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December 14, 2023

Via Hand Delivery

Edythe Nash Gaiser, Clerk of Court
West Virginia Supreme Court of Appeals
State Capitol Room E-317
1900 Kanawha Boulevard, East
Charleston, WV 25305

Re: Mountaineer Gas Company vs. West Virginia-
American Water Company
Circuit Court of Kanawha County
Civil Action No.: 23-C-1067

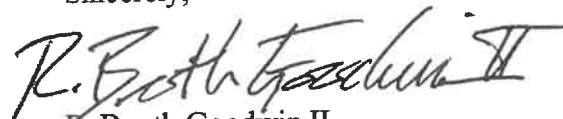
Dear Ms. Gaiser:

Please find enclosed for filing with respect to the above-referenced matter a **Motion To Refer Case To Business Court Division**.

Copies of this Motion have been served upon all counsel of record, the Circuit Clerk of Kanawha County, and Judge James Rowe as well as the Business Court Division.

Please feel free to contact me with any questions or comments that you may have with respect to this matter.

Sincerely,



R. Booth Goodwin II

Cc: All counsel of record
Honorable James J. Rowe, Jr. (Via US Mail)
Cathy Gatson, Circuit Clerk of Kanawha County (Via US Mail)
Carol Miller, Business Court Executive Director (Via E-mail and US Mail)
Tessa Bowers, Business Division Law clerk (Via E-mail and US Mail)

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

**MOUNTAINEER GAS COMPANY,
a West Virginia corporation,**

Plaintiff,

v.

**Civil Action No.23-C-1067
Judge: James J. Rowe**

**WEST VIRGINIA-AMERICAN WATER COMPANY,
a West Virginia corporation.**

Defendant.

TO: THE HONORABLE CHIEF JUSTICE

MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, Mountaineer Gas Company (“Mountaineer”), a West Virginia corporation, Plaintiff in Civil Action No. 23-C-1067 (Circuit Court of Kanawha County), by the undersigned counsel, respectfully requests the above-styled cases be referred to the Business Court Division – Region “C”.

This action presents questions regarding the duties and obligations existing between two business entities, both public utilities, with respect to the operation of facilities adjacent to one another. The issues arise from an incident in which a water main operated by the defendant, West Virginia-American Water Company (“WVAW”), ruptured. This rupture resulted in a high-pressure blast of water from the water main which then broke open an adjacent gas distribution line operated by Mountaineer. This in turn resulted in a significant volume of water entering the gas distribution line and, ultimately, in some instances, customer service lines and appliances.

Mountaineer was forced to shut off gas service to prevent further intrusions, purge the gas lines, repair lines, and repair or replace customer appliances.

Three class action lawsuits have been filed as a result of this incident. Both Mountaineer and WVAW are named as defendants in the class actions filed on behalf of affected customers. Mountaineer has instituted this action to recover damages for its economic losses (both related to and independent of the class actions), as well as to obtain indemnity for the claims asserted in the class actions. The causes of action asserted by Mountaineer against WVAW are trespass, negligence, and implied indemnity.

A focal point of this dispute is the duties and obligations between these two business entities, both of which are utilities regulated by the Public Service Commission that maintain underground water and gas lines located in proximity to one another. These issues are significant to both parties and to other business entities across the state. It is also important to note the involvement of the Public Service Commission, which is undertaking an investigation into the underlying incident, WV PSC Case No. 23-0882-G-W-GI Order Initiating Proceeding entered November 16, 2023.

The Business Court is meant to exercise jurisdiction over precisely this type of “business litigation”:

- The claims involve matters of significance regarding the operations of and regulations governing business entities. Both parties, as well as other business entities operating under similar circumstances, have a vested interest in appropriate and prompt adjudication of these issues.
- The dispute presents commercial issues relating to utility operations.

- The issues involve the interplay of common law and utility regulation such that specialized knowledge and expertise, including familiarity with specific business-related legal principles, will be implicated.
- Both the parties and other business entities conducting these types of operations will appreciate of the opportunity to resolve these matters in a forum designed to address commercial issues in particular.

The Business Court provides for specialized case management techniques and the judges have specialized training and experience in business principles. In addition, matters in the Business Court are assigned to both a Presiding Judge and a Resolution Judge. This assists in promoting timely decisions and opportunities for alternative dispute resolution throughout the process. This benefit is of particular importance here, where a prompt resolution of this case will assist the parties going forward in the underlying class action lawsuits.

The issues presented in this matter are similar to another action that was referred to the Business Court—*Covestro v. Axial Corporation, et al*, Civil Action No. 18-C-202, 203 (Circuit Court of Marshall County, West Virginia). *Covestro* arose from a chloride gas leak resulting in gas migrating to and settling upon the plaintiff's property. The plaintiff asserted various claims, including trespass and negligence, and sought to recover damages caused by the incident. Like the present action, all parties were commercial entities. This Court referred the matter to the Business Court division on May 30, 2019, and the matter was eventually resolved.

In sum, the present action is the exact type of action for which the Business Court was created: “[L]itigation involving commercial issues and disputes between businesses” and implicating the type of commercial or technological issues for which specialized knowledge and treatment will be helpful. W. Va. Tr. Ct. R. 29.01-04. None of the claims asserted by Mountaineer

fall within the categories of civil actions that are specifically excluded from the Business Court by Rule 29.04(a).

Mountaineer further submits that good cause exists for filing this motion before the time to answer the complaint has expired. W. Va. Tr. Ct. R. 29.06(a)(2). The company's efforts to restore service are ongoing and Mountaineer continues to incur losses. The Business Court offers the best opportunity for prompt judicial assistance through the appointment of a Resolution Judge to address these matters before the parties incur unnecessary legal expenses.

The relief requested in this Motion to Refer will not prejudice WVAW and no efficiencies will be lost. No scheduling order has been entered in this case (indeed, no orders have been entered at all in this case) and no discovery has been undertaken.

The Business Court, which offers the benefit of both a Presiding Judge and a Resolution Judge, is particularly well-suited to manage this action so as to achieve resolution in a timely and efficient manner. Such prompt resolution is of particular importance under the specific circumstances of this case. The Business Court was designed precisely for cases like this one. Accordingly, Mountaineer respectfully requests that this Motion to Refer be granted and that this civil action be referred to Region "C" of the Business Court Division.

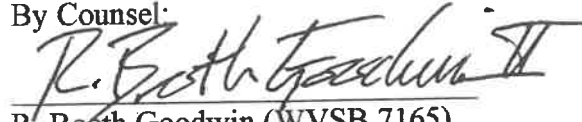
Copies of the Complaint, Civil Cover Sheet, and Summons are attached as Exhibit A, and a copy of the Docket Sheet is attached as Exhibit B, and a copy of the Return of Service is attached as Exhibit C. W. Va. Tr. Ct. R. 29.06(a)(1).

WHEREFORE, Mountaineer respectfully moves this Court, pursuant to W.Va. Trial Court Rule 29, to refer this case to the Business Court Division – Region "C".

Respectfully submitted, this 14th day of December 2023.

MOUNTAINEER GAS COMPANY,

By Counsel:

A handwritten signature in black ink, appearing to read "R. Booth Goodwin II", written over a horizontal line.

R. Booth Goodwin (WVSB 7165)

Benjamin B. Ware (WVSB #10008)

Richard D. Owen (WVSBV#2794)

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SUMMONS

THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

MOUNTAINEER GAS COMPANY,
a West Virginia corporation,

Plaintiff,

v.

Civil Action No.: 23-C-1067
Judge: Loe

WEST VIRGINIA-AMERICAN WATER COMPANY,
a West Virginia corporation.

To the above-named Defendant:

WEST VIRGINIA-AMERICAN WATER COMPANY
1600 Pennsylvania Avenue
Charleston, WV 25302

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve upon, **R. BOOTH GOODWIN**, Plaintiff's attorneys whose address is **GOODWIN & GOODWIN, LLP, 300 Summers Street, Charleston, West Virginia 25301**, an Answer, including any related Counterclaim you may have, to the Complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint and you will be thereafter barred for asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

Dated: 12/5/23

Cathy S. Gatson, Clerk

CLERK OF COURT

EXHIBIT A

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CIVIL CASE INFORMATION STATEMENT
(Civil Cases Other than Domestic Relations)

I. CASE STYLE:

Plaintiff(s)

Mountaineer Gas Company

Case No. 23-C-1067

Judge: Rowe

Plaintiff's Phone: _____

vs.

Defendant(s)

West Virginia-American Water Company

Name

1600 Pennsylvania Avenue

Street Address

Charleston, WV 25302

City, State, Zip Code

Days to
Answer

30

Type of Service

Secretary of State

Defendant's Phone: (304) 353-6300

II. TYPE OF CASE:

☒ General Civil

☐ Mass Litigation [As defined in T.C.R. 26.04(a)]

☐ Asbestos

☐ FELA Asbestos

☐ Other: _____

☐ Habeas Corpus/Other Extraordinary Writ

☐ Other: _____

☐ Adoption

☐ Administrative Agency Appeal

☐ Civil Appeal from Magistrate Court

☐ Miscellaneous Civil Petition

☐ Mental Hygiene

☐ Guardianship

☐ Medical Malpractice

III. JURY DEMAND: ☒ Yes ☐ No CASE WILL BE READY FOR TRIAL BY (Month/Year): _____ / _____

**IV. DO YOU OR ANY
OF YOUR CLIENTS
OR WITNESSES
IN THIS CASE
REQUIRE SPECIAL
ACCOMMODATIONS?**

☐ Yes ☒ No

IF YES, PLEASE SPECIFY:

☐ Wheelchair accessible hearing room and other facilities

☐ Reader or other auxiliary aid for the visually impaired

☐ Interpreter or other auxiliary aid for the deaf and hard of hearing

☐ Spokesperson or other auxiliary aid for the speech impaired

☐ Foreign language interpreter-specify language: _____

☐ Other: _____

Attorney Name: R. Booth Goodwin

Firm: Goodwin & Goodwin, LLP

Address: 300 Summers Street, Charleston, WV 25301

Telephone: (304) 346-7000

☐ Proceeding Without an Attorney

Representing:

☒ Plaintiff

☐ Defendant

☐ Cross-Defendant

☐ Cross-Complainant

☐ 3rd-Party Plaintiff

☐ 3rd-Party Defendant

Original and 2 copies of complaint enclosed/attached.

Dated: 12 / 5 / 2023

Signature: R. Booth Goodwin

Revision Date: 4/2020

SCA-C-100: Civil Case Information Statement (Other than Domestic Relations)

EXHIBIT A

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

MOUNTAINEER GAS COMPANY,
a West Virginia corporation,

Plaintiff,

v.

WEST VIRGINIA-AMERICAN WATER COMPANY,
a West Virginia corporation.

COMPLAINT

Plaintiff, Mountaineer Gas Company ("Mountaineer" or "Gas Company"), by and through its undersigned counsel, files this Complaint against Defendant, West Virginia-American Water Company ("WVAW" or "Water Company").

These claims arise from the rupture of a high-pressure water main owned and operated by WVAW on the west side of Charleston, West Virginia. Due to the pressure in WVAW's water main, water was expelled from the main with such force that the water punctured a gas pipeline owned and operated by Mountaineer, and water then flowed into Mountaineer's Gas Distribution Pipelines,¹ including numerous customer service lines, and ultimately into customer owned house piping and appliances. Mountaineer was forced to interrupt gas service to customers and undertake emergency repairs to gas lines (both Gas Company owned and customer owned) and in many cases replace customers' appliances.

¹ The terms "Mountaineer's Gas Distribution Pipelines" and "Mountaineer's Gas Distribution System" both include all Gas Company owned pipelines, which may be referred to using a variety of gas industry terms, including but not limited to - distribution lines, mainlines, taps, service pipes, customer service pipe, pipelines, pipes, or lines.

7020 DEC -5 PM 3:25
CATHY S. GATES, CLERK
KANAWHA COUNTY CIRCUIT COURT
swcopy

Civil Action No.: 23-C-1067
Judge: Rowe

In support of its Complaint, Mountaineer states and alleges as follows:

1. Mountaineer is a corporation organized and existing under the laws of the State of West Virginia with its headquarters in Charleston, West Virginia.
2. WVAW is a corporation organized and existing under the laws of the State of West Virginia with its headquarters in Charleston, West Virginia.
3. Mountaineer and WVAW both maintain and conduct operations in Charleston, Kanawha County, West Virginia.
4. Some or all of the acts and omissions giving rise to the claims asserted herein occurred in Kanawha County, West Virginia.
5. Venue is appropriate in the Circuit Court of Kanawha County.

FACTS

6. All paragraphs previously alleged are incorporated by reference as though fully stated herein.
7. Mountaineer owns and operates a regulated local gas distribution utility serving the City of Charleston, West Virginia, among other areas. As part of its operations, Mountaineer maintains underground pipelines through which natural gas is transported and delivered to residences and businesses.
8. WVAW operates a regulated utility that supplies water, serving the City of Charleston, West Virginia, among other areas. As part of its operations, WVAW maintains underground pipelines through which water is transported and delivered to residences and businesses.
9. Throughout the City of Charleston, Mountaineer's gas pipelines and WVAW's water lines are located underground in the same vicinity.

10. On or about November 10, 2023, one or more of WVAW's lines ruptured. As a result, water surged from the rupture. Because the water in the lines is pressurized, the water from the rupture erupted and spewed at enormous pressure. This pressure was such that the water cut and infiltrated Mountaineer's gas lines adjacent to the point of rupture. As a result, significant volumes of WVAW's water continuously flowed into Mountaineer's Gas Distribution Pipelines for an extended period of time.

11. Having infiltrated the gas lines, WVAW's water then moved through Mountaineer owned pipelines, regulators, and other facilities and equipment. Before the stream of WVAW's pressurized water was controlled and the flow stopped by WVAW, the water flowed into Mountaineer's Gas Distribution Pipelines and thereafter into customer-owned service piping and customer-owned appliances. Approximately 46 miles of gas lines were infiltrated with water as a result of the rupture of WVAW's water main.

12. Gas service was interrupted for many customers because WVAW's water remained in the gas pipelines until it could be properly purged by trained crews. As a result of water entering the gas lines, for safety reasons Mountaineer was compelled to shut down certain of its gas pipelines, which interrupted the flow of gas to customers.

13. As a further consequence, water infiltrated many customer-owned service pipes and gas appliances and in some cases appliances were damaged. Mountaineer paid costs associated with repair and replacement of customer-owned service pipes and appliances.

14. An additional consequence was damage to Mountaineer's gas lines, and the company is incurring significant expenses to repair the Gas Company pipelines. These costs were exacerbated by the urgency of the situation, as the interruption in gas service occurred during a period of cold weather.

15. As a direct and proximate result of WVAW's ruptured water line, damage occurred to Mountaineer's facilities, service interruptions occurred, and customer-owned lines and appliances were damaged. In addition, as a further result of the ruptured water line, multiple class action lawsuits ("Class Actions") have been filed against Mountaineer and WVAW asserting various claims for damages. As of the date of this filing, the following Class Actions have been filed against Mountaineer in the Circuit Court of Kanawha County: *Robert Ruffin v. Mountaineer Gas Company and West Virginia-American Water Company*, Civil Action No. 23-C-1003, *Thomas Toliver et al. v. West Virginia-American Water Company and Mountaineer Gas Company*, Civil Action No. 23-C-1007, and *Kate Dodson v. West Virginia-American Water Company and Mountaineer Gas Company*, Civil Action No. 23-C-1010.

16. The interruption of gas service to customers caused significant damages to Mountaineer, including repair costs, overtime wages and other expenses related to utilization of both local and non-local repair crews, lost revenues, loss of goodwill, and reputational damage. In addition, Mountaineer has been compelled to devote management time, effort, and resources to address both the service interruptions and Class Actions.

17. Mountaineer used its best efforts, which were more than reasonable, to respond, mitigate, and resolve as rapidly as possible the damage caused by the rupture of WVAW's water lines and continuous flow of uncontrolled water. Mountaineer has restored services as soon as possible under the circumstances.

**COUNT ONE
TRESPASS**

18. All paragraphs previously alleged are incorporated by reference as though fully stated herein.

19. The rupture of Mountaineer's Gas Distribution Pipelines, as well as the presence of water in Mountaineer's pipelines, constitutes a trespass on Mountaineer's property committed by WVAW.

20. As a consequence of such trespass, Mountaineer has suffered damages as alleged herein.

**COUNT TWO
NEGLIGENCE**

21. All paragraphs previously alleged are incorporated by reference as though fully stated herein.

22. WVAW has a duty to exercise reasonable care in its operations, including maintaining its lines, controlling the flow of WVAW water, and monitoring the system to detect leaks, ruptures, and other malfunctions.

23. Upon information and belief, WVAW failed to exercise reasonable care with respect to the occurrence referred to herein, including failure to prevent pipe rupture, failure to discover the occurrence and repair it in a reasonable time, and failure to notify Mountaineer in a reasonable and timely manner.

24. As a direct and proximate result of WVAW's acts and omissions as alleged herein, Mountaineer's facilities were damaged and its operations adversely affected, which in turn caused the damages and losses as alleged herein.

**COUNT THREE
IMPLIED INDEMNITY**

25. All paragraphs previously alleged are incorporated by reference as though fully stated herein.

26. Mountaineer has sustained injury, losses, and damages as a result of the rupture of WVAW's line and resulting water flow into the Mountaineer Gas Distribution Pipelines.

27. Mountaineer and WVAW share a special relationship which gives rise to a claim of indemnity by Mountaineer as to WVAW. Thus, WVAW owes a positive duty to Mountaineer with respect to its operation and maintenance of WVAW facilities located in the vicinity of Mountaineer's facilities.

28. Mountaineer is without fault as regards the harm caused by WVAW's water line rupture, flow of WVAW water into Mountaineer Gas Distribution Pipelines, the damage to its facilities, and the allegations of the Class Action Complaints, and no independent act or omission of Mountaineer caused or contributed to the injuries complained of by the Class Action Plaintiffs or any other harm experienced by Mountaineer's customers.

29. WVAW is liable to Mountaineer for all expenses, losses, and damages incurred as a result of the water main rupture.

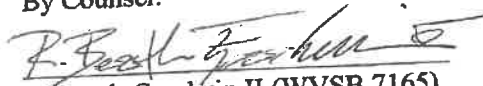
30. Notwithstanding Mountaineer's lack of fault, it has been joined as a Defendant in the Class Actions. Accordingly, Mountaineer is entitled to indemnity from WVAW for all attorney's fees and costs incurred in the defense of the Class Actions. In addition, should a judgment be rendered against Mountaineer on account of the fault of WVAW in the Class Actions or in any other lawsuit, claim, or cause of action, the law implies an indemnity obligation from WVAW to Mountaineer.

WHEREFORE, Plaintiff, Mountaineer Gas Company, demands judgment against Defendant, West Virginia-American Water Company, for (a) compensatory damages in such amount as may be proven, including without limitation costs for repairs to its facilities, costs associated with purging water from all gas lines appurtenant to Mountaineer's facilities, costs associated with utilizing emergency work crews, and costs associated with repairing and replacing customer-owned service pipes, customer appliances, among others; (b) indemnification and recovery of all attorney's fees and expenses incurred by Mountaineer in this action and all related actions (c) attorney's fees and costs incurred in this proceeding; and (d) such further relief as the Court deems appropriate.

A JURY TRIAL IS DEMANDED.

MOUNTAINEER GAS COMPANY,

By Counsel:



R. Booth Goodwin II (WVSB 7165)

Benjamin B. Ware (WVSB #10008)

Richard D. Owen (WVSBV#2794)

GOODWIN & GOODWIN, LLP

300 Summers Street, Ste. 1500

Charleston, WV 25301

Phone: (304)346-7000

Fax: (304)344-9692

Email: rbg@goodwingoodwin.com

Email: bbw@goodwingoodwin.com

Email: rdo@goodwingoodwin.com

FUNCTION = SEQ INQUIRY

Action Log

Case number : 23-C-1067

MOUNTAINEER GAS COMPANY vs. WEST VIRGINIA-AMERICAN WATER C

Line	Date	Action / Results
1	12/05/23	# CASE INFO SHEET; COMPLAINT; ISSUED SUM & 1 CPY; F FEE
2		RCPT 604799; \$200.00
3	12/08/23	@ LET FR SS DTD 12/5/23; SUM W/RET (12/5/23 SS) AS TO WEST
4		VIRGINIA-AMERICAN WATER CO

C=Chg D=Del 1-4=Scr M=Menu T=Chg Line# PgUp PgDn P=Prt A=Add I=Image _

EXHIBIT B

Office of the Secretary of State
Building 1 Suite 157-K
1900 Kanawha Blvd E.
Charleston, WV 25305

FILED
2023 DEC -8 PM 3:18
CLERK
KANAWHA COUNTY CIRCUIT COURT



Mac Warner
Secretary of State
State of West Virginia
Phone: 304-558-6000
888-767-8883
Visit us online:
www.wvsos.com

KANAWHA COUNTY CIRCUIT COURT
Kanawha County Courthouse
111 Court Street
Charleston, WV 25301-2500

Control Number: 316391

Defendant: WEST VIRGINIA-AMERICAN WATER
COMPANY
5098 WEST WASHINGTON STREET
SUITE 407
CHARLESTON, WV 25313 US

Agent: C. T. Corporation System

County: Kanawha

Civil Action: 23-C-1067

Certified Number: 92148901125134100003875271

Service Date: 12/5/2023

I am enclosing:

1 summons and complaint

which was served on the Secretary at the State Capitol as your statutory attorney-in-fact. According to law, I have accepted service of process in the name and on behalf of your corporation.

Please note that this office has no connection whatsoever with the enclosed documents other than to accept service of process in the name and on behalf of your corporation as your attorney-in-fact. Please address any questions about this document directly to the court or the plaintiff's attorney, shown in the enclosed paper, not to the Secretary of State's office.

Sincerely,

Mac Warner

Mac Warner
Secretary of State

34

EXHIBIT C

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

**MOUNTAINEER GAS COMPANY,
a West Virginia corporation,**

Plaintiff,

v.

**Civil Action No.23-C-1067
Judge: James J. Rowe**

**WEST VIRGINIA-AMERICAN WATER COMPANY,
a West Virginia corporation.**

Defendant.

CERTIFICATE OF SERVICE

I hereby certify that I have served true and exact copies of the foregoing **MOTION TO REFER CASES TO THE BUSINESS COURT DIVISION** via hand delivery and/or U.S. Mail, this 14th day of December, 2023, addressed as follows:

Robert Passmore, Esq.
West Virginia-American Water Company
1600 Pennsylvania Avenue
Charleston, WV 25302-3932
Robert.Passmore@amwater.com

Marc E. Williams, Esq.
Nelson Mullins
949 Third Avenue
Suite 200
Huntington, WV 25701
marc.williams@nelsonmullins.com


Kent Mayo, Esq.
Baker Botts
700 K Street, N.W.
Washington, D.C. 20001-5692
Kent.Mayo@bakerbotts.com

James L. Rowe, Judge
Circuit Court of Kanawha County
Judicial Building
P.O. Box 2351
111 Court Street
Charleston, WV 25301

Cathy S. Gatson, Clerk
Circuit Court of Kanawha County
Judicial Building
P.O. Box 2351
111 Court Street
Charleston, WV 25301

Edythe Nash Gaiser, Clerk of Court
West Virginia Supreme Court of Appeals
State Capitol Room E-317
1900 Kanawha Blvd., East
Charleston, WV 25305

Carol A. Miller
Business Court Executive Director
Berkeley County Judicial Center
Business Court Division
380 W. South Street, Suite 2100
Martinsburg, WV 25401



R. Booth Goodwin, II (W. Va. Bar No. 7165)

R. Booth Goodwin, II (W. Va. Bar No. 7165)
Goodwin & Goodwin, LLP
(304) 346-7000