

# In the United States Court of Federal Claims

THE ELECTRICAL WELFARE TRUST FUND, THE OPERATING ENGINEERS TRUST FUND OF WASHINGTON, D.C., and THE STONE & MARBLE MASONS OF METROPOLITAN WASHINGTON, D.C. HEALTH AND WELFARE FUND on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

Civil Action No. 19-353 C

Judge Roumel

## **NOTICE OF CLASS ACTION SETTLEMENT**

**You are entitled to a payment from this settlement of illegal exaction claims against the United States. Please read this Notice carefully to see what your rights are under this settlement.**

*A federal court authorized this Notice. This is not a solicitation from a lawyer.*

### **1. Why are you receiving this Notice?**

You are receiving this Notice because you submitted an opt-in form to join the above-captioned class action lawsuit (“Action”) asserting illegal exaction claims against the United States and your opt-in was accepted by the Court. You are an Exaction Class member.

### **2. What is this lawsuit about?**

Electrical Welfare Trust Fund (“EWTF” or “Class Representative”), on behalf of itself and the Exaction Class, alleged that the Department of Health and Human Services (“HHS”) improperly required self-administered, self-insured employee health and welfare benefit plans to make Transitional Reinsurance Program (“TRP”) contributions for benefit year 2014 under 42 U.S.C. § 18061 of the Affordable Care Act (“ACA”). The statutory language of 42 U.S.C. § 18061 requires only “health insurance issuers, and third-party administrators on behalf of group health plans” to make TRP contributions. EWTF alleged that self-administered, self-insured entities were required to make TRP contributions despite falling outside of this plain statutory language. This Action sought the return of all TRP contributions paid by self-administered, self-insured employee health and welfare benefit plans for benefit year 2014 based on HHS’s allegedly unlawful interpretation of 42 U.S.C. § 18061.

On June 22, 2022, the Court issued an Order certifying the following opt-in class: all self-administered, self-insured employee health and welfare benefit plans that are or were subject to the assessment and collection of the Transitional Reinsurance Contribution under Section 1341 of the ACA for benefit year 2014. On July 27, 2022, the Court directed EWTF to issue notice to potential members of the Exaction Class informing them of their right to opt-in to this litigation. Thereafter, Class Counsel and the Court-authorized administrator JND Legal Administration LLC (“JND”) disseminated notice to potential members of the Exaction Class. As a result of these efforts, 357 plans (who submitted opt-ins) were ultimately accepted as Exaction Class members by the Court.

On December 21, 2022, the Court granted EWTF’s Motion for Summary Judgment, stating its agreement with EWTF’s theory of liability. Thereafter, on May 12, 2023, the Court entered Rule 54(b) Judgment in favor of the Exaction Class (“Judgment”). The Judgment awarded a total of \$185,230,024.42 to the Exaction Class, which equates to 100% of the TRP contributions paid by Exaction Class members for benefit year 2014. The 357 Exaction Class members are listed on Exhibit 1 to the Court’s Judgment and Exhibit A to the Settlement Agreement.

On June 26, 2023, the Government filed a Notice of Appeal of the Judgment with the U.S. Court of Appeals for the Federal Circuit. During this same time, the parties began to explore the possibility of resolving the Action to avoid the time, risk and expense of litigating an appeal. After good-faith, arms-length negotiations, Class Representative EWTF, on behalf of all Exaction Class members, agreed to settle the Action in exchange for the Government’s payment of \$169,022,397.28 (i.e., an 8.75% reduction on the total amount awarded by the Court in its Judgment) (“Settlement”).<sup>1</sup>

On February 21, 2024, the Court preliminarily approved the Settlement, required that notice of the Settlement be sent to all 357 Exaction Class members, and scheduled a fairness hearing for May 1, 2024 at 1:00 p.m. EDT (“Fairness Hearing”) to determine if the Settlement and any requested attorneys’ fees, litigation expenses and case contribution award for Class Representative should be finally approved.

More detailed information about this lawsuit is contained in the operative Second Amended Class Action Complaint filed in this Action on May 2, 2022. The Second Amended Class Action Complaint, along with other important case documents, are available for review at [www.TRPLitigation.com/exaction](http://www.TRPLitigation.com/exaction).

### **3. What are the terms of the Settlement?**

Pursuant to the Settlement Agreement, the Government will pay \$169,022,397.28 (“Settlement Amount”) to resolve all illegal exaction claims asserted by the 357 Exaction Class members in this Action as well as claims for attorneys’ fees and expenses. The Settlement Amount represents 91.25%

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<sup>1</sup> This Settlement does not release any claims of Plaintiffs Operating Engineers Trust Fund of Washington, D.C. and The Stone & Marble Masons of Metropolitan Washington, D.C. Health and Welfare Fund (“Takings Plaintiffs”), or the putative Takings Class (all self-insured employee health and welfare benefit plans with assets held pursuant to a trust agreement that were required to make the Transitional Reinsurance Contribution under Section 1341 of the Affordable Care Act for benefit years 2014, 2015 and/or 2016). Those claims are still being litigated.

of all recoverable damages against the Government. If approved by the Court, the Settlement will permit you to be paid for your claims in this case sooner, rather than years from now, or not at all.

Upon payment of the Settlement Amount, Class Representative and all other Exaction Class members will release, waive, and abandon all claims against the United States, its political subdivisions, its officers, agents, and employees, arising out of the Complaint or otherwise related to this Action, regardless of whether they were included in the Complaint, including but not limited to any claims for costs, expenses, attorneys' fees, administrative fees and costs, and damages of any sort ("Released Claims"). For the avoidance of doubt, Released Claims do not include any claims asserted in the Action by the Takings Plaintiffs or the putative Takings Class. Released Claims also do not include any claims relating to the enforcement of the Settlement.

In the Court's order preliminarily approving the Settlement ("Preliminary Approval Order"), available at [www.TRPLitigation.com](http://www.TRPLitigation.com), the Court appointed JND (the same administrator that handled opt-in class notice) as the "Settlement Administrator." In addition to sending this Notice to Exaction Class members, the Settlement Administrator will pay Court-awarded attorneys' fees, litigation expenses and any case contribution award from the Gross Settlement Fund (i.e., the Settlement Amount plus any interest earned on the Settlement Amount while in escrow). All costs for administering the Settlement will also be paid from the Gross Settlement Fund. The amount remaining in the Gross Settlement Fund after the deduction of administration costs, attorneys' fees, litigation expenses and case contribution award is the "Net Settlement Fund."

#### **4. What will my payment be and how was this amount determined?**

Because the Settlement represents a compromise, the payment to each Exaction Class member will be its share of the Net Settlement Fund.

More specifically, as an Exaction Class member, you will receive a *pro rata* share of the Net Settlement Fund (i.e., the Gross Settlement Fund minus fees, expenses, and any case contribution award), based on the total amount of your 2014 TRP Contribution.

If the Settlement is finally approved by the Court, the Settlement Administrator will send to you your *pro rata* share. Your payment will be sent to you by check or wire.

In order to receive payment, you must provide you Taxpayer Identification Number (or EIN) to the Settlement Administrator.

**Please Note:** No opinion or advice concerning the tax consequences of the proposed Settlement to individual Exaction Class members is being given or will be given by the parties or their counsel. Each Exaction Class member's tax obligations, and the determination thereof, are the sole responsibility of the Exaction Class member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Exaction Class member.

#### **5. Who is representing Class Representative and the Exaction Class?**

Kessler Topaz Meltzer & Check, LLP and McChesney & Dale, P.C. are the law firms representing Class Representative EWTF and the Exaction Class in this Action. You are not directly responsible for Class Counsel's attorneys' fees or expenses. If the Court approves Class Counsel's request for attorneys' fees and expenses, these amounts will be paid to Class Counsel from the Gross Settlement Fund. Consistent with the representations made in the initial notice following the

Court's certification of the class, Class Counsel will request that the Court approve attorneys' fees in an amount not to exceed 25% of the Gross Settlement Fund plus litigation expenses.

## **6. What is a case contribution award?**

Class Counsel will also ask the Court to approve a case contribution award to Class Representative EWTF in an amount not to exceed \$50,000, for the extensive work it performed investigating the facts underlying the Action, supervising the litigation of the Action, participating in discovery, and negotiating the settlement at significant costs of time and resources.

## **7. What are my rights and options under the Settlement?**

You have the right to participate in the Settlement and/or to object to the Settlement, the request for attorneys' fees and expenses, and/or the request for Class Representative's case contribution award.

### **a. Participation**

You have opted into this lawsuit and are an Exaction Class member. Accordingly, to participate in the Settlement and receive your portion of the Net Settlement Fund, you do not need to take any further action. By opting into the lawsuit, you agreed to be bound by any adjudication by the Court or settlement approved by the Court.

### **b. Objections**

As an Exaction Class member, you may object to the Settlement, the request for attorneys' fees and expenses and/or the request for a case contribution award to Class Representative.

The Court will consider and decide all properly submitted objections. All orders and judgments entered by the Court regarding the Settlement, including whether to accept or reject an objection, are binding on all Exaction Class members.

To object, you must file a written statement with the Court (and serve the same on Class Counsel and the Government's Counsel), stating your objection. Specifically, your objection must include: (1) the name of this proceeding, *The Electrical Welfare Trust Fund, et al. v. United States of America*, Civil Action No. 19-353 C (U.S. Court of Federal Claims); (2) your full name, current address, and telephone number; (3) your signature, or if represented, your counsel's signature; (4) a descriptions of the basis for your objection, including all citations to legal authority and evidence supporting the objection; and (5) your unique i.d. number that was included in the Settlement Administrator's email attaching this Notice. If you are represented by an attorney, you must also include the full name, address, phone number, and email address of your attorney in your objection. If you wish to personally participate in the Fairness Hearing or if you wish to have your attorney do so, your objection must include a request to participate in the Fairness Hearing, either in person or through your attorney.

To be considered by the Court, all objections to the Settlement, and all requests to participate in the Fairness Hearing, must be filed with the Court **no later than April 10, 2024**:

Clerk of Court  
U.S. Court of Federal Claims  
Howard T. Markey National Courts Building  
717 Madison Place, N.W.  
Washington, DC 20439

**Copies of the objection must also be served on representative counsel for the Exaction Class and the Government’s Counsel at the following addresses:**

**Representative Class Counsel**  
Joseph H. Meltzer  
Kessler Topaz Meltzer & Check, LLP  
280 King of Prussia Road  
Radnor, PA 19087  
jmeltzer@ktmc.com

**Government’s Counsel**  
Borislav Kushnir  
Senior Trial Counsel  
U.S. Department of Justice  
P.O. Box 480  
Ben Franklin Station  
Washington, D.C. 20044  
Steven.Kushnir@usdoj.gov

**UNLESS OTHERWISE ORDERED BY THE COURT, ANY EXACTION CLASS MEMBER WHO DOES NOT OBJECT IN THE MANNER DESCRIBED HEREIN WILL BE DEEMED TO HAVE WAIVED ANY OBJECTION AND SHALL BE FOREVER FORECLOSED FROM MAKING ANY OBJECTION TO THE SETTLEMENT, INCLUDING THE REQUEST FOR ATTORNEYS’ FEES, LITIGATION EXPENSES AND CASE CONTRIBUTION AWARD, AND WILL NOT BE ALLOWED TO PRESENT ANY OBJECTIONS AT THE FAIRNESS HEARING.**

**8. When and where will the Court decide whether to approve the Settlement and requests for attorneys’ fees, expenses and case contribution award?**

The Court will hold the Fairness Hearing on May 1, 2024 at 1:00 p.m. EDT, at the Court of Federal Claims, Howard T. Markey National Courts Building, 717 Madison Place, N.W., Washington, D.C. 20439. At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate and whether Class Counsel’s requests for attorneys’ fees, expenses and case contribution award to EWTF are fair and reasonable. If there are objections, the Court will consider them at that time. If you do not have objections to the Settlement, you do not have to attend the hearing.

**9. How can I find out how much I will receive?**

You may contact Class Counsel or the Settlement Administrator at 1-877-654-1971.

**10. When and how will I get paid if the Settlement Agreement is approved?**

Payments will go out after the Court finally approves the Settlement and there are no appeals. Your share of the Settlement will be paid by check or wire transfer.

**11. What if I need more information or have additional questions?**

This Notice summarizes the Settlement. The complete terms of the Settlement are set out in the Settlement Agreement. You may obtain a copy of the Settlement Agreement and other Settlement-related documents at [www.TRPLitigation.com/exaction](http://www.TRPLitigation.com/exaction). You can also contact the Settlement Administrator at:

**TRP Litigation  
c/o JND Legal Administration  
P.O. Box 91381  
Seattle, WA 9811  
1-877-654-1971  
info@TRPLitigation.com**

If you have additional questions, you may contact Class Counsel directly:

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Melissa L. Yeates  
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**Please do not contact the Government or the United States Court of Federal Claims with questions or requests for information.**

By Order of the Court