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**Arbitration and Mediation**

July 30, 2014

**Via UPS Next Day**

The Honorable Milton I. Shadur  
United States District Judge  
United States District Court  
Northern District of Illinois  
Eastern Division  
219 South Dearborn Street  
Chicago, Illinois 60604

Re: Quarterly Report of Independent Special Counsel, *Perez v. Estate of Frank E. Fitzsimmons, et al.*, No. 78 C 342 (N.D. Ill., E.D.); *Perez v. Robbins, et al.*, No. 78 C 4075 (N.D. Ill., E.D.); and *Perez v. Dorfman, et al.*, No. 82 C 7951 (N.D. Ill., E.D.)

Dear Judge Shadur:

This is to report on my activities during the First Quarter of 2014 as Independent Special Counsel appointed pursuant to the *Fitzsimmons* (Pension Fund) and *Robbins* and *Dorfman* (Health and Welfare Fund) consent decrees.

Since my appointment, I have attended full Board of Trustees meetings, now held every other month (with additional meetings as noted in my reports), and consulted regularly with Fund executives.

**Board Composition**

In April of this year Mr. Ronald DeStafano, who had been serving as an Employer Trustee of both the Health and Welfare Fund and the Pension Fund, tendered his resignation as a Trustee of the Health and Welfare Fund effective as of May 1, 2014. Mr. DeStafano has retained his position as a Pension Fund Trustee, but coincident with Mr. DeStafano's resignation as a Health and Welfare Trustee, the remaining Health Fund Trustees amended the Trust Agreement to provide that United Parcel Service, Inc. ("UPS") -- rather than the Association of Food and Dairy, Retailers, Wholesalers and nominate a successor to Mr. DeStafano on the Health and Welfare Fund's Board. UPS then nominated Mr. Christopher J. Langan to serve the remainder of the Employer Trustee term (expiring on March 31, 2016) that Mr. DeStafano had been serving. Mr. Langan had served as an Employer Trustee of both Funds from 2004 to 2007, and had been duly approved by the Court to serve in that position pursuant to the Consent

Decree. As the Court has previously been notified, at the June 18, 2014 Meeting of the Health and Welfare Board, the then sitting Employer Trustees voted, pursuant to the power granted to them under the Trust Agreement, to confirm Mr. Langan's appointment as an Employer Trustee of the Health and Welfare Fund.

#### Audit

At the January 14, 2014 Board Meeting, the Internal Audit Department presented its report concerning Accounts Payable/Purchasing. The overall conclusion of the audit was that the administrative and internal accounting control surrounding Accounts Payable/Purchasing are operating in accordance with Fund's policies and provide a basis for reliance up on the transactions processed.

#### Pension Fund

##### Funding and PPA-Related Issues

As previously reported, in July 2005 the Internal Revenue Service approved the Fund's request for a 10-year extension for amortizing unfunded liabilities. This extension is likely to defer for the near term a statutory funding deficiency. The IRS granted the request subject to certain conditions. In general terms, these IRS conditions require the Pension Fund to maintain its existing ratio of assets to liabilities through 2011, and in subsequent years to show moderate annual improvements in that funding ratio.

To meet these IRS-imposed conditions, the Board of Trustees determined based on actuarial and legal advice that the Pension Fund needed increased employer contributions. The Trustees amended the Pension Plan several times in the 2005-2007 period to require 7-8% annual increases in the pension contribution rates specified in new collective bargaining agreements. In addition, pursuant to the Fund's request, the negotiators of the United Parcel Service, National Master Freight and Carhaul Agreements allocated to the Pension Fund all fringe benefit contribution increases which were scheduled for 2006 and 2007.

As explained in previous reports, the multiemployer plan funding rules of the Pension Protection Act of 2006 ("PPA") became effective on January 1, 2008. On March 24, 2008, the Fund's actuary certified the Fund to be in "critical status" under the PPA for the 2008 plan year; the actuary made the same certification with respect to 2009, 2010, and 2011. As a result of the initial critical status certification, the Trustees adopted a "rehabilitation plan" as the PPA requires for critical status plans. The plan approved by the Trustees attempts to build upon and incorporate the funding

improvement program instituted prior to the January 1, 2008 effective date of the PPA, and designed to ensure compliance with the conditions imposed by the pre-PPA amortization extension. In broad outline, the Rehabilitation Plan approved by the Trustees contains a "Primary Schedule," which requires each contributing employer to agree to five years of 8% annual contribution increases (7% if the increases began in 2006) in order to maintain current benefit levels for the affected bargaining unit. The PPA also requires that a rehabilitation plan contain a "Default Schedule," which must provide for the reduction in what the PPA terms "adjustable benefits." ("Adjustable benefits" under the PPA generally include all benefits other than a contribution-based retirement benefit payable at age 65.) Accordingly, the Pension Fund's Rehabilitation Plan includes a Default Schedule providing for 4% annual contribution rate increases and for the loss or reduction of adjustable benefits for bargaining units electing that Schedule. The PPA also provides that if the bargaining parties have not chosen any of the schedules established by a rehabilitation plan (i.e., the Primary or Default Schedule) within 180 days following the expiration of the parties' last labor agreement, the Default Schedule will be imposed as a matter of law.

Staff has reported to the Trustees at the Board meetings held during the first quarter of 2014 that the vast majority of the Fund's active members were covered by collective bargaining agreements that have come into compliance with the Fund's Rehabilitation Plan. Almost all of the compliant employers and bargaining units have agreed to adopt the Rehabilitation Plan's Primary Schedule (generally requiring 7-8% annual contribution increases for five years and maintaining current benefit levels). As of March 2014, the Pension Fund's Staff reported that there were only 18 bargaining units, comprising a total of approximately 408 active participants, that were subject to the Default Schedule, either as a result of an agreement of the negotiating parties or by operation of law (due to their failure to agree to be bound by either Primary Schedule or the Default Schedule within 180 days of the expiration of the units' last collective bargaining agreement).

Contributing employers who have not agreed to be bound by one of the Schedules created by the Rehabilitation Plan are required under the PPA to pay a non-benefit bearing surcharge to the Fund on their contractual pension contribution obligation. Under the PPA, the surcharge was 5% of the pension contribution obligation during 2008, and was increased to 10% as of January 1, 2009. Staff has reported that (1) as noted, most employers are in compliance with the Rehabilitation Plan and are not incurring surcharges, and (2) as of September 2013 most of the employers who are incurring the surcharges are also voluntarily paying them; those few who have refused to pay the surcharges are being pursued under the Fund's delinquent account collection procedures.

Under the Pension Fund's Rehabilitation Plan adopted pursuant to the PPA, a Rehabilitation Plan Withdrawal ("RPW") generally occurs where an employer ceases to have an obligation to contribute to the Fund at one or more of its locations or facilities, but continues to do the same type of work for which contributions were previously required. The consequence for a bargaining unit incurring an RPW is the loss of PPA adjustable benefits (i.e., the loss of all benefits other than a contribution-based benefit payable at age 65). Staff prepares reports concerning potential RPW events which are reviewed by the Trustees at monthly Trustee subcommittee meetings.

The PPA also contemplates that multiemployer plans in the critical zone will annually "update" their rehabilitation plans. With respect to the 2013 Rehabilitation Plan update process, as explained in my fourth quarter 2013 report, the Funds' Staff advised the Trustees, after consultation with the Funds' actuaries, that under the PPA, the Trustees should continue to pursue "reasonable measures" to forestall the possible insolvency of the Fund.

As indicated in my previous report, during the fourth quarter of 2013, the Trustees deliberated concerning the 2013 update at their Board Meetings last November. During those deliberations, the Trustees noted that during the last ten years, the Pension Fund has taken a number of measures designed to stabilize its financial condition, including benefit restructurings (such as reducing the benefit accrual rate for contribution-based benefits and mandating age 57 as the minimum retirement age), and the imposition of requirements for increased employer contributions (resulting in a near doubling of pension contribution rates since 2004 for many employers). In addition, the Trustees noted that during 2011, they also introduced, and gained PBGC approval for, a "hybrid" withdrawal liability method (see pp. 10-11 below), which the Trustees believe will help encourage existing employers to remain in the Fund and may help stabilize or grow the Fund's contribution base. In order to provide further incentives to employers to pay their "old" withdrawal liability while also continuing to make pension contributions as a "New Employer" under the hybrid method, in November 2012 the Trustees amended the Primary Schedule of the Fund's Rehabilitation Plan to provide that a New Employer who satisfies its withdrawal liability and agrees to continue to contribute to the Pension Fund will be deemed to be in compliance with the Rehabilitation Plan's Primary Schedule without the need for contribution rate increases applicable to other Primary Schedule employers.

However, as explained in my prior report, the Trustees also concluded during the 2013 update process that any further or additional benefit reductions or the imposition of additional requirements for increased contributions (i.e., beyond those already set forth in Rehabilitation Plan) would entail too great a risk of

irreparable harm to a large number of contributing employers, or would otherwise risk prompting an undue and harmful number of withdrawals from the Fund. During the 2013 update process the Trustees therefore concluded that mandating further benefit reductions or contribution rate increases at this time would be counterproductive to the Fund, and would not constitute "reasonable measures" to be adopted or pursued.

Therefore, as indicated in my report for the fourth quarter of 2013, in the 2013 Rehabilitation Plan update, the Trustees did not adopt any additional substantive amendments to the Rehabilitation Plan. In addition, the Trustees approved continued implementation of (i) the Distressed Employer Schedule (which the Trustees believe accommodated the special circumstances presented by YRC, Inc. in a manner that was actuarially favorable to the Fund; see p. 12 below), (ii) the hybrid withdrawal liability method, and (iii) the benefit modifications, contribution rate increases and other features of the Rehabilitation Plan that have been previously adopted.

Although it appears the Pension Fund has reported some progress in securing increased employer contributions and controlling benefits as required of "critical status" plans under the PPA, the financial information presented below makes clear that the Fund suffered serious investment losses in the general stock market and economic downturn that commenced in 2008. In more recent years, the Fund has enjoyed a significant, but by no means complete, recovery of its 2008 investment losses. For example, for first quarter of 2014 the Pension Fund's total composite rate of return on investments was 1.71% (following a 19.04% return for calendar year 2013). However, the asset level as of March 31, 2014 of approximately \$18.5 billion is still several billion dollars below the value of assets held by the Fund shortly before the commencement of the 2008 stock market collapse.

In addition, as previously reported, Staff has indicated that, for plan year 2008, the Pension Fund was unable to satisfy the funding ratio targets that are a condition of the amortization extension granted to the Fund by the IRS in 2005 (described above, pp. 2-3); Staff reports that these funding ratio targets were satisfied for plan years 2009 and 2010, but it appears that the funding targets for the subsequent plan years were missed. Staff has also reported that as a result of the failure to meet the 2008 funding ratio targets, in early 2009 the Pension Fund filed an application with the IRS requesting a waiver of the funding target conditions established under the amortization extension, due to the unexpected economic decline that has occurred in recent years; that application is still pending.

The Trustees have also directed Staff to continue to monitor and pursue additional regulatory or legislative initiatives that may assist in addressing the funding problems created for many pension plans by recent conditions in the general economy and financial markets. As previously reported, in the 111<sup>th</sup> Congress, Thomas C. Nyhan, Executive Director and General Counsel, testified before the Senate Committee on Health, Education and Labor in favor of legislation (H.R.3936; S.3157; the "Create Jobs and Save Benefits Act of 2010") that would generate additional revenues to alleviate the funding shortfalls. That legislation received little support in the House, Senate or from the Administration, so the bill failed and it has not been reintroduced. More recently on October 29, 2013 Mr. Nyhan testified before the U.S. House of Representatives Committee on Education and the Workforce (Subcommittee on Health, Employment Labor and Pensions). Mr. Nyhan's testimony generally supported a legislative solution that would modify the ERISA anti-cutback rule to allow troubled multiemployer plans more flexibility in addressing funding issues. Mr. Nyhan indicated that this was not the preferred solution, but it appeared to be the only practical path open in light of the fact that the Pension Benefit Guarantee Corporation ("PBGC," the government agency that underwrites private pensions) has dire funding problems of its own, and given the general lack of political appetite for programs that might increase the government's fiscal commitments. In connection with the same congressional hearings in which Mr. Nyhan testified, there were earlier presentations by both the PBGC and the Government Accounting Office that made clear that many multiemployer plans are facing insolvency, and that as a result, the PBGC's multiemployer guarantee fund will itself become insolvent prior to any projected insolvency of the Central States Pension Fund. According to the GAO study, if these insolvency projections are correct, current retirees face the stark reality that their pension checks could be eliminated entirely, if the Pension Fund becomes insolvent as projected in 2026. In light of this reality, the Board of Trustees has determined that the only concrete and realistic path to preserve the retirement security of the participants is a legislative solution that would enable the Plan to remedy the shortfall itself without relying upon unknown or hypothetical funding sources. To date no further legislation has been introduced in this Congress.

Financial Information - Investment Returns

The Pension Fund's investment return for the first quarter 2014 was 1.71%.

A comparison of the Pension Fund's performance to the TUCS<sup>1</sup> universe results published for the first quarter of 2014 (showing percent returns on investment) is summarized in the following tables:

Pension Fund's Composite Return

	<u>1st Quarter Ended March 31, 2014</u>	<u>One Year Period Ended March 31, 2014</u>	<u>Three Year Period Ended March 31, 2014</u>
TUCS 1 <sup>st</sup> Quartile	2.81	13.95	10.11
TUCS Median	2.27	12.52	9.29
TUCS 3 <sup>rd</sup> Quartile	1.93	10.40	8.59
Fund's Composite Return	1.71	13.95	9.57

Pension Fund's Total Equity Return

	<u>1st Quarter Ended March 31, 2014</u>	<u>One Year Period Ended March 31, 2014</u>	<u>Three Year Period Ended March 31, 2014</u>
TUCS 1 <sup>st</sup> Quartile	2.02	22.95	14.34
TUCS Median	1.64	20.38	11.43
TUCS 3 <sup>rd</sup> Quartile	1.36	17.70	9.75
Fund's Total Equity Return	1.34	20.81	11.65

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<sup>1</sup> "TUCS" is the Trust Universe Comparison Service. Its Custom Large Funds Universe is composed of plans with assets exceeding \$3 billion.

Pension Fund's Fixed Income Return

	<u>1st Quarter Ended</u> <u>March 31, 2014</u>	<u>One Year Period Ended</u> <u>March 31, 2014</u>	<u>Three Year Period Ended</u> <u>March 31, 2014</u>
TUCS 1 <sup>st</sup> Quartile	4.61	1.15	9.09
TUCS Median	2.39	0.65	5.29
TUCS 3 <sup>rd</sup> Quartile	1.91	0.03	4.45
Fund's Fixed Income Return	2.10	0.63	4.45

The Fund's Named Fiduciary, The Northern Trust Investments, Inc. ("Northern Trust")<sup>2</sup>, which has been allocated 50% of the Fund's investment assets) submits monthly investment reports to the Trustees, summarized below (showing percent returns on investment):

Northern Trust

	<u>Year-to-Date as of</u> <u>March 31, 2014</u>	<u>Jan.</u> <u>2014</u>	<u>Feb.</u> <u>2014</u>	<u>Mar.</u> <u>2014</u>
Northern Trust's Composite Return	1.59	(2.45)	4.16	(0.01)
Benchmark Composite Return	2.25	(2.29)	4.19	0.44
Northern Trust's Total Fixed Income Return	2.48	0.13	1.95	0.39
Benchmark Fixed Income Return	2.56	0.09	1.94	0.52

Northern Trust's first quarter 2014 composite return included a 1.56% return on U.S. equities (1.24% on large cap, 3.11% on mid cap and 1.14% on small cap U.S. equities), (0.25)% on international equities, 3.87% on real estate and 6.27% on global listed infrastructure.

<sup>2</sup> Formerly known as Northern Trust Company of Connecticut, which was in turn formally known as Northern Trust Global Advisors, Inc.



The Fund's financial group reported the following asset allocation of the Pension Fund as a whole as of March 31, 2014 as follows: 64% equity, 30% fixed income, 5% other and 1% cash.

The financial group also reported that for the first quarter of 2014 the returns on the Fund's passive indexed accounts were as follows (showing percent returns on investment):

<u>Account</u>	<u>Rate of Return for 1<sup>st</sup> Quarter 2014</u>
Passive Indexed Equity (S&P 500) (25% of investment assets)	1.84%
Passive Indexed Fixed Income (20% of investment assets)	1.90%
Passive EAFE Indexed (5% of investment assets)	0.72%

Financial Information - Net Assets  
(Dollars shown in thousands)

The financial reports prepared by Pension Fund Staff for the three months ended March 31, 2014 (enclosed) show net assets as of that date of \$18,531,834, compared to \$18,740,759 at December 31, 2013, a decrease of \$208,925 compared to an increase in net assets of \$517,099 for the same period last year. The \$726,024 difference is due to \$778,195 less net investment income offset by \$52,171 more net operating income.

The enclosed Fund's Staff report further notes that for the three months ended March 2014, the Fund's net asset decrease from operations (before investment income) was \$506,978 compared to a decrease of \$559,149 for the same period in 2013, or a \$52,171 favorable change. This change in net assets from operations (before investment income) was attributable to:

- a) \$51,864 more contributions primarily due to recognition of Sysco Corp. prior withdrawal liability payment as income (\$41 million),
- b) \$359 less benefits and
- c) (\$52) more general and administrative expenses.

During the three months ended March 2014 and 2013, the Fund withdrew \$554,891 and \$565,286, respectively, from investment assets to fund the cash operating deficit.

Financial Information - Participant Population

The enclosed March 31, 2014 report prepared by Fund Staff further notes that the two-month average number of Full-Time Equivalent ("FTE") memberships decreased 3.24% from February 2013 to February 2014 (going from 61,401 to 59,410). During that period, the average number of retirees decreased 0.80% (from 211,310 to 209,614).

Named Fiduciary

Officers of the Named Fiduciary, Northern Trust, met with the Board of Trustees to discuss portfolio matters including asset allocation.

**Hybrid Withdrawal Liability Method**

As indicated in my prior reports, in July 2011 the Trustees adopted - subject to approval by the Pension Benefit Guaranty Corporation ("PBGC") - an alternative withdrawal liability method.<sup>3</sup> Under this method, new employers joining the Pension Fund will have their withdrawal liability measured based upon the "direct attribution" method; employers who already participate in the Fund can also be treated as new employers for withdrawal liability purposes on a prospective basis (and become eligible for the "direct attribution" method) by satisfying their existing withdrawal liability under the method historically employed by the Pension Fund (i.e., the "modified presumptive method"), and then agreeing to continue to contribute to the Fund. Because the Fund will apply the historic modified presumptive method to the "old" employers, but apply direct attribution to "new" employers (including "old" employers who satisfy their existing withdrawal liability), this recently approved formula is referred to as a "hybrid" withdrawal liability method.

An employer subject to the direct attribution wing of the hybrid method will have its withdrawal liability determined based on any potential shortfall between the contributions the employer has made on behalf of the employer's own employees and the pension benefits directly attributable to the employees' service with that same employer. All the employers subject to the direct attribution method will form a new withdrawal liability pool, but the Fund's Staff reports that in light of the Fund's current benefit structure, it is unlikely that this pool, or any of the individual employers in the pool, will ever have any actual or potential exposure to withdrawal liability. That is, Staff reports that current levels of

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<sup>3</sup> The Pension Fund's Staff advises that on October 14, 2011, the PBGC approved the Pension Fund's use of the hybrid method.

contributions are more than sufficient to fund current benefit accruals, and that, therefore, there appears to be only a remote and theoretical possibility of "direct attribution" withdrawal liability. Staff also reports that it believes the hybrid method will offer a means for employers who are concerned about the potential for future growth in their exposure to withdrawal liability to cap their liability at its present level while continuing to participate in the Fund with little or no risk of withdrawal liability in the future. Staff also anticipates that this arrangement will in some cases help avoid the benefit adjustments imposed, pursuant to the Fund's Rehabilitation Plan, upon bargaining units associated with withdrawn employers, while at the same time securing a stream of contribution revenue from employers who would otherwise have withdrawn and completely ceased contributing to the Fund.

Further, as explained in my prior reports, in November 2012, the Trustees approved two additional features which they believe will enhance the attraction of the hybrid method for many contributing employers. One of these features - also discussed above (p. 4) - restructured the Primary Schedule of the Rehabilitation Plan so that employers who satisfy their withdrawal liability qualify as New Employers under the hybrid method and continue to contribute to the Pension Fund will not be subject to the rate increase rate requirements to which other Primary Schedule Employers are subject. The other feature is an amendment to the Fund's method for determining mass withdrawal liability (applicable in certain cases in which all or substantially all of the employers in a multiemployer plan withdraw from the plan; see ERISA § 4219(c) (1) (D), 29 U.S.C. § 1399(c) (1) (D)). This amendment is intended to help ensure that New Employers who satisfy their existing withdrawal liability and continue to contribute to the Fund under the hybrid method will not face increased risks in the event of a mass withdrawal, as compared to employers who have simply withdrawn from the Fund and completely discontinued pension contributions.

Staff reports that to date approximately 68 old employers have satisfied their existing liability and qualified as new employers under the hybrid plan, or have made commitments in principle to do so. This has resulted in the payment of (or commitments to pay, subject to the execution of formal settlement documents) approximately \$124 million in withdrawal liability to the Pension Fund while the employers in question also continue to contribute to the Fund pursuant to their collective bargaining agreements at guaranteed participation levels.

### Bankruptcies and Litigation

As explained in more detail below, Hostess, Inc., a significant contributing employer to both Funds, filed for Chapter 11 protection on January 11, 2012.

The Fund's Staff also reports that Allied Systems Holdings, Inc. and its affiliates ("Allied") - an automobile transporter with several hundred participants in the Funds - filed for Chapter 11 bankruptcy protection in mid-2012. However, Allied has continued to operate in bankruptcy and has continued to pay contributions to the Funds on behalf of its drivers. The bankruptcy resulted from a dispute between two factions of Allied's commercial lenders. Staff reports that Jack Cooper, Inc., another unionized automobile transporter, has been approved to purchase the assets of Allied in the bankruptcy and will continue to contribute to the Funds with respect to the purchased assets and operations. However, Jack Cooper will not be assuming Allied's withdrawal liability which will be triggered by the asset sale. Allied's withdrawal liability has not yet been assessed but Staff advises the assessment will be significant, and that the Allied bankrupt estate is not likely to have assets sufficient to satisfy the assessment. However, as noted, Jack Cooper should be able to continue the income stream to the Funds represented by the contributions historically paid by Allied.

### YRC

As previously reported, in recent years, YRC, Inc. and its affiliates ("YRC") have been among the largest contributing employers to both the Pension Fund and the Health and Welfare Fund.

As also previously reported, in May 2009 the Funds entered a Contribution Deferral Agreement ("CDA" or "Deferral Agreement") with YRC. Under the Deferral Agreement, the Pension Fund ultimately agreed to defer approximately \$109 million in pension contributions. The Fund's financial consultant indicated that absent deferral of these contribution obligations, YRC would be in default of loan covenants with its banks; Staff reported that such a default would risk triggering an insolvency and liquidation of YRC, which would destroy any chance of rehabilitating the employer as a healthy contributor to the Funds.

Some 25 other multiemployer pension plans in which YRC participates joined in the Deferral Agreement, but the Pension Fund is owed approximately 64% of the contributions deferred under the Agreement.

Repayment of the Deferral Period contributions was secured under the Deferral Agreement by first lien collateral on approximately 150

real estate parcels owned by YRC, plus additional fourth lien collateral. The Deferral Agreement originally required repayment of the deferred contributions in 36 monthly installments commencing in January 2010, plus monthly payments of interest commencing in July 2009.

Due to YRC's continuing pension contribution delinquencies, at the Trustees' July 16, 2009 Meeting, the Board formalized action to *terminate* YRC's participation in the Pension Fund. However, in light of an amended labor agreement indicating that YRC intended to resume making contributions to the Pension Fund in January 2011, the Trustees decided at their July 2009 Meeting that YRC's termination of participation in the Pension Fund should not at that time be treated as a complete and permanent cessation of its obligation to contribute to the Pension Fund that would trigger withdrawal liability.

On September 24, 2010, the Teamsters National Freight Negotiating Committee and YRC executed an Agreement for the restructuring of the YRC Worldwide, Inc. Operating Companies ("Restructuring Agreement"), which further revised YRC's pension contribution obligations. Under this Agreement YRC was scheduled to resume contributions to the Pension Fund in June 2011 at a rate constituting a 75% reduction from its pre-termination (pre-July 2009) rate.

In March 2011 the Trustees then approved an arrangement under which the CDA repayment obligations are to be deferred until March 31, 2015 (when a lump sum payment of the entire CDA balance was scheduled to be made), with the exception of monthly interest payments to commence in June 2011.

At the March 9, 2011 Board Meeting, the Fund's Trustees also determined it was appropriate to accept contributions at the new contribution rate proposed under the YRC/TNFNC September 24, 2010 Restructuring Agreement (25% of the rate required prior to the July 2009 termination); it appeared to the Trustees that the proposed contributions were at the highest rate that YRC could reasonably be expected to pay and that the proposed contribution revenue represented an improvement over the status quo for the Pension Fund.

The Trustees also decided at their March 9, 2011 meeting that in light of YRC's new contribution rate, the YRC employee unit should receive reduced benefits equivalent in most respects to the Default Schedule under the Fund's Rehabilitation Plan. (This is termed the "Distressed Employer" schedule of benefits.)

The Pension Fund's Staff also reported that since July 2011, YRC and has remained current in its monthly contribution obligations of approximately \$3-4 million per month since that time.

In mid-December 2013, YRC's management indicated that it had to restructure its overall commercial debt or risk triggering an event of default, which would result in a bankruptcy filing and possible liquidation of YRC (thus cutting short the stream of contributions and interest payments the Pension Fund is presently receiving from YRC and accelerating YRC retirements). YRC further indicated that the debt restructuring would be impossible unless the Fund agreed to an extension of the existing March 31, 2015 balloon payment date under the CDA to 2019. After consultation with financial, actuarial and legal advisors, the Trustees voted during a January 21, 2014 phone conference to authorize Staff to negotiate a revised CDA extending the balloon payment under the CDA from 2015 to 2019. The other Teamster Pension Funds who participated in the CDA also agreed to these terms and an amended CDA was executed on January 31, 2014. Staff reports that as a result, it appears that that YRC has been able to restructure its commercial debt and to avoid (at least in the near term) the threat of bankruptcy which it faced.

Staff reports that each monthly interest payment from YRC under the arrangement described above is currently in the amount of approximately \$550,000, that the Fund received the first such payment on August 15, 2011, and that YRC remains current with respect to these monthly interest payments. In addition, on November 12, 2013 the interest rate under the CDA escalated from 7.5% per year to 7.75%. (This is in addition to the \$2.2 million in YRC interest payments received by the Fund in 2009.)

In addition, Staff has reported that to date the Pension Fund has received approximately \$36.8 million as its share of the net proceeds from sales of collateralized assets as a pre-payment under the CDA. Staff reports that after accounting for all principal and interest payments made to date, the unpaid balance owed to the Pension Fund under the CDA by YRC is approximately \$81.9 million. Staff also notes that in May 2012 the Fund received a payment of approximately \$110,000 under the CDA which is expressly denominated as a fee calculated under that Agreement as a match of a portion of a refinancing charge paid by YRC to its commercial lenders; on November 12, 2013 the Fund received approximately \$419,000 as another such refinancing fee match. These refinancing fee matching payments are not to be applied to reduce either principal or interest owed by the company to the Fund.

**Hostess Brands, Inc.**

In August 2011, Hostess Brands, Inc. ("Hostess") - an employer that had regularly contributed to the Pension Fund on behalf of

approximately 2,800 participants - failed to make the monthly pension contribution payment of approximately \$1.9 million that was due on August 15, 2011.

Hostess's pension contribution delinquency persisted and at the November 2011 Board Meeting the Trustees voted to terminate the participation of Hostess in the Pension Fund and to generally reduce the benefits of the Hostess participants to the Default Schedule levels specified under the Rehabilitation Plan (see pp. 5 - 6 above).

On January 11, 2012, Hostess filed a petition under Chapter 11 of the Bankruptcy Code in the Southern District of New York. The Pension Fund has delinquent contribution claims in the amount of approximately \$8 million against the bankrupt estate, as well as withdrawal liability claim in the amount of approximately \$583 million.

As previously reported, the bankrupt employer reached an agreement with Teamster bargaining representatives to resume participation in the Pension Fund by 2015 (and that agreement was ratified by the Teamster membership). However, in October 2012 the Hostess employees who belong to the Bakery, Confectionery, Tobacco Workers and Grain Millers International Union voted to reject a proposed collective bargaining agreement comparable to the one accepted by Hostess's Teamster employees. This resulted in a strike by the Bakery Workers, and the Pension Fund's Staff reports that the bankruptcy court shortly thereafter authorized a liquidation of Hostess. Staff reports that it does not appear at this point that any unionized baking companies that participate in the Funds have acquired or will acquire any significant portion of Hostess assets or operations.

It appears that proceeds from the Hostess liquidation may not be sufficient to satisfy the company's secured debt, and this, of course, would leave the Pension Fund and other general unsecured and non-administrative priority creditors with unsatisfied claims (the Pension Fund has no administrative claims in the Hostess Bankruptcy).

**Health and Welfare Fund**  
**Financial Information**

(Dollars shown in thousands)

The Health and Welfare Fund's financial summary for the three months ended March 2014 are compared below with financial information for the same period of 2013:

	<u>Three Months Ended March 31,</u>	
	<u>2014</u>	<u>2013</u>
Contributions	\$ 344,957	306,415
Benefits	288,013	277,583
TeamCare administrative expenses	9,232	8,159
General and administrative expenses	<u>12,378</u>	<u>9,513</u>
Net operating income	35,334	11,160
Investment income (loss)	<u>18,411</u>	<u>50,527</u>
Increase in net assets	53,745	61,687
Net assets, end of period	\$ 2,063,984	1,860,203
Two-month average participants (FTEs)	83,067	82,084

For the three months ended March 2014, the Health and Welfare Fund's net asset increase from operations (before investment income) was \$35,334 compared to an increase of \$11,160 for the same period in 2013, or a \$24,174 favorable change:

- (a) \$38,542 more contributions due to an increase in FTEs (UPS Freight) and contribution rates,
- (b) (\$10,430) more benefits,
- (c) (\$1,073) more TeamCare administrative fees and
- (d) (\$2,865) more general and administrative expenses.

During the three months ended March 2014 and 2013, the Fund withdrew \$11,568 from investments (BNY Mellon) and transferred \$27,291 to investments, respectively.



The enclosed report entitled "Central States Funds Financial and Analytical Information" prepared by the Fund's financial group as of March 31, 2014 shows the investment asset allocation as 74% fixed income and 26% equity.

This report also notes that the two-month average number of Full-Time Equivalent (FTE) memberships increased by 1.20% from February 2013 to February 2014 (going from 82,084 to 83,067). During that period, the average number of retirees covered by the Health and Welfare Fund decreased by 11.32% (from 8,973 to 7,957).

Expanded UPS Participation in the Health & Welfare Fund

As indicated in my previous reports, United Parcel Service, Inc. ("UPS") and the Teamsters National UPS Negotiating Committee agreed that during 2014 a large number of *additional* actively employed and retired UPS Teamsters will commence coverage under the Central States Health and Welfare Fund. The Health and Welfare Fund has for many years covered approximately 30,000 active UPS employees (and several thousand UPS retirees), and the UPS-Teamster agreement has now resulted in a significant expansion of UPS's participation in the Fund.

On March 1, 2014 the first new UPS group (UPS Freight, comprising approximately 10,000 new participants) commenced coverage by the Health and Welfare Fund. On June 1, 2014, an additional new group consisting of approximately 70,000 UPS small package division employees became participants of the Health and Welfare Fund. In light of the increased cash payments that will accompany this increased participation, the Fund's staff is discussing with the Department of Labor some changes in the structure of the Fund's investment assets. In order to implement these changes the Fund will likely soon file a motion requesting amendments to the asset management provisions of the Health and Welfare Fund's Consent Decree.


Article V(H)

As required by Article V(H) of the Health and Welfare Fund Consent Decree, the Health and Welfare Fund has paid during the first quarter of 2014 the following for professional services and expenses for the Independent Special Counsel:

January	\$	0.00
February	\$	2,277.00
March	\$	0.00

The Honorable Milton I. Shadur  
1<sup>st</sup> Quarter, 2014  
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I will be glad to provide additional details regarding any aspect of my activities as Independent Special Counsel. Should you have any questions or comments, please do not hesitate to contact me.

Sincerely,  
  
David H. Coar

Enclosure

cc: Ms. M. Patricia Smith (w/encl.) **Via UPS Next Day**  
Mr. Michael A. Schloss (w/encl.) **Via UPS Next Day**  
Mr. Thomas C. Nyhan