

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

If you were required to pay a Transitional Reinsurance Contribution under the Patient Protection and Affordable Care Act in the 2014 benefit year, you may be entitled to opt-in to join a lawsuit

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

THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ CAREFULLY.

- This lawsuit affects 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 Program (“TRP”) contribution under Section 1341 of the Patient Protection and Affordable Care Act (“ACA”) for benefit year 2014. Excluded from the lawsuit are the U.S. Government (“Defendant” or “Government”), as well as its agents, officials, and families; any judicial officer assigned to this case; any self-insured entities that utilized a third-party administrator for any portion of their operations during benefit year 2014; and any self-administered, self-insured employee health and welfare benefit plans that received a full refund of the TRP contribution paid to the Government for benefit year 2014.
- This Notice has been sent to you by order of a federal court. Please read this Notice carefully and fully. It tells you about the opportunity you now have to join a class action lawsuit that is currently pending before the Court.
- The Court is neither encouraging nor discouraging individuals from joining this lawsuit. This Notice is intended to advise you of the TRP Litigation, which is captioned as *Electrical Welfare Trust Fund v. United States*, Case No. 19-353C and of your rights with respect to it. This includes, but is not limited to, the right to become a member of the Class or to do nothing and be excluded from the Class.

PLEASE NOTE: THIS PARTICULAR CLASS ACTION IS DIFFERENT FROM MANY OTHER CLASS ACTION LAWSUITS IN THE UNITED STATES BECAUSE, IF YOU DO NOTHING, YOU WILL NOT BE ABLE TO PARTICIPATE IN THE LAWSUIT AS A CLASS MEMBER.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS CLASS ACTION LAWSUIT:	
ASK TO BE INCLUDED (OPT-IN TO THE CLASS)	Receive any refunds or payments generated from this lawsuit, and be bound by its results. In order to join the Class, <i>you must</i> submit a Class Action Opt-In Notice Form electronically, by first-class mail, by email, or by pre-paid delivery service. The Class Action Opt-In Notice Form must be submitted, postmarked, or delivered by <u>November 14, 2022</u> . You may also download and submit the Class Action Opt-In Notice Form on the case website at www.TRPLitigation.com .
DO NOTHING	Get no benefits from the lawsuit. Keep rights to sue the Government separately.

- Your rights and options, and the deadlines to exercise them, are explained in this Notice.
- **Any questions? Read on and visit www.TRPLitigation.com**

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Basic Information

1. Why did I receive this Notice?

You have been sent this Notice because Government records show that you may be a self-administered, self-insured employee health and welfare benefit plan that was subject to the assessment and collection of the TRP contribution under Section 1341 of the ACA for benefit year 2014.

The purpose of this Notice is to inform you of a class action lawsuit regarding TRP contribution payments for benefit year 2014, to advise you of how your rights may be affected by this lawsuit, and to inform you how you can join or “opt-in” to the lawsuit if you choose to do so. The class action lawsuit is captioned *Electrical Welfare Trust Fund v. United States*, Case No. 19-353C. This lawsuit is pending in the United States Court of Federal Claims.

2. What is this lawsuit about?

Plaintiffs allege the Department of Health and Human Services (“HHS”) improperly required self-administered, self-insured employee health and welfare benefit plans to make TRP contributions for benefit year 2014 under 42 U.S.C. § 18061 of the 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. Plaintiffs allege that self-administered, self-insured entities were required to make TRP contributions despite falling outside of this plain statutory language. This lawsuit now seeks 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. In denying Defendant’s motion to dismiss and for summary judgment at the outset of the case, the Court indicated agreement with Plaintiff’s theory of liability. *Elec. Welfare Tr. Fund v. United States*, 155 Fed. Cl. 169, 183 (2021).

More detailed information about this lawsuit is contained in the Class Action Complaint filed in this lawsuit. The Class Action Complaint is available at www.TRPLitigation.com.

3. What is required in this lawsuit?

The Electrical Welfare Trust Fund (“EWTF”), the Plaintiff that filed this class action, seeks the following on behalf of itself and the Class:

- Payment from the Government of the full TRP contribution amount paid by self-administered, self-insured employee health and welfare benefit plans under the TRP for benefit year 2014;
- Payment to the lawyers who represent EWTF who filed this lawsuit, as well as their expenses and fees associated with bringing and prosecuting this lawsuit—such payment would be drawn from any judgment, settlement, or other recovery obtained by EWTF and the Class; and
- The award of any other relief that the Court deems just and proper.

4. What is a class action and who is involved?

In a class action lawsuit, one or more people or entities called “Class Representatives” (in this case, EWTF) sue on behalf of other people or entities who have similar claims. These people or entities together are a “Class” or “Class Members.” The people or entities who sued—and all the Class Members who join the lawsuit—are called “Plaintiffs.” The party or entity against whom the lawsuit is brought is called a “Defendant.” Here, the Government is the Defendant, because it is the party to whom members of the Class made TRP contributions under the ACA. The Court of Federal Claims will resolve all legal and factual issues for every eligible Class Member who timely submits a Class Action Opt-In Notice Form. Those individuals or entities who do not timely submit a Class Action Opt-In Notice Form will be excluded from the Class in this case.

More information about why the Court has allowed this lawsuit to be a class action is located in the Court’s Order certifying the Class, available at www.TRPLitigation.com.

Who May Participate In The Class Action

5. Am I part of this lawsuit?

You will need to decide whether you wish to join this lawsuit as a Class Member. You are not part of the Class unless and until you fill out the Class Action Opt-In Notice Form located at the end of this Notice or at www.TRPLitigation.com. Rule 23 of the Rules of the United States Court of Federal Claims requires that Class Members wishing to participate in this class action must join or “opt-in” to this class action lawsuit. If you fit the description in the next question, you may opt-in and join this lawsuit.

Please Note: This “opt-in” procedure is different from many other class action lawsuits in the United States because, if you do nothing, you will not be able to participate in the lawsuit as a Class Member.

6. Who is included in the Class?

Under the Rules of the United States Court of Federal Claims, the Court has allowed the lawsuit to be a class action on behalf of the following class of people or entities:

All self-administered, self-insured employee health and welfare benefit plans that are or were subject to the assessment and collection of the TRP contribution under Section 1341 of the Affordable Care Act for benefit year 2014. Excluded from the Class are Defendant, as well as its agents, officials, and families; any judicial officer assigned to this case; any self-insured entities that utilized a third-party administrator for any portion of their operations during benefit year 2014; and any self-administered, self-insured employee health and welfare benefit plans that received a full refund of the TRP contribution paid to the Government for benefit year 2014.

Your Options

7. How can I join the Class?

Enclosed you will find a document titled “Class Action Opt-In Notice Form.” If you choose to participate in this lawsuit, and potentially participate in any recovery that may result from this lawsuit, **it is extremely important** that you read, sign, and return the Class Action Opt-In Notice Form electronically via www.TRPLitigation.com, or by mail, email, or courier to JND Legal Administration (via the below addresses). The various locations and methods by which you may submit a Class Action Opt-In Notice Form are listed below:

By Internet: www.TRPLitigation.com

- A copy of the Class Action Opt-In Notice Form may also be downloaded at this URL.

By Courier:

TRP Litigation
c/o JND Legal Administration
1100 2nd Ave, Suite 300,
Seattle, WA 98101

By Mail:

TRP Litigation
c/o JND Legal Administration
PO Box 91381
Seattle, WA 98111

By Email: info@TRPLitigation.com

The Class Action Opt-In Notice Form **must be** submitted, postmarked, emailed, or delivered **on or before November 14, 2022.** You may also download and submit the Class Action Opt-In Notice Form on the case website at www.TRPLitigation.com **on or before November 14, 2022.**

If you do not wish to participate in the lawsuit, you need not take any action.

8. What happens once I join the Class?

If you are eligible to be a Class Member and choose to join the Class, you will receive any monetary or other benefits obtained from the lawsuit. A judgment in this case will be binding on you, meaning you could not pursue your own separate lawsuit using your own attorney. Similarly, you may be bound by, and can share in, any settlement reached on behalf of the Class. In the event Class Counsel and the Government reach a settlement, you will receive notice of the settlement and you may object to the settlement and be heard by the Court on your objection. In the case of any settlement reached before entry of judgment, Class Counsel may seek to decertify the litigation class and recertify a settlement class, which would allow any Class Members that previously opted-in to decide whether to join the settlement class at that time.

Any person or entity who submits a Class Action Opt-In Notice Form to join the Class need not appear in court in order to participate. If you become a Class Member, your interests will be

represented by the Class Representative and Class Counsel. Ultimately, the Court will rule on whether you are entitled to compensation and, if so, the amount of compensation owed to you.

In order to join the Class, *you must* submit a Class Action Opt-In Notice Form by **November 14, 2022**. This means your Class Action Opt-In Notice Form must either be submitted electronically at www.TRPLitigation.com, postmarked, or hand-delivered by **November 14, 2022**.

9. Will joining the Class cost me any money?

You will not have to pay any money out-of-pocket to participate in the Class Action. If the Class is successful in this litigation, however, Class Counsel will ask the Court's permission to be compensated for litigating this case and representing the successful Class. Any sums received by Class Counsel in compensation will be deducted from any recovery, which will proportionately reduce the amount of any award each Class Member receives. If the case is unsuccessful, you will have no obligation for attorneys' fees or costs.

Class Counsel represents that it will request no more than **25%** of any judgment or settlement obtained for the Class. In any event, the exact percentage of Class Counsel's fees will be determined by the Court subject to, among other things, the amount at issue in the case and what is called a "lodestar cross-check" (*i.e.* a limitation on class counsel fees based on the number of hours actually worked on the case).

10. What happens if I do not join the Class?

If you do not submit a Class Action Opt-In Notice Form electronically, postmarked, or hand-delivered **on or before November 14, 2022**, you **cannot participate as a Class Member** in this case. As a result, you will not receive any money or benefits from the Court for this lawsuit. However, you keep the right to hire your own lawyer to sue the Government separately about the same legal claims in this lawsuit and you will not be legally bound by any decision of the Court in this class action.

The Lawyers Representing You

11. Do I have a lawyer in this case to represent me?

The Court has decided that attorneys at the law firms of Kessler Topaz Meltzer & Check, LLP and McChesney & Dale, P.C., are qualified to represent you and all Class Members. Together, these firms are called "Class Counsel." Class Counsel has experience handling this type of lawsuit. More information about Class Counsel is available at www.ktmc.com and www.mcchesneydale.com.

12. Should I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel will work on your behalf and represent your interests if you join the Class. You have the right to have your own lawyer. Your own lawyer can appear in court for you if you want someone other than Class Counsel to speak on your behalf. If you choose to hire your own lawyer, you will have to pay that lawyer.

Litigation Information

13. How and when will the Court decide this case?

If the case is not resolved by a settlement, summary judgment, or otherwise, Class Counsel will have to prove the claims of Plaintiff and the Class at trial. The Court previously denied Defendant's request to dismiss Plaintiff's complaint and for summary judgment at the outset of the case. Plaintiff has completed discovery related to the illegal exaction claim and filed a motion for summary judgment, which has not yet been ruled upon by the Court. If the motion for summary judgment is denied, at a trial, the judge would hear all of the evidence to reach a decision about whether Plaintiff or Defendant is right about the claims in this case.

14. Do I need to go to the trial?

You do not need to attend the trial. Class Counsel will present the case on behalf of all Class Members. You and/or your own lawyer are welcome, and entitled, to attend the trial at your own expense.

15. Will I get any money after the trial?

If the Class is successful and obtains money as a result of a judgment, trial, or settlement, you will be notified about how to participate and receive your share. The parties at this time do not know how long this will take.

Getting More Information

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

If you have additional questions about this Notice, you may visit www.TRPLitigation.com, or you may contact Class Counsel directly:

Joseph H. Meltzer
Melissa L. Troutner
Jonathan F. Neumann
**KESSLER TOPAZ
MELTZER & CHECK, LLP**
280 King of Prussia Road
Radnor, PA 19087
Tel: (610) 667-7706
Fax: (610) 667-7056
jmeltzer@ktmc.com
mtroutner@ktmc.com
jneumann@ktmc.com

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