

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

SECURITIES AND EXCHANGE COMMISSION,	:
	:
Plaintiff,	:
	:
	: Civil Action No.:
	: 08-CV-1354 (CFD)
v.	:
	:
UNITED RENTALS, INC.,	:
	:
Defendant.	:

PLAINTIFF SECURITIES AND EXCHANGE COMMISSION’S MEMORANDUM IN SUPPORT OF MOTION FOR TRANSFER OF FAIR FUNDS FOR DISTRIBUTION TO INVESTORS

The Securities and Exchange Commission (“SEC”) respectfully requests that the Court enter an Order for the Clerk of the Court to transfer fair funds currently on deposit in the Court Registry Investment System (“CRIS”) to the Fund Administrator, Gilardi & Co., LLC (“Gilardi”) for distribution to injured investors.

I. FACTUAL BACKGROUND

By order dated September 19, 2008, the Court entered Final Judgment as to Defendant United Rentals, Inc. (URI). Pursuant to the Final Judgment, on October 20, 2008, URI paid a penalty of \$14,000,000 and disgorgement of \$1, for a total of \$14,000,001, to the Clerk of this Court (the “Distribution Fund”). The Distribution Fund was thereafter deposited in an interest bearing CRIS account, number 3755032935, under the case name designation *SEC v. United Rentals, Inc.*, Civil Action No. 3:08-cv-1354 (CFD) (“*SEC v. URI*”).

By order dated August 19, 2009, in *SEC v. Terex Corporation*, Civil Action No. 3:09-cv-1281 (AWT), the Court entered Final Judgment as to Defendant, Terex

Corporation (Terex). Pursuant to the Final Judgment, on August 28, 2009, Terex paid a penalty of \$5,000,000 and disgorgement of \$1, for a total of \$5,000,001, to the Clerk of this Court, to be made part of the previously established Distribution Fund, and was thereafter deposited in the CRIS account previously established in *SEC v. URI*.

By order dated October 14, 2009, in *SEC v. Milne*, Civil Action No. 3:08-cv-00505 (EBB), the Court entered Final Judgment as to Defendant, John N. Milne (Milne), pursuant to Rule 54(b) of the Federal Rules of Civil Procedure. Pursuant to the Final Judgment, Milne has made disgorgement payments to date in the total amount of \$1 million to the Clerk of this Court, to be made part of the previously established Distribution Fund, and was thereafter deposited in the interest-bearing CRIS account previously established in *SEC v. URI*. Pursuant to the Final Judgment against him, Milne was also ordered to make an additional payment of \$5,250,000 by October 14, 2014.

By order dated October 6, 2009, the Court entered an order appointing Damasco & Associates LLP to fulfill the tax obligations of the Distribution Fund. Pursuant to that Order, the Tax Administrator is required to pay taxes in a manner consistent with treatment of the Distribution Fund as a QSF, and is to be compensated for the tax services provided. The Distribution Fund constitutes a Qualified Settlement Fund (QSF) under section 468B(g) of the Internal Revenue Code (IRC), 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5.

By order dated February 1, 2011, the Court entered an Order Approving a Fair Fund Distribution to Investors and Appointing a Fund Administrator (the “Order”), pursuant to which Gilardi & Co., LLC was appointed as Fund Administrator to oversee the administration of claims, procedures, and distribution of the Distribution Fund.

In accordance with the Order, the Fund Administrator has informed the Commission by written notice that it has sent each eligible Claimant his or her pro rata share of the URI Fair Fund based on their calculated Loss Amount. *See Affidavit of Nashira McCoy Attesting to the Distribution of Fair Fund.*

By order dated September 8, 2015, in *SEC v. Apuzzo*, Civil Action No., 3:07-cv-01910 (AWT), the Court entered Judgment as to Defendant Joseph F. Apuzzo (Apuzzo). Pursuant to the Judgment Apuzzo made a penalty payment of \$100,000 to the Clerk of this Court, to be made part of the previously established Distribution Fund, and was thereafter deposited in the interest-bearing CRIS account previously established in *SEC v. URI*.

II. TRANSFER OF CRIS ACCOUNT

The Commission requests that the Court authorize transfer of the Distribution Fund (plus interest, less fees and expenses, and less a 5% reserve) (the “Net Distribution Fund”) to be transferred to the Fund Administrator for distribution to the Authorized Claimants. If the Court so Orders, the transfer shall be made by wire, check or money order payable to Gilardi & Co., LLC, and directed to the attention of Lara McDermott, Executive Vice President. The Commission requests that the Court authorize the Fund Administrator to deposit the Net Distribution Fund into an escrow account maintained by the Fund Administrator at The Huntington National Bank. The Fund Administrator shall supply a signed receipt to counsel for the Commission in this matter within ten (10) days of receipt of the monies.

III. CONCLUSION

For the foregoing reasons, the Commission respectfully requests that the Court grant the Commission's motion and enter an Order directing the Clerk of the Court to transfer the Net Distribution Fund to Gilardi & Co., LLC, for administration and distribution according to the plan of distribution previously approved by this Court

Dated: August 16, 2016

Respectfully submitted,

/s/ Nancy Chase Burton

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