailing are not intercepted, delayed, or redirected.

REASON FOR GRANTING THE PETITION

Subsequent to the filing of his Writ of Certiorari, English has discovered that the bankruptcy court had agreed to a contract with the United States Postal Service ("USPS"), for the interception of first class mail addressed to the court, that the first class mail is under the possession and control of the court, and that the mail will be forwarded under USPS code 06, to the court's forwarding address. See USPS mail and packaging information systems, 9/18/2018, code 06 (the addressee has an active forwarding order on file and the item was sent to new address). The Court in return had to provide a full warranty and surety bond, and the Court agreed to protect and indemnify the United States from any and all claims. The court has no contracts with FedEx, UPS, or any other third party commercial carrier to intercept their mailings, to redirect their packages, or to create any additional delays in the completion of their deliveries.

Under Postal Laws and Regulations Rule 782(2), "Mail addressed to street and number shall be delivered by letter carriers unless the addressee directs otherwise." Postal Laws and Regulation of the United States of America, Rule 782(2).

The postal service also provides that all rules and regulations of mail receptacles are governed by the Postmaster General. "Private mail receptacles should be used to facilitate the delivery of mail. When designated by the owner or user thereof, for the purpose of receiving mail, all rules and regulations affecting the use of such receptacles issued by the Postmaster General shall be effective and apply to such receptacles. Postal Laws and Regulation of the U.S.A., Rule 947.

The Attorney General of the United States has issued an opinion which states that once a letter is placed with the postal service, the envelope and its contents are the property of the recipient. The opinion provides, "it being the practice of this office, based on judicial decisions, that the right of property in mail matter is in the addressee after deposit in the mails for transmission." To the Chief Post-Office Inspector, Opinion No. 1410, May 11, 1906. In the same opinion, the attorney general provided to the Postmaster-General, "After the letter is placed in the post-office it passes out of the control of the sender and into that of the person to whom it is directed, and the Postmaster or Post-Office Department is his agent to forward the letter to him." *Id.*

It is clear that once English deposited the notice with the post office the letter became property of the bankruptcy court. The bankruptcy court has instructed its agent, the Delaware post office, to intercept the mail in transit, take possession of the notice, and transfer delivery to the court's mail receptacle. This action by the court completed delivery on June 8, 2017. With June 8th as the deadline to file his appeal, English' notice was timely, notwithstanding that the court's action to

intercept and delay first class mail is a policy that specifically inhibits and discriminates against individuals using the United States Postal Service. The court does not intercept, delay, or hinder any other third party mail carrier.

Once the mail was under its custody and control, the bankruptcy court had possession of English's appeal and delivery was completed. The postal contract between the court and the postal service provides that the Court would take possession of all incoming first class mail and redirect its delivery to the court's mail receptacle for courier pick-up.

This policy of the Delaware Bankruptcy Court to only intercept first class mail and to prevent the postal service from completing delivery while not restricting, inhibiting, or re-directing any other commercial third-party carrier is discriminating against individuals who employ the U. S. Postal Service. In Rule 29 of the Rules of the Supreme Court, the Court has provided, "A document is timely filed If it is sent to the Clerk through the United States Postal Service by first-class mail" if it "bears a postmark ... showing that the document was mailed on or before the last day for filing." See S. Ct. R. 29. In Rule 9001 of the Federal Rules of Bankruptcy Procedure, it is provided that, "'Mail" means first class, postage prepaid." See Fed. R. Bankr. P. 9001(8).

In *Eischen Cabinet Co. v. Hildebrandt*, the Supreme Court of Minnesota provided discussion on certified mail. "Notice has been found when certified mail is properly directed to an intended recipient, even though not actually received.

Here, the lien statements were properly directed to appellants. Moreover, the lien statements were sent several months after the completion date to the work site address that appellants themselves had given as their address when they obtained a mortgage; it was not unreasonable for respondents to assume that mail sent to this address would reach appellants.” Eischen, 683 NW 2d at 818, footnote 4.

The Eischen court also provided, “In *Har-Ned Lumber Co. v. Amagineers, Inc.*, the court of appeals held that service occurred when the lien statement was mailed to the homeowner with the statutory time even though the homeowner never actually received the notice. 436 N.W. 2d 811 (Minn. App. 1989).” Eischen, *supra.*, footnote 4. The Har-Ned court reasoned, “Generally, service is complete when the paper is properly mailed. The risk of failure is on the person to whom it is addressed. Certified mail is a service that provides a mailing receipt to the sender and a record of delivery at the office of address. The use of certified mail fills the function of insuring receipt by a person of suitable age or discretion at the person’s last known address and is thus reasonably calculated to provide notice to the affected person. While service by certified mail raises a presumption of actual notice, such notice may be found where the certified mailing is properly directed to the intended recipient, even though not actually received by them. Due process requires only that notice be reasonably calculated to reach interested parties.” *Har-Ned Lumber Co. v. Amagineers, Inc.*, 463 N.W. 2d 815 (Minn.App. 1989).

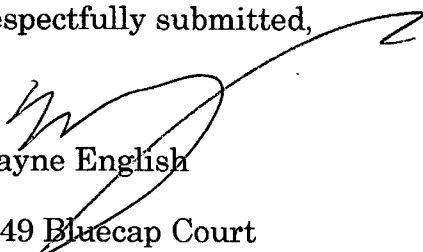
Mr. English and no bankruptcy court litigant should be discriminated against for his use of first-class mail.

The United States Postal Service has been an independent governmental institution for over 244 years and it has followed the principle that every person in the United States- no matter who, no matter where- has the right to equal access to secure, efficient, and affordable mail service. Every day hundreds of millions of United State citizens utilize the U. S. Postal Service to process and deliver their mail in a timely and uninterrupted transaction. The Delaware Bankruptcy Court does not follow such a mission. The bankruptcy court's policy only intercepts and blocks first-class mail, while allowing FedEx, UPS, and all other third-party commercial carriers to deliver their packages unscathed. How many documents would be untimely if the Court added four days to each and every FedEx delivery, UPS shipment, or DHL dispatch? How many individuals, companies, or corporate entities have had their first-class mailings ruled untimely because the bankruptcy court delays delivery by four days? There is no reason the court can provide to implement a policy that selects only first-class mailings through the United States Postal Service to intercept, delay, and inhibit the timely filing of their documents. If the bankruptcy court only delayed FedEx filings, their attorneys would have challenged the policy on discriminatory and due process grounds. If the court had only restricted and delayed all UPS shipments, their attorneys would have challenged the policy on discriminatory and due process grounds. Although Mr. English is an individual, he represents all postal service filers and he would be entitled to all rights and constitutional protections afforded FedEx or UPS if the positions were reversed.

CONCLUSION

For the foregoing reasons, Mr. English respectfully requests that this Court grant the petition for rehearing and order full briefing and arguments on the merits of this case.

Respectfully submitted,



Wayne English

4849 Bluecap Court

Mesquite, Texas 75181

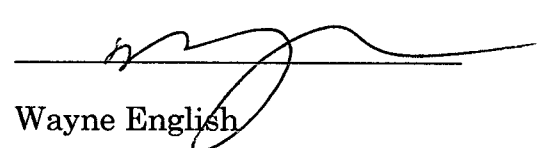
214-460-4975

waynemenglish@aol.com

November 20, 2019

Certificate of counsel (Rule 44)

I hereby certify that this petition for Rehearing from denial of certiorari is presented in good faith and not for delay, and that it is restricted to the grounds specified in Rule 44.2, namely intervening circumstances of substantial or controlling effect and substantial grounds not previously presented.



Wayne English

No. 15-5109

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PROOF OF SERVICE

I Wayne English, do swear or declare that on this date, October 31, 2019, as required by Supreme Court Rule 29 I have served the enclosed Petition for Rehearing on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Young Conaway Stargatt & Taylor, 1000 North King Street, Rodney Square,
Wilmington, DE 19801.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 20, 2019.


Wayne English