
A SENATE RESOLUTION

Respectfully requesting the Governor of the Commonwealth of the Northern Mariana Islands and the Attorney General to petition the United States District Court for the Northern Mariana Islands to reconsider the recovery of alleged overpayments of retirement pension benefits from retirees and to seek waivers and equitable relief for affected retirees.

1 **WHEREAS**, the Northern Mariana Islands Settlement Fund ("Settlement Fund")
2 has issued notices to hundreds of retirees regarding alleged overpayments of retirement
3 benefits following a benefits audit; and

4 **WHEREAS**, many retirees have received the same retirement benefits for ten years
5 or longer and have reasonably relied upon the accuracy of those benefit payments; and

6 **WHEREAS**, the alleged overpayments resulted from benefit calculations made by
7 the former Northern Mariana Islands Retirement Fund through no fault, misrepresentation,
8 or misconduct of the retirees; and

9 **WHEREAS**, retirees depend upon their monthly retirement pensions to pay for
10 essential living expenses, including housing, food, utilities, transportation, medical care,
11 and other necessities, and any reduction in benefits or recovery of alleged overpayments
12 significantly diminishes their quality of life; and

13 **WHEREAS**, the Settlement Fund's efforts to recover alleged overpayments have
14 created financial hardship, uncertainty, and emotional distress for many retirees, some of
15 whom face repayment demands ranging from thousands to hundreds of thousands of
16 dollars; and

17

1 **WHEREAS**, many affected retirees rely solely on their pension benefits and lack
2 the financial resources to repay the alleged overpayments or defend against recovery
3 actions; and

4 **WHEREAS**, recovery of overpayments is generally considered contrary to equity
5 and good conscience when it would impose financial hardship, when recipients have relied
6 upon the payments to their detriment, or when recovery would otherwise be unfair,
7 unreasonable, or unconscionable; and

8 **WHEREAS**, the Settlement Fund's determination to recover overpayments has
9 disrupted the lives of retirees who are subject to such recovery. Retirees have been
10 bombarded with letters and notices demanding repayment of alleged overpayments. Many
11 retirees cannot afford to repay the alleged overpayments, which range from several
12 thousand dollars to hundreds of thousands of dollars; and

13 **WHEREAS**, many retirees fear being sued in court to recover the alleged
14 overpayments. They cannot afford to repay the alleged overpayments, let alone hire legal
15 counsel to defend against recovery actions for benefit calculations that were made through
16 no fault of their own; and

17 **WHEREAS**, it is unfair, unreasonable, and unconscionable to require retirees who
18 are not at fault to repay the alleged overpayments. The Settlement Fund should waive
19 recovery of the alleged overpayments based on principles of fairness, equity, and good
20 conscience; and

21 **WHEREAS**, the laws of the United States, as well as those of many states and
22 territories, provide for waivers of overpayments of various benefits, including Social
23 Security benefits, state retirement benefits, unemployment benefits, veterans' benefits, and
24 family and medical leave benefits. The general standard for granting a waiver of recovery
25 of overpaid benefits is that the individual is not at fault and that recovery or repayment
26 would be against equity and good conscience; and

27 **WHEREAS**, recovery of overpaid benefits is considered against equity and good
28 conscience when: (1) recovery would cause financial hardship to the individual; (2) the
29 recipient can demonstrate, regardless of financial circumstances, that because of the notice

1 or receipt of the incorrect payment, the recipient relinquished a valuable right or changed
2 position for the worse; or (3) recovery would otherwise be unconscionable, unreasonable,
3 or unfair under the circumstances; and

4 **WHEREAS**, rather than spending thousands of dollars in retirees' funds on
5 litigation and paying the Trustee to pursue recovery of alleged overpayments, the
6 Settlement Fund should follow the example of the CNMI Supreme Court and waive
7 recovery of the alleged overpayments; and

8 **WHEREAS**, the CNMI Superior Court in *Ada v. NMIRF*, 2012 MP 10 ¶¶ 18, 28
9 (Aug. 30, 2012) held that the 3% retirement bonus given to elected officials and judges was
10 unconstitutional under article II, section 15 of the NMI Constitution. However, the court
11 further held that:

12 [T]he Fund and the members of the Fund acted in good faith when they
13 respectively distributed and received funds pursuant to an unconstitutional
14 statute. There is no indication from the record that either the Fund or the
15 Fund members believed the 3% bonus to be unconstitutional when the
16 bonuses were paid, or that bad faith was otherwise involved. Because all
17 parties acted in good faith, principles of reasonableness and fairness dictate
18 that they are now prohibited from "invok[ing] the aid of the courts to undo
19 what they themselves ha[d] done."

20
21 Stripping Fund members of their previously received bonuses at this late
22 date would place those members in the untenable position of paying back
23 funds, which they received in good faith and upon which they may have
24 reasonably relied. Moreover, recouping the bonuses from Fund members
25 who in all likelihood have spent the money, relied on this income for their
26 livelihood in good faith of the enacted statute's validity, and were not
27 complicit in the pay out of the funds, would be unreasonable and unfair.
28 This Court accordingly holds that the 3% bonus is void prospectively only
29 and is not void ab initio. This holding permits Fund members who
30 previously received the 3% bonus to retain it. However, persons who have
31 not yet received the bonus, including Ada, are barred from receiving the
32 bonus in the future.
33

34 **WHEREAS**, the court *Ada v. NMIRF* made it clear that it would be unreasonable
35 and unfair to recoup the bonuses paid to retirees because the retirees received the bonus in

1 good faith, relied on the bonus when they retired, probably spent the bonus already, relied
2 on the bonus as income, and were not complicit; and

3 **WHEREAS**, more recently *In the Administrative Appeal of Rosa A. Camacho*,
4 NMISF 16-002, the NMISF Hearing Officer in her Limited Decision and Order on the
5 Effect of Overtime on Retirement Benefits (Oct. 20, 2023) cited the CNMI Supreme
6 Court's holding in *Ada v. NMIRF*, 2012 MP 10 for the doctrine of fairness. The *Rosa A.*
7 *Camacho* administrative case, among other things, involved overpayment of benefits
8 because overtime was included in her benefits; and

9 **WHEREAS**, the Hearing Officer in the *Rosa A. Camacho* administrative case also
10 cited the case *Cody v. NMIRF*, 2011 MP 16 (Dec. 29, 2011), where the CNMI Supreme
11 Court alluded to the concept of fairness and found that it was not reasonable to bar Mr.
12 Cody's claim against the NMIRF because it would allow the NMIRF to use an indefinite
13 timeframe to bury unfavorable claims in the administrative process and to stay the
14 proceedings for an indefinite time; and

15 **WHEREAS**, applying the doctrine of fairness used in the CNMI Supreme Court
16 decisions in the *Ada* and *Cody* cases, the Hearing Officer in the *Rosa A. Camacho* appeal
17 decided "that overtime should not have been included in the calculation of Mrs. Camacho's
18 post-retirement benefits. However, Mrs. Camacho shall not be recouped or required to
19 reimburse the NMISF for any monies due to any readjustment of her benefits based on the
20 expiration of the statute of limitations and the unfairness of requiring payment after the
21 length of time that has passed. The NMISF, however, shall properly adjust Mrs. Camacho's
22 benefit payments to reflect the correct calculation going forward from the date of this
23 decision"; and

24 **WHEREAS**, based on the CNMI Supreme Court's decisions in *Ada v. NMIRF* and
25 *Cody v. NMIRF*, as well as the NMI Settlement Fund's Hearing Officer's decision in the
26 *Rosa A. Camacho* administrative case, it is evident from CNMI case law that claims
27 involving the recovery of overpayments of retirement benefits would likely be decided in
28 favor of retirees based on the doctrine of fairness; and

1 **WHEREAS**, the Settlement Fund should not expend precious resources and funds
2 belonging to retirees to pursue recovery of alleged overpayments through the courts,
3 particularly in light of the *Rosa A. Camacho* administrative case and the CNMI Supreme
4 Court's decisions in *Ada and Cody*, which recognize the doctrine of fairness; and

5 **WHEREAS**, the Senate supports the waiver of recovery of overpayments of
6 benefits where the individual is not at fault and recovery or repayment would be against
7 equity and good conscience. The Senate believes that retirees who received benefit
8 payments as a result of administrative error, and without fault, should not bear the burden
9 of repaying those amounts;

10 **NOW, THEREFORE, BE IT RESOLVED**, that the Senate of the
11 Commonwealth of the Northern Mariana Islands respectfully requests that the Governor
12 and the Attorney General take all appropriate legal action to petition the United States
13 District Court for the Northern Mariana Islands to reconsider the recovery of alleged
14 retirement benefit overpayments and to seek waivers for retirees who were not at fault for
15 the administrative errors that resulted in such overpayments; and

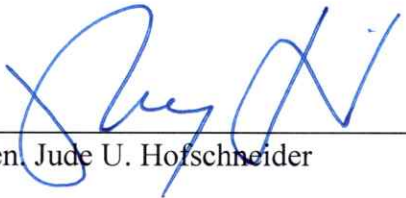
16 **BE IT FURTHER RESOLVED**, that the Senate requests that the Governor and
17 the Attorney General advocate for equitable relief, including the waiver or compromise of
18 recovery where permitted by law, consistent with the principles of fairness, equity, and
19 good conscience; and

20 **BE IT FURTHER RESOLVED**, that the Senate requests that retirement benefits
21 be prospectively adjusted, where necessary, to reflect the correct benefit amount while
22 protecting retirees from repayment obligations arising solely from administrative
23 miscalculations; and

24 **BE IT FURTHER RESOLVED**, that the President of the Senate shall certify and
25 the Senate Legislative Secretary shall attest to the adoption of this Resolution, and
26 thereafter the Senate Clerk shall transmit certified copies to the Honorable David M.
27 Apatang, Governor of the Commonwealth of the Northern Mariana Islands; Edward
28 Manibusan, the Attorney General of the Commonwealth of the Northern Mariana Islands;
29 Joyce Tang, Trustee of the NMI Settlement Fund; the Honorable Frances M. Tydingco-

- 1 Gatewood, Designated Judge of the United States District Court for the Northern Mariana
- 2 Islands; and the Honorable Edmund S. Villagomez, Speaker of the House of
- 3 Representatives of the 24th Northern Marianas Commonwealth Legislature.

Date: 7/20/2024

Introduced By: 
Sen. Jude U. Hofschneider