

Coverage Owed For Insured's Loss Of 502,315 Soybean Bushels, New York Justice Rules

NEW YORK — A New York justice granted a physical commodities trader insured's motion for partial summary judgment on declaratory judgment and breach of contract counterclaims against its insurers in their lawsuit disputing coverage for the insured's loss of 502,315 bushels of soybeans, finding that the insured established an actual loss under the policies (Endurance American Insurance Company, et al. v. StoneX Commodity Solutions, LLC, No. 653234/2022, N.Y. Sup., New York Co.).

(Decision and order available. Document #13-240118-001Z.)

New York County Supreme Court Justice Lyle E. Frank issued the decision on Jan. 8.

Alleged Fraud

StoneX Commodity Solutions LLC, which is a trader of physical commodities, stored millions of bushels of soybeans at warehouses that were owned by Express Grain Terminals LLC (EGT). In September 2021, EGT was forced into bankruptcy after its lender discovered that it had less inventory than it was reporting. The bankruptcy resulted in the dispossession of 2,780,000 bushels of soybeans from StoneX subject to the bankruptcy court's determination of competing interests in the disposition of EGT's assets.

StoneX recovered all but 502,315 bushels of soybeans in the bankruptcy proceeding and sought coverage from its insurers Endurance American Insurance Co., Zurich American Insurance Co. and Atain Insurance Co. for the outstanding amount.

The insurers filed suit in the New York County Supreme Court, seeking a declaratory judgment they have no duty to provide coverage for StoneX's claim. StoneX counterclaimed for declaratory judgment and breach of contract. StoneX moved for partial summary judgment on its counterclaims.

'Actual Loss'

Justice Frank determined that StoneX "has established an actual loss as well as an ascertainable date of the loss, September 29, 2021."

"The Court declines to read terms into the policy that are not there, specifically that defendant was required to ascertain whether EGT had sufficient soybeans to satisfy all receipt-holders. The parties could have contracted to include those terms in the policy but did not," the justice said.

The justice concluded that the insurers failed to raise a triable issue of fact.

"The Court disagrees with plaintiffs arguments that because at various times prior to the bankruptcy filing, EGT did not have enough soybeans to fulfill defendant's requirements, the date of loss is outside of the policy term. The unrefuted evidence is that there were in fact a sufficient number of bushels of soybeans to satisfy defendant's claim at the time EGT filed for bankruptcy, it follows that once EGT filed for bankruptcy defendant no longer had access to the soybeans, thus triggering the date of the loss," the justice said, granting StoneX's motion for partial summary judgment.

Counsel

The insurers are represented by Adam H. McCabe of Cassidy Schade LLP in Chicago, John A.V. Nicoletti of Nicoletti Hornig & Sweeney in New York and James Mercante and Bruce Friedman of Rubin, Fiorella, Friedman & Mercante LLP in New York.

StoneX is represented by Joshua Blosveren and Bradley Nash of Hoguet Newman Regal & Kenney LLP in New York.