

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

BETTY JOHNSON, on behalf of herself, and as
a representative of a class of similarly-situated
persons,

Plaintiffs,

v.

ELOY S. INOS, Governor of the
Commonwealth of the Northern Mariana Islands
("CNMI"), *et al.*,

Defendants.

CIVIL CASE NO. 09-00023

ORDER

re Appointment of Trustee Possessing All
Powers of a Federal Receiver

This litigation arises from claims surrounding the Commonwealth of the Northern Mariana Islands ("CNMI") Government's failure to pay required annual contributions to the CNMI Retirement Fund (the "Fund" or "Retirement Fund"). Its time with this court has spanned over four years. Still more time was spent in the CNMI courts, where the CNMI Retirement Fund obtained a judgment against the CNMI Government.¹

In August 2013, the parties definitively stepped towards resolving this case: they filed a revised settlement agreement. (ECF No. 468-1 (hereinafter "Settlement Agreement").) This agreement explicitly requires that this court invoke its equity jurisdiction and appoint a Trustee, possessing all the powers of a federal receiver. Accordingly, the court invokes this power and

¹ See *Northern Mariana Islands Retirement Fund v. Commonwealth of the Northern Mariana Islands Government, et al.*, Case No. 06-0367.

1 appoints Civile & Tang, PLLC, acting by and through its principal representative Joyce C.H. Tang,
2 as the Trustee.

3 4 **I. SETTLEMENT AGREEMENT**

5 The Settlement Agreement provides for, among other things, the creation of the “Settlement
6 Fund.” (*Id.* at ¶¶ 1.24 & 8.) This fund would “accept a transfer of the Assets of the CNMI Fund[,]
7 . . . receive the Annual Contributions and other payments paid by the CNMI[,] . . . [and] own the
8 Consent Judgment entered by the District Court upon Final Approval . . .” (*Id.*) To administer
9 and run the Settlement Fund, the District Court must appoint a “Trustee,” possessing all the powers
10 of a federal equity receiver, “to administer and run [it] . . .” (*Id.* at ¶¶ 1.27 & 10.)

11 12 **II. AUTHORITY TO APPOINT**

13 Federal courts, possessing jurisdiction over “all cases in law and equity,” U.S. Const.
14 Art. III, § 2, have the power to establish a receivership. *United States of America v. Government*
15 *of Guam*, Civil Case No. 02-00022, ECF No. 239 (D. Guam Mar. 17, 2008). Though this power
16 should be employed cautiously, there are many contexts where receiverships are appropriate.
17 CHARLES A. WRIGHT & ARTHUR R. MILLER, 12 FED. PRAC. & PROC. CIV. § 2983 (2d ed.). One
18 such area, similar to here, are stockholders’ derivative suits for the impairment of corporate assets.
19 *Id.*; see *Tanzer v. Huffines*, 408 F.2d 42, 43 (3d Cir. 1969) (per curiam); see also *Savage v. United*
20 *States District Court in and for Southern District of California, Central Division*, 144 F.2d 575, 575
21 (9th Cir. 1944) (per curiam). Even in areas where receiverships are generally considered
22 inappropriate, a court may still appoint a receiver when the defendant “consents to the appointment
23 . . .” CHARLES A. WRIGHT & ARTHUR R. MILLER, 12 FED. PRAC. & PROC. CIV. § 2983 (2d ed.);
24 see also *Newberry v. Davison Chem. Co.*, 65 F.2d 724, 729 (4th Cir. 1933).

25 This court has the power to establish a receivership, by appointing a Trustee, here. Plaintiffs,
26 over the course of their careers, have contributed money to the CNMI Retirement Fund. In
27 exchange for their contributions, they were promised benefits throughout their retirement. But the
28 CNMI Government did not satisfy its obligations. (Settlement Agreement at 2, ECF No. 468-1.)

1 Further, it impeded the CNMI Retirement Fund's operations by not appointing trustees to the
2 Fund's board, thus incapacitating the Fund and preventing it from acting.² (Order re Trustee Ad
3 Litem Appointment (Sept, 14, 2012) at 2, ECF No. 220.) In short, Plaintiffs' assets resting with
4 the Retirement Fund have "been impaired and diminished" (Settlement Agreement at 2, ECF
5 No. 468-1.) Even if these facts were insufficient to impose a receivership, Defendants have
6 consented to appointing a Trustee and, therefore, the Trustee's appointment is nevertheless proper.

8 **III. APPOINTMENT**

9 Pursuant to the Settlement Agreement, this court solicited nominations for Trustee
10 candidates. (Order Regarding Settlement Trustee (Aug. 12, 2013), ECF No. 472; Settlement
11 Agreement at ¶10, ECF No. 468-1.) Ultimately, the CNMI Government, CNMI Retirement Fund,
12 and Plaintiff nominated seven candidates, and the court interviewed all seven.³

15 ² The court eventually appointed a Trustee Ad Litem to act on all matters on behalf of
16 the Retirement Fund that required board action. The court appointed Civile and Tang, PLLC,
17 with Joseph C. Razzano, Esq. to serve as the principal representative for the firm. The court
18 extends its personal thanks to Mr. Razzano and the Civile and Tang firm, including their team
19 of professionals and attorneys Daniel Berman and Braddock Huesman, for their dedication and
20 tireless efforts in carrying out the duties and responsibilities of the Retirement Fund. While the
21 decision to appoint a Trustee Ad Litem may not have been a popular one, Mr. Razzano never
22 waived in the performance of his obligations, and the court is extremely proud of the work he
23 has accomplished.

24 ³ The seven nominees were: Richard Villagomez, Michael J. Berman, Joyce C.H. Tang,
25 Mitchell F. Thompson, William J. Plum, Mark J. Heath, and David J. Sablan. The court thanks
26 the nominees for arranging their schedules to fit the court's needs during the interview process.
27 The nominees had quite diverse backgrounds, ranging from a certified public accountant and
28 certified financial planner to attorneys and a private consultant. The following factors were
important to the court's ultimate selection: (1) familiarity with the Retirement Fund's duties
and responsibilities in order to maintain a smooth and seamless transition from the Retirement
Fund to the Settlement Fund; (2) the need to ensure the Trustee is free from any conflicts of
interests or potential conflicts of interests; and (3) educational background and financial
management experience. Although the court found all the nominees to be qualified, the court
believes that Ms. Tang was the best overall candidate for the position, given her background
and prior experience with the Retirement Fund.

1 The court now ORDERS the following: the court appoints Civile & Tang, PLLC, acting
2 by and through its principal representative Joyce C.H. Tang, as the Trustee. Ms. Tang possesses
3 all the powers of a federal equity receiver and is vested with the power and authority provided under
4 Rule 70 of the Federal Rules of Civil Procedure to perform all acts deemed necessary to comply
5 with the Settlement Agreement.

6 **A. TRUSTEE'S POWERS AND RESPONSIBILITIES**

7 The Trustee shall have the authority, powers, and duties required and necessary to act on
8 behalf of the Settlement Fund on all its matters or business. This shall include, but is not limited
9 to, the following:

- 10 (a) To sue and be sued in her fiduciary capacity, and to direct any and all litigation in which the
11 Settlement Fund is a party, including, but not limited to, this matter;
- 12 (b) To establish the Settlement Fund's internal organization and management;
- 13 (c) To employ, retain, or contract with individuals or organizations for their services as
14 qualified managers, specialists, attorneys, and other experts;
- 15 (d) To acquire, own, and dispose of real and personal property to the extent permissible under
16 the CNMI Constitution;
- 17 (e) To adopt policies and procedures as necessary for the exercise of the Settlement Fund's
18 powers, performance of its duties and administration of its operations;
- 19 (f) To provide for the maintenance of a system of accounts and records which give full effect
20 to the provisions of the Settlement Agreement; to adopt all necessary actuarial tables to be used in
21 the operation of the Settlement Fund; and to provide for the compilation of statistical and financial
22 data as required for actuarial valuations, periodic surveys, and calculations;
- 23 (g) To obtain information from the Settlement Class Members and the CNMI as necessary for
24 the proper operation of the Settlement Fund;
- 25 (h) To authorize expenditures as necessary to maintain and run the Settlement Fund and to
26 report these expenditures to the District Court;
- 27 (i) To have the accounts of the Settlement Fund audited as of the end of each fiscal year and
28 submit and an annual report to the District Court as soon as possible following the close of the year,

1 embodying, among other things, a balance sheet showing the financial and actuarial condition of
2 the Settlement Fund, a statement of income and expenditures for the year, a statement of investment
3 owned by the Settlement Fund, and other financial or statistical data as necessary for a proper
4 interpretation of the condition of the Settlement Fund and the result of its operation;

5 (j) To appoint an Administrator or Acting Administrator to be the chief executive officer of the
6 Settlement Fund, and to direct the Administrator to carry out the policy decisions of the Trustee.

7 The administrator shall be appointed by the Trustee with the concurrence of the District Court and
8 shall have the requisite education, experience and background to carry out the duties and
9 responsibilities of the office. The Administrator shall serve at the pleasure of the Trustee and shall
10 have all powers over the Settlement Fund that the Administrator had over the CNMI Fund as set
11 forth in 1 CMC § 8316;

12 (k) To establish policies and appoint hearings officers for the resolution of all disputes between
13 individual Members of the Settlement Fund and the Settlement Fund consistent with due process
14 and a right to a final appeal to an independent arbitrator selected by the Trustee and approved by
15 the District Court. There shall be no further appeal from the decision of the arbitrator;

16 (l) To petition the District Court for instructions or for a declaration as to the construction of
17 the Settlement Agreement or the powers of the Trustee;

18 (m) To report to the District Court as instructed by the District Court periodically on the
19 execution of the Trustee's functions, and if necessary to seek authority from the District Court to
20 carry out any additional functions that are in the best interests of the Settlement Fund and not
21 expressly provided for in the Settlement Agreement;

22 (n) To cooperate with Class Counsel and to provide information to Class Counsel when
23 reasonably requested; and

24 (o) To do any and all things necessary to the full and convenient exercise of the above powers.

25 **B. TERM OF APPOINTMENT**

26 The Trustee shall serve for as long as necessary to effectuate the Settlement Agreement, or
27 until the earliest of: (a) the Trustee requests to be relieved and such request is approved by the
28 District Court; (b) ninety days after the Trustee has submitted a notice of resignation to the District

1 Court; or (c) the District Court removes and replaces the Trustee by order for good cause after a
2 hearing.

3 **C. REMUNERATION**

4 The Trustee shall receive remuneration at a rate of \$250.00 per hour, subject to future
5 increase by the court upon petition by the Trustee. The Trustee shall submit monthly requests for
6 remuneration in the following manner:

7 (a) On or before the 10th day of each month, the Trustee shall submit to the court a summary
8 of time expended and expenses incurred during the month immediately preceding, along with a
9 billing statement and request for compensation.

10 (b) The court shall review the request for compensation for reasonableness, and shall thereafter
11 issue an order directing that payment be made to the Trustee for all compensation and expenses
12 incurred and found by the court to be reasonable. Payments shall be limited to 90% of fees and
13 100% of all expenses deemed reasonable. Ten-percent (10%) of the Trustee's fees shall be held in
14 trust accruing interest at prevailing rates for trust accounts to the credit of the Trustee and shall be
15 payable on a quarterly basis upon petition by the Trustee, subject to the court's satisfaction of the
16 Trustee's work and any objections to the Trustee's compensation requests.

17 (c) Within ten days of the court's order directing payment be made to the Trustee, the
18 Government, Class Counsel and Plaintiff have the right to object to any request for remuneration.
19 The court will address any objections raised prior to the release of the 10% monthly retainage to be
20 withheld from the Trustee's fees.

21 The Settlement Fund shall be responsible for compensation and expenses of the Trustee and
22 of any and all persons or entities employed or contracted by the Trustee in carrying out the
23 provisions of this order.

24 **D. CONTINUING JURISDICTION**

25 This court retains specific and continuing jurisdiction to enforce the provisions of this order,
26 and to enter such further orders to effectuate the purposes of the receivership and compliance with
27 the Settlement Agreement.

1 This court retains jurisdiction to enable any party, subject to this order, to apply to this court
2 at any time for further orders and directions as may be necessary or appropriate to carry out or
3 construe this order, to modify any of its provisions, to enforce compliance, and to punish violations
4 of its provisions.

5 IT IS SO ORDERED.



6 /s/ **Frances M. Tydingco-Gatewood**
7 **Designated Judge**
8 **Dated: Sep 25, 2013**

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28