

**FRANK J. McGARR, Esq.**  
**Arbitration and Mediation**

November 20, 2009

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

**Via UPS Next Day**

Re: Quarterly Report of Independent Special Counsel, Chao v. Estate of Frank E. Fitzsimmons, et al., No. 78 C 342 (N.D. Ill., E.D.); Chao v. Robbins, et al., No. 78 C 4075 (N.D. Ill., E.D.); and Chao 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 third quarter of 2009 as Independent Special Counsel appointed pursuant to the Fitzsimmons (Pension Fund) and Robbins and Dorfman (Health and Welfare Fund) consent decrees.

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.

Trustee Selection / Board Composition

As indicated in my August 13, 2009 report, at the Board of Trustees Meeting on July 16, 2009, the Board formalized action to terminate the Pension Fund participation of YRC, Inc. and its affiliates (collectively, "YRC"), due to YRC's inability to remain current in its pension contribution obligations. YRC has historically been one of the most significant employers contributing to both Funds.

An employee of YRC - Mr. Thomas Ventura - has for several years served as an Employer Trustee. Although Mr. Ventura is an employee of YRC, he was in fact appointed to his Employer Trustee

position by an employer association in which YRC is the major participant, the Motor Carrier Employers Conference-Central States ("MCEC"). In addition to appointing Mr. Ventura, MCEC or its affiliate (the Southern Motor Carriers Association, "SMCLRA," which is now dissolved) also held the appointing authority under the Funds' Trust Agreements with respect to two other Employer Trustee positions.

However, with the termination of YRC's participation in the Pension Fund, and in light of the fact that the MCEC-affiliated SMCLRA is no longer an active employer association, it appeared to the Trustees that MCEC and SMCLRA were less representative of the employers currently participating in the Pension Fund. Therefore, at the September 16, 2009 Board Meeting, the Trustees amended the Trust Agreement to eliminate the appointing authorities previously conferred on MCEC and SMCLRA, i.e., for the Employer Trustee terms ending March 31, 2010, 2011 and 2012. The MCEC/SMCLRA appointing authorities with respect to these three Employer Trustee positions were then conferred, pursuant to Trust Agreement Amendments approved on September 16, upon the following three bodies (with each body authorized to nominate one Employer Trustee):

- (1) The Employer Trustees, acting by majority vote, were given authority for the appointment of the Employer Trustee term commencing April 1, 2010;
- (2) The Association of Food and Dairy Retailers, Wholesalers and Manufacturers ("AFDRWM"), an employer association representing a number of Fund contributing employers (AFDRWM has been given a Trustee nominating authority, subject to approval by a majority vote of the Employer Trustees), for the Employer Trustee term commencing April 1, 2011; and
- (3) ABF, a large contributor to both Funds (ABF has been given a Trustee nominating authority, subject to approval by a majority vote of the Employer Trustees), for the Employer Trustee term commencing April 1, 2012.

These changes in the Employer Trustee selection procedures were made without any effect upon the validity of the four terms of office presently in effect as of the September 16, 2009 effective date of the Trust Agreement Amendments. But the amendments provide that in the event of a vacancy occurring during a term of office,

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the nominating and appointing authorities that would otherwise have the authority to nominate and appoint at the expiration of the term would have the power to fill the vacancy.

On September 23, 2009, Mr. Tom Ventura (the YRC employee appointed Trustee by MCEC) tendered notice of his resignation. This resignation created a vacancy for the Employer Trustee term ending March 31, 2010. Pursuant to the Trust Agreements outlined above, Mr. Art Bunte was appointed to serve the balance of the term ending March 31, 2010 as well as the five year term commencing April 1, 2010. As Mr. Bunte has already been approved by the Court overseeing the consent decrees, no further Court approvals are required. There currently exists a vacancy in Employer Trustee term ending March 31, 2011, which vacancy is to be filled by a nomination to be submitted by the AFDRWM, subject to approval by a majority vote of the other, then sitting Employer Trustees. If the candidate has never previously been appointed to serve as a Trustee then the ultimate appointment would be subject to approval by this Court, pursuant to the process established by the consent decrees. The Funds' Staff has indicated that the issue of filling this Employer Trustee vacancy will be discussed at future meetings of the Board of Trustees.

With respect to the Employee Trustees, Mr. Jerry Younger's present Trustee position and term is set to expire on March 31, 2010. On October 1, 2009, I attended a ballot counting procedure at the Funds' offices to select an individual to fill the Employee Trustee position and term set to begin on April 1, 2010 and running through March 31, 2015. The ballots returned by the Central Trustee Selection Board, pursuant to the Funds' Statement of Procedures for Selection and Monitoring of Employee Trustees ("Procedures"), indicated that Mr. Younger has been re-elected to serve the five year term following the expiration of his present term on March 31, 2010. As Mr. Younger has already been approved by the Court overseeing the consent decrees, no further court approvals are required. These balloting results were reviewed and confirmed by the Employee Trustees at the November 17 Board Meeting pursuant to the Funds' Procedures.

### Audit

At the July 16, 2009 Meeting of the Board of Trustees, the Funds' Internal Audit Department presented a report concerning its audit of 2009 Team 2000/Contracts Processing for both Funds. And at the September 16, 2009 Board Meeting, Internal Audit presented

a report concerning the 2009 audit of the Funds' Team 2000/Accounts Receivable processing activities.

The overall conclusion of these audits was that adequate administrative and internal accounting controls surrounding contracts and accounts receivable processing are operating in accordance with the Funds' policies and procedures, and provide a basis for reliance on the propriety of the transactions processed.

The 2008 Forms 5500 for both Funds were reviewed by the Board of Trustees' audit committee at their September 16, 2009 Meeting, having previously been distributed in draft form, and subsequently filed by the October 15 filing date.

### 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 believed 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 needs increased employer contributions. At their November 8, 2005 meeting, the Board accordingly amended the Pension Plan to require such increased contributions (at a rate the Board sets) in collective bargaining agreement renewals as a condition of continued participation, and approved specific rates reflecting 7% annual increases for contracts renewing by December 31, 2006. The Fund so notified all locals and employers participating in the Fund by special bulletin dated November 28, 2005 and held extensive meetings explaining the changes to local unions and employers.

At their November 8, 2006 meeting, again as recommended by the Pension Fund's actuaries to enable the Fund to comply with the funding ratio conditions imposed by the IRS, the Board of Trustees approved 8% per year as the required contribution rate increase for all collective bargaining agreements expiring in 2007. Local unions

and participating employers were notified of this rate increase in December 2006.

The Pension Fund's Board of Trustees also asked the negotiators of the United Parcel Service, National Master Freight Agreement and Carhaul agreements to allocate to the Pension Fund fringe benefit contribution increases which were scheduled for 2006. The negotiators agreed to that allocation. Allocations of increased fringe benefit contributions to the Pension Fund were also made in 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; on March 31, 2009, the actuary certified that the Fund remains in critical status for the 2009 plan year. 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 will require 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 that as of September 2009, a 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 the Trustees' September 16, 2009 Meeting, only 7 bargaining units, comprising a total of 136 active participants, have agreed to adopt the rehabilitation plan's Default Schedule (4% annual increases and elimination of PPA adjustable benefits). As of September 2009, approximately 19 bargaining units, comprising approximately 374 participants, have had the Default Schedule imposed on them by operation of law under the PPA, 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 May 2009, most of the employers who are incurring the surcharges are also voluntarily paying them. Thus Staff reported at the September 16, 2009 Trustees' Meeting that only 2 employers are delinquent in paying their surcharges, and that the total surcharge delinquency of these 2 employers was less than \$2,000; these employers are being pursued under the Fund's delinquent account collection procedures, including litigation where necessary. (It should be noted that surcharged employers - *i.e.*, those not compliant with the Rehabilitation Plan - are not necessarily subject to the Default Schedule under which the affected participants incur a loss of PPA adjustable benefits. Under the PPA, the Default Schedule is imposed on the bargaining parties only after the lapse of 180 days from the expiration of a non-compliant collective bargaining agreement. As reported above, only approximately 19 bargaining units, comprising approximately 374 participants, have so far incurred the Default Schedule through this PPA-mandated process.)

At the July and September, 2009 Board of Trustees Meeting, Staff also presented reports concerning certain employers and bargaining units who may have triggered "Rehabilitation Plan Withdrawals" from the Pension Fund. 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).

Although it thus appears the Pension Fund has reported progress in securing increased employer contributions and controlling benefits as required of "critical status" plans under the PPA, the financial information presented below also makes clear that the Fund has suffered serious investment losses in the general stock market and economic downturn that commenced in 2008. In addition, Staff has reported that, for plan year 2008, the Pension Fund will be 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. 3-4). Staff has also reported, with the concurrence of the Trustees, that the Pension Fund has filed an application with the IRS requesting a waiver of the funding ratio targets for 2008, in view of the unexpected economic decline that has occurred. The Trustees have also directed Staff to continue to monitor and pursue additional regulatory or legislative initiatives that may assist the Pension Fund in addressing the funding problems created by recent conditions in the general economy and stock markets.

#### Financial Information - Investment Returns

The Pension Fund's investment return for the third quarter 2009 was 13.88%.

The Fund's financial group prepared for the Trustees a comparison of the Pension Fund's performance to the TUCS<sup>1</sup> universe results published for the third quarter of 2009. This comparison (showing percent returns on investment) is summarized in the following tables:

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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 Composite Return**

	<u>3rd Quarter Ended</u> <u>Sept. 30, 2009</u>	<u>One Year Period Ending</u> <u>Sept. 30, 2009</u>	<u>Three Year Period Ending</u> <u>Sept. 30, 2009</u>
TUCS 1 <sup>st</sup> Quartile	12.32	3.24	1.37
TUCS Median	11.46	0.16	(0.41)
TUCS 3 <sup>rd</sup> Quartile	10.16	(2.38)	(1.17)
Fund's Composite Return	13.88	2.57	(1.05)

**Pension Fund's Total Equity Return**

	<u>3rd Quarter Ended</u> <u>Sept. 30, 2009</u>	<u>One Year Period Ending</u> <u>Sept. 30, 2009</u>	<u>Three Year Period Ending</u> <u>Sept. 30, 2009</u>
TUCS 1 <sup>st</sup> Quartile	17.82	(0.09)	(3.47)
TUCS Median	17.12	(2.26)	(4.15)
TUCS 3 <sup>rd</sup> Quartile	16.81	(3.17)	(4.61)
Fund's Total Equity Return	17.07	(2.80)	(4.91)

**Pension Fund's Fixed Income Return**

	<u>3rd Quarter Ended</u> <u>Sept. 30, 2009</u>	<u>One Year Period Ending</u> <u>Sept. 30, 2009</u>	<u>Three Year Period Ending</u> <u>Sept. 30, 2009</u>
TUCS 1 <sup>st</sup> Quartile	9.50	19.22	7.25
TUCS Median	6.57	13.52	6.43
TUCS 3 <sup>rd</sup> Quartile	5.44	12.67	5.69
Fund's Fixed Income Return	5.59	13.26	6.88



The Fund's named fiduciaries (Goldman Sachs Asset Management and Northern Trust Global Advisors, Inc.) submit monthly investment reports to the Trustees, summarized below (showing percent returns on investment):

**Goldman Sachs Asset Management**

	<u>Year-to-Date as of Sept. 30, 2009</u>	<u>3rd Quarter 2009</u>	<u>July 2009</u>	<u>Aug. 2009</u>	<u>Sept. 2009</u>
Goldman-Sach's Composite Return	26.63	15.72	7.17	3.66	4.17
Benchmark Composite Return	25.13	16.15	7.56	3.83	4.01
Goldman Sach's Total Fixed Income Return	18.98	7.85	3.70	1.58	2.38
Benchmark Fixed Income Return	17.20	6.74	2.89	1.29	2.41

Goldman Sach's third quarter 2009 composite return included a 18.58% return on U.S. equities (14.59% large cap and 22.17% on small cap U.S. equities), 17.16% on international equities and 33.39% on real estate.

**Northern Trust Global Advisors, Inc.**

	<u>Year-to-Date as of Sept. 30, 2009</u>	<u>3rd Quarter 2009</u>	<u>July 2009</u>	<u>Aug. 2009</u>	<u>Sept. 2009</u>
Northern Trust's Composite Return	27.77	16.82	7.85	3.69	4.47
Benchmark Composite Return	23.77	15.62	7.40	3.37	4.15
Northern Trust's Total Fixed Income Return	23.00	9.76	4.77	1.92	2.78
Benchmark Fixed Income Return	16.23	6.08	2.60	1.07	2.30

Northern Trust's third quarter 2009 composite return included a 17.13% return on U.S. equities (17.36% large cap and 16.47% on small

cap U.S. equities), 19.92% on international equities and 35.16% on real estate.

The Fund's financial group reported asset allocation of the Pension Fund as whole as of September 30, 2009 as follows: 69% equity, 27% fixed income, 2% other and 2% cash. The financial group also reported that for the third quarter of 2009 the return on the indexed fixed income account was 3.67%. For the third quarter of 2009 the passive equity account had a return of 15.61%.

#### Financial Information - Net Assets

(Dollars shown in thousands)

The financial report prepared by Fund staff for the nine months ending September 30, 2009 shows net assets as of that date of \$19,295,873, compared to \$17,358,652 at December 31, 2008, an increase of \$1,937,221 compared to a decrease of \$5,644,135 for the same period last year. The \$7,581,356 difference is due to \$7,746,256 more investment income offset by \$164,900 more net operating loss.

The Fund's staff report further notes that for the nine months ended September 30, 2009, the Fund's net asset decrease from operations (before investment income) was \$1,519,038 compared to a decrease of \$1,354,138 for the same period in 2008, or a \$164,900 unfavorable change. This change in net assets from operations (before investment income) was attributable to:

- a) (\$129,125) less contributions, primarily a decrease in FTEs and YRC termination,
- b) (\$36,446) more benefits paid, and
- c) \$671 less general and administrative expenses.

During the nine months ended September 30, 2009 and 2008, the Fund withdrew \$1,603,390 and \$1,284,699, respectively, from investment assets to fund the cash operating deficit.

#### Financial Information - Participant Population

The September, 2009 report prepared by Fund staff further notes that the eight-month average number of Full-Time Equivalent (FTE) memberships decreased 18.55% from August 2008 to August 2009 (going from 94,075 to 76,625). During that period, the average number of retirees increased (from 212,246 to 212,247).

### Named Fiduciaries

Officers of the Named Fiduciaries, Goldman Sachs Asset Management and Northern Trust Global Advisors, Inc. met with the Board of Trustees during this quarter to discuss portfolio matters including asset allocation.

The Fund's financial group reported to the Board of Trustees at their September 16, 2009 meeting on investment expenses incurred through the second quarter of 2009. These investment expenses (fiduciary, custodial and investment management fees) totaled \$25,789,350 through the second quarter of 2009 compared to \$41,751,288 for the same period in 2008, a 38.2% decrease.

### Bankruptcies and Litigation

The Funds' Executive Director continued to report to the Trustees on employer bankruptcies, including interim recoveries collected in the Funds' ongoing pursuit of claims for contributions and withdrawal liability against Consolidated Freightways Corporation and related entities. Approximately \$68.5 million has been collected to date from Consolidated Freightways companies.

### YRC

YRC and its affiliates ("YRC") are trucking subsidiaries of YRC Worldwide, the product of a merger between Yellow Transportation and Roadway. YRC is the single largest contributing employer to both the Pension Fund and the Health and Welfare Fund. As previously reported, the Funds' Executive Director informed the Trustees at their March 24, 2009 Meeting that YRC has reported cash flow issues caused by the current decline in the general economy. As a result, YRC proposed an arrangement under which portions of its payment obligations to the Funds would be deferred for several months, and the Funds would be given liens or mortgages to secure the deferred obligations.

In May the Funds entered a Contribution Deferral Agreement ("Deferral Agreement") with YRC. Under the Deferral Agreement, the Pension Fund has agreed to defer payment of YRC's pension contribution obligations accrued during January, March, April and May of this year (the "Deferral Period," representing a deferral of contributions totaling approximately \$83 million). 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 have joined in the Deferral Agreement, but the Pension Fund is owed approximately 63% of the contributions deferred under the Agreement.<sup>2</sup>

Repayment of the Deferral Period contributions is secured under the Deferral Agreement by first lien collateral on approximately 150 real estate parcels owned by YRC, plus additional second lien collateral. The Pension Fund's Staff reported (1) that this was the maximum collateral package that could be obtained from YRC and its banks to support the Deferral Period contributions, and (2) that YRC's banks (who had a first lien on virtually all the company's assets) required the Pension Fund to agree to the Deferral Agreement as a condition for the banks' release of the collateral.

The Deferral Agreement requires repayment of the deferred contributions in 36 monthly installments commencing in January 2010. YRC is also scheduled to pay interest on the deferred contributions on a current basis commencing on July 15, and continuing on the 15<sup>th</sup> of each month thereafter. The Pension Fund's Staff has reported that YRC has made timely interest payments to the Fund of approximately \$1.4 million as of October 15, 2009. In addition, Staff has reported that YRC has sold a portion of the first lien collateral provided by the Deferral Agreement, and the Pension Fund received approximately \$9.7 million as its share of the net proceeds from these sales as a pre-payment under the Deferral Agreement.

However, the Pension Fund's Staff and financial consultants have reported that YRC is both unable and unwilling to meet its pension contribution payment obligations beyond the Deferral Period, *i.e.*, contribution obligations accrued after May of this year. While some additional security can apparently be provided to cover YRC's June and July pension contribution accruals, Staff advised the Trustees that protection of the Pension Fund's interests cautions in favor of *terminating* the participation of YRC in the

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<sup>2</sup>As of May 15, 2009, YRC became current in its contribution obligations to the Health and Welfare Fund and it apparently intends to remain current in its payments to that Fund for the foreseeable future.

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Pension Fund in order to stop the accrual of further pension obligations for which the company is not able to provide funding. Accordingly, at the Trustees' July 16 Meeting, the Board formalized action to terminate YRC's participation in the Pension Fund.

The Pension Fund's Staff has also reported that a few days before this formal action to terminate YRC at the July 16 Trustees' Meeting, representatives of YRC and the International Brotherhood of Teamsters reached an agreement to amend YRC's current labor agreement to eliminate the company's pension contribution obligation for the next 18 months, and to resume making those contributions in January 2011. (This agreement is being considered for ratification by the YRC bargaining unit members.) In light of YRC's intention to return to the Pension Fund as a participating employer at a later date, and upon a recommendation from Staff, the Trustees decided at their July 16 Meeting that YRC's termination of participation in the Pension Fund should not at this time (and subject to certain conditions) be treated as a complete and permanent cessation of its obligation to contribute to the Pension Fund that would trigger withdrawal liability. For similar reasons, the Trustees resolved that YRC's termination of participation in the Pension Fund should not at this time be treated as a Rehabilitation Plan Withdrawal (see p. 4 above), which would reduce the pension benefits of the YRC participants.

At the September 16, 2009 Board Meeting, the Trustees approved treating YRC's delinquent contributions for the post-Deferral Period (*i.e.*, the contribution obligations accrued during June and July 2009, prior to the July termination of YRC's Pension Fund participation - approximately \$26 million) as additional deferrals subject to repayment under the Deferral Agreement. The rationale expressed by the Trustees and their consultants for permitting this additional deferral was much the same as the rationale for the original deferral: Absent the deferrals, an insolvency and liquidation of the company would apparently result, and given the security package provided under the Deferral Agreement, the Pension Fund's best collection prospect is to rely on that security and while giving the company an opportunity to re-establish strong cash flow and profitability.

The Pension Fund's Staff has also reported that in mid-October, YRC approached the Fund and requested the ability to postpone for at least one year the principal and interest payments that are scheduled to fall due under the Deferral Agreement commencing on January 15, 2010. YRC based this request upon its continuing cash flow difficulties, and the willingness of YRC's banks and other

creditors to make comparable concessions, including significant deferrals of interest and fees owed to the banks. YRC presented this as time-sensitive issues that had to be resolved by October 27, 2009 in order to coordinate with the company's other creditors. The Fund's Staff has reported that it appeared that if the Fund were to insist that YRC make the payments scheduled to commence on January 15, 2010, the other creditor groups would withdraw the concessions they were offering to make - thus resulting in a liquidation of YRC. As a result, in a phone conference held on October 26, the Trustees approved the requested postponement of the principal and interest payments scheduled to commence in January 2010 under the Deferral Agreement, because the Trustees viewed a liquidation of YRC at this time as contrary to the interests of the Fund. This decision was formalized at the Trustees' November 17, 2009 Meeting.

**Health and Welfare Fund**  
**Financial Information**  
(Dollars in thousands)

The Health and Welfare Fund's financial summary for the third quarter of 2009 is compared below with interim financial information for the same periods of 2008:

	<u>3rd Quarter Ended Sept. 30,</u>	
	<u>2009</u>	<u>2008</u>
<b>Contributions</b>	\$287,486	305,787
<b>Benefits</b>	251,401	268,695
<b>TeamCare administrative expenses</b>	7,083	7,602
<b>General and administrative expenses</b>	<u>8,898</u>	<u>9,624</u>
<b>Net operating income (loss)</b>	20,104	19,866
<b>Investment income (loss)</b>	63,907	(29,614)

<b>Increase (Decrease) in net assets</b>	84,011	(9,748)
<b>Net assets, end of period</b>	<u>\$1,231,447</u>	<u>1,094,477</u>
<b>Eight-month average participants (FTEs)</b>	88,499	95,903

For the nine months ended September 30, 2009, the Health and Welfare Fund's net asset increase from operations (before investment income) was \$51,797 compared to an increase of \$60,968 for the same period in 2008, or a \$9,171 unfavorable change:

- (a) (\$33,904) less contributions, primarily due to a decrease in FTEs offset by an increase in contribution rates,
- (b) (\$22,492) less benefits,
- (c) (\$667) less TeamCare administrative fees, and
- (d) (\$1,574) less general and administrative expenses.

Net investment income for the nine months ended September 30, 2009 was \$127,658 more than for the same period last year. This increase resulted primarily from \$133,348 favorable change in realized/unrealized gain (loss) offset by (\$5,682) less interest and dividend income.

During the nine months ended September 30, 2009 and 2008, the Fund transferred \$66,953 and \$86,926, respectively, to investments (Mellon Bank) as the operations generated positive cash flows for those periods.

The enclosed report entitled "Central States Funds Financial and Analytical Information" prepared by the Fund's financial group as of September 30, 2009 shows the investment asset allocation as 74% fixed income and 26% equity.

This report also notes that the eight month average number of Full-Time Equivalent (FTE) memberships decreased 7.72% from August 2008 to August 2009 (going from 95,903 to 88,499). During that period, the average number of retirees covered by the Health and Welfare Fund decreased by 9.84% (from 14,327 to 12,917).

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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 2009 the following for professional services and expenses for the Independent Special Counsel:

July	\$	0
August	\$	0
September	\$	0

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,

  
FRANK J. MCGARR,

Enclosure

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