



**REPORT OF THE TRUSTEE**

**Civille & Tang PLLC**

**Joyce C.H. Tang**

*Betty Johnson v. Ralph DLG. Torres, et al., CV 09-0023*

Combined FY 2016 through Third Quarter FY 2017

September 19, 2017

## I. OVERVIEW OF SETTLEMENT FUND OPERATIONS

The Trustee presents her report on the operations of the Settlement Fund for the Fiscal Year (“FY”) 2016 through the Third Quarter of FY 2017.

### A. CLASS MEMBERSHIP DATA

As of September 2017, there are 3,035 Settlement Class Members, 72 of whom are members are active NMI Government employees. The overall Class Membership increased by 7 members from FY 2016:

	September 30, 2016	September 30, 2015
<b>Participant Counts</b>		
Active Employees (Class I)	66	85
Active Employees (Class II)	<u>6</u>	<u>10</u>
Total Active Employees	72	95
Retirees	<u>2,956</u>	<u>2,998</u>
Total Participants	3,028	3,093

A breakdown of the distribution of benefit payments based on the Settlement Class Members’ current place of residence and classification is presented in **Chart 1** below.

**Chart 1**  
(Period Ending 8/31/2017)

PLACE OF RESIDENCE	Total # of Members	NMISF Class Member Classification					Total Benefit Payment
		Retiree Disabled	Retiree	Surviving Child Disabled	Surviving Child	Surviving Spouse	
CNMI	2268	\$633,792.15	\$ 36,034,676.32	\$28,764.07	\$370,412.76	\$ 5,288,852.28	\$ 42,356,497.58
CONTINENTAL U.S.	526	\$ 13,797.30	\$ 7,269,868.01	\$ 8,529.40	\$ 76,506.65	\$ 1,056,869.10	\$ 8,425,570.46
FSM	15		\$ 178,416.42		\$ 1,363.12	\$ 46,408.42	\$ 226,187.96
GUAM	147	\$ 11,624.58	\$ 1,683,648.21		\$ 45,758.64	\$ 288,564.98	\$ 2,029,596.41
NON U.S.	49		\$ 479,591.14		\$ 3,991.19	\$ 102,002.97	\$ 585,585.30
REPUBLIC OF PALAU	30		\$ 346,130.84		\$ 12,288.10	\$ 78,846.80	\$ 437,265.74
<b>Total Payments @ 100%</b>	<b>3035</b>	<b>\$659,214.03</b>	<b>\$ 45,992,330.94</b>	<b>\$37,293.47</b>	<b>\$510,320.46</b>	<b>\$ 6,861,544.55</b>	<b>\$ 54,060,703.45</b>
<b>Total Payments @ 75%</b>		<b>\$494,410.52</b>	<b>\$ 34,494,248.21</b>	<b>\$27,970.10</b>	<b>\$382,740.35</b>	<b>\$ 5,146,158.41</b>	<b>\$ 40,545,527.59</b>

**B. MINIMUM ANNUAL PAYMENT AND OTHER SOURCES OF FUNDS****1. Minimum Annual Payment**

The NMI Government (the “Government”) has worked closely and cooperatively with the Settlement Fund to pay the Minimum Annual Payment (“MAP”) of \$30 million in FY 2016 and \$33 million in FY 2017. See **Exhibit 1**, *Schedule of CNMI Government Contribution Payments (FY 2016 and FY 2017)*. Since December 2015, the Government has been making regular payments of \$1 million per week to the Settlement Fund. The regular weekly payments has allowed the Settlement Fund to avoid draw downs on investments and extended the Settlement Fund’s investment horizon. The receipt of payments by the Settlement Fund is published on the Settlement Fund’s website and updated regularly at <http://www.nmisf.com/rfp/annual-payment-status/>.

For FY 2018, the MAP will increase to \$45 million (October 1 to September 30). Milliman, Inc., the actuary consultant engaged by the Settlement Fund, has confirmed that the \$45 million MAP provided in the Settlement Agreement is appropriate for FY 2018. See **Exhibit 2**, Actuarial Valuation Report at 1.

**2. Alternative Payment of a Greater Amount**

The Settlement Agreement requires the Government to make Alternative Payment of a Greater Amount (“APGA”) equal to the difference of 17% of the Government’s Total Annual Revenue, after deducting the amount of MAP paid. *Settlement Agreement* ¶ 4.2 (ECF 468-1 at 11).

Based on the Government’s audited financial statements for FY 2014 – FY 2016, the APGA amounts due are as follows:

FY 2014	\$5,919,797.89 (Paid)
FY 2015	\$1,209,243.87 (Paid)
FY 2016	<u>\$11,534,522.38</u> (Outstanding)
<b>TOTAL</b>	<b>\$18,663,564.14</b>

*See Alternative Payment of a Greater Amount (FY 2014-2016)*, attached hereto as **Exhibit 3**. The Settlement Fund received full payment of the APGA for FY 2014 and FY 2015, appropriated under Public Law 20-09. In discussions and a meeting with Governor Ralph DLG. Torres, the Governor committed to working on an appropriation bill to fund the \$11.5 million APGA for FY 2016. The Settlement Fund has proposed the following payment schedule for the \$11.5 million APGA:

1 <sup>st</sup> Payment	10/17/17	\$3,460,356.71 (30%)
2 <sup>nd</sup> Payment	12/31/17	\$4,037,082.83 (35%)
3 <sup>rd</sup> Payment	3/31/17	\$4,037,082.83 (35%)
<b>Total</b>		<b>\$11,534,522.38</b>

Governor Torres has tentatively accepted the proposed payment schedule.

### **3. 25% Benefit Payments**

For FY 2016 and FY 2017, the Government remitted \$15.148 million and \$13.515 million, respectively, to the Settlement Fund for the 25% benefit payments. *See Accounting of 25% Payments by CNMI Government FY 2015-2016*, attached hereto as **Exhibit 4**. For FY 2018, the NMI Legislature passed House Bill 20-99, which appropriates the first \$22 million of the Casino Gross Revenue Tax referenced in 4 CMC § 2308 for the 25% benefit payments and a bonus payment to retirees. The 25% benefit payment and bonus payment are voluntary payments from the Government, and are not required under the Settlement Agreement. This bill has been passed by the Senate and the House and has not been signed into law by Governor Torres. The Trustee has requested that House Bill 20-99 be amended to give priority to the MAP that are paid from the Casino Gross Revenue Tax (the “Casino GRT”) source. The Governor has agreed to the amendment requested by the Settlement Fund.

The Settlement Fund will continue to assist the Government with processing of the 25% payments as an accommodation to the Government so long as: (1) the Government continues to

pay the MAP in a timely and periodic manner; (2) the Government remains current on its APGA payment and other Settlement Agreement obligations; and (3) all payments received from the Government comply with CNMI appropriation laws.

#### **4. Employer Contributions**

The Government and its Autonomous Agencies are required to submit employer contributions (“ER”) after each pay period pursuant to Paragraph 5.0 of the Settlement Agreement. Pursuant to the Court’s March 10, 2016 Order, the following rates apply:

<b>Agency</b>	<b>Applicable ER Rate</b>
NMI Government - Local	30%
NMI Government - Federal	37.3909%
Commonwealth Health Care Corporation (“CHC”)	37.3909%
Public School System (“PSS”)	37.3909%
Northern Marianas College (“NMC”)	20%
Other Autonomous Agencies	30%

*Order re Joint Motion to Confirm the NMI Settlement Fund’s Status as a Tax Exempt Entity* (ECF No. 756, at 9).

As of the pay period ending September 2, 2017, the Government and the Autonomous Agencies are current on their payment obligations, with the exception of PSS and CHC who owe the following amounts from FY 2014 through FY 2016:

Agency	ER Contributions Due
Public School System (“PSS”)	\$212,239.71
Commonwealth Health Care Corporation (“CHC”)	\$98,938.53

The outstanding employer contributions arise from the Court’s March 10, 2016 Order, which correctly interpreted Paragraph 5.0 of the Settlement Agreement to require the Government and Autonomous Agencies to pay employer contributions at the same contribution rates they were paying as of June 26, 2013. *Order re Joint Motion to Confirm the NMI Settlement Fund’s Status as a Tax Exempt Entity* (ECF No. 756, at 9). Prior to the issuance of the March 10<sup>th</sup> Order, the Settlement Fund required the Government and all Autonomous Agencies to pay employer contributions at the rate of 30% because it was the rate that applied as of June 26, 2013 (as required under Judge Govendo’s August 22, 2011 Order). The Court, however, disagreed and found that the contributions should be based on the contribution rates the NMI Government and its Autonomous Agencies were paying as of June 26, 2013. *See id.*

The March 10<sup>th</sup> Order affected the contribution rates for the Government, the Tinian Mayor’s Office, CHC, and PSS, all of which are now paying employer contributions at the increased rate of 37.3909% instead of the lower 30% rate they were paying as of June 26, 2013. The NMC’s contribution rate remains at 20% pursuant to the order. All other agencies are required to pay employer contributions at the 30% rate set by Judge Govendo’s order.

The amounts owed by CHC and PSS represent the difference between the 30% rate and the 37.3909% rate that they should have been paying from FY 2014 through FY 2016. CHC has entered into a payment plan to pay the outstanding amount in equal payments by June 2018. PSS

has stated it will enter into a payment plan once they confirm the outstanding amount due. The Government and the Tinian Mayor's Office are current.

**5. Reimbursement of Trustee Ad Litem Fees**

The NMI Government agreed to reimburse the Settlement Fund for the Trustee Ad Litem fees in the amount of \$694,998.30, to be paid in 24 equal monthly installments of \$28,958.26 per month. The balance was paid in full on June 15, 2016.

**6. Judicial Building Loan**

The Judicial Building Loan matured on March 1, 2015. The loan balance as of September 30, 2016 was \$4,303,213.80. In FY 2017, the Government made payments totaling \$942,772.53. *See Judicial Building Loan Payments*, attached hereto as **Exhibit 5**. The outstanding balance as of September 15, 2017, is \$3,667,219.28 (including interest).

The Government, with the help of the NMI Judiciary, has applied for a USDA loan for \$12,000,000 to pay off the Judicial Building Loan and to expand the Judiciary Building and other facilities. In September 2016, Public Law 19-67 was signed into law authorizing the Government to borrow from the USDA for these purposes. The Settlement Fund was informed that the USDA loan application is being reviewed by the Guam and Hawaii USDA offices, and will be forwarded to the USDA headquarters in Washington, D.C. by October 1, 2017 for final review.

**7. NMI Settlement Fund Building**

The second and third floors of the Settlement Fund building are vacant and available for lease. The Settlement Fund has had difficulty finding a suitable tenant for the space. The Government agencies interested in leasing the space do not have sufficient funding. The second

and third floors were previously occupied by the U.S. Government (FEMA) after Typhoon Soudelor in 2015 at the rate of \$17,236.50 per month (\$1.50 per s.f.), with an additional \$5,745.50 per month for utilities. The Settlement Fund would like to explore the possibility of obtaining consent to lease space to private tenants so that it can maximize rental revenue.

The Settlement Fund building sustained some damage from Typhoon Soudelor and also requires maintenance work. The damage from Soudelor is below the deductible. The proposals for repair are estimated to be between \$76,632.46 and \$103,518.19, excluding construction management cost. Because of the labor shortage in Saipan, work that should cost a fraction of this amount is double or triple the normal cost. The Settlement Fund has budgeted \$270,000 for the repair and maintenance of the building.

### C. AUDIT SOFTWARE

As previously reported, the benefit audit software reported large sums of potential overpayments and underpayments to members:

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

*See Report of the Trustee Combined Fourth Quarter FY 2014 and First Quarter FY 2015 (ECF 697, at 10).*

The Settlement Fund conducted a manual audit of all of the underpayment and overpayment member accounts identified. The audit involved a five-stage process described below:



Audit Stages	Overpayment		Underpayment
	Class 1	Class 2	
<b>Stage 1</b> – File is reviewed to identify issues pertaining to under/overpayment and to ensure all supporting documents are available.	Class 1	-	-
	Class 2	-	-
<b>Stage 2</b> – Data is recomputed by Member Services staff in accordance with the applicable laws and regulations governing the member’s annuity calculation.	Class 1	-	-
	Class 2	-	-
<b>Stage 3</b> – File is forwarded to Member Services Manager for recalculation and final review.	Class 1	1	1
	Class 2	14	-
<b>Stage 4</b> – Completed file is sent to the Audit department to ensure that calculations are accurate and in compliance with applicable laws and Fund rules and regulations.	Class 1	6	2
	Class 2	60	10
<b>Stage 5</b> – Audited file is forwarded to Legal Department for legal review. For overpayments, adverse letters are issued by the Administrator. For underpayments, a findings and recommendations letter is forwarded to the Trustee for approval of underpayment pay out.	Class 1	8	8
	Class 2	42	-

The audit determined that 247 of the member accounts did not contain any issues and were closed out. Different issues were found for the remaining 152 member accounts.<sup>1</sup> The issues found involve at least one or more of the following:

- 1. Amendment 19.** According to Amendment 19 to the NMI Constitution, a member with 20 years or more of creditable service may elect to receive an additional 5 years of creditable service to retire. NMI CONST. art. III, § 20(b). An employee who elects to receive the additional 5-year credit, however, may not be reemployed by the NMI Government for more than 60 days in any fiscal year without losing retirement benefits, unless the member qualifies for an exemption under Section 8392 of the Retirement Fund Act. We have found that the additional 5-year credit was incorrectly applied to members who did not qualify for such credit.
- 2. Average Annual Salary.** The average annual salary is the average of the 3 highest salaries received by a member, 1 CMC § 8313(d); NMIAC § 110-10-010(d), and is used to determine a member’s retirement annuity, 1 CMC §§ 8341, 8344. We have found that the average annual salary for a number of files were miscalculated, resulting in overpayments.

<sup>1</sup> A member was counted twice in the Class 2 overpayment list.

3. **Benefit Calculation.** Benefits are calculated according to respective class I and II formulas. 1 CMC §§ 8341, 8344. We have found errors in various numbers factored into the calculation, affecting the benefit amounts.
4. **Class I.** The computation for Class I members is governed by 1 CMC § 8341, which provides an annuity formula that depends on the years of membership service and requires that the minimum annual annuity not be less than \$6,000 unless contributions have not been fully paid. Some Class I members were improperly categorized as Class II members.
5. **Cost of Living Adjustment (“COLA”).** Eligible members who receive a retirement annuity are entitled to a COLA on the anniversary of their retirement date. 1 CMC § 8358. A number of members improperly received COLA without satisfying the age requirement.
6. **Credited Service.** Credited service is computed based on the amount of time a member has been employed by the government, including elected service and accumulated sick leave. 1 CMC § 8313(p); NMIAC § 110-10-010(h). Some members received credited service, but their membership records do not support the amount of time in service.
7. **Disability.** To qualify for continuing disability benefits, members must undergo medical examinations, or otherwise forgo benefits. 1 CMC § 8347(b), (d). One member has not complied with this requirement and continued to receive an annuity.
8. **Double Dipping.** A retiree may not receive retirement benefits if reemployed by the NMI Government without an exemption under 1 CMC § 8392. One who avails of the additional 5-year service credit under the NMI Constitution may only receive both retirement benefits and government salary for 60 calendar days in any fiscal year without losing retirement benefits. 1 CMC § 8392(c). Some reemployed retirees improperly received benefits and government salaries without satisfying any of the exceptions under Section 8392.
9. **Early Retirement Penalty.** Members who elect to retire before the age of 62 receive a reduced amount of retirement benefits for each month the member is under 62. 1 CMC § 8342(a); NMIAC § 110-10-205. In some cases, the early retirement penalty was not applied or improperly applied.
10. **Elected Official.** An additional 3% times the average annual salary and years of service is given to members elected as government officials and judges after January 8, 1978, as long as it did not exceed the highest annual salary received. P.L. 6-41, § 6. The computation of benefits for respective members did not consider this provision.
11. **Employee Contribution.** Members must contribute a percentage of their salary to the Settlement Fund (Class I members: 6.5% rate / Class II members: 9% rate). 1 CMC § 8361. Some members paid the incorrect contribution rate.
12. **Overtime/Compensatory Time (“OT/CT”).** Members who worked in excess of 2,080 regular hours/year receive additional vesting service credit. PL 8-24, § 3; NMIAC § 110-10-280(a)(2). Many members were improperly given service credit instead of vesting

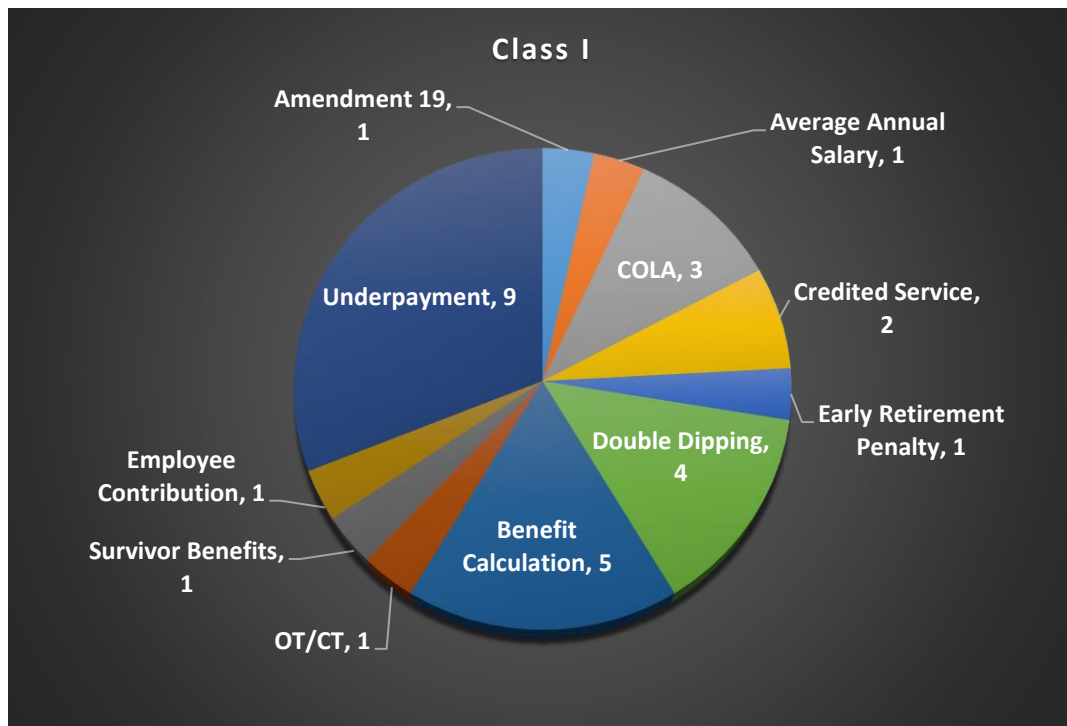
service credit for OT/CT hours, and/or were not eligible for such credit because they did not meet the threshold 2,080 regular hour requirement.

**13. Survivor Benefits.** Survivors of members are entitled to benefits in accordance with 1 CMC §§ 8350-8353. One member who received such benefits was not entitled to such.

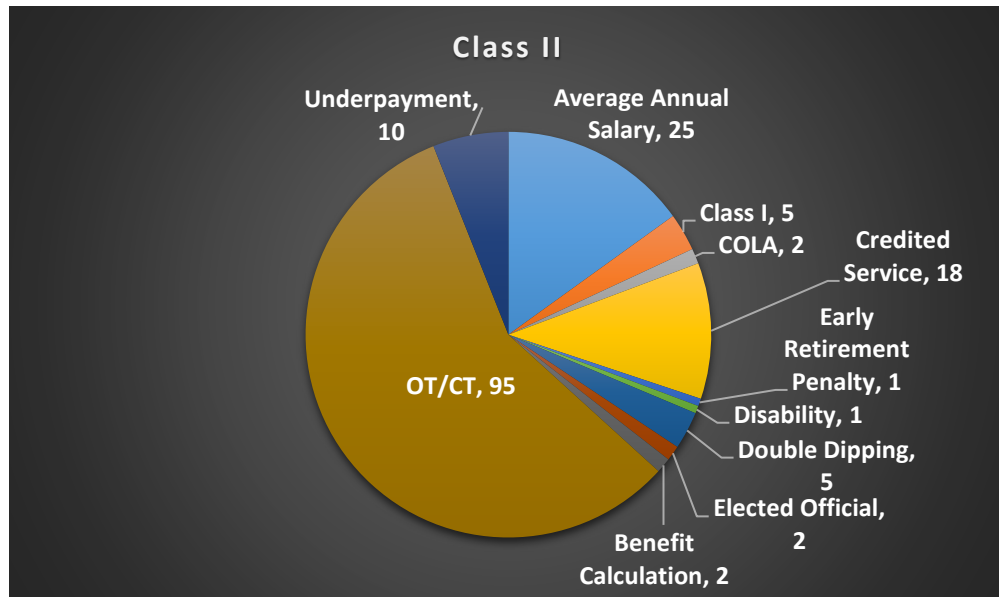
**14. Underpayment.** Members who have been underpaid are entitled to the underpayment plus regular interest. 1 CMC § 8390(d). Some members' benefits were improperly computed, resulting in benefit underpayments.

The charts below show a breakdown of the findings of the audited members accounts based on Class:

**Chart 2**  
**Class I Members (as of 9/15/2017)**



**Chart 3**  
**Class II Members (as of 9/15/2017)**



The updated financial results of the audited member accounts are set forth below:

	<b>Overpayment</b>		<b>Underpayment</b>	
<b>Class I</b>	15 members	\$73,478	11 members	\$28,068
<b>Class II</b>	116 members	\$348,121	10 members	\$29,683
<b>Disability</b>	0 members	\$ -	0 members	\$ -
<b>TOTAL</b>	<b>131 members</b>	<b>\$421,599</b>	<b>21 members</b>	<b>\$57,751</b>

**D. CONSULTANTS**

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

**1. Investment Advisor**

Maggie Ralbovsky, a principal of Wilshire, is still the investment advisor for the Settlement Fund. Wilshire’s contract was renewed for FY 2018.

**2. Actuary**

Milliman, Inc. has acted as the Settlement Fund's actuary since March 2015. For FY 2016, the Settlement Agreement requires an independent actuary 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 Settlement Agreement* ¶ 4.0 (ECF No. 468-1). A copy of Milliman's FY 2016 Actuarial Valuation Report is attached hereto as **Exhibit 2**.

**3. Auditors**

Ernst & Young LLP (E&Y), auditors for the Settlement Fund, completed the FY 2014 audit in June 2017 and found the Settlement Fund's financial statements to be fairly stated in accordance with U.S. generally accepted accounting principles. A copy of the FY 2014 audit is attached hereto as **Exhibit 6**. The delay in completing the FY 2014 audit was due to a disagreement with the NMI Government regarding the Secretary of Finance's determination that the Settlement Fund is a component unit of the NMI Government. On December 2, 2016, the Settlement Fund and the Government submitted a Stipulation Regarding the Assets of the Settlement Fund. *Stipulation Regarding the Assets of the Settlement Fund* (ECF No. 758). The Stipulation states that the Settlement Fund disagreed with the Government's determination that the Settlement Fund is a component unit of the Government for tax purposes, and the Government confirmed that the Government and NMI Retirement Fund do not possess any interest in and to Settlement Fund assets. *Id.*

The Settlement Fund has engaged E&Y to perform the audits for FY 2015 and FY 2016. The audit of the Settlement Fund's financial statements for FY 2015 and FY 2016 will be completed by December 31, 2017.

**E. NMISF NEWSLETTER**

The Settlement Fund began publishing the Newsletters to update its membership on the status of their fund. The First Issue was published in February 2016, and the Second Issue in September 2017. A copy of both issues are attached hereto as **Exhibit 7**. Newsletters are mailed to Class Members and are posted on the Settlement Fund's website.

## II. FINANCIAL REPORT

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### A. FINANCIAL OVERVIEW

#### 1. Sources of Funds

In order to meet its financial obligations in FY 2016 and FY 2017, the Settlement Fund drew down \$3.5 million in FY 2016 and \$7 million in FY 2017 from its investments to cover the 75% benefit payments. Because the funding requirements of the Settlement Fund exceeded the Settlement Fund's income (comprised of the Minimal Annual Payment, investment income, employer/employee contributions, and other income), the Settlement Fund drew down on its investments to cover the outflows. For the period ending August 31, 2016 and August 31, 2017, the Sources of Funds and Expenses were as follows:

	<b>8/31/2017</b>	<b>8/31/2016</b>
Minimum Annual Payment & Income	\$37,504,992	\$38,573,503
Total Expenses	(\$41,745,453)	(\$42,936,248)
Realized Gain/Loss on Investments	\$447,783	\$2,995,973
<b>Difference</b>	<b>(\$3,792,678)</b>	<b>(\$1,366,772)</b>

See Exhibit 8, *Sources of Funds and Expenses for FY 2016 and FY 2017*.

**2. Budget for FY 2016 and FY 2017**

A summary of the FY 2016 and FY 2017 budget and actual performance is presented in **Schedule 1** below.

**Schedule 1  
FY 2016 & FY 2017  
Actual Expenses v. Budget Results**

	<b>Actual FY 2016 8/31/2016</b>	<b>FY 2016 Budget 8/31/2016</b>	<b>Actual FY 2017 8/31/2017</b>	<b>FY 2017 Budget 8/31/2017</b>
<b>Benefits Payments</b>				
Total Benefit Payments	41,725,323	42,455,417	40,611,024	42,029,167
Total Refunds	62,256	206,250	13,623	105,417
Total Benefits and Refunds Payment	41,787,579	42,661,667	40,624,647	42,134,583
<b>General &amp; Administrative Expenses</b>				
Total Personnel Expenses	649,719	777,712	680,481	751,954
Total Professional Fees	311,446	824,542	286,747	671,000
Total General & Admin. Expenses	187,505	310,292	153,577	588,133
<b>Total Fixed Assets</b>	10,409	9,167	17,499	27,500
<b>Total Expenses</b>	42,946,657	44,583,378	41,762,952	44,173,170



### 3. Proposed FY 2018 Budget

The Settlement Fund's proposed expenses for FY 2018 total \$47,222,438. See **Schedule 2** below for a summary.

#### Schedule 2 FY 2016, FY 2017, & Proposed FY 2018 Budget

	Approved FY 2016 Budget	FY 2017 Tentative Budget	Proposed FY 2018 Budget	FY 2018 increase/ (decrease)	% (+/-) from previous budget
<b>Benefits Payments</b>					
Total Benefits Payment	46,315,000	45,850,000	44,890,000	(960,000.00)	-2.1%
Total Refunds	225,000	115,000	60,000	(55,000.00)	-47.8%
Total Benefits and Refunds Payment	46,540,000	45,965,000	44,950,000	(1,015,000.00)	-2.2%
<b>General &amp; Administrative Expenses</b>					
Total Personnel Expenses	848,413	815,645	816,080	435.25	0.1%
Total Professional Fees	899,500	797,000	945,000	148,000.00	18.6%
Total General & Admin. Expenses	338,500	470,600	476,800	6,200.00	1.3%
<b>Total Expenses</b>	<b>48,626,413</b>	<b>48,048,245</b>	<b>47,187,880</b>	<b>(860,364.75)</b>	<b>-1.8%</b>
<b>Total Fixed Assets</b>	<b>10,000</b>	<b>30,000</b>	<b>10,000</b>	<b>(20,000.00)</b>	<b>-66.7%</b>
<b>Total Expenditures</b>	<b>48,636,413</b>	<b>48,078,245</b>	<b>47,197,880</b>	<b>(880,364.75)</b>	<b>-1.8%</b>

See **Exhibit 9**, detailed breakdown of the proposed budget for FY 2018.

The overall projected expenditures for FY 2018 is \$880,364 less than the FY 2017 tentative budget. The increase of \$148,000 in professional fees is due primarily to the anticipated completion of the Settlement Fund's FY 2015, FY 2016 and FY 2017 audits.

## B. INVESTMENTS REPORT

### 1. Investment Policy

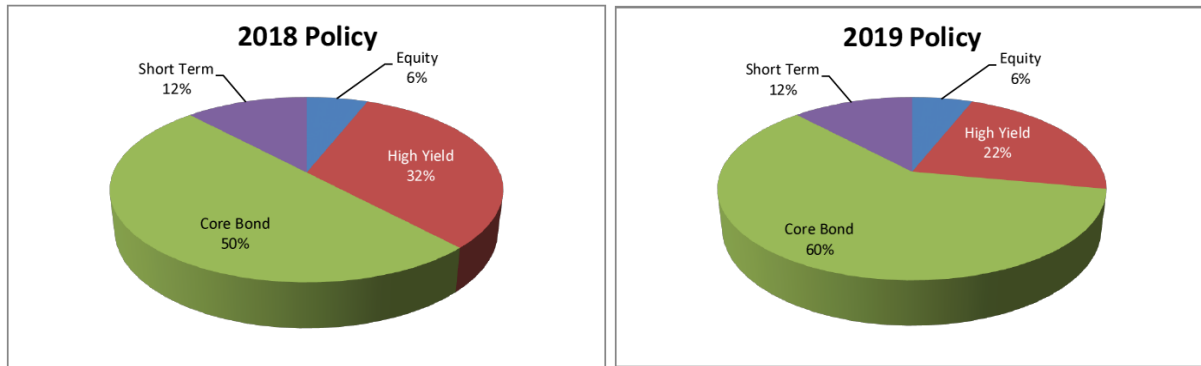
The Settlement Fund's current investment policy is very conservative because the Settlement Fund will not be able to take high levels of capital markets risk. Wilshire Investments'

recommended investment glide path and asset allocation for FY 2018 through FY 2020 is presented below:

**NMI Settlement Fund Glide Path**

Asset	Current	2018 Target	2019 Target	2020 Target
Equity	11	6	6	5
High Yield	30	32	22	15
Core Bond	47	50	60	65
Short Term	12	12	12	15
<b>Expected Return</b>	<b>4.61</b>	<b>4.15</b>	<b>3.99</b>	<b>3.77</b>
<b>Expected Risk</b>	<b>6.48</b>	<b>4.94</b>	<b>4.70</b>	<b>4.49</b>

**Asset Allocation Charts  
Fiscal Years 2018 and 2019**



The Settlement Fund previously reported that unless the NMI Government increased its contributions, the Settlement Fund is expected to become a pay-as-you-go entity during the year 2019. *Report of the Trustee for FY 2015 (2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Quarters)* (ECF 731, at 12). Maggie Ralbovsky, the Settlement Fund’s investment advisor, has stated that if the Government continues to make timely and periodic payments of the Minimum Annual Payment and APGA, *the anticipated asset depletion date may be extended to the end of 2024*. In the past two years, the Government has been making weekly payments of \$1 million to the Settlement Fund. The \$1 million weekly payments provide the cash flow needed to for bi-weekly benefit payments without having to liquidate the Settlement Fund’s investments. The Government’s cooperation and

willingness to make these large weekly payments eased the Settlement Fund's liquidity requirements, allowing the Settlement Fund to invest its money for longer periods.

The Government is able to make the weekly \$1 million payments, in part, because of the increased Casino GRT revenue collected in 2016 and 2017. The Casino GRT has developed into a primary source of revenue for the Government. The Settlement Fund has requested a breakdown of the Casino GRT collected in prior years from Secretary of Finance, but has not received this information as of the filing of this Report. Continuing payment of the Casino GRT to the Government at the current rate is, at best, uncertain. The lack of diversification of revenue sources also creates risks for the CNMI. Because of the lack of certainty regarding continuing the stream of Casino GRT revenue and the Government's lack of revenue diversification, reliance on the Casino GRT is very risky. In order to mitigate the attendant risk to the Settlement Fund, the Trustee is exploring alternative funding methods, including obtaining full funding of the Settlement Fund. The Settlement Fund's investment consultant has calculated the amount that is needed in order for the Settlement Fund to be fully funded. Subject to certain assumptions, an infusion of an *additional \$468 million* today is required to fully fund the Settlement Fund. The Trustee plans to engage the Government in discussions regarding options available to obtain this funding.

## **2. Updated Investment Balance as of 8/31/2017**

The balance in the Settlement Fund's investment accounts for FY 2017 (as of August 31, 2017) is **\$72,599,000**. A summary of the FY 2017 investment reports, showing the beginning and ending investment balances, gains and losses, and fees paid to managers is provided in **Chart 4** below.

Chart 4

Investment Summary FY 2017 (as of 8/31/17)					
	Beg. Balance	Distributions & Adm Fees	Investment Gains/Losses	Inv. Fees	End. Balance
<b>1st Quarter</b> (Oct. - Dec. 2016)	\$ 75,665,000	\$(1,578,000)	\$ (39,000)	\$ -	\$ 74,047,000
<b>2nd Quarter</b> (Jan. - March 2017)	\$ 74,047,000	\$ (18,000)	\$ 1,734,000	\$ -	\$ 75,763,000
<b>3rd Quarter</b> (April - June 2017)	\$ 75,763,000	\$ (18,000)	\$ 1,406,000	\$ -	\$ 77,151,000
<b>4th Quarter (interim)</b> (July - Aug. 2017)	\$ 77,151,000	\$(5,511,000)	\$ 959,000	\$ -	\$ 72,599,000
		<b>\$(7,125,000)</b>	<b>\$ 4,060,000</b>		

See **Exhibit 10**, *NMI Settlement Fund Investment Performance Analysis (6.30.2017)*; **Exhibit 11**, *Flash Reports for July and August 2017*. The investment reports are available on the Settlement Fund website: <http://www.nmisf.com/investment-consultant-reports-2/>.

For FY 2017, the Settlement fund drew down \$7.1 million to cover benefit payments and administrative fees, and had a gain of \$4.06 million on its investments. The investment portfolio for FY 2017 outperformed the expected return of 4.61% by 1.87%.

### C. MILLIMAN'S ACTUARIAL VALUATION REPORT

Milliman, Inc. completed the Settlement Fund's Actuarial Valuation Report as of September 30, 2016. A copy of the Actuarial Valuation Report is attached hereto as **Exhibit 2**. Paragraph 4.0 of the Settlement Agreement requires the Government to make MAP each year to pay 75% of the Class Members' Full Benefits. The payments for FY 2014 and FY 2015 were fixed at \$25,000,000 and \$27,000,000, respectively. The MAP after FY 2015 are to be determined

by an independent actuary. The purpose of the Actuarial Valuation Report is to project the MAP to be made by the Government to pay 75% of the Class Members' full benefits.

Highlights from the Milliman's FY 2016 Actuarial Valuation Report:

- The Government paid MAP in the amount of \$30,000,000 for FY 2016. Milliman has determined that the MAP for FY 2017 should be \$33,000,000, and FY 2018 should be \$45,000,000.
- Assuming life expectancies based upon the mortality table used in the 2012 actuarial valuation of the Northern Mariana Islands Retirement Fund, the MAP is estimated to be \$44,000,000 for FY 2019. The MAP are estimated to decline by \$1,000,000 per year from 2020 to FY 2036, resulting in a MAP of \$27,000,000 for FY 2036.

**Projected CNMI Payments (current mortality)**

FY 2017	33,000,000	33,000,000
FY 2018	45,000,000	45,000,000
FY 2019	44,000,000	44,000,000
FY 2020	43,000,000	43,000,000
FY 2021	42,000,000	42,000,000

(see Exhibit 7 for FY 2022 and later years)

- Assuming improved life expectancies, the MAP for FY 2019 is estimated to be \$44,000,000; however, because class members are living longer, the estimated MAP from FY 2020 to FY 2028 is estimated to stay at \$44,000,000 per year. MAP for FY 2029 through FY 2035 are estimated to be \$43,000,000 yearly.

### III. LITIGATION STATUS

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**A. *NMI Retirement Fund v. CNMI, Civil Case No. 13-00006 (NMI Dist. Court).***

This case originated as Civil Action No. 06-0367 in the NMI Superior Court. The Retirement Fund filed suit against the CNMI for nonpayment of employer contributions, and obtained a judgment against the CNMI. The Commonwealth Ports Authority intervened and filed a Motion for Writ of Mandamus against the Retirement Fund and the *Trustee Ad Litem*, seeking an order compelling the distribution of employer contributions. The case was removed to the District Court (assigned Case No. 13-CV-00006), and was later stayed on May 15, 2013, pending final approval of the Settlement Agreement entered in the *Johnson v. Inos* case.

On August 31, 2017, the court ordered the parties and the Settlement Fund Trustee to submit a Joint Status Report that addresses whether all issues in the case are resolved and whether the case can now be closed in light of the Settlement Agreement approved in the *Johnson v. Inos* case. The Joint Status Report was submitted on September 19, 2017, a copy of which is attached hereto as **Exhibit 12** (without exhibits). The Joint Status Report advised the Court that this matter has been resolved and should be closed in accordance with Paragraph 14.0 of the Settlement Agreement.

**B. *NMI Settlement Fund v. Commonwealth Utilities Corporation, Civil Action No. 11-0114-CV (NMI Superior Court).***

This action was originally filed on May 5, 2011 by the NMI Retirement Fund against the Commonwealth Utilities Corporation (the “CUC”) to collect outstanding employer contributions totaling \$3,175,225 plus \$740,462 in statutory penalties and \$527,716 in economic damages as of April 29, 2011. It was assumed by the Settlement Fund and was identified as an asset to be transferred to the Settlement Fund in the Settlement Agreement. *See Settlement Agreement ¶¶ 1.1,*

8.0, 29.0(b) (ECF 468-1, at 4-5, 16, 34-36). By stipulation of the parties, the Settlement Fund substituted in as plaintiff on August 16, 2017. The Settlement Fund entered its appearance in this action. A status conference is scheduled on October 24, 2017.

**C. *NMI Retirement Fund v. Sword and Express Electronics*, Civil Action No. 12-0086 (NMI Superior Court).**

This lawsuit was filed in the NMI Superior Court by the NMI Retirement Fund. It was not assumed by the Settlement Fund and was not identified as an asset to be transferred to the Settlement Fund in the Settlement Agreement. The lawsuit alleged a breach of contract and unjust enrichment claim by the plaintiff, the Retirement Fund, against defendants, Gerhard Sword, individually, and Express Electronics, involving a defective audit software they had supplied to the Retirement Fund. All Retirement Fund matters are handled the Office of the Attorney General (the "OAG"). The Settlement Fund notified the OAG on March 14, 2016 that the Court will be dismissing this lawsuit. The lawsuit remained with the Retirement Fund and was dismissed by the court on April 27, 2016.

**D. ADMINISTRATIVE APPEALS**

**1. Appeals Pending Mediation**

A summary of pending administrative cases is provided in the Pending Administrative Cases Report, attached as **Exhibit 13**. These appeals will proceed with mediation upon the Court's appointment of mediators. The Settlement Fund collected \$18,723 in FY 2016 and \$62,323 so far in FY 2017 in overpayments paid to those who waived their right to appeal the adverse decision.

**2. Appointment of New Hearing Officers**

Attorneys Maya Kara and Josh Berger were previously selected and approved as hearing officers to assist with administrative proceedings. Ms. Kara notified the Settlement Fund of a conflict which prevented her from accepting this engagement. Mr. Berger left Saipan and is no longer practicing in the CNMI. The Fund will be issuing solicitations for hearing officer positions.



## IV. STATUS OF LEGISLATION

The Twentieth Legislature considered several bills that may affect the Settlement Fund and its members. The proposed bills are available at [www.cnmileg.gov.mp/](http://www.cnmileg.gov.mp/).

Below is a summary of new measures affecting Class Members.

	<b>BILL / INITIATIVE</b>	<b>STATUS</b>
<b>BENEFITS</b>	<b>House Bill 20-36</b> To amend 1 CMC § 8357 to reinstate the special retirement annuity for former NMI Governors and Lieutenant Governors, except those “impeached or convicted of a felony while in office or convicted of other misconduct while in office,” and provides that eligible officials receive “65% of the last annual salary paid to them” during their tenure.	Pending review by the House of Representatives.
	<b>Senate Legislative Initiative 20-01</b> To amend Article III, Section 20(b) of the NMI Constitution to permit reemployment of retirees as classroom teachers, doctors, nurses, and other medical professionals without losing their benefits for an unlimited duration.	Pending review by the House of Representatives.
<b>BONUS</b>	<b>House Bill 20-99, SS1</b> To repeal and reenact 4 CMC § 2308 to earmark the first \$22 million of the casino gross revenue tax to pay the 25% payments and a bonus to class members.	Pending Governor Torres’ review.
	<b>House Bill 19-212, HD2</b> To appropriate \$3.5 million to “be equally distributed to pay a bonus to the retirees and retiree’s beneficiaries.”	Signed into law on December 19, 2016 as Public Law 19-75.
<b>FUNDING</b>	<b>House Bill 20-10</b> To establish a Settlement Fund Revolving Fund Account, consisting of business gross revenue taxes collected every FY in 4 CMC § 1301, exclusively for the Minimum Annual Payment obligations.	Pending action from the Senate.
	<b>House Bill 20-28</b> To amend 4 CMC § 2307 to cover the 25% payments and to reserve additional funds for deposit into a special account called the “Future Generation Pension Plan” and to amend 4 CMC § 2308 to pay a biannual bonus to retirees and other purposes.	Pending action from House of Representatives Ways and Means Committee.

	<p><b>House Bill 20-116, SD2</b> To appropriate \$7,129,041.76 of funds from the Saipan casino operator’s business gross revenue tax to pay the FY 2014 and FY 2015 APGA due to the Settlement Fund.</p>	Signed into law on September 12, 2017 as Public Law 20-09.
<p><b>GROUP HEALTH AND LIFE INSURANCE (“GHLI”)</b></p>	<p><b>House Bill 20-101</b> To allow annuitants who did not enroll or re-enroll in health insurance within six months of the date of retirement to enroll later, as long as enrollment occurs during the open enrollment month.</p>	Pending action by the House of Representatives.
	<p><b>Senate Bill 20-04, SD1</b> To raise group life insurance benefits for government employees and retirees from 1.8 to 2 times the annual salary of the employee or retiree, and allow annuitants to continue coverage under the same terms and conditions offered to government employees each fiscal year. The life insurance premiums will be divided between the NMI Retirement Fund and annuitant.</p>	Pending review by the House of Representatives.
	<p><b>Senate Bill 20-05, SD1</b> To allow government employees and retirees who participated in the life insurance program for at least 5 years the option to continue coverage upon separation from service. The employee will be responsible for 100% of premium payments. The Bill also authorizes elected officials and government employees who retire under the U.S. Social Security System to continue coverage in the GHLI program, with premiums being divided between the Government and the retiree.</p>	Pending review by the House of Representatives.

The Settlement Fund will continue to monitor and report on bills which affect the Settlement Fund and the class members.

Respectfully submitted this 19th day of September, 2017.

**CIVILLE & TANG, PLLC**

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/s/ Joyce C.H. Tang  
Joyce C.H. Tang  
Trustee