The Virgin Islands Consortium

District Court Orders Submission Of Plan For Gov't To Pay GERS

Government / **Published On March 14, 2018 10:19 AM /**

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ST. THOMAS -- Virgin Islands District Court Judge Curtis V. Gomez on Tuesday ordered the Government of the Virgin Islands and the Government Employees' Retirement System (G.E.R.S.), to submit to the court either a joint or separate plans to assure payment by the government to the pension system for employee and employer contributions, along with a plan of avoidance to ascertain that the government does not renege on its statutorily obligated duty in the future. Judge Gomez ordered that the plan or plans be submitted to the court in one week following yesterday's hearing at the District Court here.

The case, brought on the government by the pension system, was one of the most critical in a long time, considering G.E.R.S.'s quickly deteriorating condition (it is expected to collapse before 2023, according to new estimates). It sought broad enforcement of a consent judgement first ordered in 1984, and modified in 1994, but Judge Gomez, at yesterday's court hearing, heard arguments only on the matters relative to employee and employer contributions being withheld from G.E.R.S. by the government.

The government's defense, argued by Attorney Carol Thomas-Jacobs, was to contend two main points: 1) That the District Court did not have jurisdiction to hear to the case because the matter should be addressed by the local government, and 2) That the case be dismissed because it was coming some 25 years after the modified consent judgement in 1994. "The case laid dormant for 25 years; the court should not take up the matter," Mrs. Jacobs-Thomas argued, adding that the case should also be barred by laches (an unreasonable delay in making an assertion or claim).

Judge Gomez, who would eventually allow the case to move forward, pointed to the waste water and V.I.P.D. consent decree issues that have been ongoing throughout multiple administrations in the District Court of the Virgin Islands.

At the heart of yesterday's hearing was the government's untimely employee and employer payments to the pension system. G.E.R.S. CEO and Administrator Austin Nibbs, said when employee, employer and loan deductions are considered, the government owes it about $41 million. G.E.R.S. Attorney Robert Klausner said the government's attempt to dismiss the case claiming laches held no merit, because whether it's 30 or 40 years down the line, the government is obligated to follow the law and remit employee and employer payments to the pension system that it created. "We're running out of money," Mr. Klausner said, adding that the system, currently, is essentially a Ponzi scheme because it's using funds coming into the system from current employees to pay retirees, while leaving the current employees with no retirement assurances. "Those folks will get nothing," Mr. Klausner said, referring to current employees, "and it's due largely to the government's failure."

G.E.R.S.'s goal on Tuesday was to proceed on multiple fronts, including the government's decades-long negligence of its actuarially determined employer contribution (ADEC), currently standing at $1.2 billion, which G.E.R.S. says the government has not paid since 1991. The argument being that the system's life is at stake and that all the components to its survival deriving from the government's dereliction should be considered. Judge Gomez, however, said a determination of whether the consent judgement's breadth covered the ADEC would be determined at another time.

GERS By the Numbers

- The pension system has 8,500 retirees and 9,300 active government employees, for a total of 17,800 members
- From 2000 to early 2018, G.E.R.S.'s withdrawals to make benefit payments totaled $1.5 billion
- Total assets remaining is $716 million
- Current annual payout to retirees is $250 million

Mr. Nibbs said while G.E.R.S.'s problems have been unabating throughout multiple government administrations, at least there were efforts and discussions between the pension system and past administrations on how to remedy the problems. (Mr. Nibbs spoke of a task force formed during the de Jongh years to that end.)

But in 2016, the delinquent employer and employee payments to the system had recommenced, he said, and there were no conversations between the Mapp administration and G.E.R.S. until in recent weeks to deal with the matter. According to Virgin Islands law, the government is supposed to remit employee and employer contributions to G.E.R.S. in ten days of receipt, but the government currently owes the system for multiple months dating back to 2017, for a total of $31 million without considering loan deductions -- payments of which the government is also failing to make.

The government was asked whether it was breaking the law by not meeting its statutorily obligated duty of on-time payments, but Mrs. Jacobs-Thomas argued that the government, while late, was not breaking the law. The question was posed by Judge Gomez in multiple ways yet the government's answer remained the same.

Asked by Judge Gomez what should the government do if there is no money to fund the pension system, Mr. Klausner said a modification should be sought, but the system should not be left to die -- which would leave the 17,800 people who depend on it without retirement, while destroying a third of the territory's economy, he contended.

The government's sole witness at the hearing yesterday was Grace Fahie-Lindo, director of payroll at the Department of Finance for 9 years. She said the government recently submitted a plan to come current with payments to G.E.R.S., and said the plan sees the government making one delinquent payment and one current payment every payday until July 2018, at which point the government would become current with its employee, employer and loan deduction payments to G.E.R.S. The payments will also include interest, she said.

G.E.R.S. said the missed payments over the years have hastened the pension system's impending collapse. An assessment of the system, conducted in 2016, concluded that G.E.R.S. would run out of money by February 2023, but with the continued deterioration of funding -- Mr. Nibbs said the system is spending $138 million more than what it's taking in -- the 2023 projection now seems like an optimistic assessment, said Rocky Joyner of Segal Consulting, who is G.E.R.S.'s actuary.

Mr. Nibbs said he was not confident that the government would keep its promises, an uncertainty he said was based on passed promises. Nonetheless, Judge Gomez ordered the parties to either work together or separately to come up with a plan that would not only see the government coming current on its payments to the pension system, but crafting a plan of avoidance that would assure the situation does not reoccur. The submission of the plan, according to Judge Gomez's directive, should be made in one week from Tuesday.

Randolph Thomas, a resident of St. Thomas and sole person to attend the hearing aside from the individuals scheduled to participate, said the case was of utmost importance to him. "I recognize the importance that G.E.R.S. has to the economic, social and general welfare of all persons in the Virgin Islands," he said. "The threat of insolvency is also personal, as I am a member; I have been on this issue since I became aware of it."

Mr. Thomas, who said he would also vie for a Senate seat in the 33rd Legislature, added that he has been following the issue closely. "I saw today's hearing as one of the single most critical events in the recent chronicles of the Virgin Islands. Today the VI government can finally come face to face with its demise, and yet the silence is deafening."

Feature Image: The Run de Lugo Federal Court House in St. Thomas (Ernice Gilbert, VIC)