

No. 24001 - Charles D. Foster and Dolly D. Foster, Tammy Martin, Theodore Metcalfe, and James Yeckel and Shelda Yeckel, Plaintiffs below, Respondents v. City of Keyser, a West Virginia municipality; Norman Parks, individually, and d/b/a Parks Excavating; and Parks Excavating, Defendants below, Respondents; and Mountaineer Gas Company, a West Virginia corporation, Defendant below, Petitioner. And Donald L. Wolfe and Virginia Wolfe, Plaintiffs below, Respondents, v. Mountaineer Gas Company, a West Virginia corporation, Defendants below, Petitioner; and Norman Parks, individually, and d/b/a/ Parks Excavating, Defendants below, Respondent, v. City of Keyser, a West Virginia municipality, Third-Party Defendant below, Respondent. R.J. Harber and M.S. Harber; Charles Taylor and Melanie Taylor; Daniel Streets and Paula Streets; Timothy Newlin and Virginia Newlin; Steve Everett and Cynthia Everett; Junior Armentrout and June Halbritter; Dorothy Lyons; William Paitsel; Harry Beard; and Tammy Martin, Plaintiffs below, Respondents, v. City of Keyser, a West Virginia municipality; Norman Parks, individually, and d/b/a/ Parks Excavating; and Parks Excavating, a West Virginia corporation, Defendants below, Respondents; and Mountaineer Gas Company, a West Virginia corporation, Defendant below, Petitioner. And Nationwide Mutual Insurance Company,

Plaintiff below, Respondent, v. City of Keyser, a municipal corporation; and Norman Parks, an individual doing business as Parks Excavating, Defendants below, Respondents; and Mountaineer Gas Company, a West Virginia corporation, Defendant below, Petitioner. And Tammy Martin, Administrator of the Estate of David G. Martin, deceased; John B. Lusk and Sue E. Lusk; Samuel L. Crites and Carol A. Crites; and J. Richard Campbell and Margaret H. Campbell, Plaintiffs below, Respondents, v. City of Keyser, a West Virginia municipality; Norman Parks, individually and d/b/a Parks Excavating; and Parks Excavating, a West Virginia corporation, Defendants below, Respondents; and Mountaineer Gas Company, a West Virginia corporation, Defendant below, Petitioner. And Charles B. Lanham and a West Virginia corporation, and City of Keyser, a municipal corporation, Plaintiffs below, Respondents, v. Mountaineer Gas Company, a West Virginia corporation, Defendant and Third-Party Plaintiff below, Petitioner, and City of Keyser, a municipal corporation, Defendant and Third-Party Plaintiff below, Respondent, v. Norman Parks, individually and d/b/a/ Parks Excavating, a West Virginia corporation, Third-Party Defendant below, Respondent. And Charles Armentrout and Peggy Armentrout, husband and wife, and Daniel Ross and Sandy Ross, husband and wife, Plaintiffs below,

Respondents, v. City of Keyser, a West Virginia municipality; Norman Parks, individually, and d/b/a Parks Excavating; and Parks Excavating, a West Virginia corporation, Defendants below, Respondents; and Mountaineer Gas Company, a West Virginia corporation, Defendant below, Petitioner. And Dorothy Johnson; Robert T. Kane, Jr. and Cheryl L. Kane, his wife, and William Amtower, Plaintiffs below Respondents, v. City of Keyser, a West Virginia municipality; Norman Parks, individually, and d/b/a/ Parks Excavating, Defendants below, Respondents; and Mountaineer Gas Company, a West Virginia corporation, Defendant below, Petitioner.

Maynard, Justice, dissenting in part, and concurring in part:

I agree with the majority in this case that the circuit court erred in applying strict liability to Mountaineer. I disagree, however, that the doctrine of *res ipsa loquitur* should be applied in cases involving the transmission of natural gas. Also, I would affirm the trial court's grant of summary judgment in favor of the City of Keyser.

The majority rightly concludes that companies involved in the transmission of natural gas should be held to a high standard of care in light of the dangerous nature of such activity. This standard includes a high degree of care in constructing and maintaining gas lines, as well as constant monitoring of the lines to guard against defects. Once any defects are found, of course a company must respond immediately to correct the defect. The majority states, and I agree, that the slightest deviation in the construction, maintenance, and inspection of gas lines amounts to negligence.

In light of this high and clearly articulated standard of care, I do not agree that the doctrine of *res ipsa loquitur* is needed in cases involving the transmission of natural gas. I believe that it is unnecessary and unfair to defendants in such cases to allow a jury to infer negligence.

Instead, I would require that the plaintiffs prove specific acts of negligence just like in any other tort case.

Further, I believe the trial court was correct in granting summary judgment in favor of the City of Keyser. West Virginia cities and towns are spending millions for lawsuit-related costs. A recent statewide survey of municipalities revealed that lawsuits and the threat of lawsuits may cost local taxpayers over \$9.4 million per year. Some towns reported spending a sizeable portion of their budgets on litigation-related costs.

Small towns appear to be especially hard hit by lawsuit-related cost the survey shows. More than 25% of responding towns with populations of 2,000 or less reported spending 10% or more of their budgets on lawsuit-related costs. Some towns are spending one-third or more of their budgets. The majority decision will further aggravate this problem.

Accordingly, I dissent in part, and concur in part.