

7/27/12

To the dismay of many hot-heads who had loudly proclaimed that the firm of Brown, Rudnick LLP, CNMI Retirement Fund's bankruptcy attorneys, should not get paid at all, Judge Robert J. Faris, U.S. District Court for the CNMI Bankruptcy Division designated judge, ruled today that the firm should indeed get paid in full in accordance with the claim it had filed. The hearing, in District Court, was again multiple-tele-video, with connections to Hawaii and Boston by video, and a telephone connection in the CNMI.

In his opening remarks, Faris said he was inclined to accept Brown Rudnick's claim, but would hear arguments that any party cared to make before reaching a final decision. He began by noting the irony of the CNMI government's concern over the cost of the litigation when it was the government's inaction that had caused the problem to begin with. He addressed several points raised by the CNMI Attorney General's office in the AG's opposition to the claims by Brown Rudnick. Insofar as limiting the payment to 15% of the bill was concerned, Faris said this was illogical, and carried to its logical extreme would mean that even someone who won a case would never be able to be paid in full. He said he would like to see the source of the 15% figure - that the government had offered no basis for the calculation.

While the AG had written, in its submittal, that the Brown Rudnick willingness to cut its fees should be seen as an acknowledgment of its guilty conscience, Faris said that on the contrary, it was the government that should have the guilty conscience; the reduction in fees should be seen as a good thing, a willingness to compromise, and not an indication of guilt. He acknowledged that it was a "Hail Mary" case - the last option in a difficult case to collect the millions owed the Retirement Fund, but said the benefits would have been substantial. (It should be noted that Brown Rudnick, in its claim, had offered to file an appeal at no cost to the CNMI.)

Faris said that the AG's argument that Brown Rudnick should have stopped its work once it was clear the bankruptcy case would be dismissed was impractical and unrealistic: further actions were still necessary to complete the operation.

Only the CNMI AG's office responded to the Judge's invitation to make a statement, and it was only to the effect that it would accept the Judge's ruling. Faris closed the proceedings by saying he would approve and allow all claims - except the one filed by Jack Angelo, which, said Faris, did not qualify as a proper administrative expense, and which existed prior to the bankruptcy filing in any case. The Judge was asked to spell out the procedure for submitting the actual claims, which he did, identifying the Bankruptcy Trustee as the "clearinghouse" for all transactions. Once they are completed, Faris said, he would issue the final dismissal order. Surprisingly, less than 1/2 dozen retirees attended the hearing. One would have thought they'd want to hear, first hand, how the judge would rule, and why. Hopefully, a full transcript of his comments will become available shortly.

As a matter of record, Judge Faris has been rated as an outstanding bankruptcy judge in an issue of turnaround and workouts, a newsletter for professionals in the bankruptcy field.

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Though there's no doubt it will make quite a few people happy, and though there's some chance it will help the economy a little by making more money available "in the marketplace," so to speak, the decision announced this week that austerity Fridays will now only be every OTHER Friday is highly suspect. The announcement made headlines in the *Saipan Tribune* on

Wednesday, quoting acting governor Eloy S. Inos as saying the restoration would begin with the 7/29 pay period. As of October 1, Inos is quoted as saying, the full 80-hour work week will be restored.

But the question is, Where did the money come from - even before the start of the new fiscal year? Even before the approval of the budget by the legislature? CUC is low on fuel; CHC is low on doctors, nurses, supplies; private sector vendors are refusing to serve the government due to non-payment of their bills; the debt to the Retirement Fund grows ever larger - and the mysterious supply of surplus funds is going to government employees? Who made that decision? on what basis? will that bring "the best bang for the buck," as the saying goes? Is that the best use of those monies?

And why do we not know? Did the reporters fail to ask the questions? or is the administration refusing to say? What kind of games are being played here???????

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Apparently, it has been decided that there's no point in trying to reform or restructure the Retirement Fund in any way. Every two weeks, thousands and thousands of dollars are paid out in retirement benefits that almost everyone now agrees are excessive - benefits that were provided in laws passed by the legislature and that could be rescinded the same way, through laws passed by the legislature - yet not a single bill has been drafted to eliminate any one of them.

Never mind the more encompassing, controversial proposals to turn over public lands to the Retirement Fund, or to float a pension obligation bond, or to make the Fund the beneficiary of this or that tax. For starters, a much simpler solution would be to repeal the thirteen laws listed in the findings of House Legislative Initiative 16-13, House Draft 2 that were identified as responsible for the generous and overly expensive retirement system that the CNMI now has. Among them: the overtime work-service credit, additional prior service credits, double-dipping allowances, survivor benefits, early retirement, using average rather than highest salary earned in determining benefits.....

As a result, the Fund will continue, over the next two years (or however long it lives), to pay out extravagant benefits. Why?

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Hidden on page six of today's *Saipan Tribune* is the news that a 2011 Marianas Visitors Authority survey overwhelmingly showed that most visitors indicated that nature/scenic attractions were the top one or two activities they would like to see more of while visiting the Northern Marianas. "Visitors also listed environmental quality as a priority," according to the MVA press release.

Given that information, how can the Department of Public Works justify destroying the last large preserve of the only remaining "wilderness" area on Saipan - an area left undisturbed for 30 years or more - by persisting in the construction of the proposed Route 36, all the way past Kalabera Cave? Functioning as a natural wildlife sanctuary, the area not only contains a depth of species and numbers of both flora and fauna not seen to any significant extent in any other part of Saipan - or in the other two populated islands - but also feeds and supports the rest of the

islands in maintaining their natural populations. In addition, it offers any number of eco-tourism-type trails and hikes.

However, if the road is built, all this would disappear, disrupting and destroying natural habitat just by virtue of the construction process itself, and continuing to decimate the populations of flora and fauna by the fact that the entire area would suddenly become easily accessible to locals as well as tourists, and thereby prone to development - not to mention predation, vandalism, general degradation - just the opposite of what the area now offers, of what tourists have gone on record as saying they want.

And given that information, why isn't the Marpi path better maintained? It's a beautiful walk through an area of flowering trees, lovely vistas, greenery galore. The Department of Natural Resources, to whom maintenance of tourist sites has been assigned, complains of lack of funding. Maybe it's time to return the responsibility to the Marianas Visitors Authority, since they have a more direct interest in tourist site upkeep and maintenance? The tourists have told the CNMI what they are interested in. The MVA - and the legislature, the administration, Public Works and its Transportation Division - should use the new poll results to re-focus tourism development activities accordingly.

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Short takes:

- Correction: Social Security withholding rates cited last week were in error; a federal law passed in 2011 lowered the rate to 4.2% for employees, though the rate for employers did not change. With the addition of a Medicare charge of 1.45%, total employee withholding would be 5.65%, not 7.65% as previously stated. The rate, originally slated to expire in February 2011, will now hold until the end of 2012.

- There's a vile rumor floating around that the administration wants the Election Commission to use numbered ballots in November. That would make it very easy to tell who voted how, which is illegal. Even though the CNMI's reputation for laxity in enforcing the law is spreading - it was stated twice in the Brown, Rudnick papers filed this week, as in "a jurisdiction where the rule of law does not appear to enjoy the same respect it receives in other jurisdictions," and in "a jurisdiction where, inter alia, Court judgments may be ignored and/or not enforced" - one would hope the laxity will not be allowed to go this far.....

- Should the federal immigration transition period be extended beyond 2014? According to Wendy Doromol's blog *Unheard No More*, "The CNMI federal worker program is like a pieced-together, build-as-you-go Lego project with missing pieces. It is a demonstration of how a bureaucratic program can fail when it is poorly planned, poorly funded, poorly coordinated and poorly executed.... Foreigners who are recruited to fill jobs that residents cannot fill should not be treated as replaceable labor units. Foreigners who have lived and worked in a U.S. locality for years and decades should be accepted as members of the community with full economic, political and social rights. The failure of the U.S. Congress to introduce and pass legislation providing for status for the CNMI's legal, long-term foreign workers is reprehensible." In other words, No, it should not. Instead, the U.S. Congress should amend the act to allow improved status.

- A "funny" making the rounds is about elected politicians being compared to "post turtles" - a turtle sitting atop a post that "you know didn't get up there by himself, sure as heck doesn't belong up there, doesn't know what to do (or can't get anything done) while he's up there, and

you just wonder what kind of idiot put him up there in the first place (or: you just want to help take the poor thing down).