



The Role of the Department of Labor and the Central States Pension Fund

Questions have arisen about the role of the Department of Labor relating to the Central States, Southeast and Southwest Areas Pension Fund (the "Fund"). A 1982 Consent Decree put independent fiduciaries in place to manage the assets of the Fund and an Independent Special Counsel in place to monitor the Fund's activities and report quarterly to the Court. The Department of Labor does not select the Independent Special Counsel or independent fiduciaries, nor does the Department control the Fund's assets, make investment decisions, or manage the day-to-day operations of the Fund. The Department may object to proposed trustees, named fiduciaries, index fund investment managers and asset custodians and may object to proposed changes to the Fund's investment policy statement. However, the district court is the decision maker with regard to all of these matters (all such decisions and related documentation are available to the public in the Court's files).

The oversight role of the Department under the Consent Decree is limited to receiving copies of the quarterly reports issued by the court-appointed Independent Special Counsel and certain reports provided by the Fund. The Department reviews these reports, but cannot interfere in the investment strategy or operation of the Fund.

Central States Pension Fund Consent Decree

In 1978, the Department filed Donovan v. Fitzsimmons, et al., No. 78-C-342 (N.D. Ill.) (currently captioned Perez v. Fitzsimmons, et al.), alleging, among other things, that the trustees of the Fund had summarily approved huge loans to applicants who were fronts for organized crime. The Consent Decree, was primarily focused on preventing a recurrence of such conduct. The Consent Decree accomplished this by requiring that all Fund assets "except for those liquid assets held in reserve for payment of benefits and administrative expenses, . . . shall . . . be managed for the duration of this Consent Decree by a named fiduciary, as defined in section 402(a)(2) of ERISA" appointed by the Court. See Consent Decree at 5.

The Independent Special Counsel's Review of the Fund's Administration

The Consent Decree established the position of Independent Special Counsel ("ISC") to, among other things, assist the Court "in identifying and resolving any problems or issues that may arise in connection with the [] Fund's performance of the undertakings in" the Consent Decree. See Consent Decree at 16. The ISC is to give special attention to compliance with the fiduciary responsibility provisions of Part 4, Title I of ERISA. The ISC is appointed by the Court from candidates recommended by the Fund and agreeable to the Secretary. The ISC can only be removed by the Court. The ISC, among other powers, has "full access to all documents, books, records, personnel, files, and information of whatever type or description in the possession, custody, or control of the Pension Fund." See Consent Decree at 18. The ISC is also authorized to attend all meetings, including trustee, committee, attorney and review committee meetings.



The current ISC is David H. Coar, a retired federal judge. The ISC is also required to submit quarterly reports to the Court. The ISC's reports from 2008 and onward are available at: https://mycentralstatespension.org/forms_and_documents.aspx.

The Department of Labor's Role Does Not Involve Day To Day Operations or Investment Decision-making of the Fund.

Although the Consent Decree provided for the appointment of a single named fiduciary, over the years various amendments to the Consent Decree have gone back and forth between one and two named fiduciaries. Northern Trust Global Advisors has served as the Fund's sole named fiduciary since June 25, 2010. The Consent Decree sets out specific criteria that any potential named fiduciary and investment manager candidates must meet in order to be considered for these roles. Named fiduciaries are appointed by the Court. The candidates are selected by the Fund's trustees with notice to the ISC and the Secretary of Labor. The Secretary cannot veto a named fiduciary selection, but can file objections to the appointment with the Court. The Court either approves and appoints the named fiduciary candidate, or rejects the candidate and the process begins again. Fund trustees are appointed in much the same way.

Named fiduciaries have exclusive authority to manage and control the Fund assets allocated to them, including the exclusive authority to appoint, replace, and remove investment managers they retain to manage the assets allocated to the named fiduciary. These appointments, replacements, and removals need not be approved by the Court. In addition, named fiduciaries, after consultation with the trustees, are responsible for developing the short-term and long-term investment objectives and policies of the Fund. Although changes to the investment policy must be reported to the ISC and the Secretary, the Secretary has no authority to dictate the Fund's investment policy or make decisions regarding the investment of the Fund's assets. Further, named fiduciaries are solely responsible for allocating the investment assets they control among different types of investments and different investment managers. Named fiduciaries are also responsible for monitoring the performance of the investment managers they appoint. Monitoring by the named fiduciaries does not diminish the obligation of the Fund's trustees under ERISA to monitor such performance or relieve any trustee of any liability under Part 4 of Title I of ERISA. Finally, the Consent Decree does not give the Secretary any authority or control over the Fund's assets or investment decisions; those matters are under the exclusive control of the named fiduciaries and their appointed investment managers.