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IN THE UNITED STATES COURT OF FEDERAL CLAIMS

Frank Calapristi and other  
similarly situated persons,  
v.  
THE UNITED STATES

CLASS ACTION COMPLAINT

I. INTRODUCTION

1. This case is filed on behalf of the above named Plaintiffs whose pension retirement benefits were substantially reduced by the United States of America (hereafter the “Government”) in breach of an implied contract in fact that existed, and continues to exist, between an executive agency of the Government, the United States Department of Energy (hereafter the “DOE”), and the Plaintiffs. The Plaintiffs are entitled under the Tucker Act to obtain just compensation from the Government for the Government's breach of the implied contract in fact.

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.

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III. VENUE

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

IV. PARTIES

4. The Plaintiffs (hereafter “Plaintiffs” or “Class Members”) are all individuals who

a) were employed by contractors at the United States Government's Hanford site in southeastern Washington state between 1987 and October 1, 1996,

b) were Participants in The Hanford Multi-Employer Pension Plan, Engineering and Operations (hereafter the “MEPP”) on September 30, 1996,

c) had their contractor (employer) terminated from the Hanford site by the Government on or about September 30, 1996,

d) were transferred to a contractor which was a so-called “Enterprise Company” by the Government on or about October 1, 1996, and

e) have made a claim for their retirement benefits in the six years preceding the initiation of this action, or who have the right to make a claim for their retirement benefits at any point in the future.

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

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V. OPERATIVE FACTS

6. In January 1943 the United States Government made the decision to build the United States plutonium production facilities at the Hanford site in southeastern Washington state.

7. Ultimately, that decision would lead to the Hanford site becoming the largest and most dangerous nuclear and hazardous waste site in the United States and perhaps the world.

8. From the beginning of the Government's activities at the Hanford site and continuing to this day, the work on the Hanford site, including but not limited to manufacturing plutonium and cleaning up the waste generated by that manufacturing, is generally not performed by Government employees.

9. Instead, these activities are generally performed by contractors hired by the Government, or more precisely by the employees of contractors who are hired by the Government.

10. These employees are performing tasks, including but not limited to manufacturing plutonium at a Government-owned facility and cleaning up the waste generated by manufacturing plutonium at a Government-owned facility, that are the sole and exclusive responsibility of the United States Government, and are thus decidedly governmental in nature.

11. On October 1, 1977 the United States Department of Energy became the lead agency for the Government's management of the Hanford site.

1 12. Between 1982 and 1987 a subsidiary of the Westinghouse Corporation called the  
2 Hanford Engineering and Development Laboratory (hereafter “HEDL”) was operating  
3 the Hanford site under a prime contract with the United States Department of Energy.

4 13. By 1987, along with HEDL, no fewer than seven separate contractors were  
5 providing services to the Government at the Hanford site.  
6

7 14. The contractors and their employees at the Hanford site had numerous  
8 characteristics in common.

9 15. All of the contractors, and all of the contractor's employees, were performing  
10 work on the Hanford site for the sole and exclusive benefit of the Government.  
11

12 16. Directly or indirectly, all contractors and all of their employees were paid for  
13 their services by the Government.

14 17. All contractors offered retirement benefits to their employees upon retirement  
15 that included a defined benefit pension.

16 18. At all times relevant to this litigation, the funding for the defined benefit pension  
17 was directly or indirectly provided exclusively by the Government.  
18

19 19. When a particular contractor was replaced with a new contractor, or when a  
20 portion of work performed by one contractor was transferred to another contractor,  
21 (often referred to as a “successor contractor”) the actual workers who performed that  
22 work would typically continue to perform their same jobs, in the same locations.  
23

24 20. When a contractor on the Hanford site lost their contract and left the Hanford  
25 site, their employees would have a choice; they would either be transferred to a  
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1 successor contractor and stay on the Hanford site, or they would stay employed with  
2 their old employer and leave the Hanford site along with their employer.

3 21. If they left the Hanford site to stay with their old employer, their participation in  
4 their old employer's pension plan would typically continue in an uninterrupted fashion.

5 22. If they stayed at the Hanford site, the credit for their years of service with their  
6 old employer's pension plan would typically be transferred to their new employer, and  
7 the funds necessary to fund their years of service would also typically be transferred  
8 from their old employer's pension plan to the their new employer's pension plan.

9 23. The termination of one contractor and transfer of the work to a successor  
10 contractor by the Government therefore created a significant administrative burdens and  
11 costs for the government related to transferring the pension funds for thousands of  
12 employees from the old contractor to the new contractor.

13 24. To relieve the Government from these costs and burdens created when the  
14 Government terminated a contractor and hired a successor contractor, the United States  
15 Department of Energy decided to create a pension plan for the workers of the Hanford  
16 site contractors that would be separate from their employers.

17 25. This new pension plan would be separated from their employers.

18 26. This new pension plan would directly and explicitly tie the employees' pensions  
19 to their continuing to work on the Government's behalf at the Hanford site.

20 27. To do so, and in exchange for removing these Hanford employees from their  
21 company-based pension plans, the new pension plan would explicitly guarantee that  
22 these Hanford employees would continue to participate in the new pension plan even if  
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1 the Government terminated their contractor (employer) and transferred them to a new  
2 contractor (employer).

3 28. The new pension plan would also explicitly guarantee these Hanford employees  
4 that their years of service at the Hanford site would be counted in the calculation of their  
5 retirement benefits at their retirement even if, from time to time, the Government  
6 terminated their contractor (employers) and transferred them to new contractor  
7 (employers).

8  
9 29. To achieve that end, sometime prior to 1987, officials with the United States  
10 Department of Energy who had the actual authority to bind the United States  
11 Government instructed the President of HEDL, John Nolan, and the heads of the other  
12 various Hanford contractors, to work together to draft a multi-employer pension plan  
13 that would cover all of their employees in anticipation of a consolidated Hanford  
14 contract being awarded in 1987.

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16 30. By combining the worker's separate, company based pensions into a single  
17 pension plan that was separate from their employers and tied instead to their continued  
18 work at the Hanford site, the United States Department of Energy sought to simplify the  
19 Government's administrative burden of transferring any particular work scope from one  
20 contractor to a successor contractor.

21  
22 31. Absent DOE's explicit orders and instructions to do so, none of the contractors  
23 or their employees ever had the power or authority to draft a new pension plan and  
24 impose it on all of the workers at the Hanford site.  
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1 32. To comply with the Government's directive, sometime prior to the consolidation  
2 of the Hanford work into a single prime contract in 1987, HEDL and the various  
3 Hanford contractors each appointed two employees to a working group tasked with  
4 drafting the multi-employer pension plan that would later become the MEPP.  
5

6 33. HEDL appointed Earnest Vodney and Paul Matthews to the working group.

7 34. Earnst Vodney was the Controller of HEDL at the time.

8 35. Paul Matthews was the head of the Human Resources department of HEDL at  
9 the time.

10 36. During the process of drafting the multi-employer pension plan, officials with  
11 the United States Department of Energy who had the actual authority to bind the United  
12 States Government would periodically review the working group's drafting activities  
13 and coordinate with the working group to provide the Government's input into the terms  
14 and conditions of the emerging multi-employer pension plan.  
15

16 37. When the working group completed the multi-employer pension plan, it was  
17 submitted to the United States Department of Energy for final review and approval by  
18 officials with the United States Department of Energy who had the actual authority to  
19 bind the United States Government.  
20

21 38. When the working group completed the multi-employer pension plan, officials  
22 with the United States Department of Energy who had the actual authority to bind the  
23 United States Government, provided their final review and approval of the multi-  
24 employer pension plan.  
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1 39. In the solicitation for the Hanford prime contract in 1987, officials with the  
2 United States Department of Energy who had the actual authority to bind the United  
3 States Government then required the contractors who bid on the prime contract to  
4 implement the new multi-employer pension plan as part of the scope of work for the  
5 new prime contract.  
6

7 40. Absent DOE's direct authorization, none of the contractors, past, present, or  
8 future, ever had, or ever will have, the ability or authority to require any entity,  
9 including themselves, to implement or participate in any multi-employer pension plan at  
10 the Hanford site.  
11

12 41. On June 29, 1987 Westinghouse Hanford Company (WHC) was awarded the  
13 prime contract for the Hanford site by officials with the United States Department of  
14 Energy who had the actual authority to bind the United States Government, and WHC  
15 was given overall responsibilities for site management & operations at the Hanford site.  
16

17 42. On or about the same date, officials with the United States Department of  
18 Energy who had the actual authority to bind the United States Government directed  
19 WHC and WHC's subcontractors to implement the multi-employer pension plan as set  
20 forth in the solicitation and, at DOE's direction, all of the employees of the contractors  
21 and sub-contractors at the Hanford site thereby became Participants in the MEPP in  
22 1987.  
23

24 43. At DOE's direction, and as set forth in the terms and conditions of the MEPP,  
25 the pension funds that had been earned by these employees under their prior employer's  
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1 pension plans, and the obligations of those pension plans, were all then transferred into  
2 the MEPP.

3 44. The MEPP included at least one implied obligation and at least one explicit  
4 obligation that could only ever be fulfilled by the Government.

5  
6 45. The implied obligation was for the Government to provide the money to the  
7 Hanford contractors, present and future, so that they could in turn adequately fund the  
8 MEPP.

9  
10 46. The implied obligation was for the Government to include in contracts with  
11 Hanford contractors the obligation that the Hanford contractors who received  
12 government funds for work at the Hanford site would use some portion of those funds to  
13 fund the MEPP.

14 47. No one except the Government ever had the intention, authority, ability or  
15 obligation to fund the MEPP, because everyone, including particularly officials with the  
16 United States Department of Energy with the actual authority to bind the United States  
17 Government, always knew that the Government had the sole and exclusive ability to  
18 authorize any and all payments to any and all contractors at the Hanford site, and that  
19 the Government further had the sole and exclusive ability to require that those  
20 contractors use a portion of those funds to fund the MEPP.

21  
22 48. The explicit obligation created by the Government when the Government  
23 implemented the MEPP was to insure that when the Government decided to change  
24 contractors, the Government would draft all new contracts with the new contractors to  
25 insure that a Participant in the MEPP would continue to accrue credit for their “Years of  
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1 Service on the Hanford Reservation” to “assure that the Participant receives a benefit at  
2 Normal Retirement Date which is reflective of his Years of Service on the Hanford  
3 Reservation” as was required by Article 29 of the MEPP.

4 49. The explicit obligation was set forth as Article 29 in the MEPP, which states:

5  
6 Termination and Transfer

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

15 50. While the MEPP purports to be controlled by an independent “Plan Administrator,”  
16 beginning with the Government's creation of the MEPP, at all times relevant to this  
17 litigation, the Government has actually controlled the terms, conditions, and administration  
18 of the MEPP.

19 51. No one except the Government ever had the intention, authority, ability or obligation  
20 to enforce Article 29 of the MEPP, because everyone, including particularly officials with  
21 the United States Department of Energy with the actual authority to bind the United States  
22 Government who formed and then administered the MEPP, always knew that the  
23 Government had the sole and exclusive ability to determine the terms, conditions, and  
24 requirements of contracts at the Hanford site, as well as the ability to control the  
25 performance of the contractors at the Hanford site including their administration of the  
26 MEPP.

1 52. By making the implicit promise to fund the MEPP and the explicit promise set forth  
2 in Article 29 of the MEPP, the United States Government made an offer to the employees at  
3 the Hanford site.

4 53. The terms of the government's offer were that if the employees worked at the  
5 Hanford site, the Government would fund the MEPP and enforce Article 29 of the MEPP.  
6

7 54. When employees accepted the Government's offer by working on the Hanford site,  
8 they formed a contract in fact between the Government and themselves obligating the  
9 government to fund the MEPP and further obligating the Government to honor Article 29 of  
10 the MEPP in exchange for their continued work at the Hanford site.

11 55. Even if the Government's conduct in forming the MEPP did not constitute an offer,  
12 the Government nevertheless formed a contract in fact between the Government and the  
13 Participants in the MEPP obligating the Government to fund the MEPP and obligating the  
14 Government to enforce Article 29 of the MEPP when the Government assented to the  
15 Government's obligations to do so.  
16

17 56. On numerous occasions subsequent to the implementation of the MEPP, the  
18 Government, acting by and through representatives with the actual authority to bind the  
19 Government, clearly indicated the Government's assent to both the Government's obligation  
20 to fund the MEPP, and to the Government's obligation to effectuate the promises set forth in  
21 Article 29 of the MEPP.  
22

23 57. Beginning concurrently with the implementation of the MEPP the Government  
24 began making payments to the Hanford contractors to fund the MEPP.  
25

26 58. The Government's payments to fund the MEPP have continued to this day.

1 59. The Government is the only entity that has ever funded the MEPP, and the funds  
2 paid by the Government to the various Hanford contractors to be paid into the MEPP are the  
3 only funds that have ever been paid into the MEPP.

4 60. In 1996 the Government asked for bids on a new prime contract for the management  
5 of the Hanford site called the Project Hanford Management Contract (PHMC) with a  
6 transition date of October 1, 1996.

7 61. The Government's decision to transition to the PHMC was the first instance of a  
8 "Termination for Transfer" that would trigger the enforcement of Article 29 of the MEPP,  
9 and therefore the first instance where the Government could demonstrate the Government's  
10 assent to the implied contract to do so.

11 62. When the Government first made the decision to transition to the PHMC in 1996,  
12 the Government clearly indicated to the Participants in the MEPP in the Hanford workforce  
13 that the Government assented to the requirements of Article 29 of the MEPP.

14 63. The Government's solicitation for the PHMC contract contained a specific  
15 requirement that the Contractor who was awarded the PHMC contract would be required to  
16 ensure that the Plaintiffs would continue to participate in the MEPP under exactly the terms  
17 and conditions that they had prior to the termination for transfer, in a manner that was fully  
18 consistent with the Government's obligations under Article 29 of the MEPP.

19 64. The Government's Solicitation, in pertinent part, stated:

20 The Contractor agrees to the following:

21 In filling employment positions for work under the contract, other than  
22 management positions, the Contractor and Major Subcontractors, agrees to hire  
23 employees who are or can become qualified by the time the work commences  
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1 from the workforce of the incumbent contractor and its integrated subcontractors  
2 (Westinghouse Hanford Company, ICF Kaiser Hanford, and Boeing Computer  
3 Services Richland). The Contractor and Major Subcontractors shall assume the  
4 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.

5 65. In setting forth this requirement, the Government clearly indicated to the  
6 Participants in the MEPP that the Government assented to the requirements of Article  
7 29 of the MEPP.

8 66. On August 6, 1996, it was announced that the prime contract for the  
9 management of the Hanford site was to be terminated and transferred by the United  
10 States Department of Energy from the incumbent contractors Westinghouse Hanford  
11 Company (WHC) and its subcontractors to the successor contractor Fluor Daniel  
12 Hanford, Inc. (FDH) and its team of integrated subcontractors with a transition date of  
13 October 1, 1996 (hereafter the “1996 changeover”).  
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16 67. For the vast majority of the Hanford workforce affected by the 1996 changeover,  
17 the Government would honor the implied contract with these workers and require their  
18 new employers would be identified as “Employers” as that term is defined in the MEPP.

19 68. However, for a small minority of the Hanford workforce, the Government  
20 created an entirely new and made up designation for their employers that the  
21 Government called “Enterprise Companies.”  
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23 69. The Enterprise Companies were not listed as “Employers” in the MEPP.  
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1 70. By failing to name the Enterprise Companies as “Employers” in the MEPP, the  
2 Government repudiated the Government's obligation to the employees of the Enterprise  
3 Companies to enforce Article 29 of the MEPP at their retirement.

4 71. When it became apparent that their Enterprise Company employers were not  
5 named as “Employers” in the MEPP, certain Enterprise Company employees (who are  
6 not Plaintiffs in this action) sought to begin withdrawing their pension benefits from the  
7 MEPP, as was their right under the terms of the MEPP and under ERISA 29 U.S.C. §  
8 1001 et seq.

9 72. The Government, acting through the MEPP, refused to allow these employees  
10 to begin drawing their pensions because the MEPP had insufficient resources to pay  
11 these pension benefits and the MEPP would not remain adequately funded under ERISA  
12 if these employees were permitted to withdraw their pensions.

13 73. On October 10, 1996 the Government, realizing that it could not afford to have  
14 the Enterprise Company employees withdraw their pension benefits from the MEPP and  
15 keep the MEPP adequately funded under the requirements of ERISA, announced that  
16 the Enterprise Company employees who continued to work at the Hanford site would be  
17 forced to remain in the MEPP.

18 74. On January 15, 1997, the Government then again repudiated its obligations  
19 under the MEPP when the Government amended the MEPP (hereafter the “January 15,  
20 1997 Amendment”).

21 75. The January 15, 1997 Amendment recited that the Enterprise Company  
22 employees would remain Participants in the MEPP, and upon retirement the MEPP  
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1 would calculate Enterprise Company employees pension benefits using the highest five  
2 year salary during their employment at the Hanford site (hereafter the “high five  
3 benefit”), but that calculation would not include the number of years they worked for  
4 Enterprise Company, thereby explicitly repudiating the contract in fact between the  
5 Plaintiffs and the Government set forth at Article 29 of the MEPP.  
6

7 76. By its own terms, the January 15, 1997 Amendment was made retroactive to  
8 September 30, 1996.

9 77. When the Government put in place the January 15, 1997 Amendment, it created  
10 a new financial obligation to the Plaintiffs, the high five benefit.

11 78. The high five benefit required ongoing contributions to the MEPP to account for  
12 the fact that the Plaintiffs were continuing to work and get raises at the Hanford site,  
13 thereby increasing the amount the MEPP would ultimately be required to pay them at  
14 retirement.  
15

16 79. The Plaintiff's employers were never “Employers” in the MEPP, as that term is  
17 defined in the MEPP, and therefore had no ability or obligation to fund the Plaintiffs'  
18 high five benefit.  
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20 80. Beginning in 1997 and continuing to this day, the Government has made  
21 payments into the MEPP to account for the ongoing increases in the Plaintiffs' high five  
22 benefit.  
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24 81. By making payments into the MEPP on the Plaintiffs' behalf to account for the  
25 Plaintiffs' high five benefit, the Government has demonstrated that the Government  
26 assented to having obligations directly to the Plaintiffs by virtue of the MEPP.

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82. Plaintiffs are still Participants in the MEPP.

83. Article 29 is still a term of the MEPP.

84. Subsequent to the Government's repudiation of the contract in fact between the Government and the Plaintiffs, on numerous occasions the Government acting by and through its agent the MEPP has instructed the Plaintiffs that they could not challenge the purported changes in the Plaintiff's retirement benefits until the Plaintiffs retired.

85. While the MEPP 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 MEPP.

86. Evidence of the Government's assent to an implied contract between the Plaintiffs and the Government obligating the Government to enforce Article 29 of the MEPP includes the fact that at all times relevant to this litigation, the United States Department of Energy has actually controlled the terms, administration, and operation of the MEPP.

87. Evidence of the Government's control of the the MEPP includes the fact that the Plan Administrator is required to have any amendment to the MEPP approved by the United States Department of Energy.

88. Evidence of the Government's control of the the MEPP includes the fact that all actions of the Plan Administrator that would have a financial impact on the MEPP require the prior written approval of the United States Department of Energy.



1 89. Evidence of the Government's control of the the MEPP includes the fact that any  
2 amendments to the MEPP by the Plan Administrator require the prior written approval  
3 of a contracting officer with the United States Department of Energy.

4 90. Evidence of the Government's control of the the MEPP includes the fact that the  
5 United States Department of Energy provides the funding for all costs of the MEPP  
6 including, but not limited to, the high five benefit.

7 91. Evidence of the Government's control of the MEPP includes the fact that the  
8 United States Department of Energy created the MEPP.

9 92. Evidence of the Government's control of the MEPP includes the fact that the  
10 United States Department of Energy has controlled all amendments subsequent to the  
11 formation of the MEPP through its control of various Hanford site contractors who were  
12 controlled by, and acted as agents of, the United States Department of Energy.

13 93. Evidence of the Government's control of the MEPP includes the fact that at all  
14 times relevant to this litigation, the Plan Administrator has always consisted of  
15 individuals employed by contractors who were in turn controlled by the United States  
16 Department of Energy.

17 94. Evidence of the Government's control of the MEPP and all other aspects of  
18 contractor post retirement benefits at the Hanford Site includes the fact that the  
19 Government admitted it controlled all aspects of contractor pensions and benefits when,  
20 on or about March 19, 2007, the Department of Energy sent a letter signed by Keith  
21 Klein, manager of the Richland Operations Office and Shirley J. Olinger, Acting  
22 Manager of the Office of River Protection, to Ms. Susan Leckband, Chair of the  
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1 Hanford Advisory Board, stating, in pertinent part: “The U.S. Department of Energy  
2 (DOE) headquarters (HQ) is responsible for establishing the Department's policy and  
3 implementation for contractor pensions and benefits.”

4  
5 95. Evidence of the Government's control of the MEPP includes the fact that at all  
6 times relevant to this litigation, on each and every occasion that the Plan Administrator  
7 has sought to change any of the provisions of the MEPP, the United States Department  
8 of Energy required the Plan Administrator to seek and receive approval by the United  
9 States Department of Energy for any such changes before such changes became  
10 effective.

11  
12 96. Evidence of the Government's control of the MEPP includes the fact that on or  
13 about 9/24/2008, Fluor Hanford President and CEO Bruce Hanni sent a letter to the  
14 United States Department of Energy seeking permission and approval for Fluor  
15 Hanford's intended actions discontinuing accruing vesting service and compensation for  
16 certain Hanford site employees under the MEPP.

17  
18 97. Evidence of the Government's control of the MEPP includes the fact that on or  
19 about 11/25/2008, Sally Sieracki, contracting officer for the United States Department  
20 of Energy sent the Government's reply, providing that permission and concurrence.

21  
22 98. Evidence of the Government's control of the MEPP includes the fact that on or  
23 about 7/28/2009, Fluor Hanford President and CEO David Ruscitto sent a letter to the  
24 United States Department of Energy seeking approval for the fourth and fifth  
25 amendments to the MEPP.  
26

1 99. Evidence of the Government's control of the MEPP includes the fact that on or  
2 about 08/12/2009, Sally Sieracki, contracting officer for the United States Department  
3 of Energy sent the Government's reply, "approving" the fifth amendment to the MEPP,  
4 and "not approving" the fourth amendment to the MEPP.  
5

6 100. Evidence of the Government's control of the MEPP includes the fact that  
7 subsequent to the 08/12/2009 correspondence from Sally Sieracki, the Plan  
8 Administrator adopted the fifth amendment to the MEPP and revoked the fourth  
9 Amendment to the MEPP, thereby plainly demonstrating that the Plan Administrator  
10 had no actual independence, and was merely in place to carry out the directions of the  
11 United States Department of Energy.  
12

13 101. Evidence of the Government's assent to being bound by Article 29 of the MEPP  
14 includes the fact that on every occasions subsequent to the 1996 contract changeover, in  
15 each and every case where the Government has caused contracts to be issued resulting  
16 in workers moving from one contractor to another, the Government has written these  
17 new contracts to require that the new contractor continue to promise the workers the  
18 same post retirement benefits.  
19

20 102. It was only for a small minority, for the Plaintiffs herein, and only on the  
21 occasion of the 1996 changeover, that the Government repudiated its contract in fact to  
22 provide the post retirement benefits after a "termination for transfer."  
23

24 103. Evidence of the Government's assent to an implied contract between the  
25 Plaintiffs and the Government obligating the Government to enforce Article 29 of the  
26 MEPP also includes the fact that at all times relevant to this litigation, the United States

1 Department of Energy has held in place an official policy that required the Government  
2 to effectuate the terms of Article 29 during a termination for transfer.

3 104. Included in the Government's official policy was a requirement that any changes  
4 to the MEPP required the approval of a contracting officer.

5  
6 105. Subsequent to the October 1, 1996 termination and transfer of the Plaintiffs  
7 from their prior employers to Enterprise Companies, all of the Plaintiffs herein  
8 continued to perform their work at the Hanford site.

9 106. The Government has received the full benefit of the Plaintiffs' work at the  
10 Hanford site subsequent to the Government's repudiation of the contract in fact between  
11 the Government and the Plaintiffs.

12  
13 107. Beginning on or about October, 2014, various Enterprise Company employees  
14 began retiring and notified the Plan Administrator that they wished to begin drawing  
15 retirement benefits under the MEPP.

16 108. The Government, acting through the MEPP and the Plan Administrator,  
17 responded by beginning to pay those Enterprise Company employees retirement pension  
18 benefits that were not calculated using their entire term of service at the Hanford Site as  
19 required under Article 29 of the MEPP, thereby breaching the contract in fact that  
20 existed between those employees and the Government.

21  
22 109. The employees appealed.

23 110. The Government, acting through the MEPP and the Plan Administrator,  
24 declined those appeals and ruled that these employees benefits did not include the entire  
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1 term of their service at the Hanford Site, as required by Article 29 of the MEPP and the  
2 contract in fact between those employees and the Government.

3 111. When each Class Member retires, the Plaintiffs believe, and therefore allege,  
4 that the Government, acting through the MEPP and the Plan Administrator, will  
5 determine that each member of the Class is not entitled to have that member's pension  
6 benefits calculated using that member's entire term of service at the Hanford Site,  
7 thereby breaching the Article 29 and the Government's contract in fact with the Class  
8 Member.  
9

10 112. In the event that any Class Member appeals any such future determination by the  
11 Government acting through the MEPP and the Plan Administrator, that the Class  
12 Member is not entitled to have that Class Member's pension benefits calculated using  
13 that Class Member's entire term of service at the Hanford Site, the Plaintiffs believe,  
14 and therefore allege, that the Government, acting through the MEPP and the Plan  
15 Administrator, will deny such appeal, rendering all such future appeals futile.  
16

## 17 VI. CLASS ACTION ALLEGATIONS 18

19 113. This action is brought and may be properly maintained as a class action pursuant  
20 to RCFC 23(a)(1-4) and RCFC 23(b)(2-3). This action satisfies the numerosity,  
21 commonality, typicality, adequacy, predominance, and superiority prerequisites of Rule  
22 23. The named class representatives seek to maintain this case as an opt-in class action  
23 on behalf of a class ("the Class") as defined as follows:  
24

25 The Class is defined as any person who was a Participant in the MEPP on  
26 or prior to September 30, 1996 who was transferred to an Enterprise

1 Company between about August and December of 1996 and who have  
2 made a claim for their retirement benefits in the six years preceding the  
3 initiation of this action, or who have the right to make a claim for their  
4 retirement benefits at any point in the future.

5  
6 114. The Class is comprised of more than 500 individuals making joinder  
7 impractical.

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

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

11  
12 117. The proposed Class meets the prerequisites of RCFC 23(a). First, the proposed  
13 Class is so numerous that the individual joinder of all members is impracticable. While  
14 the exact number and identities of the members of the Class are unknown at this time  
15 and can be ascertained only through appropriate discovery, Plaintiff believes that the  
16 class consists of more than 500 members.

17  
18 118. As required by RCFC 23(a)(2), common questions of law and fact exist as to all  
19 members of the Class and predominate over any questions affecting only individual  
20 members of Class.

21 119. Plaintiffs, like all class members, had, or will have, the continuation of their  
22 retirement benefits unilaterally terminated in breach of a contract in fact existing  
23 between DOE and the Plaintiffs in direct contradiction of the DOE's own regulations.

24  
25 120. Plaintiffs, like all Class members, were damaged or will be damaged as a result  
26 of the termination of the continuation of their retirement benefits.

1 121. Among the questions of law and fact common to the members of the Class are  
2 the following:

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

4 123. The appropriate nature of class-wide relief; and

5  
6 124. Whether the Government is liable for damages to Plaintiffs and members of the  
7 Class.

8 125. As required by RCFC 23(a)(3), Plaintiffs' claims are typical of the claims of the  
9 members of the Class, as all such claims arise out of the breach by the Government of a  
10 contract between the members of the Class and the Government, and the consequent  
11 injuries they suffered as a proximate result of the Government's common course of  
12 conduct as alleged herein.

13  
14 126. As required by RCFC 23(a)(4), Plaintiffs will fairly and adequately protect the  
15 interests of the members of the Class and have no interest antagonistic to those  
16 of members of the Class.

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

18  
19 128. This action is maintainable as class action pursuant RCFC 23(b)(1) because the  
20 Government acted or refused to act on grounds generally applicable to the Class,  
21 conduct making the subject of this action a common course of conduct involving  
22 standardized documents, regulations, policies, contracts, and actions applicable to the  
23 Class as a whole.

24  
25 129. As required by RCFC 23(b)(2), the questions of law or fact common to members  
26 of the Class predominate over any questions affecting only individual members.

1 130. In this regard the common question, among other common questions, of whether  
2 the actions of the Government, in reducing the Plaintiff's pension and other post  
3 retirement benefits in the manner set forth herein give rise to compensation predicated  
4 on the Tucker Act, the provisions of which apply to members of the Class.  
5

6 131. Further, a class action is superior to other available methods for the fair and  
7 efficient adjudication of this controversy, since individual joinder of all members of the  
8 Class is impracticable. Furthermore, the expense and burden of individual litigation  
9 would make it difficult or impossible for individual members of the Class to redress the  
10 wrongs done to them. The cost to the court system of adjudicating such individualized  
11 litigation would be substantial. While the individual claims are large, many of the  
12 members of the Class are unable to pursue their individual claims due to the financial  
13 hardship caused by the loss of their post retirement benefits.  
14

15 132. The conduct of this action as a class action presents fewer management  
16 difficulties, conserves the resources of the parties and the court system, and protects the  
17 rights of each member of the Class. Notice of the pendency and any resolution of this  
18 action can be provided to members of the Class by a combination of publication and  
19 individual notice, based upon records maintained by the United States Department of  
20 Energy and/or Government contractors and/or Plaintiff's counsel.  
21

## 22 VII. THE CLAIMS FOR DAMAGES

23 133. Paragraphs 1 through 131 are incorporated by reference as though fully set forth  
24 in this cause of action.  
25  
26



1 134. The Tucker Act provides that Plaintiffs and the members of the Class be fully  
2 compensated for the breach of an implied contract in fact as described above.

3 135. Beginning with the Government's implementation of the MEPP in 1987, the  
4 Government formed an implied contract in fact with the Plaintiffs obligating the  
5 Government to provide pension retirement benefits that accounted for the Plaintiffs'  
6 years of service on the Hanford site at their normal retirement date, as set forth in  
7 Article 29 of the MEPP.

8 136. Beginning with the contract changeover in 1996, the Government repudiated that  
9 obligation.  
10

11 137. When Plaintiffs herein have retired, the Government has breached the contract in  
12 fact formed between the Government and the Plaintiffs.

13 138. Plaintiffs are entitled to be compensated for the Government's breach of the  
14 implied contract in fact under the Tucker Act.  
15

16 PRAYER

17 WHEREFORE, Plaintiffs and the putative members of the Class seek judgment against  
18 the United States as follows:  
19

- 20 1. That the Court certify this case as an opt-in class action under RCFC 23(b);
- 21 2. For appointment of the above named Plaintiffs as representative of the certified  
22 class;
- 23 3. For appointment of Douglas E. McKinley, Jr. as counsel for the certified class;
- 24 4. That the Court declare the rights and duties of the parties consistent with the relief  
25 sought by Plaintiffs;  
26

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

4  
5 6. For an award of damages to the Class in an amount to be proven at trial but which for  
6 purpose of pleading is alleged to be one hundred million dollars.

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

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

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

11 9. Such other additional relief as the interests of justice may require.  
12  
13  
14

15 s/Douglas E. McKinley

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17 Attorney for Plaintiffs

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