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Arbitration and Mediation

May 21, 2012

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, *Solis v. Estate of Frank E. Fitzsimmons, et al.*, No. 78 C 342 (N.D. Ill., E.D.); *Solis v. Robbins, et al.*, No. 78 C 4075 (N.D. Ill., E.D.); and *Solis 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 fourth quarter of 2011 as Independent Special Counsel appointed pursuant to the *Fitzsimmons* (Pension Fund) and *Robbins* and *Dorfman* (Health and Welfare Fund) consent decrees. This will be my first report to you since my appointment as Independent Special Counsel, pursuant to your order dated November 2, 2011.

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.

As you know, my predecessor in the Independent Special Counsel office, Frank J. McGarr, passed away on January 6, 2012, and prior to his final illness he was planning to issue a report to you concerning his activities during the third quarter of 2011 (which would have been his final Independent Special Counsel Report). I have reviewed a draft of the third quarter report which I understand Frank McGarr had been reviewing prior to his final illness; I have also consulted with the Funds' Staff concerning third quarter developments and I have reviewed information prepared by the Funds' Staff concerning the Funds' financial performance and other metrics during the third

quarter. On the basis of these representations and data I have received from the Funds' Staff, this report summarizes the Funds' activities and performance during the third quarter of 2011 (which preceded my appointment as Independent Special Counsel), as well as the fourth quarter.

In addition, please note that in general I have attempted to follow the same format and outline in this report as was used by Frank McGarr in his reports. I have also incorporated, where appropriate, Frank McGarr's summaries of the historical background of various topics and issues.

Audit

At the September 14, 2011 Board Meeting, the Internal Audit Department reported on its audit of the Health and Welfare Fund's claims processing activities. The overall conclusion of the audit was that the administrative and internal accounting controls surrounding Health and Welfare claims processing were operating throughout the period tested, and that these controls provide a basis for reliance on the transactions as being processed according to the Fund's policies and procedures.

At the November 8, 2011 Board Meeting, the Internal Audit Department reported on its audit of the general ledger processing by the Financial Accounting Group. The overall conclusion of the audit was that internal controls surrounding general ledger processing were operating throughout the period tested, and that these controls provide a basis for reliance on the transactions as being processed according to the Fund's policies and procedures.

Pension Fund

Funding and PPA-Related Issues

As previously reported by Frank McGarr, 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.

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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. 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. The Fund followed a similar procedure with respect to agreements expiring in 2007, but requested 8% annual increases under those 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 submitted by Frank McGarr, 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 third and fourth quarters of 2011 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 the Trustees' December 13, 2011 Meeting, only 16 bargaining units, comprising a total of 385 active participants, have agreed to adopt the Rehabilitation Plan's Default Schedule (4% annual increases and elimination of PPA adjustable benefits). As of December 2011, approximately 6 bargaining units, comprising approximately 18 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 December 2011, 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.

At the Board of Trustees Meetings held in the third and fourth quarter of 2011, 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

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benefits (*i.e.*, the loss of all benefits other than a contribution-based benefit payable at age 65).

As previously reported by Frank McGarr, the PPA also contemplates that multiemployer plans in the critical zone will annually "update" their rehabilitation plans. Prior reports described the 2010 updates to the Rehabilitation Plan, which included the establishment of a minimum retirement age of 57 for all Fund participants and the use of a new table to measure the actuarial equivalence of age 65 benefits that are commenced prior to age 65 (but after the minimum retirement age of 57 has been achieved). With respect to the 2011 Rehabilitation Plan Update process, the Fund's Staff advised the Trustees, after consultation with the Fund's actuaries, that under the PPA, the Trustees should continue to pursue "reasonable measures" to forestall the possible insolvency of the Fund.

The Trustees deliberated concerning the 2011 update at their November and December 2011 Board Meetings and noted that earlier in 2011 they had already approved the "Distressed Employer Schedule" (described in more detail on p. 17 below), which permitted the Pension Fund to accept the continued participation of the participants employed by YRC, Inc. (and its affiliates, collectively the "YRC Group") on terms that were actuarially favorable to the Fund, despite the greatly reduced contributions being paid by the YRC Group. During 2011, the Trustees also implemented a "hybrid" withdrawal liability plan (see pp. 13-14 below), which the Trustees believe will help encourage existing employers to remain in the Fund and may lead to stabilization or growth in the Fund's contribution base.

However, the Trustees also concluded during the 2011 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 2011 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, in the 2011 Rehabilitation Plan update, the Trustees did not adopt any additional substantive amendments to the Rehabilitation Plan, but approved continued implementation of the

2011 Distressed Employer Schedule and the hybrid withdrawal liability plan, and of the benefit reductions, 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. During 2009 and 2010 the Pension Fund enjoyed a significant (but by no means complete) recovery of its 2008 investment losses; further, as reported below, the Pension Fund experienced significant investment losses during the market declines that occurred in the third quarter of 2011 (which were partially offset with gains in the fourth quarter of 2011, and ended the year with an investment return close to zero.

In addition, as previously reported by Frank McGarr, 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 2011 plan year 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. Staff has also indicated that the Fund's legal counsel advises that in light of this prior (and still pending) request for a waiver filed by the Fund in 2009, it is not necessary for the Fund to file a separate request for a waiver relating to the apparent failure to satisfy the funding target conditions for plan year 2011.

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 2011 was (11.65)% and 7.23% for the fourth quarter. For the full calendar year 2011 the Fund's investment return was (0.28)%.

The Fund's financial group prepared for the Trustees a comparison of the Pension Fund's performance to the TUCS¹ universe results published for the third and fourth quarters of 2011. This comparison (showing percent returns on investment for each quarter) is summarized in the following tables:

Pension Fund's Third Quarter Composite Return

| | <u>3rd Quarter Ended</u> <u>Sept. 30, 2011</u> | <u>One Year Period Ended</u> <u>Sept. 30, 2011</u> | <u>Three Year Period Ended</u> <u>Sept. 30, 2011</u> |
|----------------------------------|---|---|---|
| TUCS 1 st Quartile | (3.77) | 5.30 | 5.36 |
| TUCS Median | (8.05) | 2.66 | 4.26 |
| TUCS 3 rd Quartile | (9.59) | 1.65 | 3.13 |
| Fund's Composite Return | (11.65) | (0.40) | 4.45 |

Pension Fund's Third Quarter Total Equity Return

| | <u>3rd Quarter Ended</u> <u>Sept. 30, 2011</u> | <u>One Year Period Ended</u> <u>Sept. 30, 2011</u> | <u>Three Year Period Ended</u> <u>Sept. 30, 2011</u> |
|----------------------------------|---|---|---|
| TUCS 1 st Quartile | (16.21) | (1.86) | 2.57 |
| TUCS Median | (17.13) | (3.70) | 1.72 |
| TUCS 3 rd Quartile | (17.40) | (4.16) | 1.21 |
| Fund's Total Equity Return | (17.50) | (3.69) | 1.36 |

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

Pension Fund's Third Quarter Fixed Income Return

| | <u>3rd Quarter Ended Sept. 30, 2011</u> | <u>One Year Period Ended Sept. 30, 2011</u> | <u>Three Year Period Ended Sept. 30, 2011</u> |
|-------------------------------------|---|---|---|
| TUCS 1 st Quartile | 8.40 | 9.45 | 14.65 |
| TUCS Median | 2.25 | 5.72 | 9.73 |
| TUCS 3 rd Quartile | 0.95 | 4.47 | 9.09 |
| Fund's Fixed Income Return | 2.04 | 4.47 | 9.08 |

Pension Fund's Fourth Quarter Composite Return

| | <u>4th Quarter Ended Dec. 31, 2011</u> | <u>One Year Period Ended Dec. 31, 2011</u> | <u>Three Year Period Ended Dec. 31, 2011</u> |
|----------------------------------|--|--|--|
| TUCS 1 st Quartile | 5.66 | 3.90 | 12.28 |
| TUCS Median | 4.51 | 1.58 | 11.23 |
| TUCS 3 rd Quartile | 3.72 | 0.35 | 9.61 |
| Fund's Composite Return | 7.23 | (0.28) | 13.31 |

Pension Fund's Fourth Quarter Total Equity Return

| | <u>4th Quarter Ended Dec. 31, 2011</u> | <u>One Year Period Ended Dec. 31, 2011</u> | <u>Three Year Period Ended Dec. 31, 2011</u> |
|----------------------------------|--|--|--|
| TUCS 1 st Quartile | 9.73 | (2.75) | 14.67 |
| TUCS Median | 8.26 | (4.55) | 14.14 |
| TUCS 3 rd Quartile | 7.37 | (5.97) | 13.40 |
| Fund's Total Equity Return | 9.46 | (4.42) | 13.81 |

Pension Fund's Fourth Quarter Fixed Income Return

| | <u>4th Quarter Ended</u> <u>Dec. 31, 2011</u> | <u>One Year Period Ended</u> <u>Dec. 31, 2011</u> | <u>Three Year Period Ended</u> <u>Dec. 31, 2011</u> |
|-------------------------------------|--|--|--|
| TUCS 1 st Quartile | 2.70 | 14.92 | 13.38 |
| TUCS Median | 2.00 | 8.83 | 10.70 |
| TUCS 3 rd Quartile | 1.77 | 6.98 | 9.14 |
| Fund's Fixed Income Return | 1.97 | 7.06 | 9.13 |

The Fund's named fiduciary, The Northern Trust Company of Connecticut ("Northern Trust")², 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) for the third and fourth quarters of 2011:

Northern Trust - Third Quarter

| | <u>Year-to-Date as of</u> <u>Sept. 30, 2011</u> | <u>3rd Quarter</u> <u>2011</u> | <u>July</u> <u>2011</u> | <u>Aug.</u> <u>2011</u> | <u>Sept.</u> <u>2011</u> |
|--|--|-----------------------------------|----------------------------|----------------------------|-----------------------------|
| Northern Trust's Composite Return | (10.64) | (15.51) | (1.36) | (6.59) | (8.30) |
| Benchmark Composite Return | (9.71) | (14.46) | (1.43) | (5.92) | (7.76) |
| Northern Trust's Total Fixed Income Return | 1.58 | (1.83) | 1.32 | (1.70) | (1.42) |
| Benchmark Fixed Income Return | 1.62 | (1.49) | 1.29 | (1.33) | (1.44) |

Northern Trust's third quarter 2011 composite return included a (18.79)% return on U.S. equities ((17.37)% large cap and (19.98)% on small cap U.S. equities), (21.55)% on international equities and (16.10)% on real estate.

² Formerly known as Northern Trust Global Advisors, Inc.

Northern Trust - Fourth Quarter

| | <u>Year-to-Date as of</u> <u>Dec. 31, 2011</u> | <u>4th Quarter</u> <u>2011</u> | <u>Oct.</u> <u>2011</u> | <u>Nov.</u> <u>2011</u> | <u>Dec.</u> <u>2011</u> |
|--|---|-----------------------------------|----------------------------|----------------------------|----------------------------|
| Northern Trust's Composite Return | (3.63) | 7.85 | 10.25 | (2.17) | (0.01) |
| Benchmark Composite Return | (2.25) | 8.25 | 9.86 | (1.87) | 0.41 |
| Northern Trust's Total Fixed Income Return | 5.44 | 3.81 | 3.28 | (1.27) | 1.80 |
| Benchmark Fixed Income Return | 5.21 | 3.53 | 2.96 | (1.11) | 1.69 |

Northern Trust's fourth quarter 2011 composite return included a 11.16% return on U.S. equities (11.02% large cap and 12.27% on small cap U.S. equities), 3.37% on international equities and 14.53% on real estate.

The Fund's financial group reported the following asset allocations of the Pension Fund as a whole as of the dates indicated:

| <u>Date</u> | <u>Equity</u> | <u>Fixed Income</u> | <u>Other</u> | <u>Cash</u> |
|----------------|---------------|---------------------|--------------|-------------|
| Sept. 30, 2011 | 67% | 30% | 2% | 1% |
| Dec. 31, 2011 | 67% | 29% | 2% | 2% |

The financial group also reported that for the third and fourth quarters of 2011, and for the full year, the returns on the Fund's passive indexed accounts were as follows (showing percent returns on investment):

| <u>Account</u> | <u>3rd Quarter</u> <u>2011</u> | <u>4th Quarter</u> <u>2011</u> | <u>Calendar</u> <u>Year 2011</u> |
|---|--|--|-------------------------------------|
| Passive Indexed Equity (S&P 500) Income (25% of investment assets) | (13.85) | 11.82 | 2.15 |
| Passive Indexed Fixed-Income (20% of investment assets) | 3.80 | 1.09 | 7.68 |
| Passive EAFE Indexed (5% of investment assets) | (19.05) | 3.39 | (11.91) |

Financial Information - Net Assets

(Dollars shown in thousands and do not include year-end adjustments)

The financial reports prepared by Pension Fund Staff for the nine months ended September 30, 2011 and for the twelve month period ended December 31, 2011 (enclosed) show the following net asset positions as of the dates indicated:

| | <u>Dec. 31, 2010</u> | <u>Sept. 30, 2011</u> | <u>Dec. 31, 2011</u> |
|------------|----------------------|---|---|
| Net Assets | \$19,843,959 | \$16,968,323 (\$2,875,636 less than the 12/31/10 position) | \$17,668,396 (\$2,175,563 less than the 12/31/10 position) |

The \$2,875,636 decrease in net assets between December 31, 2010 and September 30, 2011 compared to a decrease of \$435,861 for the same nine month period in 2010. The \$2,439,775 difference is due to \$2,465,624 less investment income offset by \$25,849 less net operating loss.

The \$2,175,563 decrease in net assets between December 31, 2010 and December 31, 2011 compared to an increase of \$301,917 during the same twelve month period in 2010. The \$2,477,480 difference is due to \$2,573,308 less investment income offset by \$95,828 less net operating loss.

The enclosed Fund's Staff reports further note the following net asset changes from operations (before investment income) for the periods indicated:

| | <u>9 months ended Sept. 30, 2011</u> | <u>12 months ended Dec. 31, 2011</u> |
|---|--|--|
| Net asset change from operations (before investment income) | (\$1,625,741) | (\$2,124,432) |

The net asset decrease of \$1,625,741 from operations (before investment income) for the nine month period ended September 30, 2011, compared to a decrease of \$1,651,590 for the same period in 2010, or a \$25,849 favorable change. This change in net assets from operations (before investment income) was attributable to:

- a) \$41,912 more contributions primarily due to an increase in contribution rates,
- b) (\$16,165) more benefits paid and

- c) \$102 less general and administrative expenses.

The net asset decrease of \$2,124,432 from operations (before investment income) for the twelve month period ended December 31, 2011 compared to \$2,220,260 for the same period in 2010, or a \$95,828 favorable change. This change in net assets from operations (before investment income) was attributable to:

- a) \$114,695 more contributions primarily due to an increase in contribution rates and withdrawal liability income,
- b) (\$19,662) more benefits paid and
- c) \$795 less general and administrative expenses.

During the nine months ended September 30, 2011 and 2010, the Fund withdrew \$1,822,238 and \$1,672,107, respectively, from investment assets to fund the cash operating deficit.

During the twelve months ended December 31, 2011 and 2010, the Fund withdrew \$2,146,767 and \$2,223,134, respectively, from investment assets to fund the cash operating deficit.

Financial Information - Participant Population

The enclosed September 30 and December 31, 2011 reports prepared by Fund Staff further note the following changes in the full-time equivalent ("FTE") active and retiree participant populations during the periods indicated:

ACTIVE/FTE POPULATION

| | <u>August 2010</u> | <u>August 2011</u> |
|---------------------------|----------------------|-------------------------|
| Eight-month average FTEs | 57,795 | 60,264 (4.27% increase) |
| | <u>November 2010</u> | <u>November 2011</u> |
| Eleven-month average FTEs | 58,347 | 62,729 (7.51% increase) |

RETIREE POPULATION

| | <u>August 2010</u> | <u>August 2011</u> |
|----------------------------------|-----------------------------|-----------------------------|
| Eight-month average retirees | 214,305 | 213,892 (0.19% decrease) |
| | <u>November 2010</u> | <u>November 2011</u> |
| Eleven-month average retirees | 214,336 | 213,865 (0.22% decrease) |

Named Fiduciary

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

Staff has reported the total investment expenses (fiduciary, custodial, and investment management fees) for 2011 through the end of the third quarter were \$35,665,470, compared to \$43,958,789 for the same period in 2010. This represents an 18.9% decrease in investment expenses (a savings of \$8,293,319 for the first three quarters of 2011 and an annualized savings of over \$11 million). Fourth quarter results will be presented at the upcoming March 13, 2012 meeting.

Staff has noted that the decrease in investment expenses as of the end of the third quarter occurred despite the fact that the average net asset balances for the first 3 quarters of 2010 and 2011 were approximately the same. Staff attributed this decrease in investment expenses to the Fund's reversion to the single Named Fiduciary model as well as an increased allocation to indexed investment accounts (as opposed to accounts under active management by compensated investment managers, as authorized by the Court September 2010).

Hybrid Withdrawal Liability Method

Staff has reported that at the July 14, 2011 Board Meeting, the Trustees adopted - subject to approval by the Pension Benefit Guaranty Corporation ("PBGC") - an alternative withdrawal liability method.³ Under this method, new employers joining the Pension Fund

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

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 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.

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 \$102 million has been collected to date from Consolidated Freightways companies.

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

YRC

As previously reported by Frank McGarr, 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 agreed to defer payment of YRC's pension contribution obligations accrued during January, March, April and May of 2009; subsequently, unpaid contributions accrued during June and July 2009 were also covered by the Deferral Agreement, bringing the principal amount of the deferred contributions to approximately \$109 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 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 second lien collateral. The Deferral Agreement originally required repayment of the deferred contributions in 36 monthly installments commencing in January 2010. YRC was also scheduled under this Agreement to pay interest on the deferred contributions on a current basis commencing on July 15, 2009 and continuing on the 15th of each month thereafter.

However, in mid-2009 the Pension Fund's Staff and financial consultants reported that YRC was both unable and unwilling to meet its on-going pension contribution payment obligations beyond the Deferral Period, *i.e.*, contribution obligations accrued *after* May of

2009. As a result, at the Trustees' July 16, 2009 Meeting, the Board formalized action to *terminate* YRC's participation in the Pension Fund.

The Pension Fund's Staff also reported that in early July 2009, representatives of YRC and the Teamsters National Freight Negotiating Committee ("TNFNC") reached an agreement to amend YRC's then 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. 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, 2009 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.

On September 24, 2010, TNFNC 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 addition, as previously reported, in light of YRC's continuing financial distress and the willingness of the company's banks and other creditor groups to grant concessions so as to avoid a bankruptcy, during 2010 the Trustees approved a number of amendments to the CDA. These amendments resulted in further deferring commencement of the CDA payment schedule until June 2011.

In March of this year 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 is due), with the exception of monthly interest payments to commence later this year. The Trustees' agreement to this arrangement was contingent on YRC's completion of a planned debt restructuring under in which \$237 million in bond and bank debt owed by YRC would be eliminated by means of a debt-for-equity swap, and \$100 million in new financing would be provided to the company.

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. The Trustees then approved a Rehabilitation Plan Schedule (designated the "Distressed Employer Schedule") authorizing these benefit reductions.

The Pension Fund's Staff has also reported that on July 15, 2011, YRC made its initial monthly payment to the Pension Fund of approximately \$3.64 million for the company's resumed pension contribution obligation. Staff reports that YRC remains current with respect to its resumed monthly contribution payments.

In addition, Staff has reported that on July 22, 2011, YRC closed on agreements with its bank lenders and other creditors resulting in completion of the debt restructuring described above. As a result, the Fund's agreement to defer the entire CDA balance until March 2015 - except for monthly interest payments -- is now effective. Staff reports that that each monthly interest payment will be in the amount of approximately \$600,000, that the Fund received the first such payment on August 15, 2011, and that YRC remains current with respect to these monthly interest payments.

Finally, the Pension Fund's Staff has reported that YRC previously made interest payments to the Fund of approximately \$2.2 million through December 15, 2009 (when payments of interest were suspended under the revised repayment plans described above). In addition, Staff has reported that to date the Pension Fund has received approximately \$29.3 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 payments made to date, the unpaid principal and interest balance owed to the Pension Fund under the CDA by YRC is approximately \$89.5 million.

Hostess Brands, Inc.

At the September 14, 2011 Board Meeting, the Pension Fund's Staff reported that 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. The company indicated that it was experiencing cash flow difficulties; a report from the Fund's financial consultants has confirmed this assertion.

Hostess's pension contribution delinquency persisted in September and October, as the company failed to make any of the contribution payments that fell due during those months. Consequently, 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. Staff reports that these claims would likely prove to be largely uncollectible in a liquidation of Hostess, but that it is possible that a reorganized company will emerge from bankruptcy and resume contributions to the Pension Fund.

Health and Welfare Fund
Financial Information

(Dollars shown in thousands and do not include final
 year-end adjustments)

The Health and Welfare Fund's financial summary for the third and fourth quarters of 2011 are compared below with interim financial information for the same periods of 2010:

| | 3 rd Quarter Ended Sept. 30 | | 4 th Quarter Ended Dec. 31 | |
|----------------------|---|---------|--|---------|
| | 2011 | 2010 | 2011 | 2010 |
| Contributions | \$ 301,331 | 290,786 | 322,966 | 296,255 |
| Benefits | 277,301 | 246,510 | 270,204 | 222,473 |

| | | | | |
|---|-----------------|---------------|---------------|---------------|
| TeamCare administrative Expenses | 7,982 | 7,383 | 7,404 | 7,625 |
| General and administrative expenses | <u>9,373</u> | <u>8,921</u> | <u>9,286</u> | <u>9,906</u> |
| Net Operating income | 6,675 | 27,972 | 36,072 | 56,251 |
| Investment income (loss) | <u>(37,919)</u> | <u>57,662</u> | <u>54,811</u> | <u>28,566</u> |
| Increase (Decrease) in net assets | (31,244) | 85,634 | 90,883 | 84,817 |
| Net assets, end of period | 1,560,156 | 1,410,614 | 1,651,039 | 1,495,431 |
| Eight/Eleven-month average participants (FTEs) | 83,619 | 82,680 | 83,850 | 83,316 |

For the periods indicated below the Health and Welfare Fund enjoyed the following net asset increases from operations (before investment income):

| | <u>9 months ended Sept. 30, 2011</u> | <u>12 months ended Dec. 31, 2011</u> |
|---|--|--|
| Net asset increase from operations (before investment income) | \$59,206 | \$95,278 |

The \$59,206 increase in net assets from operations before investment income for the nine month period ended September 30, 2011 compared to an increase of \$56,759 for the same period in 2010, or a \$2,447 favorable change. This change resulted from:

- (a) \$40,482 more contributions due to an increase in contribution rates combined with an increase in FTEs,
- (b) (\$34,870) more benefits,
- (c) (\$1,573) more TeamCare administrative fees and
- (d) (\$1,592) more general and administrative expenses.

The \$95,278 increase in net assets from operations before investment income for the twelve month period ended December 31, 2011 compared

to an increase of \$113,010 for the same period in 2010, or a \$17,732 unfavorable change. This change resulted from:

- (a) \$67,193 more contributions due to an increase in contribution rates, an extra billing week in 2011 and an increase in FTEs,
- (b) (\$82,601) more benefits,
- (c) (\$1,352) more TeamCare administrative fees and
- (d) (\$972) more general and administrative expenses.

During the periods indicated below the Fund transferred the following amounts to investments (BNY Mellon) as the operations generated positive cash flows for those periods:

| | <u>9 months ended</u> <u>Sept. 30, 2010</u> | <u>9 months ended</u> <u>Sept. 30, 2011</u> | <u>12 months ended</u> <u>Dec. 31, 2010</u> | <u>12 months ended</u> <u>Dec. 31, 2011</u> |
|---------------------------|--|--|--|--|
| Transfer to BNY Mellon | \$65,434 | \$75,995 | \$110,353 | \$91,496 |

The enclosed reports entitled "Central States Funds Financial and Analytical Information" prepared by the Fund's financial group as of September 30 and December 31, 2011 show the investment asset allocation as 76% fixed income and 24% equity as of September 30, and 74% fixed income and 26% equity as of December 31.

These reports also note that the eight-month average number of Full-Time Equivalent (FTE) active memberships increased by 1.14% from August 2010 to August 2011 (going from 82,680 to 83,619). During that period, the average number of retirees covered by the Health and Welfare Fund decreased by 7.94% (from 12,298 to 11,321). The reports also show that the eleven-month average number of FTE active memberships increased by 0.64% from November 2010 to November 2011 (going from 83,316 to 83,850). During that period, the average number of retirees covered by the Health and Welfare Fund decreased by 8.18% (from 12,170 to 11,175).

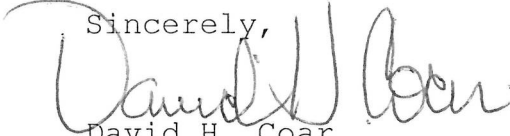
The Honorable Milton I. Shadur
May 21, 2012
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Article V(H)

As required by Article V(H) of the Health and Welfare Fund Consent Decree, the Health and Welfare Fund has paid during the third and fourth quarters of 2011 the following for professional services and expenses for the Independent Special Counsel:

| | |
|-----------|----------|
| July | \$ 0.00 |
| August | \$442.75 |
| September | \$ 0.00 |
| October | \$ 0.00 |
| November | \$ 0.00 |
| December | \$ 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. Michael A. Schloss (w/encl.) **Via UPS Next Day**
Mr. Thomas C. Nyhan