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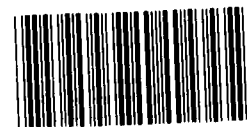
Report To The Permanent Subcommittee On Investigations, Committee On Governmental Affairs United States Senate

The Department Of Labor's Oversight Of The Management Of The Teamsters' Central States Pension And Health And Welfare Funds

GAO obtained information on the status of several civil suits the Department of Labor has initiated, since 1978, against the Teamsters' Central States Pension and Health and Welfare Funds and some trustees and officials for allegedly mismanaging the Funds' assets. GAO's review disclosed that:

- In August 1984 a district court ordered the dismissal of Labor's suit against the former trustees and officials of the Pension Fund as part of a proposed settlement of two private plaintiff cases against the Fund. Labor's appeals to have the court's decision reversed were pending as of June 30, 1985.
- Reports by the court-appointed Independent Special Counsel, who helps the court administer a September 1982 consent decree negotiated separately between Labor and the then current Pension Fund trustees, indicated that the Fund and its trustees were complying with the decree.
- Labor's civil suits against the Health and Welfare Fund were partially settled through an out-of-court agreement with the Fund's trustees in April 1984 and consent decrees approved by a court in February 1985.

GAO also examined the likely impact on the Pension Fund of losses incurred on loans to three hotels/casinos in Las Vegas. The Pension Fund could suffer losses of about \$21.3 million from the sale of the loans. Such a loss would represent less than 0.5 percent of the Fund's assets--estimated at \$5.2 billion as of December 31, 1984--and probably would not significantly affect the Fund's operations.



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HUMAN RESOURCES
DIVISION

B-199238

The Honorable William V. Roth, Jr., Chairman
The Honorable Sam Nunn, Ranking Minority Member
Permanent Subcommittee on Investigations
Committee on Governmental Affairs
United States Senate

As requested, we reviewed several aspects of the Department of Labor's oversight of the management of the Teamsters' Central States, Southeast and Southwest Areas Pension and Health and Welfare Funds. We obtained information specifically on

- the status of the civil suit, Brock v. Fitzsimmons, Labor initiated on February 1, 1978, against the Pension Fund's former trustees and officials;
- the administration of the September 1982 consent decree entered into between Labor and the Pension Fund (particularly its provisions concerning the Pension Fund's independent asset manager, who is also the Fund's fiduciary, and the Independent Special Counsel);
- the likely impact on the Pension Fund of losses incurred on loans to three hotels/casinos in Las Vegas; and
- the mechanism in place for processing claims for the Health and Welfare (H&W) Fund.

We reviewed records, reports, and other pertinent documents--at Labor's Washington headquarters--related to the litigation involving the two Funds and the H&W Fund claims processing prepared by Labor, the Funds, the courts, the Pension Fund's investment managers, and the Independent Special Counsel. We also visited the Funds' offices in Chicago and reviewed records and reports pertaining to Pension Fund loans to owners or entities that controlled certain Las Vegas hotels and casinos and other activities of both Funds. We also held discussions with knowledgeable Labor and Fund officials.

Our objectives, scope, and methodology are detailed in appendix I. Information on the four specific areas of your request is detailed in appendixes II to V and summarized below.

STATUS OF LABOR'S CIVIL SUIT
BROCK V. FITZSIMMONS

As a result of investigations, on February 1, 1978, Labor filed a civil suit--Brock v. Fitzsimmons, et al., (Fitzsimmons)--against 17 former trustees and 2 former officials of the Pension Fund to recover losses resulting from alleged breaches of fiduciary responsibilities under the Employee Retirement Income Security Act (ERISA), including mismanagement of Fund assets.

According to Labor, the Fitzsimmons suit was delayed during the first 2 years because of discovery disputes among Labor, the Pension Fund, and the defendants; the lack of a permanent judge; and the consolidation of discovery on Fitzsimmons with discovery on two other civil suits brought against the Fund by private plaintiffs. Between 1981 and August 1984, the Fitzsimmons case was further delayed by extended negotiations--between Labor and the Fund and separately between the Pension Fund and plaintiffs in the two private suits--and various court pleadings and actions to reach a proposed settlement on all three cases.

On August 27, 1984, the district court ordered the dismissal of Labor's Fitzsimmons suit as part of a proposed settlement of the two private plaintiff cases against the Pension Fund. On October 25, 1984, Labor appealed the district court's ruling, requesting the appeals court to reverse the district court's decision and remand the Fitzsimmons case and the two private plaintiff cases to the district court with directions to reinstate the three cases. The appeals court was still considering Labor's appeal as of June 30, 1985.

ADMINISTRATION OF THE CONSENT DECREE

On September 22, 1982, Labor entered into a court enforceable consent decree with the Pension Fund to help assure that the Fund's assets are managed for the sole benefit of the plan's participants and beneficiaries as intended by ERISA. The district court, as authorized by the consent decree, on December 3, 1982, appointed an Independent Special Counsel (the Counsel) to assist it in administering the decree. The Counsel has access to all Pension Fund records and officials. Also, the court, with Labor not objecting, approved on January 17, 1984, the Pension Fund's selection of a new fiduciary with responsibility as asset manager.

The Counsel's quarterly reports to the court as of April 1, 1985, indicated that the Pension Fund and its trustees were complying with the terms of the consent decree; had instituted, or were instituting, most of the reforms called for in the decree; and were cooperating with the operation of the outside independent asset manager.

Labor, which is responsible for oversight of the Counsel, performed a limited review of the Counsel's activities in the summer of 1984 and found nothing to indicate that the Counsel was not performing satisfactorily.

PENSION FUND LOANS TO OWNERS
OF LAS VEGAS HOTELS AND CASINOS

Between 1972 and 1976 the Pension Fund made various loans totaling about \$140 million to the Argent Corporation, owner of the Fremont and Stardust Hotels/Casinos in Las Vegas, and to the Aladdin Hotel Corporation, owner of the Aladdin Hotel and Casino in Las Vegas.

In December 1979 the Fremont and Stardust loans, which had a balance of about \$88,000,000, were assumed by Trans-Sterling, Inc. On November 1, 1984, the loan balance totaled about \$73,900,000. On November 7, 1984, The Victor Palmieri and Company, Incorporated, the manager of these loans, closed a sale of the loans to Golden Nugget, Inc., in Las Vegas for \$58,580,000, plus a contingent interest in future proceeds realized by the Golden Nugget, Inc., if sold. In February 1985, a third party purchased the Fremont and Stardust properties, and Golden Nugget, Inc., received about \$73 million for the notes it purchased in November 1984 from Palmieri. Palmieri believed that under the terms of the sale agreement with Golden Nugget, Inc., the Pension Fund would share in the sale proceeds.

Golden Nugget, Inc., however has contended that the final sales agreement did not contain a specific provision for the Pension Fund to share in any benefits from prepayment of the notes. Thus, the Fund received only \$111,476--representing accrual of interest--instead of the estimated \$7.5 million calculated by Palmieri. The Fund has a civil suit pending against Golden Nugget, Inc., seeking to recover the moneys it contends are due under the agreement.

The Pension Fund's loans to Aladdin totaled about \$43 million, and the loans have been in delinquency since September 1982. Aladdin's current owner is negotiating a sale of the hotel/casino, and the Fund has indicated it will accept the

owner's \$33,000,000 offer to settle the \$39,000,964 outstanding principal and interest balance at December 31, 1984, upon sale of the hotel/casino.

The Pension Fund could suffer losses from its loans on the three hotels/casinos of as much as \$21.3 million. Such a loss would represent less than 0.5 percent of the Fund's assets--estimated at \$5.2 billion at December 31, 1984--and probably would not significantly affect Fund operations.

HEALTH AND WELFARE
CLAIMS PROCESSING

The H&W Fund provides medical and hospital care, dental, vision, prescription, and related medical benefits as well as death benefits to about 170,000 eligible participants and beneficiaries. It is administered by the same trustees who administer the Pension Fund.

From its inception in 1950 to February 1983, the H&W Fund used the services of Amalgamated Insurance Agency Services Inc. (Amalgamated) and affiliated corporations to process health and benefit claims. In February 1983, the H&W Fund conditionally acquired certain Amalgamated assets for about \$10.75 million to initiate an in-house claims processing system and began processing its own claims.

The final sale of the assets to the H&W Fund was subject to a determination by the district court that the selling price represented the fair value of the assets acquired from Amalgamated. The court determined on July 23, 1984, that the \$10.75 million selling price for the assets was reasonable.

Before the approval of the asset sale, Labor had initiated two civil suits in the district court--the Brock v. Robbins, et al. and Brock v. Dorfman, et al. cases--against the H&W Fund then current and former trustees and a former executive director, and Amalgamated and its affiliated corporations for alleged violations of ERISA's fiduciary provisions. These suits were partially settled through an out-of-court agreement with the Fund's trustees in April 1984 and consent decrees between Labor and the H&W Fund and Amalgamated defendants that the district court approved on February 14, 1985.

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We did not obtain official comments from Labor or the Funds on a draft of this report. However, during our work, we discussed its contents with officials of Labor and the Funds and incorporated their comments as appropriate when preparing the final report.

As arranged with your offices, unless you publicly announce its contents earlier, we will make no further distribution of this report for 30 days. At that time, we will send copies to the Secretary of Labor; the Commissioner of Internal Revenue; the Attorney General; the Acting Executive Director, Pension Benefit Guaranty Corporation; the Executive Director, Teamsters' Central States, Southeast and Southwest Areas Pension and H&W Funds; appropriate congressional committees, subcommittees, and members; and other interested parties. We will also make copies available to others upon request.



Richard L. Fogel
Director

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ABBREVIATIONS

B&A	Benefits and Administration account
ERISA	Employee Retirement Income Security Act
H&W	Health and Welfare Fund
IBT	International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America Union
IRS	Internal Revenue Service
OPWBP	Office of Pension and Welfare Benefit Programs



BACKGROUND

Multiemployer pension and health and welfare plans are trust funds that are jointly administered by labor and management and are established under the Labor Management Relations Act of 1947--the Taft-Hartley Act. The act provides that such trust funds be (1) based on payments or contributions from employers, (2) managed for the sole benefit of eligible employees and their beneficiaries, (3) governed by a written agreement specifying the employer payments/contributions and employee benefits, and (4) administered by an equal number of representatives from the employees' and employers' organizations.

The Congress enacted the Employee Retirement Income Security Act (ERISA) of 1974, as amended (29 U.S.C. 1001, et seq.) to regulate private pension plans--including multiemployer plans. To protect employees' interests in pension plans, ERISA established comprehensive minimum standards for how employees become eligible to participate in pension plans (participation standards), how employees earn a nonforfeitable right to pension benefits (vesting standards), how the plans should be funded (funding provisions), how the plans should be operated in the best interests of plan participants (fiduciary standards), and to what extent and to whom plan information is to be reported and disclosed (reporting and disclosure requirements). In addition, employee health and welfare benefit plans--including multiemployer plans--are subject to ERISA's reporting and disclosure requirements and fiduciary standards.

The Department of Labor, the Internal Revenue Service (IRS), and the Pension Benefit Guaranty Corporation share the primary responsibilities for ERISA. Labor is primarily responsible for enforcing the reporting, disclosure, and fiduciary provisions. IRS enforces the act's participation, vesting, and funding provisions and makes sure plans meet Internal Revenue Code requirements for favorable tax treatment. The Corporation, which was established by ERISA, administers programs that guarantee payment of at least part of the vested benefits promised to participants of certain plans that become unable to pay benefits.

The Department of Justice, as the government's chief law enforcement agency, is responsible for prosecuting alleged violations of ERISA's criminal provisions, such as the embezzlement by a fiduciary of a plan's funds or assets.

According to Labor, the Teamsters' Central States, Southeast and Southwest Areas Pension Fund (the Pension Fund) and

Health and Welfare Fund (the H&W Fund)¹ are the largest multi-employer plans in the nation. On December 31, 1984, the Pension Fund had 298,563 active participants and 124,075 retirees or beneficiaries of deceased participants receiving pension benefits. During calendar year 1984, the Pension Fund received \$642 million in employers' contributions, paid out \$637 million in pension benefits, and had \$5.2 billion in assets at the end of the year.

On December 31, 1984, the H&W Fund had 149,530 active participants and 19,649 retirees receiving benefits, such as insurance, medical, or dental benefits. During calendar year 1984, the H&W Fund received \$480 million in employers' contributions, paid out \$421 million in benefits, and had \$323 million in assets at the end of the year.²

LABOR'S INVESTIGATION OF THE PENSION FUND

Since the Pension Fund's inception in 1955, its trustees have been the subject of controversy and allegations of misuse and abuse of its assets. Allegations have also been made that individuals linked to organized crime had connections with, or controlled, the Fund's trustees and that the trustees had made questionable loans to people linked to organized crime.

Over the past 17 years, various federal agencies have reviewed the Pension Fund and investigated alleged misconduct by the trustees. One of the most significant and controversial of the government's investigations was initiated in 1975 by Labor. At that time, an IRS investigation of the Pension Fund, which started in 1968, was also in process.

¹The official names of the funds are the "Central States, Southeast and Southwest Areas Pension Fund" and the "Central States, Southeast and Southwest Areas Health and Welfare Fund." Although these are the official names, "Teamsters'" was added since this is the name commonly used to identify the funds.

²The figures on the participants, employers' contributions, and assets on December 31, 1984, were furnished by the Office of the Executive Director of the Pension and H&W Funds and are unaudited, preliminary estimates. According to the Executive Director's office, these were the most current figures available.

Labor's and IRS' investigations indicated that former Pension Fund trustees and officials had apparently mismanaged the Fund's assets, failed to prudently carry out their fiduciary responsibilities, and not operated the Fund for the exclusive benefit of plan participants and beneficiaries--as required by ERISA.

Labor had targeted 82 of the Pension Fund's 500 real estate mortgage and collateral loans for investigation. The 82 loans totaled about \$518 million, more than half of which had been loaned to owners of or entities that controlled hotels and casinos in Las Vegas. Labor's investigators found apparent significant fiduciary violations and imprudent practices by the trustees on many of these loans.

As a result of the investigations, on February 1, 1978, Labor filed a civil suit, Brock v. Fitzsimmons (Fitzsimmons), against 17 former trustees and 2 former officials of the Pension Fund to recover losses resulting from alleged breaches of fiduciary duties, including mismanagement of Fund assets.³ The complaint identified 15 transactions that the Secretary alleged as examples of the defendants' violations of ERISA.

Labor, after consultation with IRS and the Department of Justice, on September 22, 1982, entered into a court-approved consent decree with the Pension Fund. The decree provides (1) for the Fund to continue its use of an independent asset manager--who is also the named fiduciary with exclusive responsibility to manage and control the Fund's assets--and (2) greater assurance that the Fund's assets, estimated to be

³Brock v. Fitzsimmons, et al., No. 78 C 342 (N.D.Ill.). The suit listed 17 former trustees: Frank E. Fitzsimmons, Roy L. Williams, Robert Holmes, Donald Peters, Joseph W. Morgan, Frank H. Ranney, Walter W. Teague, Jackie Presser, Albert D. Matheson, Thomas J. Duffey, John F. Spickerman, Sr., Herman A. Lueking, Jack A. Sheetz, William J. Kennedy, Bernard S. Goldfarb, Andrew G. Massa, and William Presser. The two former officials were Alvin Baron and Daniel Shannon; however, Mr. Shannon was later dropped from the complaint. Mr. Frank Fitzsimmons died in May 1981, Mr. William Presser died in July 1981, and Mr. William Kennedy died in April 1984.

\$5.2 billion as of December 31, 1984, are managed for the sole benefit of the plan's participants and beneficiaries as intended by the act.⁴

The decree also authorizes the court to appoint an Independent Special Counsel to oversee compliance with the consent decree and report quarterly to the court on the Pension Fund's performance.

LABOR'S INVESTIGATION OF THE H&W FUND

In June 1977, Labor initiated an investigation of the H&W Fund to determine whether the trustees or plan officials, who under ERISA act as fiduciaries of the Fund's assets, had violated the fiduciary requirements in title I of the act. On the basis of its preliminary review, Labor tentatively concluded that there were deficiencies in the manner in which Amalgamated Insurance Agency Services, Inc. (Amalgamated),⁵ performed and processed benefit claims under its contract with the Fund.

Labor tentatively concluded that claims processing procedures did not include many of the basic checks and auditing procedures necessary to insure the integrity of the claims payment process carried out by Amalgamated. The investigation raised questions as to whether an effective auditing capability was in place and whether controls over claimant eligibility, claim verification, and payment documentation were deficient.

As a result, on October 16, 1978, Labor filed a suit against the then current and former H&W trustees and a former executive director, Brock v. Robbins (Robbins),⁶ to obtain relief for alleged violations of ERISA. Also, on December 29, 1982, Labor filed a suit, Brock v. Dorfman (Dorfman),⁷ in the district court against Amalgamated and its affiliated corporations, Allen M. Dorfman and other officials of the corporations,

⁴Labor's and IRS' actions were in general consonance with our views and recommendations in our report Investigation to Reform Teamsters' Central States Pension Fund Found Inadequate (HRD-82-13, Apr. 28, 1982).

⁵Amalgamated was substantially controlled by Allen M. Dorfman, who died on January 20, 1983.

⁶Brock v. Robbins, et al., No. 78 C 4075 (N.D.Ill.).

⁷Brock v. Dorfman, et al., No. 82 C 7951 (N.D.Ill.).

and the H&W Fund, its then current trustees, a former trustee, and a former executive director. The suit alleged that certain transactions between the H&W Fund fiduciaries and Amalgamated and its affiliates violated ERISA's fiduciary provisions.

SUBCOMMITTEE REQUEST

The Chairman and Ranking Minority Member of the Permanent Subcommittee on Investigations, Senate Committee on Governmental Affairs, requested us to obtain information on Labor's oversight activities relating to management of the Pension and H&W Funds.

The Subcommittee requested information specifically on:

- (1) The current status of the civil suit, Brock v. Fitzsimmons, Labor initiated in February 1978 against the former Pension Fund trustees and officials. (See p. 7.)
- (2) The administration of the consent decree between Labor and the Pension Fund. The Subcommittee was particularly interested in Labor's ability to assure the independence of the outside asset managers. Later, Subcommittee staff expressed concern as to whether the Independent Special Counsel had been appointed in conformance with the consent decree. (See p. 15.)
- (3) The likely impact on the Pension Fund should certain loans to Las Vegas hotels/casinos go into default. (See p. 23.)
- (4) The processing of claims for the H&W Fund. (See p. 32.)

SCOPE AND METHODOLOGY

Within Labor, the Office of Pension and Welfare Benefit Programs (OPWBP) enforces ERISA, and its Washington, D.C., headquarters and Chicago Area Office handle the investigation and other enforcement actions involving the Pension and H&W Funds. OPWBP is assisted by Labor's Office of the Solicitor, whose Special Litigation Division handles Labor's civil suits against the current and former trustees and officials of both Funds.

Our review was performed principally at Labor's Washington headquarters. To obtain the information requested by the Subcommittee, we reviewed documents, records, and reports related to litigation involving the two Funds which were obtained primarily from the Special Litigation Division. These included various briefs, memorandums, and correspondence prepared by Labor, the Funds, the courts, and others concerning the litigation; financial reports prepared by the Equitable Life Assurance Society of the United States and the Victor Palmieri and Company Incorporated, the Pension Fund's initial named fiduciary and real estate investment manager; and quarterly reports prepared by the Independent Special Counsel. Discussions were also held with the Associate Solicitor for Special Litigation, who heads the Special Litigation Division, and two supervisory trial attorneys working on the civil suits.

We also reviewed OPWBP's records pertaining to the H&W Fund claims processing mechanism. We discussed the H&W Fund's claims processing activities with officials in OPWBP, including the Deputy Administrator.

We also visited the Pension and H&W Funds' offices in Chicago and held discussions with the Funds' Executive Director, his two executive assistants, and the Funds' Associate General Counsel. We also reviewed records and reports pertaining to the Pension Fund's loans to owners of or entities that controlled certain hotels and casinos in Las Vegas and other activities of both Funds.

Our work was performed in accordance with generally accepted government auditing standards. The views of directly responsible officials were sought during our work and are incorporated in the report where appropriate. In accordance with your wishes, we did not request the Department of Labor or the Funds to review and comment officially on a draft of this report.

STATUS OF LABOR'S CIVIL SUIT, BROCK V. FITZSIMMONS,
INITIATED IN FEBRUARY 1978

According to Labor, its civil suit, Brock v. Fitzsimmons et al. (Fitzsimmons), filed on February 1, 1978, in the U.S. District Court, Northern District of Illinois, Eastern Division, was delayed during the first 2 years because of discovery¹ disputes among Labor, the Pension Fund, and the defendants; the lack of a permanent judge; and the consolidation of discovery on Fitzsimmons with discovery in two other civil suits brought against the Fund by private plaintiffs. Between 1981 and August 1984, the Fitzsimmons case was further delayed by extended negotiations--between Labor and the Fund, and between the Fund and the plaintiffs in the two private suits--and various court pleadings and actions to reach proposed settlements on all three cases.

On August 27, 1984, the district court ordered the dismissal of Labor's Fitzsimmons suit as part of a proposed settlement of the two private plaintiff cases against the Pension Fund. On October 25 and 26, 1984, Labor appealed the district court's ruling to the U.S. Court of Appeals for the Seventh Circuit, requesting the appeals court to reverse the district court's decision and remand the Fitzsimmons case and the two private plaintiff cases to the district court with directions to reinstate the three cases. The appeals court was still considering Labor's appeals as of June 30, 1985.

INITIAL DELAYS IN LITIGATING
THE FITZSIMMONS SUIT

In the Fitzsimmons suit, Labor complained that the former trustees and officials allegedly breached their fiduciary obligations under ERISA by failing to manage the Pension Fund solely in the interest of its participants and beneficiaries and to exercise the care, skill, prudence, and diligence required by ERISA. Labor's complaint listed 15 transactions, including loan transactions, as examples of the alleged fiduciary violations

¹The disclosure by the defendant of facts, titles, documents, or other things that are in defendant's exclusive knowledge or possession and that are necessary to the party seeking the discovery as a part of a cause or action pending or to be brought in another court or as evidence of his rights or title in such proceedings.

and contended that the trustees' mismanagement of Fund assets caused great financial harm to the plan and its participants and beneficiaries.

According to Labor, during the first 2 years of the suit, litigation was delayed many times due to discovery disputes among Labor, the defendants, and the Pension Fund and the assignment and reassignment of the case to four different judges before it was permanently assigned to a district court judge in 1979.

On April 21, 1981, Labor filed a motion to amend the complaint to (1) add nine more loan transactions to the case as examples of the defendants' alleged imprudence, (2) add the Pension Fund (an entity distinct from its former officials) as a party to the litigation, and (3) clarify that, in addition to monetary recovery from defendants, the case sought injunctive relief in the form of institutional reforms to safeguard the Fund's future operation.

The district court's October 7, 1981, order on Labor's motion (1) permitted Labor to specify the nine additional loan transactions in the complaint and (2) authorized Labor's request to specify the injunctive and equitable relief it sought. The court, however, stayed discovery on the 9 transactions pending completion of the trial on the 15 transactions in the original complaint. The court rejected Labor's proposal to include the Pension Fund as a defendant to the suit.

CONSOLIDATION OF DISCOVERY IN FITZSIMMONS WITH OTHER SUITS

According to documents filed by Labor in the court, the discovery involving the Fitzsimmons case was consolidated with two other² suits--Dutchak v. the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America Union (IBT), et al. (Dutchak) and Sullivan v. Fitzsimmons, et al. (Sullivan)--filed by private plaintiffs on behalf of a class of Pension Fund participants and beneficiaries.

The Dutchak case was filed in October 1976 by a group of private plaintiffs against IBT, the Pension Fund, the Teamsters'

²Dutchak v. International Brotherhood of Teamsters, et al., No. 76 C 3803 (N.D.Ill.), and Sullivan v. Fitzsimmons, et al., No. 79 C 1725 (N.D.Ill.).

Local 705 and Local 710 Pension Funds, and various officials of these entities. The complaint alleged that the defendants improperly denied pension benefits to individuals through the application of arbitrary and unreasonable vesting requirements. The Dutchak complaint also alleged under state law that various investments made by the defendants between 1955 and 1976 were imprudent and improper. However, according to Labor, the complaint does not allege violations of ERISA.

Labor's documents also stated that in 1979, after Labor filed the Fitzsimmons case, plaintiffs in Dutchak attempted to amend their complaint to include the ERISA asset mismanagement allegations contained in Labor's complaint. Failing to gain the court's permission to file the amended complaint, in April 1979 counsel for the private plaintiffs brought, on behalf of a new group of named plaintiffs, a second class action, Sullivan, against--inter alia--most of the same Pension Fund fiduciaries named as defendants in the Fitzsimmons and Dutchak actions. The Sullivan complaint repeated most of the allegations of the Dutchak complaint pertaining to arbitrary and unreasonable pension benefit eligibility rules and imprudent investments. In addition, the Sullivan complaint asserted, in language virtually identical to claims set forth in Labor's Fitzsimmons complaint, that former Fund fiduciaries breached their duty of care under ERISA.

The three cases were consolidated for discovery purposes by a district court order entered on November 27, 1979. Only Labor, however, initiated discovery with respect to the asset mismanagement claims, obtaining more than 60 depositions (written testimony obtained under oath) pertaining to the Pension Fund's imprudent investments.

PROPOSALS TO SETTLE THE SUITS

On October 16, 1981, a settlement memorandum of understanding proposing to resolve the claims of improperly denied pension benefits, negotiated by the private plaintiffs and the Pension Fund, was presented to the district court. The proposed settlement was conditioned upon the resolution of the asset mismanagement claims and dismissal by the court of Labor's Fitzsimmons complaint.

On November 17, 1981, the district court granted Labor the right to intervene in the Sullivan and Dutchak cases to express its views and objections regarding the appropriateness and adequacy of the proposed settlement and to participate in any settlement hearing. In December 1981, the counsel for the

former trustees of the Pension Fund also requested a stay of all substantive discovery in the three cases pending review of the settlement. Over Labor's objections, the court granted the request to, among other things, determine whether a settlement agreeable to all parties, including Labor, could be reached.

After the stay was granted, representatives of Labor and the Pension Fund continued negotiations. These negotiations were accompanied by frequent pretrial conferences and reports to the court on the progress of the negotiations.³ Concurrently, the Fund, the private plaintiffs, and the insurance companies that insured the former trustees for losses resulting from fiduciary breaches held extensive negotiations without Labor. The Fund and counsel for the Dutchak and Sullivan participants, while reaching an agreement between themselves, did not agree on a settlement acceptable to Labor.

Plaintiffs in the Dutchak and Sullivan cases and the Pension Fund filed a revised settlement agreement with the district court on July 22, 1982, which was later revised by a September 29, 1983, addendum agreement. A draft notice of the settlement was approved by the district court in early 1984. The court provisionally ruled that the settlement class should include all persons--more than 400,000 participants and beneficiaries of the Fund--on whose behalf employers made or were required to make a contribution to the Fund. On April 3, 1984, pursuant to the court's order, the Fund served the notice of settlement to nearly 500,000 persons who, according to the Fund's records, were members of the class.

The settlement proposed that the Pension Fund

- Liberalize its rules to provide benefits to participants for whom contributions had been made or were required to be made to the Fund for 10 or more years.
- Liberalize the Fund's disability benefits rules.
- Establish a Special Hardship Appeal Committee for the purpose of allowing the payment of benefits where deviation from the Fund's rules and certain other specified conditions are justified.

³These negotiations led to the consent decree on September 22, 1982, between Labor and the Pension Fund relating to management of the Fund's assets, appointment of a special counsel, and other matters. See pp. 3 and 15.

--Provide increased information to participants, including a toll-free 24-hour telephone number that participants can call for information and an annual report with detailed information.

--Maintain a continuing offer to enter into a reciprocal agreement with any jointly trusted pension fund whose participants are represented by an affiliate of IBT.

The settlement would also provide for the Pension Fund to establish a special account to fund the benefits provided under the settlement. The Fund's actuaries estimated that the aggregate of all retroactive, lump-sum, and future benefits payable pursuant to the pension plan amendments required by the settlement would approximate \$140 million.

Concerning the asset mismanagement claims, the proposed settlement states that the Pension Fund shall receive from Lloyd's of London and Aetna Life & Casualty Co.--the fiduciary liability insurance carriers that provided coverage to the former trustees--"payments in an amount acceptable both to the Fund and to the attorneys for the plaintiffs." The proposed settlement of the asset mismanagement claims was covered by an insurance settlement agreement submitted to the court on June 13, 1984, which provides that the insurance carriers must pay \$2 million to the Fund.

Additionally, the insurance carriers would be prohibited from seeking recovery of any amounts expended for legal fees to defend the former trustees. In return, the former trustees, the Pension Fund, and the private plaintiffs would release the insurance carriers from liability for defense or indemnification of the trustees on the asset mismanagement claims. Also, the Fund and the private plaintiffs would release the former trustees from any claim that might have been asserted in Sullivan or Dutchak.

Finally, the settlement provides for the dismissal of the Dutchak and Sullivan suits, as well as Labor's Fitzsimmons suit.

In May and June 1984, Labor filed memoranda in the district court in opposition to the settlement and objected to it at an oral hearing held by the court.

On August 27, 1984, the district court issued findings of fact and conclusions of law in which it approved the overall settlement, consisting of both the benefits and the assets mismanagement agreements, and dismissed the Fitzsimmons and

Sullivan suits and a portion of the Dutchak suit. The court said that the aspects of the settlement relating to benefits were fair, adequate, and reasonable and that the benefits settlement, which was within the power of the trustees of the Pension Fund to adopt, would not impose unmanageable costs upon the Fund or adversely affect its ability to make benefit payments to others.

Regarding the portion of the settlement providing for the payment of \$2 million to resolve the claims of asset mismanagement, the court said it was fair, adequate, and reasonable, and taking into account the risks and costs of litigation and the time value of money, it was a reasonable compromise of the asset mismanagement claims. In an analysis submitted to the district court, Labor had valued the claims at about \$73 million. The court reasoned that a resolution of all the claims--benefit and asset management--would end years of litigation and spare costs to the parties, including the Pension Fund.

The court also stated that the gross assets of the defendants, other than one former trustee and a former asset manager, do not exceed \$5 million. The court stated that many of those assets, if not virtually all, would be or might be unavailable to satisfy a final judgment. The court also stated "To the extent that the defendants were themselves forced to incur defense costs, those costs would further deplete the assets available to satisfy any judgement."

The court cited two other factors for approving the settlement: (1) almost all the transactions in the asset mismanagement facts involve pre- and post-ERISA claims, and it is highly uncertain whether substantial separable post-ERISA damages could be established and (2) Labor's stated objective in this case, to "send a message" to other ERISA fiduciaries by obtaining judgments against the former trustees, whether or not collectible in any substantial amount, has been largely served by seeking and obtaining a far-reaching consent decree between Labor and the Pension Fund. (See pp. 3 and 15.)

LABOR'S APPEAL OF DISTRICT COURT
ORDER APPROVING PROPOSED SETTLEMENT

On October 25, 1984, Labor filed a notice of appeal in Fitzsimmons of the district court's ruling to the U.S. Court of Appeals for the Seventh Circuit. Labor also filed notices of appeal in Dutchak and Sullivan the next day. In its December 17, 1984, brief, Labor requested the appeals court to (1) reverse the district court's decision approving the settlement

and dismissing Labor's Fitzsimmons suit, (2) vacate the decisions in the Dutchak and Sullivan cases, and (3) remand the cases to the district court with directions to reinstate all three suits.

In its appeal, Labor argued that the district court erred in approving the settlement because it requires that Labor's complaint in the Fitzsimmons suit be dismissed. Labor said, by its decision, the district court improperly thwarted Labor's efforts to gain adequate remedies for violations of, and assure future compliance with, ERISA's fiduciary duty standards. By dismissing Labor's separate breach of duty claims as part of its approval of the overall private settlement, Labor said the district court had undermined the very interests intended to be protected by ERISA.

Labor also argued that the district court improperly certified two groups of plaintiffs with antagonistic interests as one class. In this case, the district court certified a class consisting of all persons on whose behalf a contribution has been made or was required to be made to the Fund. Labor contended that although the class in its entirety consisted of over 400,000 participants and beneficiaries, the plaintiffs for the benefit claims suit numbered about 20,000, or less than 5 percent of the class in its entirety. Labor said there were obvious and inherent conflicts within such a class between those pursuing benefit claims and the remainder of the class.

Regarding the parties' agreement to establish a special settlement account at an estimated cost of \$140 million, Labor said each dollar allocated to that account would be a dollar less than would be available to fund the pension benefits of current participants and beneficiaries. Labor, therefore, believed that the district court's class certification was in error and should be reversed.

Moreover, according to Labor, the district court's approval of the settlement was erroneous because it did not provide for adequate monetary or injunctive relief. Labor said the settlement approved by the district court providing for resolution of all the asset mismanagement claims solely in return for payment of \$2 million to the Pension Fund from the fiduciary liability insurers of the former trustees was inadequate. Labor's detailed analysis of 10 loan transactions approved by the former trustees reflects a total alleged loss, including interest, to the Pension Fund of over \$73 million. In its appeal, Labor said given the enormous potential liability of the former Fund fiduciaries, the court's approval of an agreement that provides only

for a minimal amount of restitution--with no personal contribution by the offending trustees--was in error.

Labor stated that the court, in holding that most of the defendants had about \$5 million to satisfy a final judgment, apparently relied on a litigation analysis commissioned by the Pension Fund and submitted to the court. (The analysis was prepared by a private law firm and is referred to as the Vardeman Report.) Labor stated the report estimates that 75 percent of the gross assets may be protected from execution by state joint property laws, but \$575,000 could be attached from current assets. Labor stated the report concluded that an additional \$500,000 of 1981 income could be garnishable. Labor said income obviously could also be garnished in later years. Based on the court and Vardeman Report findings, which Labor believes are both limited and conservative, Labor stated "it is clear that the former trustees have a significant amount of assets and income that could have and should have formed the basis of a large restitutionary award."

Also according to Labor, the discovery conducted in Fitzsimmons revealed a consistent and widespread pattern of imprudence by the former trustees. For a period of years, without adequate information or investigation, the former trustees consistently transferred Pension Fund assets to borrowers with poor loan histories. Some of the borrowers defaulted on the loans, which were often made in disregard of the value of the collateral offered and for excessively low interest rates. Labor said no defendant has conceded that his activities were improper or has disavowed an intention to serve as a plan fiduciary again. In sum, Labor said that overwhelming evidence of imprudence, together with the defendants' lack of stated intents to comply with ERISA, supports the need for injunctive relief.

According to Labor's Associate Solicitor for Special Litigation, the appeals court was still considering Labor's appeals as of June 30, 1985.

ADMINISTRATION OF CONSENT DECREE

According to a former Secretary of Labor, the Pension Fund's September 22, 1982, consent decree with Labor contains virtually all of the safeguards over the Pension Fund's administration that the government had been seeking for over 7 years. The decree:

- Requires that the Pension Fund operate in compliance with ERISA and with conditions imposed by IRS. In addition, a condition for virtually all persons and entities continuing their relationships with the Fund is that they discharge their duties to the Fund in compliance with ERISA and not take any action inconsistent with the Fund's compliance with ERISA, the conditions imposed by IRS, or the consent decree.
- Requires the Pension Fund to continue its use of a named fiduciary who is also the independent asset manager--with exclusive responsibility to manage and control the Fund's assets. The asset manager is appointed by the Fund and approved by the court. The Secretary of Labor may object to the appointment. The Fund trustees are prohibited from participating in managing assets or investment decisions.
- Places strict controls on moneys used by the trustees from the Pension Fund's Benefits and Administration (B&A) account.¹ The account must not retain an amount greater than 2-1/2 times the sum of the benefits and administration expenses paid in the preceding month, and the account funds must be managed and invested in accordance with the advice of a court-approved qualified independent investment advisor.
- Requires immediate removal of trustees and employees if they are convicted of various crimes, such as the embezzlement of pension fund moneys.
- Obligates the Pension Fund to cooperate with Labor in its continuing investigations and enforcement responsibilities under ERISA.

¹The trustees are to use the B&A account to record the employers' contributions, pay the employees' benefits and the Pension Fund's administrative expenses, and maintain an appropriate reserve for the Fund.

--Provides for the court's appointment of an Independent Special Counsel with full authority to examine the Pension Fund's future activities and report on the performance of the undertakings in the consent decree.

The U.S. District Court for the Northern District of Illinois, Eastern Division, has jurisdiction to enforce the terms of the decree and supervisory power over the administration of the Pension Fund. The court will retain jurisdiction for at least 10 years. As authorized by the consent decree, the court, on December 3, 1982, appointed an Independent Special Counsel (the Counsel) (see p. 18) to assist in administering the decree. The Counsel has access to all Pension Fund records and officials. Also, the court, with Labor not objecting, approved on January 17, 1984, the Fund's selection of Morgan Stanley, Inc., as a new fiduciary with responsibility as an independent asset manager effective January 20, 1984, and on April 11, 1985, the Fund's selection of Bear, Stearns, & Co. as the investment advisor for the B&A account, effective May 1, 1985.

The Counsel's quarterly reports to the court as of April 1, 1985, indicated that the Pension Fund and its trustees were complying with the terms of the consent decree; had instituted, or were instituting, most of the reforms called for in the decree; and were cooperating with the operation of the outside independent asset manager.

OPWBP, which within Labor is responsible for oversight of the Counsel, based on a limited review of the Counsel's activities in the summer of 1984, found nothing to indicate that the Counsel is not performing satisfactorily.

ASSET MANAGER

The consent decree provides for a named fiduciary who will also be the Pension Fund's asset manager with exclusive responsibility and authority to (1) control and manage the Fund's assets; (2) appoint, replace, and remove investment managers; (3) allocate Fund investment assets among different types of investment managers, including real estate investment managers; and (4) monitor the performance of all investment managers. The asset manager's monitoring function does not diminish the trustees' obligation under ERISA to monitor the performance of investment managers or relieve the trustees of any fiduciary liability.

Under the decree, the asset manager must continue to implement the existing investment objectives and policy of the Pension Fund as adopted by the Equitable Life Assurance Society of the United States, the Fund's initial asset manager and named fiduciary. The trustees must be consulted before the policy is changed, any changes must be reported to the Secretary of Labor and the Counsel, and ultimately the changes require court approval. No trustee or person associated with the Fund, other than the fiduciary and the investment managers and real estate investment managers it appoints, can authorize or recommend, directly or indirectly, any acquisitions, investments, or dispositions of the Fund's assets.

The asset manager is subject to removal without cause on 6 months' written notice from the Pension Fund and for good cause at any time by the court after 60 days' notice. The Secretary of Labor must be advised when an asset manager is to be removed. Before the removal of an asset manager can become effective, the Fund must appoint, and the court approve, a successor in accordance with the consent decree.

Selection of a new asset manager

Before 1977, the Pension Fund's Board of Trustees established all policies for the Fund's operations, including benefit payment levels, and made all management and investment decisions relating to the Fund's assets. On June 30, 1977, the Board entered into contracts with The Equitable Life and Assurance Society of the United States and the Victor Palmieri and Company Incorporated to manage the Fund's assets. Equitable was appointed as overall fiduciary and asset manager of the Fund and investment manager for its real estate assets east of the Mississippi. Palmieri was the investment manager for Fund's real estate assets west of the Mississippi. The contracts with Equitable and Palmieri could not be abrogated or modified without the approval of the Secretary of Labor during the 5-year period October 3, 1977, to October 3, 1982. However, both Equitable and Palmieri continued on after their contract expired until a new asset manager was appointed.

In search of a new asset manager, the Pension Fund officials interviewed officials at a number of large financial institutions. The Fund trustees then selected the following five institutions as best qualified and obtained proposals from them: (1) Merrill Lynch Asset Management/Bear Stearns, (2) Morgan Stanley, Inc., (3) the Equitable Life Assurance Society of the United States, (4) Alliance Capital Management Company, and (5) E. F. Hutton.

Based on further consideration of the proposals of the five companies and discussions with them, Pension Fund officials and the trustees eliminated Alliance Capital Management Company and E. F. Hutton from further consideration. The Fund entered into contract negotiations with the other three companies, and the trustees selected Merrill Lynch Asset Management/Bear Stearns.

However, according to the Counsel's January 1, 1984, quarterly report, following extended discussions with Labor and the Pension Fund, Merrill Lynch advised the Pension Fund that it was unwilling to commit its full equity capital in support of its and Bear Stearns' obligations as asset manager. Because this position was contrary to Merrill Lynch's previous representations, the trustees at a November 16, 1983, meeting unanimously selected Morgan Stanley as asset manager.

On November 17, 1983, the Pension Fund filed a motion in the district court for approval of Morgan Stanley to succeed Equitable as the Fund's asset manager. On January 16, 1984, Labor advised the U.S. district court that it had no objection to the appointment of Morgan Stanley. On January 17, 1984, the district court approved Morgan Stanley as asset manager.

INDEPENDENT SPECIAL COUNSEL

The consent decree provides for the appointment of an Independent Special Counsel to serve the court by helping identify and resolve problems or issues that may arise in connection with the Pension Fund's performance under the consent decree. It also provides that 30 days after the entry of the consent decree, the court shall appoint the Counsel from a list of three individuals recommended by the Fund and agreeable to Labor. Although the Counsel was to be appointed by October 23, 1982, he was not appointed until December 3, 1982.

Labor's Associate Solicitor for Special Litigation stated that there were no written criteria for selecting nominees, determining who was to be considered, and deciding how the final selection was to be made. According to the Associate Solicitor, Labor and the Pension Fund considered whether the Counsel should be affiliated with a large corporation or come from a large law or accounting firm and ultimately agreed that the person selected for the position should be trained in law and affiliated with a large law firm.

According to the Associate Solicitor, the Pension Fund's executive director interviewed all prospective appointees. He

said the Fund's trustees later narrowed the list to three individuals, including Mr. William B. Saxbe, a former U.S. Senator and Attorney General. However, to avoid the stigma that might be associated with individuals who were recommended not being appointed by the court after their names were publicly identified, the Fund asked Labor if it would agree to submit to the court only one name, Mr. Saxbe. The Associate Solicitor said Labor did not object to this procedure if it was acceptable to the court.

The Associate Solicitor said that he participated in a telephone conference with the Pension Fund's executive director and the district court judge about the selection of the Counsel. According to the Associate Solicitor, the consensus was that the Fund's Counsel should be Mr. Saxbe, and his name was presented to the district court judge. On December 3, 1982, he was approved by the court.

The Associate Solicitor said that the 30-day requirement for appointing a Counsel was not adhered to because Pension Fund officials developed an elaborate selection procedure and it took longer than anticipated to find a suitable nominee. He stated that the district court judge was aware of the slippage and did not raise any objection.

Counsel reviews of Pension Fund activities

In carrying out his duties and responsibilities, the Counsel (1) has access to all Pension Fund books, documents, and records; (2) has authority to attend trustee board or committee meetings or other meetings where Fund-related matters are discussed; and (3) can consult with Labor and IRS and other federal, state, or local governmental agencies on matters relating to his areas of responsibility.

The Counsel is also required to (1) provide access to Labor, on request, any records reviewed, compiled, or prepared by him or his staff and (2) file quarterly reports on his activities with the U.S. district court in Chicago and provide copies of them, and any other reports he deems necessary or appropriate, to Labor and the Pension Fund. Between March 1, 1983, and April 1, 1985, the Counsel had submitted all nine quarterly reports to the court.

In his March 1, 1983, report, he outlined his plans and procedures to assure compliance with the consent decree. According to the report, during the quarter ended February

1983, he attended trustees' meetings to observe the functioning of the Board of Trustees and on several other occasions met with the officers and senior staff of the Pension Fund to develop a better understanding of the Fund's operations and internal controls. The report stated that the trustees had a positive attitude toward strict compliance with the consent decree and ERISA and the Fund's officers and employees had been extremely helpful and cooperative.

The March report noted that the Counsel hired the law firm of Jones, Day, Reavis and Pogue to provide him legal advice. He also retained the services of Lewis, Bailey Associates, Inc., a pension fund consulting service, to provide him advice regarding financial matters and to conduct some of the reviews and audits contemplated by his plans.

The other eight quarterly reports show that the Counsel continued his monitoring and oversight activities through March 31, 1985, by (1) regularly attending the trustees' board meetings and consulting with the Pension Fund's executive director, (2) having representatives attend various other meetings with Fund officials, and (3) consulting and meeting with Labor representatives and making or having his representatives make reviews and analyses of the Pension Fund's handling of various matters and actions to meet the requirements of the consent decree.

The reports outline actions taken, or being taken, by the Pension Fund to comply with provisions of the decree. They indicate that the trustees and the Fund continued to display a cooperative and positive attitude about compliance with ERISA and the consent decree.

The Counsel, for example, stated he had not observed any interference by Pension Fund representatives with Morgan Stanley, the asset manager, in the performance of its duties, nor has Morgan Stanley reported any interference to him. The reports also note that the trustees continue to monitor the activities of Morgan Stanley and its submanagers closely without interfering with their activities and responsibilities.

The reports also state that the Pension Fund had reduced the average balance in its B&A account below the criteria called for in the consent decree. The October 1, 1984, quarterly report also stated that the Fund had reached an agreement with Bear Stearns & Co. to provide investment advice for the B&A account, as contemplated by the consent decree.

Other positive developments at the Pension Fund since entry of the consent decree as cited in the reports included (1) hiring a finance director, strengthening internal audits, and submitting monthly internal audit reports to the trustees and (2) appointing a legal director for the Fund.

On August 1, 1984, the Counsel applied for the district court's permission to (1) hire the Washington, D.C., law firm of Pierson, Ball & Dowd--to replace Jones, Day, Reavis and Pogue--to provide legal assistance and (2) become affiliated with the law firm as a counsel. The Counsel advised the court that the former Solicitor of Labor who helped negotiate the consent decree with the Pension Fund was a partner in Pierson, Ball & Dowd.

In a memorandum by another law firm, Covington & Burling, on his proposed plan to hire and become affiliated with Pierson, Ball & Dowd, the Counsel was quoted as stating that (1) the fundamental corrections to rectify the management of the Pension Fund were taking hold and (2) an increasing portion of the Counsel's time would be taken up with issues concerning the prudent management of the Fund and not related to the improprieties that gave rise to Labor's Fitzsimmons suit and the consent decree. The memorandum also commented on the procedures that Pierson, Ball & Dowd would establish to have the former Labor Solicitor participate in the duties the firm carried out for the Counsel relative to the consent decree.

On August 30, 1984, Labor filed comments with the district court stating, among other things, that Labor did not object to the court's approval, if and to the extent this would be appropriate, of the Counsel's application to hire and be affiliated with Pierson, Ball & Dowd. According to the Associate Solicitor for Special Litigation, on August 31, 1984, the district court approved the Counsel's application.

LABOR'S OVERSIGHT OF COUNSEL ACTIVITIES

As indicated on page 5, the Division of Special Litigation and OPWBP are responsible for handling the litigation and investigation of the Pension Fund. The Associate Solicitor said that his review of the Counsel's compliance with the consent decree consists primarily of reviews of correspondence and quarterly reports and discussions with the Counsel. The Associate Solicitor said that his office had not conducted any onsite reviews of the Counsel's activities.

However, according to the Deputy Administrator, OPWBP, OPWBP had conducted a limited onsite review of the Counsel's activities. The review was initiated in early calendar year 1984 by OPWBP's Chicago area office. The review was triggered because OPWBP's analysis of the Counsel's quarterly reports showed that the Counsel had discussed several issues or problems but the Counsel did not appear to have followed up on or resolved them.

The Chicago office submitted its report in June 1984, and OPWBP closed the case in October 1984. According to the Deputy Administrator, based on the limited review's results, Labor found nothing to indicate that the Counsel is not performing satisfactorily. Because the review of the Counsel's activities is part of Labor's overall ongoing investigation of the Pension Fund and Labor's policy is not to allow access to ongoing investigative reports, we did not review Labor's investigation report on the Counsel's activities. However, Fund officials advised us it was their opinion, after reviewing later reports, that the Counsel did follow up and resolve the issues--involving the B&A account and the Fund's legal staff--raised by Labor.

PENSION FUND LOANS TO
OWNERS OF HOTELS AND CASINOS

Between 1972 and 1976 the Pension Fund made various loans totaling about \$140 million to the Argent Corporation, owner of the Fremont and Stardust Hotels/Casinos in Las Vegas and to the Aladdin Hotel Corporation, owner of the Aladdin Hotel and Casino in Las Vegas.

In December 1979, the Fremont and Stardust loans, which had a balance of about \$88 million, were assumed by Trans-Sterling, Inc. More recently, The Victor Palmieri and Company, Incorporated, the manager of the loans, closed a sale of these loans to Golden Nugget, Inc., in Las Vegas on November 7, 1984. On November 1, 1984, the loan balance was about \$73,900,000. The loans were sold to Golden Nugget for \$58,580,000, plus a contingent interest in future proceeds realized by the purchaser from the loans. As a result, the Pension Fund, as of the closing, realized about \$15,320,000 less than the outstanding loan balance.

In February 1985, a third party purchased the Fremont and Stardust properties, and Golden Nugget received about \$73 million for the notes it purchased in November 1984 from Palmieri. Palmieri believed that under the terms of the sale agreement with Golden Nugget, the Pension Fund would share in the sales proceeds Golden Nugget received above its guaranteed 20 percent return on its investment in the Fremont and Stardust notes. Golden Nugget, however, has contended that the final sales agreement did not contain a specific provision for the Fund to share in any benefits from prepayment of the notes. Thus, the Fund received only \$111,476--representing accrual of interest--instead of the estimated \$7.5 million calculated by Palmieri.

On April 9, 1985, Palmieri's counsel filed a civil suit against Golden Nugget seeking to recover the moneys Palmieri contends are due the Pension Fund under the agreement.

The Pension Fund's loans to Aladdin totaled about \$43 million, and the loans have been in delinquency since September 1982. As of December 31, 1984, the loans had an outstanding balance of \$31,649,653; payments of \$7,351,311 in interest and \$1,953,242 in principal were in arrears. Aladdin's current owner is negotiating a sale of the hotel/casino, and the Fund has indicated it will accept the owner's \$33,000,000 offer to settle the \$39,000,964 outstanding principal and interest balance upon sale of the hotel/casino. If the sale is completed, the Fund will lose about \$6 million on the loans.

The Pension Fund could suffer losses from its loans on the three hotels/casinos of as much as \$21.3 million. Such a loss would represent less than 0.5 percent of the Fund's assets totaling \$5.2 billion and probably would not significantly affect Fund operations.

LOANS TO OWNERS OF FREMONT AND
STARDUST HOTELS/CASINOS

The Pension Fund in 1974 and 1975 made several loans to the Argent Corporation, to purchase and renovate the Fremont and Stardust Hotels/Casinos, totaling about \$98.0 million, which were secured by first mortgages on the hotels/casinos.

In July 1979, Trans-Sterling, Inc., entered into a contract with Alkath Corporation, the parent of Argent, to purchase all outstanding Argent stock for \$68 million. On December 6, 1979, Trans-Sterling completed the purchase of the Argent Corporation and, under a separate agreement with the Pension Fund, assumed the Fremont and Stardust loans, which had a balance of about \$88 million as of November 30, 1979. The agreement restricted Trans-Sterling's distribution of funds and payment of dividends.

In August 1981, Trans-Sterling requested Palmieri, which was the Pension Fund's manager for the loan, to waive certain restrictions under the agreement to enable Trans-Sterling to transfer funds to another hotel/casino--the Sundance Hotel/Casino--in which the Trans-Sterling shareholder had an ownership interest and which was having financial problems. In September 1981, Palmieri conditionally agreed that up to \$3 million could be transferred to Sundance, and Trans-Sterling began making the distribution on or about November 1, 1981. The loan modification documents relating to the transfer of the \$3 million were executed in July 1982.

On January 4, 1983, Palmieri received Trans-Sterling's audited financial statements for the fiscal year ended August 31, 1982, showing for the first time that Trans-Sterling had transferred cash and other assets to Sundance in excess of the \$3 million allowed under its agreement with the Pension Fund. According to the Funds' Associate General Counsel, the Pension Fund's Certified Public Accountant, Arthur Young and Company, had noted the unauthorized transfers and told the Pension Fund's executive director, who then advised Palmieri of the situation.

At a meeting with Palmieri on January 14, 1983, Trans-Sterling officials acknowledged that \$16 million had been transferred from Trans-Sterling to Sundance. After negotiations during calendar year 1983, Trans-Sterling and Palmieri reached an agreement that, after giving effect to tax savings and reduction in executive salaries, the net amount of the unauthorized transfers would be set at \$7 million. On October 27, 1983, Trans-Sterling agreed to return the \$7 million over a 3-year period.

In April 1984, Morgan Stanley, Inc., as the Pension Fund's asset manager, adopted a new Investment Policy Statement requiring investment managers to reduce substantially the aggregate amount of existing real estate assets over the next 5 years. Under the policy statement, real estate loans of questionable stability were divided into two categories: (1) "transitional loans," which are loans that are expected to improve within a reasonable time and should be held and (2) "other loans," which are loans that should be expediently disposed of at current market values.

In developing an investment strategy for the Trans-Sterling loans under the new investment policy, Palmieri classified the loans as "transitional" and thus were to be held until a better value could be realized. Palmieri's initial approach was to tie the liquidation of the loan to Trans-Sterling's pending sale of the Fremont and Stardust Casinos. Palmieri stated that Trans-Sterling had contracted in early May 1984 to sell the casinos for \$200 million. However, the deal failed. Although Trans-Sterling entered into other negotiations for the sale, Palmieri reclassified the loans from "transitional" to "other" and began an analysis of the fair market value of the Pension Fund's loan in preparation of selling it.

In November 1984, Palmieri completed the sale of the loans to Golden Nugget in Las Vegas. According to Palmieri records, the original amount of the loan was \$88,308,797, and at November 1, 1984, the balance owed was about \$73,900,000. The Pension Fund's selling price to Golden Nugget was \$58,580,000, a loss of \$15,320,000.

However, according to Palmieri's analysis of the sales agreement, there were three scenarios under which the Pension Fund could realize additional moneys and its \$15,320,000 loss would be reduced. According to Palmieri's analysis, the final agreement between the Fund and Golden Nugget provided that in any situation where Golden Nugget receives more than a 20-percent return on its investment in the Trans-Sterling

loans, the Fund would share in the excess. Under this analysis, the Fund should have received \$7.5 million from a February 1985 loan prepayment of the loans discussed below.

In its February 1985 monthly report, Palmieri stated it was advised on February 28 that, in connection with the purchase of the Trans-Sterling properties by a third party, Golden Nugget had received full prepayment for the loans (notes) on the Fremont and Stardust Hotels/Casinos. Later, according to Palmieri's report, Golden Nugget advised Palmieri that the Pension Fund would not share in the sale proceeds, but would receive only about \$111,000--representing the accrual of interest before prepayment--instead of the \$7.5 million Palmieri calculated the Fund would receive under the terms of the agreement.

By letter dated March 1, 1985, Palmieri advised Golden Nugget that its position was in conflict with the intent of the Pension Fund's agreement with Golden Nugget and that the Fund was owed more than \$7 million as a result of the prepayment. On March 5, Golden Nugget's Executive Vice President, according to Palmieri's report, confirmed the earlier position, and Palmieri asserted that if that remained Golden Nugget's position, the Fund would sue for the difference. According to a March 18, 1985, letter by Palmieri's attorney, Golden Nugget contends that the Fund is not due the \$7.5 million because prepayment is not expressly mentioned in the agreement.

On April 9, 1985, Palmieri's attorneys filed a civil suit, on behalf of the Pension Fund, Pension Fund v. Golden Nugget (Golden Nugget)¹ in the U.S. District Court, Central District of California, in Los Angeles, to recover the moneys they believed are owed the Fund.

The complaint alleges, among other things, that Golden Nugget breached the contract and the covenant of good faith and fair dealing by denying that the agreement required the equal sharing of the present value as of the closing of the amount it received in excess of the 20-percent minimum yield as a result of the prepayment of the notes and by refusing to deliver the Pension Fund's share. As a result, the complaint alleges that the Fund is entitled to damages in an amount not less than \$6,921,293 and exemplary damages in an amount not less than \$20 million.

¹Trustees of the Central States Southeast & Southwest Areas Pension Fund v. Golden Nugget, Inc., a Nevada Corporation; and Clyde Turner, No. 85-2366-AAH (C.D. Calif.).

The complaint also alleges that because of Golden Nugget's misrepresentation and fraud when it contracted with the Pension Fund intending not to make a payment to the Fund in the event of prepayment of the notes, the Fund is entitled to rescind the sales agreement and to receive the entire sum realized by Golden Nugget on the transaction. According to Palmieri's attorney, Golden Nugget realized \$18,393,462 on the sale.

After the complaint was filed, Palmieri's attorney and the Pension Fund's Associate General Counsel held several discussions concerning the handling and scope of the complaint. The Associate General Counsel suggested, among other things, that consideration be given to the assertion of a separate count to the complaint alleging that, by its actual and exclusive control of the notes-collection account (at Valley Bank of Nevada), Golden Nugget became an ERISA-defined "fiduciary" of the Fund and through disloyal and self-dealing diversions from that account violated ERISA and as a result caused loss to the Fund. To protect the Fund after the closing of the sale of the notes to Golden Nugget on November 7, 1984, the parties had agreed in writing that all proceeds of the notes would be deposited into the notes-collection account and further agreed that the Fund would have a security interest in all payments of principal and interest made under the notes, in the account.

After the discussions, Palmieri's attorney on May 3, 1985, filed an amended complaint in the district court, generally asserting that:

". . . Golden Nugget undertook a fiduciary duty in regard to account and agreed that no withdrawals could be made from the collection account unless an officer of Golden Nugget certified in writing to the Palmieri Company in Los Angeles, as fiduciary of the Pension Fund, and to the bank holding the collection account how the proceeds of the Notes were to be shared between the Pension Fund and Golden Nugget."

The amended complaint also added a count alleging that:

"Golden Nugget defrauded the Pension Fund and breached its fiduciary duty to the Pension Fund by deceiving the Pension Fund in connection with the making of the agreement by which Golden Nugget became a fiduciary of the Pension Fund and by falsely certifying to The Palmieri Company and the bank holding the collection account that the Pension Fund's share of the proceeds of the Notes in February 1985 was only \$111,476."

According to Pension Fund officials, the Golden Nugget suit was still pending in the district court as of June 30, 1985.

During our discussions with Pension Fund officials on May 15, 1985, the Executive Director expressed concern about the Golden Nugget controversy and litigation. On May 10, 1985, he wrote to the Independent Special Counsel setting forth his concerns and questions. In the letter, the Executive Director indicated

". . . that the dispute between the Pension Fund and Golden Nugget will not be amicably resolved and that the Golden Nugget litigation will be protracted and expensive. . . . Morgan Stanley has authorized Palmieri to manage and control the recovery efforts including the Golden Nugget litigation. In furtherance of the Pension Fund's monitoring authority and responsibility, we have questions whether the manner in which Morgan Stanley is exercising its authority and responsibility in the recovery efforts is appropriate. As a result we believe it is necessary and appropriate to ask that you review and address a series of related questions:

- "(1) . . . whether it was reasonable for Morgan Stanley to place and retain Palmieri in management and control of certain real estate assets and the enforcement of all claims and causes of action of the Pension Fund for the loss sustained in the Golden Nugget transaction, and whether it is necessary that Morgan Stanley conduct an independent review, and secure a written opinion from its ERISA counsel, to determine the issues whether or not Palmieri and/or . . . the law firm [which assisted Palmieri on the transaction] contributed to the loss sustained by the Pension Fund in the Golden Nugget transaction.
- "(2) . . . whether Palmieri's apparent interest conflicts in the Golden Nugget litigation make it necessary that another party, to be appointed by Morgan Stanley, be selected promptly to manage and control the litigation strategy and activities in lieu of Palmieri, and whether the most reasonable choice is Morgan Stanley itself . . .

"(3) . . . whether or not Palmieri and/or [its] . . . law firm should be joined as defendants in the Golden Nugget litigation."

The Executive Director's letter also requested the Counsel to consider initiating proceedings before the district court supervising the Fitzsimmons consent decree for expedited resolution of the above questions.

LOANS TO OWNERS OF ALADDIN HOTEL/CASINO

From early 1972 to December 1976, the Pension Fund made various loans to the Aladdin Hotel Corporation totaling about \$43 million. According to Labor's records, the loans were secured by a mortgage on the Aladdin Hotel and Casino in Las Vegas, pledges of the Corporation's stock, and a pledge of gamblers' markers (gamblers' IOUs for losses incurred at the casino).

In early 1979, the Aladdin Hotel and Casino experienced difficulty in repaying the loan. In March 1979, the Pension Fund threatened to foreclose but withheld foreclosure action because Aladdin made added payments and agreed to find a buyer for the hotel and casino.

During 1979 and 1980, Aladdin officials entered into proposed purchase agreements with various companies, and on September 30, 1980, Aladdin was sold to a company owned by Mr. Wayne Newton, a Las Vegas entertainer, and the Valley Bank of Nevada acting as a trustee for a Mr. Edward Torres' children for \$85 million. The Pension Fund agreed to permit the buyers to assume its existing loans to Aladdin under certain conditions, including an increase in the interest rates and monthly payments.

In December 1981 Aladdin began to experience a loss in revenues, and revenues continued to deteriorate until late May 1982, when Aladdin could no longer service its loan debt. The loan became delinquent in September 1982. The Pension Fund recorded a notice of default on December 10, 1982, thereby commencing a foreclosure process.

During 1983 and through February 1984, Palmieri, the loan manager, and Mr. Edward Torres, who became the sole owner of the Aladdin in the summer of 1982, attempted to negotiate the sale or refinancing of the property. Palmieri cooperated with the owner and creditors of Aladdin in their efforts to obtain a buyer for the property. However, the efforts failed, and

according to the Pension Fund, Aladdin has been in bankruptcy since February 1984.

A February 4, 1985, memorandum by a Pension Fund executive assistant to the Fund's Executive Director on the status of the Aladdin loan noted that, as of December 31, 1984, the loan had an outstanding principal balance of \$31,649,653, and Aladdin was in arrears on payments of \$7,351,311 for interest and \$1,953,242 for principal.

The loan was valued at \$23,300,000 on the Pension Fund's annual report for calendar year 1983. The memorandum stated, however, that the Fund was reviewing the valuation process for the note. In a May 15, 1985, memorandum the Director of the Fund's Financial Group stated that at the completion of the valuation, the estimated value of the loan at December 31, 1984, would be \$27,600,000. The increase in the estimated value of the loan was based principally on changes in the loan discount and interest rate assumptions used in the valuation process.

The February 4, 1985, memorandum also stated that Palmieri was informed on December 27, 1984, of pending negotiations to sell Aladdin for about \$51,500,000 to the owners of the Imperial Palace Hotel/Casino in Las Vegas, and as part of that sale, Aladdin proposed to pay the Pension Fund \$32,000,000 cash for the note. The memorandum said that as of February 4, 1985, the owner of the Imperial Palace presented an offer to Aladdin for \$50,945,000 with certain conditions that Aladdin's owner indicated were not satisfactory. The memorandum indicated, however, that Aladdin's owner was confident that an agreement could be worked out.

According to the February 4, 1985, memorandum effective January 1, 1985, Morgan Stanley--the Pension Fund's asset manager--assigned the real estate investment firm of Thomas Karsten Associates to manage the Aladdin loan in place of Palmieri. According to the minutes of the Fund Trustees' April 15 and 16, 1985, meeting, a Morgan Stanley representative reported that the most active prospective purchaser appeared to be Gary Kerkorian, the owner of the MGM Grand Hotel/Casino in Las Vegas. The minutes also stated that the representative reported that the Aladdin owners were looking to a \$50,000,000 sale and that Karsten had indicated it was willing to accept a \$33,000,000 share of the proceeds (plus interest from Jan. 1, 1985) in exchange for release of the Fund's secured interests (which according to the Fund's February 4, 1985, memorandum was calculated to be about \$39,000,000 as of Dec. 31, 1984).

Should the Pension Fund, upon sale of Aladdin, receive \$33,000,000 as full payment of its loan, the Fund would lose about \$6,000,000. The \$33,000,000 offer, however, is about \$5,400,000 greater than the Fund's estimated value of the loan at December 31, 1984.

LABOR'S ACTIONS ON THE HOTEL/CASINO LOANS

In May 1983, Labor's Associate Solicitor for Special Litigation referred the Trans-Sterling and Aladdin loans to OPWBP for investigation. Also, in June 1983, the Associate Solicitor referred Trans-Sterling's unauthorized transfer of \$13 million to Sundance to the Department of Justice for consideration of criminal prosecution. Justice advised Labor on August 9, 1983, that the case did not warrant criminal prosecution.

On February 4, 1985, the Deputy Administrator, OPWBP, stated to us that the investigation of Aladdin and Trans-Sterling loans is part of Labor's overall investigation of the Pension Fund, which was ongoing. He said Labor's policy is not to discuss ongoing investigations.

In regard to the Golden Nugget situation, the Deputy Administrator, OPWBP, and the Associate Solicitor for Special Litigation told us that they met with the Pension Fund's General Counsel and Executive Director on May 17, 1985, and based on this meeting Labor will decide what action, if any, to take on the matter.

HEALTH AND WELFARE FUNDCLAIMS PROCESSING

The H&W Fund is a trust formed pursuant to a March 14, 1950, agreement and declaration of trust, as amended. The H&W Fund provides medical, hospital care, dental, vision, prescription, and related medical benefits as well as death benefits to about 170,000¹ eligible participants and beneficiaries. It is administered by the same trustees who administer the Pension Fund.

From its inception in 1950 to February 1983, the H&W Fund used the services of Amalgamated--controlled by the late Allen Dorfman²--and affiliated corporations to process health and benefit claims. In February 1983, the Fund conditionally acquired certain Amalgamated assets for \$10.75 million to initiate an in-house claims processing system and began processing its own claims under the direction of a court-appointed receiver.

The final sale of the assets to the H&W Fund was subject to a determination by the U.S. District Court for the Northern District of Illinois, Eastern Division, that the selling price represented the fair value of the assets acquired from Amalgamated. The court determined on July 23, 1984, that the \$10.75 million selling price for the assets was reasonable.

Before approval of the asset sale, Labor had initiated two civil suits--the Robbins³ and Dorfman⁴ cases--against both the H&W Fund and Amalgamated for alleged violations of ERISA's fiduciary provisions. These suits were partially settled through an out-of-court agreement with the Fund's trustees in April 1984 and consent decrees between Labor and the Fund and the Amalgamated defendants which the court approved on February 14, 1985.

H&W FUND'S PROPOSED
PURCHASE OF AMALGAMATED ASSETS

Until February 1983, the H&W Fund had contracted with Amalgamated and its affiliated corporations to process the health

¹See footnote 2, page 2, for source of this figure.

²See footnote 5, page 4.

³See footnote 6, page 4.

⁴See footnote 7, page 4.

and benefit claims of its participants and beneficiaries. Amalgamated reviewed and processed medical claims to determine if the charges were fair and reasonable, using adjustment standards jointly established by the Fund and Amalgamated, which were based on customary charges in the industry. The Fund, however, made final determinations on any contested payments.

In calendar year 1981, the H&W Fund trustees determined that, in the best interest of the Fund and its members, the Fund should establish an in-house facility to directly control and process claims. Toward this end, the trustees and Amalgamated entered into a memorandum of understanding--originally dated November 3, 1981, and amended on January 28, 1982--proposing the sale of certain Amalgamated assets and resources to the Fund to enable the Fund to process its own claims.

Pursuant to the memorandum, Arthur Young and Company, acting as representatives of the H&W Fund, and representatives for Amalgamated developed written specifications covering the Amalgamated assets to be acquired by the Fund. The specifications were submitted to the Fund on April 12, 1982. Two days later, the Fund and Amalgamated contracted with Merrill Lynch, White Weld Capital Markets Group of Merrill Lynch, Pierce, Fenner & Smith, Inc., to determine the assets' fair value.

On August 31, 1982, Merrill Lynch advised the H&W Fund and Amalgamated that it valued the assets at \$10,750,000. In a resolution adopted at a meeting on October 18 and 19, 1982, the H&W Board of Trustees accepted the valuation and proposed that an Amalgamated offer to sell the assets at that price be accepted.

The resolution also authorized the H&W Fund's Executive Director to submit to Labor an application to obtain an administrative exemption for the proposed purchase of Amalgamated's assets from the prohibited transaction restrictions of ERISA and the Internal Revenue Code. Under ERISA, an employee benefit plan's fiduciaries may not cause a plan to engage in the sale, exchange, or lease of any property between the plan and a party in interest. Amalgamated was a party in interest to the Fund, and thus under ERISA an administrative exemption from Labor was required for the purchase of Amalgamated's assets. The Fund's application for the administrative exemption was submitted to Labor on October 21, 1982, and granted on October 18, 1983. (See p. 35.)

LABOR'S CIVIL SUITS
REGARDING CLAIMS PROCESSING

In its October 1978 Robbins suit, filed in the U.S. District Court for the Northern District of Illinois, Eastern Division, against the then current and former H&W Fund trustees and a former executive director,⁵ Labor alleged, in general, that a series of contracts for claims processing services between the Fund and Amalgamated and its affiliated companies were unfavorable to the Fund and that the Fund's trustees and others committed violations of the fiduciary obligations imposed by ERISA in connection with the contracts. Labor sought restitution to the Fund for losses caused by the ERISA violations and prospective injunctive relief.

Labor's December 29, 1982, Dorfman suit,⁶ also filed in the district court, alleged that certain transactions between fiduciaries of the H&W Fund and corporations controlled by Amalgamated violated the fiduciary provisions of ERISA. According to Labor's brief appealing the Dorfman and Robbins decisions, the suits focused on the:

"reasonableness . . . of a January 1976 claims processing contract and 1978 supplement thereto between the Fund and Amalgamated; the manner in which Fund trustees conducted the bidding process under which a 1979 claims administration agreement was awarded to Amalgamated for prescription drug and dental claims; and the reasonableness of a May 1980 fee increase given to Amalgamated."

Also, on December 29, 1982, relative to the Dorfman and Robbins cases, Labor applied to the court for a temporary restraining order freezing all personal assets of Allen Dorfman and the corporate assets of Amalgamated and its three affiliated corporations involved in processing claims for the H&W Fund. On the same day, the court granted Labor's application and issued the temporary restraining order which included the appointment of the Chicago law firm of Scariano, Kula & Associates as the receiver of all assets and property of Amalgamated and its affiliated corporations.

On February 1, 1983, the district court issued an order agreed to by the H&W Fund and Amalgamated and its affiliates--

⁵See footnote 6, page 4.

⁶See footnote 7, page 4.

which Labor did not object to--permitting the Fund to purchase the assets from Amalgamated and its affiliates. The order called for the Fund to deposit, for purchase of the assets, \$10,750,000 with the clerk of the court for investment in government securities or government-guaranteed obligations to be held by the trust department of the First National Bank of Chicago. According to Labor's Associate Solicitor for Special Litigation, the order specified that the amount of any judgments entered or settlements approved by the court in the Dorfman or Robbins cases would be applied against the deposit and that the deposit would be subject to further adjustment if the court accepted Labor's claims that the price for the assets is too high. Labor had filed an amendment to the Dorfman case in February 1983 to add a claim challenging the fairness of the value of the Amalgamated assets transferred to the Fund and the written specifications of the assets to be acquired by the Fund developed by Arthur Young. (See p. 33.)

The order also provided that the specified assets of Amalgamated and its affiliated corporations continue to be held by the court-appointed receiver for exclusive use by the H&W Fund to ensure the continued orderly processing of health and other benefit claims, pending a ruling by Labor on the Fund's exemption request and the outcome of the litigation against the Fund and the Dorfman estate.

On October 18, 1983, Labor granted the H&W Fund an exemption permitting the Fund to purchase the assets of Amalgamated and its affiliated corporations. Labor stated that the exemption was subject to a determination by the district court that the written specifications regarding the assets to be acquired were appropriate and the selling price for the assets was fair. In December 1983, the district court severed Labor's February 1983 claim--regarding the assets acquired from Amalgamated--from the Dorfman case, and a trial took place in February and March 1984. On July 23, 1984, the district court issued its decision approving the \$10,750,000 sales price as fair and reasonable.

CONSENT DECREES TO PARTIALLY SETTLE CIVIL SUITS

Beginning in May 1983, Labor and the H&W Fund and its current trustee defendants proposed several consent decrees and agreed orders of dismissal providing for a partial settlement of the Dorfman and Robbins cases. According to Labor's brief filed with the court on November 21, 1983, Labor submitted to the district court a proposed consent decree and an order of dismissal which, if approved, would have:

- Dismissed Labor's actions against the H&W Fund and its current trustees; however, other defendants, including the Dorfman estate, Amalgamated and several persons associated with it, and certain former trustees of the Fund, would remain as parties in the ongoing litigation.
- Required the Fund to make the following court-supervised institutional reforms to better ensure compliance with ERISA and to maintain the integrity of the Fund's operations: (1) use a named fiduciary to manage Fund assets, (2) maintain an internal audit staff, and (3) remain under court supervision for at least 10 to 15 years.
- Provided for a court-appointed Independent Special Counsel contemplated to be former U.S. Attorney General William B. Saxbe.
- Provided for the current trustee defendants or their insurers to pay the H&W Fund \$1,779,273 in settlement of all monetary claims against the current trustee defendants for overpayments to Amalgamated and its affiliates.
- Provided for recovery of attorney's fees improperly paid to defend the trustees charged with breaching their fiduciary duties.

On December 20, 1983, the district court declined to approve the proposed decree, because, according to the court, the decree was not an adequate, reasonable, and equitable settlement of this litigation. Labor appealed the district court's decision to the U.S. Court of Appeals for the Seventh Circuit. In its brief filed in April 1984, Labor requested the district court's order be reversed and the consent decree approved.

While Labor's appeal was pending with the appeals court, Labor and the then current trustees of the H&W Fund signed an agreement on April 30, 1984, settling the monetary claims asserted by Labor against the trustees. According to the Associate Solicitor for Special Litigation, under the agreements, the insurers for the trustees paid the Fund \$1,779,273 to settle the claim for overpayments to Amalgamated and its affiliates and \$75,120 for alleged improper attorneys' fees--for a total of \$1,854,393. The Associate Solicitor also said the Fund received an additional \$71,323 to compensate for the delay in receiving the comprehensive settlement amount agreed to in May 1983.

On January 3, 1985, the appeals court ruled that the consent decree was reasonable and ordered the district court to approve it. The district court on February 14, 1985, approved the proposed consent decree between Labor and the H&W Fund's trustees. Inasmuch as the April 1984 agreement between Labor and the trustees settled Labor's monetary claims, the court entered the decree dealing with institutional reforms and an order dismissing Labor's complaints against the current Fund trustees.

Also, on February 14, 1985, the court approved (1) a consent decree between Labor and the Amalgamated defendants in the Robbins and Dorfman cases and (2) a settlement agreement negotiated between the H&W Fund and the Amalgamated defendants in connection with the Robbins and Dorfman cases.

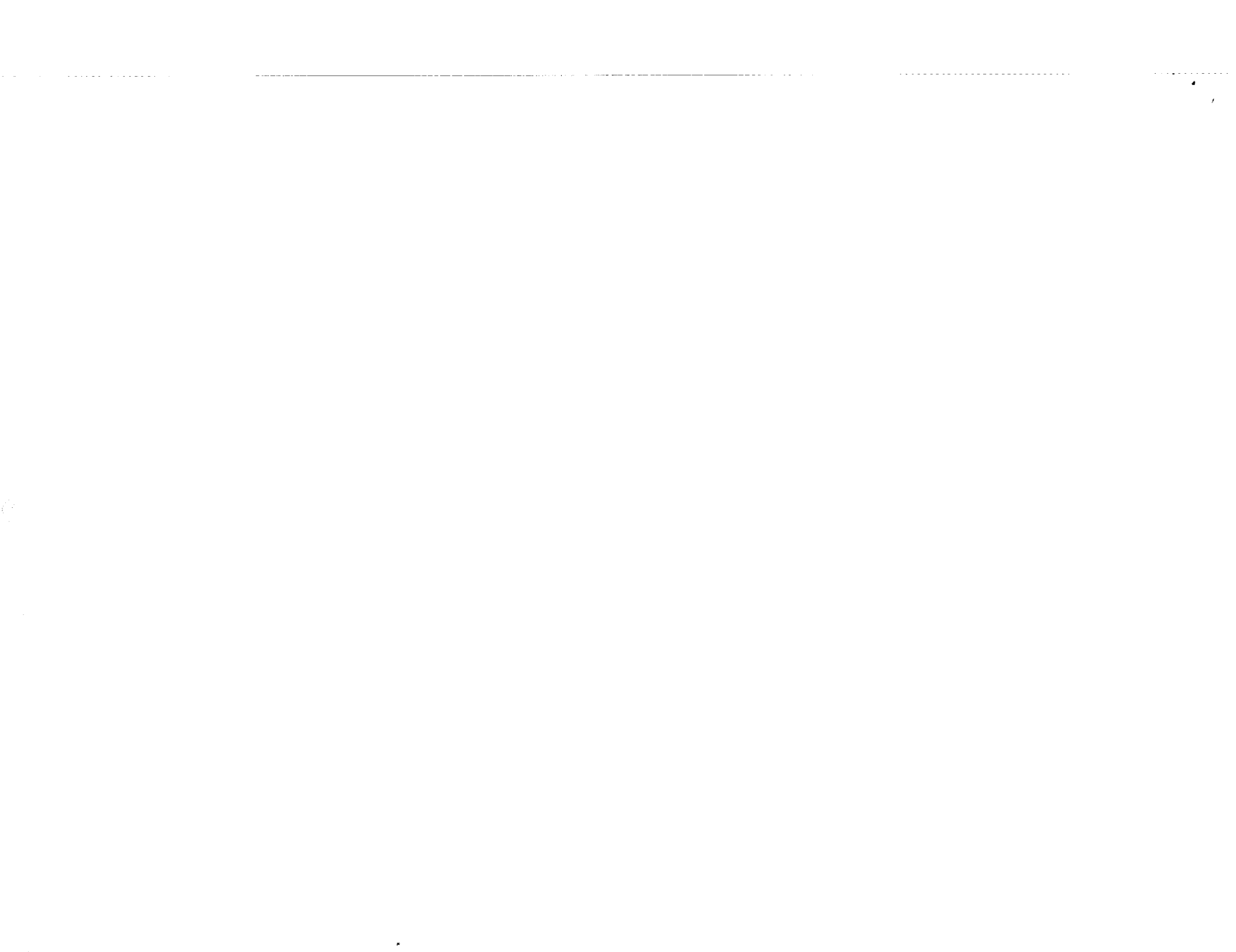
Under the consent decree the H&W Fund on February 19, 1985, received about \$6.4 million of the money deposited by the Fund for the purchase of Amalgamated's assets as settlement of Labor's claims that the Dorfman companies' allegedly overcharged the Fund for processing medical and dental claims. (The original deposit of \$10.75 million had an accumulated value of about \$12.8 million.) Amalgamated was to receive the balance of the funds on deposit as the proceeds from the sale of assets to the H&W Fund.

The consent decree also directed Amalgamated and its affiliated corporations to permanently terminate business by April 15, 1985, and barred two Dorfman associates from dealing with the H&W and Pension Funds or any other employee benefit plan. In turn, Labor is precluded from pressing any further claims against Dorfman entities relative to their involvement with the H&W and Pension Funds about which Labor had actual knowledge at the time of this settlement.

The separate settlement agreement between the H&W Fund and the Amalgamated defendants, to which Labor was not a part, provides for the Fund to pay Amalgamated defendants \$2 million in return for dropping all countersuits against the Fund. Thus, the Fund netted about \$4.4 million of the \$6.4 million it received under the consent decree.

According to Labor, notwithstanding the above consent decrees and settlement agreement, the remaining defendants are a former H&W Fund executive director, eight former trustees, and the estates of two former trustees in the Dorfman and Robbins cases.

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