

CHANGES IN BOLD TYPE IN PARAGRAPHS 29, 30, 57

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 98-D-2495 (CBS)

UNITED STATES OF AMERICA
ex rel. **JACK J. GRYNBERG**, Plaintiffs,

v.

AMERIGAS, INC.,
A Pennsylvania Corporation, Defendant.

FIRST AMENDED STIPULATED SETTLEMENT AGREEMENT

COME NOW the United States of America, by and through the United States Attorney for the District of Colorado, the Relator, Jack J. Grynberg (“Grynberg”), by and through his attorney, Michael S. Porter, and the Defendant, AmeriGas, Inc. (“AmeriGas”), by and through its attorneys Ballard Spahr Andrews & Ingersoll, LLP, and hereby stipulate and agree to settle and compromise the above captioned civil action, and state as follows:

PREAMBLE

1. On November 16, 1998, Grynberg, a private person, acting as a relator, pursuant to 31 U.S.C. § 3730(b) of the False Claims Act, 31 U.S.C. § 3729, *et. seq.* (hereinafter “the False Claims Act”) filed a complaint (“Grynberg’s Complaint”) against AmeriGas Propane, Inc.,¹

¹ The parties have stipulated that AmeriGas, Inc. is the correct corporate entity; AmeriGas, Inc. was subsequently substituted for AmeriGas Propane, Inc. as the correct defendant.

which became the subject action, 98-D-2495, in the United States District Court for the District of Colorado (hereinafter “The Action”).

2. Grynberg’s Complaint alleged that the Defendant AmeriGas under-paid federal mineral royalties:

- A. By under-reporting the volume of the carbon dioxide (CO₂) gas that Defendant AmeriGas produced from federal land; and
- B. By under-reporting the value of the CO₂ gas that Defendant AmeriGas produced from federal land.

3. On February 23, 2001, the United States, pursuant to 31 U.S.C. § 3730(b)(2) and (4), filed a Notice Of Intervention By The United States Of America (“Notice”) that notified the Court that the United States was intervening and proceeding against Defendant AmeriGas as to the allegations contained in Grynberg’s Complaint that Defendant AmeriGas under-paid federal mineral royalties by under-reporting the value of the CO₂ gas that Defendant AmeriGas produced from federal land.

4. Pursuant to 31 U.S.C. § 3730(b)(4), the Notice also notified the Court that the United States declined to intervene and declined to proceed as to all other allegations (“Unadopted Allegations”) contained in Grynberg’s Complaint.

5. The Unadopted Allegations alleged that Defendant AmeriGas under-paid federal mineral royalties by under-reporting the volume of the CO₂ gas that Defendant AmeriGas produced from federal land.

6. Contemporaneously with the filing of the Notice, the United States filed the Complaint of the United States of America (“United States’ Complaint”) in The Action.

7. The United States' Complaint alleged that Defendant AmeriGas violated the False Claims Act during the period November 16, 1988, through June 30, 1989, and under-paid federal mineral royalties:

- A. By under-reporting the value of the CO₂ gas produced from federal land; and
- B. By under-reporting the value of the methane gas produced from federal land.

8. The United States' Complaint also alleged causes of action under the common law for unjust enrichment and breach of contract.

9. On June 14, 2002, Grynberg, acting as a relator pursuant to 31 U.S.C. § 3730(b), filed an amended complaint ("Grynberg's Amended Complaint") against Defendant AmeriGas.

10. Grynberg's Amended Complaint alleged that Defendant AmeriGas violated the False Claims Act and under-paid federal mineral royalties:

- A. By under-reporting the value of the CO₂ gas produced from federal land;
- B. By under-reporting the volume of the CO₂ gas produced from federal land;
- C. By under-reporting the value of the methane gas produced from federal land; and
- D. By under-reporting the volume of the methane gas produced from federal land.

11. On October 15, 2002, the Court entered the Order Granting The Parties' Stipulation Re: The May 8, 2002 Motion To Amend Complaint And To Dismiss With Prejudice the CO₂ Volume Claims, As To AmeriGas, Only ("October 15th Order").

12. Pursuant to the October 15th Order, Grynberg's Amended Complaint was accepted as filed.

13. Also pursuant to the October 15th Order, the claim in Grynberg's Amended Complaint that Defendant AmeriGas violated the False Claims Act and under-paid federal mineral royalties by under-reporting the volume of the CO₂ gas produced from federal land was dismissed with prejudice.

14. Thereafter, Grynberg's Amended Complaint alleged that Defendant AmeriGas violated the False Claims Act and under-paid federal mineral royalties:

- A. By under-reporting the value of the CO₂ gas produced from federal land;
- B. By under-reporting the value of the methane gas produced from federal land; and
- C. By under-reporting the volume of the methane gas produced from federal land.

15. On October 17, 2002, the United States, pursuant to 31 U.S.C. § 3730(b)(2) and (4), filed a Notice Of Intervention By The United States Of America In Reference To Relator Jack Grynberg's Amended Complaint ("Second Notice") that notified the Court that the United States was intervening and proceeding against Defendant AmeriGas as to the remaining allegations contained in Grynberg's Amended Complaint, as modified by the October 15th Order, that allege that Defendant AmeriGas violated the False Claims Act and under-paid federal mineral royalties:

- A. By under-reporting the value of the CO₂ gas produced from federal land;
- B. By under-reporting the value of the methane gas produced from federal land; and

- C. By under-reporting the volume of the methane gas produced from federal land.

16. Contemporaneously with the filing of the Second Notice, the United States filed the Amended Complaint of the United States of America (“United States’ Amended Complaint”).

17. The United States’ Amended Complaint alleged that Defendant AmeriGas violated the False Claims Act during the period November 16, 1988, through June 30, 1989, and under-paid federal mineral royalties:

- A. By under-reporting the value of the CO₂ gas produced from federal land;
- B. By under-reporting the value of the methane gas produced from federal land; and
- C. By under-reporting the volume of the methane gas produced from federal land.

18. The United States’ Amended Complaint also alleged causes of action under common law for unjust enrichment and breach of contract.

19. On August 30, 1979, Defendant AmeriGas acquired title to and the operating rights in federal Lease COP 58692 located on federal land in the McElmo Dome Field.

20. On October 22, 1980, the United States approved the assignment of the operating rights in federal Lease COC 38421 located on federal land in the McElmo Dome Field to Defendant AmeriGas.

21. The United States and Relator Grynberg have investigated Defendant AmeriGas’ federal mineral royalty payments for CO₂ gas and methane gas produced during the period

August 30, 1979, through June 30, 1989, from federal Lease COC 38421 and federal Lease COP 58692 located in the McElmo Dome Field in and around Cortez, Colorado (“Federal Leases”).

22. The United States and the Relator Grynberg assert that Defendant AmeriGas is liable to the United States pursuant to the False Claims Act for knowingly under-paying federal mineral royalties for the Federal Leases during the period November 16, 1988, through June 30, 1989.

23. AmeriGas denies that it underpaid any royalties or otherwise acted improperly.

24. There has been no factual finding or adjudication as to the matters alleged in Grynberg’s Amended Complaint or the United States’ Amended Complaint.

25. The United States, the Relator Grynberg and the Defendant AmeriGas mutually desire to avoid the delay, expense and inconvenience of further litigation and desire to settle the allegations involved in this litigation.

ACCORDINGLY, in consideration for the mutual promises, covenants and obligations contained in this First Amended Stipulated Settlement Agreement and the resolution of the claims alleged in Grynberg’s Amended Complaint and the United States’ Amended Complaint, the United States, the Relator Grynberg and the Defendant AmeriGas agree and stipulate as follows:

TERMS AND CONDITIONS

26. Defendant AmeriGas agrees to pay to the United States the sum of One Hundred Ninety-Five Thousand Dollars (\$195,000) (“Settlement Payment to the United States”).

27. Defendant AmeriGas shall make the Settlement Payment to the United States in accordance with and pursuant to paragraphs 38 through 42 herein.

28. Defendant AmeriGas agrees to pay to the Relator Jack J. Grynberg the sum of Ninety Thousand Dollars (\$90,000.00) (“Settlement Payment to Jack J. Grynberg”).

29. In consideration for the Settlement Payment to the United States and the Settlement Payment to Jack J. Grynberg, the United States and Jack J. Grynberg release, discharge, waive and promise to refrain from instituting or maintaining any civil or administrative monetary claims, including civil penalties, against Defendant AmeriGas, its current and former affiliates, parents, divisions, or subdivisions, its successors or assigns, **however specifically excluding The BOC Group, Inc. (please see ¶ 32, *infra*)**, and any of its current or former directors, officers, employees or agents, whether for actions taken on behalf of Defendant AmeriGas, actions taken by Defendant AmeriGas on behalf of third parties, or actions of a third party taken on behalf of Defendant AmeriGas, brought or filed under: (A) the False Claims Act, 31 U.S.C. § 3729 *et seq.*, for submitting or causing to be submitted claims and/or reports to the United States and/or its executive branches and agencies; (B) any other statute creating causes of action for civil damages or civil penalties for submitting or causing to be submitted claims and/or reports to the United States and/or its executive branches and agencies; or (C) the common law theories of payment by mistake, unjust enrichment, breach of contract and fraud, based upon the allegations in Grynberg’s Amended Complaint or the United States’ Amended Complaint, concerning:

- (1). The valuation (including all allowances and deductions), or the reporting of the value (including all allowances and deductions) of the CO₂ gas produced from the Federal Leases during the period August 30, 1979, through June 30, 1989;
- (2). The valuation (including all allowances and deductions), or the reporting of the value (including all allowances and deductions) of the methane gas produced from the Federal Leases during the period August 30, 1979, through June 30, 1989; and

- (3). The reporting of volumes of the methane gas produced from Federal Leases during the period August 30, 1979, through June 30, 1989.

30. The United States, the Relator Grynberg and the Defendant AmeriGas stipulate and agree that specifically excluded from the scope and terms of this First Amended Stipulated Settlement Agreement are:

- A. Any disputes or claims arising under federal mineral leasing law, federal regulations, or federal leases not specifically referred to in paragraph 29 of this First Amended Stipulated Settlement Agreement.
- B. Any disputes or claims against any person or entity, except the persons and entities identified in paragraph 29 of this First Amended Stipulated Settlement Agreement;
- C. Any disputes or claims arising under the criminal laws of the United States;
- D. Any disputes or claims arising under the Internal Revenue Code; and
- E. Any disputes or claims for the enforcement of this First Amended Stipulated Settlement Agreement.

31. In consideration for the Settlement Payment to the United States and the Settlement Payment to Jack J. Grynberg, the United States and Jack J. Grynberg release, discharge, waive and promise to refrain from instituting or maintaining any civil or administrative monetary claims, including civil penalties, against each other including any claims by the Relator Grynberg against the United States for any portion or percentage of the Settlement Payment to the United States, under any common law or statutory provision, including any provision of the False Claims Act, and conversely, any claim by the United States

for any portion or percentage of the Settlement Payment to Jack J. Grynberg under any common law or statutory provision, including any provision of the False Claims Act.

32. The parties to the First Amended Stipulated Settlement Agreement hereby expressly recognize that there is currently pending a civil action entitled United States of America ex rel, Jack J. Grynberg v. The BOC Group, Inc., Civil Action No. 97-D-2422, United States District Court for the District of Colorado (hereinafter “The BOC Action”), against Defendant AmeriGas’ successor in interest in the Federal Leases. The parties to this First Amended Stipulated Settlement Agreement expressly stipulate and agree that nothing contained in this First Amended Stipulated Settlement Agreement, the fact of this settlement, and/or the Stipulation For Dismissal With Prejudice intended to be filed upon the consummation of this First Amended Stipulated Settlement Agreement is intended to act, or should be construed to limit, reduce, impair and/or otherwise release or diminish any aspect of the United States’ and/or the Relator Grynberg’s pending claims against the BOC Group, Inc. as set forth in The BOC Action.

33. The United States and the Relator Grynberg specifically stipulate and agree that nothing contained within this First Amended Stipulated Settlement Agreement shall be construed to create a precedent relative to any other False Claims Act action involving Jack J. Grynberg as a Relator. Specifically, the United States and the Relator Grynberg agree that nothing contained herein, or the fact of this settlement, shall be utilized by Jack J. Grynberg or anyone else to claim a determination herein, or as a result of this First Amended Stipulated Settlement Agreement, regarding Jack J. Grynberg’s jurisdictional status or qualification in any other False Claims Act action. Conversely, the United States and the Relator Grynberg stipulate and agree that the facts

of this case and the circumstances surrounding this settlement are unique to this case and nothing contained herein, or the fact of this settlement, shall be utilized by the United States or anyone else for purposes of establishing a percentage, if any, of the judgment or settlement funds in any other False Claims action, to which Jack J. Grynberg may be entitled, for purposes of justifying or establishing the reasonableness or fairness of a proposed settlement in any other False Claims Act action, including The BOC Action, or for purposes of establishing the amount of damages in any other False Claims Act action, including The BOC Action. The Defendant AmeriGas is not a party to the stipulations and agreements contained in this paragraph, but does not otherwise dispute or contest these stipulations.

34. The Defendant AmeriGas and its counsel agree not to voluntarily produce this First Amended Stipulated Settlement Agreement, and agree not to discuss the terms of this First Amended Stipulated Settlement Agreement, including the amounts of payments, with any third parties, except AmeriGas may discuss the fact of this First Amended Stipulated Settlement Agreement, without divulging any terms of this settlement.

35. This First Amended Stipulated Settlement Agreement is made in compromise of disputed claims, therefore, neither the existence of this First Amended Stipulated Settlement Agreement nor the performance of any obligation pursuant to this First Amended Stipulated Settlement Agreement, including the making of the Settlement Payment to the United States or the Settlement Payment to Jack J. Grynberg, shall be construed as an admission by Defendant AmeriGas of liability or wrongdoing or other expression concerning the merits of the claims in dispute against Defendant AmeriGas.

36. The parties stipulate that Court approval is not necessary to consummate or validate this First Amended Stipulated Settlement Agreement or the payments and releases identified herein.

37. The United States and Defendant AmeriGas stipulate and agree that all costs (as defined by Federal Acquisition Regulation 31.205-47(a)) incurred by or on behalf of Defendant AmeriGas and its successors, affiliates, parents, subsidiaries, officers, directors, agents, or employees in connection with: (1) the matters covered by this First Amended Stipulated Settlement Agreement; (2) the United States' investigations of the matters covered by this First Amended Stipulated Settlement Agreement; (3) Defendant AmeriGas' investigation, defenses of these matters, and corrective action with respect to these matters; (4) the negotiation of this First Amended Stipulated Settlement Agreement; and (5) Settlement Payment to the United States and the Settlement Payment to Jack J. Grynberg pursuant to this First Amended Stipulated Settlement Agreement, shall be unallowable costs for government contract accounting purposes. These amounts shall be separately stated.

38. Defendant AmeriGas shall make the Settlement Payment to the United States and the Settlement Payment to Jack J. Grynberg within thirty days of the date this First Amended Stipulated Settlement Agreement is fully executed by all signatories identified below.

39. The Settlement Payment to the United States shall be made by Defendant AmeriGas by FedWire Electronic Funds Transfer ("EFT") to the United States Department of Justice account in accordance with current EFT procedures, and shall refer to USAO File Number 1998V01016.

40. The Settlement Payment to the United States shall be made in accordance with instructions provided to Defendant AmeriGas by the Financial Litigation Unit of the United States Attorney's Office for the District of Colorado following execution in full of this First Amended Stipulated Settlement Agreement.

41. Any amount of the Settlement Payment to the United States received by the Department of Justice after 4:00 p.m. (Eastern Standard Time) shall be credited to the next business day.

42. If Defendant AmeriGas fails to make the Settlement Payment to the United States or the Settlement Payment to Jack J. Grynberg in accordance with the terms and conditions of this First Amended Stipulated Settlement Agreement, Defendant AmeriGas shall pay a One-Hundred-Dollar per day penalty, to each payee, for each day Defendant AmeriGas fails to pay either the Settlement Payment to the United States or the Settlement Payment to Jack J. Grynberg in accordance with the terms and conditions of this First Amended Stipulated Settlement Agreement.

43. Defendant AmeriGas shall make the Settlement Payment to Jack J. Grynberg by transmitting a settlement draft payable to "Jack J. Grynberg" to Mr. Grynberg at Prentice Point, Suite 500, 5299 DTC Boulevard, Greenwood Village, CO 80111-3321, and simultaneously providing a copy of said settlement draft to Mr. Grynberg's counsel, Michael S. Porter at 4465 Kipling Street, Wheat Ridge, CO 80033.

44. With the exception of the Settlement Payment to the United States and the Settlement Payment to Jack J. Grynberg expressly provided for herein, the United States, the Relator Jack J. Grynberg and the Defendant AmeriGas agree and stipulate that each party shall

be responsible for its own attorneys' fees, costs and expenses related to the matters resolved by this First Amended Stipulated Settlement Agreement.

45. This First Amended Stipulated Settlement Agreement expressly resolves and releases any claims for attorneys' fees, costs and expenses that Relator Grynberg may have against Defendant AmeriGas, pursuant to 31 U.S.C. § 3730(d).

46. This First Amended Stipulated Settlement Agreement expressly resolves and releases any claims, pursuant to section 3730 of the False Claims Act, that the Relator Grynberg may have against the United States for any percentage of the Settlement Payment to the United States.

47. Defendant AmeriGas shall have no responsibility to further compensate the United States for any Relator share, if any, that may be due in connection with the Settlement Payment to the United States paid by Defendant AmeriGas to the United States.

48. The Settlement Payment to the United States and the Settlement Payment to Jack J. Grynberg represent the full payment of and compensation to the United States and Jack J. Grynberg for all claims against Defendant AmeriGas referred to in The Action and in paragraph 29 herein.

49. Nothing in this First Amended Stipulated Settlement Agreement shall be construed to bar either party to this First Amended Stipulated Settlement Agreement from seeking judicial enforcement of this First Amended Stipulated Settlement Agreement in a court of competent jurisdiction, including the United States District Court for the District of Colorado.

50. Defendant AmeriGas shall have no obligation to make corrections or recalculations, submit reports, adjust prior royalty payments, or file amended Monthly Report Of Operations – Form 3160 or Report Of Sales And Royalty Remittance – Form 2014 related to the

CO₂ gas and methane gas produced from the Federal Leases during the period November 16, 1988, through June 30, 1989.

51. This First Amended Stipulated Settlement Agreement, together with all of the obligations and terms hereof, shall inure to the benefit of and shall bind assigns, successors-in-interest, and transferees of the parties to this First Amended Stipulated Settlement Agreement.

52. Each of the signatories executing this First Amended Stipulated Settlement Agreement represents that he or she has full authority to sign on behalf of the designated party and to bind that party to each and every term, condition and covenant of this First Amended Stipulated Settlement Agreement.

53. This writing constitutes the entire agreement of the parties to this First Amended Stipulated Settlement Agreement.

54. This First Amended Stipulated Settlement Agreement may not be modified, amended or terminated except by a written agreement signed by the parties to this First Amended Stipulated Settlement Agreement.

55. This First Amended Stipulated Settlement Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which taken together shall constitute one and the same instrument.

56. Within ten (10) days after the Defendant AmeriGas makes the Settlement Payment to the United States and the Settlement Payment Jack J. Grynberg, the United States, the Relator Grynberg and the Defendant AmeriGas shall jointly file a Stipulation to Dismiss With Prejudice The Action, pursuant to Fed. R. Civ. P. 41(a)(2).

57. The parties hereto acknowledge that the United States and the Defendant AmeriGas previously entered into a Stipulated Settlement Agreement dated November 12, 2002,

and filed it in the United States District Court for the District of Colorado on November 12, 2002. The parties stipulate and agree this First Amended Stipulated Settlement Agreement supercedes the Stipulated Settlement Agreement dated November 12, 2002, and renders the Stipulated Settlement Agreement dated November 12, 2002, moot, void and of no legal effect.

ON BEHALF OF THE UNITED STATES OF AMERICA

Dated: this ____ day of February, 2003

JOHN W. SUTHERS
United States Attorney

STEPHEN D. TAYLOR
Assistant U.S. Attorney
1225 Seventeenth Street, Suite 700
Denver, CO 80202
Telephone: (303) 454-0100

ON BEHALF OF THE RELATOR JACK J. GRYNBERG

Dated: this ____ day of February, 2003

JACK J. GRYNBERG

Dated: this ____ day of February, 2003

THE LAW FIRM OF MICHAEL S. PORTER

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4465 Kipling Street
Wheat Ridge, CO 80033
Telephone: (303) 940-8370
ATTORNEY FOR JACK J. GRYNBERG

ON BEHALF OF DEFENDANT AMERIGAS, INC.

Dated: this ____ day of February, 2003

BRENDAN P. BOVAIRD
Vice President and General Counsel
AMERIGAS, INC.

Dated: this ____ day of February, 2003

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