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DAVID H. COAR, ESQ.
Arbitration and Mediation

June 28, 2021, 2021

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
Chicago, Illinois 60604

Re: Quarterly Report of Independent Special Counsel, *Scalia v. Estate of Frank E. Fitzsimmons, et al.*, No. 78 C 342 (N.D. Ill., E.D.); *Scalia v. Robbins, et al.*, No. 78 C 4075 (N.D. Ill., E.D.); and *Scalia 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 first quarter of 2021. 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' lease at their office at 9377 West Higgins Road in Rosemont, Illinois was expiring at the end of 2019. The Funds had approximately 670 full-time employees at this office near the Chicago O'Hare Airport in Rosemont, and the Funds occupied approximately 175,000 square feet of office space at that location. In anticipation of the expiration of the lease, the Funds' Staff consulted with professional real estate brokers and architects, reviewed all potential options in the Chicago O'Hare Airport submarket with respect to the Funds' future office space requirements, and in March 2017 the Health and Welfare Fund's Board of Trustees approved the purchase of a parcel of property located at 8647 West Higgins Road, and construction of a new building on that site. Construction began on November 8, 2017, was completed on time and under budget and the Funds moved their business operations

into the new building on July 15, 2019. Independent fiduciaries hired by each Fund negotiated and finalized the terms of a lease between the Pension and Health and Welfare Funds pursuant to which the Health and Welfare Fund leases space in the new building to the Pension Fund.

Beginning in late 2017 the Department of Labor ("DOL") requested, and the Central States Funds provided, various documents relating to above real estate transactions. In early 2019, the DOL also requested information from and interviewed representatives of Jones Lang LaSalle, the real estate broker and consultant that assisted the Funds in their search for office space. Then in January 2020 the DOL interviewed several members of the Funds' Staff. The DOL next contacted the Funds in April 2020 and indicated that, largely due to the COVID-19 pandemic, they did not believe they could timely complete their review of the Health and Welfare Fund's decision to construct a new office building and to lease space therein to the Pension Fund. As a result, the DOL requested that the Trustees enter into a tolling agreement through the end of 2020 and that agreement was executed in May 2020 and then extended in November 2020 for an additional six-months. Next on December 4, 2020, the DOL sent a request to the Fund for additional information related to the building project and the Fund responded to that request on March 5, 2021. Most recently, on April 7, 2021, the DOL requested that the Trustees enter into an additional six-month extension of the tolling agreement and the Trustees agreed to that request.

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 beginning in March 2015 the actuary certified the Fund to be in the new category denominated "critical and declining" created by the Multiemployer Pension Reform Act of 2014 ("MPRA"). 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 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 also explained in my prior reports, the PPA and MPRA require the Trustees to consider annual updates to the Rehabilitation Plan. During the 2020 Rehabilitation Plan update process (conducted in November 2020), 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, as previously reported, in the 2020 Rehabilitation Plan update process, the Trustees approved continued implementation of all prior provisions and modifications of the Rehabilitation Plan.

Although the Pension Fund has reported some progress in securing increased employer contributions and in adjusting benefits as required of "critical and declining" 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, with the exception of 2018, enjoyed investment gains. For example, the Fund enjoyed a composite rate of return of 12.74% for calendar year 2017, a return of (0.76%) for calendar year 2018, a return of 10.55% for 2019, and a return of 2.93% for calendar year 2020 (unaudited). The asset level as of December 31, 2020 of $10 billion is approximately $17 billion below the value of assets held by the Fund shortly before the commencement of the world-wide stock market collapse in 2008. 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 over $2 billion per year *more* in benefits than it has collected in contributions from employers.

Funding Issues Confronting Multiemployer Plans

According to the Pension Benefit Guaranty Corporation's ("PBGC") most recent fiscal year 2020 Projections Report (published December 10, 2020) the PBGC's multiemployer guarantee program remains severely underfunded with liabilities of $66.9 billion and only $3.1 billion in assets as of September 30, 2020 and is highly likely to become insolvent in 2026. This means that the PBGC will have no financial resources to

pay benefits to the Pension Fund's participants if, as projected, the Central States Pension Fund also becomes insolvent at approximately the same time as the PBGC.

In his December 11, 2019 testimony before the Senate Committee on Finance, PBGC Director Gordon Hartogensis explained that the PBGC's Multiemployer Guarantee Program at that time had liabilities of $68 billion and assets of only $2.9 billion, resulting in a deficit of about $65.2 billion. He further reported that "without reforms, the Multiemployer Program – the backstop that is the last resort for retirees when a plan fails – is very likely to become insolvent by the end of 2025, which would leave participants and beneficiaries with significantly less than the level of benefits currently guaranteed by 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. *See* U.S. Congressional Budget Office, *Options to Improve the Financial Condition of the PBGC's Multiemployer Program* (August 2016). This CBO report also estimates 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 and Efforts

As detailed in my prior reports, Pension Fund's Staff has briefed the Board of Trustees over at least the past ten years on numerous legislative proposals intended to avoid the projected insolvency facing the Pension Fund and other multiemployer pension plans. After years of efforts, on March 11, 2021, President Biden signed into law the American Rescue Act of 2021 ("ARPA"). Included within this Act was the Butch Lewis Emergency Pension Plan Relief Act of 2021. ARPA creates a special financial assistance program under which eligible pension plans, like Central States, can apply for financial assistance directly from the PBGC. Upon approval, eligible pension plans will receive a single lump-sum payment in an amount required to allow the plan to pay promised benefits, generally without reduction, through the end of 2051. This lump sum payment is in the form of a grant which does not need to be repaid by the plan. However, because ARPA was passed through the budget reconciliation process, there were a number of constraints on what could be included in the Act. As a result, there are a number of issues concerning this Act and the relief to be provided which are unclear. Under ARPA the PBGC must issue guidance or regulations within 120 days of enactment which hopefully will clarify the majority of these issues.

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")[1], 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 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 and on June 5, 2017 the Court granted those motions. The last stage of the asset reallocation plan was completed in March 2020. Pursuant to that Plan 99% of the Fund's assets are in intermediate fixed income securities, 0% in return-seeking assets, and the remaining 1% in cash or cash equivalents.

Government Accounting Office ("GAO") Review

As indicated in my report for the third quarter of 2018, on June 4, 2018, the GAO issued its reports concerning the investigations it commenced in 2016 of (1) the Pension Fund's investment activities, and (2) the activities of the Department of Labor in overseeing the Fund pursuant to the 1982 consent decree entered in Case No. 78 C 342. The key findings and conclusions of these GAO reports can be summarized as follows:

- The Pension Fund has suffered from severe funding issues at least since the initial entry of the Consent Decree in 1982.

- Over the course of the next two decades, the Pension Fund made some progress in moving towards fuller funding, but never achieved a funded ratio of more than 75%.

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[1] Formerly known as Northern Trust Company of Connecticut, which was in turn formerly known as Northern Trust Global Advisors, Inc.

- The achievement of fuller funding has been hindered by trucking deregulation (which forced many unionized trucking companies out of business) and difficulties in organizing new employers that were willing to contribute to the Pension Fund.

- This has eroded the Fund's contribution base due to sharp declines in the number of active Participants in comparison to retired Participants. The Pension Fund lost 30% of its active Participants when UPS withdrew from the Fund in 2007.

- The resulting operating deficits of more than $2 billion per year, in conjunction with the market declines of the early 2000s and in 2008, launched the Fund on the path towards insolvency, which is now projected to occur in 2025.

- The Fund undertook efforts to increase employer contributions, but that effort was limited by the practical ability of the remaining employers in the Fund to absorb continuous and compounding contribution rate increases.

- The Pension Fund's investment returns and investment expenses are in line with those of comparable pension plans. (4.9% average annual investment return for the Pension Fund from 2000 – 2014; 4.8% average return over the same period for comparable pension plans. And the Pension Fund's average investment expense fee ratio was 9% lower than comparable pension plans during the 2000 – 2014 period.)

- The Pension Fund's administrative expenses have generally been about 16% lower than comparable pension plans since 2014.

- The Department of Labor's oversight of the Pension Fund under the consent decree has been appropriate. In the time since the Consent Decree was established (1982), DOL has not found Central States in violation of the Consent Decree or the Employee Retirement Income Security Act (ERISA).

- The GAO has no recommendations concerning either its review of the Pension Fund's investment activities or of the GAO's oversight of the Pension Fund. The GAO provided drafts of its reports to the Department of Labor, Treasury and the PBGC, and those agencies had no substantive comments.

Financial Information - Investment Returns

The Pension Fund's investment return for the first quarter of 2021 was (0.06%).

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.

<u>Pension Fund's Composite (Percent) Return / 1st Quarter Ended March 31, 2021</u>

Fund's Return (All asset classes)	(0.06)
Benchmark Composite Return (All asset classes)	(0.04)

<u>Pension Fund's Total Fixed Income (Percent) Return / 1st Quarter Ended March 31, 2021</u>

Fund's Return (Total Fixed Income)	(0.06)
Benchmark Composite Return (Total Fixed Income)	(0.04)

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 / 1st Quarter Ended March 31, 2021

	Quarter-to-Date as of March 31, 2021	Jan. 2021	Feb. 2021	Mar. 2021
Northern Trust's Return (All asset classes)	(0.05)	0.01	(0.02)	(0.04)
Northern Trust's Benchmark Composite Return (All asset classes)	(0.04)	0.03	0.00	(0.06)
Northern Trust's Return (Total Fixed Income)	(0.06)	0.00	(0.02)	(0.04)
Northern Trust's Benchmark Composite Return (Total Fixed Income)	(0.04)	0.03	0.00	(0.06)

Northern Trust's first quarter 2021 composite return resulted primarily from fixed income.

The Fund's financial group reported the following asset allocation of the Pension Fund as of March 31, 2021 as follows: 99% fixed income 1% cash.

The financial group also reported that for the first quarter of 2021 the returns on the Fund's passive indexed account was as follows (showing percent returns on investments):[2]

	Fund's Rate of Return for 1st Quarter 2021	Benchmark for Account 1st Quarter 2021
Passive Indexed Fixed Income (50.00% of investment assets as of March 31, 2021)	(0.07)	(0.04)

[2] The Fund's return for the passive index account is 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.

Financial Information - Net Assets

The financial reports prepared by Pension Fund Staff for the three months ended March 31, 2021 (enclosed) show net assets as of that date of $9,835,886 compared to $10,409,441 at December 31, 2020, a decrease of $573,555 compared to a decrease of $557,771 for the same period in 2020. The $15,784 difference is due to $14,810 less net investment income combined with $974 more net operating loss.

The enclosed Fund's Staff report further notes that for the three months ended March 2021, the Fund's net operating loss was $565,406 compared to a loss of $564,432 for the same period in 2020, or a $974 unfavorable change. This change in net assets from operations (before investment income) was attributable to:

a) ($1,838) less contributions,

b) $1,770 more benefits and

c) ($906) less general and administrative expenses.

During the three months ended March 2021 and 2020, the Fund withdrew $561,062 and $558,131, respectively, from investment assets to fund the cash operating deficits.

Financial Information - Participant Population

The enclosed March 31, 2021 report prepared by Fund Staff further notes that the two-months average number of Full-Time Equivalent ("FTE") memberships decreased by (7.97)% from February 2020 to February 2021 (from 47,538 to 43,748). During that period, the average number of retirees decreased by (1.03)% (from 198,366 to 196,318).

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.[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

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

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 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 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 100 old employers have satisfied their existing liability and qualified as new employers 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 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 $160 million.

Bankruptcies and Litigation

YRC

As detailed in my prior reports, in 2009 YRC, Inc. and its affiliates ("YRC"), one of the largest contributing employers to the Pension Fund, became delinquent in its contribution obligations to the Fund. This delinquency culminated in the Fund entering into a Contribution Deferral Agreement ("CDA" or "Deferral Agreement") with YRC in May 2009. Under the Deferral Agreement, the Pension Fund agreed to defer approximately $109 million in pension contributions. Since its original execution in 2009, the CDA has been amended several times, most recently in 2017 when the maturity date (for final payment of all balances) was extended to December 31, 2022. As a result of the CDA, the Pension Fund has received approximately $126.9 million in principal and interest

payments from YRC through March 31, 2021 reducing the contribution delinquency to approximately $45.9 million.

On April 9, 2020 YRC contacted the Funds and requested a three-month deferral of its contribution obligations to both the Health and Welfare and Pension Funds. At that time no details concerning repayment terms were given by YRC other than the Health and Welfare Fund would be repaid upon receipt of a loan which the Company was seeking from the federal government under the CARES Act and that the Pension Fund would receive payment based upon "business performance". Following this request, the Funds retained Stout Risius and Ross ("Stout"), an Independent financial consulting firm that the Pension Fund had used in the past to analyze the financial condition of YRC, to help the Funds evaluate the Company's financial situation. Representatives of the Funds and Stout subsequently engaged in extensive communications with YRC and made several requests for information necessary to enable the Funds to properly analyze and make a determination regarding the company's deferral request. Although certain information was provided, as of April 28, 2020, a number of necessary items of information still had not been provided. Having not received all requested information, the Trustees of the Health and Welfare Fund on April 28, 2020 denied YRC's request for a deferral of its March, April and May 2020 contributions and advised the Company if payment for its March contributions was not received by April 30, 2020, notices would be sent to their employees advising that their health benefits would be suspended effective May 10, 2020. The Trustees of the Pension Fund deferred decision on YRC's deferment request pending receipt of additional information.

Subsequent to April 28, 2020 representatives of the Funds engaged in continued discussions with representatives with YRC in an effort to reach an acceptable resolution with respect to the Company's request for a deferment of its March, April and May 2020 contribution obligations. Unrelated to YRC, on April 21, 2020, in response to the COVID-19 pandemic, the Trustees of the Health and Welfare Fund had approved amendments to certain of its plans that provided up to eight weeks of layoff coverage to certain affected participants. Representatives of both YRC and the International Brotherhood of Teamsters ("IBT") contacted the Health and Welfare Fund and expressed concerns about YRC employees who had previously been laid off and were being recalled by the Company. This presented the situation where the Fund suspends benefits on May 10, 2020 (pursuant to the Trustees' April 28, 2020 decision referenced above) and not all YRC employees will have the full eight weeks of layoff coverage available to them. YRC and the IBT were concerned that this scenario had the potential to cause labor unrest. In an effort to avoid this potential labor unrest, YRC proposed to pay the Fund the amount of contributions necessary to reimburse it for the total number of weeks of layoff coverage used by any of its employees from March 1, 2020 through May 9, 2020 in exchange for the Fund's agreement to provide all of the Company's covered employees with a full eight week bank of layoff coverage effective May 10, 2020. The Trustees accepted this proposal and YRC paid the required contributions. YRC was eventually successful in its efforts to secure a loan under the Cares Act and on July 14, 2020 the Company paid its delinquent March, April and May contributions to the Health and Welfare Fund and on

July 15, 2020 timely paid its June 2020 contributions, and to date remains current in its contribution obligations for months subsequent to June 2020.

Jack Cooper

As explained in my prior reports, in late 2018, Jack Cooper Transport Company, Inc. and Auto Handling Corporation (Collectively "JC"), a large carhaul company that participates in both the Pension and Health and Welfare Funds, became delinquent in its continuing obligations to the Funds. These delinquencies culminated in the Funds entering into a term sheet with JC and one of its lenders, Solus Alternative Asset Management L.P. ("Solus"). Pursuant to this term sheet, and as detailed in my prior reports, JC filed a Chapter 11 bankruptcy petition, was terminated from participation in the Pension Fund, its assets were sold and the new entity, Jack Cooper Transport Company, LLC and Auto Handling, LLC (Collectively "Jack Cooper"), among other obligations, entered into a collective bargaining agreement with the International Brotherhood of Teamsters pursuant to which it agreed to participate in the Pension Fund as a new employer under the Fund's hybrid plan, agreed to guaranty a minimum level of participation in the Fund through 2024, and agreed to make a payment 18 months following the asset sale closing representing the contributions not paid by JC from May 26, 2019 through the date of closing on the asset sale (the "Special Contribution"). Pursuant to this agreement, Jack Cooper also agreed to participate in the Health and Welfare Fund. The asset sale closed on November 4, 2020 at which point Jack Cooper began participating in the Funds pursuant to the terms of the parties agreement.

In March 2020 Jack Cooper contacted the Health and Welfare Fund and requested a deferment of its February 2020 contribution obligation which it proposed to pay over 12 months commencing in April 2020. Jack Cooper explained that its request was necessitated by the announced two-week closure of the automobile manufacturer's ("OEMs") operations resulting from the COVID-19 pandemic. On March 24, 2020, the Board of Trustees of the Health and Welfare Fund granted this request. Then, on April 1, 2020 Jack Cooper indicated that the OEMs had extended their shutdown from two to six weeks and, as a result, the Company would not be able to pay its March 2020 contributions. It requested a deferral of this obligation which it proposed to pay over three months commencing in April 2020. The Board approved this request on April 21, 2020, and Jack Cooper remitted its third and final installment for its March 2020 contributions by June 20, 2020. Additionally, Jack Cooper remained current with normal contribution obligations and remitted its twelfth and final installment for its February 2020 contributions by March 19, 2021. Finally, as noted above, pursuant to the parties 2019 agreement, Jack Cooper agreed to make the Special Contribution payment to the Fund on May 4, 2021. However, in late March 2021, Jack Cooper contacted the Fund and advised that it would be unable to make the Special Contribution payment in full on May 4, 2021. It proposed to pay this obligation in six monthly installments commencing on May 10, 2021. On April 14, 2021 the Board approved this request and the first payment due under this revised payment schedule has been received.

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 (DOL) commenced an onsite review of various Health and Welfare Fund documents that the DOL had 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 standard review and has apparently not been prompted by any specific concerns by the DOL about the Fund's compliance with ERISA and other legal requirements.

The DOL's review has focused on the operations of the Active Health and Welfare Plan, and the documents requested by the DOL 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 DOL 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 requested by the DOL in 2016 were promptly produced. Staff also reports that on November 15, 2018 the DOL made a supplemental request for some additional records relating to claims processing. Staff has indicated that they responded to that document request on February 6, 2019 and provided follow up information on April 12, 2019. The Fund was next contacted by the DOL on July 1, 2020 requesting a conference call to verify their understanding of several benefits provided by the Fund following their review of the information previously provided by the Fund. That conference call was conducted on July 6, 2020 and confirmed the DOL's prior understanding of the benefits in question. Finally, on March 24, 2021, the DOL sent a letter to the Fund questioning its adjudication of certain emergency room claims. The Fund responded on May 19, 2021 disagreeing with the DOL's position and noting that regardless the issue only involved a de minimis number of claims. In its response, the Fund proposed a resolution of the issue and is currently awaiting a response from the DOL.

Financial Information

(Dollars shown in thousands and 2020 does not include year-end adjustments)

The Health and Welfare Fund's financial summary for the twelve months ended December 31, 2020 is compared below with financial information for the same period of 2019:

	Twelve Months Ended December 31,	
	2020	2019
Contributions	$ 4,209,326	$ 3,924,648
Rent income	912	456
Benefits	3,336,670	3,266,244
TeamCare administrative expenses	95,262	88,674
General and administrative expenses	96,478	94,542
Operating gain (loss)	681,828	475,644
Investment income (loss)	568,647	650,482
Change in net assets	1,205,475	1,126,126
Net assets, end of period	$ 8,700,290	$ 7,449,815
Eleven-months average Participants (FTEs)	218,692	205,973

For the twelve months ended December 31, 2020, the Health and Welfare Fund's net operating gain was $681,828 compared to a gain of $475,644 for the same period in 2019, or a $206,184 favorable change:

(a) $285,134 more revenue due to an increase in FTEs and rates,

(b) ($70,426) more benefits,

(c) ($6,588) more TeamCare administrative fees and

(d) ($1,936) more general and administrative expenses.

During the twelve months ended December 2020 and 2019, the Fund transferred $748,291 and $595,391, respectively, to investments as the operations generated positive cash flows for those periods.

The enclosed December 31, 2020 report also notes that the eleven-months average number of Full-Time Equivalent (FTE) memberships increased by 6.18% from 2019 to 2020 (from 205,973 to 218,692). During that period, the average number of

retirees covered by the Health and Welfare Fund increased by 6.40% (from 8,385 to 8,922).

Retiree Plan Funding

The Health and Welfare Fund has always maintained two separate plans, one for actively employed participants and the other for retired participants, each with its own plan document and summary plan description. The retiree plan is funded on a pay-as-you-go basis. The Trustees determine the expected retiree payments in a given year and then compute a load to be applied to the contribution rate for active employees whose collective bargaining agreements provide for retiree benefits. In addition to this load on current contributions, the future funding needs of the retiree plan are reviewed periodically by the Trustees and additional funding is provided by means of a Retiree Contribution Benefit. As of January 1, 2021, utilizing a 2% discount rate, the retiree plan is 99% funded with respect to current retirees. However, if all participants who are fully eligible for retiree benefits are added in, the plan is 43% funded. Although most multiemployer health funds do not pre-fund retiree benefits, given the size of the Health and Welfare Fund and the current financial strength of the Active Plan, the Trustees requested an actuarial analysis of future funding options which they could consider to address potential future liabilities in the Retiree Plan and to strengthen its financial position for the future. After receiving and discussing this report, the Trustees at their March 2021 meeting decided to approve a one-time transfer of one billion dollars from the Active Plan to the Retiree Plan effective June 30, 2021, to calculate future retiree loads as a percentage of contributions and freezing this load where it is today, and to continue to periodically review future funding needs of the Retiree Plan on a periodic basis authorizing additional Retiree Contribution Benefits as they deem appropriate with the proviso that no transfers can be made unless the Active Plan has a minimum of 24 months in reserves. The Trustees determined that this course of action would considerably strengthen the financial position of the Retiree Plan without jeopardizing the current financial strength of the Active Plan which will still have 24 months in reserve after the one billion dollar transfer.

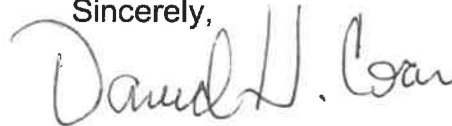
Article V (H)

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 2020 the following for professional services and expenses for the Independent Special Counsel:

October	$6,621.62
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. Elena Goldstein, Acting Solicitor of Labor (w/encl.) **Via UPS Next Day**
Mr. Wayne Berry (w/encl.) **Via UPS Next Day**
Mr. Thomas C. Nyhan