

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

**SAMUEL J. SWIGER, and
BRENDA FRAZIER SWIGER,**
individually, and as next of friend of
JOSEPH SHAWN SWIGER, an infant
and **FRANK YABLONSKY, CHERYL HALL,**
KEN BONNETTE, VINCE OPALINSKI,
ANDREW SORINE, GRAFTON CHURCH
OF GOD, ELIZABETH QUINTANA,
PAMELA NELSON, and RUSSELL A. IRWIN, all individually,
and as Representatives of the Class of
other similarly situated individuals,

Plaintiffs,

v.

/ / Civil Action No. 98-C-298
[Judge Robert B. Stone]

**AMERIGAS PROPANE, INC.,
AMERIGAS PROPANE, L.P., and any**
other related entities of UGI Corporation, and
JAMES WALTERS, and
NISOURCE, INC.,
COLUMBIA ENERGY GROUP, and
COLUMBIA PROPANE CORPORATION,
and any other related entities of NiSource, Inc.

Defendants.

**AGREED ORDER GRANTING JOINT MOTION OF THE PARTIES AND THE
CLAIMS ADMINISTRATOR TO ENHANCE PARTICIPATION
IN CLASS ACTION SETTLEMENT BY CLASS MEMBERS
WHO HAVE NOT YET FILED A CLAIM FOR DAMAGES**

On the 18th day of January, 2012, came the Plaintiff Class by its counsel, David J. Romano of Romano Law Office, in person, and came also Ed Gentle and Mike Jacks, in person, and J.J. Thomas, telephonically, from the Office of the Claims Administrator, and came also the AmeriGas Defendants, by counsel, James A. Varner, in person, and Melinda F. Levitt, telephonically, and came also the NiSource Defendants, by counsel, Amy M. Smith, in person, and Yvette Harmon, telephonically, all pursuant to notice heretofore given for a hearing on this date with regard to the "Joint Motion of the Parties and the Claims Administrator to Enhance Participation in Class Action Settlement by Class Members Who Have Not Yet Filed a Claim for Damages."

At that time, the Court having reviewed the Joint Motion and listened to the argument of counsel and the representations of the Claims Administrator made the following findings and rulings.

1) The Court, through prior orders, has previously conducted a Final Fairness Hearing in this case after certifying it as a Settlement Class Action under W.Va. Rule of Civil Procedure 23;

2) The Parties have proceeded to distribute the settlement monies in accordance with the Distribution Plan as previously approved by the Court. However, as discussed at the August 10, 2011 Final Fairness hearing, fewer claims forms were submitted than anticipated when compared to the total number of potential Class Members, which led Class Plaintiffs' counsel to raise with the Court the possibility of later seeking enhanced procedures in order to include more class members;

3) Since that time, the Parties have conferred on numerous occasions and exchanged various suggestions concluding in a Joint Motion to enhance participation by those Class Members who have not yet filed a claim form which Enhancement Procedure has been reviewed by the Court and found to be appropriate in this case; the Court recognizes that having concluded that the Settlement is fair and reasonable that the primary goal in any class action settlement is to compensate those Class Members who suffered damages in accordance with the Settlement Agreement;

4) The Court finds and agrees with the Parties that the Category B Claimants, denominated in the Notice as "Not Remediated" and who are those Class Members who are believed to be within the Class definition and who have a propane system on their property where the line is buried less than 18" in depth and in some instances buried less than 12" in depth, should be the primary focus of the Enhancement Procedure as these class members may have a propane system on their property which needs remediation; the Court believes it appropriate to first focus on these Category B Claimants in an effort

to seek greater participation by them to provide to them a damage payment a part of which will be utilized to inspect and remediate their propane system;¹

5) Accordingly the Category B Claimants will receive a "last chance" Letter², a copy of which was attached to the Joint Motion as "Exhibit 1" and which Letter will be sent by First Class mail to the last known address of these Category B Claimants, along with the Claim Form which was attached as "Exhibit 2"; the Court finds and approves both the Letter and the Claim Form and approves that portion of the Enhancement Procedure related to the Category B claimants;

6) The Court finds that the letter attached to the Joint Motion as "Exhibit 3" which will be provided to Category A Claimants with a check for \$1,000.00, which the back of such check will contain the release language as set forth in the attached "Exhibit 4" to the Joint Motion is appropriate and will further the goals of Rule 23 in this case; it will also provide the damage distribution to Category A Claimants without their completing a claim form; this suggested procedure will eliminate those Category A Claimants from the need to complete a claim form and the review process by the Claims Administrator as the identity of these claimants is much more definite as they had some remediation by the AmeriGas Defendants during the various line replacement projects during the pendency of this case;

7) Finally, those Claimant Categories C through F will also be addressed in the Enhancement Procedure as those Claimants will receive damage payments without the necessity of completing a claim form in amounts proportionate to the settlement funds

¹ At the Hearing the Claims Administrator advised the Court that he intended to notify Category B Class members of preset conference calls where they can listen to instructions on how to complete the Claim Form and ask any questions about it; the Court approves such mechanism to assist the Class in receiving compensation in this case and authorizes such information to be set forth in the Category B letter which is attached to this Order.

² Also at the Hearing, Plaintiff's counsel and the Claims Administrator were concerned that Category B Class members may not be able to determine the depth of their current underground propane line, and accordingly, requested that the Claim Form be altered to indicate that no measurement is necessary as such will be determined upon an inspection before remediation is undertaken; the Court approved this change to the Claim Form which is attached to this Order.

remaining after Claimant Categories B and A are determined and paid or escrowed, all in accordance with the Joint Motion of the Parties; the Court finds that this aspect of the Enhancement Procedure is fair and reasonable and will accomplish the goals of Rule 23 in this case and the Court approves the payment of Categories C through F on a proportionate basis;

8) The Court recognizes and accepts that Class Members in Categories C through F most likely will receive less than the amount set forth in the Long Form Notice originally mailed and published in this Class Action, but the Notice indicated that the amount of such damage payment in each Claimant Category A through F was an approximate amount and not an exact amount; moreover, none of these Class Members in any of the Categories, who will benefit from this Enhancement Procedure filed the required Claim Form as required in the Long Form Notice approved by the Court and therefore, this Enhancement Procedure is a "second bite at the apple" which the Court approves;

9) The Court also approves the Time Table to implement the Enhancement Procedure as set forth in the Joint Motion; the Claims Administrator shall mail within 15 days from the date of this hearing, by First Class mail, the Letter approved by the Court with the approved Claim Form, to those remaining Category B Claimants who did not file a claim form as originally requested by the Long Form Notice; thereafter, the Parties are to follow the Timeline as set forth in the Joint Motion and attached as "Exhibit 5" to said Motion.

The Court finds that all of the above is fair and reasonable under the circumstances of this case and will promote the goal of class action proceedings under Rule 23. Further, the Court **ORDERS** all of the above to be completed as set forth herein and in the Joint Motion of the Parties.

The Court will continue to retain jurisdiction over this matter for further proceedings pending completion of the Enhancement Procedure.

The Clerk of this Court is **ORDERED** to send a certified copy of this Order to the below identified counsel of record and the Claims Administrator at the addresses listed below.

David J. Romano, Esquire
Romano Law Office
363 Washington Avenue
Clarksburg, WV 26301

Yvette Harmon, Esquire
Jonathan T. Blank, Esquire
McGuireWoods LLP
1345 Avenue of the Americas, 7th Floor
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W. Henry Lawrence, Esquire
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James A. Varner, Sr., Esquire
Debra T. Herron, Esquire
McNeer, Highland, McMunn &
Varner, L.C.
P. O. Drawer 2040
Clarksburg, WV 26302-2040

Ed Gentle, Claims Administrator
WV AmeriGas Class Action
P.O. Box 361730
Birmingham, AL 35236

ENTER: January 27, 2012
Robert B. Stone
JUDGE ROBERT B. STONE

Agreed for Entry by:

David J. Romano
David J. Romano, Esquire
W.Va. State Bar ID No. 3166
Romano Law Office
363 Washington Avenue
Clarksburg, WV 26301

Counsel for Plaintiffs and
Settlement Class Members

Yvette Harmon
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1345 Avenue of the Americas, 7th Floor
New York, NY 10105-0106

STATE OF WEST VIRGINIA: for NiSource Defendants

I, Jean Friend, Clerk of the Circuit Court and
Family Court of Monongalia County State
aforesaid do hereby certify that the attached
Order is a true copy of the original Order
made and entered by said Court.

Jean Friend Circuit Clerk

Amy M. Smith
W. Henry Lawrence, Esquire (#2156)
Amy M. Smith, Esquire (#6454)
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Bridgeport, WV 26330

Counsel for NiSource Defendants

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P. O. Drawer 2040
Clarksburg, WV 26302-2040

Counsel for AmeriGas Defendants

CLAIM FORM

Swiger v. AmeriGas Class Action
Civil Action No. 98-C-298 (Stone, Judge)

TO BE VALID, YOUR CLAIM FORM MUST BE RECEIVED ON
OR BEFORE _____, 2012.

Our records indicate you are a Class Member because you or a prior occupant of the property at this location were an AmeriGas Propane or Columbia Propane customer sometime between the dates of October 18, 1994 through December 31, 2005. **If this is incorrect and neither you nor any prior occupant were customers of Amerigas or Columbia Propane during this time period please disregard this form.** If it is correct, you may be entitled to receive money to repair your current propane system and also receive a settlement payment for damages together totaling up to **\$2000.00**. You may have also received a prior Notice of this class action. **If you want to receive a settlement payment, you need to file a valid Claim Form by providing the information requested below. Please print clearly in blue or black ink. This Claim Form must be mailed to the Claims Administrator and received on or before _____, 2012.** You may also obtain another copy of this Claim Form though the internet at www.wvamerigasclassaction.com for mailing to the Claims Administrator. If you have any questions about this settlement, you may call 1-855-637-5538 or visit www.wvamerigasclassaction.com for more information.

You are encouraged to complete this Claim Form as this will be your last chance to do so before the case is forever closed.

1. Full Name: _____
Last First Middle
2. Current Address: _____
No. Street Name Apt. No.

City State Zip Code
3. Home Telephone Number: (____) ____ - ____
4. Cellular Telephone Number: (____) ____ - ____
5. E-Mail Address: _____
6. Social Security Number: ____ - ____ - ____ (required to receive a damage payment)

7. Date of Birth: ____/____/____
8. Were you a customer of AmeriGas Propane or Columbia Propane at any time during the period of October 18, 1994 to December 31, 2005?
- Yes ____ No ____ (if yes, which Company and dates of service)
9. Was any prior resident or owner of your property a customer of AmeriGas Propane or Columbia Propane during the time period of October 18, 1994 to December 31, 2005?
- Yes ____ No ____ (if yes, which Company and dates of service)
10. Is there a propane system with an underground line on your property being used at the present time?
- Yes ____ No ____ (if yes, which Company now supplies you propane)
11. You are designated as "NOT REMEDIATED" in the Customer Category [located on page 1 upper right corner], the Claims Administrator believes you may presently have on your property an underground propane line buried less than 18 inches so please answer the following questions:

- a) Do you desire to have your underground line re-buried to 18 inches, or if unable to be buried 18 inches, have it encased in conduit?

Yes ____ No ____

- b) If the Claims Administrator determines your claim to be valid, you are eligible to receive a damage payment totaling up to **\$2,000.00** for the cost of reburial, hook up and testing, and as payment for damages for aggravation and inconvenience. The Claims Administrator will assist you in directly paying your current propane supplier, including Amerigas, or a licensed contractor familiar with propane repairs to re-bury your underground line or if you desire you can pay for the repair yourself and seek reimbursement from the Claims Administrator.

If you want the Claims Administrator to assist you in arranging for payment of the licensed contractor please contact the Claims Administrator by calling toll free at 1-855-637-5538 or by mail to Ed Gentle, WV AmeriGas Class Action, P.O. Box 361730, Birmingham, AL 35236 or by email at the e-mail address link at www.wvamerigasclassaction.com.

**IF YOU NEED ADDITIONAL SPACE TO ANSWER ANY QUESTIONS,
PLEASE USE THE ADDITIONAL SPACE BELOW OR ATTACH
ADDITIONAL PIECES OF PAPER IF NECESSARY.**

WV AMERIGAS CLASS ACTION
EDGAR C. GENTLE, CLAIMS ADMINISTRATOR
P.O. BOX 361730
BIRMINGHAM, AL 35236
1-855-637-5538
amerigas@gstandslaw.com
www.wvamerigasclassaction.com

IMPORTANT NOTICE - LAST OFFER FOR PAYMENT

Dear Class Member:

You may have previously received a Notice regarding a settlement in the class action case, known as *Swiger v. AmeriGas & NiSource*, filed in the Circuit Court of Monongalia County, West Virginia, in which you have been determined to be a potential claimant entitled to money damages upon your filing of a valid Claim Form.

Enclosed with this letter is a Claim Form that you are encouraged to complete and mail to the Claims Administrator, in the envelope provided herein, to preserve your right to a damage payment. You should fill out and mail this Claim Form even if you do not believe you have all of the necessary information to complete the Claim Form, because if you fail to have your Claim Form postmarked by _____, your entitlement to a damage payment will be **FOREVER BARRED**.

If you file this Claim Form and it is approved, you will be entitled to a **\$2,000.00 payment** of which \$1,000.00 is to be used to repair your current propane system by burying it to an 18" depth and for shielding your propane pipe where it leaves the tank and enters your structure. The Claims Administrator will assist you in locating a qualified contractor to make this repair, including using your current propane supplier, with the cost of the repair to be paid from the damage payment. Also, if your claim is approved, you will be entitled to an additional \$1,000.00 payment which you may use and spend as you like, as well as keeping any remaining funds from the \$1,000.00 payment for repair of your propane system if such repair costs less than \$1,000.00. However, to receive this **\$2,000.00 damage** payment you must file (mail) your Claim Form prior to _____.

If you have any questions at all, or need assistance in completing your Claim Form, please contact the Claims Administrator at the mailing address or toll free number or e-mail address located at the top of this letter. Also as Claims Administrator, I have scheduled the following conference telephone calls where the completion of the Claim Form will be explained and you may ask questions. You may participate in one or all of the conference calls that meet your schedule by calling the toll-free number _____.

- 1) _____
- 2) _____
- 3) _____
- 4) _____
- 5) _____

Hopefully you will find time to complete and mail the Claim Form prior to the deadline as your failure to do so will keep you from receiving any damage payment from this case at any time, now or in the future.

Very truly yours,

Ed Gentle
Claims Administrator

[Category B Claimants]