

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

April 4, 2023

**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: 1. **Quarterly Report** of Independent Special Counsel, *Walsh v. Estate of Frank E. Fitzsimmons, et al.*, No. 78 C 342 (N.D. Ill., E.D.); *Walsh v. Robbins, et al.*, No. 78 C 4075 (N.D. Ill., E.D.); and *Walsh v. Dorfman, et al.*, No. 82 C 7951 (N.D. Ill., E.D.).
2. **Recommendation to dissolve the Consent Decrees.**

Dear Judge Durkin:

This letter comprises my report on activities at the Central States Funds during the fourth quarter of 2022. 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.

**Board Composition**

Robert Whitaker is currently serving a term as an Employer Trustee of both Central States Funds which was set to expire on March 31, 2023. Under the terms of the Funds' Trust Agreements, the current Employer Trustees are empowered, by majority vote, to appoint an individual to serve the Employer Trustee five-year term commencing on April 1, 2023. On November 15, 2022 the current Trustees, with Robert Whitaker abstaining, voted to approve and confirm Mr. Whitaker to serve an additional five-year term as Trustee of both Funds commencing on April 1, 2023 and extending through March 31, 2028.

**Trustee Selection Boards**

Pursuant to the Central States Funds' Statement of Procedures for Selection and Monitoring of Employee Trustees, the four-year terms of all the current members of the Central Trustee Selection Board ("CTSB") and the Southern Trustee Selection Board ("STSB") were set to expire on December 31, 2022. Accordingly, as directed by the Employee Trustees, ballots and related correspondence were sent to each eligible Local Teamster Union in the 11 state Central Region and in the 9 state Southern Region. After the November 7, 2022 date set for return of ballots, Staff retrieved all the ballots that had been returned to the designated P.O. Box, opened the ballot envelopes and counted the ballots. The vote count indicated that the following individuals achieved a plurality of the votes returned by the eligible Local Unions in each state listed below:

**Central Trustee Selection Board**

<b>CTSB STATE</b>	<b>Name and Local Union of Person Achieving Plurality of Votes</b>
1. Illinois	Kevin Engelke Local Union 525 Alton
2. Kansas	Jesse Castillo Local Union 795 Wichita
3. Nebraska	Daniel W. Avelyn Local Union 554 Omaha
4. Minnesota	Tom Erickson Local Union 120 Blaine
5. Iowa	Jesse Case Local Union 238 Cedar Rapids
6. Missouri	Dan Thacker Local Union 610 Maryland Heights
7. Wisconsin	Thomas Bennett Local Union 200 Milwaukee
8. Michigan	Ellis Wood Local Union 406 Grand Rapids
9. Ohio	Patrick Darrow Local Union 348 Akron
10. Kentucky	John Stovall Local Union 783

	Louisville
11. Indiana	Robert R. Warnock III Local Union 364 South Bend

**Southern Trustee Selection Board**

<b>STSB STATE</b>	<b>Name and Local Union of Person Achieving Plurality of Votes</b>
1. Florida	James Shurling Local Union 512 Jacksonville
2. Louisiana	Stephen Sorrell Local Union 270 New Orleans
3. Tennessee	Lendon Grisham Local Union 480 Nashville
4. Oklahoma	Kelly Swon Local Union 516 Muskogee
5. Georgia	Matt Higdon Local Union 728 Atlanta
6. Alabama	Joe Gronek Local Union 402 Muscle Shoals
7. Texas	Brent Taylor Local Union 745 Dallas
8. Arkansas	Stacy Fox Local Union 373 Fort Smith
9. Mississippi	W.C. (Willie) Smith Local Union 891 Jackson

The Funds' Statement of Procedures for Selection and Monitoring of Employee Trustees specify that the individual receiving the plurality of votes for each state shall be that state's CTSB or STSB member subject to confirmation of the vote count by the Employee Trustees. During the Funds' November 2022 Board Meetings, the Board voted to confirm the individuals listed above as the members of the CTSB and STSB for four-year terms commencing on January 1, 2023 and ending December 31, 2026.

### **Office Space**

As explained in my prior reports, the Funds' lease at their office space at 9377 West Higgins Road in Rosemont, Illinois expired 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 the 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. 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. Additional six-month extensions of the tolling agreement were requested by the DOL and granted by the Trustees on November 17, 2021, May 26, 2022 and most recently on November 10, 2022. The tolling agreement is currently scheduled to expire on June 30, 2023.

### **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 2021 Rehabilitation Plan update process (conducted in November 2021), 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 2021 Rehabilitation Plan update process, the Trustees approved continued implementation of all prior provisions and modifications of the Rehabilitation Plan.

Although the Pension Fund 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 subsequent years, the Fund has, with the exception of 2018, 2021 and 2022, 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 calendar year 2019, a return of 2.93% for calendar year 2020, a return of (0.29%) for calendar year 2021, and a return of (3.32%) for calendar year 2022. 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**

Fiscal year 2021 marked a significant milestone for the Pension Benefit Guaranty Corporation's ("PBGC") Multiemployer Program with the enactment of the American Rescue Plan Act of 2021 ("ARPA"). According to the PBGC's FY 2021 Annual Report (released November 16, 2021), prior to the enactment of ARPA, its Multiemployer Program was expected to run out of money by 2026. According to the PBGC, "ARP's Special Financial Assistance ("SFA") Program will significantly extend the solvency of the Multiemployer Program by at least thirty years." This report further notes that "The Multiemployer Program's positive net position of \$481 million at the end of FY 2021 is in sharp contrast to the negative net position of \$63.7 billion at the end of FY 2020, a drastic improvement of \$64.2 billion."

### **Legislative Proposals and Efforts**

As detailed in my prior reports, the Pension Fund's Staff has briefed the Board of Trustees over the past ten plus years on numerous legislative proposals intended to avoid the projected insolvency facing the Pension Fund and other multiemployer pension plans. After years of these 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. On July 9, 2021 the PBGC issued interim-final regulations setting forth the requirements for special financial assistance applications and related restrictions and conditions pursuant to ARPA. The PBGC invited public comments on this interim-final rule which were due on or before August 11, 2021. Pension Fund Staff prepared and submitted written comments to the PBGC. Pursuant to the PBGC's interim-final rule, pension funds in critical and declining status with more than 350,000 participants, such as Central States, were allowed to submit their applications for special financial assistance commencing on April 1, 2022. The Fund filed its application on April 28, 2022. Following the above-referenced comment period, the PBGC issued its final regulation with respect to special financial assistance under

ARPA which took effect on August 8, 2022. In response to guidance from the PBGC and to take advantage of favorable provisions of the PBGC's final regulation, the Pension Fund on August 12, 2022 withdrew its application and re-filed an amended application that same day. On December 5, 2022 the PBGC granted the Pension Fund's amended application for SFA funds. On January 12, 2023 the Pension Fund received a disbursement in the amount of \$35,764,910,109.99 which represents the full amount of the Fund's SFA request.

### **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 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 approximately 99% of the Fund's investment assets are in fixed income securities, with the remaining 1% in cash or cash equivalents.

In June 2021, in light of its likely receipt of SFA funds under ARPA, the Trustees of the Pension Fund determined that it was prudent to evaluate the market for its named fiduciary business. This process resulted in the appointment of a new named fiduciary, BlackRock Financial Management, Inc. ("BlackRock"). On September 12, 2022, this Court approved the appointment of BlackRock as the new named fiduciary of the Pension Fund along with an Amended and Restated Consent Decree and a new investment policy

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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.

statement. Finally, on February 10, 2023, BlackRock filed its post-SFA investment policy statement which is currently in place and is being reviewed by the DOL.

### **Financial Information - Investment Returns**

The Pension Fund's investment return for the fourth quarter of 2022 was 0.98%.

As of October 11, 2022, BlackRock replaced Northern Trust as the Fund's Named Fiduciary and assumed responsibility for oversight of 100% of the Fund's investment assets. The Named Fiduciary submits monthly investment reports to the Trustees. These reports are summarized below (showing percent returns on investments):

### **Pension Fund's (Percent) Returns/ 4<sup>th</sup> Quarter-to-Date as of December 31, 2022**

	<b><u>Quarter-to-Date as of December 31, 2022</u></b>	<b><u>Oct. 2022</u></b>	<b><u>Nov. 2022</u></b>	<b><u>Dec. 2022</u></b>
Fund's Return (All asset classes)	0.98	(0.15)	0.88	0.30
Benchmark Composite Return (All asset classes)	1.06	(0.14)	1.00	0.21
Fund's Return (Total Fixed Income)	1.03	(0.16)	0.90	0.29
Benchmark Composite Return (Total Fixed Income)	1.06	(0.15)	1.00	0.21

BlackRock's fourth quarter 2022 composite return resulted primarily from fixed income.

The Fund's financial group reported the following asset allocation of the Pension Fund as of December 31, 2022 as follows: 97% fixed income, 3% cash.

### **Financial Information - Net Assets**

(Dollars shown in thousands and 2022 does not include year-end adjustments)

The financial reports prepared by Pension Fund Staff for the twelve months ended December 31, 2022 (enclosed) show net assets as of that date of \$41,466,875 compared to \$8,158,228 on December 31, 2021, an increase of \$33,308,647 compared to a



decrease of \$2,251,213 for the same period in 2021. The \$35,559,860 difference is due to \$224,196 less net investment income offset by \$19,146 less net operating loss and includes recognition of Special Financial Assistance of \$35,764,910.

The enclosed Fund's Staff report further notes that for the twelve months ended December 2022, the Fund's net operating loss was \$2,201,242 compared to a loss of \$2,220,388 for the same period in 2021, or a \$19,146 favorable change. This change in net assets from operations (before investment income) was attributable to:

- a) \$21,533 more contributions due to a \$33.3 million decrease to YRC deferral agreement reserve, combined with an extra billing week in 2022, offset by decreased withdrawal liability revenue,
- b) (\$1,668) more benefits and
- c) (\$719) more general and administrative expenses.

During the twelve months ended December 2022 and 2021, the Fund withdrew \$2,270,211 and \$2,215,851 respectively, from investment assets to fund the cash operating deficits.

#### **Financial Information - Participant Population**

The enclosed December 31, 2022 report prepared by Fund Staff further notes that the eleven-month average number of Full-Time Equivalent ("FTE") memberships decreased by (2.87)% from November 2021 to November 2022 (from 43,887 to 42,627). During that period, the average number of retirees decreased by (1.10)% (from 195,303 to 193,152).

#### **Named Fiduciary**

During the fourth quarter officers of the Named Fiduciary, BlackRock, 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>2</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

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<sup>2</sup> The Pension Fund's Staff advises that on October 14, 2011, the PBGC approved the Pension Fund's use of the hybrid method.

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 105 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 \$315 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 \$ 171 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. Throughout the 2022 calendar year, YRC representatives corresponded with Pension Fund staff regarding YRC’s desire to extend the CDA maturity date from December 31, 2022 to December 31, 2025. The Trustees of the Pension Fund denied this request at their December 13, 2022 meeting and on January 3, 2023 the remaining balance of \$44,771,835.89 owed on the CDA was paid to the Pension Fund by YRC. As a result of the CDA, the Pension Fund

received \$ 179, 249, 609.43 in principal and interest payments from YRC through January 3, 2023.

### **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 which was approved by the DOL and is currently being implemented.

### **Financial Information**

(Dollars shown in thousands and 2022 does not include year-end adjustments)

The Health and Welfare Fund's financial summary for the twelve months ended December 31, 2022 is compared below with financial information for the same period of 2021:

	<u>Twelve Months Ended December 31,</u>	
	<u>2022</u>	<u>2021</u>
Contributions	\$ 4,932,228	4,597,690
Rent income	912	912
Benefits	3,808,301	3,789,886
TeamCare administrative expenses	98,983	95,489
General and administrative expenses	<u>105,629</u>	<u>100,604</u>
Operating gain (loss)	920,227	612,623
Investment income (loss)	<u>(847,938)</u>	<u>391,682</u>
Change in net assets	72,289	1,004,305
Net assets, end of period	9,873,640	9,801,351
Eleven-month average Participants (FTEs)	222,255	222,188

For the twelve months ended December 2022, the Health and Welfare Fund's net operating gain was \$920,227 compared to a gain of \$612,623 for the same period in 2021, or a \$307,604 favorable change:

- (a) \$334,538 more revenue due to an increase in rates combined with an extra week of contributions in 2022,
- (b) (\$18,415) more benefits,
- (c) (\$3,494) more TeamCare administrative fees and
- (d) (\$5,025) more general and administrative expenses.

During the twelve months ended December 2022 and 2021, the Fund transferred \$893,151 and \$690,898 respectively, to investments as the operations generated positive cash flows for those periods.

The enclosed December 31, 2022 report also notes that the eleven-month average number of Full-Time Equivalent (FTE) memberships increased by 0.03% from November 2021 to November 2022 (from 222,188 to 222,255). During that period, the average

number of retirees covered by the Health and Welfare Fund increased by 6.63% (from 9,853 to 10,506).

**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 2022 the following for professional services and expenses for the Independent Special Counsel:

October	\$0.00
November	\$9,196.26
December	\$0.00

**Recommendation that the Court Consider  
Dissolution of the Consent Decrees**

In 1978 the United States Department of Labor (“DOL”) filed a complaint against the Central States, Southeast and Southwest Areas Pension Fund (“Pension Fund”) alleging that trustees of the Fund violated various provisions of ERISA. Similar actions were filed in 1978 and 1982 (later consolidated) against the Central States, Southeast and Southwest Areas Health and Welfare Fund (“Health and Welfare Fund”). These actions came about as a result of investigations by the DOL into alleged breaches of fiduciary duty and mismanagement of plan assets. These cases culminated in the entry of two consent decrees entered in 1982 (Pension Fund) and 1985 (Health and Welfare Fund) which were designed to ensure plan compliance with ERISA and applicable IRS determination letters. Because these consent decrees have now been in place for 41 years and 38 years, respectively, with no violations by either Fund during this extensive period, I believe that the objectives of the consent decrees have been achieved and it is appropriate at this time for the Court to consider dissolution of both decrees. The reasons underlying this recommendation are detailed below.

**Legal Standard for Modification or Dissolution of Consent Decrees**

The consent decrees at issue in these proceedings both provide that the Court retains jurisdiction over the parties and subject matter of the action for the purpose of enforcing the terms of the consent decrees. They further provide that each Fund:

... after notice to the Secretary, may petition the Court to dissolve the Consent Decree and; absent good cause shown by the Secretary establishing a need for continuing this Amended and Restated Consent Decree, the Amended and Restated Consent Decree shall be dissolved.

In addition to the above language, the Health and Welfare Fund consent decree additionally provides:

The Court's retained jurisdiction shall include the power to modify this Amended and Restated Consent Decree upon petition of a signatory to this Amended and Restated Consent Decree or upon the Court's initiative, after notice and an evidentiary hearing, in order to accommodate changed legal or factual circumstances, as and to the extent appropriate under *United States v. Swift & Co.*, 286 U.S. 106, 119-20 (1932).

The *Swift* decision cited in the Health and Welfare Fund consent decree set forth the principle that a court of equity retains the power to modify a decree of injunctive relief if the circumstances, whether of law or fact, have changed since the time of issuance. This inherent right derives from Fed. R. Civ. P. Rule 60(b)(5). As part of an issuing court's inherent power over decrees within its jurisdiction, the court retains ongoing supervisory authority to enforce, modify or dissolve a consent decree. *In re Peterson*, 990 F.2d 653, 657-658 (1<sup>st</sup> Cir. 1993). It is also well established that the supervising court does not need to await a party's motion to modify a consent decree and may *sua sponte* move to evaluate the decree. *In re Pearson* at 658-659. See also *United States v. City of Miami*, 3F.d 1497, 1503 and 1506 (11<sup>th</sup> Cir. 1993). The Supreme Court in 1992 re-affirmed the court's power to modify consent decrees under Rule 60(b)(5) and stressed the need for flexibility in administering consent decrees. See *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367 (1992).

### **The Parties Conduct**

As noted above, the Pension Fund and Health and Welfare Fund consent decrees have now been in place for 41 years and 38 years, respectively. During this extensive period there have been no violations of ERISA or any other terms of the consent decrees by either Fund. I was appointed as Independent Special Counsel under the terms of the consent decrees on November 2, 2011. Since that time I have been present at every Board meeting of both Funds as well as the majority of their subcommittee meetings. My personal observations during this time period are that both the Pension Fund and the Health and Welfare Fund are operated in a professional manner and in compliance with ERISA. Both Funds' Trustees and their Staff are competent and professional in all respects. I would additionally note that in 2016 two comprehensive investigations of the Pension Fund were commenced by the United States Government Accountability Office ("GAO"). These investigations focused on 1) the Pension Fund's investment activities, and 2) the activities of the DOL in overseeing the Fund pursuant to the 1982 consent

decree. Following these investigations, the GAO in 2018 issued two reports wherein it had no recommendations concerning either its review of the Pension Fund's investment activities or the DOL's oversight of the Pension Fund. Among the numerous findings in the GAO report were the following:

- The Pension Fund's investment returns and investment expenses were 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.)
- 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).

**Continued Oversight of the Pension and Health and Welfare  
Funds Exists Regardless of the Consent Decrees**

Congress enacted ERISA in 1974 to protect the interests of participants and beneficiaries of private sector employee benefit plans. Among other things, ERISA requires plans to meet certain requirements and minimum standards and fiduciaries of such plans are required to follow the terms of the relevant plan and trust documents governing the plan. The DOL, the IRS and the Pension Benefit Guaranty Corporation ("PBGC") are generally responsible for administering ERISA and its related regulations. The DOL has primary responsibility for administering and enforcing the fiduciary responsibility provisions under Part 4 of Title 1 of ERISA, which include the requirement that plan fiduciaries act prudently and in the sole interest of participants and beneficiaries. ERISA provides the DOL with authority to investigate plans and to obtain documents and information from the plans when deemed necessary. The IRS is generally responsible for enforcing ERISA's minimum funding requirements and, like the DOL, also has investigatory authority. The PBGC operates the Single – Employer and Multiemployer insurance programs which protect the retirement benefits of over 33 million workers and retirees. In addition to these regulations and safeguards arising out of ERISA, the American Rescue Plan Act of 2021 ("ARPA") places additional obligations on plans such as the Pension Fund which receive SFA funds. These plans are required to file an annual compliance certificate attesting that they are in full compliance with all statutory requirements of the Act and the PBGC is empowered to conduct audits of participating plans to ensure this compliance. ARPA also further requires that withdrawal liability settlements above a certain dollar threshold must be submitted to the PBGC for approval before they can be implemented. In sum, even if this Court dissolves the consent decrees, the Pension and Health and Welfare Fund will be subject to continued regulation and oversight from multiple federal agencies.

The Honorable Thomas Durkin  
April 4, 2023

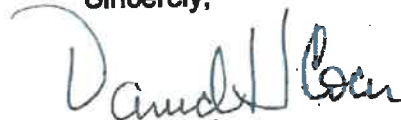
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### CONCLUSION

As set forth above, the primary objective of both consent decrees was to ensure compliance with ERISA and applicable IRS determination letters. In the over 38 years since these decrees have been in place there has been full compliance by the Funds with the consent decrees and all court orders related thereto, there has been full cooperation and coordination with the DOL with respect to all aspects of plan administration and, most important, there have been no breaches of ERISA. It is my opinion that the objectives of both consent decrees have been fully achieved. As such, I recommend that the consent decrees be dissolved and that the Court's jurisdiction over these cases be terminated.

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. Seema Nanda, Solicitor of Labor (w/encl.) Via UPS Next Day  
Mr. Wayne Berry (w/encl.) Via UPS Next Day  
Mr. Thomas C. Nyhan