

8/17/12

Oy vey! As has been said before - about the Retirement Fund's bankruptcy and other cases - there are just too many moving parts, with filings in the local court and the NMI District Court, not to mention the Ninth Circuit court - seems like they all moved in one direction or another over the last two days. Judge Robert J. Faris issued the final dismissal of the bankruptcy case. Roe/Doe have filed an appeal of the governor's executive order (EO) taking over the Retirement Fund. Bronster Hoshibata, *et al.*, have filed a second amended complaint for plaintiff Betty Johnson on behalf of herself, and as a representative of a class of similarly-situated persons, against Governor Benigno R. Fitial in District Court, *et al.* and District Court of the Northern Mariana Islands Chief Judge Frances M. Tydingco-Gatewood has announced a hearing on August 31 on lifting the existing stay of the case in District Court and, if that is granted, on the executive order and a motion to file a seconded amended complaint.

Not that it was all unexpected. The bankruptcy dismissal was imminent. The appeal of the executive order had been somewhat less certain until this last week. But the second amended complaint was unexpected, and is accompanied, as is typical of prior filings in the Roe/Doe case, by pages and pages of numerous affidavits, motions, notices, etc. Most, if not all, of the documents can be found on Glen Hunter's retiree blog < <http://kixproductions.com/cnmiretiree/> >.

Unfortunately, the filings don't come with interpretations or explanations. One wonders, for example, whether the Johnson filing is intended to replace the Roe/Doe filing. One wonders where all this leaves the Superior Court case - which is the only part of the scenario that did not move this past week (!). One wonders, also, what impact the appeal of the executive order will have on the steamroller that has been set in motion to convert government employees to Social Security.

What can one say? Stay tuned!

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One wonders, as well, why the list of reasons Bronster Hoshibata *et al.* have compiled in their appeal of the governor's executive order taking over the Retirement Fund does not include the "void ab initio" argument (those lovely words so popular in earlier Article XII litigations). Isn't the EO an adverse action? Wasn't the Retirement Fund protected from adverse actions under the laws of bankruptcy? Wouldn't that have made the EO invalid to begin with?

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Now that the governor's executive order is being appealed, it would seem that serious attention should be given to reconstituting the Retirement Fund Board of Trustees. At the moment, there is no quorum, so all decisions are in the hands of the acting administrator, a heavy burden indeed. It is probably one of the wisest actions taken by the Board that, in the final days of its existence as a functioning body, it passed a resolution giving as many of its functions as it could to the Fund administrator, should the Board cease to have a quorum. That seems to be working - so far as it goes, but it is the Board, for example, that should be protesting to the administration and the legislature - visibly, loudly, and at length - at the non-payment by an increasing number of government agencies of their obligations to the Fund. The Fund will not even last its predicted

two years if employer contributions are discontinued - and it would appear that that is what is being planned, according to the budget for the next fiscal year.

In fact, the coconut wireless has it that it is the annual government contribution of \$13 million to the Retirement Fund that (a) doesn't show in the budget and (b) is the source of the "found" additional funds that have increased employee work weeks to 72 hours/week.

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Some feedback, thanks to the legal community, on some of the questions raised in last week's column regarding "Buckinggate:" There are two kinds of summons, penal, for criminal charges, and civil. Both set a date on which the defendant must appear or be subject to contempt of Court. In the CNMI at least, telephonic appearance is not acceptable in the case of penal summons. If Buckingham was on leave, wasn't he entitled to government representation in court? Answer: No. Only if he had been acting in his official capacity at the time of his alleged offense would he have been entitled to legal defense by the government.

Why did he attempt to withdraw his resignation? Presumably so he would be able to take advantage of representation in court by the government.

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Short takes:

- What does it say about this government when the most highly trained, educated and skilled persons on island, who hold our life and death in their hands, who've spent more years acquiring their license to practice than any other government employee, aren't given their paychecks on time while those with lesser qualifications are regularly given theirs? What does it say about this government - or about its judgment and mathematical understanding - when it expects an agency to function properly on \$5 million per year when it used to be given nearly 8 times as much?

What does it say about this government when it lets medicinal supplies run out, leaving staff unable to take care of patients properly? What does it say about this government when it lets the situation get worse and worse, with no idea, no plan, no schedule, no mechanism for improving matters? CHC doesn't need an executive order declaring an emergency, it needs an executive who can control/bring order to the chaos.

- It is being said that the CNMI does not have the funds to afford bringing former Attorney General Edward T. Buckingham back to the CNMI to face trial - even if he were to be arrested. It is interesting to contemplate whether there's enough concern/anger/outrage out there so that if the opportunity was provided for the general public to make donations, offer contributions, conduct fund-raisers, collecting enough money to bring him back would not be a problem.

- There was a time when just the mention of the word "impeach" or "impeachment" wasn't safe - it brought threats and gunfire, as long time residents (of which yours truly is one) can testify. This week, the words have appeared on the front page of the newspapers at least three times, with no noticeable retaliatory consequences. Does that mean that the "probably causes of action" are more egregious, objectionable, this time around? Or does it mean that people are more secure in their rights?

- One can't help wondering why the *Marianas Variety* continues to provide so much space on its editorial pages to the same verbose letter-writer who, of late, keeps writing about the same thing - why one should vote for the "other" candidate for non-voting delegate to the U.S. Congress.

The *Variety's* policy even states that letters 'endorsing particular political candidates are discouraged." Do letters *in opposition* to particular political candidates not count?

- To fill the void left by the demise of "Expressions," the gourmet shop that used to sit at the foot of Capitol Hill, Delta Management has begun stocking selected goodies at - would you believe? - the four Shell stations under its management. Shell stations in Puerto Rico, Susupe, San Roque, and Gualo Rai are selling everything from baby brie, flat bread and prosciutto to buffalo mozzarella, Pepperidge Farm cookies and micro-brew beers. Items are ordered only in limited quantities because, explains Delta Mgmt president Jim Arenovski, "the items are not cheap." For those who use it, "Shell Puerto Rico" is on Facebook, and provides details on what is in stock.

- Brief as it was, many thanks to the Social Security Administration for finally coming out and itself providing some much needed information directly to the community. Social Security Administration Regional Commissioner Bill Zielinski made clear in interviews, a letter to the editor, that all it would take to set the system in motion was the approval of H.B. 17-312 by the legislature and the approval of the governor. Too bad it was so little, and happens so rarely.

- Too bad there isn't some way to share some of Saipan's rain with those areas on the mainland that are suffering from drought. Doesn't seem fair somehow, that here roads get flooded, while back there, lakes go dry.