

# Physical Loss Coverage Update

March 3, 2025

## Physical Loss - New York

### ***Endurance Am. Ins. Co. v. StoneX Commodity Sols., LLC***

No. 2024-00728, --- N.Y.S.3d ---, 2025 WL 516104 (N.Y. App. Div. Feb. 18, 2025)

The New York Supreme Court's Appellate Division, First Department, affirming a trial court's order, determined that a commodity trader, StoneX Commodity Solutions (StoneX), was entitled to coverage for the physical loss of soybeans under an ocean marine policy issued by Endurance American Insurance Company, Zurich American Insurance Company and Atain Insurance Company (Insurers).

From 2017 to 2021, StoneX stored millions of bushels of soybeans at warehouses in Mississippi owned by Express Grain Terminals, LLC (EGT). In September 2021, EGT was forced into bankruptcy when its lender discovered that EGT had less inventory than reported. This resulted in StoneX being dispossessed of 2.8 million bushels of soybeans that were subject to the bankruptcy court's determination of various competing interests in the disposition of EGT's assets. In the end, StoneX was able to recover all but 502,315 bushels of soybeans. StoneX sought coverage for the loss of the soybeans it was not able to recover.

The Insurers denied StoneX's claim and filed a declaratory judgment action in New York state court, claiming that StoneX's proof of loss failed to establish facts that triggered coverage under the ocean marine policy. StoneX filed a counter complaint against the Insurers, claiming that coverage was triggered under the policy because the loss was due to EGT's fraudulent warehouse receipts. The parties filed competing dispositive motions. The trial court granted StoneX's motion for summary judgment finding that StoneX suffered a physical loss of its soybeans that it could not access on the date that EGT filed for bankruptcy.

The Supreme Court's Appellate Division, First Department upheld the trial court's ruling as StoneX presented warehouse receipts and third-party inspection reports demonstrating that EGT housed enough soybeans to cover StoneX's receipts at the time EGT filed bankruptcy, which in turn satisfied the Additional Coverage Endorsement (Endorsement No. 5) and triggered coverage under the policy. The appellate court found unavailing the Insurers' argument that Clause 15 of Endorsement 5 was not met because StoneX failed to present evidence that the soybeans were actually owned by StoneX versus being encumbered by claims of other warehouse receipt-holders since the endorsement does not have such a requirement. The appellate court also found unavailing the Insurers' claim that discovery was needed to determine if the "misappropriation" exclusion applies, noting that the Insurers did not claim that StoneX was dishonest or that EGT was an "other party of interest" within the purview

PHYSICAL LOSS COVERAGE UPDATE Cont.

of the exclusion. honest or that EGT was an “other party of interest” within the purview of the exclusion.