UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

NEW YORK STATE ELECTRIC & GAS CORPORATION,

Plaintiff,

v. **5:13-CV-976 (TJM/ATB)**

CENTURY INDEMNITY COMPANY, and ONEBEACON AMERICA INSURANCE COMPANY,

Defendants.

Thomas J. McAvoy, S.U.S.D.J.

DECISION & ORDER

Before the Court is Plaintiff's motion for reconsideration, dkt. #183, of the Court's decision granting Defendants' motion for summary judgment and denying Plaintiff's motion for summary judgment. See dkt. # 181.

I. BACKGROUND

This case grows out of the operation of certain power facilities by Plaintiff New York State Electric & Gas Corporation ("NYSEG") and its predecessors in various towns in upstate New York. These facilities, Manufactured Gas Plants (MGPs), operated at numerous sites in upstate New York at the end of the nineteenth and first part of the twentieth centuries to make heating gas. The processes used created waste that concerned regulators beginning in the 1970s. Eventually, large-scale cleanup was required at many of the sites, and such cleanup was costly. NYSEG turned to its insurers, including the Defendants here, seeking indemnification.

Defendants Century Indemnity Company and One Beacon Insurance Company

denied coverage on various grounds. This suit resulted from those denials. After considering the arguments and voluminous evidence produced by the parties, this Court issued a decision that concluded that Defendants were entitled to summary judgment because Plaintiff failed to provide timely notice. The Court pointed to evidence in the record that indicated that Plaintiff had knowledge of the occurrences and claims for a considerable about amount time before providing notice, and found that no reasonable juror could consider Plaintiff's notice timely. The Court was also persuaded that the statute of limitations had run on Plaintiff's claims before Plaintiff filed the action.

After the Court's decision, the Plaintiff moved for reconsideration and clarification. This case involved a number of sites. The parties' arguments concentrated on six of those sites, as did the Court's decision. Plaintiff asks the Court to clarify that the Court's reasoning applies to the evidence in the record on the remaining sites.

II. LEGAL STANDARD

Plaintiff seeks reconsideration of the Court's decision granting Defendants summary judgment. When a party files a motion for reconsideration, "[t]he standard for granting such a motion is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked–matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." Shrader v. CSX Transp., 70 F.3d 255, 257 (2d Cir. 1995). Such a motion is "not a vehicle for relitigating old issues, presenting the case under new theories, securing a rehearing on the merits, or otherwise taking 'a second

bite at the apple[.]'" Analytical Surveys, Inc. v. Tonga Partners, L.P., 684 F.3d 36, 41 (2d Cir. 2012) (quoting Sequa Corp. v. GBJ Corp., 156 F.3d 136, 144 (2d Cir. 1998)). Reconsideration should be granted when the moving party shows "'an intervening change in controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice.'" Virgin Atl. Airways, Ltd. v. Nat'l Mediation Bd., 956 F.2d 1245, 1255 (2d Cir. 1992) (quoting 18 C. Wright, A. Miller & E. Cooper, FEDERAL PRACTICE & PROCEDURE § 4478 at 790).

III. ANALYSIS

Having carefully considered Plaintiff's arguments for reconsideration, the Court will deny the motion. Plaintiff does not point to any intervening change in the controlling law, nor to any newly available evidence. Instead, Plaintiff attempts to point to clear error, either in the Court's interpretation of the facts or application of the legal standards. The Court is unpersuaded by these arguments. Plaintiff repeats arguments already considered and rejected by the Court with respect to the issue of notice of occurrence, notice of claim, and the statute of limitations. Such is not the proper role of reconsideration motion, and the Court will deny the motion in that respect. Similarly, Plaintiff argues that the Court misinterpreted or overlooked material facts. The Court, however, considered the facts to which Plaintiff points in reaching its conclusions and is not persuaded that those conclusions should be altered. The motion will be denied on this basis.

Plaintiff also asks for clarification to the Court's logic in granting summary judgment. The parties–and the opinion–stressed six MGP sites in deciding the motion for summary judgment. Plaintiff seeks clarification from the Court as to whether the

Court's interpretation applies to the other sites here at issue. The Court will provide some detail on that issue to make the reasoning on the matter clear.

First, the Court cites to a portion of a footnote from the original opinion:

> The Court notes that the parties have provided thousands of pages of documents in connection with their motions. These documents consist in large part of reports of dozens of investigations performed by environmental consultants at the MGP sites, internal NYSEG memoranda concerning investigation and remediation at the sites, correspondence between NYSEG and regulatory agencies, and correspondence between insurers and NYSEG. The Court has carefully reviewed these submissions but will cite largely to the parties' statements of material facts in addressing the motion in this respect. The Court makes the general observation, however, that the evidence provided by the parties demonstrates 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.

Dkt. # 181 at n.6. While the Court emphasized that it had considered all of the documents submitted by both sides in support and opposition to summary judgment, the Court's opinion attempted to address the sites that had been the focus of the briefing. In examining the other sites, the Court found and finds that the same problems of notice that faced the sites about which there was extensive dispute exist: Plaintiff engaged in extensive investigation and–at many sites–extensive efforts at mitigation, spending large sums of money, without ever notifying the insurer. Plaintiff also engaged in extensive investigation and contacts and negotiations with regulators before notifying insurers of any potential claims. The Court concluded–for the reasons stated in the opinion–that Defendants' notice and statute of limitations defense applied and granted the motion for summary judgment. See, e.g., Exh. 17 to Defendants'

Response, dkt. # 126-5 (1981 letter from NYSEG to United States Environmental Protection Agency describing investigation of 22 MGP sites); and Exh. 104 to Defendant's Response, dkt. # 126-6 (1989 NYSEG interoffice memorandum describing ongoing efforts at investigation and remediation and costs therefore at 23 MGP sites). The record is replete with examples of NYSEG's knowledge of contamination and potential claims related to that contamination at all of the sites in question, and the Court's logic for the sites discussed at length in the original opinion applies equally to those other sites.

IV. CONCLUSION

For the reasons stated above, Plaintiff's motion for reconsideration, dkt. # 183, is hereby DENIED.

Dated:March 27, 2018

Thomas J. McAvoy
Senior, U.S. District Judge