

DAVID H. COAR, Esq.
Arbitration and Mediation

October 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 #2388
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 second quarter of 2012 as Independent Special Counsel appointed pursuant to the *Fitzsimmons* (Pension Fund) and *Robbins* and *Dorfman* (Health and Welfare Fund) consent decrees.

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

Board of Trustees Composition

As the Court is aware, an Employee Trustee vacancy was created when Fred Gegare resigned from his Trustee position for personal reasons on May 11, 2012. Pursuant to the Funds' Trustee Selection Procedures, in a ballot counting procedure that I witnessed on June 5, 2012, Marvin Kropp, of Teamsters Local 618 in St. Louis, Missouri, achieved the plurality of votes cast by the Central Trustee Selection Board required to fill the Employee Trustee vacancy. On August 31, 2012, this Court entered orders approving Mr. Kropp's appointment as Trustee for each of the Funds. Mr. Kropp was confirmed as a Trustee pursuant to the Trustee Selection Procedures at the September 12,

The Honorable Milton I. Shadur

October 21, 2012

Page 2

2012 Meeting of the Funds' Board of Trustees, at which he was in attendance. Mr. Kropp is serving a term that will expire on March 31, 2014.

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. Accordingly, at the November 8, 2005 meeting, the Board 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 Car Haul Agreements allocated to the Pension Fund all fringe benefit contribution increases which were scheduled for 2006 and 2007.

As explained in previous reports, the multi-employer 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

The Honorable Milton I. Shadur

October 21, 2012

Page 3

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 second quarter of 2012 that the vast majority of the Fund's active members were covered by collective bargaining agreements that have come into compliance with the Fund's Rehabilitation Plan. Almost all of the compliant employers and bargaining units have agreed to adopt the Rehabilitation Plan's Primary Schedule (generally requiring 7-8% annual contribution increases for five years and maintaining current benefit levels). As of May 1, 2012, the Pension Fund's Staff reported that there were only 22 bargaining units, comprising a total of 434 active participants, that were subject to the Default Schedule, either as a result of an agreement of the negotiating parties or by operation of law (due to their failure to agree to be bound by either Primary Schedule or the Default Schedule within 180 days of the expiration of the units' last collective bargaining agreement).

Contributing employers who have not agreed to be bound by one of the Schedules created by the Rehabilitation Plan are required under the PPA to pay a non-benefit bearing surcharge to the Fund on their contractual pension contribution obligation. Under the PPA, the surcharge was 5% of the pension contribution obligation during 2008, and was increased to 10% as of January 1, 2009. Staff has reported that as noted, most employers are in compliance with the Rehabilitation Plan and are *not* incurring surcharges, and, 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 Honorable Milton I. Shadur

October 21, 2012

Page 4

the surcharges are being pursued under the Fund's delinquent account collection procedures.

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

As previously reported, the PPA also contemplates that multi-employer plans in the critical zone will annually "update" their rehabilitation plans. 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.

As also indicated in my previous reports to you, 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. 12 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. 9-10 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 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. The Pension Fund's Staff has discussed the 2012 Rehabilitation Plan update process with the Trustees, and the Trustees plan to complete the 2012 update in Board Meetings later this year.

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, the Pension Fund ended the year 2011 with an investment return close to zero. As previously reported, during the first quarter of 2012, the Pension Fund enjoyed strong investment returns (with a composite return of 9.2% for that quarter), but during the second quarter 2012 (as reported in detail below) the Fund suffered a composite investment loss of 2.6%. Of course, 2012 has been marked by exceptional volatility in the U.S. and international markets, but the Fund's Staff advises that the third quarter investment returns will likely be more favorable and that as of mid-September 2012 the Pension Fund showed a 13% composite return on investments for the year.

In addition, as previously reported, Staff has indicated that, for plan year 2008, the Pension Fund was unable to satisfy the funding ratio targets that are a condition of the amortization extension granted to the Fund by the IRS in 2005 (described above, pp. 2-3); Staff reports that these funding ratio targets were satisfied for plan years 2009 and 2010, but it appears that the funding targets for the 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 second quarter 2012 was (2.60)%.

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 second quarter of 2012. This comparison (showing percent returns on investment) is summarized in the following tables:

Pension Fund's Composite Return

	<u>2nd Quarter Ended June 30, 2012</u>	<u>One Year Period Ended June 30, 2012</u>	<u>Three Year Period Ended June 30, 2012</u>
TUCS 1 st Quartile	0.24	4.98	13.29
TUCS Median	(1.29)	1.87	12.28
TUCS 3 rd Quartile	(1.81)	0.63	11.34
Fund's Composite Return	(2.60)	0.80	13.01

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 Total Equity Return

	<u>2nd Quarter Ended June 30, 2012</u>	<u>One Year Period Ended June 30, 2012</u>	<u>Three Year Period Ended June 30, 2012</u>
TUCS 1 st Quartile	(4.15)	(1.09)	15.23
TUCS Median	(4.83)	(3.79)	13.64
TUCS 3 rd Quartile	(5.42)	(5.09)	12.68
Fund's Total Equity Return	(5.02)	(3.02)	13.81

Pension Fund's Fixed Income Return

	<u>2nd Quarter Ended June 30, 2012</u>	<u>One Year Period Ended June 30, 2012</u>	<u>Three Year Period Ended June 30, 2012</u>
TUCS 1 st Quartile	4.79	16.88	14.65
TUCS Median	2.56	8.37	10.58
TUCS 3 rd Quartile	2.01	7.11	8.60
Fund's Fixed Income Return	2.01	7.48	8.42

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):

² Formerly known as Northern Trust Global Advisors, Inc.

Northern Trust

	<u>Year-to-Date as of June 30, 2012</u>	<u>2nd Quarter 2012</u>	<u>April 2012</u>	<u>May 2012</u>	<u>June 2012</u>
Northern Trust's Composite Return	6.64	(4.26)	(0.56)	(6.71)	3.20
Benchmark Composite Return	6.73	(3.17)	(0.46)	(6.25)	3.76
Northern Trust's Total Fixed Income Return	5.22	2.07	1.18	(0.26)	1.14
Benchmark Fixed Income Return	4.49	1.80	0.98	(0.20)	1.01

Northern Trust's second quarter 2012 composite return included a (5.42)% return on U.S. equities ((5.83)% large cap and (3.19)% on small cap U.S. equities), (7.73)% on international equities and 2.51% on real estate.

The Fund's financial group reported the following asset allocation of the Pension Fund as a whole as of June 30, 2012 as follows: 68% equity, 29% fixed income, 2% other and 1% cash.

The financial group also reported that for the second quarter of 2012 the returns on the Fund's passive indexed accounts were as follows (showing percent returns on investment):

<u>Account</u>	<u>Second Quarter 2012 Return</u>
Passive Indexed Equity (S&P 500) (25% of investment assets)	(2.82)
Passive Indexed Fixed Income (20% of investment assets)	2.00
Passive EAFE Indexed (5% of investment assets)	(6.96)

Financial Information - Net Assets
 (Dollars shown in thousands)

The financial reports prepared by Pension Fund Staff for the six months ended June 30, 2012 (enclosed) shows net assets as of that date of \$17,650,118, compared to \$17,649,875 at December 31, 2011, an increase of \$243 compared to a decrease of \$93,338 for the same

The Honorable Milton I. Shadur

October 21, 2012

Page 9

period last year. The \$93,581 difference is due to \$90,095 more investment income combined with \$3,486 less net operating loss.

The enclosed Fund's Staff report further notes that for the six months ended June 2012, the Fund's net asset decrease from operations (before investment income) was \$1,091,780 compared to a decrease of \$1,095,266 for the same period in 2011, or a \$3,486 favorable change. This change in net assets from operations (before investment income) was attributable to:

- a) \$4,133 more contributions,
- b) (\$1,094) more benefits and
- c) \$447 less general and administrative expenses.

During the six months ended June 2012 and 2011, the Fund withdrew \$1,232,733 and \$1,109,685, respectively, from investment assets to fund the cash operating deficit.

Financial Information - Participant Population

The enclosed June 30, 2012 report prepared by Fund Staff further notes that the five-month average number of Full-Time Equivalent ("FTE") memberships increased 16.33% from May 2011 to May 2012 (going from 55,152 to 64,157). During that period, the average number of retirees decreased 0.47% (from 214,005 to 212,996).

Named Fiduciary

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

Staff reported at the September 12, 2012 Board Meeting that total investment expenses (fiduciary, custodial, and investment management fees) through the second quarter of 2012 were \$22,551,289, compared to \$25,181,172 through the second quarter of 2011, a 10.4% decrease in investment expenses.

Hybrid Withdrawal Liability Method

As indicated in my prior reports, Staff has indicated 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 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 upon bargaining units associated with withdrawn employers, pursuant to the Fund's Rehabilitation Plan,, 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.

Staff reports that there are currently 17 old employers who have satisfied their existing liability and qualified as new employers

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

under the hybrid plan, or have made commitments to do so. This has resulted in the payment of approximately \$20 million in withdrawal liability to the Pension Fund (plus commitments to pay another \$4 million) while the employers in question also continue to contribute to the Fund pursuant to their collective bargaining agreements at guaranteed participation levels.

Bankruptcies and Litigation

The 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 \$111 million has been collected to date from Consolidated Freightways companies. The Consolidated Freightways bankruptcy has now been closed and the Funds' Staff reports that no further collections are anticipated in that matter.

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, 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 multi-employer 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 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 is currently in the amount of approximately \$550,000, that the Fund received the first such payment on August 15, 2011, and that YRC remains current with respect to these monthly interest payments. Staff also reports that during 2009 - prior to the period during which interest payments were temporarily suspended pursuant to the CDA amendments described above - the Fund received approximately \$2 million in interest payments.

In addition, Staff has reported that to date the Pension Fund has received approximately \$34 million as its share of the net proceeds from sales of collateralized assets as a pre-payment under the CDA. Staff reports that after accounting for all principal and interest payments made to date, the unpaid balance owed to the Pension Fund under the CDA by YRC is approximately \$85 million. Staff also notes that in May 2012 the Fund received a payment of approximately \$110,000 under the CDA which is expressly denominated as a fee calculated under that Agreement as percentage of a refinancing charge paid by YRC to its commercial lenders; this fee is not to be applied to reduce either principal or interest owed by the company to the Fund.

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.

The Pension Fund's Staff reports that on May 14, 2012, the bankruptcy court denied Hostess's motion to reject its collective bargaining agreements, while also expressing the view that the company was not acting unreasonably in rejecting the Union's most

recent proposal for renewed participation in the Pension Fund. However, the Pension Fund's Staff reports that the bankrupt employer has reached an agreement with Teamster bargaining representatives to resume contributions to the Pension Fund in January 2015 at rates substantially below those at which Hostess previously contributed to the Pension Fund. This agreement has now been reported as ratified by majority vote of Hostess's Teamster employees. Therefore, in upcoming meetings, the Pension Fund's Trustees must now decide whether to accept Hostess's resumption of participation in the Fund on the terms proposed. However, the Fund's Staff has also reported that the Hostess employees who belong to the Bakery, Confectionery, Tobacco Workers and Grain Millers International Union have voted to reject a proposed collective bargaining agreement comparable to the one proposed to Hostess's Teamster employees. The ultimate impact of the Bakery Union's rejection is unclear at this time, but this development will likely at a minimum lead to further negotiations or bankruptcy court litigation, and thus delay Hostess's exit from bankruptcy.

Health and Welfare Fund
Financial Information

(Dollars shown in thousands)

The Health and Welfare Fund's financial summary for the second quarter of 2012 is compared below with interim financial information for the same period of 2011:

	<u>2nd Quarter Ended June 30,</u>	
	<u>2012</u>	<u>2011</u>
Contributions	\$ 304,695	291,711
Benefits	271,319	255,233
TeamCare administrative expenses	7,440	7,954
General and administrative expenses	<u>9,383</u>	<u>9,412</u>
Net operating income	16,553	19,112
Investment income (loss)	<u>638</u>	<u>18,464</u>

Increase in net assets	17,191	37,576
Net assets, end of period	\$ 1,719,044	1,591,400
Five-month average participants (FTEs)	82,561	83,214

For the six months ended June 2012, the Health and Welfare Fund's net asset increase from operations (before investment income) was \$18,739 compared to an increase of \$52,531 for the same period in 2011, or a \$33,792 unfavorable change:

- (a) \$22,216 more contributions,
- (b) (\$55,958) more benefits,
- (c) \$224 less TeamCare administrative fees and
- (d) (\$274) more general and administrative expenses.

During the six months ended June 2012 and 2011, the Fund transferred \$24,825 and \$73,084, 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, 2012 shows the investment asset allocation as 74% fixed income and 26% equity.

This report also notes that the five-month average number of Full-Time Equivalent (FTE) memberships decreased by 0.78% from May 2011 to May 2012 (going from 83,214 to 82,561). During that period, the average number of retirees covered by the Health and Welfare Fund decreased by 11.55% (from 11,417 to 10,098).

The Honorable Milton I. Shadur
October 21, 2012
Page 17

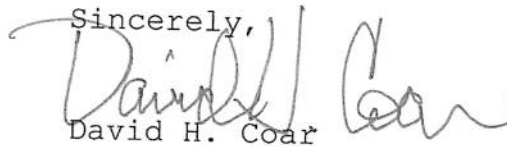
Article V(H)

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 2012 the following for professional services and expenses for the Independent Special Counsel:

April	\$ 0.00
May	\$ 0.00
June	\$ 0.00

I am happy 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