

IN THE CIRCUIT COURT OF

KANAWHA

COUNTY, WEST VIRGINIA

CIVIL CASE INFORMATION STATEMENT  
(Civil Cases Other than Domestic Relations)2023 DEC 5 PM 3:25  
FILED

## I. CASE STYLE:

Case No.

23-C-1067

Judge:

Rowe

CATHY S. GATSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

## Plaintiff(s)

Mountaineer Gas Company

Plaintiff's Phone:

vs.

## Defendant(s)

West Virginia-American Water Company

Days to

Answer

Type of Service

30

Secretary of State

Name

1600 Pennsylvania Avenue

Defendant's Phone: (304) 353-6300

Street Address

Charleston, WV 25302

City, State, Zip Code

## 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 MalpracticeIII. 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 &amp; Goodwin, LLP

Address: 300 Summers Street, Charleston, WV 25301

Telephone: (304) 346-7000

Representing:

☒ Plaintiff☐ Defendant☐ Cross-Defendant☐ Cross-Complainant☐ 3rd-Party Plaintiff☐ 3rd-Party Defendant☐ Proceeding Without an Attorney

Original and 2 copies of complaint enclosed/attached.

Dated: 12 / 5 / 2023

Signature: R. Booth Goodwin

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

Payment Type ☒ \$200 ☐ \$135  
Receipt # 604799  
Total Collected \$ 200.00  
Summons Issued # 1 No Summons  
☒ Return to Attorney \$20 CM x  
Mailed CM/RM \$5 CLK x  
Mailed to SOS w/check# \$15 MDF x  
Sent to w/check #

**IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA**

**FILED**

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

**Plaintiff,**

**v.**

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

2023 DEC -5 PM 3:25  
CATHY S. GATSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

**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,<sup>1</sup> 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.

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<sup>1</sup> 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.



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.

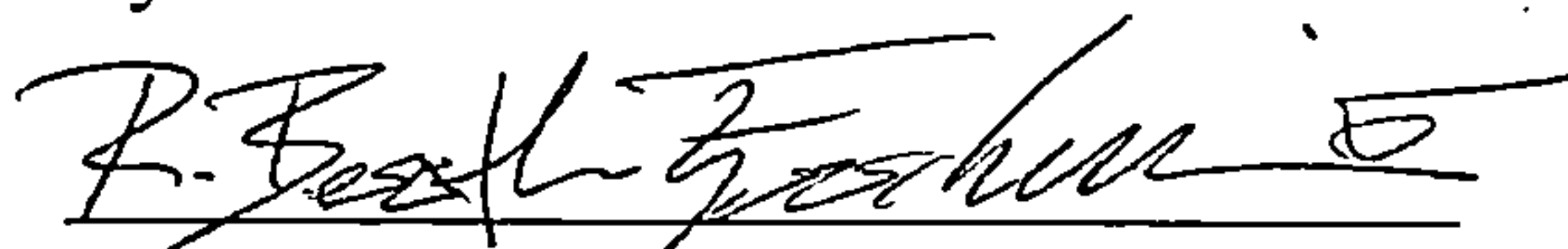
30. Notwithstanding Mountaineer's lack of fault, it has been joined as a Defendant in the Class Actions. Accordingly, Mountaineer is entitled to indemnity from WVAW for all attorney's fees and costs incurred in the defense of the Class Actions. In addition, should a judgment be rendered against Mountaineer 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)

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