



REPORT OF THE TRUSTEE

Civille & Tang PLLC

Joyce C.H. Tang

Betty Johnson v. Eloy S. Inos, et al., CV 09-0023

Combined Fourth Quarter FY 2014 and First Quarter FY 2015

Filed on March 13, 2015

I. OVERVIEW OF SETTLEMENT FUND OPERATIONS

This is the Trustee's report on the operations of the Settlement Fund for the Fourth Quarter 2014 and First Quarter 2015.

A. SETTLEMENT AGREEMENT PAYMENTS.

The NMI Government (the "Government") is required under the Settlement Agreement to pay \$27 million. This is a \$2 million increase from FY2014. *See, §4.0, Settlement Agreement*, (ECF 468-1). The Government was prompt in making regular payments to meet the quarterly payment obligations for the Fourth Quarter 2014 (July – September) and First Quarter 2015 (October – December). *See, Government Contribution Schedule* attached hereto as **Exhibit 1**¹

The Second Quarter 2015 began on January 1, 2015, and ends on March 31, 2015. The amount of \$9.45 million is due this quarter. With three weeks left in the Second Quarter, \$4.7 million, which represents 50% of the amount due this quarter, remains to be paid by March 31, 2015. *Id.* The Settlement Fund expressed concerns regarding the lack of regular payments for the current quarter, and sought a meeting with the Governor and his team to address these concerns. The Governor assured the Trustee that the Government's cash receipts will improve near the end of March and that there will be sufficient funds with which to pay the balance due for this quarter.

The Government has also been making the 25% payments to make up for the reduction in pension payments (the "25% payments"). While it is commendable that the Governor is trying

¹ The NMI Government Contribution schedule is updated regularly and is available online at the Settlement Fund's website: <http://www.nmisf.com/rfp/annual-payment-status/>.

to help the retirees, the Settlement Fund believes that these are funds should be used to fund the regular 75% payments and/or invested to extend the investment horizon of the Settlement Fund.

All of the Autonomous Agencies are required to pay Employer Contributions for taxes at the rate of 30% under Judge Govendo's Order, which was in effect as of June 26, 2013. *See, §5.0, Settlement Agreement* (ECF No. 468-1 at 14). Except for the Northern Marianas College ("NMC") which owes the Settlement Fund \$71,749.43, all of the other agencies are current through pay period ending January 24, 2015. NMC owes the Settlement Fund \$71,749.43.

Agency	Estimated ER Contribution	Payments Received	Unpaid ER Contribution	Penalty
NMC	\$172,202.39	\$114,802.85	\$ 57,399.54	\$14,349.89.

At the Court hearing on September 9, 2014, the Court ordered the Government, Settlement Fund and NMC were to meet and to discuss NMC's concerns. The parties conferred by telephone on September 10, 2014. During the call, Mr. Scoggins, NMC's counsel, informed the Settlement Fund that the reason NMC was not paying ER Contributions at the 30% rate was because of a June 24, 2008 letter agreement from Governor Fitial to NMC. *See, 6/24/2008 Letter from Gov. Fitial attached as **Exhibit 2***. NMC claimed that Governor Fitial's letter confirms the agreement of the Government to pay the 10% portion of NMC's ER Contributions. When Governor Inos was asked by the Trustee whether the Government had, in fact, agreed to pay 10% of NMC's ER Contributions for a period beyond 2008, he responded that there was not an agreement to cover NMC's ER Contributions past 2008.

Subsequently, on February 27, 2015, the Settlement Fund wrote to NMC requesting compliance and to pay the outstanding balance. *See 2/27/15 Letter to Mark Scoggins attached as **Exhibit 3***. Mr. Scoggins responded on March 3, 2015, stating that NMC did not agree and

refused to pay the outstanding amounts due. *See, 3/3/2015 Ltr from Mark Scoggins* attached as **Exhibit 4**. NMC's refusal to pay is not based on any law or legal authority; rather, it is based on Governor Fitial's letter agreement to cover a portion of NMC's ER Contributions to meet accreditation requirements in 2008. The Settlement Fund will file a *Motion to Enforce the Judgment* against NMC, and ask the Court to issue an Order requiring NMC to comply with §5.0 of the Settlement Agreement by paying all employer contributions at the rate of 30% together with interest and penalties on the unpaid portion.

The Government is current and timely on its payment plan to reimburse the Trustee *Ad Litem* fees to the Settlement Fund. The original amount due was \$694,998.30. The Settlement Fund and the Government agreed to a 24 month payment plan of \$28,958.26 per month. There is a balance of \$434,373.96 remaining as of March 2015.

The Judiciary Building Loan matured on March 1, 2015. The principal amount due as of March 1, 2015 is \$4,814,903.11, and the accrued unpaid interest due is \$186,577.50. The payoff amount calculated as of March 1, 2015 is \$5,001,480.60. In early 2014, an agreement was reached by the parties under which the Government would make monthly installment payments of interest and principal in the amount of \$111,314.15. The Government made four (4) payments since January 2014. *See, Judiciary Building Loan Balance Schedule* attached hereto as **Exhibit 5**. On March 13, 2015, the Government informed the Settlement Fund that a \$400,000 payment for the Judiciary Building Loan is being processed. During the call with the Governor and his team on February 24, 2015, the parties discussed ways the Government can bring the loan current and to maintain regular payment schedule. The Governor asked if the loan could be re-amortized for a longer term, and interest rate reduced which is 7.75% compounded. The Trustee informed the Governor that any modification of the terms (re-amortization and reduction

in interest) needs to be justified *i.e.*, Government giving security, or appropriating and earmarking funds to pay the loan payments. Any modification of the loan terms will require the Court's approval. If the parties are unable to work out a restructuring plan, the Settlement Fund will have to initiate foreclosure proceedings.

Other than the Judiciary Loan and NMC debt, the Government is current on all of its payment obligations to the Settlement Fund.

B. CONSULTANTS.

The Settlement Fund has retained three consultants: (1) Wilshire as its investment consultant; (2) Milliman Inc. as its actuary consultant; and (3) Ernst & Young as its auditor.

Maggie Ralbolvsky, a principal of Wilshire, is still the investment advisor for the Settlement Fund. Her contract was renewed for FY2015.

The Settlement Agreement requires the Settlement Fund to retain an independent actuary to determine the amount of minimum annual payments to the Settlement Fund sufficient to enable the Settlement Fund to pay 75% of Class Members' Full Benefits each year for the Settlement Fund's expected life. *See*, § 4.0, *Settlement Agreement*, (ECF No. 468-1). An actuarial report is not required until after fiscal year 2015. *Id.* The Settlement Fund would like to retain the services of Milliman Inc. as the Actuary for the Settlement Fund. Milliman is scheduled this month to begin their review of the Settlement Fund in order to insure that an actuarial report is completed at the commencement of FY2016.

Ernst & Young are auditors for the Settlement Fund. The audit for FY2014 began in January 2015 and is ongoing. Due to the delay in the Government auditors' completion of the NMI Retirement Fund audit, the NMI Settlement Fund audit will be delayed. The tentative audit completion date is May 2015. The auditor's report will be filed with the Court when issued.

C. STAFFING AND BENEFITS.

During this period, there were two staffing changes. The Settlement Fund's Deputy Administrator left Saipan to pursue a job opportunity on the mainland. The Trustee does not have any immediate plans to fill this position.

After the end of the employees' secondment period (September 31, 2104), the Trustee elected not to retain the Controller. Since the departure of the Controller, the position was filled temporarily by one of the Settlement Fund's internal auditors, who has served as the acting Controller since December 2014. The Trustee intends to promote the acting Controller to a permanent Controller position.

As of October 1, 2014, the Settlement Fund separated itself from the NMIRF operations, entered into contracts to provide health and dental insurance coverage, life insurance coverage and 401K Retirement Plan to its employees. Currently, 100% of the employees of the Settlement Fund have medical insurance with no deductible requirements. The health insurance premium for the *employee* is covered 100% by the Settlement Fund. The employee has the option to obtain coverage for family members at the employee's expense. The health insurance is being provided by Netcare Health & Life Insurance ("Netcare"). The health insurance premiums are approximately 20% less than the rates currently paid by the Government for its employees and retirees.

The Settlement Fund provides life insurance coverage of \$25,000 for each employee. The employee has the option of increasing his or her policy coverage at the employee's expense. Netcare is the carrier providing life insurance coverage.

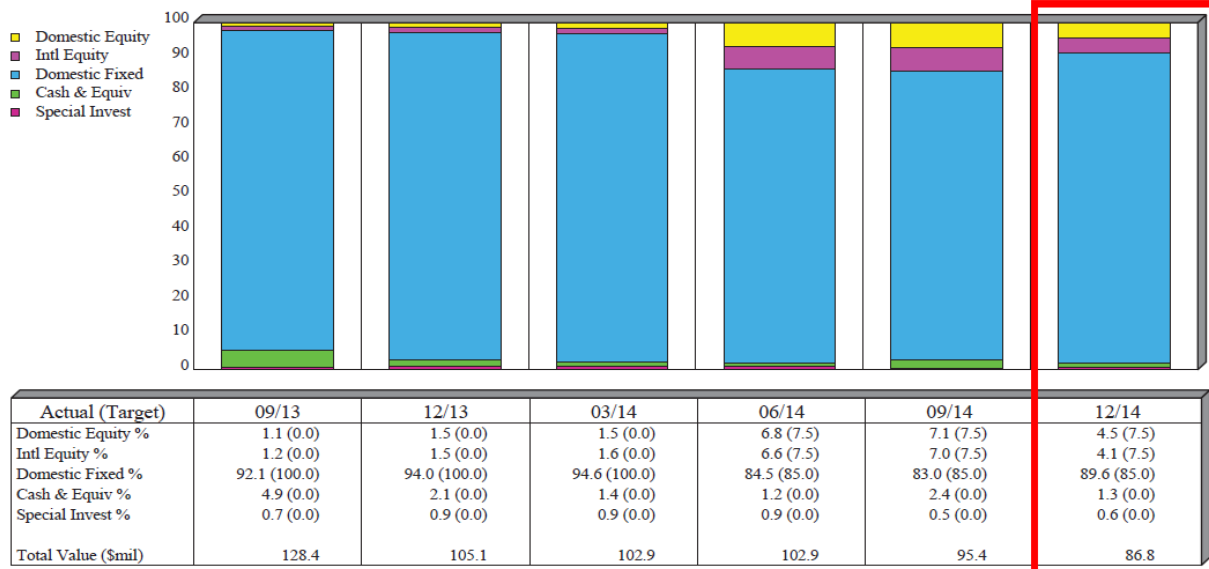
The 401K plan is in place and the Settlement Fund will match up to 5.5% of an employee's gross salary. The Settlement Fund 401K plan is administered by Vanguard.

II. FINANCIAL REPORT

A. FINANCIAL SNAPSHOT.

The Settlement Fund’s investment strategy has changed from September 2013 to the present time. *See, **Chart 1*** below. In April 2014, the Settlement Fund began implementing the new Asset Allocation Glidepath and investment strategy. As the Settlement Fund’s investments are being liquidated to pay pension payments, the amount available for investment decreases, and the investment horizon is shortened. Because of the Settlement Fund’s inability to take high levels of capital markets risk, a more conservative investment policy is required. The Asset Allocation for FY2015 is 90% in bonds and 10% in equity consistent with the investment policy set in April 2014. For FY2015, bond investments were increased by 5% and equity investments were decreased by 5%. The target return for FY2015 is 4.3%, a reduction of .19% from FY2014 target return of 4.49%.

CHART 1
Asset Allocation Chart
As of December 31, 2014



For the quarter ending December 31, 2014 (First Qtr 2015), the Settlement Fund liquidated \$7.5 million of its investments to fund the pension payments, and had a net investment gain of \$129,000. The beginning value of the investments on October 1, 2014 was \$95.3 million, and the ending value of investments on December 31, 2014 was \$86.8 million. *See, 4th Qtr Settlement Fund Performance Report* at p. 15, attached hereto as **Exhibit 6**.²

For the month ended February 28, 2015, the investment values are as follows:

Beginning Investment Value:	\$84,521,000	
Liquidation/Withdraw:	(\$504,000)	
<u>Investment Gain/Loss:</u>	<u>\$717,000</u>	(Time weighted return .85%)
Ending Investment Value:	\$84,735,000	

See, NMI Settlement Fund Feb. 2015 Flash Report at p. 4, attached hereto as **Exhibit 7**.

Unless there is additional contribution which increases the Settlement Fund's investment horizon, the Settlement Fund has very limited options for higher returns. It is the Trustee's view is that the Casino licensing fee of \$15 million per year paid by the licensors is better used for payment of the 75% pension and/or investment by the Settlement Fund so as to increase the investment horizon, instead of the 25% payment that the Government is paying to retirees. As stated in the last report, the Settlement Fund is expected to become a pay-as-you-go entity during the year 2019, by which time retirement income of all the beneficiaries will be entirely dependent upon the CNMI Government's contributions.

B. THE BUDGET.

The Settlement Fund's budget for FY2015 is \$50,760,878.25, a reduction of 1.60% from FY2014. Of this amount, \$48.6 million was allocated to Settlement Fund members' pension

² All monthly and quarterly investment reports can also be accessed and downloaded from the Settlement Fund website from this link: <http://www.nmisf.com/investment-consultant-reports/>.

benefits and disability payments, \$887,878 for wages, salaries and employer expenses, \$940,000 for consultant and professional fees, \$256,000 for general administrative expenses, and \$10,000 for other expenses.

The results of the First Quarter period ending December 31, 2014 (FY2015) comparing the actual versus budget is attached hereto as **Exhibit 8**. A summary of the quarter end results is presented in Chart 2 below:

CHART 2
Actual v. Budget Results
3 Months Period Ending December 31, 2014

	F-Y-T-D Actual	F-Y-T-D Budget	F-Y-T-D Favorable (Unfavorable)	FY 2015 Approved Budget	FY 2015 Remaining Budget
Pension Benefits & Refunds					
Total Benefits Payment	11,768,760.51	11,954,250.00	185,489.49	47,817,000.00	36,048,239.49
Total Refunds	44,274.47	212,500.00	168,225.53	850,000.00	805,725.53
Total Benefits and Refunds	11,813,034.98	12,166,750.00	353,715.02	48,667,000.00	36,853,965.02
General & Admin. Expenses					
Total Personnel Expenses	181,078.18	221,969.56	40,891.38	887,878.25	706,800.07
Total Professional Fees	289,021.83	235,000.00	(54,021.83)	940,000.00	650,978.17
Total Other Gen. & Admin. Expenses	49,450.29	64,000.00	14,549.71	256,000.00	206,549.71
Total General & Admin. Expenses	519,550.30	520,969.56	1,419.26	2,083,878.25	1,564,327.95
Total Fixed Assets	-	2,500.00	2,500.00	10,000.00	10,000.00
Total Expenses	12,332,585.28	12,690,219.56	357,634.28	50,760,878.25	38,428,292.97

In First Quarter 2015, the Settlement Fund made two payments to the Trustee for the Trustee's fees on October 8, 2014 and December 19, 2014. The two payments were made pursuant to the Court Orders approving payments to the Trustee for work performed during the preceding eight-month period (March 2014 - October 2014). Seven of the eight months approved and paid in October and December 2014, were for invoices issued for services performed in FY2014. Due to the delay in payment of invoices, the Settlement Fund booked the payment for the seven FY2014 invoices in FY 2015. The amount of the seven invoices for

period covering March 2014 – September 2014) was \$133,679.33. This amount was booked in FY2015, but should have been booked in FY2014 and deducted from the FY2014 budget. Because of this late payment, the Professional Service line item in Chart 2 is “over budget”, when in actuality it is not. Going forward, from April 2015, the Settlement Fund will report the invoices during the month incurred to avoid this problem.

The Settlement Fund is operating within its approved budget.

C. PENSION SYSTEM AUDIT SOFTWARE.

The design and installation of the pension audit software has been completed. However, during the trial runs in January 2015, the information generated showed that fine tuning of the software was required. Also, in order to validate the results, the Settlement Fund staff reviewed approximately fifty files to verify the calculations. Based on the initial results of the pension audit software, and subject to further reviews by the software developer and the Settlement Fund, the tentative results were as follows:

	Overpayment	Underpayment
Class 1	75 members \$617,293	33 members \$58,201
Class 2	193 members \$820,068	80 members \$209,182
Disabled	8 members \$56,448	11 members \$63,143
TOTAL	276 members \$1,493,809	124 members \$330,526

The Settlement Fund is prioritizing its work to finalize calculations in order to launch the pension audit software. The Settlement Fund is targeting the launching of this software by the end of April 2015, and sending notices to members regarding these over/underpayments at that time.

D. STATUS OF MERRILL LYNCH ARBITRATION.

The claims asserted against Merrill Lynch on behalf of the Settlement Fund in an arbitration proceeding pending before the Financial Industry Regulatory Authority (“FINRA”) have been assigned to the Trustee. *See* Order (Oct. 24, 2014) [ECF 685]. With the approval of this Court, the Trustee substituted as the Claimant in the FINRA arbitration. *Id.* FINRA approved the substitution pursuant to an Order dated March 6, 2015.

The law firm of Levin, Papantonio, Thomas, Mitchell, Rafferty, P.A. serves as lead counsel to the Settlement Fund. Due to the confidential nature of the FINRA action, the Trustee is only able to disclose at this time that the case is in mediation, and that discovery is ongoing. Any settlement will require this Court’s approval.

E. ADMINISTRATIVE PROCEEDINGS.

The Trustee previously submitted proposed Appeal Rules and Procedures for the Court’s consideration. Since the rules have not yet been approved, the Trustee has taken the liberty to make minor edits to the Appeal Rules and Procedures, as shown in the attached as **Exhibit 9**, for the Court’s consideration. Also attached is the Fee Schedule, attached as **Exhibit 10**. These rules need to be approved before the administrative proceedings can commence.

Two administrative hearing officers have been selected to assist with the administrative proceedings. They are Ms. Maya Kara and Mr. Josh Berger. The search for qualified arbitrator is ongoing.

F. PENDING LEGISLATIVE BILLS AND INITIATIVE.

The Legislature is presently considering several legislations which, if passed, may affect the Settlement Fund and its members. The proposed legislations and initiative are available on the Settlement Fund website and at www.cnmileg.gov.mp/.

Below is a summary of the proposed legislations and initiative:

1. **House Bill (“HB”) 19-21.** The purpose of HB 19-21 is to amend §§ 2306 and 2307 of Public Law 18-56 (*i.e.* casino gaming law) and to dedicate the entire license fee to cover the 25% portion of the pension payments that were reduced under Settlement Agreement. Currently, only \$10 million of the \$15 million annual licensing fee is allocated for the payment of the 25% reduction in pension. *See* Public Law 18-56.

As stated above, the Settlement Fund believes that these funds should be used for either payment of the 75% payments and/or given to the Settlement Fund to be invested so that the investment horizon can be extended. HB 19-21 is currently with the Ways & Means Committee, which has an April 7, 2015 deadline to act and to report to the House.

2. **House Bill 19-24.** The intent of HB 19-24 is to provide a Supplemental Retirement Benefit to retirees who return to government employment by re-computing retirement benefits, a procedure which the Retirement Fund Act does not allow.

The Supplemental Retirement Benefit is calculated under a new formula: “2.5 percent times the Salary for Years of employment after Retirement or the Average Annual Salary prior to retirement, whichever is greater, times the sum of the Years of Membership Service and Years of Employment after Retirement minus the Retirement Annuity”. HB 19-24, at 3:6-11. Section 104 of Bill 19-24 also provides for an annuity which may be assigned and garnished for spousal and child support. Section 105 provides for a Survivor Annuity which gives a surviving spouse 50% of the Supplemental Retirement Benefit.

The same measure was previously introduced and approved by the House under the 18th Legislature as HB 18-174, but it was left “unassigned” by the Senate. In response to Senator Jovita Taimanao’s request for comment, the Trustee sent a letter opposing the passage of HB 18-

174. A copy of the Trustee's October 19, 2014 letter to Senator Jovita Taimanao objecting to this Bill is attached as **Exhibit 11**. The Trustee made the following observations: (1) any modification to Settlement Fund members' benefits without the Settlement Fund's consent and the NMI District Court's approval would be ineffective under the Settlement Agreement; and (2) the revenue stream for the Supplemental Retirement Benefit is already being used to pay the Annual Payments due under the Settlement Agreement. *See id.*

The Trustee believes that HB 19-24 is defective for the same reasons raised in HB18-174. HB 19-24 is currently before the Ways & Means Committee, with an April 28, 2015 deadline to act and to report to the House.

3. Senate Bill ("SB") 19-10. The purpose of SB 19-10 is to amend §8364 of the NMI Retirement Fund Act to allow retirees to enroll in the Government Health Insurance Program any time after retirement. The Retirement Fund Act prohibits a retiree from enrolling in the insurance program if the retiree fails to enroll within the six month period upon retirement. *See* 1 CMC § 8364.

If passed, SB 19-10 will give retirees the option of enrolling in the Government Health Insurance Program during open enrollment. SB 19-10 is not clear as to whether this is a one-time enrollment opportunity or whether retirees will be permitted to enroll during open enrollment each year. Several retirees have asked for this benefit and the Settlement Fund believes that providing retirees with an opportunity to join the program is a good thing. However, the ramifications, *e.g.*, increase premiums and higher deductibles, of this new law need to be studied.

SB 19-10 is currently before the Senate Health & Welfare Committee with no scheduled date for committee action.

4. **Senate Legislative Initiative (“SLI”) 19-01.** The purpose of SLI 19-01 is to amend Article III, Section 20(b) of the CNMI Constitution to “allow government retirees to be reemployed without losing their retirement benefits for an unrestricted period of time, provided that qualified local non-retiree applicants be give first priority on any vacancies” SLI 19-01, at 1:5-9. SLI 19-01 was recently referred to the Judiciary GL Committee, but it appears that no action has been taken as of this date. The Settlement Fund will continue to monitor this initiative.

Respectfully submitted this 13th day of March, 2015.

CIVILLE & TANG, PLLC

/ s /

Joyce C.H. Tang
Trustee