

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ELAINE L. CHAO, Secretary of)	
the United States Department)	
of Labor,)	
)	
Plaintiff,)	
)	
v.)	
)	No. 78 C 342
ESTATE OF FRANK E. FITZSIMMONS,)	
<u>et al.</u> ,)	(United States District
)	Judge James B. Moran)
Defendants.)	

**TRUSTEES' AND FUND'S MOTION FOR ORDER
APPROVING AND AUTHORIZING (1) THE TRUSTEES'
APPOINTMENT OF A CUSTODIAN FOR ALL INVESTMENT
ASSETS, (2) THE ALLOCATION OF NEW FUNDS FROM
UNITED PARCEL SERVICE, INC. AND (3) THE
TRUSTEES' DECISIONS THAT ESTABLISH THE NEW
PASSIVE EQUITY INDEX ACCOUNT**

The trustees ("Trustees") of Central States, Southeast and Southwest Areas Pension Fund ("Fund") and the Fund respectively move for an order approving (1) the Trustees' appointment of a Custodian for all investment assets of the Fund, (2) the allocation of new funds being paid to the Fund by United Parcel Service, Inc. and (3) the Trustees' decisions that establish the new Passive Equity Index Account of the Fund.

1. Appointment of Custodian.

On November 20, 2007, the Court entered an order approving and authorizing modifications of Section II of the Consent Decree in this action as amended to date ("Consent Decree"). One modification granted to the Trustees "... exclusive authority to appoint, replace and remove the custodian or custodians for all assets of the Pension Fund, including assets

allocated to each Named Fiduciary", contingent upon approval by the Court after notice (II.B.2.). At a board meeting on December 13, 2007, the Trustees appointed Mellon Bank, N.A. ("Mellon") as the custodian for all assets of the Fund under Section II of the Consent Decree, including assets allocated to each Named Fiduciary (Goldman Sachs Asset Management, L.P. ["Goldman Sachs"] and Northern Trust Global Advisors, Inc. ["Northern Trust"]). Mellon has served as the custodian of assets of the Fund since October 1, 1986, and has also administered benefit disbursement accounts of both the Fund and Central States, Southeast and Southwest Ares Health and Welfare Fund ("Welfare Fund") since August 1, 1990. Mellon currently serves as the custodian of all assets of the Fund allocated to Goldman Sachs and Northern Trust as the Fund's Named Fiduciary appointees approved by the Court, and as the custodian of the Passive Fixed-Income Index Account established by the Fund, effective July 1, 2003, pursuant to approval by the Court. Since November 1, 1994, Mellon has also served as a lockbox depository for employer contributions to the Fund and the Welfare Fund. It is respectfully requested that the Court approve the appointment of Mellon as the custodian for all assets of the Fund under Section II of the Consent Decree, effective immediately.

2. Allocation of New Funds from United Parcel Service, Inc.

An agreement ("UPS-CSPF Agreement") was signed and entered by United Parcel Service, Inc. ("UPS"), a major contributing employer of the Fund, and the Trustees on September 30, 2007, the terms of which require a \$6,100,000,000 payment (\$6.1

Billion UPS Payment") by UPS to the Fund on December 26, 2007, as part of a complete withdrawal on that date by UPS and related entities from the Fund (the terms also include a transfer of specified benefit liabilities of the Fund to a plan or plans maintained by UPS), contingent upon the satisfaction of conditions precedent that are described in the agreement. The Court has previously received information about these developments, including data in a quarterly report from Independent Special Counsel Frank J. McGarr dated November 5, 2007 (p. 2). The Court holds full authority for the allocation of all assets of the Fund under Section II of the Consent Decree among the Named Fiduciary appointees (Goldman Sachs and Northern Trust), the Passive Fixed-Income Index Account and the Passive Equity Index Account, including this statement (§ II.B.1):

"At all times the Court shall retain full authority to change all allocations of all assets of the Pension Fund"

It is respectfully requested that the Court authorize and approve the following allocation of the \$6.1 Billion UPS Payment after its receipt by the Fund:

- (a) allocation of \$900,000,000 to the Passive Fixed-Income Index Account of the Fund; and
- (b) allocation of \$4,200,000,000 to the Passive Equity Index Account of the Fund; and
- (c) allocation of \$1,000,000,000 to Northern Trust as a Named Fiduciary of the Fund.

3. Passive Equity Index Account.

The modifications of Section II of the Consent Decree by order of the Court on November 20, 2007, include the addition of a

new Section II.F., which authorizes a Passive Equity Index Account in an amount to be determined by the Court ("the Court-authorized Allocation"). Relative to the Passive Fixed-Income Index Account, the Consent Decree (as amended in 2003) requires that "... the Pension Fund will ... maintain the Passive Fixed-Income Index Account at a 20% share of all investment assets, as of the first day of each calendar quarter on and after October 1, 2003 ..." (§ II.E.). It is respectfully requested that the Court determine that the Court-authorized Allocation to the Passive Equity Index Account is also a 20% share of all investment assets of the Fund, with quarterly adjustments by the Fund for each calendar quarter on and after April 1, 2008, within 35 days after the end of the prior quarter, in accordance with the Consent Decree (§ II.F.).

Section II.F. of the Consent Decree also provides that "[a]ll assets of the Pension Fund in the Passive Equity Index Account shall be managed by one or more investment managers as defined in section 3(38) of ERISA, 29 U.S.C. § 1002(38), each of which shall be appointed by the Board of Trustees with the approval of the Court after notice to the Secretary." In early November, 2007, request-for-proposal packages were distributed by the Fund to seven established financial institutions with known expertise in providing the investment management services needed to manage the Passive Equity Index Account. Proposals were later received by the Fund from four of those institutions and, after evaluation, Mellon Bank, N.A. ("Mellon"), which meets the required qualifications in Section II.C.2. of the Consent Decree, has been appointed by the

Trustees (at a board meeting on December 13, 2007), effective immediately, as the investment manager of the Fund with exclusive authority and responsibility to control and manage the assets of the Fund in the Passive Equity Index Account (if approved by the Court).

Mellon has served as an investment manager of the Fund since September 1, 1978, and as the custodian of assets of the Fund since October 1, 1986. Mellon also has administered benefit disbursement accounts of both the Fund and Central States, Southeast and Southwest Ares Health and Welfare Fund ("Welfare Fund") since August 1, 1990. On September 16, 1993, the Welfare Fund's board of trustees appointed Mellon as a Welfare Fund investment manager, effective January 1, 1994, "contingent upon approval by Judge [Hubert L.] Will ... as required by the Consent Decree" of the Welfare Fund. Judge Will, in an order he signed on December 15, 1993, approved that appointment of Mellon as a Welfare Fund investment manager. Nos. 78 C 4075 and 82 C 7951 (N.D.Ill.). On October 21, 1993, the Welfare Fund's board of trustees appointed Mellon as the custodian of the assets of the Welfare Fund, replacing Bank of New York, effective January 1, 1994. Mellon has continuously served, since January 1, 1994, as investment manager and custodian of the Welfare Fund. Since November 1, 1994, Mellon has also served as a lockbox depository for employer contributions to the Fund and the Welfare Fund.

On May 27, 2003, the Court entered an order approving the Trustees' appointment of Mellon "... to serve as an investment

manager of the Fund, with authority and responsibility for the Passive Fixed-Income Index Account of the Fund, effective on and after July 1, 2003", and since that date Mellon has served as the investment manager of the Passive Fixed-Income Index Account of the Fund. It is respectfully requested that the Court enter an order approving the appointment by the Trustees of Mellon to serve as an investment manager of the Fund, with authority and responsibility for the Passive Equity Index Account of the Fund, effective immediately. It is further respectfully requested that the Court enter an order approving the Investment Policy Statement for the Passive Equity Index Account, of which a copy is attached.

There is one final and necessary authorization in the initial funding and management of the Fixed Equity Index Account. The Consent Decree states in part as follows (§ II.E.):

"It is an objective of this section II.E. that the assets of the Pension Fund in the Passive Fixed-Income Index Account will continuously constitute 20% (or around 20%) of the combined value of all investment assets of the Pension Fund"

The Fund itself, pursuant to Section II.E., monitors that account and is authorized to direct quarterly adjustments as needed to maintain that approximate 20% balance. *Id.* That provision authorizes the Fund to direct such needed quarterly adjustments "within 35 days after the end of the prior quarter". *Id.* (Most recently, the Fund directed Goldman Sachs and Northern Trust to transfer a total of \$247,920,015.18 to the Passive Fixed-Income Index Account on July 31, 2007.) One result of the \$6.1 Billion UPS Payment will be a need to increase the allocation to the

Passive Fixed-Income Index Account, and \$900,000,000 will be allocated for that purpose (as stated on p. 3, *supra*), if the Court approves that allocation. The Fund has determined that an additional \$1,200,000,000 needs to be allocated, on or about December 26, 2007, from Goldman Sachs to the Fixed Equity Index Account, to maintain its 20% proportion (assuming that proportion is approved by the Court, as requested). Since this adjustment is not a quarterly one, the Fund cannot itself direct this allocation. The Consent Decree provides, however, that "[a]t all times the Court shall retain full authority to change all allocations of all assets of the Pension Fund ..." (§ II.B.1.). It is respectfully requested that the Court enter an order authorizing and approving the following allocation of assets of the Fund on or about December 26, 2007: \$1,200,000,000 from Goldman Sachs to the Fixed Equity Index Account.

A copy of a proposed order is attached (an original order, identical to the attachment, will be presented to the Court at the hearing upon this motion).

Dated: December 17, 2007.

Respectfully submitted,

/s/ Thomas C. Nyhan
Thomas C. Nyhan

/s/ William J. Nellis
William J. Nellis

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