

# TOWN OF NIAGARA VICTORIOUS IN CHALLENGE TO SPECIAL DISTRICT ASSESSMENTS

February 4, 2010

A recent victory in New York State Supreme Court by the Town of Niagara saves the town from refunding approximately \$200,000 in sewer charges contested by Niagara Mohawk Power Corporation and sets an important statewide precedent regarding the assessment of special ad valorem levies.

The decision in *Niagara Mohawk Power Corporation v. Town of Niagara* was issued January 6 by Hon. Richard C. Kloch Sr. of the New York State Supreme Court, Niagara County. **Michael B. Risman**, town attorney and a partner in the Hodgson Russ LLP Municipal Law Practice Group, represented the Town of Niagara in the two-day, non-jury trial, held June 29-30, 2009.

“This decision is a success for the many upstanding individuals and businesses residing in the Town of Niagara who do not seek to be treated differently than all other taxpayers and who will now not have to pay Niagara Mohawk’s share of the costs of the sewer system,” said Town Supervisor Steven C. Richards. “It also marks a significant victory for municipalities against utility companies attempting to avoid paying legitimate public assessments.”

## Potential and Actual Benefit Demonstrated in Court

From 2003 through 2009, Niagara Mohawk challenged the assessment of special sewer district charges on certain transmission lines, associated towers, and distribution substations located in the town, claiming that these improvements were not connected to the sanitary sewer and therefore received no benefit from it. Niagara Mohawk is currently challenging numerous similar special district assessments in municipalities across New York State.

However, as the town noted during the trial, appellate courts have set a high threshold for property owners attempting to avoid paying special district assessments. According to a recent decision, if a property is capable of receiving the service funded by the special ad valorem levy, even if the benefit is potential or even theoretical, the property is considered to receive sufficient benefit from it to warrant special district taxation.

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The town also demonstrated a substantial benefit received by Niagara Mohawk: The sanitary sewer system acts as a catch basin and receives storm water from properties throughout the entire town. This provides an actual benefit to the transmission and distribution facilities by reducing flooding around those facilities.

In a well-reasoned decision, New York State Supreme Court Justice Richard C. Kloch Sr. correctly found completely in favor of the Town of Niagara and denied Niagara Mohawk's petition challenging the special sewer district assessments.

