

# New York Law Journal



## 'A Long 6 Years': No \$150M for Goldman Sachs Investors

Manhattan Supreme Court's Justice Joel Cohen tossed the case, finding that the investors were "unreasonabl[y]" attempting to use notice agreements to make Energy Transfer liable for delays beyond July 1, 2018.

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🕒 4 minute read

By Alyssa Aquino

*EDITOR'S NOTE: This story has been corrected to properly identify Manhattan Supreme Court Justice Joel Cohen's jurisdiction and the names of the law firms representing the parties in the case.*

A group of Goldman Sachs investment vehicles lost their bid to force the developer of the failed Revolution pipeline to repay its \$150 million investment in an energy company after a New York state court found that the developer hadn't breached contracts requiring construction updates.

GSCP VI EdgeMarc Holdings LLC, GSCP VI Parallel EdgeMarc Holdings LLC, WSP and Bridge 2012 EdgeMarc Holdings LLC and EM Holdco LLC argued that the Dallas-based ETC Northeast Pipeline LLC had misled them on whether the pipeline would be ready by July 1, 2018.

The pipeline's later explosion in September 2018 cast into doubt every certification that the project was progressing without delays, the investors argued in a complaint lodged in 2019.

But Manhattan Supreme Court's Justice Joel Cohen tossed out the case, finding that the investors were "unreasonabl[y]" attempting to use the notice agreements to make Energy Transfer liable for delays beyond July 1, 2018.

"That is not the deal the parties agreed on. If that were the case, [Energy Transfer] essentially would be a guarantor of plaintiffs' \$150 million investment regardless of the cause of delay or whether it could be foreseen as of the date of the Project Status Reports," the justice said during a Jan. 17 court hearing, a transcript of which was obtained by the New York Law Journal.

Cohen further pointed out that none of the agreements were construction contracts that contained warrants of durability, or quality of workmanship.

"Accordingly, there are no construction standards tied to the project status notices," Cohen said.

Lynn, Pinker, Hurst & Schwegmann's Chris Patton, who represents Energy Transfer, told the New York Law Journal on Wednesday he was proud of his team's work.

"It's been a long six years and it's been a hard-fought battle. ... We're all very excited about the ruling, the decision, especially because it was complex, with some facts that were less than great," he said.

The investors were represented by Wachtell, Lipton, Rosen & Katz. Counsel for the company didn't respond to a Wednesday request for comment.

Energy Transfer had built the pipeline that would transport gas produced by EdgeMarc, an energy company that had received \$850 million from

the suing investors. EdgeMarc had planned on the pipeline being available by July 2018 for it to begin transporting gas to customers, according to court documents.

However, the pipeline exploded during a tropical storm that had caused the earth to shift and the pipeline to dislodge, causing substantial damage to the area and kicking off a series of investigations.

Pennsylvania regulators later concluded that Energy Transfer had inadequate erosion control measures.

The investors, most of which are affiliated with funds managed by Goldman Sachs & Co., then sued Energy Transfer, claiming that the pipeline was inherently flawed and that Energy Transfer had misled them on such in its updates. Among others, the investors pointed to the pipeline's placement in a steep hill, as well as the dozens of environmental violations regulators found after the explosion.

Cohen claimed there could be an "extreme situation" in which a pipeline was so clearly flawed as to make Energy Transfer's assurances on the project false. However, "that is not what the facts are here," he claimed.

Cohen said that the tropical storm was an "extraordinary rainfall event." He further noted that many of the regulatory findings centered on the pipeline's compliance with environmental regulations concerning soil run-off into nearby waterways.

He said, "While compliance with such regulations during construction obviously is quite important as a matter of policy, ... plaintiffs have not shown by a preponderance of the evidence that the regulators would have shut down the pipeline or suspended permits during the notice period such that regulatory action or the threat thereof would constitute a delay that was required to be reported."

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