

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 MOTION AND
MEMORANDUM IN SUPPORT THEREOF
FOR DISTRIBUTION OF FAIR FUND AND APPROVAL OF FUND
ADMINISTRATOR FEES**

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”), minus appropriate expenses and a reserve of \$350,000, to the Fund Administrator, Gilardi & Co., LLC (“Gilardi”), for distribution to injured investors; and to approve the payment of Fund Administrator fees incurred to date.

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, under the case name

designation *SEC v. United Rentals, Inc.*, Civil Action No. 3:08-cv-1354 (CFD) (“*SEC v. URI*”) (the “CRIS account”).

By order dated August 19, 2009, in *SEC v. Terex Corporation*, Civil Action No. 3:09-cv-1281 (AWT) (the “Terex action”), 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 “Milne action”), 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, 2012.

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”). The Order established a Fair Fund (“URI Fair Fund”) encompassing all payments in the Distribution Fund made by the defendant in this action and the defendants in the Terex and Milne actions, all of which were deposited into the CRIS account. In addition, the Order appointed Gilardi as Fund Administrator to oversee the administration of claims, procedures, and distribution of the URI Fair Fund.

II. THE DISTRIBUTION PLAN

In accordance with the Order, the Fund Administrator has informed the Commission by written notice that it has completed the process of analyzing claims and determining the amounts to be distributed pursuant to the plan of distribution. *See Declaration of Lara McDermott of Gilardi & Co., Inc. in Support of Securities and Exchange Commission’s Motion for Distribution of Fair Fund* (the “Gilardi Declaration” or the “Declaration”) attached hereto as Exhibit I. As stated in the Declaration, as of the date of the Declaration, Gilardi has sent a total of 19,038 Notices and Proofs of Claim to potential claimants. Exhibit I, ¶4. Copies of the Notice and Proof of Claim forms sent to potential claimants are attached to the Gilardi Declaration as Exhibit A. A total of 2,816 claims, with a total aggregate Loss Amount of \$185,038,530.48, were found to be eligible (“Authorized Claimants”). Exhibit I, ¶11. If the Court so orders, Gilardi will calculate the *pro rata* distribution amount of the URI Fair Fund to be received by each Authorized Claimant. Exhibit I, ¶12.

III. FEES AND EXPENSES

As explained in further detail in the Declaration, Gilardi was not able to combine the distribution in this matter with that in the related private securities class action into a single payment to harmed investors. Exhibit I, ¶13. Gilardi was, however, still able to utilize existing claimant data from the class action that resulted in significant cost savings to the Commission. *Id.* If subsequent distributions are required to be made from the URI Fair Fund as a result of additional payments by Defendant Milne, Gilardi intends, pursuant to the Order, to apply at the conclusion of each month for compensation for the fees and reimbursement of its expenses incurred during the month.

Attached to the Gilardi Declaration as Exhibit B are invoices showing the fees and expenses incurred to date by Gilardi in connection with its services rendered under the Order. As shown in the invoices, Gilardi has incurred fees to date of \$66,820, and expenses to date of \$28,314.61, for a total amount of \$95,134.61. Exhibit I, ¶14. The SEC has reviewed the invoices and supporting documentation and concludes the billed amount is reasonable for the services provided to date. Gilardi expects to incur additional fees through distribution of \$6,500, and additional expense of \$13,500 for a total of \$20,000. Exhibit I, ¶14. A reserve of \$350,000 should be maintained in the CRIS account to cover such future costs, as well as to cover the amount of taxes required to be paid and costs incurred by the Tax Administrator. In addition, if any refunds, abatements or other funds are received by the Tax Administrator in connection with the tax obligations of the URI Fair Fund, those funds should be transferred from Damasco to the Fund Administrator to be included in the distribution to the Authorized Claimants.

IV. TRANSFER OF FAIR FUND

The Commission requests that the Court authorize transfer of the URI Fair Fund (plus interest, less fees and expenses, and less a reserve of \$350,000) to be transferred to the Fund Administrator for distribution to the Authorized Claimants. The Commission further requests that the Court approve payment of fees and expenses incurred to date by the Fund Administrator, which the Commission staff has reviewed and considers reasonable. 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 Chris Andreis, Fund Accounting. Although the Order had authorized that the funds be deposited at the Bank of the West, the Commission now requests that the Court authorize the Fund Administrator to deposit the URI Fair Fund into an escrow account maintained by the Fund Administrator at The Huntington National Bank. The Fund Administrator shall file a signed receipt with the Court and supply a copy of the receipt to counsel for the Commission in this matter within ten (10) days of receipt of the monies.

V. 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 URI Fair Fund to Gilardi & Co., LLC, for administration and distribution according to the plan of distribution previously approved by this Court. The Commission further requests approval for payment of the fees and expenses totaling \$95,314.61 incurred by Gilardi from funds in the CRIS account.

Dated: July 18, 2012

Respectfully submitted,

/s/ Nancy Chase Burton
Nancy Chase Burton (Bar No. phv04988)

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CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S MOTION AND MEMORANDUM IN SUPPORT THEREOF FOR DISTRIBUTION OF FAIR FUND AND APPROVAL OF FUND ADMINISTRATOR FEES to the ECF registrants herein by electronically transmitting it using the ECF system for filing and transmittal of a Notice of Electronic Filing on this 18th day of July, 2012.

/s/ Nancy Chase Burton
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