

## UGI Wins Exit From Frontier Suit Over Maine Cleanup

By Leigh Kamping-Carder

Law360, New York (November 23, 2010) -- A federal judge has adopted a recommendation to release UGI Utilities Inc. from a lawsuit filed by Frontier Communications Co., which paid \$7.6 million to clean up tar contamination in a Maine river and sued nearly a dozen companies it said were also liable.

Judge George Z. Singal of the U.S. District Court for the District of Maine on Friday signed off on a magistrate judge's grant of summary judgment to UGI, arguing that its predecessor company did not exercise enough control over the contaminated site to hold the defendant liable.

UGI's predecessor "essentially pulled all of the corporate strings when it came to the finances and the set up of Bangor Gas Light Co.'s business and productive facilities," Magistrate Judge Margaret J. Kravchuk ruled in October, referring to the one-time operator of the gas plant at the heart of the lawsuit.

"However, the record does not demonstrate actual operation of the facility on an ongoing, day-to-day, or even intermittent basis by personnel lacking a legitimate relationship with Bangor Gas Light Co.," the judge said.

Frontier first sued in 2007 under the Comprehensive Environmental Response, Compensation and Liability Act after it agreed to pay \$7.6 million in cleanup costs to settle a 2002 suit with the city of Bangor.

The site was operated by Bangor Gas Light, Frontier's predecessor, from 1852 until 1941, when it changed its name to Bangor Gas Co. In 1948 Bangor Gas was merged into Frontier, which operated the gas plant until 1963.

Frontier argued that UGI should be liable for the pollution because two predecessors owned Bangor Gas stock before Frontier merged with the company. Bangor Gas stock was acquired in 1901 by American Gas Co. of New Jersey, which itself was merged with United Gas Improvement Co., which became UGI, in 1925.

UGI first moved for summary judgment in November 2009, saying it cannot be responsible because American Gas never specifically controlled pollution activity at the gas plant. Following a period of limited discovery requested by Frontier, UGI in August partly amended its summary judgment motion.

UGI argued that, although some executives of its predecessors served on the board of Bangor Gas, the U.S. Supreme Court found that this fact alone cannot make the parent corporation liable for the actions of its subsidiaries.

Frontier responded that it would not make sense to find evidence of American Gas exercising control over environmental policy or hazardous waste disposal in documentary evidence from the early 1900s. Instead, Frontier pointed to evidence that American Gas made substantial improvements to the facilities and oversaw budgetary matters.

Although Judge Kravchuk agreed that the record showed American Gas' control over business decisions, she was not

persuaded that the UGI predecessor oversaw day-to-day operations, including waste disposal.

“We've never believed that UGI had liability, and this decision vindicates that,” said Jay Varon, an attorney with Foley & Lardner LLP who represents the defendant.

An attorney for Frontier did not immediately respond to a call seeking comment Tuesday.

In September 2009, Judge Kravchuk granted a motion for summary judgment filed by CenterPoint Energy Resources Corp. on largely the same grounds.

Defendant Dead River Co. settled its role in the dispute for \$1.8 million in July 2009, five months after Barrett Paving Materials Inc. and Beazer East Inc. settled for \$900,000 and \$500,000, respectively. Defendant Honeywell International Inc. agreed to pay \$1.75 million.

In August, Judge Singal tossed the bulk of Pan Am Railways Inc.'s third-party allegations against the city of Bangor, adopting Judge Kravchuk's ruling that an indemnity agreement between the parties was void.

Frontier is represented by Mayer Brown LLP and Friedman Gaythwaite Wolf & Leavitt LLP.

UGI is represented by Foley & Lardner LLP and Nelson Kinder Mosseau & Saturley PC.

The case is Frontier Communications Corp. v. Barrett Paving Materials Inc. et al., case number 07-cv-113, in the U.S. District Court for the District of Maine.

--Additional reporting by Mike Cherney