



NMI SETTLEMENT FUND

POST OFFICE BOX 501247, SAIPAN, MP 96950

November 2, 2015

VIA HAND DELIVERY AND EMAIL

Honorable Edward Manibusan
Attorney General
CNMI Office of the Attorney General
Hon. Juan A. Sablan Memorial Bldg., 2nd Floor
Saipan, MP 96950

RE REQUEST FOR ATTORNEY GENERAL'S LEGAL OPINION NMI Settlement Fund's Non-profit, Tax Exempt Status

Dear Attorney General Manibusan:

During our meeting last month, we discussed the issue of the non-profit tax status of the Settlement Fund under NMI law. This issue needs to be resolved and I am asking for your assistance in this regard.

As you are aware, the Settlement Fund was created pursuant to the Settlement Agreement approved by the District Court for the Northern Mariana Islands ("District Court") in the federal court action styled as *Betty Johnson v. Eloy S. Inos, et al.*, Civil Case No. 09-00023. Attached is a copy of the Settlement Agreement (ECF No. 468-1). "Settlement Fund" is defined under the Settlement Agreement as follows:

the fund created by this Agreement to accept a transfer of the Assets of the CNMI Fund as provided in this Agreement, to receive the Annual Contributions and other payments paid by the CNMI as provided by this Agreement, and to own the Consent Judgment entered by the District Court upon Final Approval as specified in this Agreement and to and receive immediate, irrevocable assignment of the CNMI Fund's interests in the Consent Judgment upon entry.

See Settlement Agreement, ¶ 1.24 (ECF No. 468-1, at 8).

The NMI Government, the NMI Retirement Fund ("NMIRF"), the NMIRF Board of Trustees, and the NMI Department of Finance, among others, are parties to the Settlement Agreement and approved the creation of the Settlement Fund. *See id.* (ECF No. 468-1, at 1).

The Settlement Fund serves a purely public purpose as it was created to preserve the Settlement Class's constitutional rights to accrued retirement benefits under Article III, Section 20 of the CNMI Constitution, and to ensure that such benefits are not diminished or impaired.

November 2, 2015

Page -2-

See id. (ECF No. 468-1, at 3); *see* CNMI Constitution, art. III, § 20. The Settlement Fund’s purpose is not to make a profit. *See Pangelinan v. N. Mariana Islands Ret. Fund*, 2009 MP 12 ¶ 29 (“As Pangelinan points out, the Retirement Fund does indeed invest much of its capital and consult with third-party experts in order to accumulate a larger reserve of funds. However, its main objective is not to make a profit for those who contribute to the fund, and thus have an ownership interest in it. Its purpose in engaging in commercial activities is to ensure that there is enough money to cover annuity payments that are presently due.”).

Oversight of the Settlement Fund lies entirely and exclusively with the District Court. The court appointed me to serve as Trustee, and to oversee and run the Settlement Fund. The Trustee has the powers of a federal equity receiver and reports directly to Chief Judge Frances Tydingco-Gatewood. *See Settlement Agreement*, ¶ 10 (ECF No. 468-1, at 18). Courts have held with respect to federal receivers that:

[a] court-appointed receiver is an officer of the court, appointed on behalf and for the benefit of all the parties having an interest in the property, not for the plaintiff or defendant alone. The property in his hands is in *custodia legis*; it is the court itself that has the care of the property in dispute. The receiver is but the creature of the court having no powers except such as are conferred upon him by the order of his appointment and the course and practice of the court.

N. Am. Broad., LLC v. United States, 306 F. App’x 371, 373 (9th Cir. 2008) (citations omitted). The Trustee has “the authority, powers and duties required and necessary, over the ‘person’ of the Settlement Fund to act on all matters or business of the Settlement Fund” *Settlement Agreement*, ¶ 10 (ECF 687-1, at 19).

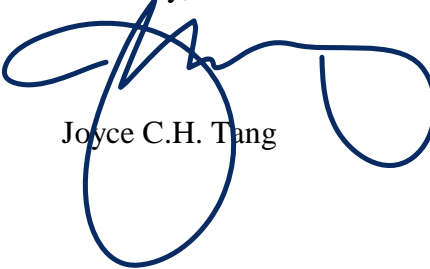
It is the Settlement Fund’s position that it is a non-profit, tax exempt entity pursuant to Section 1105 (titled “Government Exemption”) of the Revenue and Taxation Act of 2004. Section 1105 specifically exempts the United States government (including its departments, agencies and instrumentalities) from “any liability to pay any tax imposed by [the Act] other than such taxes required to be withheld from another person and paid over to the Secretary.” 4 CMC § 1105(a). This exemption extends to the District Court for the Northern Mariana Islands as it was established by the United States government pursuant to Article 4, Section 401, of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America. The exemption should equally apply to the Settlement Fund because it is a “creature” of the District Court.

If the Settlement Fund were to be considered a taxable entity, a status with which the Settlement Fund disagrees, the NMI Government will have to pay tax on income from its investments. The taxes would be treated as an operating expense of the Settlement Fund and will be included in the minimal annual payments due from the NMI Government. *See Settlement Agreement*, ¶ 1.0 (ECF No. 468-1, at 4) (“Funds reasonably necessary to pay the operating expenses of the Settlement Fund must always be provided for [by the NMI Government] when calculating any minimum annual payments under this Agreement.”). It does not make sense to

have the Government provide the funds for the tax to the Settlement Fund through the minimal annual payments, and then to be paid back the taxes through a tax assessment.

We request that you affirm our interpretation and understanding of the Settlement Fund's status as a non-profit, tax exempt entity. Thank you for your assistance in this regard.

Sincerely,



Joyce C.H. Tang

cc: Lillian M. Pangelinan