



**REPORT OF THE TRUSTEE**

**Civille & Tang PLLC**

**Joyce C.H. Tang**

*Betty Johnson v. Ralph DLG. Torres, et al., CV 09-00023*

Combined Second Quarter FY 2022 through Fourth Quarter FY 2022

September 9, 2022

## I. OVERVIEW OF SETTLEMENT FUND OPERATIONS

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The Trustee presents her report on the operations of the Settlement Fund for the Second Quarter of Fiscal Year FY 2022 through the Fourth Quarter of FY 2022. In a year of exceptional challenges and disruption, the CNMI continues to recover and the Government continues to timely pay its bi-weekly Settlement Fund payments. Importantly, it has and continues to pay the 25% benefit payments in order to make the Settlement Class Members whole. Governor Ralph Torres has announced that he is committed to continue funding \$545,000 bi-weekly payments to cover the 25% portion through the first quarter next fiscal year.

Post-Pandemic recovery has been slow for many. With Russia's invasion of Ukraine in February 2022, skyrocketing inflation, and three rate hikes from the Federal Reserve, these impacts have rippling effects in the investment markets, travel, and Pandemic recovery. Tourism, which is the backbone of the CNMI's tax revenue, has begun to recover and we have seen a steady increase in the number of visitor arrivals to the islands of Saipan, Tinian, and Rota. In July 2022, the arrivals grew by 766% (10,367 visitors) compared with July 2021 (1,197 visitors).<sup>1</sup> While this represents only one-third of the number of visitors pre-pandemic, the events relating to the pandemic and the war in Ukraine have directly impacted the global financial markets throughout 2022 and no pension or retirement fund is immune from these impacts. With no end in sight to the war in Ukraine, we will likely see more inflation, supply chain issues, turmoil and volatility in the financial markets. The Settlement Fund made substantial gains on its investment portfolio during the Pandemic. With inflation, geopolitical conflicts, the gains have been reduced compared to Pre-Pandemic (December 2021).

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<sup>1</sup> See Marianas Visitors Authority, Marianas Visitor Arrivals Up 766% in July 2022 (2022), *available at* <https://www.mymarianas.com/press-release-reports/> (last visited September 9, 2022).

In June 2022, the Settlement Fund rebalanced its investment portfolio to include a diversified hedge fund. As discussed further in the Financial Report (**Section II** below), the Settlement Fund executed and completed the asset rebalancing and acquisition of a diversified hedge fund strategy in early July 2022, thus, mitigating some of the inflation risks to the investment portfolio.

This year, with the appointment of Judge Daniel Collins of the U.S. Bankruptcy Court for the District of Arizona as our mediator, the Settlement Fund was able to resolve five administrative appeals. The Settlement Fund is working and continues to work with Judge Collins and other retirees to find ways to resolve their claims. Judge Collins' experience and ability to work with and communicate with the retirees is an important factor in the success of mediation.

#### **A. CLASS MEMBERSHIP DATA**

As of August 31, 2022, the Settlement Fund has 2,553 Settlement Class Members. This is broken down into two categories: (1) 2,553 retirees, and (2) 75 active employees, 23 of whom are retirees who have returned to government service. Between FY 2021 and August 31, 2022, the class membership decreased by 73 members:

	8/31/2022	9/30/2021	9/30/2020	9/30/2019
<b>Participant Counts</b>				
Active Employees (Class I)	60	58	45	54
Active Employees (Class II)	<u>15</u>	<u>13</u>	<u>3</u>	<u>4</u>
Total Active Employees	75	71	48	58
Retirees	<u>2,553</u>	<u>2,630</u>	<u>2,741</u>	<u>2,780</u>
Total Participants	2,628	2,701	2,789	2,838

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

**Chart 1**  
(Period Ending 8/31/2022)

PLACE OF RETIREMENT	Total # of Members	NMISF Class Member Classification					Total Benefit Payments
		Retiree Disabled	Retiree	Surviving Child Disabled	Surviving Child	Surviving Spouse	
ROTA	272	\$ 1,106.33	\$ 184,462.25	\$ 268.96	\$ 1,349.76	\$ 36,322.91	\$ 223,510.21
SAIPAN	2100	\$ 7,792.21	\$ 1,494,750.46	\$ 1,438.11	\$ 8,732.64	\$279,692.71	\$ 1,792,406.13
TINIAN	181	\$ 734.78	\$ 120,677.44	\$ -	\$ 915.20	\$ 26,747.34	\$ 149,074.76
Total Payments @ 100%	2553	\$ 9,633.32	\$ 1,799,890.15	\$ 1,707.07	\$ 10,997.60	\$342,762.96	\$ 2,164,991.10
Total Payments @ 75%		\$ 7,224.99	\$ 1,349,917.61	\$ 1,280.30	\$ 8,248.20	\$257,072.22	\$ 1,623,743.32

Of the 2,553 Settlement Class Members receiving benefit payments as of August 31, 2022, 82% are members from Saipan, 11% from Rota, and 7% from Tinian.

A breakdown of the distribution of benefit payments based on the Settlement Class Members' current place of residence and classification is presented in **Chart 2** below.

**Chart 2**  
(Period Ending 8/31/2022)

PLACE OF RESIDENCE	Total # of Members	NMISF Class Member Classification					Total Benefit Payments
		Retiree Disabled	Retiree	Surviving Child Disabled	Surviving Child	Surviving Spouse	
CNMI	1844	\$ 5,824.30	\$ 1,036,181.57	\$ 831.34	\$ 6,246.64	\$192,062.27	\$ 1,241,146.12
CONTINENTAL U.S.	527	\$ 1,400.69	\$ 244,077.97	\$ 448.97	\$ 1,408.37	\$ 48,899.25	\$ 296,235.25
FSM	11	\$ -	\$ 3,554.25	\$ -	\$ -	\$ 2,467.41	\$ 6,021.66
GUAM	98	\$ -	\$ 39,639.01	\$ -	\$ 291.28	\$ 7,786.11	\$ 47,716.40
NON U.S.	48	\$ -	\$ 12,706.80	\$ -	\$ 301.92	\$ 4,338.79	\$ 17,347.51
REPUBLIC OF PALAU	25	\$ -	\$ 13,758.02	\$ -	\$ -	\$ 1,518.39	\$ 15,276.41
Total Payments @ 75%	2553	\$ 7,224.99	\$ 1,349,917.62	\$ 1,280.31	\$ 8,248.21	\$257,072.22	\$ 1,623,743.35

Of the total benefit payments paid, 72% of the total benefits paid in FY 2022 were made to CNMI residents, while 21% were paid to members living in the continental United States. The remaining 7% of benefits are paid to members residing in Guam, other Micronesian islands, and non-U.S. jurisdictions.

**B. MINIMUM ANNUAL PAYMENT AND OTHER SOURCES OF FUNDS**

**1. Minimum Annual Payment (“MAP”)**

As previously reported on December 10, 2021, Milliman, Inc., the Settlement Fund’s actuary consultant, projected a MAP of \$38 million for FY 2022 and \$36 million for FY 2023. *See Report of the Trustee Combined Fourth Quarter FY 2019 through First Quarter FY 2022* (ECF No. 810, at 20; ECF No. 810-3, at 5). The \$38 million represents the amount the Government has to pay for the 75% benefit payments due under the Settlement Agreement.

The Government has and continues to make the bi-weekly MPA payments for FY 2022. *See Schedule of CNMI Government Contribution Payments (FY 2022)*, attached hereto as **Exhibit 1**. Of the \$38 million MAP due for FY 2022, to date, the Government has paid the Settlement Fund \$34.5 million. *See id.* The accounting of MAP payments is reported and published on the Settlement Fund’s website and updated regularly at <https://www.nmisf.com/rfp/annual-payment-status/>.

Since the implementation of the bi-weekly MAP payments in 2018, the Settlement Fund has avoided having to draw down on its investments to pay benefit payments. This was made possible because the Government kept its promise to make bi-weekly MAP payments, and the enactment of Public Law 20-33. Public Law 20-33 established a Settlement Fund Revolving Fund Account funded by NMI Gross Revenue Taxes, which are exclusively used to pay for MAP payments beginning in FY 2018 through FY 2024.

**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 No. 468-1, at 11-12).

Based on the Government's audited financial statements in FY 2018 and FY 2019, no APGA was due for these fiscal years. Whether the Government will be required to pay APGA for FY 2020 and FY 2021 will be determined once the Government releases its audited financial statements for these periods.

All APGA payments received were invested along with the other investment funds in the Settlement Fund's investment portfolio.

	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
<b>TOTAL ANNUAL REVENUE:</b>						
Taxes	154,831,829.00	149,719,538.00	226,119,758.00	279,791,409.00	267,791,170.00	196,920,863.00
Licenses and Fees	46,005,588.00	31,392,355.00	38,694,768.00	36,506,891.00	21,473,133.00	34,411,145.00
Charges for Sales and Services	5,805,208.00	6,133,601.00	7,209,159.00	8,659,050.00	9,097,118.00	7,860,093.00
Contributions from Component Units	653,737.00	5,438,928.00	2,779,810.00	2,262,224.00	1,904,725.00	2,590,236.00
Interest and Dividends	303,884.00	211,956.00	85,583.00	253,796.00	582,210.00	626,315.00
Other Sources	6,563,386.00	7,089,653.00	12,901,824.00	17,093,152.00	8,878,379.00	7,123,549.00
Recoveries	451,952.00	2,954,730.00				
<b>Total Annual Revenue</b>	<b>214,615,584.00</b>	<b>202,940,761.00</b>	<b>287,790,902.00</b>	<b>344,566,522.00</b>	<b>309,726,735.00</b>	<b>249,532,201.00</b>
<b>LESS DEDUCTIONS:</b>						
Minimum Annual Payments	25,000,000.00	27,000,000.00	30,000,000.00	33,000,000.00	45,000,000.00	44,000,000.00
<b>GHLI</b>						
Health Insurance	6,782,603.65	7,169,924.32	10,208,008.15	10,624,546.27	10,162,245.62	10,695,524.62
Life Insurance	616,816.29	559,108.05	553,840.62	580,971.42	600,173.59	576,158.66
<b>Class Counsel Fees</b>						
Bronster Hoshibata (\$6,500,000)	150,000.00	1,475,000.01	2,708,333.33	2,166,666.66		
Stephen C. Woodruff (\$185,000)	185,000.00					
Bruce Jorgensen (\$800,000)		800,000.00				
<b>Total Deductions</b>	<b>32,734,419.94</b>	<b>37,004,032.38</b>	<b>43,470,182.10</b>	<b>46,372,184.35</b>	<b>55,762,419.21</b>	<b>55,271,683.28</b>
<b>NET TOTAL ANNUAL REVENUE:</b>	<b>181,881,164.06</b>	<b>165,936,728.62</b>	<b>244,320,719.90</b>	<b>298,194,337.65</b>	<b>253,964,315.79</b>	<b>194,260,517.72</b>

**Paragraph 4.2 - Alternative Payment of a Greater Amount**

17% of Net Total Annual Revenue	30,919,797.89	28,209,243.87	41,534,522.38	50,693,037.40	43,173,933.68	33,024,288.01
Less: Minimum Annual Payment	25,000,000.00	27,000,000.00	30,000,000.00	33,000,000.00	45,000,000.00	44,000,000.00
<b>Amount Due to NMISF</b>	<b>5,919,797.89</b>	<b>1,209,243.87</b>	<b>11,534,522.38</b>	<b>17,693,037.40</b>	<b>(1,826,066.32)</b>	<b>(10,975,711.99)</b>

### **3. 25% Benefit - Voluntary Payment**

To date, the Government has remitted \$12.1 million to the Settlement Fund for the FY 2022 25% benefit payments. *See Accounting of 25% Payments by CNMI Government FY 2022*, attached hereto as **Exhibit 2**. The Government has voluntarily made the 25% benefit payments

under the Settlement Agreement. Based on media reports, Governor Torres has committed to paying the 25% benefit payments through first quarter of FY 2023. The Settlement Fund continues to assist with the processing of the 25% benefit payments conditioned on the Government's timely payment of the MAP obligations and fulfillment of other payment obligations, such as the APGA and Employer Contributions.

#### **4. Bonus Payments**

In addition to paying the 25% benefit payments, in April 2022, the Legislature passed a bill authorizing the payment of a bonus to Settlement Class Members in the amount of \$1,000 each. Like the 25% benefit payments, the bonus payments are purely voluntary. At the Government's request, the Settlement Fund assisted with processing the bonus payments.

#### **5. 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. The ER payments received in FY 2022 (as of September 8, 2022), are presented in **Chart 3** below.

**Chart 3**

Agency	Applicable ER Rate	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
		ER Payments Received				
CNMI Government - Local	30%	\$ 532,619 71	\$ 529,237 42	\$ 432,683 65	\$ 367,268 53	\$ 334,228 59
CNMI Government - Federal	37 3909%	\$ 21,229 43	\$ 8,245 14	\$ 72,890 77	\$ 56,650 13	\$ 95,028 51
Commonwealth Health Care Corporation ("CHCC")	37 3909%	\$ 354,270 69	\$ 285,050 37	\$ 241,536 86	\$ 312,720 85	\$ 176,110 83
Public School System ("PSS")	37 3909%	\$ 571,473 47	\$ 485,746 04	\$ 373,879 57	\$ 446,127 14	\$ 399,847 23
Northern Marianas College ("NMC")	20%	\$ 82,170 52	\$ 60,804 11	\$ 61,451 13	\$ 61,839 51	\$ 62,271 91
Commonwealth Utilities Corporation ("CUC")	30%	\$ 178,807 38	\$ 264,437 09	\$ 156,271 19	\$ 132,142 81	\$ 155,341 68
Commonwealth Development Authority ("CDA")	30%	\$ 82,127 00	\$ 76,413 17	\$ 66,858 27	\$ 69,758 55	\$ 63,498 65
Commonwealth Ports Authority ("CPA")	30%	\$ 26,285 56	\$ 28,358 87	\$ 24,932 40	\$ 22,344 20	\$ 27,253 77
Tinian Gaming Casino Commission ("TGCC")	37 3909%	\$ 4,314 32	\$ 4,314 32	\$ -	\$ -	\$ -
Tinian Mayor's Office ("TMO")	37 3909%	\$ -	\$ -	\$ -	\$ 8,846 65	\$ -
<b>TOTAL</b>		<b>\$ 1,853,298.08</b>	<b>\$ 1,742,606.53</b>	<b>\$ 1,430,503.84</b>	<b>\$ 1,477,698.37</b>	<b>\$ 1,313,581.17</b>

The ER rate is 37.3909% for the CNMI (federal), CHCC, PSS, Tinian Gaming Casino Commission, and Tinian Mayor's Office. However, the ER rate is lower for the CNMI (local), NMC, CUC, CDA and CPA based on the application of the Court's prior Order issued on March 10, 2016 (ECF No. 756) (finding that the lower ER rate applied to NMC because this was the rate that NMC paid as of June 26, 2013, pursuant to Section 5.0 of the Settlement Agreement).

The Government and the autonomous agencies are current on their ER obligations through August 13, 2022. With respect to the CUC, the Settlement Fund and the CUC have reached a tentative settlement regarding the CUC's outstanding ER balance and are working out the details regarding repayment (as discussed in **Section III** below).

**6. Judicial Building Loan**

The Judicial Building Loan matured on March 1, 2015, and was paid in full on March 29, 2022. The original principal amount was \$15 million and interest accrued at the rate of 7.75% per annum. From inception to March 2022, when the time the loan was paid off, the Government had paid a total of \$14,946,830.18 in interest payments. *See Judicial Building Loan Payments*, attached hereto as **Exhibit 3**.

**7. Building Rental**

Previously, the Settlement Fund rented the second and third floor space to FEMA following Typhoons Soudelor, Mangkhut, and Yutu. The building is designed such that HVAC system and utility units run the entire floor. The HVAC system and ducting were replaced when FEMA rented the space due to age and typhoon damage. Although the Settlement Fund has received rental inquiries, the prospective tenants were only interested in leasing a small portion of the space for short terms which would not have been cost beneficial to the Fund.



## C. AUDITS OF MEMBER FILES

### 1. Benefit Software

As of March 13, 2015, potential overpayments and underpayments to members determined by the benefit software were broken down as follows:

	Overpayment		Underpayment	
<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 No. 697, at 10).

The purpose of the benefit software was to narrow the number of potential over/under payments. The list of over and under payments generated by the benefit software would be subject to a manual audit in order to validate the benefit software findings. The manual audit of the 400 member files was both time and labor intensive and involved five stages.

Audit Stages
<b>Stage 1</b> – File is reviewed to identify issues pertaining to under/overpayment and to ensure all supporting documents are available.
<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.
<b>Stage 3</b> – File is forwarded to Member Services Manager for recalculation and final review.
<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.
<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.

The results of the manual audits were as follows: (1) 247 of the member accounts did not contain any issues, (2) one member account was counted twice, and (3) 152 member accounts had over/under payments. The 152 files will undergo Audit Stages 2 through 5, before an adverse letter is issued by the administrator for overpayments or refunds are made for underpayments.

A review of the remaining member accounts is ongoing and the amount of overpayments and underpayments as of August 31, 2022, is shown in the table below:

	<b>Overpayment</b>		<b>Underpayment</b>	
<b>Class I</b>	16 members	\$167,973	10 members	\$18,196
<b>Class II</b>	120 members	\$1,802,234	6 members	\$15,750
<b>Disability</b>	0 members	\$ -	members	\$ -
<b>TOTAL</b>	<b>136 members</b>	<b>\$1,970,207</b>	<b>16 members</b>	<b>\$33,946</b>

## **2. Priority Audits**

In addition to the audits of the 152 member accounts identified by the benefit software discussed above, the Settlement Fund conducts audits of other member files that are required when certain triggering events occur, such as: (a) the death of a retiree, (b) a new application for retirement or survivor's benefits, (c) a retiree's return to government service or reinstatement of retirement benefits upon termination of government reemployment, and (d) pending administrative appeals that were transferred to the Settlement Fund under the Settlement Agreement. Due to the time sensitive nature of certain audits, the Settlement Fund has prioritized the review of these member files.

As of August 31, 2022, audits of 102 member accounts were completed, not including the 152 files referenced above. The results of the audit based on this review determined that 57 did

not have any payment issues. The remaining 45 files are at stage 5. Of the 45 files, 29 files contain payment issues, and 16 files are pending legal review. The 29 accounts with payment issues are broken down as follows:

	<b>Overpayment</b>		<b>Underpayment</b>	
<b>Class I</b>	13 members	\$18,650	1 member	\$3,817
<b>Class II</b>	13 members	\$138,288	2 members	\$2,406
<b>TOTAL</b>	<b>26 members</b>	<b>\$156,938</b>	<b>3 members</b>	<b>\$6,223</b>

The 26 members have received adverse decision letters. The remaining 3 members who were confirmed to have received an underpayment of benefits have been notified and paid.

#### **D. CONSULTANTS**

The Settlement Fund has engaged Wilshire Investments as its investment consultant, Milliman Inc. as its actuary consultant, and Ernst & Young as its auditor.

##### **1. Investment Advisor**

Maggie Ralbovsky, a principal of Wilshire, continues to provide investment advice to manage the Settlement Fund's investment portfolio. Wilshire's contract was renewed for FY 2023. The Settlement Fund pays a fixed fee of \$145,000 per year. There was no increase in the flat fee charged from the previous year.

##### **2. Actuary**

Milliman, Inc. has acted as the Settlement Fund's actuary since March 2015. For FY 2018 through FY 2022, the Settlement Agreement requires 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 Settlement Agreement* § 4.0 (ECF No. 468-1, at 10). Milliman's FY 2021 Actuarial Valuation Report is expected to be completed by December 2022.

**3. Auditor**

Ernst & Young LLP (E&Y) has acted as the auditor for the Settlement Fund. The FY 2021 audit was completed and will be finalized next week. All reports are available at the Settlement Fund's website at <https://www.nmisf.com/audit-reports/>.

**E. INFORMATION REGARDING SETTLEMENT FUND**

Information regarding the Settlement Fund, including but not limited to the Government's MAP payments and investment reports, is posted regularly on the Settlement Fund website: <https://www.nmisf.com>. The Settlement Fund has published Newsletters to update its membership on the status of their fund. The Fifth Issue will be published following the conclusion of FY 2022, which will be sent to Class Members electronically and by mail and will be available on the Settlement Fund website.

## II. FINANCIAL REPORT

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### A. FINANCIAL OVERVIEW

#### 1. Sources of Funds

The Settlement Fund receives income from three sources: (1) the MAP and APGA; (2) contributions; and (3) investments. A breakdown of the sources is shown in the table below.

Since FY 2020, the Settlement Fund was able to pay the benefit payments from the bi-weekly MAP payments, and avoided having to liquidate its investments. For the periods ending July 31, 2022, and July 31, 2021, the Sources of Funds and Expenses were as follows:

Sources of Funds		
	7/31/2022	7/31/2021
MAP	\$ 29,230,769.24	\$ 30,769,230.76
Contributions	\$ 1,631,477.35	\$ 1,566,822.50
Investments Income	\$ 3,692,694.57	\$ 4,244,835.00
Rental Income	\$ -	\$ -
Other Income	\$ 7,540.00	\$ -
Litigation proceeds		\$ 17,848.17
	\$ 34,562,481.16	\$ 36,598,736.43
Total Expenses	\$ (34,392,098.35)	\$ (35,174,640.81)
*Realized Gain/(Loss)	\$ (4,395,035.75)	\$ (802,366.50)
Net	\$ (4,224,652.94)	\$ 621,729.12

\*The \$4,395,036 realized loss is part of the \$14,043,748.68 realized/unrealized loss to the investment portfolio from FY2022.

See Sources of Funds and Expenses for FY 2021 and FY 2022, attached hereto as **Exhibit 4**.

## 2. Budget for FY 2022

A summary of the FY 2022 budget and actual performance is presented in **Schedule 1** below.

### Schedule 1 FY 2022 Actual Expenses v. Budget Results

	Actual FY 2022 8/31/2022	FY 2022 Budget 8/31/2022
<b>Benefits Payments</b>		
Total Benefits Payment	36,304,936	37,551,250
Total Refunds	1,518	50,417
Total Benefits and Refunds Payment	36,306,454	37,601,667
<b>General &amp; Administrative Expenses</b>		
Total Personnel Expenses	816,961	854,569
Total Professional Fees	485,624	747,083
Total General & Admin. Expenses	174,333	267,438
<b>Total Expenses</b>	37,783,371	39,470,756
<b>Total Fixed Assets</b>	2,736	7,792
<b>Total Expenditures</b>	37,786,107	39,478,548

## 3. Proposed FY 2023 Budget

The Settlement Fund's proposed expenses for FY 2023 is summarized in Schedule 2 below.

**Schedule 2**  
**FY 2021, FY 2022, & Proposed FY 2023 Budget**

	<b>FY 2021 Budget</b>	<b>Approved FY 2022 Budget</b>	<b>Proposed FY 2023 Budget</b>	<b>FY 2023 increase/ (decrease)</b>	<b>% (+/-) from previous budget</b>
<b>Benefits Payments</b>					
Total Benefits Payment	43,000,000	40,965,000	39,550,000	(1,415,000)	-3.45%
Total Refunds	685,000	55,000	37,500	(17,500)	-31.82%
Total Benefits and Refunds Payment	43,685,000	41,020,000	39,587,500	(1,432,500)	-3.49%
<b>General &amp; Administrative Expenses</b>					
Total Personnel Expenses	869,303	932,257	1,076,720	144,463	15.50%
Total Professional Fees	783,000	815,000	867,500	52,500	6.44%
Total General & Admin. Expenses	599,450	291,750	273,750	(18,000)	-6.17%
<b>Total Expenses</b>	<b>45,936,753</b>	<b>43,059,007</b>	<b>41,805,470</b>	<b>(1,253,537)</b>	<b>-2.91%</b>
<b>Total Fixed Assets</b>	<b>10,000</b>	<b>8,500</b>	<b>8,500</b>	<b>-</b>	<b>0.00%</b>
<b>Total Expenditures</b>	<b>45,946,753</b>	<b>43,067,507</b>	<b>41,813,970</b>	<b>(1,253,537)</b>	<b>-2.91%</b>

See **Exhibit 5**, detailed breakdown of the proposed budget for FY 2023.

The projected expenditures for FY 2023 are \$41,813,970, which is a reduction of 2.91% from FY 2022 approved budget. Although the budget as a whole reflects a 2.91% reduction from the previous budget, we note that the most significant expense increases are for employee salaries, related taxes, and fringe benefits.

- Salaries & Wages \$876,408 (increase of \$124,033 or 16.49%)
- Social Security Taxes \$54,647 (increase of \$7,690 or 16.38%)
- 401K Employer Contribution \$52,884 (increase of \$7,441 or 16.38%)
- Medicare Taxes \$12,780 (increase of \$1,798 or 16.38%)

The increase in salaries is due in part to budgeting for an additional in-house counsel and the increase in the average pay raise announced by President Biden in August 2022 (up to 4.6%, with the locality pay, or \$37,033) which will be implemented in first quarter of 2023, if approved. The Settlement Fund's key employees' salaries are based on the salary ranges paid to federal employees without the locality pay in order to be competitive in the local market. The ability to offer competitive salary and compensation package is vital for employee retention. The Settlement Funds' employees have historical knowledge of the operations and the experience needed to support its operations. In the past two years, due to the closure of many businesses, professionals have left the island seeking better opportunities in the mainland. It is now getting much more difficult to attract experienced managerial level employees with the skills needed to operate the Settlement Fund.

## **B. INVESTMENT REPORT**

### **1. Investments and Policy**

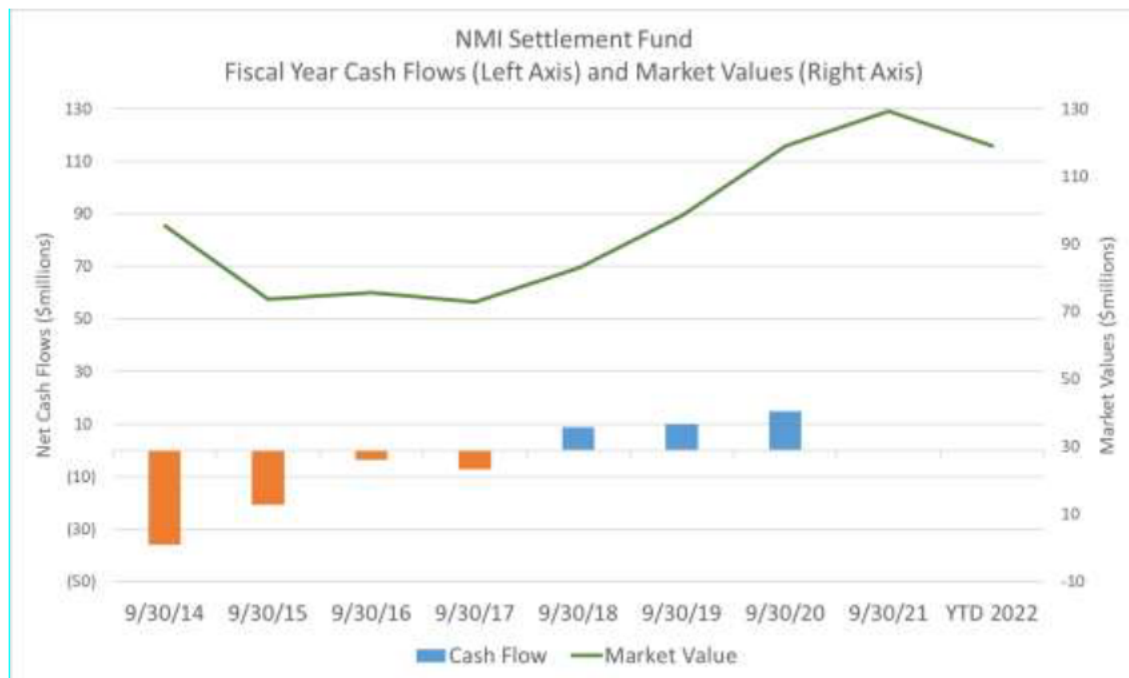
Beginning in early 2020, at the start of the global pandemic, central banks and governments around the world launched multiple rounds of stimulus programs via both monetary support and fiscal expansion. These stimulus programs injected monumental amounts of liquidity into the world financial system and induced valuation bubbles in various sectors of the economy. As we entered 2022, with the developed countries largely reopening their economies, a surge in demand was magnified by the wealth effect from the bubbly asset market and government injected excess liquidity. Inflation in the developed countries shot up to levels we have not seen since the 1970s. Russia's shocking invasion of Ukraine put further stress on global energy and food supply, as both countries are major exporters of energy and wheat. This coupled with the continued COVID



restrictions in China that further added to the inflationary pressure by creating global supply chain bottlenecks.

To fight inflation, the Federal Reserve Bank, the Bank of England and the European Central Bank took aggressive steps to withdraw liquidity from the financial system, by both raising interest rates and selling assets from their own balance sheet. This has led to an unprecedented double digits selloff of bonds, stocks, and other financial investments all at once. Time-tested diversification tools of blending stocks and bonds in the portfolio failed to work in this environment.

As a result of this adverse market environment, the Settlement Fund experienced negative returns for the Fiscal Year to Date (FYTD) Period ending July 31, 2022. The FYTD return was -7.96%, outperforming the benchmark index return of -8.97%. The Benchmark index was calculated with the target investments assuming passively managed.



After reviewing the rapidly changing market environment, Wilshire discussed the challenging investment outlook with the Trustee. With the Ukraine War continuing, a difficult winter is still ahead for Europe, because the vast majority of energy usage for heating in Europe during the winter months would usually come from Russia, which is now likely cut off. The sanctions against Russia and Russia's hardline stance make it likely that energy prices will continue to skyrocket, impacting both global growth and inflation. This may happen at the same time where tight labor market and disrupted supply chain from China continue to add to the inflation pressure and growth drag.

With future risks of sustained low growth and challenging inflation, Wilshire believes that the traditional diversification methodology of utilizing stocks and bonds to balance each other through market cycles would become ineffective. This is because inflation erodes purchasing power of future interest receipts of bonds and corporate earnings for stocks all at the same time. This environment has a tendency to push investors to sell financial assets in favor of hard assets like commodities and natural resources.

With a goal of protecting the Fund's assets and managing risk, Wilshire reviewed the Settlement Fund's asset allocation targets and determined that it would be beneficial to the Fund to further diversify into assets whose value are more connected to inflation. Wilshire further determined that a diversified blend of such assets should be considered due to the uncertainties of sources of inflation and global growth going forward. Wilshire recommended the Settlement Fund modify its asset allocation by reducing equity and nominal bonds, and initiating a 25% allocation to a balanced diversified real return manager: Fidelity Strategic Real Return Fund. This change was approved by the Trustee and executed in June 2022. Following this change, the Fund's

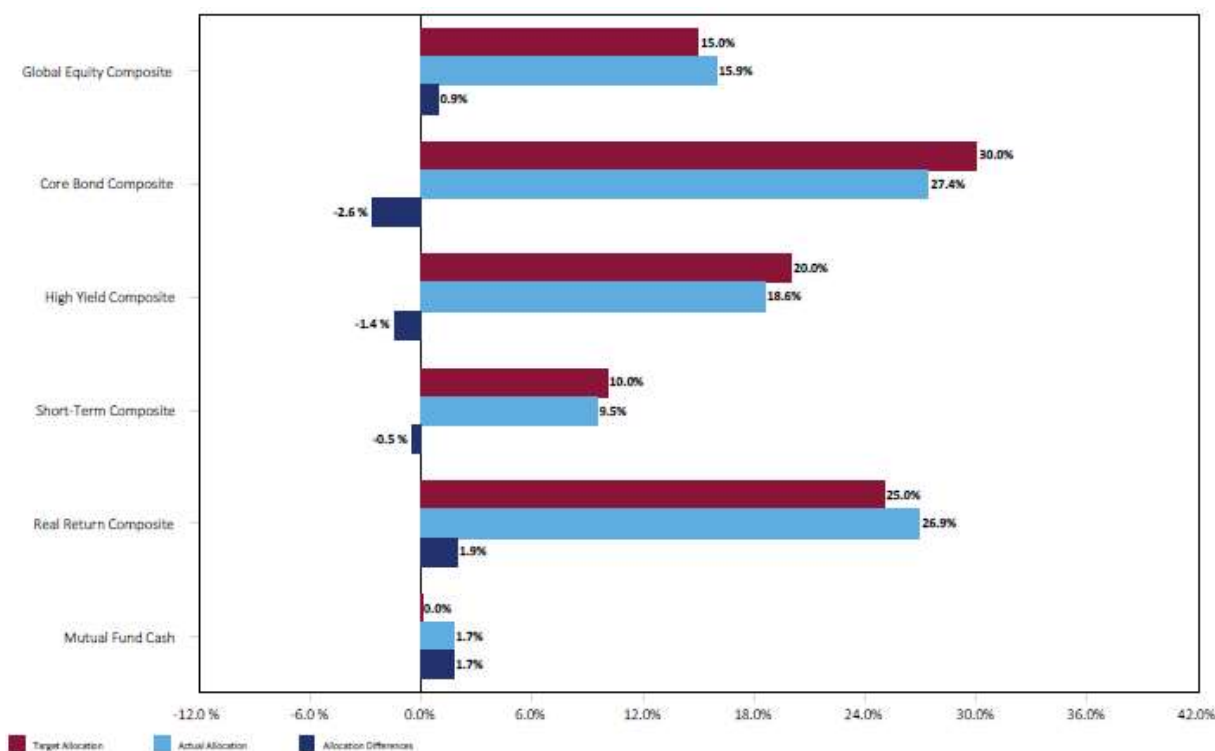
portfolio continues to be conservatively invested, with additional diversification from the Real Assets addition.

***2022 – 2023 Portfolio Targets***

<b>Equity</b>	15%
<b>High Yield</b>	20%
<b>Core Bond</b>	30%
<b>Short Term Bond</b>	10%
<b>Balanced Real Return</b>	25%
<b>Expected Return</b>	4.37%
<b>Expected Risk</b>	6.09%

***Note: Based on Wilshire's 2022 mid-year updated financial markets outlook.***

As of July 31, 2022, the Settlement Fund's actual allocation is within the policy range of the targets:



## 2. Settlement Fund Portfolio Performance

Before the Pandemic (end of FY 2019), the Settlement Fund's portfolio balance was \$98,260,000. The Settlement Fund's investment performance through the Pandemic was very strong. At the end of December 2021, the portfolio balance was \$131,109,506. In the first half of 2022, performance was impacted by the start of the Ukraine war, the disruption of global supply chain as China continued its lock down policy, and the reversal of liquidity support from the governments. Surging commodity prices and skyrocketing inflation, as well as aggressive rate hikes imposed by the Federal Reserve, the Bank of England and the European Central Bank triggered widespread market selloff of the vast majority of asset classes. The Settlement Fund experienced negative returns during this period thus reducing the portfolio's pre-pandemic gains to a net positive gain of \$20.7 million.

In June 2022, in response to a rapidly changing market environment where future risks of sustained low growth and high inflation have risen, Wilshire reviewed the Settlement Fund's asset allocation targets. With a goal of improving the portfolio's resiliency to a stagflation environment where growth is trending lower and inflation is trending higher, Wilshire recommended the Settlement Fund modify its asset allocation by reducing equity and nominal bonds, and initiating a 25% allocation to a balanced diversified real asset manager. The asset allocation was rebalanced as shown:

	Current Allocation		Revised Allocation		Required Actions
	%	\$ (mil)	%	\$ (mil)	
Global Equity	20%	25	15%	19	Rebalance to New Target
Core Bond	40%	50	30%	37	Rebalance to New Target
High Yield	30%	37	20%	25	Rebalance to New Target
Short Term	10%	12	10%	12	
Fidelity Strategic Real Return			25%	31	New manager Ticker: FSRKX
Portfolio		124		124	

After researching and comparing at least five different investment diversification products, Fidelity Strategic Real Return Fund was selected because it has a long-term track record and

appropriate risk management process. The allocations include floating rate debt, commodities, inflation participating equities and inflation protected Treasuries. It also has a liquid mutual fund vehicle registered with the SEC with a competitive expense ratio of .51%.

With the incorporation of this inflation hedge strategy, the Settlement Fund is expected to become more resilient to future adverse market shocks with the benefits of improved diversification. At the end of July 2022, the Settlement Fund's portfolio balance was \$118,969,851.

A summary of the FY 2022 investment reports, showing the beginning and ending investment balances, contributions, gains and losses, and fees, are shown in in **Chart 4** below.

**Chart 4**

Investment Summary FY 2022						
	Beg. Balance	Net Contributions	Distributions & Adm Fees	Investment Gains/Losses	Inv. Fees	End. Balance
<b>1st Quarter</b> (Oct. - Dec. 2021)	\$ 129,393,294	\$ -	\$ (18,040)	\$ 1,734,252	\$ -	\$ 131,109,506
<b>2nd Quarter</b> (Jan. - Mar. 2022)	\$ 131,109,506	\$ -	\$ (17,756)	\$ (6,444,262)	\$ -	\$ 124,647,489
<b>3rd Quarter</b> (Apr. - June 2022)	\$ 124,647,489	\$ -	\$ (16,958)	\$ (10,022,513)	\$ -	\$ 114,608,018
<b>4th Quarter</b> (July 2022)	\$ 114,608,018	\$ -	\$ (5,471)	\$ 4,367,304	\$ -	\$ 118,969,851
		\$ -	\$ (58,225)	\$ (10,365,219)		

See *Flash Reports for June and July 2022*, attached hereto as **Exhibit 6**.

The Settlement Fund portfolio balances from inception (2014) to July 31, 2022, is shown in the chart below.



The Wilshire monthly investment reports are available on the Settlement Fund website:

<https://www.nmisf.com/investment-consultant-reports-2/>.

### C. MILLIMAN'S ACTUARIAL VALUATION REPORT

Paragraph 4.0 of the Settlement Agreement requires the Government to pay MAP each year to pay 75% of the Class Members' Full Benefits. The FY 2014 and FY 2015 MAP amounts were fixed at \$25,000,000 and \$27,000,000, respectively. Subsequent MAP amounts were to be determined by an independent actuary. The FY 2020 Actuarial Valuation Report projected the MAP for FY 2022 at \$38 million and FY 2023 at \$36 million. *See* Report of the Trustee Combined Fourth Quarter FY 2019 through First Quarter FY 2022 (ECF No. 810, at 20; ECF No. 810-3, at 5).

### III. LITIGATION STATUS

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

The claims filed against the Commonwealth Utilities Corporation (the “CUC”) arose from the CUC’s failure to pay its share of employer contributions due to the NMI Retirement Fund in FY 2008 through the date of the complaint—May 5, 2011. As of April 29, 2011, the CUC owed approximately \$3,175,255. The claims were 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 No. 468-1, at 4-5, 16, 34-36).

Given this Court’s Order granting the Settlement Fund’s Motion to Enforce Final Judgment and the CNMI’s Motion to Enforce (ECF No. 792), the Settlement Fund filed a Second Amended Verified Complaint against the CUC on March 16, 2020, asserting the following causes of action: (1) breach of contract; (2) violation of Article III, Section 20(b); (3) violation of 1 CMC § 8362; (4) violation of the Contracts Clause; and (5) unenforceable Memorandum of Understanding between the CUC and NMI Government. The CUC filed a motion to dismiss the case, which the Settlement Fund opposed.

Since then, the parties met and reached a tentative settlement. The terms of the agreement require CUC to pay a minimum of \$50,000 per month until the balance is paid in full, subject to annual review of its financial statements to determine if CUC is capable of paying more than the minimum payments. The parties have reached an agreement in principle and are working on finalizing the settlement agreement. The CUC filed a motion requesting a status conference, which the Superior Court has not yet scheduled, and the parties subsequently filed a Joint Status Report to update the Superior Court about the status of the settlement agreement.

**B. *In re Estate of Manuel B. Villagomez*, Civil Action No. 20-0123-CV (NMI Superior Court)**

On November 1, 2021, the Settlement Fund filed a Notice of Claim against the Estate of Manuel B. Villagomez for the overpayment of retirement benefits in the amount of \$45,680.36. At a status conference on the Settlement Fund's Notice of Claim on January 6, 2022, the Estate Administratrix requested for an order declaring that the NMI Superior Court has jurisdiction over the pending administrative appeal involving Mr. Villagomez. Because the Administratrix raised jurisdictional and substantive issues involving the Settlement Agreement's mandate that all Settlement Fund claims be adjudicated in accordance with the administrative appeals process and the NMI Settlement Fund Appeal Rules and Procedures, on January 18, 2022, the Settlement Fund filed an *Ex Parte* Emergency Motion Under Local Rule 7.1(f) for Declaratory Relief, Stay, and Injunctive Relief ("Emergency Motion"), seeking a declaration that the Court has exclusive jurisdiction over any matters pertaining to or arising under the Settlement Agreement; an order staying all proceedings by any court outside this Court from issuing orders adjudicating rights and liabilities of Settlement Fund or its members pertaining to the Settlement Agreement; and enjoining the Administratrix from asserting any claims or defenses, or seeking any relief related to the Settlement Agreement and the Settlement Fund's claim against Mr. Villagomez in any court other than this Court.

After the hearing on the Emergency Motion on February 1, 2022, the Court stayed the issuance of a decision pending the outcome of the parties' settlement discussions. The parties were unable to reach settlement.

Since then, the Administratrix has produced additional documents which the Settlement Fund has reviewed and this additional information has resulted in the reduction of the initial overpayment amount. The parties are still negotiating and working towards a settlement.



### C. ADMINISTRATIVE APPEALS

The Administrative Appeals Process, which is governed by the NMI Settlement Fund Appeal Rules and Procedures, was implemented to resolve all disputes between individual members and the Settlement Fund. *See* Order (ECF No. 739); NMI Settlement Fund Appeal Rules and Procedures (ECF 731-14). The Appeals Process consist of three stages: (1) Mandatory Mediation, (2) Appeal to Hearing Officer (if mediation is unsuccessful), and (3) Appeal to an Independent Arbitrator (final appeal). *See* NMI Settlement Fund Appeal Rules and Procedures (ECF 731-14). As of September 8, 2022, there are 105 pending administrative cases. A summary of pending administrative cases is provided in **Exhibit 7**, attached.

#### 1. Appeals Pending Mediation / Settled Cases

On December 21, 2022, the Honorable Daniel P. Collins, U.S. Bankruptcy Judge for the District of Arizona, was appointed to serve as mediator for all pending administrative cases. *See* Order (ECF No. 813, at 2). Below is a breakdown of the cases in the mediation stage of the administrative appeal process:

Pending: 102  
 Settled at Mediation: 5  
 Not Settled Following Mediation: 3

In addition to these 5 cases settled in mediation, an additional 20 matters have settled outside of formal mediation, and 2 have reached a tentative settlement as of August 31, 2022.

#### 3. Hearings Before Hearing Officer

On July 11, 2022, the Court issued an order approving the appointment of attorney Deborah Fisher as the hearing officer. *See* Order re Approval of Hearing Officer (ECF No. 840). Ms. Fisher is licensed to practice law in the CNMI. Since her appointment, three appeals have been assigned

to her. *See* **Exhibit 7**. One hearing has been scheduled this month, and the remainder will be scheduled in the next few months.

## IV. STATUS OF LEGISLATION

The 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 bills that affect Class Members.

	BILL / INITIATIVE / RESOLUTION	STATUS
<b>BONUS</b>	<b>House Bill 22-91</b> To amend the FY 2022 Appropriations Act, signed into law as P.L. 22-08, to establish a business unit and properly fund the retiree bonus.	None. Separate legislation enacted into law.
	<b>House Bill 22-95, SSI</b> To amend the FY 2022 Appropriations Act, signed into law as P.L. 22-08, to establish a business unit for the retiree bonus and re-appropriate personnel lapses and line-item vetoes in P.L. 22-8.	Signed into law on April 28, 2022, as Public Law 22-17.
	<b>Senate Joint Resolution 22-05</b> Approving the Governor's request to create a new program and business unit for retiree bonuses and to reprogram \$1.3 million from the general fund for the payment of \$500 bonuses to retirees.	Pending with the House.
	<b>Senate Joint Resolution 22-09</b> Approving the Governor's request to create a new program and business unit for retiree bonuses and to reprogram \$2.6 million from the executive branch for the payment of \$1,000 bonuses to retirees.	Pending with the House.
	<b>Senate Resolution 22-18</b> To request that the Senate President appoint Senate Conferees to the Conference Committee for House Bill 22-91, HD1, SS1 and support and approve the proposed conference committee substitute for the payment of \$1,000 bonuses to retirees.	Pending with the Senate.

<b>FUNDING</b>	<b>House Bill 22-116, HD2</b> To appropriate funds for the operations and activities of the CNMI Government for FY 2023, including the \$36 million FY 2023 MAP obligation.	Pending action by the Senate.
	<b>House Concurrent Resolution 22-1</b> To approve revenues and resources for FY 2022, including the FY 2022 MAP obligation.	Adopted.
	<b>House Concurrent Resolution 22-2</b> To approve revenues and resources for FY 2023, including the FY 2023 MAP obligation.	Pending with the Senate.
	<b>Senate Resolution 22-10</b> Urges Governor Torres to reserve funds for a retiree bonus or Cost of Living Adjustment to be distributed equally to all Settlement Class members and CNMI Fund members receiving an annuity.	Pending action by the Senate.
<b>GROUP HEALTH AND LIFE INSURANCE (“GHLI”)</b>	<b>Senate Bill 22-79</b> To amend 1 CMC §§ 8421-8424 to transfer the administration of the GHLI from the Department of Finance to the Office of Personnel Management.	Pending action by the Senate.
<b>MARRIAGE CERTIFICATE REQUIREMENTS</b>	<b>House Bill 22-113</b> To amend 8 CMC § 1204 to eliminate the ten-day restriction to submit a marriage certificate to the clerk of court for recordation in the marriage register.	Pending review by the Senate.
<b>NEW RETIREMENT PLAN</b>	<b>Senate Bill 22-71</b> To create a CNMI Term Pension Plan, which will be partially funded by deficient employer contributions collected pursuant to Section 8.1 of the Settlement Agreement.	Pending further action by the Senate.

The Settlement Fund will continue to monitor and report on bills, which affect the Settlement Fund and Class Members.

Respectfully submitted this 9th day of September 2022.

**CIVILLE & TANG, PLLC**

/s/

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Joyce C.H. Tang  
*Trustee*