

THOUGHT LEADERSHIP

News

CORPUS CHRISTI COURT REVERSES SUMMARY JUDGMENT FOR INSURER - DELIVERY OF ENDORSEMENT TO RETAIL AGENT MAY NOT BE EFFECTIVE

Newsbrief

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The Corpus Christi appellate court recently examined the effect of a policy endorsement that was not delivered to the insured before the loss and addressed the question of which party an insurance intermediary actually represents. In *Wendlandt v. Certain Underwriters At Lloyd's, London*, No. 13-21-00323-CV, 2023 WL 2711104, (Tex. App.—Corpus Christi—Edinburg Mar. 30, 2023, no pet. h.) (slip op.) a property policy included a Named Storm exclusion endorsement, but the endorsement was mistakenly not added to the policy at the time of initial delivery to the insured. It was added to the policy, and the change endorsement was delivered to the broker, who in turn delivered it to the retail insurance agent who sold the policy to the insured. It was undisputed that the retail agent never provided it to the insured or informed the insured of it.

The property was damaged in Hurricane Harvey, and the insurer denied the claim, relying on the Named Storm exclusion, resulting in this suit. The crucial point of law at issue both in the trial court and on appeal was that an endorsement added to the policy after its initial issuance only becomes effective upon *delivery* to the insured. Thus, the key question here was whether the endorsement had been properly delivered.

The insurer argued that by delivering the change endorsement to the retail agent, who was the legal representative of the insured, it had achieved delivery of the endorsement to the insured so that it became enforceable. The trial court agreed and granted summary judgment for the insurer, but the court of appeals, applying the summary judgment standard which requires all evidence to be construed in the light most favorable to the non-movant, was not convinced. The insurer's summary judgment win was reversed, requiring the insurer to continue litigating a change endorsement which might not be effective even though the final delivery from retail agent to policyholder was out of its hands.

Editor's Note: Although the opinion does not discuss it, it is likely this policy was a surplus lines policy, which requires two layers of insurance intermediaries to be involved in its sale – a retail agent who typically represents the insured, and a specially licensed surplus lines broker who typically represents the insurer. Under that general rule, one would expect delivery of an endorsement to the retail agent to be sufficient to enforce it. While there is case law

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in Texas setting out this legal agency relationship, there may be some circumstances in which specific acts can change the relationships. It is not clear whether one of those acts occurred here.