

NY Federal Court Reaffirms White and Williams Win in Former Gas Plant Pollution Coverage Dispute

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In *New York State Electric & Gas Corporation v. Century Indemnity Company, et al.*, the US District Court for the Northern District of New York recently reaffirmed the dismissal of claims by policyholder New York State Electric & Gas Corporation (NYSEG) against Century Indemnity Company and another insurer for coverage under excess liability policies for alleged environmental pollution at numerous former manufactured gas plant (MGP) sites. In this case, the court explained, NYSEG engaged in a "robust program of investigation years before" notifying the insurers and "attempted to deal with the pollution on its own and then present the insurer with a bill, years later." It concluded that no reasonable juror could consider NYSEG's notice timely under the insurance policies at issue.

Among other things, the court noted that the record evidence demonstrated that NYSEG was "aware of potential contamination at MGP sites in the 1970s, developed a program in the 1980s for investigating the sites and negotiating with regulators that involved setting aside considerable sums for which NYSEG now seeks reimbursement, and only gave notice to the insurers in the 1990s, well after NYSEG had developed an approach for attempting to deal with any potential liability at the sites." "While [NYSEG] contends that its actions represented a laudatory attempt to take action when faced with pollution, the question here is when a duty to provide notice attached, not whether [NYSEG] acted as a good corporate citizen. That duty attached years before [NYSEG] provided notice in 1991, and [its] notice was untimely," the court said. NYSEG filed a notice of appeal to the Second Circuit on April 9, 2018.

This summary is based on the court's March 31, 2017 decision granting summary judgment to the insurers and its March 27, 2018 decision denying NYSEG's motion for reconsideration.

Century Indemnity Company was represented by Robert Walsh, John Anooshian, Shane Heskin, Craig O'Neill and Sara Mirsky.