

Court Dismisses Public Pension Fund's Bankruptcy Case

Friday, June 15, 2012

In our May 24 entry on this topic, the Northern Mariana Islands Retirement Fund (the “Fund”) was battling numerous challenges to its **Chapter 11** eligibility. The dispute revolved around whether the Fund, which provides benefits to government workers and retirees, was a “governmental unit” as defined by the Bankruptcy Code. In a decision from the bench on June 1st, **U.S. Bankruptcy Court** Judge Robert Faris affirmed his May 29th tentative ruling that the Fund is a “governmental unit” and, as such, is ineligible for Chapter 11.

While a full memorandum opinion granting the motion to dismiss is forthcoming, Judge Faris’s tentative ruling provides useful insight. In the tentative ruling, the Judge explained that “Congress did not intend that the Bankruptcy Code could solve all problems, least of all the financial problems of governmental units[,]” as the Bankruptcy Code explicitly prohibits a “governmental unit” from filing Chapter 11. The issue turned on the factors highlighted in our previous entry, those which focused on the formation and function of the Fund. Ultimately, the Court found three factors persuasive: (i) the Commonwealth of the Northern Mariana Islands (the “Commonwealth”) formed the Fund as a means of carrying out the government’s obligations to its current and retired employees; (ii) the Commonwealth retains significant influence over the Fund; and (iii) providing compensation and benefits to government employees (and only government employees) is a quintessential governmental function. The Judge concluded that because the Fund acts solely as an intermediary between the government and its employees and retirees, with no private employer or nongovernmental employees involved, the Fund is a “governmental unit.”

[Tentative Ruling on Motion to Dismiss.pdf](#)

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