

**SUPPLEMENTAL REPORT AND RESPONSE
OF THE SETTLEMENT TRUSTEE**

Civille & Tang PLLC

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

In reply to the NMI Government's 2/19/14 Response to Settlement Fund Trustee's Report, the Settlement Trustee states as follows:

1. UNDERPAYMENT OF EMPLOYER CONTRIBUTIONS.

The NMI Government objected to the 2/11/2014 Settlement Fund Trustee's Report ("Trustee's Report") regarding the underpayment of employee contributions by the NMI Government and the Autonomous Agencies. The Trustee reported that the amount of the underpayment of employer contributions for the pay periods between October 5, 2013 through January 11, 2014 was \$419,120.19 for the NMI Government, plus an additional \$549,287.56 for the autonomous agencies, for a total outstanding amount due of \$968,407.75. *See, Trustee's Report* at 2 [ECF No. 613].

The underpayment of employer's contributions represents the NMI Government's and Autonomous Agencies' portion of employer contributions for active employees who are members of the Settlement Fund (previously members of the Defined Benefits Plan). These payments, which are due on each pay period, fluctuate based on a variety of factors which are information within the Government's control.

Since the Settlement Fund does not have the actual earnings for a current pay period it can only estimate the amount of the employer's contribution. Until the Government makes a payment for a particular pay period, which payment is delivered with a report showing the exact amount the Government is paying for each employee, the Settlement Fund cannot calculate exactly the amount due for employer's contribution. Because the Settlement Fund is not usually provided the gross earnings for computing employer's contribution until a check and report is received, it can only estimate this amount based on gross earnings information from prior pay periods. The calculations are further complicated because the Settlement Fund has to determine

whether an employee is a Class I or II employee, and after it determines the class an employee falls into, the total employee's earnings for each class are divided by a percentage (10.5% for Class I and 11.0% for Class II). After deriving this number, the applicable rate is applied.

The \$968,407.75 reported amount was derived by applying the actuarial rate of 62.15% rather than the rate applied as of June 26, 2013 (37.39% (federal) / 30% (local)) as provided at Section 5.0 of the Settlement Agreement. *See, Settlement Agreement* at 14 [ECF No. 468-1]. The incorrect rate applied by the Settlement Fund based on estimated gross earnings resulted in a much higher underpayment.

Additional payments totaling approximately \$143,000 were made by the Government on February 14, 2014, after the submission of the Trustee's Report, and the Report needs to be updated to reflect these payments.

Since the filing of the Trustee's Report, the Settlement Fund and Government have worked to resolve this issue. The Government has provided up to date earnings information which the Trustee did not have when the Report was filed. The Trustee is pleased to note that the underpayment is much less than previously stated. The parties have agreed that as of the pay period ending January 25, 2014, the underpayment is as follows:

<u>NMI Government</u>	\$ 5,625.15 ¹
<u>Autonomous Agencies</u>	
CDA	\$ 0.00
CHC	\$ 43,468.84
CPA	\$ 0.00
CUC	\$ (.39)
NMC	\$ 24,373.41
PSS-LOCAL	\$ 104,457.33
PSS –FEDERAL	\$ 103.14
TMO	\$ (.19)
Total	\$ 172,402.13

¹ The Settlement Fund and the Dept. of Finance have not resolved \$3,028.12 included in this underpayment, because the Settlement Fund is unable to confirm receipt of this amount.

The total amount of the underpayment of Government Contributions for the pay period ending January 25, 2014 is the sum of \$178,027.28.

2. PERSONNEL BUDGET OF THE SETTLEMENT FUND.

The Settlement Fund's budget for wages and salaries for the FY 2014 is \$898,082. While this amount represents a \$141,008 increase from FY 2013 wages and salaries, the Settlement Fund was able to reduce overall Administrative Expenses by 17.85%.

Administrative Expenses	Budgeted 2014	Actual 2013	Actual 2012
Wages, Salaries & Employer Expenses	\$898,082	\$757,074	\$1,087,106
Consultant and Professional Fees	\$822,670	\$1,347,241	\$1,553,630
General Administrative Expenses	\$226,600	\$266,076	\$321,672
	\$1,947,352	\$2,370,391	\$2,962,408

The increased personnel expenses resulted from: (1) the overtime employees' salary incurred for the 1st Quarter (Oct. 2013 – Dec 2013) to cover PL. 17-82 disbursements, and other support provided by the Settlement Fund to the NMI Government; (2) re-classification of certain employees' positions pursuant to NMI personnel regulations based on an earlier desk audit of positions; and (3) raises approved by the Trustee Ad Litem for certain employees prior to the Settlement. In reviewing the raises after the Settlement, the Settlement Trustee notes that the employees of the Fund were working under enormous stress, in a highly contentious, often hostile environment, for the period leading up to the Settlement.

None of the managers who worked overtime for the months leading up to the approval of the Settlement Agreement and after the Settlement Fund came into being received overtime pay. Fund employees frequently worked between 50 – 60 hour weeks from September 2012 to November 2013, to meet the demands of calculating and distributing the PL. 17-82 payments for

over 1,700 employees, to effectuate the transition to the Settlement Fund, and to perform the many responsibilities undertaken by the Settlement Fund on behalf of the NMI Retirement Fund (e.g., administering the health care/life insurance programs and the member home program, and reviewing over 1,000 withdrawal applications submitted by defined contributions members). It also appears that there was concern that without a small increase in wages or re-classification, the Settlement Fund was going to lose seasoned employees at a critical period of the transition. Under the circumstances, the re-classification and raises appear to have been earned.

Respectfully submitted this 24th day of February 2014.

CIVILLE & TANG, PLLC

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Joyce C.H. Tang
Settlement Trustee