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In an apparent first, a public pension plan files for bankruptcy

Northern Mariana Islands plan in deep trench, with $268M in assets, $911M in liabilities

By Darla Mercado

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In what's believed to be a first by a public pension plan, the Northern Mariana Islands Retirement Fund filed for Chapter 11 bankruptcy protection on Tuesday.

The public defined-benefit plan is in a big hole. At the moment, it's only 38.8% funded, thanks to low investment returns and a benefit structure that's been increased without raises in funding, according to the bankruptcy filing in the U.S. District Court for the Northern Mariana Islands, a U.S. commonwealth consisting of three major islands in the Western Pacific.

Currently, the fund holds $268.4 million in assets, yet faces a staggering $911 million in liabilities. Last year alone, it paid $76 million in retirement benefits, health and life insurance claims and lump-sum death payments.

Marcia Wagner, managing director at The Wagner Law Group, believes that this is the first time a public pension plan has filed for bankruptcy. Notably, this is a restructuring of the fund and not a liquidation, which would be under the jurisdiction of Chapter 7 of the U.S. Bankruptcy Code.

The development of the restructuring will set a precedent, particularly at a time when local government budgets and defined-benefit plans are under strain.

“If it were a private pension plan, the [Pension Benefit Guaranty Corp.] could take it over,” Ms. Wagner said. “But with a public plan, the question is: What happens to the plan participants?”

In a restructuring, it is likely that participants wouldn't get the level of benefits they were expecting, Ms. Wagner said. As a result, how the court deals with retirees, disabled individuals and others entitled to payments will be pivotal.

The Northern Mariana Islands Retirement Fund has been bedeviled by the commonwealth's inability to make its share of contributions to the pension plan, according to court documents and an April 17 letter to participants.

The feud between the retirement fund and the commonwealth over the government's responsibility to chip in for employer contributions to the pension plan goes back to 2006.

While the commonwealth court decided in favor of the retirement plan in 2009, the local government has been unable to make the mandated $231 million payment — and now the amount it owes to the plan has ballooned to $325 million, according to bankruptcy court filings.

Part of the problem has been the generosity of the pension plan. While the defined-benefit program was designed to serve retirees and their spouses, the fund had permitted the grandchildren and great-grandchildren of the first generation of retirees to receive benefits after the original retiree died, according to court documents.

Though the fund has stopped admitting new participants, managers predict that it will only be able to pay the current benefit rate for two more years and will fail in 2014, according to court documents.

Officials at the fund have petitioned the court to continue making payments to beneficiaries, but also plan to reduce the rate at which it currently pays benefits.

In the meantime, the pension plan created a new entity, called Pension Holdings Corp., that has enough funds to pay two months of benefits to islanders. Thus, beneficiaries can keep collecting while the plan discusses with creditors terms for making future payments.

Calls and e-mails to Jeremy Coffey and Steven Pohl, attorneys at Brown Rudnick LLP who are overseeing the fund's bankruptcy filing, were not immediately returned.