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

October 24, 2011

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, 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 second quarter of 2011 as Independent Special Counsel appointed pursuant to the Fitzsimmons (Pension Fund) and Robbins and Dorfman (Health and Welfare Fund) consent decrees. Although at my request you relieved me from my duties as Independent Special Counsel pursuant to an Order dated September 19, 2011, I am submitting this report because it relates to my tenure as Independent Special Counsel. I also plan to submit a report covering the third quarter of 2011. That will be my final report to you. As you know, the Pension and Health and Welfare Funds hope (with the agreement of the Secretary of Labor) to ask you to approve a successor Independent Special Counsel within the next few weeks.

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.

## Pension Fund

### Funding and PPA-Related Issues

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

To meet these IRS imposed conditions, the Board of Trustees determined based on actuarial and legal advice that the Pension Fund needed increased employer contributions. 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, 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 May 17, 2011 Board Meeting that as of that date, 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' May 17, 2011 Meeting, only 15 bargaining units, comprising a total of 379 active participants, have agreed to adopt the Rehabilitation Plan's Default Schedule (4% annual increases and elimination of PPA adjustable benefits). As of May 2011, approximately 9 bargaining units, comprising approximately 41 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 March 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 May 2011 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).

As previously reported, the PPA also contemplates that multiemployer plans in the critical zone will annually "update" their rehabilitation plans, which presumably includes annual consideration of changes to the rehabilitation plan schedules of contributions and benefits. As previously reported, at their December 2010 meeting the Board approved an updated Rehabilitation Plan. The major changes introduced by this 2010 update, as compared to the original Rehabilitation Plan adopted by the Trustees in 2008, are as follows:

- Effective on July 1, 2011, no new retirements will be permitted unless the participant has reached a minimum of age 57.

- Effective on July 1, 2011, participants who incur a loss of adjustable *(i.e.,* pre-age 65) benefits under the Default Schedule or as a result of a Rehabilitation Plan Withdrawal will have the reductions in their age 65 benefits calculated in accordance with an actuarial equivalence table, rather than pursuant to the formula used in the past, which provided for a reduction in the age 65 benefit of a flat 6% per year for each year prior to age 65.

The Trustees also concluded that under the present economic conditions, attempting to specify *additional* employer contribution rate increases (*i.e.*, beyond the rate increases specified in the 2008 Rehabilitation Plan) in the Rehabilitation Plan Schedules would risk irreparable harm to the financial condition of many of the Fund's contributing employers, and would therefore also imperil the Pension Fund and run counter to the PPA's funding improvement mandate. Moreover, the Trustees decided to establish a dollar limit on the contribution increases required by the Rehabilitation Plan. As of June 1, 2011, (1) with respect to the National Master Automobile Transporter Agreement, a contribution rate of $348 per week for each full-time employee is deemed to comply with the Rehabilitation Plan's Primary Schedule without the need for further contribution rate increases, and, (2) with respect to any other collective bargaining agreement (such as the National Master Freight Agreement), $342 per week sufficient to achieve Primary Schedule compliance.

The Trustees concluded that these 2010 changes to the Rehabilitation Plan were necessary to meet the PPA requirement that the Trustees take reasonable measures, in light of the Fund's experience, to improve pension funding. The Trustees continue to receive actuarial reports and other information relevant to their responsibility to update the Rehabilitation Plan each year.

Although it appears the Pension Fund has reported some progress in requiring 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. Since 2008 the Pension Fund has enjoyed a significant (but by no means complete) recovery of its 2008 investment losses. In addition, Staff has reported 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, p. 2). Staff has also reported that in 2009 the Pension Fund filed an application with the IRS requesting a waiver of the funding ratio targets established under the amortization extension, in view of the unexpected economic decline that has occurred; that application is still pending.

The Trustees have also directed Staff to continue to monitor and pursue additional regulatory or legislative initiatives that may assist 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 second quarter 2011 was 0.98%.

The Fund's financial group prepared for the Trustees a comparison of the Pension Fund's performance to the TUCS[1] universe results published for the second quarter of 2011. This comparison (showing percent returns on investment) is summarized in the following tables:

[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 Composite Return**

| | 2nd Quarter Ended June 30, 2011 | One Year Period Ending June 30, 2011 | Three Year Period Ending June 30, 2011 |
|---|---|---|---|
| TUCS 1st Quartile | 1.87 | 23.17 | 4.93 |
| TUCS Median | 1.52 | 21.28 | 3.90 |
| TUCS 3rd Quartile | 1.14 | 19.18 | 2.85 |
| Fund's Composite Return | 0.98 | 23.52 | 5.45 |

**Pension Fund's Total Equity Return**

| | 2nd Quarter Ended June 30, 2011 | One Year Period Ending June 30, 2011 | Three Year Period Ending June 30, 2011 |
|---|---|---|---|
| TUCS 1st Quartile | 0.49 | 32.11 | 3.71 |
| TUCS Median | 0.35 | 31.62 | 3.12 |
| TUCS 3rd Quartile | 0.21 | 30.80 | 2.63 |
| Fund's Total Equity Return | 0.32 | 30.58 | 3.35 |

**Pension Fund's Fixed Income Return**

| | 2nd Quarter Ended June 30, 2011 | One Year Period Ending June 30, 2011 | Three Year Period Ending June 30, 2011 |
|---|---|---|---|
| TUCS 1st Quartile | 2.85 | 7.55 | 9.35 |
| TUCS Median | 2.35 | 6.50 | 8.27 |
| TUCS 3rd Quartile | 2.07 | 4.95 | 7.70 |
| Fund's Fixed Income Return | 1.94 | 5.29 | 7.77 |

The Fund's named fiduciary (Northern Trust Global Advisors, Inc., which has been allocated 50% of the Fund's investment assets) submits monthly investment reports to the Trustees, summarized below (showing percent returns on investment):

**Northern Trust Global Advisors, Inc.**

| | Year-to-Date as of June 30, 2011 | 2nd Quarter 2011 | Apr. 2011 | May. 2011 | June 2011 |
|---|---|---|---|---|---|
| Northern Trust's Composite Return | 5.75 | 0.85 | 3.20 | (1.08) | (1.22) |
| Benchmark Composite Return | 5.56 | 0.67 | 3.24 | (0.96) | (1.54) |
| Northern Trust's Total Fixed Income Return | 3.47 | 1.14 | 1.25 | 0.44 | (0.55) |
| Benchmark Fixed Income Return | 3.16 | 1.39 | 1.16 | 0.76 | (0.52) |

Northern Trust's second quarter 2011 composite return included a 0.34% return on U.S. equities (0.22% large cap and (0.90)% on small cap U.S. equities), 0.35% on international equities and 3.97% on real estate.

The Fund's financial group reported asset allocation of the Pension Fund as a whole as of June 30, 2011 as follows: 66% equity, 31% fixed income, 2% other and 1% cash.

The financial group also reported that for the second quarter of 2011 the returns on the Fund's passive indexed accounts were as follows:

| Account | Second Quarter 2011 Return |
|---|---|
| Passive Indexed Equity (S&P 500) Income (25% of investment assets) | 0.00 |
| Passive Indexed Fixed-Income (20% of investment assets) | 2.29 |
| Passive EAFE Indexed (5% of investment assets) | 1.78 |

Financial Information - Net Assets
(Dollars shown in thousands)

The financial report prepared by Fund Staff for the six months ending June 30, 2011 (enclosed) shows net assets as of that date of $19,750,621, compared to $19,843,959 at December 31, 2010, a decrease of $93,338 compared to a decrease of $1,558,072 for the same period last year. The $1,464,734 difference is due to $1,449,419 more investment income combined with $15,315 less net operating loss.

The enclosed Fund's Staff report further notes that for the six months ended June 30, 2011, the Fund’s net asset decrease from operations (before investment income) was $1,095,266 compared to a decrease of $1,110,581 for the same period in 2010, or a $15,315 favorable change. This change in net assets from operations (before investment income) was attributable to:

a) $26,135 more contributions primarily due to an increase in contribution rates,

b) ($10,743) more benefits paid, and

c) ($77) more general and administrative expenses.

During the six months ended June 30, 2011 and 2010, the Fund withdrew $1,109,685 and $1,103,358, respectively, from investment assets to fund the cash operating deficit.

Financial Information - Participant Population

The enclosed June 30, 2011 report prepared by Fund Staff further notes that the five-month average number of Full-Time Equivalent (FTE) memberships decreased 2.93% from May 2010 to May 2011 (going from 56,674 to 55,014). During that period, the average number of retirees decreased 0.10% (from 214,222 to 214,005).

Named Fiduciary

Officers of the Named Fiduciary, Northern Trust Global Advisors, Inc. met with the Board of Trustees during this quarter to discuss portfolio matters including asset allocation.

Staff reported at the September 14, 2011, 2011 meeting of the Board of Trustees that total investment expenses (fiduciary, custodial, and investment management fees) for 2011 through the end of the second quarter were $25,195,594, compared to $29,771,276 for the same period in 2010. This represents a 15.4% decrease in investment expenses (a savings of $4,575,682 for the first two quarters of 2011 and an annualized savings of over $9 million). Staff has noted that this decrease in investment expenses occurred despite an *increase* in the average net asset balance of approximately $1 billion (or 5.3%) from the second quarter of 2010 to the second quarter of 2011. 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 during 2010.

**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.

**YRC**

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

As also previously reported, in May 2009 the Funds entered a Contribution Deferral Agreement ("CDA" or "Deferral Agreement") with YRC. Under the Deferral Agreement, the Pension Fund 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 authorizing these benefit reductions.

The Pension Fund's Staff has also reported that on July 15, 2011, YRC made a timely payment to the Pension Fund of approximately $3.64 million for the company's June 2011 pension contribution obligation.

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 and that the Fund received the first such payment on August 15, 2011.

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 $26 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 these payments made to date, the unpaid principal and interest balance owed to the Pension Fund under the CDA by YRC is approximately $93.5 million.

**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 second quarter of 2011 is compared below with interim financial information for the same period of 2010:

| | 2nd Quarter Ended June 30, 2011 | 2010 |
|---|---|---|
| **Contributions** | $291,711 | 277,083 |
| **Benefits** | 255,233 | 249,656 |
| **TeamCare administrative expenses** | 7,954 | 7,171 |
| **General and administrative expenses** | 9,412 | 8,858 |
| **Net operating income** | 19,112 | 11,398 |
| **Investment income (loss)** | 18,464 | (21,490) |
| **Increase (Decrease) in net assets** | 37,576 | (10,092) |
| **Net assets, end of period** | 1,591,400 | 1,324,980 |
| **Five-month average participants (FTEs)** | 83,071 | 81,711 |

For the six months ended June 30, 2011, the Health and Welfare Fund's net asset increase from operations (before investment income) was $52,531 compared to an increase of $28,787 for the same period in 2010, or a $23,744 favorable change:

(a) $29,937 more contributions due to an increase in contribution rates combined with an increase in FTEs,

(b) ($4,079) more benefits,

(c) ($974) more TeamCare administrative fees, and

(d) ($1,140) more general and administrative expenses.

During the six months ended June 30, 2011 and 2010, the Fund transferred $73,084 and $34,385, respectively, to investments (BNY Mellon) 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 June 30, 2011 shows the investment asset allocation as 75% fixed income and 25% equity.

This report also notes that the five-month average number of Full-Time Equivalent (FTE) memberships increased by 1.66% from May 2010 to May 2011 (going from 81,711 to 83,071). During that period, the average number of retirees covered by the Health and Welfare Fund decreased by 8.01% (from 12,413 to 11,419).

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 second quarter of 2011 the following for professional services and expenses for the Independent Special Counsel:

| | |
|---|---|
| April | $0 |
| May | $241.50 |
| June | $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

FRANK J. MCGARR,

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