

**DAVID H. COAR, ESQ.**  
**Arbitration and Mediation**

January 17, 2017

**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. Dorman, et al.*, No. 82 C 7951 (N.D. Ill., E.D.)

Dear Judge Shadur:

This is to report on my activities during the third quarter of 2016 as Independent Special Counsel appointed pursuant to the *Fitzsimmons* (Pension Fund) and *Robbins and Dorfman* (Health and Welfare Fund) consent decrees.

**Central Trustee Selection Board**

The Central Trustee Selection Board ("CTSB") consists of 11 members elected by the principal officers of Teamster Local Unions in 11 Midwestern states. The CTSB has responsibility to elect and monitor 3 of the 4 Employee Trustees of Central States Funds. The Funds' Statement of Procedure for the Selection and Monitoring of Trustees (the "Procedures") provides that a CTSB member must vacate his or her position if he or she is appointed an Employee Trustee of the Funds.

Gary Dunham, who was appointed as an Employee Trustee on June 7, 2016, had previously been serving as the CTSB member for the State of Iowa. Accordingly ballots were sent to all eligible Iowa Local Unions in September of this year and all ballots were returned and counted on October 7, 2016. The results of this election -- which were reviewed and approved by the Employee Trustees on October 11, 2016, pursuant to the Procedures -- is that Ms. Claudia Pettit, the principal officer of Local Union 90 in Des Moines, Iowa, has been elected to the CTSB member for Iowa. She will serve the remainder of Mr. Dunham's term, which will expire on December 31, 2018.

### Audit

At the September 13, 2016 Meeting of the Board of Trustees and the Meeting of the Audit Subcommittee held on that same date, the Trustees heard the report of the Funds' outside auditors -- Lindquist LLP -- concerning their audit of the Funds' Annual Reports (Form 5500s) for the plan/calendar year ending on December 31, 2015. Lindquist LLP submitted unqualified opinions concerning the 2015 Annual Reports of both the Pension Fund and the Health and Welfare Fund. At the September 2016 Meetings the Trustees also reviewed and approved the filing of the 2015 Annual Reports of both Funds.

At the September 2016 Board Meetings the Internal Audit Department presented its report on the audit "V-3" employer contract system. ("V-3" refers to a software system used to track contributing employer accounts and other key information used in the Funds' operations.) The overall conclusion of the audit was that the administrative and internal accounting controls surrounding contracts processing are operating in accordance with the Funds' policies, and provide a basis for reliance on the propriety of the transactions processed.

### Pension Fund

#### PPA-Related Issues

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 has made the same certification with respect to subsequent plan years, except that in March 2015, the actuary certified the Fund to be in the new category of "critical and declining" created by the Multiemployer Pension Reform Act of 2014 (discussed below). As a result of the initial critical status certification, the Trustees adopted a "rehabilitation plan" as the PPA requires for critical status plans. 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"; the Fund's Rehabilitation Plan mandates 4% annual contribution rate increases with respect to the Default Schedule. ("Adjustable benefits" under the PPA generally include all benefits other than a contribution-based retirement benefits payable at age 65.) 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. In addition, the Rehabilitation Plan provides that that the members of bargaining units who agree to a withdrawal from the Pension Fund, or otherwise acquiesce or participate in a withdrawal -- an event termed a "Rehabilitation Plan Withdrawal" -- also incur a loss of their adjustable benefits.

As also explained in my previous reports, the PPA requires the Trustees to engage in an annual process of considering whether it is appropriate to update the Rehabilitation Plan in any fashion. Last December during the 2015 Rehabilitation Plan update process the Trustees

noted that because the Fund was facing an insolvency (projected to occur in 2025), the PPA required that they take "reasonable measures" to forestall the insolvency. ERISA §305(e)(3)(A)(ii). The Trustees also concluded that the application that the Trustees approved for filing with the U.S. Department of Treasury on September 25, 2015 pursuant to the Multiemployer Pension Reform Act (MPRA) was a reasonable measure designed to forestall the projected insolvency (see pp. 3 - 4 below), and therefore one that the Trustees were required to take under the PPA. However, during the 2015 Rehabilitation Plan update process the Trustees also concluded that any further or additional benefit reductions or the imposition of additional requirements for increased contributions (*i.e.*, beyond filing the 2015 MPRA application and those measures previously implemented and 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.

However, in the 2015 Rehabilitation Plan update process, 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 pp. 12 - 13 below), (ii) the hybrid withdrawal liability method (pp. 10 - 11 below), and (iii) the benefit modifications, contribution rate increases and other features of the Rehabilitation Plan that have been previously adopted (*e.g.*, the Trustees raised the minimum retirement age to 57, effective as of June 1, 2011).

Although it appears the Pension Fund has reported some progress in securing increased employer contributions and in adjusting benefits as required of "critical and declining status" plans under the PPA, the Fund suffered serious investment losses in the general stock market and economic downturn that commenced in 2008 (and before that, in the 2002 - 2003 market decline). In more recent years, the Fund has enjoyed significant investment gains. For example, the Fund enjoyed a composite rate of return of 19.04% for calendar year 2013, and a rate of return of 6.86% for calendar year 2014. However, 2015 and 2016 (through the end of the third quarter) have been marked by volatility in the markets. The asset level as of September 30, 2016 of approximately \$15.7 billion is approximately \$10 billion below the value of assets held by the Fund shortly before the commencement of the world wide stock market collapse in 2008. But the Fund's Staff reports that the continuing downward pressure on the Fund's assets is largely due to the Fund's current annual operating deficit of more than \$2 billion per year -- meaning that in recent years the Fund has paid out more than \$2 billion each year *more* in benefits than it has collected in contributions from employers.

In addition, as indicated in my prior reports, the Pension Fund's Staff has reported that due to the global downturn in investment markets during 2008, as of January 1, 2009, the Pension Fund was unable to satisfy the funding improvement targets that are a condition of the amortization extension granted to the Fund by the IRS in 2005. The consequence of an unexcused failure to satisfy the funding target conditions of the amortization extension (as it was originally formulated) could have been the imposition of potentially crippling excise taxes upon the Fund's contributing employers. However, Staff has also reported that in early 2009 the Pension Fund filed an application with the IRS requesting a waiver of the funding targets.

As is also indicated in my prior reports, Staff now advises that on April 28, 2016, the IRS approved a modification of the amortization extension. Staff advises that under this

modification there will be no retroactive funding deficiency for years prior to 2009 as a result of any failure of the Fund to satisfy the funding target conditions for 2009 and subsequent years. Staff also advises that under the modified extension the Fund's employers will not be exposed to excise taxes as long as the Fund has a PPA rehabilitation plan in place and is complying with it.

#### Funding Issues Confronting Multiemployer Plans

According to the Pension Benefit Guarantee Corporation's ("PBGC") fiscal year 2015 Projections Report (published on June 17, 2016), it is more likely than not that the PBGC multiemployer guaranteed program will run out of money by the end of 2025. This means that the PBGC will have no financial resources to pay benefits to the Pension Fund participants if, as projected, the Fund also becomes insolvent at approximately the same time as the PBGC.

And according to an August 2016 report issued by the Congressional Budget Office ("CBO"), multiemployer pension plans in the United States have in the aggregate approximately \$850 billion in pension obligations, but have only about \$400 billion in assets. U.S. Congressional Budget Office, *Options to Improve the Financial Condition of the PBGC's Multiemployer Program* (August 2016). This CBO report also indicates that the present value of the combined projected claims of all multiemployer plans for financial assistance from the PBGC during the 2017-2036 period totals \$101 billion. But the CBO also reports that since the PBGC is projected to become insolvent in 2025, that agency will only be able to satisfy a small portion of these claims.

#### Multiemployer Pension Reform Act of 2014

As was also explained in my prior reports, it appears that in response to the funding issues impacting the PBGC and a number of multiemployer plans throughout the United States, in December 2014 the Multiemployer Pension Reform Act of 2014 ("MPRA" or the "Act") was enacted. MPRA provides "critical and declining" multiemployer plans -- such as the Pension Fund -- with the option of requesting approval for a plan of benefit suspensions from the U.S. Department of Treasury. Any such benefit suspension plan (a) would be required to avoid the Fund's projected insolvency, but (b) may not contain benefit suspensions that are materially greater than those required to avoid the insolvency.

In addition, my prior reports noted that on September 25, 2015, the Pension Fund filed an application under MPRA with the U.S. Department of the Treasury requesting approval of a plan of benefit suspensions.

And as also indicated in my prior reports:

1. On May 6, 2016 the Department of Treasury denied the Fund's MPRA application.
2. Due to the passage of time (and the accompanying decline in the Fund's assets), and due to the new requirements of the recently published Treasury regulations governing MPRA applications, the Pension Fund Trustees have concluded that it

is not possible for the Fund to submit a new or revised application or proposed suspension plan.

3. The Trustees have also resolved to continue to cooperate with Congress, regulatory agencies, unions, employers and private parties and organizations to search for a solution to the multiemployer pension funding problem.

### Campbell Litigation

As the Court is aware, on April 25, 2016 Doris Campbell and several other participants in the Pension Fund filed an action alleging breach of fiduciary duty against the Fund and its Trustees. *Campbell v. Whobrey*, No. 16-CV-04631 (U.S. Dist. N.D. Ill.). The *Campbell* plaintiffs are all present or former employees of The Kroger Co. ("Kroger"), a significant contributing employer to the Fund. The *Campbell* complaint alleges that the Pension Fund defendants acted imprudently in considering (or failing to consider) a proposal that Kroger had made to the Pension Fund concerning the timing of Kroger's planned withdrawal from the Pension Fund and the resolution of the company's resulting withdrawal liability.

The *Campbell* case was assigned to Judge James Zagel, but on May 3, 2016, the Pension Fund defendants filed a motion with this Court requesting reassignment of *Campbell* as a case related to the Pension Fund consent decree case (No. 78 C 342). On May 6, 2016, this Court denied the reassignment motion for the reasons stated in open court.

The *Campbell* plaintiffs filed a motion for a preliminary injunction requesting, along with other relief, the appointment of an independent fiduciary to consider the Kroger proposal relating to that company's planned withdrawal from the Pension Fund, and presumably to negotiate with Kroger on behalf of the Fund concerning the terms of Kroger's planned withdrawal. That motion was briefed and argued before Judge Zagel, who denied the motion on June 30, 2016 on the grounds that (1) the plaintiffs had not shown a probability of success on the merits (2) they had requested a form of final, irrevocable relief in their preliminary injunction motion, and (3) they had failed to show irreparable harm.

The Pension Fund contends that the *Campbell* complaint is baseless. The Pension Fund's Staff also reports that the action is being controlled and funded by Kroger pursuant to an agreement with the International Brotherhood of Teamsters (or its affiliates) in an effort to gain leverage in negotiations with the Fund. In any event, the Fund's Staff reports that it has provided the actuarial data requested by Kroger in order to permit the company to analyze various settlement alternatives. In addition, Staff reports that it presented a counter - proposal to Kroger on July 15, 2016 and met with Kroger representatives on July 18 to discuss that proposal. Staff also reports that Kroger rejected the Fund's proposal at the July 18<sup>th</sup> meeting, and did not offer a counter - proposal at the time of the meeting. However, Staff reports that on October 21, 2016 Kroger did submit a counter-offer to the Fund's July 15, 2016 proposal, and that on November 4, 2016 the Fund submitted a further revised offer to Kroger. As of this date, Kroger has not responded to the Fund's November 4<sup>th</sup> proposal.

On October 27, 2016 the *Campbell* case was reassigned from Judge Zagel to Judge Edmond Chang. The Pension Fund has filed, and fully briefed, a motion for a protective order

before Judge Chang to limit the discovery to the administrative record before the Trustees concerning their consideration of Kroger's proposals. The parties are awaiting a ruling on that motion by Judge Chang.

#### Government Accounting Office Review

In response to a February 1, 2016 request by Senator Charles Grassley (R-Iowa), the Government Accounting Office (GAO) has commenced a review of the Department of Labor's (DOL) oversight of the Pension Fund under the consent decree. On June 20, 2016 a number of members of Congress also requested that the GAO review the Pension Fund's investment activities, and the GOA has acknowledged that it will undertake that review as well.

As I previously reported, the Fund's Staff advises that on June 15, 2016, Staff met with representatives of the GAO in order to review the history and the background of the consent decree, including the various amendments to the consent decree that have been entered since that order was originally entered on September 22, 1984. The GAO also made inquiries during this meeting concerning the appointments of named fiduciaries and independent special counsels under the consent decree. Subsequently, the representatives of the GAO requested additional documentation from the Fund relating to the administration of the consent decree, investment procedures and investment performance and fees. Staff advises that all documents referenced in the GAO's original requests have been produced, and that the Fund is in the process of collecting materials responsive to supplemental requests more recently submitted by the GAO.

On October 19, 2016, the GAO conducted a telephone interview with key Pension Fund Staff Members as a follow-up to the initial June 2016 meeting with Staff. The Pension Fund's Staff advises that the October 19<sup>th</sup> telephonic interview focused on the reasons for (and consequences of) the Pension Fund's decline in active participation, the responses of the IRS and the DOL to the Fund's financial difficulties and efforts taken by the Fund (including the named fiduciaries and the Trustees) to improve or stabilize the Funds financial condition.

The GAO has also requested additional data and records from the Pension Fund which Staff reports are being assembled.

It is anticipated that these reviews by the GAO will result in the issuance of one or more written reports, but it is not known when these reports will be completed.

#### Financial Information - Investment Returns

The Pension Fund's investment return for the third quarter of 2016 was 4.00%.

A comparison of the Pension Fund's performance to the TUCS<sup>1</sup> universe results published for the third quarter of 2016 (showing percent returns on investment) is summarized in the following tables:<sup>2</sup>

**Pension Fund's Composite (Percent) Return**

	<b><u>3<sup>rd</sup> Quarter Ended September 30, 2016</u></b>	<b><u>One Year Period Ended September 30, 2016</u></b>	<b><u>Three Year Period Ended September 30, 2016</u></b>
TUCS 1 <sup>st</sup> Quartile	3.97	10.84	7.44
TUCS Median	3.51	9.64	6.64
TUCS 3 <sup>rd</sup> Quartile	3.09	8.03	5.82
Fund's Composite Return	4.00	11.30	6.64

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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.

<sup>2</sup> As required under the consent decree, 50% of the Pension Fund's investments are held in passive or indexed accounts and 50% of the investments are subject to active management under the control of Northern Trust Investments, Inc. ("Northern Trust") as the Fund's court-appointed Named Fiduciary. However, the Named Fiduciary is also responsible for setting the Pension Fund's overall asset allocation, and in doing so it must take account of the mandatory allocation of 50% of the Fund's assets to passive or indexed accounts as directed under the consent decree – an allocation that includes, for example, an indexed or passive bond / fixed income account that comprises 20% of the Fund's total assets. Therefore, the Pension Fund's Composite Returns presented below reflect the combined returns of the passive / indexed portion of the Fund's total investment portfolio and the portion under active management controlled by the Named Fiduciary. On the other hand, Northern Trust's returns, as presented below, reflect only the performance of the assets under the control of Northern Trust as Named Fiduciary. However, Northern Trust's separately stated returns can be influenced at times by the asset allocations that it feels constrained to make within its own actively managed portfolio in light of the allocations required under consent decree in the passive / indexed portion of the Fund's portfolio.

**Pension Fund's Total Equity (Percent) Return**

	<b><u>3<sup>rd</sup> Quarter Ended September 30, 2016</u></b>	<b><u>One Year Period Ended September 30, 2016</u></b>	<b><u>Three Year Period Ended September 30, 2016</u></b>
TUCS 1 <sup>st</sup> Quartile	6.19	13.53	8.69
TUCS Median	5.60	12.63	7.96
TUCS 3 <sup>rd</sup> Quartile	5.09	9.55	5.71
Fund's Total Equity Return	5.29	12.63	7.65

**Pension Fund's Fixed Income (Percent) Return**

	<b><u>3<sup>rd</sup> Quarter Ended September 30, 2016</u></b>	<b><u>One Year Period Ended September 30, 2016</u></b>	<b><u>Three Year Period Ended September 30, 2016</u></b>
TUCS 1 <sup>st</sup> Quartile	2.37	13.83	8.56
TUCS Median	1.59	8.25	5.32
TUCS 3 <sup>rd</sup> Quartile	1.04	6.13	4.12
Fund's Fixed Income Return	2.33	8.14	3.89

The Fund's Named Fiduciary, Northern Trust Investments, Inc. ("Northern Trust")<sup>3</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):

<sup>3</sup> Formerly known as Northern Trust Company of Connecticut, which was in turn formerly known as Northern Trust Global Advisors, Inc.



**Northern Trust**

	<b><u>Year-to-Date as of September 30, 2016</u></b>	<b><u>July 2016</u></b>	<b><u>August 2016</u></b>	<b><u>September 2016</u></b>
Northern Trust's Composite Return	9.11	3.74	0.72	0.81
Benchmark Composite Return	9.96	3.73	0.48	0.60
Northern Trust's Total Fixed Income Return	13.69	2.31	1.64	0.66
Benchmark Fixed Income Return	12.90	1.81	1.39	0.56

Northern Trust's third quarter 2016 composite return included a 5.52% return on U.S. equities (5.57% on large cap, 4.63% on mid cap and 7.20% on small cap U.S. equities), 7.52% on international equities, 1.09% on real estate and 1.91% on global listed infrastructure.

The Fund's financial group reported the following asset allocation of the Pension Fund as a whole as of September 30, 2016 as follows: 61% equity, 33% fixed income, 5% other and 1% cash.

The financial group also reported that for the third quarter of 2016 the returns on the Fund's passive indexed accounts were as follows (showing percent returns on investment):

<b><u>Account</u></b>	<b><u>Rate of Return for 3<sup>rd</sup> Quarter 2016</u></b>
Passive Indexed Equity (S&P 500) (25% of investment assets)	3.86
Passive Indexed Fixed Income (20% of investment assets)	0.44
Passive EAFE Indexed (5% of investment assets)	6.43

Financial Information - Net Assets  
(Dollars shown in thousands)

The financial reports prepared by Pension Fund Staff for the nine months ended September 30, 2016 (enclosed) show net assets as of that date of \$15,701,983, compared to \$16,126,208 at December 31, 2015, a decrease of \$424,225 compared to a decrease of \$1,940,426 for the same period in 2015. The \$1,516,201 difference is due to \$1,782,054 more net investment income offset by \$265,853 more net operating loss.

The enclosed Fund's Staff report further notes that for the nine months ended September 30, 2016, the Fund's net asset decrease from operations (before investment income) was \$1,570,324 compared to a decrease of \$1,304,471 for the same period in 2015, or a \$265,853 unfavorable change. This change in net assets from operations (before investment income) was attributable to:

- a) (\$271,866) less contributions primarily due to recognition of withdrawal liability previously classified as potentially refundable in 2015,
- b) \$3,521 less benefits and
- c) \$2,492 less general and administrative expenses.

During the nine months ended September 2016 and 2015, the Fund withdrew \$1,749,044 and \$1,427,054, respectively, from investment assets to fund the cash operating deficit.

Financial Information - Participant Population

The enclosed September 30, 2016 report prepared by Fund Staff further notes that the eight month average number of Full-Time Equivalent ("FTE") memberships decreased 1.58% from August 2015 to August 2016 (from 60,132 to 59,179). During that period, the average number of retirees decreased 1.20% (from 206,891 to 204,404).

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>4</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. This formula is referred to as a "hybrid" withdrawal liability method.

Staff reports that it believes the hybrid method offers 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.

Further, as explained in my prior reports, in November 2012, the Trustees 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 Trustees have also approved an amendment 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 90 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 \$281 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**

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 continued to operate in bankruptcy and to pay contributions to the Funds on behalf of its drivers. Staff reports that in December 2013 Jack Cooper, Inc., another unionized automobile transporter, purchased the assets of Allied in the bankruptcy and will continue to contribute to the Funds with respect to the purchased assets and operations, but without an assumption or Jack Coopers' withdrawal liability. Allied's withdrawal liability (in the amount of \$976 million) was triggered by the sale and Staff advises that the Allied bankrupt estate is not likely to have assets sufficient to satisfy this 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.

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<sup>4</sup> The Pension Fund's Staff advises that on October 14, 2011, the PBGC approved the Pension Fund's use of the hybrid method.

### YRC

As also previously reported, in May 2009 the Funds entered a Contribution Deferral Agreement ("CDA" or "Deferral Agreement") with YRC, Inc. and its affiliates ("YRC") — one of the largest contributing employers to the Fund. 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.

Following a temporary termination of YRC's participation in the Pension Fund (due to its chronic delinquencies), 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, in light of the company's continuing financial distress, that 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).

At the same time, the Trustees decided that 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.)

In January 2014, after consultation with financial, actuarial and legal advisors, the Trustees voted to approve 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 also reports that since July 2011, YRC has remained current in its pension contribution payments (\$3-\$4 million per month), and in the monthly interest payments (beginning in August 2011) of approximately \$500,000. In addition, on November 12, 2013 the interest rate under the CDA escalated from 7.5% per year to 7.75%.

In addition, Staff has reported that to date the Pension Fund has received approximately \$49.4 million as its share of the net proceeds from sales of collateralized assets as a prepayment 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 \$69.2 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 (and not applicable to reduce YRC's principal or interest balance); on November 12, 2013 the Fund received approximately \$419,000 as another such refinancing fee match.

#### **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, Staff has indicated the efforts to reorganize Hostess were unsuccessful. Further, Staff has reported that it now is clear that proceeds from the Hostess liquidation are not sufficient to satisfy the company's secured debt, and that the Pension Fund and other general unsecured creditors will make no further recoveries from the Hostess Bankruptcy. As a result, because Staff reports that the Pension Fund has no priority or administrative claims in the Hostess bankruptcy, the Trustees have now approved a write-off of all claims against Hostess.

#### **Health and Welfare Fund**

##### **Department of Labor Review**

As indicated in my report on the second quarter of this year, on February 2, 2016 the Chicago office of the U.S. Department of Labor (the "Department") commenced an onsite review of various Health and Welfare Fund documents that the Department requested pursuant to its general authority under ERISA § 504, 29 U.S.C. §1134. The Health and Welfare Fund's Staff advises that this is a fairly standard review, and has apparently not been prompted by any specific concerns by the Department of Labor about the Fund's compliance with ERISA and other legal requirements.

The Department of Labor's review has focused on the operations of the Active Health and Welfare Plan, and the documents requested by the Department include Trust Agreements, Plan Documents, Summary Plan Descriptions, Evidence of Coverage, Enrollment Packages, Summaries of Benefits and Coverage, contracts with service providers and Form 5500 Annual Reports.

Following their onsite inspection of documents at the Fund's offices during the week of February 2, 2016, the Department of Labor personnel involved in this review asked the Fund to provide various data and files relating to claims processing. The Fund's Staff reports that all requested files and data have been provided to the Department of Labor, and that these materials are currently being reviewed by the Department.

Financial Information

(Dollars shown in thousands)

The Health and Welfare Fund's financial summary for the nine months ended September 30, 2016 are compared below with financial information for the same period of 2015:

	<u>Nine Months Ended September 30,</u>	
	<u>2016</u>	<u>2015</u>
<b>Contributions</b>	\$ 2,365,050	2,187,059
<b>Recognized portion of UPS lump sum</b>	64,359	73,584
<b>Benefits</b>	1,998,501	1,760,917
<b>TeamCare administrative expenses</b>	58,283	54,773
<b>General and administrative expenses</b>	<u>53,459</u>	<u>48,889</u>
<b>Net operating income</b>	319,166	396,064
<b>Investment income (loss)</b>	<u>192,001</u>	<u>(39,372)</u>
<b>Increase in net assets</b>	511,167	356,692
<b>Net assets, end of period</b>	4,827,235	4,176,433
<b>Eight-month average Participants (FTEs)</b>	191,096	183,102

For the nine months ended September 30, 2016, the Health and Welfare Fund's net asset increase from operations (before investment income) was \$319,166 compared to an increase of \$396,064 for the same period in 2015, or a \$76,898 unfavorable change:

- (a) \$168,766 more contributions due to increases in FTEs (UPS and American Red Cross),

- (b) (\$237,584) more benefits, primarily due to UPS and American Red Cross,
- (c) (\$3,510) more TeamCare administrative fees and
- (d) (\$4,570) more general and administrative expenses.

During the nine months ended September 2016 and 2015, the Fund transferred \$299,063 and \$303,132, respectively, to investments (BNY Mellon) as the operations generated positive cash flows for those periods.

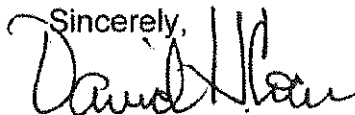
The enclosed report also notes that the eight month average number of Full-Time Equivalent (FTE) memberships increased by 4.37% from August 2015 to August 2016 (from 183,102 to 191,096). During that period, the average number of retirees covered by the Health and Welfare Fund increased by 5.46% (from 8,421 to 8,881).

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 third quarter of 2016 the following for professional services and expenses for the Independent Special Counsel:

July	\$0.00
August	\$5,559.05
September	\$0.00

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. Wayne Berry (w/encl.) **Via UPS Next Day**  
Mr. Thomas C. Nyhan