

THOUGHT LEADERSHIP

News

COURT FINDS SETTLEMENT OBLIGATIONS TO PAY MORTGAGOR ARE NOT DISCHARGED BY SENDING CO-PAYABLE CHECK TO INSURED

Newsbrief

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Last Thursday, in *Viewpoint Bank v. Allied Property and Cas. Ins. Co.*, 2014 WL 3867810 (Tex.App.-Dallas August 7, 2014), the Dallas Court of Appeals examined the insurer's duty to pay a mortgage company in relation to the settlement of an insurance claim arising out of Hurricane Ike. Allied Property and Casualty Insurance Company issued settlement checks jointly payable to the Insured, Optimum Deerbrook and its mortgagor, Viewpoint Bank. The checks were delivered directly to the insured who deposited the checks without the consent or endorsement of the bank. And the bank never received payment. The bank then sued the insurer for breach of contract. The trial court granted summary judgment in favor of the insurer finding that it was no longer obligated on the checks or under the insurance contract based on its delivery of the jointly payable checks to the insured.

The Dallas Court of Appeals disagreed and reversed the summary judgment rendered in favor of the insurer. The court held that the insurer still owed payment to the bank because neither joint payee, acting alone, was entitled to negotiate the checks, thus payment to one (the insured) does not discharge the obligation to pay the bank (the mortgagor).

The Court of Appeals further held that the bank was entitled to summary judgment as a matter of law because the checks had been improperly paid despite missing the bank's endorsement. The court found that the insurer's remedy is to sue another bank that improperly paid the checks without all the necessary endorsements.