

FILED

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

2011 JAN 28 P 2:57

U.S. DISTRICT COURT  
115 W. STATE ST.

SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

v. :

UNITED RENTALS, INC., :

Defendant. :

Civil Action No.:  
08-CV-1354 (CFD)

ORDER APPROVING A FAIR FUND DISTRIBUTION TO INVESTORS AND APPOINTING A FUND ADMINISTRATOR

This Court, having reviewed Plaintiff’s Motion for Order Approving a Fair Fund Distribution to Investors and Appointing a Fund Administrator filed by the United States Securities and Exchange Commission (“Commission”), and for good cause shown, IT IS HEREBY ORDERED THAT THE MOTION IS GRANTED; and IT IS FURTHER ORDERED:

1. That a fair fund shall be established (“URI Fair Fund”) to distribute the payment of disgorgement and civil penalties made by the defendant in this action and defendants in other, related actions, which have been deposited into a Court Registry Investment System (“CRIS”) account in the name of this action.
2. Gilardi & Co., LLC, 3301 Kerner Boulevard, San Rafael, California, is appointed to be the Fund Administrator to oversee the administration of claims, procedures, and distributions of the URI Fair Fund as provided in this Order.

3. When the Fund Administrator has completed the process of analyzing claims and determining the amounts to be distributed as described in this plan of distribution, the Fund Administrator shall provide written notice of that fact, by e-mail or otherwise, to the Commission's counsel in this action who will then file a Notice to so advise the Clerk of Court.

4. The Clerk of the Court shall, following its receipt of the Notice described in paragraph 3 above, and as promptly as the work of the office allows, transfer all monies in the CRIS account in this case, less any expenses incurred with respect to the CRIS account, to the Fund Administrator. The transfer shall be made by wire, check or money order made payable to Gilardi & Co., LLC, and directed to the attention of Chris Andreis, Fund Accounting . The Fund Administrator and counsel for the Commission shall cooperate with the Clerk of the Court to provide any information required to facilitate transfer of the funds pursuant to this paragraph.

5. The Fund Administrator shall deposit the URI Fair Fund into an escrow account maintained by the Fund Administrator at the Bank of the West (hereinafter "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.

6. Pursuant to an escrow agreement (the "Escrow Agreement") to be provided by the staff of the Commission, the Distribution Agent and Bank shall establish both an escrow account and a controlled distribution account in the name of and bearing the Employer Identification Number ("EIN") of the URI Fair Fund, as custodian for the distributees of the Distribution Plan. The name of each account shall be in the following

form: SEC v. United Rentals, Inc. Fair Fund (“URI Fair Fund”), EIN No. xx-xxx6267 as custodian for the benefit of investors allocated a distribution from the URI Fair Fund. The above-referenced accounts will be managed separately from the account the Fund Administrator maintains for the settlement funds paid by URI in the related private securities class action, captioned *In re United Rentals, Inc.* (3:04-cv-01615)(“Class Action”), in which case the Fund Administrator has been appointed as the Claims Administrator to distribute the Class Action settlement funds.

7. During the term of the Escrow Agreement, the Fair Fund Escrow Account shall be invested and reinvested in short-term United States Treasury securities backed by the full faith and credit of the United States Government of a type and term necessary to meet the cash liquidity requirements for payments to eligible claimants, tax obligations, and fees and expenses, or invested or reinvested in AAA-rated Money Market Mutual Funds registered under the Investment Company Act of 1940 that directly invest in short-term United States Treasury securities and obligations; provided however, that investments in the United States Treasury securities will not be made through repurchase agreements or other derivative products. The Fund Administrator shall provide copies of bank and/or investment statements on any accounts established by the Fund Administrator to the Tax Administrator on a monthly basis and shall assist the Tax Administrator in obtaining mid-cycle statements, as necessary.

8. The Fund Administrator shall be responsible for the administration of claims and the distribution of the URI Fair Fund in accordance with the following provisions:

**Allocation and Distribution of the URI Fair Fund**

A. The Fund Administrator shall allocate the URI Fair Fund among (i) the settlement class members in the Class Action who have submitted valid proofs of claim as provided in the Notice of Pendency and Proposed Settlement of the Class Action in that Class Action, and (ii) those persons who would otherwise be included in the Class for the purposes of the Class Action, but who have elected to be excluded from the Class and the settlement in the Class Action who timely submit a valid proof of claim as to the URI Fair Fund (collectively, "Claimants").

B. With respect to Claimants who are included in the Class and eligible to participate in the Class Action settlement, the Fund Administrator shall rely upon the proofs of claim previously submitted in the Class Action for the purposes of determining the ability of those Claimants to participate in the URI Fair Fund distribution.

C. With respect to Claimants who elected to be excluded from the Class Action settlement, the Fund Administrator shall, upon issuance of the Order approving this plan of distribution, promptly provide written notification by U.S. Mail ("Notice") informing such Claimants of their potential eligibility to participate in the distribution of the URI Fair Fund and solicit proofs of claim from those persons. The Fund Administrator shall permit the submission of proofs of claim from such Claimants for a period of forty five (45) days following the mailing of the Notice. This period may be extended by the Fund Administrator in consultation with the staff of the Commission.

D. Should the claim of one of the Claimants who elected to be excluded from the Class Action settlement be denied, that claimant may request reconsideration of the determination by filing a written request for reconsideration with the Fund Administrator.

Such written request must be mailed by the claimant in sufficient time that it is received by the Fund Administrator no later than fifteen (15) days after the date on which the claimant was advised that the claim would be denied. The burden of ensuring timely receipt shall be upon the potentially eligible claimant. Such written request must contain a statement as to why the potentially eligible claimant believes their claim should be reconsidered and must include documentation to support the reconsideration request. After it duly reviews any reconsideration request, the Fund Administrator's decision of claim eligibility shall be final.

E. The Fund Administrator shall analyze and process all Claimants' proofs of claim in accordance with the provisions of this plan of distribution, and shall endeavor to complete this claim administration process no later than on hundred and twenty (120) days after mailing the Notice to those Claimants who elected to be excluded from the Class Action settlement.

F. The Fund Administrator shall determine the amounts to be distributed from the URI Fair Fund in the following manner:

1. Subject to the other provisions of this plan of distribution, a Claimant is potentially eligible to participate in the distribution of the URI Fair Fund if the Claimant purchased or otherwise acquired shares of URI common stock on or after February 28, 2001, and prior to August 31, 2004.

2. The Fund Administrator shall determine the amount of loss ("Loss Amount") for each Claimant who purchased or otherwise acquired shares of URI common stock on or after February 28, 2001, and prior to August 30, 2004, as follows. If the Claimant:

- a. sold such shares prior to August 30, 2004, the claim per share shall be zero;
- b. sold such shares on August 30, 2004, the claim per share is the lesser of (i) the Purchase Price less the Sales Price, or (ii) \$4.39 (8/30/04 Price Decline);
- c. retained such shares at the end of August 30, 2004, the claim per share is the lesser of (i) the Purchase Price less \$14.69 (8/31/04 Closing Price), or (ii) \$5.70 (8/30/04 & 8/31/04 Price Decline).

3. The Fund Administrator shall determine the Loss Amount for each Claimant who purchased or otherwise acquired shares of URI on August 30, 2004, as follows. If the Claimant:

- a. sold such shares prior to August 31, 2004, the claim per share shall be zero;
- b. retained such shares at the end of August 30, 2004, the claim per share is the lesser of (i) the Purchase Price less \$14.69 (8/31/04 Closing Price), or (ii) \$1.31 (8/31/04).

4. The Fund Administrator shall determine the Loss Amount for each Claimant who purchased or otherwise acquired URI's 6.5% notes due 2/15/02 (Cusip:911365AN4) on or after February 28, 2001, and prior to August 30, 2004, as follows. If the Claimant:

- a. sold such notes prior to August 30, 2004, the claim per note shall be zero;

b. sold such notes on August 30, 2004, the claim per note is the lesser of (i) the Purchase Price less the Sales Price, or (ii) \$15.00 (8/30/04 Price Decline);

c. retained such notes at the end of August 30, 2004, the claim per note is the lesser of (i) the Purchase Price less \$950.00 (8/31/04 Closing Price), or (ii) \$30.00 (8/30/04 & 8/31/04 Price Decline).

5. The Fund Administrator shall determine the Loss Amount for each Claimant who purchased or otherwise acquired URI's 6.5% notes due 2/15/02 (Cusip:911365AN4) on August 30, 2004, as follows. If the Claimant:

a. sold such notes prior to August 31, 2004, the claim per note shall be zero;

b. retained such notes at the end of August 30, 2004, the claim per note is the lesser of (i) the Purchase Price less \$950.00 (8/31/04 Closing Price), or (ii) \$15.00 (8/31/04 Price Decline).

6. The Fund Administrator shall determine the Loss Amount for each Claimant who purchased or otherwise acquired URI 7.75% Notes due 11/15/13 (CUSIP 911365AL8) on February 28, 2001, through August 29, 2004, as follows. If the Claimant:

a. sold such notes prior to August 30, 2004, the claim per note shall be zero;

b. sold such notes on August 30, 2004, the claim per note is the lesser of (i) the Purchase Price less the Sales Price, or (ii) \$32.50 (8/30/04 Price Decline);

c. retained such notes at the end of August 30, 2004, the claim per note is the lesser of (i) the Purchase Price less \$930.00 (8/31/04 Closing Price), or (ii) \$52.50 (8/30/04 & 8/31/04 Price Declines).

7. The Fund Administrator shall determine the Loss Amount for each Claimant who purchased or otherwise acquired URI 7/75% Notes due 11/15/13 (CUSIP 911365AL8) purchased on August 30, 2004, as follows. If the Claimant:

a. sold such notes prior to August 31, 2004, the claim per note shall be zero;

b. retained such notes at the end of August 30, 2004, the claim per note is the lesser of (i) the Purchase Price less \$930.00 (8/31/04 Closing Price), or (ii) \$20.00 (8/31/04 Price Decline).

8. The Fund Administrator shall determine the Loss Amount for each Claimant who purchased or otherwise acquired URI 7% Notes due 2/15/14 (CUSIP 911365AQ7) purchased on February 28, 2001 through August 29, 2004, as follows. If the Claimant:

a. sold such notes prior to August 30, 2004, the claim per note shall be zero;

b. sold such notes on August 30, 2004, the claim per note is the lesser of (i) the Purchase Price less the Sales Price, or (ii) \$37.50 (8/30/04 Price Decline);

c. retained such notes at the end of August 30, 2004, the claim per note is the lesser of (i) the Purchase Price less \$885.00 (8/31/04 Closing Price), or (ii) \$57.50 (8/30/04 & 8/31/04 Price Decline).



9. The Fund Administrator shall determine the Loss Amount for each Claimant who purchased or otherwise acquired URI 7% Notes due 2/15/14 (CUSIP 911365AQ7) purchased on August 30, 2004, as follows. If the Claimant:

a. sold such notes prior to August 31, 2004, the claim per note shall be zero;

b. retained such notes at the end of August 30, 2004, the claim per share is the lesser of (i) the Purchase Price less \$885.00 (8/31/04 Closing Price), or (ii) \$20.00 (8/31/04 Price Decline).

10. The Fund Administrator shall determine the Loss Amount for each call option on United Rentals common stock purchased from February 28, 2001, through August 30, 2004, as follows. If the Claimant:

a. held the call option(s) at the end of August 29, 2004, and/or August 30, 2004, the claim per call option is the difference between the price paid for the call option less the proceeds received upon the settlement of the call option contract;

b. did not hold the call option(s) at the end of August 29, 2004, and/or August 30, 2004, the claim per call option shall be zero.

11. The Loss Amount for each call option on United Rentals common stock written from February 28, 2001, through August 30, 2004, shall be \$0.

12. The Fund Administrator shall determine the Loss Amount for each put option on United Rentals common stock written from February 28, 2001, through August 30, 2004, as follows. If the Claimant:

a. held the put option(s) at the end of August 29, 2004, and/or August 30, 2004, the claim per put option is the difference between the price paid upon

settlement of the put option contract less the initial proceeds received upon the sale of the put option contract;

b. did not hold the put option(s) at the end of August 29, 2004, and/or August 30, 2004, the claim per put option shall be zero.

13. The Loss Amount for each put option on URI common stock purchased from February 28, 2001, through August 30, 2004, shall be zero.

14. The combined recovery for the Claimants of put/call options shall not exceed 3% of the net settlement fund.

15. In the event that a Claimant acquired or sold shares on multiple dates, the first-in, first-out ("FIFO") method will be applied to such holdings, purchases and sales for the purpose of calculating the Claimant's Loss Amount. Under this method, sales of URI shares occurring on or after February 28, 2001, will be matched, in chronological order, first against shares held prior to that date. The remaining sales of shares will then be matched, in chronological order, against URI shares purchased during the period commencing on February 28, 2001, through and including August 30, 2004.

16. The Fund Administrator shall determine the amount to be distributed to each Claimant from the URI Fair Fund ("Distribution Amount") on a pro rata basis, that is, each Claimant shall be paid a percentage of the URI Fair Fund which is the same as the percentage that each Claimant's Loss Amount bears to the total Loss Amount for all Claimants.

17. To the extent a Claimant had a gain from his, her or its overall transactions in URI publicly traded securities during the time period set forth herein, the value of the recognized claim will be zero.

18. In no event and under no circumstances shall the claims of any of the following be paid by the URI Fair Fund:

a. defendants named in the Commission's complaints in this action or related actions (or any of their affiliates, distributees, spouses, parents, children or controlled entities);

b. defendants named in the Class Action related to the conduct described in the Commission's complaints in this action (or any of their affiliates, distributees, spouses, parents, children or controlled entities), unless such defendant is found not liable in all such civil suits prior to the payment of claims by the URI Fair Fund;

c. assignees of the right to obtain a recovery of defendants described in (a) and (b) above, provided, however, that this provision shall not be construed to exclude those persons who obtained such a right through inheritance or devise.

G. The Fund Administrator shall hold back from the amount to be distributed a prudent reserve, established in consultation with the staff of the Commission and the Tax Administrator, to take into account the fees and expenses incurred in the performance of its duties, as well as reserves for taxes and fees of the Tax Administrator.

H. The Fund Administrator shall include the Distribution Amount in the total distributed to each Claimant participating in the Class Action, and shall endeavor, so far as is possible, to distribute the Distribution Amount from the URI Fair Fund simultaneously with the residual distribution(s) of the settlement amount paid in the Class Action. In any event, the Fund Administrator shall complete the initial distribution of the

URI Fair Fund within six months following receipt of the funds for the Clerk of the Court.

I. Payments to Claimants shall be made, in so far as is possible, in the form of a single check representing the aggregate of the Distribution Amount from the URI Fair Fund and the residual distribution from the Class Action settlement. The Distribution Amount from the URI Fair Fund shall be separately identified in a letter accompanying the payment to the Claimant indicating that the payment represents the Claimant's proportionate share of the Securities and Exchange Commission's settlement proceeds in this action which is being distributed jointly with the proceeds from the Class Action settlement pursuant to this Order.

J. Checks to Claimants shall be valid for a period of ninety (90) days from the date of issuance. If checks are issued that include Distribution Amounts from the UIR Fair Fund and which remain uncashed at the end of this 90 day period, the Fund Administrator shall undertake good faith efforts for thirty (30) days to locate and contact the intended recipients of the uncashed checks to ensure that the intended recipients have a reasonable opportunity to participate in the distribution of the URI Fair Fund.

K. If any funds remain in the URI Fair Fund following the remittance of the Distribution Amount and the expiration of the period in which the checks will be valid, such funds may be distributed to those Claimants, if any, who filed claims with the Fund Administrator after the forty-five (45) day deadline for claim forms provided for on page 4, paragraph C of this plan of distribution. If a second distribution is made pursuant to this paragraph, it shall be made in accordance with the provisions of this plan of distribution, including those related to the determination of Loss and Distribution

Amounts. Such claims shall be paid on a first filed, first distributed basis. Any funds remaining in the URI Fair Fund following a distribution made pursuant to this paragraph shall be treated in accordance with the provisions of this plan of distribution governing Additional Distributions, Residual Funds and Final Accounting for the URI Fair Fund set forth below.

Review of Claims Processes

L. After the Fund Administrator has completed the process of analyzing the claims and determining the amounts to be distributed as provided in this plan of distribution, and prior to the distribution of funds from the URI Fair Fund, the Fund Administrator shall engage its accounting firm, Wilson Markle Stuckey Hardesty & Bott, to review the Fund Administrator's compliance with the procedures for processing claims to the URI Fair Fund. The Fund Administrator shall provide counsel for the Commission with the results of that review together with any written analysis or reports related to the review, and, upon request, shall make its accounting firm available to the Commission to respond to questions concerning the review.

Accounting for the URI Fair Fund

M. Upon receipt of funds from the Clerk of the Court, the Fund Administrator shall file with the Court and serve on the Commission an accounting of all assets in the URI Fair Fund within twenty (20) days after the end of each calendar quarter, or as directed by the Commission, in a format to be approved or provided by the staff of the Commission. Such an accounting shall inform the Court and the staff of the Commission of the activities and status of the URI Fair Fund during the requested reporting period, and shall specify, at a minimum, the location of the account comprising the URI Fair

Fund, the value of that account, all monies earned or received into that account, funds distributed to Claimants pursuant to this Order, and any monies expended from the URI Fair Fund to satisfy any taxes and other expenses incurred.

Tax Compliance and Fees

N. The Court has previously appointed Damasco & Associates LLC as the Tax Administrator for this case. The Fund Administrator will cooperate with the Tax Administrator in providing any information necessary to ensure income tax compliance. After all monies in the URI Fair Fund are transferred to the Fund Administrator for distribution, the Fund Administrator shall tender to the Tax Administrator funds necessary to pay taxes upon the request of the Tax Administrator and approval by the staff of the Commission without further order of this Court.

O. After the monies in the URI Fair Fund are transferred to the Fund Administrator, the Fund Administrator must obtain Court approval before paying costs, fees and expenses of the Tax Administrator from the Fair Fund. In such instances, the Fund Administrator shall give notice to the staff of the Commission at the same time it files a request for Court approval of such expenditures.

Fees and Expenses of the Fund Administrator

P. The Fund Administrator shall act in a cost-effective manner and will be entitled to compensation for services and of the reasonable costs, fees, and other expenses incurred in the performance of its duties. All such reimbursement and compensation requests must be approved by the Court before payment from the Distribution Fund may be made.

Q. At the conclusion of each month, the Fund Administrator may apply for compensation for the fees and reimbursement of its expenses incurred during the month. At least fifteen days before submitting a request for payment to the Court, the Fund Administrator shall provide the staff of the Commission with a copy of its compensation and reimbursement request, which shall include supporting documentation to justify the services rendered or expenses incurred, and the detail of the requested payment on a form to be provided by Commission staff. Documentation for services shall include: (a) the date of service; (b) the name or initials of the individual rendering the service; (c) a description of the service; (d) the hourly rate; (e) the time charged; and (f) the amount due for that service. The description of the service should be brief and informative. Expenses shall be supported by invoices.

Additional Distributions, Residual Funds and Final Accounting

R. In light of the fact that additional monies may be paid into the URI Fair Fund, it should be noted that more than one distribution may be made in this matter. Any subsequent distribution(s) will be made using the plan methodology set forth herein, however, such subsequent distribution(s) shall be made only to those Claimants that cashed their check which was sent pursuant to the initial distribution in this matter.

S. If, after the Fund Administrator makes all distributions to Claimants and has exhausted good faith efforts to locate Claimants who have not cashed their checks, and all tax related obligations of the URI Fair Fund have been satisfied and there are remaining funds in the URI Fair Fund, those funds shall be returned to the Commission to be paid over to the United States Treasury.

T. Upon final distribution to Claimants of substantially all of the URI Fair Fund, the Fund Administrator shall make arrangements for the final payment of taxes and Tax Administrator costs and fees and Fund Administrator costs and fees and shall submit a final accounting to the Court which includes presenting information in a format to be approved or provided by the staff of the Commission. The URI Fair Fund shall be eligible for termination, and the Fund Administrator eligible for discharge, after all of the following have occurred: (1) the final accounting by the Fund Administrator has been submitted and approved by the Court; (2) all taxes and fees have been paid; and (3) all remaining funds or any residual funds have been transferred to the Commission to be paid to the United States Treasury or distributed to Claimants.

Other Provisions for the URI Fair Fund Distribution

U. The Fund Administrator is entitled to rely on all outstanding rules of law and court orders, and shall not be liable to anyone for any action taken or omitted in connection with this Order except upon a finding by this Court that it, in bad faith or in reckless disregard of its duties under this Order, acted or failed to act. This Court retains exclusive jurisdiction over all claims arising in connection with the distribution of the URI Fair Fund, including, but not limited to, claims against the Fund Administrator asserting liability for violation of any duty imposed under this Order.

V. In light of the use of an escrow account as described herein by the Fund Administrator, the Fund Administrator is excused from all legal requirements to post a bond in connection with its fiduciary duties and obligations under the Distribution Plan.



W. The Fund Administrator may, after consulting with and receiving the written consent of the Commission, and subject to review by the Court, modify these procedures to effectuate the general purposes of this Order.

X. The Fund Administrator may be removed at any time by the Court and replaced with a successor.

**SO ORDERED.**

Dated at Hartford, Connecticut this 27<sup>th</sup> day of January, 2011.

~~/s/ Christopher F. Droney, USDJ~~

---

Christopher F. Droney  
United States District Judge