

On My Mind

4/1/03

Well, it looks like House Bill 13-267 - the one awarding Tony Pellegrino and his Marine Revitalization Corporation some \$3,000,000- is practically a done deal. The House has already passed it, and so has the Senate, sort of. The Senate offered two relatively minor amendments earlier this week, so the bill must first go back to the House for a vote on the amendments before it is submitted to the Governor. However, Senate President Paul A. Manglona has said that the bill will not be returned to the House unless funding is found for the construction of dialysis centers on Rota and Tinian.

The problem is that the funds set aside in the bill to pay Pellegrino's Marine Revitalization Corporation its first installment of \$800,000 are the same funds that had been set aside for the Rota and Tinian dialysis centers.

Time could eventually become an issue here. According to the terms of the agreement, if the agreement is not enacted into public law within four months of its execution (which was signed February 11, 2003), the settlement agreement will not go into effect, and arbitration would again have to be resumed.

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Is House Bill 13-267 a government bailout? It would certainly appear so. Yes, the amount is identified in a "settlement agreement" but that doesn't necessarily mean that the settlement agreement should be accepted unquestioningly.

Some background: The settlement agreement comes out of a suit that Pellegrino filed in District Court on April 1, 1999, (not the most auspicious of dates) against the CNMI's Department of Lands and Natural Resources because DLNR had failed to act on one of the provisions in the submerged land lease agreement between DLNR and Pellegrino.

The lease covers the area of the Outer Cove Marina which Pellegrino eventually built. The lease provision that DLNR did not act on, according to court filings, required DLNR to agree to establish a policy for Smiling Cove Marina that would bar owners of commercial passenger and commercial fishing boats from renting slips in the Smiling Cove Marina.

Pellegrino, clearly, had relied on that provision to bring customers to his Outer Cove Marina. But DLNR never did establish the required policy, apparently because of a number of unresolved issues regarding the safety of Outer Cove Marina and the fees that Pellegrino intended to charge for its use.

Claiming that he had been deprived of certain constitutionally guaranteed rights to property, among other things, Pellegrino brought his case to the District Court. In response, the CNMI Attorney General's office, on behalf of the DLNR, filed a counter motion for dismissal, arguing that Pellegrino's claims were vague and unfounded.

Two months later, in June of 1999, the District Court issued an order granting the CNMI's motion to dismiss. The order said that there was only one law that might provide "possible federal jurisdiction" but that the arguments made by Pellegrino's attorney, David G. Banes, did not meet the requirements of that law. Judge Alex R. Munson, in his order, noted that Pellegrino's complaint seemed to be "simply a common contract action," and that Pellegrino had "traditional and adequate remedies under Commonwealth law" to sue for breach of contract.

Oddly enough, he never did.

Two years later, in April 2001, Pellegrino demanded arbitration under the terms of the submerged land lease agreement. But the bill that would have enacted that first settlement agreement was not passed by the legislature. In August 2001, a second round of arbitration ensued, but that too failed - the 3-person arbitration team recommended that a "settlement agreement" be drawn up instead. And it is this settlement agreement that has become House Bill 13-267, passed by the House and Senate but now being held hostage by the Senate.

The settlement agreement calls for an initial \$800,000 payment to Pellegrino, and another \$2,200,000 (\$3,000,000.00 in all) in monthly installments over 20 years, to his company, Marine Vitalization Corporation. It contains further concessions as monthly credits and tax credits to various other enterprises owned by Pellegrino. In return, Pellegrino will surrender his Submerged Land Lease with DLNR, which, together with the all improvements in Outer Cove Marina (with the exception of the Fuel Pier) will be assigned to the CNMI by and through DLNR in fee simple.

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In a "settlement agreement," opposing parties agree upon their respective rights and obligations, eliminating the need to go to trial to settle the controversy. And to some extent, House Bill 13-267 is a "settlement agreement." But when it comes to identifying respective rights and obligations, the terms of this one would seem more favorable to Pellegrino than to the CNMI.

Banes said, in a phone conversation earlier this week, that the CNMI is getting a bargain. The Outer Cove facility is worth \$5,000,000, he said, and the CNMI is only having to pay \$3,000,000. Besides, Pellegrino will still not recoup all his investments, said Banes. But given that the marina cost three times more than originally estimated, and given today's real estate values, how valid are those numbers? The land was always the CNMI's. The CNMI is gaining only the improvements. Are they worth \$3,000,000?

Moreover, the original Outer Cove Marina problems are still there, which will take more money to fix: the stationary docks (they were supposed to have been floating docks) and the lack of a breakwater (which was supposed to have been completed by Pellegrino), not to mention the 45 boat slips rather than 76, which means a smaller base from which to source operational revenue.

DLNR did not follow the lease provision requiring it to enact a policy to keep commercial boats

from using Smiling Cove, so that they would be forced to use Outer Cove. But Pellegrino did not follow the original plans for the Outer Cove marina, nor did he construct a marina that was seen as safe. To escalate these differences into a \$3,000,000 payout to Pellegrino and Marine Revitalization Corporation that the CNMI can ill afford is a pretty slick piece of salesmanship, and does not speak at all well, in my opinion, for the bargaining skills of the succession of Attorneys General who were supposed to protect the interests of the CNMI in this matter.

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NMC's President Kenneth Wright bases his argument that NMC staff and faculty pay scales should be increased by comparing them with salary levels reported by the <I>Chronicle of Higher Education</I>. The question is, did President Wright also take into consideration, in making those comparisons, the size and type of the institutions to which he compared the CNMI?

Whether they, too, were tiny community colleges?

Big institutions have different needs, make different demands. It is hardly appropriate to compare them with small community colleges.....

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The surgery mentioned in my last column was for the removal of a large ovarian cyst in my 47-year- old daughter Stacey, which unfortunately required a partial hysterectomy.. Though so-called borderline cancer was found in the cyst, it had apparently not spread. The surgery went well, and she is back in Jakarta, though not yet back on the job. The surgery was done in Singapore, just as SARS was beginning to appear there.

Thank-you for all your good wishes. They were much appreciated!