IN THE UNITED STATES COURT OF FEDERAL CLAIMS

Peter Turping, Dick Cartmell, Philip Isaacs, Greg Brown, John Bongers; and other similarly situated persons, v. THE UNITED STATES	NO. CLASS ACTION COMPLAINT

I. INTRODUCTION

1. This case is filed on behalf of the above named plaintiffs whose property interests in their pension retirement benefits were illegally eliminated, discontinued, or substantially reduced and taken by the United States of America (hereafter the "Government") contrary to the Government's own policies and the regulations of an executive department, the United States Department of Energy. Plaintiffs are entitled by the Tucker Act and the Takings Clause of the Fifth Amendment to the U.S. Constitution to obtain just compensation from the Government.

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II. JURISDICTION

2. This Court has exclusive subject matter jurisdiction pursuant to 28 U.S.C. § 1491 because the United States is the defendant; the amount being sought by Plaintiffs individually, and each and every member of the Class, exceeds $10,000; and these claims are brought within six (6) years.

III. VENUE

3. Washington D.C. is the appropriate venue pursuant to 28 U.S.C. § 1491.

IV. PARTIES

4. The plaintiffs are all present and former employees of Boeing Computer Services, Richland (BCSR), Westinghouse Hanford Company (WHC) and Kaiser Engineering Hanford (KEH) at the Department of Energy's Hanford Nuclear Reservation who were transferred to Lockheed Martin Services, Inc. (LMSI).

5. The Defendant is the United States of America ("Government") together with its controlled entity and agent, The Hanford Multi-Employer Pension Plan, Engineering and Operations (the Plan) which Plaintiffs allege is entity completely controlled by the United States Department of Energy to such an extent that it is in fact and law a part of the Government.

V. OPERATIVE FACTS

V.(a) Background

6. Hanford, White Bluffs, and Richland were small farming towns in Southeast Washington founded between 1905 and 1910. The towns had a combined population of 1500. Richland's 1940 census numbered its citizens at 200.

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7. In 1939 the Manhattan Project was begun to investigate the production of nuclear weapons. The Army component of the Manhattan Project was designated the Manhattan District. In 1941, the United States entered World War II. In June 1942 the Army Corps of Engineers was tasked with building industrial plants to make Plutonium-239 and Uranium-235. In September 1942, the Army Corps of Engineers placed the Manhattan District under the command of General Leslie R. Groves, charging him with the construction of industrial-size plants for manufacturing plutonium and uranium. Groves recruited the DuPont Company to be the prime contractor for the construction of the plutonium production complex.

8. In January 1943 the decision was made to build the production facilities at Hanford, and all of Hanford's residents were removed from the site by the government. In the 30 months between groundbreaking in March 1943 and the end of the war in 1945, and for a cost of $230 million, workers for the DuPont Company built 554 nonresidential buildings, including B, D, and F reactors, T, B and U processing canyons, 64 underground tanks, fuel fabricating buildings in the 300 area, 386 miles of roadway, 158 miles of railroad lines, and a new city of Richland which could house 17,500 workers.

9. Plutonium from Hanford's reactors went into the Trinity test bomb and into the bomb dropped on Nagasaki. Japan surrendered unconditionally within a week.

10. In September 1946, the General Electric Company assumed management of the Hanford Works from the DuPont Company.

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11. In January of 1947 the Atomic Energy Commission replaced the US Army Corps of Engineers as the lead agency for the Government's management of the Hanford site.

12. In January of 1975 the Energy Research and Development Administration (ERDA) replaced the Atomic Energy Commission as the lead agency for the Government's management of the Hanford site.

13. On October 1, 1977 the United States Department of Energy replaced the Energy Research and Development Administration (ERDA) as the lead agency for the Government's management of the Hanford site.

14. Between 1947 and 1987, while under the management of the Atomic Energy Commission, ERDA, and the United States Department of Energy, the scope of work at the Hanford site continued to grow as a result of the Cold War and the Korean War.

15. Between 1947 and 1987, while under the management of the Atomic Energy Commission, ERDA, and the United States Department of Energy, the scope of work at the Hanford site was split between the General Electric Company (GE) and at least a dozen different contractors. A summary of some of the changes in the companies hired by the government to manage the work at the Hanford site is set forth below:

a) 1953, May 15, Vitro Engineers assumed GE's new facility design role.

b) 1953, June 1, J.A. Jones Construction assumed GE's construction role.

c) 1965, January 1, U.S. Testing assumed GE's environmental and bioassay testing role.

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d) 1965, January 4, Battelle Memorial Institute, assumed GE's laboratory operations – subsequently renamed Pacific Northwest National Laboratory (PNNL).

e) 1965, July 1, Computer Sciences Corporation (CSC) began providing computer services; a new scope at Hanford.

f) 1965, August 1, Hanford Occupational Health Foundation assumed GE's industrial medicine role.

g) 1965, September 10, Douglas United Nuclear assumed part of GE's reactor operations.

h) 1966, January 1, Isochem assumed GE's chemical processing operations.

i) 1966, March 1, ITT Federal Support Services, Inc. assumed responsibility for some of GE's support services.

j) 1967, July 1, Douglas United Nuclear assumed responsibility for the remainder of GE's reactor operations.

k) 1967, September 4, Atlantic Richfield Hanford Company succeeded Isochem.

l) 1970, February 1, Westinghouse Hanford Company, Hanford Engineering Development Laboratory was spun off from PNNL (Pacific Northwest National Laboratories) (then PNL) with mission to build the Fast Flux Test Facility.

m) 1971, September, ARHCO succeeded ITT/PSS.

n) 1975, October 1, Boeing Computer Services, Richland (BCSR) was hired to provide computer services at the Hanford site, succeeded CSC.

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o) 1977, October 1, Rockwell Hanford Operations (RHO) was hired to perform Chemical Processing & Support Services, succeeded ARCHO.

p) 1981, June, Braun Hanford Company (BHC) was hired to perform Architect & Engineering Services, succeeded Vitro.

q) 1982, March, Kaiser Engineering Hanford (KEH) was hired to perform Architect & Engineering Services, succeeded BHC.

r) 1987, March 1, site construction work was transferred to KEH consolidating the work formerly performed by J.A. Jones.

s) 1987, June 29, Westinghouse Hanford Company (WHC) was given overall responsibilities for site management & operations, including work performed by previous contractors Rockwell Hanford Operations (RHO), United Nuclear Corporation (UNC) and Kaiser Engineering Hanford (KEH).

16. By 1987, no fewer than seven separate contractors were providing services to the government at the Hanford site. The contractors at the Hanford site had numerous characteristics in common.

a) All contractors were ultimately paid for their services by the Government.

b) All contractors offered pay and benefits to their employees that included health care benefits, a defined benefit pension, and other retirement benefits.

17. Up until 1987, when a particular contractor was replaced with a new contractor, or when a portion of work performed by one contractor was transferred to another contractor, (often referred to as a "successor contractor") the actual workers who performed that work would continue to perform their same jobs, in the same locations,

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for the same pay and benefits. From the worker's perspective, a change in contractor would entail merely reporting to a new company with new senior management. They would continue to do the same work in the same location for the same pay and benefits.

18. These transfers from one contractor to a successor contractor created a burden for both the United States Department of Energy and the successor contractors, because there were significant administrative requirements to move the pensions earned by these workers while they were employed with the old contractor to the new successor contractor. Frequently, both the old contractor and the new successor contractor would have pension plans that owed benefits to employees not associated with the Hanford site. The contract transfers therefore necessitated disentangling the Hanford worker's pension contributions from their old contractor's pension plan, and integrating them into the new contractor's pension plan.

19. To relieve the United States Department of Energy and its contractors from the burdensome process of transferring the pensions of Hanford workers from one contractor to a successor contractor, the United States Department of Energy decided to create pension plans for the workers of the Hanford site contractors that were separate from their employers. By combining the worker's pensions into pension plans separate from their employers, the United States Department of Energy sought to simplify the administrative burden of transferring any particular work scope from one contractor to a successor contractor.

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20. In 1987, the United States Department of Energy directed the prime contractor for the Hanford site, the Westinghouse Hanford Company, to create The Hanford Multi-Employer Pension Plan, Engineering and Operations (the Plan).

V.(b) The Plan And The Plan Administrator Are So Completely Controlled By The Government That In Law And Fact The Plan And The Plan Administrator Are A Part Of The Government

21. The Plan was designed to operate, and has operated, as the pension plan for multiple Hanford site contractors.

22. While the Plan purports to have an independent pension committee charged with the administration and operation of the plan (the Plan Administrator), at all times relevant to this litigation, the United States Department of Energy has actually controlled the terms, administration and operation of the Plan.

23. The Plan Administrator is required to have any amendment to the Plan approved by the United States Department of Energy.

24. All actions of the Plan Administrator that would have a financial impact on the Plan require the prior written approval of the United States Department of Energy.

25. The United States Department of Energy reimburses all costs of the Plan.

26. Evidence of this control includes the fact that the United States Department of Energy created the Plan, through its contractor and agent, Westinghouse Hanford Company.

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27. The United States Department of Energy controlled the original provisions of the Plan, through its control of its contractor and agent, Westinghouse Hanford Company, who drafted the Plan at the request of the United States Department of Energy.

28. The United States Department of Energy controlled all subsequent amendments to the Plan through its control of various Hanford site contractors who were controlled by, and acted as agents of, the United States Department of Energy.

29. At all times relevant to this litigation, the Plan Administrator has always consisted of individuals employed by contractors to the United States Department of Energy at the Hanford site.

30. On September 30, 1996, the United States Department of Energy formalized the government's control of the Plan and the Plan Administrator when it issued an executive department regulation, DOE Order 350.1.

31. DOE Order 350.1, in pertinent part, provides that "DOE approval is required prior to implementing any change to a pension plan covering prime cost reimbursement contracts for management and operation of DOE facilities and other contracts when designated. Changes shall be in accordance with and pursuant to the terms and conditions of the contract."

32. At all times relevant to this litigation, the United States Department of Energy has always controlled the decisions and actions of the Plan Administrator by virtue of their employment with contractors hired and controlled by the United States Department of Energy at the Hanford site, the contracts between the United States Department of Energy, and the executive agency regulation, DOE Order 350.1.

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33. For example, at all times relevant to this litigation, on each and every occasion that the Plan Administrator has sought to change any of the provisions of the Plan, the United States Department of Energy required the Plan Administrator to seek and receive approval by the United States Department of Energy for any such changes before such changes became effective.

34. For example, on or about 9/24/2008, Fluor Hanford President and CEO Bruce Hanni sent a letter to the United States Department of Energy seeking permission and approval for Fluor Hanford's intended actions discontinuing accruing vesting service and compensation for certain Hanford site employees under the Plan.

35. On or about 11/25/2008, Sally Sieracki, contracting officer for the United States Department of Energy sent the Government's reply, providing that permission and concurrence.

36. In another example, on or about 7/28/2009, Fluor Hanford President and CEO David Ruscitto sent a letter to the United States Department of Energy seeking approval for the fourth and fifth amendments to the Plan.

37. On or about 08/12/2009, Sally Sieracki, contracting officer for the United States Department of Energy sent the Government's reply, “approving” the fifth amendment to the Plan, and “not approving” the fourth amendment to the Plan.

38. Subsequent to this correspondence, the Plan Administrator adopted the fifth amendment to the Plan and revoked the fourth Amendment to the Plan.

39. In 2008, Doug Shoop, the current Department of Energy Hanford Site Director who was then Deputy Director, met with a small group of Class members

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40. At this meeting, Mr. Shoop provided a pension cost estimate for putting Class members back into the Plan that was grossly overstated by orders of magnitude.

41. This inaccurate information was then provided by the government as justification for denying any changes that would restore pension benefits to the Class members.

42. On November 3, 2006, Todd Martin, chair of the Hanford Advisory Board, (an independent oversight agency monitoring Hanford Site operations), advised Keith Klein of the United States Department of Energy Richland Operations office (DOE-RL) and Roy Schepens of the United States Department of Energy Office of River Protection (DOE-ORP) that "all employees, including enterprise employees, whose workscope is in support of the Hanford clean-up effort, should be given an opportunity to obtain pension and medical benefit coverage under the regular Hanford plans, thereby providing an end to existing benefit inequities."

43. This recommendation was ignored by the United States Department of Energy.

44. It is plain from these and other examples that the independence of the Plan Administrator is a sham, and that at all times relevant to this litigation, the Plan Administrator and the Plan were actually controlled by the Government.

V.(c) The Regulations Of An Executive Department, The United States Department Of Energy, Have Always Required That The Class Be Included In The Plan Under The Same Terms And Conditions As All Other Plan Participants

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45. On October 1, 1996, the prime contract for the management of the Hanford site was terminated and transferred by the United States Department of Energy from the incumbent contractors Westinghouse Hanford Company and its integrated subcontractors Boeing Computer Services, Richland (BCSR) and Kaiser Engineering Hanford (KEH) to the successor contractor Fluor Daniel Hanford, Inc. (FDH) and its team of integrated subcontractors collectively called the Project Hanford Management Contract (PHMC).

46. Prior to the transfer, BCSR provided information technology services and records and information management services to Westinghouse Hanford Company (WHC).

47. Prior to the transfer, all employees of BCSR, WHC and KEH were full participants in the Plan.

48. Subsequent the transfer, the incumbent employees of BCSR, and some incumbent employees of WHC and KEH, were transferred to the successor contractor team and employed by Lockheed Martin Services, Inc. (LMSI),a so-called "Enterprise Company" that was a subcontractor to FDH.

49. As a result of the termination and transfer of these incumbent employees from the predecessor contractors BCSR, WHC and KEH to the successor contractor LMSI, retirement medical benefits, retirement death benefits, and retirement compensation, including the formula used to calculate pension service for these employees within the Plan, (collectively referred to hereafter as "Benefits") were purportedly altered, such

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that the Benefits for these incumbent employees were ultimately frozen regarding pension service, and eliminated in regards to medical and death benefits.

50. This purported alteration in the Benefits of these incumbent employees was contrary to the regulations of an executive agency, specifically DOE Order 350.1, which was in effect at the time of the termination for transfer and which required that the successor contractor sponsor the Plan and continue the Benefits.

51. On or about April 29, 2011 the Government, through the US Government Accountability Office, confirmed this interpretation of DOE Order 350.1 in a report entitled "DEPARTMENT OF ENERGY Progress Made Overseeing the Costs of Contractor Post Retirement Benefits, but Additional Actions Could Help Address Challenges (GAO-11-378, April 29, 2011), which in pertinent part states:

"When site contracts are recompeted or expire, it is DOE's policy to ensure the continuation of these benefits for incumbent contractor employees and eligible retirees by, for example, requiring the transfer of benefit plan sponsorship responsibilities to a successor contractor or related company."

52. February 11, 2016, the Government, through the US Government Accountability Office, confirmed that there are two references in DOE Order 350.1 that the Government used to support the forgoing statement in GAO-11-378; item 14 on page V-3 of DOE Order 350.1, and item 5b on page VI-7 of DOE Order 350.1, in a letter addressed to Mr. Glynn Stevens responding to Mr. Stevens' "request for confirmation of records."

53. The Plan itself, which was drafted by the United States Department of Energy through its agent Westinghouse Hanford Company, required that employees who were

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terminated from one contractor at the Hanford site to be transferred to another contractor at the Hanford site (termination for transfer), were to have their pension benefit reflective of their Years of Service on the Hanford reservation. The Plan, in pertinent part, states:

Termination and Transfer

In the case of a Termination for Transfer, an Employee who becomes a Participant hereunder shall be entitled to credit for eligibility under Article 2, Benefit Service under Article 3 and Vesting Service under Article 6 to such a degree as shall be determined by the Plan Administrator in order to assure that the Participant receives a benefit at Normal Retirement Date which is reflective of his Years of Service on the Hanford Reservation. The Plan Administrator's decision shall be adopted by a rule pursuant to Article 11. A termination for transfer means a termination from one contractor on the Hanford reservation to another contractor which is determined to be in the best interests of the government.

54. The transfer of the incumbent employees of BCSR, WHC and KEH to LMSI was a "termination for transfer" as that term is used in the Plan.

55. The Government's solicitation of the contract that defines scope of work under the contract that includes information services and records management that ultimately resulted in the termination for transfer of the employees of BCSR, WHC and KEH to LMSI (hereafter the Government's Solicitation) also required that the Benefits of the Class continue at the same level as they existed prior to the termination and transfer. The Government's Solicitation, in pertinent part, states:

The Contractor agrees to the following:

In filling employment positions for work under the contract, other than management positions, the Contractor and Major Subcontractors, agrees to hire employees who are or can become qualified by the time the work commences from the workforce of the

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incumbent contractor and its integrated subcontractors (Westinghouse Hanford Company, ICF Kaiser Hanford, and Boeing Computer Services Richland). The Contractor and Major Subcontractors shall assume the assets, liabilities, and other obligations and continue the defined benefit pension plans (does not include any defined contribution plans) of the incumbent contractor and integrated subcontractors.

V.(d) Any Purported Exception To The Regulations Of The United States Department Of Energy, The Terms Of The Plan, And The Government's Solicitation, Requiring That The Class Be Included In The Plan Under The Same Terms And Conditions As All Other Plan Participants Is A Sham.

56. When the termination and transfer of the employees of BCSR, WHC and KEH to LMSI occurred in the time frame between October and December of 1996 (hereafter "the Transfer"), The United States Department of Energy and Fluor Hanford invented the term "enterprise companies" and then termed LMSI as an "enterprise company" as a ruse to deny the Class their Benefits.

57. The term "enterprise companies" does not exist in the Plan, the regulations of the United States Department of Energy, or the Government's Solicitation.

58. At the time of the Transfer, Plaintiffs and members of the Class were sent letters by the United States Department of Energy's agents Lockheed Martin (B. Russell, IRM Hanford) explaining to the Plaintiffs and members of the Class that they could accept employment with an "enterprise company" or they could quit working at the Hanford site, as they would be barred by the Government from securing employment from any of the other Hanford contractors.

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59. At the time of the Transfer, Plaintiffs and members of the Class were told by the Government, through its agent the Plan Administrator, that the Plaintiffs and members of the Class could not appeal the determination that they would not be entitled to their Benefits until they retired, and began drawing such benefits.

60. As described by The United States Department of Energy and Fluor Hanford at the time of the Transfer, "enterprise companies" were to be companies that performed work for the Government at the Hanford site, and would additionally perform work for other commercial entities.

61. As described by The United States Department of Energy and Fluor Hanford at the time of the Transfer, contracts between "enterprise companies" and the United States Department of Energy or contrators to the United States Department of Energy for work for the Government at the Hanford site were to be opened to competition on a regular basis.

62. As described by The United States Department of Energy and Fluor Hanford at the time of the Transfer, "enterprise companies" performance of work for other commercial entities and the requirement that the "enterprise companies" "compete" for work on the Hanford site on a regular basis was used as the sole justification for reducing the Class's Benefits.

63. In a conference committee report that accompanied the National Defense Authorization Act of 1997, the United States Department of Energy testified to Congress that the elimination of Benefits was justified because "... certain elements of the work scope would be assigned to newly created commercially based companies

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called Enterprise Companies ... and they will compete in the marketplace for Hanford work."

64. At all times relevant to this litigation up to the present day, the Government knew, or should have known, that all but a trivial portion of the work performed by LMSI was for the Government at the Hanford site.

65. At no time was the work performed by LMSI for the Government at the Hanford site ever opened up to competition.

66. On or about February 3, 2009, LMSI admitted that all but a trivial portion of its work was for the Government in public testimony before the Washington State Department of Revenue where LMSI sought to have its B&O tax rate reduced based on the fact that all of their work was for the Government.

67. The United States Department of Energy, as a result of an Office of Inspector General (OIG) investigation that was concluded on or about March 2016, requested that Mission Support Alliance (MSA) (a successor contractor to Fluor Hanford) return 63.5 million dollars paid to LMSI as "profits" for its work on the Hanford site since contract inception, because those "profits" were improper based on the United States Department of Energy's determination that LMSI was never, in fact, an "enterprise company."

68. This request and determination is in direct contradiction to the Department of Energy's assertion that removing Lockheed Martin employees from the pension plan was appropriate because LMSI was functioning as an "enterprise company" and not entitled to participate in a government sponsored contractor pension plan.

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69. The United States Department of Energy, in its own capacity and by and through its agent contractors, has acted arbitrarily and capriciously in allowing individual employees to regain their full benefits under the plan.

70. For example, Class member Phillip Isaacs was given a bona fide job offer from a Hanford contractor that would have put him back in the Plan as a full participant, but was not able to accept that job offer because LMSI would not approve the transfer.

71. As another example, Class member Joyce Caldwell was given a bona fide job offer from a Hanford contractor that would have put her back in the Plan as a full participant, but was not able to accept that job offer because LMSI would not approve the transfer.

72. As a counter example, LMSI employee Ann Olive was allowed to transfer between contractors and was placed back in the Plan as a full participant.

73. The United States Department of Energy, by and through its Plan Administrator agents, has gamed changes to the Plan to increase their own compensation.

74. For example, in 2014 the Plan was amended to change the calculation of benefits so that Plan participants under 50 years old would no longer have the highest five years of their salary used in the calculation of their benefits. Plan adminstrators delayed the onset of this change to allow some of the plan administrators to turn 50.

V.(e) The Government, Acting Through Its Agent The Plan Administrator, has denied Plaintiffs And Members Of The Class Benefits To Which They Are Morally, Ethically, and Legally Entitled

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75. On or about October, 2014, Peter Turping retired from LMSI and notified the Plan Administrator that Plaintiff Peter Turping should begin drawing retirement benefits under the Plan.

76. The Plan responded by beginning to pay Peter Turping's Benefits that were not calculated using Peter Turping's entire term of service at the Hanford Site and Peter Turping appealed.

77. On or about April 2015, the Government, acting through its agent the Plan Administrator, declined Peter Turping's appeal of the Plan's determination that Peter Turping's benefits did not include Peter Turping's entire term of service at the Hanford Site, as required by the regulations of the United States Department of Energy, the Plan, and the Government's Solicitation.

78. On or about May, 2014, Richard Cartmell retired from LMSI and notified the Plan Administrator that Plaintiff Richard Cartmell should begin drawing retirement benefits under the Plan.

79. The Plan responded by beginning to pay Richard Cartmell's Benefits that were not calculated using Richard Cartmell's entire term of service at the Hanford Site, and Richard Cartmell appealed.

80. On or about April 2015, the Government, acting through its agent the Plan Administrator, declined Richard Cartmell's appeal of the Plan's determination that Richard Cartmell's benefits did not include Richard Cartmell's entire term of service at

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the Hanford Site, as required by the regulations of the United States Department of Energy, the Plan, and the Government's Solicitation.

81. On or about January, 2015, Darlene Simpson retired from LMSI and notified the Plan Administrator that Plaintiff Darlene Simpson should begin drawing retirement benefits under the Plan.

82. The Plan responded by beginning to pay Darlene Simpson's Benefits that were not calculated using Darlene Simpson's entire term of service at the Hanford Site, and Darlene Simpson appealed.

83. On or about May, 2015, the Government, acting through its agent the Plan Administrator, declined Darlene Simpson's appeal of the Plan's determination that Darlene Simpson's benefits did not include Darlene Simpson's entire term of service at the Hanford Site, as required by the regulations of the United States Department of Energy, the Plan, and the Government's Solicitation.

84. On or about May, 2015, Kathy Kachele retired from LMSI and notified the Plan Administrator that Plaintiff Kathy Kachele should begin drawing retirement benefits under the Plan.

85. The Plan responded by beginning to pay Kathy Kachele's Benefits that were not calculated using Kathy Kachele's entire term of service at the Hanford Site, and Kathy Kachele appealed.

86. On or about August, 2015, the Government, acting through its agent the Plan Administrator, declined Kathy Kachele's appeal of the Plan's determination that Kathy Kachele's benefits did not include Kathy Kachele's entire term of service at the Hanford

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Site, as required by the regulations of the United States Department of Energy, the Plan, and the Government's Solicitation.

87. When each member of the Class retires, the Plaintiffs believe, and therefore allege, that the Government, acting through its agent the Plan Administrator, will determine that each member of the Class is not entitled to have that member's Benefits calculated using that member's entire term of service at the Hanford Site.

88. In the event that any member of the Class appeals any future determination by the Government, acting through its agent the Plan Administrator, that the member of the Class is not entitled to have that member's Benefits calculated using that member's entire term of service at the Hanford Site, the Plaintiffs believe, and therefore allege, that the Government, acting through its agent the Plan Administrator, will deny such appeal, rendering all such future appeals futile.

VI. CLASS ACTION ALLEGATIONS

89. This action is brought and may be properly maintained as a class action pursuant to RCFC 23(a)(1-4) and RCFC 23(b)(2-3). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority prerequisites of Rule 23. The named class representatives seek to maintain this case as an opt-in class action on behalf of a class ("the Class") as defined as follows:

The Class is defined as any person who was transferred from Boeing Computer Services, Richland (BCSR), Westinghouse Hanford Company (WHC) or Kaiser

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Engineering Hanford (KEH) to Lockheed Martin Services, Inc. (LMSI), a so-called "Enterprise Company" that was a subcontractor to Fluor Daniel Hanford, Inc. (Fluor) in the time frame of between about October and December of 1996.

90. The Class is comprised of more than 500 individuals making joinder impractical.

91. The disposition of the claims of these class members in a single class action will provide substantial benefits to all parties and to the Court.

92. There is a well-defined community of interest among members of the Class.

93. The proposed Class meets the prerequisites of RCFC 23(a). First, the proposed Class is so numerous that the individual joinder of all members is impracticable. While the exact number and identities of the members of the Class are unknown at this time and can be ascertained only through appropriate discovery, Plaintiff believes that the class consists of more than 500 members.

94. As required by RCFC 23(a)(2), common questions of law and fact exist as to all members of the Class and predominate over any questions affecting only individual members of Class. Plaintiffs, like all class members, had the continuation of their retirement benefits unilaterally terminated as a part of a plan controlled by the DOE in direct contradiction of the DOE's own regulations.

95. Plaintiffs, like all Class members, were damaged as a result of the termination of the continuation of their retirement benefits

96. Among the questions of law and fact common to the members of the Class are the following:

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97. Whether the actions of the Government damaged the property of and/or constituted a taking of property from members of the Class without just compensation;

98. Whether the actions of the Government are compensable under the Tucker Act;

99. The appropriate nature of class-wide relief; and

100. Whether the Government is liable for damages to Plaintiffs and members of the Class.

101. As required by RCFC 23(a)(3), Plaintiffs' claims are typical of the claims of the members of the Class, as all such claims arise out of the actions of the Government in damaging and/or taking the property of the members of the Class without just compensation, and the consequent injuries they suffered as a proximate result of the Government's common course of conduct as alleged herein.

102. As required by RCFC 23(a)(4), Plaintiffs will fairly and adequately protect the interests of the members of the Class and have no interest antagonistic to those of members of the Class.

103. Plaintiffs have retained counsel experienced in the litigation of class actions.

104. This action is maintainable as class action pursuant RCFC 23(b)(1) because the Government acted or refused to act on grounds generally applicable to the Class, conduct making the subject of this action a common course of conduct involving standardized documents, regulations, policies, and actions applicable to the Class as a whole.

105. As required by RCFC 23(b)(2), the questions of law or fact common to members of the Class predominate over any questions affecting only individual members.

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106. In this regard the common question, among other common questions, of whether the actions of the Government, in reducing the plaintiff's pension benefits in the manner set forth herein give rise to compensation predicated on the Tucker Act and/or the Fifth Amendment of the United States Constitution, the provisions of which apply to members of the Class.

107. Further, a class action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impracticable. Furthermore, the expense and burden of individual litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them. The cost to the court system of adjudicating such individualized litigation would be substantial. While the individual claims are large, many of the members of the Class are unable to pursue their individual claims due to the financial hardship caused by the loss of their retirement benefits.

108. The conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and the court system, and protects the rights of each member of the Class. Notice of the pendency and any resolution of this action can be provided to members of the Class by a combination of publication and individual notice, based upon records maintained by the United States Department of Energy and/or government contractors.

VII. THE CLAIMS FOR DAMAGES AND/OR TAKINGS

109. Paragraphs 1 through 108 are incorporated by reference as though fully set forth in this cause of action.

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110. The Fifth Amendment to the United States Constitution provides "[N]or shall private property be taken for public use without just compensation" and it bars the Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.

111. The Department of Energy, using their Executive powers acting under Article II of the Constitution, re-shaped the Benefits of the Plaintiffs and the members of the Class.

112. Consequently, Plaintiffs and the members of the Class were arbitrarily and unreasonably deprived of their Benefits.

113. Consequently, without adequate compensation, Plaintiffs and the members of the Class were damaged by the Government without necessity, had their assets taken, seized, extinguished, nullified, terminated, and/or transferred, rights that were previously clearly established.

114. The Tucker Act provides that Plaintiffs and the members of the Class be fully compensated for their property that was damaged and/or the subject of the takings described above.

115. In the alternate, to the extent, if any, Congress withdrew availability of Tucker Act relief or otherwise limited its scope, the Fifth Amendment provides a remedy for Plaintiffs and the members of the Class for the unconstitutional takings as described above.

116. The Benefits of the Class were property interests protected by the Fifth Amendment.

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PRAYER

WHEREFORE, Plaintiffs and the putative members of the Class seek judgment against the United States as follows:

1. That the Court certify this case as an opt-in class action under RCFC 23(b);

2. For appointment of the above named Plaintiffs as representative of the certified class;

3. For appointment of Douglas E. McKinley, Jr. as counsel for the certified class;

4. That the Court declare the rights and duties of the parties consistent with the relief sought by Plaintiffs;

5. That Plaintiffs and each of the putative members of the Class recover compensatory damages in amount equal to the value of their economic losses, each individual claim being more than $10,000.00;

6. For an award of damages to the Class in an amount to be proven at trial but which for purpose of pleading is alledged to be one hundred million dollars.

6. That Plaintiffs and the putative members of the Class recover an award of reasonable attorney's fees, costs, and expenses; and

7. For leave to amend these pleadings to conform to the evidence presented at trial;

8. For judgment against the government in an amount to be determined at trial;

9. Such other additional relief as the interests of justice may require.

s/Douglas E. McKinley
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