

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

**April 18, 2018**

**Via UPS Next Day**

The Honorable Thomas Durkin  
United States District Judge  
United States District Court  
Northern District of Illinois  
Eastern Division  
219 South Dearborn Street Room 1446  
Chicago, Illinois 60604

Re: Quarterly Report of Independent Special Counsel, *Acosta v. Estate of Frank E. Fitzsimmons, et al.*, No. 78 C 342 (N.D. Ill., E.D.); *Acosta v. Robbins, et al.*, No. 78 C 4075 (N.D. Ill., E.D.); and *Acosta v. Dorfman, et al.*, No. 82 C 7951 (N.D. Ill., E.D.)

Dear Judge Durkin:

This letter comprises my report on activities at the Central States Funds during the Fourth Quarter of 2017. I have attended meetings of the Full Board of Trustees of the Central States Funds, as well as certain Trustee Subcommittee meetings during the period covered by this report.

**Office Space**

As explained in my prior reports the Funds' Staff has reported that the Funds' existing lease at their office at 9377 West Higgins Road in Rosemont, Illinois will expire at the end of 2019. The Funds have approximately 650 full-time employees at their offices near the Chicago O'Hare Airport in Rosemont, and the Funds occupy approximately 175,000 square feet of office space at that location.

In anticipation of the expiration of the lease, the Funds' Staff has, over the course of the last three years, been consulting with Jones Lang LaSalle, a Chicago-based real estate broker and consultant, and with the Whitney Architects firm. At the March and May 2017 Board of Trustees Meetings Jones, Lang LaSalle reviewed all potential options in the Chicago O'Hare Airport submarket with respect to the Funds' future office space requirements, including a lease renewal at the Funds' current address, the negotiation of a lease at another location, and the purchase and/or development (for either purchase or lease) of an office building. The Trustees then authorized Staff to execute a letter of intent and related documents with Glenstar, a commercial real estate developer, for the construction and purchase by the Health

and Welfare Fund of a new "Class B" office building located at 8647 West Higgins Road not far from the Funds' existing offices and in proximity to the Chicago O'Hare International Airport. The Trustees concluded, on the basis of the advice received from their expert consultants, that this arrangement is the most economical and efficient solution to the Funds' office space requirements in comparison to other possible options, including a renewal of the lease on the building at the 9377 West Higgins building currently occupied by the Funds. Nearly all the employees of the Health and Welfare Fund are also employed by the Pension Fund, and under the plan approved by the Trustees, the Health and Welfare Fund will lease space in the new building to the Pension Fund, with the terms of the lease between the two Funds to be established by an independent consultant with knowledge of commercial real estate values in the O'Hare submarket.

In addition, at the May 2017 Board Meeting the Trustees received and considered written opinions and oral presentations from representatives of the Groom Law Group. The Groom lawyers concluded that the contemplated real estate transactions would be in compliance with all applicable ERISA requirements, including the ERISA obligations to act prudently with respect to the assets of the Fund, to minimize administrative expenses as much as reasonably possible and to avoid non-exempt prohibited transactions.

On October 17, 2017 the Health and Welfare Fund closed on the purchase of the property located at 8647 Higgins Road, and construction of the new building began on November 8, 2017.

Over the course of the last five months the Department of Labor has requested, and the Central States Funds have provided, various documents relating to these real estate transactions and the Health and Welfare Fund's decision to pursue the 8647 W. Higgins Road option. On October 13, 2017 I also attended a meeting between the Department of Labor and representatives of the Central States Funds held at Labor's offices in Washington, D.C. to review the current status of the real estate / office space issues.

Since the October 13, 2017 meeting, the Funds' Staff reports that the Department of Labor made a request for certain documents relating to work performed by the real estate counsel who have assisted the Health and Welfare Fund with regard to the transactions described above. These documents were provided to the Department of Labor in early November 2017. On February 28, 2018, Labor made a request for additional documents relating to the office space / real estate issue. Staff advises that those documents are being collected and will be produced.

### **Pension Fund**

#### **PPA-Related Issues**

As explained in previous reports, the multiemployer plan funding rules of the Pension Protection Act of 2006 ("PPA") became effective on January 1, 2008. On March 24, 2008, the Fund's actuary certified the Fund to be in "critical status" under the PPA for the 2008 plan year; the actuary has made the same certification with respect to subsequent plan years, except that in March 2015, the actuary certified the Fund to be in the new category of "critical and declining" created by the Multiemployer Pension Reform Act of 2014 (MPRA, discussed

below). As a result of the initial critical status certification, the Trustees adopted a "rehabilitation plan" as the PPA requires for critical status plans. In broad outline, the Rehabilitation Plan approved by the Trustees contains a "Primary Schedule," which requires each contributing employer to agree to five years of 8% annual contribution increases (7% if the increases began in 2006) in order to maintain current benefit levels for the affected bargaining unit. The PPA also requires that a rehabilitation plan contain a "Default Schedule" which must provide for the reduction in what the PPA terms "adjustable benefits"; the Fund's Rehabilitation Plan mandates 4% annual contribution rate increases with respect to the Default Schedule. ("Adjustable benefits" under the PPA generally include all benefits other than a contribution-based retirement benefits payable at age 65.) The PPA also provides that if the bargaining parties have not chosen any of the schedules established by a Rehabilitation Plan (*i.e.*, the Primary or Default Schedule) within 180 days following the expiration of the parties' labor agreement that was in effect when the rehabilitation plan was adopted, the Default Schedule will be imposed as a matter of law. MPRA added a provision dealing with the expiration of a collective bargaining agreement that was *not* in effect at the time of adoption of a rehabilitation plan. In that case a failure to adopt a schedule compliant with the rehabilitation plan within 180 days after the collective bargaining agreement has expired results in the implementation of the schedule that controlled under the most recently expired agreement. In addition, the Rehabilitation Plan adopted by the Trustees in 2008 provides that that the members of bargaining units who agree to a withdrawal from the Pension Fund, or otherwise acquiesce or participate in a withdrawal -- an event termed a "Rehabilitation Plan Withdrawal" - - also incur a loss of their adjustable benefits.

As explained in my prior reports, the PPA and MPRA require the Trustees to consider annual updates to the Rehabilitation Plan. During the November 2017 Rehabilitation Plan update process, the Trustees concluded that any further or additional modifications in the existing Rehabilitation Plan Schedules (*i.e.*, beyond the Schedules described in prior reports and those benefit modifications and contribution rate requirements that the Trustees previously approved) 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 and declines in active participation.

However, in the November 2017 Rehabilitation Plan update process, the Trustees approved continued implementation of all prior provisions and modifications of the Rehabilitation Plans including, (i) the Distressed Employer Schedule (which the Trustees believe accommodates the special circumstances presented by YRC, Inc. in a manner that was actuarially favorable to the Fund; *see* p. 16 below), (ii) the hybrid withdrawal liability method (pp. 14 – 15 below), and (iii) the benefit modifications, contribution rate increases and other features of the Rehabilitation Plan that have been previously adopted (*e.g.*, effective as of June 1, 2011, the Trustees raised the minimum retirement age to 57, in November 2016 they added a schedule designed to encourage the continued participation of "hybrid" method / New Employers and in March 2017 they added a schedule designed to encourage the continued participation of certain bargaining units that have experienced wage freezes due to the Rehabilitation Plan requirements for pension contribution increases).

Although it appears the Pension Fund has reported some progress in securing increased employer contributions and in adjusting benefits as required of "critical and declining



status” plans under the PPA and MPRA, the Fund suffered serious investment losses in the general stock market and economic downturn that commenced in 2008 (and before that, in the 2002 – 2003 market decline). In more recent years, the Fund has enjoyed significant investment gains. For example, the Fund enjoyed a composite rate of return of 12.7% for calendar year 2017, and a return of 2.42% for the fourth quarter of 2017. Nevertheless, the asset level as of December 31, 2017 of \$15.0 billion is approximately \$12 billion below the value of assets held by the Fund shortly before the commencement of the world wide stock market collapse in 2008. But the Fund’s Staff reports that the continuing downward pressure on the Fund’s assets is largely due to the Fund’s current annual operating deficit of more than \$2 billion per year -- meaning that in recent years the Fund has paid out more than \$2 billion each year *more* in benefits than it has collected in contributions from employers.

#### Funding Issues Confronting Multiemployer Plans

According to the Pension Benefit Guarantee Corporation’s (“PBGC”) fiscal year 2017 Projections Report (published on November 15, 2017), it is more likely than not that the PBGC multiemployer guaranteed program will run out of money by the end of 2025. This means that the PBGC will have no financial resources to pay benefits to the Pension Fund participants if, as projected, the Fund also becomes insolvent at approximately the same time as the PBGC.

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

Staff has also noted that (including the Central States Pension Fund) four of the five largest Teamster multiemployer plans are currently in “critical and declining” status under the Multiemployer Pension Reform Act of 2014 (“MPRA”) and are projected to become insolvent.

#### Current Legislative Proposals

The Pension Fund’s Staff has briefed the Board of Trustees on recent legislative proposals intended to avoid the projected insolvency facing the Pension Fund and other multiemployer plans. Only one of these proposals has been “dropped” as a formal bill in the legislative process but various Senators, Congresspersons and their staffs have received briefings concerning all of them:

1. *UPS Proposal*. Because of certain pension guarantees and promises of indemnity that UPS has provided to its Teamster workforce, the company has an interest in pension legislation that will permit the Central States Pension Fund, as well as other multiemployer plans, to avoid insolvency. UPS has proposed federal legislation involving low interest government loans for troubled multiemployer plans, along with 20% reductions in pension

benefits for all multiemployer plan participants and beneficiaries in those plans; the UPS proposal also calls for the creation of a risk reserve pool funded by unions, employers and participants to ensure repayment of the loans. The Pension Fund's actuary has modeled the UPS proposal and determined that it would likely allow the Fund to avoid its currently projected insolvency.

2. *S.2147 / H.R. 4444 -- Butch Lewis Act of 2017.* The proposal described in my prior report and advanced by Senator Sherrod Brown (Dem., Ohio) has now been introduced in the Senate as S.2147 and in the House of Representatives as H.R.4444 and entitled The Butch Lewis Act of 2017. This proposal involves federally guaranteed loans and federal subsidies to troubled multiemployer plans to allow the plans to pay the pensions of current retirees, with no requirement for pension reductions. Based on modeling of this proposed legislation prepared to date by the Pension Fund's actuaries, the proposed Butch Lewis Act would require federal loans to the Fund in the range of \$11 billion to \$15 billion to be repaid at the end of a thirty-year period. But the models indicate that the Fund would be unable to repay the loans and would require the federal subsidies ranging from \$20 billion to \$25 billion in order to repay the loans and to avoid insolvency. Under the proposed Butch Lewis Act these federal subsidies would be administered to the Pension Fund by the PBGC and the Fund would not be required to repay these subsidies.
3. On February 8, 2018, as part of the federal budget legislation, Congress established a Joint Select Committee on Multiemployer Pension Plans (the "Joint Committee"). The Joint Committee's goal is to develop a bipartisan legislative solution for distressed multiemployer pension funds like the Central States Pension Fund. The Joint Committee, which consists of eight members from the House and eight from the Senate, split evenly between Republicans and Democrats, has been tasked with the responsibility to produce a proposed legislative fix no later than November 30, 2018. The Pension Fund believes that the establishment of the Joint Committee is a crucial step towards a legislative solution for the nationwide multiemployer pension plan funding problem. Staff advises that there are more than 200 pension plans covering 1.5 million Americans that are projected to fail; many -- like the Central States Pension Fund -- within the next 10 years. The Pension Fund's Staff advises that because of the importance of this Joint Committee and the urgent need for a legislative solution, the Fund is in the early stages of creating a "Congressional Outreach Campaign" that will engage the Pension Fund's participants, Local Unions and Employers to contact Congress and the White House on this crucial issue.

### Asset Allocation

As indicated in my previous reports, during the December 2016 Pension Fund Trustee Subcommittee Meeting, the Fund's Named Fiduciary, Northern Trust Investment, Inc. ("Northern Trust")<sup>1</sup>, discussed an asset allocation plan which is designed to address the Fund's projected insolvency in the year 2025. Northern Trust indicated that the intent of its allocation

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<sup>1</sup> Formerly known as Northern Trust Company of Connecticut, which was in turn formerly known as Northern Trust Global Advisors, Inc.

plan is to forestall the projected insolvency to the extent reasonably possible, with an emphasis on additional measures designed to protect the Fund's assets from market downturns. Northern Trust noted that asset protection has become especially important because under current projections there is a substantial risk that the Fund's assets would not have sufficient time to recover from any sharp market downturn prior to the Fund's projected insolvency. Therefore, Northern Trust's plan entails a gradually increased allocation of the Fund's assets to fixed income investments. Although this is largely an investment matter that the Consent Decree has placed under the exclusive control of the Named Fiduciary, the Pension Fund's Trustees and their financial advisor have indicated that they concur with Northern Trust's asset allocation plan. However, as the Court is aware, implementation of certain aspects of the allocation plan required review by the Department of Labor and approval by this Court. As a result, the Fund and Northern Trust engaged in consultations with the Department of Labor concerning the asset reallocation plan and filed motions with the Court requesting approval of the features of the plan for which Court approval is required; on June 5, 2017 the Court granted those motions. The most recent landmark in the Court-approved asset reallocation plan was the completion of "Stage 2" of the plan, which targeted an allocation on or before March 31, 2018 of 65.5% of the Fund's assets to intermediate fixed income securities, 33.5% to return-seeking assets, and the remaining 1% to cash or cash equivalents. The Fund's Staff reports that the Stage 2 allocation target has been met.

#### Campbell Litigation

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

On May 13, 2016, the *Campbell* plaintiffs filed a motion for a preliminary injunction requesting, along with other relief, the appointment of an independent fiduciary to consider the Kroger proposal relating to that company's planned withdrawal from the Pension Fund, and presumably to negotiate with Kroger on behalf of the Fund concerning the terms of Kroger's planned withdrawal. That motion was briefed and argued before Judge Zagel, who denied the motion on June 30, 2016 on the grounds that (1) the plaintiffs had not shown a probability of success on the merits (2) they had requested a form of final, irrevocable relief in their preliminary injunction motion, and (3) they had failed to show irreparable harm.

The Pension Fund contends that the allegations in *Campbell* are baseless. The Pension Fund's Staff also reports that the action is being controlled and funded by Kroger pursuant to an agreement with the International Brotherhood of Teamsters (or its affiliates) in an effort to gain leverage in negotiations with the Fund. In any event, the Fund's Staff reports that it has provided the actuarial data requested by Kroger in order to permit the company to analyze various settlement alternatives. In addition, Staff reports that it presented a counter - proposal to Kroger on July 15, 2016 and met with Kroger representatives on July 18, 2016 to discuss



that proposal. Staff also reports that Kroger rejected the Fund's proposal at the July 18<sup>th</sup> meeting, and did not offer a counter - proposal at the time of the meeting. However, Staff reports that on October 21, 2016 Kroger did submit a counter-offer to the Fund's July 15, 2016 proposal, and that on November 4, 2016 the Fund submitted a further revised offer to Kroger. Kroger made no response to this proposal.

On October 27, 2016 the *Campbell* case was reassigned from Judge Zagel to Judge Edmond Chang. On June 30, 2017 Judge Chang granted in substantial part the Pension Fund's motion for a protective order that sought to limit discovery to the administrative record that was before the Trustees when they made their decisions concerning Kroger's withdrawal liability settlement proposals. Judge Chang also held in his June 30 ruling that the Trustees' decisions concerning the Kroger proposals should be reviewed by the Court under the deferential "arbitrary and capricious" standard.

On October 16, 2017 the *Campbell* plaintiffs filed a motion for leave to file an amended complaint alleging that the Pension Fund's Trustees have committed fiduciary breaches not only with regard to their responses to the Kroger proposals that occurred prior to the filing of the original complaint in April 2016 but also with regard to the handling of the more recent negotiations with Kroger. The Pension Fund defendants opposed the filing of the amended complaint, or in the alternative sought dismissal of that pleading.

However, in December 2017 Kroger and one of its contractors, Southstar LLC ("Southstar"), incurred complete withdrawals from the Pension Fund. Soon thereafter, Kroger's legal counsel approached the Pension Fund's Staff and expressed an interest in settling the withdrawal liability of both Kroger and Southstar by means of a lump sum payment. Kroger's counsel explained that it was important to close a lump sum deal by February 2, 2018 in order for Kroger to claim a tax write-off of the settlement payment in its then current fiscal year.

The Fund's Staff reports that negotiations with Kroger then ensued throughout most of January 2018, and culminated in a special telephonic Board Meeting on January 31, 2018. During that Board Meeting the Trustees approved a settlement that netted \$467 million in cash for the Pension Fund. This payment resolved the liability of Kroger and Southstar for their complete withdrawals from the Pension Fund, as well as the Fund's claims for certain additional amounts of pension contributions (totaling approximately \$1.4 million) that the Fund believed were due as a result of recent audits performed on the operations of these employers. In addition, Staff advises that \$1 million of the settlement payment to the Fund was attributable to the Fund's claim that Kroger should be liable for the attorney fees the Fund has expended to date in the *Campbell* case because Kroger provided the funding for the prosecution of that case -- litigation which the Fund asserts is frivolous and meant to harass the Fund's Trustees and to gain an unwarranted tactical advantage for Kroger in its negotiations with the Fund. In addition, as part of the settlement Kroger has agreed to stop funding the *Campbell* case after its current commitment to provide an additional \$255,000 to defray costs and attorney fees incurred by the plaintiffs in that case is exhausted.

The face amount of the Kroger withdrawal liability assessment was approximately \$1.03 billion, and the face amount of the Southstar assessment was approximately \$113 million. However, the Fund's Staff reports that both of these assessments are subject to the twenty-

year statutory cap on withdrawal payment schedules (see ERISA § 4219). Staff also reports that one of the principal issues in the negotiations with Kroger concerned the discount rate to be applied in determining the present value of the twenty-year payment schedules. Staff has indicated that this issue is highly dependent on the specific facts of each case, including the credit worthiness of the employer (and thus the employer's practical ability to secure financing on favorable terms that will permit it to pay the Pension Fund in a lump sum amount), the absolute amount of the lump sum being offered by the employer, and the Fund's own assumed rate of return on investments.

Staff reports that Kroger also raised issues relating to the calculation of the withdrawal liability installment payment amounts, and that these are unresolved legal questions for which there is no legal authority or guidance. Staff also indicates that it conceded for purposes of the settlement with Kroger that it faced litigation risk on these issues, but noted that even if the Fund were to ultimately prevail on these issues, the Fund's recovery would likely be increased by less than 10% of the total amount in dispute. Further, the Fund's Staff has indicated that if it were to be assumed for settlement purposes that the Fund has no chance of prevailing on the installment payment calculation issues raised by Kroger, the settlement amount of \$467 million (less approximately \$2.4 million attributable to the audit and attorney fee issues) represents the application of a present value discount rate of 4.31% per year to the Kroger and Southstar withdrawal liability payment schedules. Staff advises this is a present value discount rate that (1) approximates the interest rate that Kroger is presently paying on its long-term debt, (2) is well below the 5.5% assumed rate of return applicable to the amortization of the Fund's 2017 withdrawal liability assessments, and (3) adequately compensates the Fund for concessions made to Kroger during the negotiations on the installment payment amount issue.

It should also be noted that during the January 2018 negotiations the Pension Fund initially proposed that Kroger secure a dismissal with prejudice of the *Campbell* case as part of the withdrawal liability settlement. The Pension Fund proposed that this be accomplished by means of an offer from Kroger to the *Campbell* plaintiffs and the entire class of affected Kroger participants of complete or partial protection against any future loss or reduction in their Central States Pension Fund benefits. However, Staff advises that Kroger refused to negotiate with the *Campbell* plaintiffs on this point, and offered only the attorney fee payment of \$1 million and the limitation on Kroger's future financial support of the *Campbell* case discussed above.

For these reasons, the Fund's Staff recommended that the Trustees approve the Kroger/Southstar settlement proposal as a packaged, integrated deal in which all the terms discussed above had to be accepted by all parties. At the January 31, 2018 Meeting the Trustees adopted Staff's recommendation.

In light of the Kroger/Southstar settlement, on February 16, 2018, Judge Chang ruled in the course of a status conference that the *Campbell* plaintiffs' motion filed on October 16, 2017 for leave to file their First Amended Complaint is now moot and that motion is deemed terminated. However, on March 9, 2018, the *Campbell* plaintiffs filed a motion for leave to file new proposed Amended Complaint. The new Amended Complaint alleges that the Trustees breached their fiduciary duties by entering into the recently concluded Kroger settlement rather than accepting Kroger's prior liability transfer proposal. The Pension Fund defendants have



indicated that they will not oppose the filing of the new Amended Complaint, but they intend to move to dismiss certain allegations contained in that pleading and to move for summary judgment with regard to the remaining claims.

#### Government Accounting Office Review

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

As I previously reported, the Fund's Staff advises that on June 15, 2016, Staff met with representatives of the GAO in order to review the history and the background of the consent decree, including the various amendments to the consent decree that have been entered since that order was originally entered on September 22, 1982. The GAO also made inquiries during this meeting concerning the appointments of named fiduciaries and independent special counsels under the consent decree. Subsequently, the representatives of the GAO requested additional documentation from the Fund relating to the administration of the consent decree, investment procedures and investment performance and fees. Staff advises that all documents referenced in the GAO's requests have been produced.

On October 19, 2016, the GAO conducted a telephone interview with key Pension Fund Staff Members as a follow-up to the initial June 2016 meeting with Staff. The Pension Fund's Staff advises that the October 2016 telephonic interview focused on the reasons for (and consequences of) the Pension Fund's decline in active participation, the responses of the IRS and the DOL to the Fund's financial difficulties and efforts taken by the Fund (including the Named Fiduciaries and the Trustees) to improve or stabilize the Fund's financial condition. Staff also advises that the GAO interviewed the Fund's Employer Trustees on February 14, 2017, and interviewed the Employee Trustees on March 14, 2017. During March 2017 the GAO also conducted interviews of Northern Trust and of Professor John Heaton of the University Of Chicago Booth School Of Business, who has served as a financial advisor to the Board of Trustees. On July 10, 2017 the GAO conducted additional interviews of the Fund's Staff, Northern Trust and Professor Heaton.

The Fund's Staff best estimate at this time is that the GAO will release its reports at the end of the first quarter of 2018 or soon thereafter.

#### EBSA Review

On May 1, 2017 the Pension Fund received a request for review from the Chicago Office of the Department of Labor's Employee Benefit Security Administration ("EBSA"). This was essentially a request for documents focusing upon the bond trading activities of Logan Circle Square Partners, L.P., one of the asset managers retained by Northern Trust (as named fiduciary of the Fund). Staff advises that all requested documents and information have been provided to the EBSA. The agency has indicated that it does not require any further documents or information on this subject from the Fund at this time.

However, the Pension Fund's Staff has indicated that on August 2, 2017 EBSA representatives met with Northern Trust representatives to discuss the purchases by Logan Circle on behalf of the Pension Fund of bonds with a par value totaling approximately \$11.6 million issued by Caesar's Entertainment Corporation ("Caesar's"). Caesar's is a publicly traded company that owns and manages more than 50 casinos across the globe. Logan Circle began purchasing the Caesar's bonds in 2012, but in 2015 Caesar's filed a Chapter 11 bankruptcy; Caesar's emerged from bankruptcy, but the Pension Fund incurred a net loss of approximately \$570,000 on the Caesar's bonds. The EBSA representatives' interest in this matter was apparently prompted by the Las Vegas-centered and organized crime affiliated investment activities of the Pension Fund during 1960s or 1970s, and perhaps by a concern that Logan Circle's purchase of the Caesar's bonds signaled a return of corrupt influences over the Fund's investment activities -- which is one of the circumstances that led to the Department of Labor's filing of this litigation nearly forty years ago.

Northern Trust assured the EBSA representatives that Logan Circle was hired as a fixed income manager authorized to exercise its independent judgement within the fairly broad guidelines given to it for selecting investments, and that the Caesar's bonds which it purchased fell within those investment guidelines. No evidence has emerged that Northern Trust, the Pension Fund's Trustees or the Fund's Staff in any way, directly or indirectly, influenced Logan Circle's decision to invest in the Caesar's bonds.

The Fund's Staff reports that subsequent to EBSA's August 2, 2017 meeting with Northern Trust the only inquiry from the EBSA received by Northern Trust or the Fund's Staff on this matter was a March 1, 2018 telephone interview of Northern Trust personnel. During this interview EBSA representatives inquired concerning some communications that the Fund's Staff had with Northern Trust during 2016 asking about the history and status of Logan Circle's trades in the Caesar's bonds. Specifically, EBSA asked Northern Trust personnel if they understood why the Pension Fund would be interested in that matter and whether the Pension Fund had directed Logan Circle's acquisition of the Caesar's bonds or its subsequent disposition of those bonds. The Fund's Staff has indicated that Northern Trust explained to the EBSA that the communications from the Pension Fund concerning the Caesar's bonds occurred *after* Logan Circle had acquired the Caesar's bonds, and that the Fund's interest in the Caesar's bond trades appeared to be a function of the Fund's responsibility to monitor Northern Trust and the asset managers it retains. Northern Trust again stated that the Fund did not direct in any way Logan Circle's acquisition or sale of any of the Caesar's bonds.

#### Financial Information - Investment Returns

The Pension Fund's investment return for the fourth quarter of 2017 was 2.42%.

Shown below is a comparison of the Pension Fund's performance to a Composite Benchmark consisting of a composite of representative and weighted index returns for each

asset class held by the Fund. That is, the Composite Benchmark is formed from the cumulative index returns for each distinct class of assets held by the Fund on a dollar weighted basis.<sup>2</sup>

**Pension Fund's Composite (Percent) Return / 4<sup>th</sup> Quarter Ended December 31, 2017**

Fund's Return (All asset classes)	2.42
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Benchmark Composite Return (All asset classes)	2.41
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**Pension Fund's Total Equity (Percent) Return / 4<sup>th</sup> Quarter ended December 31, 2017**

Fund's Return (Total equity)	5.97
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Benchmark Composite Return (Total equity)	5.95
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**Pension Fund's Total Fixed Income (Percent) Return / 4<sup>th</sup> Quarter Ended December 31, 2017**

<sup>2</sup> For example, the Fund currently has 20% of its assets invested in a passive account that closely tracks the S&P 500 Index. The S&P 500 Index showed a return of 6.64% during the fourth quarter of 2017; therefore, the portion of the Composite Benchmark that is applicable to and accounts for the Fund's investment in the Passive S&P 500 Index Account is 0.90% (*i.e.*, 20% of assets x 6.64% return for the fourth quarter = 1.33%). Similar calculations are made for each asset class held by the Fund, and the cumulative result is the Composite Benchmark for the Fund's total assets. Composite Benchmarks for subclasses of the Fund's assets (*e.g.*, for total assets under the control of the Named Fiduciary) are derived using the same methodology.

The Fund formerly used the Trust Universe Comparison Service ("TUCS") to compare its performance to other pension plans. The TUCS Custom Large Funds Universe is composed of plans with assets exceeding \$3 billion. However, in light of the Pension Fund's projected insolvency and the specialized asset allocation plan proposed by the Named Fiduciary in light of that projection (as approved by the Court in its June 5, 2017 Order), TUCS seemed to provide a less suitable point of comparison for the Fund's performance; therefore the Composite Benchmark method of comparison will be used in the future.



Funds Fixed Income Return	(0.13)
Benchmark Composite Return (Total Fixed Income)	(0.12)

The Fund's Named Fiduciary, Northern Trust, which has been allocated 50% of the Fund's investment assets, submits monthly investment reports to the Trustees. These reports are summarized below (showing percent returns on investments):

**Northern Trust's (Percent) Returns / 4<sup>th</sup> Quarter Ended December 31, 2017**

	<b><u>Quarter-to-Date as of December 31, 2017</u></b>	<b><u>Oct. 2017</u></b>	<b><u>Nov. 2017</u></b>	<b><u>Dec. 2017</u></b>
Northern Trust's Return (All asset classes)	1.89	0.69	0.56	0.63
Northern Trust's Benchmark Composite Return (All asset classes)	1.88	0.74	0.55	0.59
Northern Trust's Return (Total Fixed Income)	(0.02)	0.01	(0.25)	0.22
Northern Trust's Benchmark Composite Return (Total Fixed Income)	(0.05)	0.04	(0.28)	0.19

Northern Trust's fourth quarter 2017 composite return included a 6.36% return on U.S. equities, 4.71% on international equities, and 0.46% on global listed infrastructure.

The Fund's financial group reported the following asset allocation of the Pension Fund as a whole as of December 31, 2017 as follows: 42% equity, 56% fixed income, 1% other and 1% cash.

The financial group also reported that for the fourth quarter of 2017 the returns on the Fund's passive indexed accounts were as follows (showing percent returns on investments).<sup>3</sup>

	Fund's Rate of Return for <u>4<sup>th</sup> Quarter 2017</u>	Benchmark for Account <u>4<sup>th</sup> Quarter 2017</u>
Passive Indexed Equity (S&P 500) (20% of investment assets)	6.65	6.64
Passive Indexed Fixed Income (25% of investment assets)	(0.26)	(0.20)
Passive EAFE Indexed (5% of investment assets)	4.51	4.23

#### 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 twelve months ended December 31, 2017 (enclosed) show net assets as of that date of \$15,008,805 compared to \$15,267,533 at December 31, 2016, a decrease of \$258,728 compared to a decrease of \$858,675 for the same period in 2016. The \$599,947 difference is due to \$570,996 more net investment income combined with \$28,951 less net operating loss.

The enclosed Fund's Staff report further notes that for the twelve months ended December 31, 2017, the Fund's net operating loss was \$2,052,879 compared to a loss of \$2,081,830 for the same period in 2016, or a \$28,951 favorable change. This change in net assets from operations (before investment income) was attributable to:

- a) \$30,970 more contributions,
- b) (\$3,943) more benefits and
- c) \$1,924 less general and administrative expenses.

During the twelve months ended December 2017 and 2016, the Fund withdrew \$2,052,620 and \$2,076,580, respectively, from investment assets to fund the cash operating deficit.

#### Financial Information - Participant Population

<sup>3</sup> The Fund's returns for each of the passive index accounts are presented net of all investment expenses and transaction costs. Of course, the Benchmarks (indices) to which the passive accounts are compared do *not* reflect any deductions for investment expenses.

The enclosed December 31, 2017 report prepared by Fund Staff further notes that the eleven-month average number of Full-Time Equivalent ("FTE") memberships decreased 2.26% from November 2016 to November 2017 (from 59,440 to 58,096). During that period, the average number of retirees decreased 0.84% (from 204,172 to 202,449).

#### Named Fiduciary

During the fourth quarter officers of the Named Fiduciary, Northern Trust, met with the Board of Trustees to discuss portfolio matters including asset allocation.

#### **Hybrid Withdrawal Liability Method**

As indicated in my prior reports, in July 2011 the Trustees adopted -- subject to approval by the Pension Benefit Guaranty Corporation ("PBGC") -- an alternative withdrawal liability method.<sup>4</sup> Under this method, new employers joining the Pension Fund will have their withdrawal liability measured based upon the "direct attribution" method; employers who already participate in the Fund can also be treated as new employers for withdrawal liability purposes on a prospective basis (and become eligible for the "direct attribution" method) by satisfying their existing withdrawal liability under the method historically employed by the Pension Fund (*i.e.*, the "modified presumptive method"), and then agreeing to continue to contribute to the Fund. This recently formula is referred to as a "hybrid" withdrawal liability method.

Staff reports that it believes the hybrid method offers a means for employers who are concerned about the potential for future growth in their exposure to withdrawal liability to cap their liability at its present level while continuing to participate in the Fund with little or no risk of withdrawal liability in the future.

Further, as explained in my prior reports, in November 2012, the Trustees restructured the Primary Schedule of the Rehabilitation Plan so that employers who satisfy their withdrawal liability qualify as New Employers under the hybrid method and continue to contribute to the Pension Fund will not be subject to the rate increase rate requirements to which other Primary Schedule Employers are subject. The Trustees have also approved an amendment intended to help ensure that New Employers who satisfy their existing withdrawal liability and continue to contribute to the Fund under the hybrid method will not face increased risks in the event of a mass withdrawal, as compared to employers who have simply withdrawn from the Fund and completely discontinued pension contributions.

Staff reports that to date approximately 93 old employers have satisfied their existing liability and qualified as new employees under the hybrid plan, or have made commitments in principle to do so. This has resulted in the payment of (or commitments to pay, subject to the execution of formal settlement documents) of approximately \$295 million in withdrawal liability to the Pension Fund while the employers in question also continue to contribute to the Fund

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



pursuant to their collective bargaining agreements at guaranteed participation levels. Staff estimates that contributions paid to date under these participation guarantees, plus future contributions required to satisfy the guarantees, will total approximately \$94.6 million.

### **Bankruptcies and Litigation**

The Fund's Staff also reports that Allied Systems Holdings, Inc. and its affiliates ("Allied") -- an automobile transporter with several hundred participants in the Funds -- filed for Chapter 11 bankruptcy protection in mid-2012. However, Allied continued to operate in bankruptcy and to pay contributions to the Funds on behalf of its drivers. Staff reports that in December 2013 Jack Cooper, Inc., another unionized automobile transporter, purchased the assets of Allied in the bankruptcy and will continue to contribute to the Funds with respect to the purchased assets and operations, but without an assumption or Jack Coopers' withdrawal liability. Allied's withdrawal liability (in the amount of \$976 million) was triggered by the sale and Staff advises that the Allied bankrupt estate is not likely to have assets sufficient to satisfy this assessment. However, as noted, Jack Cooper has to date been able to continue the income stream to the Funds represented by the contributions historically paid by Allied.

### **YRC**

As also previously reported, in May 2009 the Funds entered a Contribution Deferral Agreement ("CDA" or "Deferral Agreement") with YRC, Inc. and its affiliates ("YRC") -- one of the largest contributing employers to the Fund. Under the Deferral Agreement, the Pension Fund ultimately agreed to defer approximately \$109 million in pension contributions. The Fund's financial consultant indicated that absent deferral of these contribution obligations, YRC would be in default of loan covenants with its banks; Staff reported that such a default would risk triggering an insolvency and liquidation of YRC, which would destroy any chance of rehabilitating the employer as a healthy contributor to the Funds.

Some 25 other multiemployer pension plans in which YRC participates joined in the Deferral Agreement, but the Pension Fund is owed approximately 66% of the contributions deferred under the Agreement.

At the March 9, 2011 Board Meeting, following a temporary termination of YRC's pension contribution obligations, the Fund's Trustees also determined, in light of the company's continuing financial distress, that it was appropriate to accept contributions at the new contribution rate proposed under the YRC/TNFNC September 24, 2010 Restructuring Agreement (25% of the rate required prior to the July 2009 termination).

At the same time, the Trustees decided that the YRC employee unit should receive reduced benefits equivalent in most respects to the Default Schedule under the Fund's Rehabilitation Plan. (This is termed the "Distressed Employer" schedule of benefits.)

In January 2014, after consultation with financial, actuarial and legal advisors, the Trustees voted to approve a revised CDA extending the balloon payment under the CDA from 2015 to December 31, 2019. The other Teamster Pension Funds who participated in the CDA also agreed to these terms and an amended CDA was executed on January 31, 2014.

Staff also reports that since July 2011, YRC has remained current in its pension contribution payments (\$3-\$4 million per month), and in the monthly interest payments (beginning in August 2011) of approximately \$500,000 (now reduced to approximately \$400,000 per month due to payments of deferred interest and principal received). In addition, on November 12, 2013 the interest rate under the CDA escalated from 7.5% per year to 7.75%. Staff has also reported that to date the Pension Fund has received approximately \$45.4 million as its share of the net proceeds from sales of collateralized assets that were applicable to principal owed under the CDA.

Staff reports that in mid-2017 the YRC companies approached the Pension Fund with a request for an extension of the December 31, 2019 maturity and final lump sum payment date. Staff then engaged an outside financial consultant (Stout, Risius and Ross) to analyze the ability of the YRC companies to make the 2019 balloon payment; the consultant concluded that it is not reasonable to expect the YRC companies to make that payment. The Pension Fund then entered into negotiations with the YRC companies concerning an amendment to the CDA that would extend the 2019 maturity date. After further financial analysis and negotiations, the Pension Fund and the YRC companies agreed to an amendment to the CDA on the following terms: (1) a \$25 million payment to the pension funds on or before the effective date of the amendment to the CDA, (2) payments of 2% of the outstanding Deferred Pension Payments owed to the funds on December 31 of each year from 2018 through 2021, (3) an extension of the CDA maturity date so that a final payment of all Deferred Pension Payments and Deferred Interest will be due on December 31, 2022 and (4) a reaffirmation of all other terms of the existing CDA, including the requirements for monthly payments of current interest at 7.75% and monthly payments to the Pension Fund of the YRC group's pension contribution obligations attributable to its ongoing operations.

For a number of reasons, YRC wanted to make the \$25 million down payment described above prior to year-end 2017 even though the required approvals of the amendment / extension from 100% of the pension funds participating in the CDA had not yet been received. The Pension Fund's Staff further reports that on December 28, 2017 YRC then made the \$25 million payment under an agreement with the Central States Pension Fund that effectively treats that payment as an optional or voluntary payment under the existing CDA in the event that approvals of the amendment / extension of the CDA would not ultimately be received from 100% of the participating pension funds.

The Pension Fund's Staff reports that by January 30, 2018, all the 19 pension funds<sup>5</sup> that participate in the CDA had executed the amendment / extension of the CDA described above, and on that date the amendment / extension became effective.

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<sup>5</sup> Six of the original 25 funds that participated in the CDA refused to accept the reduced YRC contributions and applied the amounts designated as pension contributions under the collective bargaining agreement to reduce the amount owed under the CDA. These funds have as a result eliminated the YRC's contribution delinquencies and are not owed any amounts under the CDA.

Staff reports that after accounting for all principal and interest payments made to date, including the Pension Fund's share of the \$25 million down payment described above (approximately \$16.8 million), the unpaid balance owed to the Pension Fund under the CDA by YRC is approximately \$50 million.

### **Health and Welfare Fund**

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

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

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

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



Financial Information

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

The Health and Welfare Fund's financial summary for the twelve months end December 31, 2017 are compared below with financial information for the same period of 2016:

	Twelve Months Ended December 31,	
	<u>2017</u>	<u>2016</u>
Contributions	\$3,354,801	3,251,235
Recognized portion of UPS lump sum	73,512	85,812
Benefits	2,684,120	2,633,617
TeamCare administrative expenses	77,891	77,612
General and administrative expenses	76,296	73,107
Operating gain (loss)	590,006	552,711
Investment income (loss)	329,894	181,447
Change in net assets	919,900	734,158
Net assets, end of period	\$5,970,126	5,050,226
Eleven-month average Participants (FTEs)	189,962	189,140

For the twelve months ended December 2017, the Health and Welfare Fund's net operating gain was \$590,006 compared to a gain of \$552,711 for the same period in 2016, or a \$37,295 favorable change attributable to the following factors:

- (a) \$91,266 more contributions due to increases in rates, offset by an extra billing week in 2016,
- (b) (\$50,503) more benefits,

The Honorable Thomas Durkin  
April 18, 2018  
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- (c) (\$279) more TeamCare administrative fees and
- (d) (\$3,189) more general and administrative expenses.

During the twelve months ended December 2017 and 2016, the Fund transferred \$536,390 and \$412,719, respectively, to investments as the operations generated positive cash flows for those periods.

The enclosed report also notes that the eleven-month average number of Full-Time Equivalent (FTE) memberships increased by 0.43% from November 2016 to November 2017 (from 189,140 to 189,962). During that period, the average number of retirees covered by the Health and Welfare Fund increased by 11.36% (from 6,284 to 6,998).

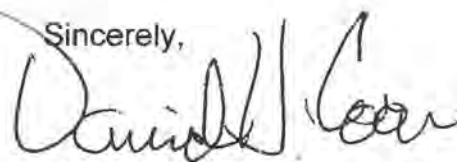
Article V (H)

As required by Article V (H) of the Health and Welfare Fund Consent Decree, the Health and Welfare Fund has paid during the fourth quarter of 2017 the following for professional services and expenses for the Independent Special Counsel:

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. Kate O'Scannlain, Solicitor of Labor (w/encl.) **Via UPS Next Day**  
Mr. Wayne Berry (w/encl.) **Via UPS Next Day**  
Mr. Thomas C. Nyhan