

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK**

In re Agway, Inc.,

Debtor.

In re Agway General Agency, Inc.,

Debtor.

In re Brubaker Agronomic Consulting Service LLC,

Debtor.

In re Country Best Adams, LLC,

Debtor.

In re Country Best-DeBerry LLC,

Debtor.

In re Feed Commodities International LLC,

Debtor.

**Chapter 11
Case No. 02-65872 through
Case No. 02-65877**

Jointly Administered

**REPORT OF THE LIQUIDATING TRUSTEE FOR
THE PERIOD ENDING DECEMBER 31, 2005**

D. Clark Ogle, Trustee (the "Trustee") of the Agway Liquidating Trust (the "Trust") established pursuant to the above-captioned Debtors' Second Amended Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code (the "Plan") and the Order (the "Confirmation Order") confirming the Plan, entered on the docket of the United States Bankruptcy Court for the Northern District of New York (the "Court") on April 28, 2004, pursuant to Section 6.1 of the Liquidating Trust Agreement For The Agway Liquidating Trust, provides the following Report to Holders of Beneficial Interests in the Trust for the period ending December 31, 2005¹.

¹ Certain transactions discussed herein occurred after December 31, 2005 but have been included in this report to provide Trust beneficiaries with the most current information available on those topics.

I. INTRODUCTION

This Report reflects the financial activity of and other actions taken by the Trust during the period January 1, 2005 through and including December 31, 2005 (the "Reporting Period").

As described in greater detail below, during the Reporting Period the Trust converted certain assets to cash, collected certain accounts receivable, obtained the release of certain escrowed funds, sold surplus properties, continued prosecution of objections to claims, commenced over 20 adversary proceedings to collect on claims owed to the Trust, continued prosecution of pending actions, and effected the Third Distribution under the Plan, as confirmed.

Attached to this report are summaries of the Trust's Valuation of Assets, a Total Projected Recovery Calculation, a statement of the Trust's Cash Receipts and Disbursements, and a Summary of Claim Payments.

II. OVERVIEW OF ACTIONS TAKEN DURING THE REPORTING PERIOD

- **DISTRIBUTIONS:** The Trust made the Third Distribution under Agway's Plan, in the amount of 5.0% of Allowed Claim amounts, to the holders of beneficial interests in the Trust. The total amount distributed to the holders of allowed beneficial interests in the Trust in the Third Distribution was approximately \$18,000,000. As of December 31, 2005, the total amount distributed to the holders of allowed beneficial interest in the Trust equaled approximately \$200,414,000.
- **DIRECTOR AND OFFICER CLAIMS:** The action against certain officers and directors, alleging, among other things, that the payment of interest on and redemption of the Debtors' securities was inappropriate and the amounts paid should be recovered on behalf of the estate, is still pending. Discovery in this litigation is being held in abeyance pending a decision by the Court on the defendants' motion to dismiss the Complaint.
- **PENSION PLAN TERMINATION:** Under the terms of the Plan, the Employees' Retirement Plan of Agway Inc. ("Agway Pension Plan") is to be amended by the

addition of certain benefits, and then terminated, with the net amounts remaining after such termination to be delivered to the Trust for further distribution. Under the Plan, IRS action on the amendments is a prerequisite to (i) the termination of the Agway Pension Plan, (ii) payment of all Agway Pension Plan claims in full, and (iii) reversion of the remainder of the Agway Pension Plan funds, if any, to the Trust. Progress on the termination of the Agway Pension Plan is required to allow the Pension Benefit Guaranty Corporation (the "PBGC") to determine that the Agway Pension Plan is overfunded, so that a \$36 million reserve that has been established to secure the PBGC's \$36 million claim may be released for distribution to the Beneficial Holders of the Trust. Agway expected that the IRS would provide a letter of approval by the Fall of 2004. Since that time, Agway and the Official Retirees' Committee have been working to resolve the issues with the IRS. Agway was recently advised, however, that the IRS has suspended Agway's request for approval due to a Congressional moratorium on IRS rulings affecting plans like the Agway Retirement Plan. To ensure that Retirees, former Employees and surviving spouses receive all of their anticipated benefits from the Agway Retirement Plan, Agway made a motion to the United States Bankruptcy Court in which the Court was asked to eliminate the "pre-condition" for approval by the IRS and to order the implementation of the proposed amendment to the Retirement Plan. The Retirees' Committee supported this motion. The Court approved that motion on February 8, 2006.

- **401(k) PLAN LITIGATION:** The Company Security Fund of the 401(k) Plan, through a Litigation Fiduciary, is continuing its action against certain former officers, directors, employee benefit committee members, accountants and 401(k) Plan fiduciaries with respect to the appropriateness of the Company Security Fund's investment in the Debtor's securities. Although not a party to that action, the Trustee has been

advised that a motion to dismiss filed by the defendants is still pending before the Court.

- **CLAIMS OBJECTIONS:** The Trustee, his staff and counsel have filed objections in the Bankruptcy Court to nearly 2,500 claims representing alleged liabilities of approximately \$177,184,000. As a result of the objections, during the Reporting Period, an additional 16 disputed claims asserting values of approximately \$15,398,000 have been resolved through the disallowance or reduction of approximately \$13,772,000 in claims and the allowance of approximately \$1,626,000 in claims. There remain approximately 63 disputed claims asserting liabilities of approximately \$40,576,000. The remaining disputed claims include claims that must be resolved in a forum other than the Bankruptcy Court.
- **WELLS FARGO LITIGATION:** The Trust commenced an adversary proceeding against Wells Fargo Financial for improper withdrawal of funds from a holdback account established in connection with the sale of the assets of Telmark.
- **LATE CLAIM MOTIONS:** Several parties filed motions for authority to file late claims during the Reporting Period. If allowed, those claims would have substantially increased the total amount of the allowed unsecured claims. The Trust successfully defended all but two of those motions and the late claims were not allowed. The remaining two motions are still pending and before the Court for decision.

III. **CONVERSION OF SPECIFIC ASSETS TO CASH**

- **ASSET LIQUIDATION/DISPOSITION:** As reflected in the attached Statement of Receipts and Disbursements, during the Reporting Period the Trust recovered significant funds from a number of sources:
 - Delinquent Accounts Receivable in the amount of \$1,545,000 were collected;

- The release of \$3,684,000 of restricted cash from various municipalities and entities holding surety bonds and letters of credit was successfully negotiated;
- Interest income of approximately \$2,508,000 was received;
- Claims against the Disputed Claims Reserve were reduced from \$56 million to \$40 million (thereby releasing funds of approximately \$5 million from the reserve) while allowed unsecured claims were increased by only \$2 million;
- Approximately 80 insured claims and legal claims were settled and/or paid, decreasing litigation reserves by \$5,688,000;
- The sale of approximately 19 real estate properties realized \$3,600,000 in gross proceeds;
- The sale of properties resulted in a reduction of \$3,325,000 in claims against reserves for environmental liabilities;
- Fifty percent of the indemnification escrow established in connection with the Coop Milling sale was released, resulting in the receipt of \$300,000 by the Trust;
- The environmental holdback established in connection with the sale of assets to Growmark was settled and the Trust received payment of \$725,000;
- The Trust received \$3,500,000 from the indemnification escrow held by Suburban Propane arising out of the sale of assets of Agway's subsidiary, Agway Energy Products, LLC (now known as Yawga Energy Products, LLC); and
- Insurance premium refunds were received in the amount of \$315,000.

IV. MAJOR ASSETS REMAINING TO BE LIQUIDATED

- The significant assets of the Trust yet to be liquidated include:
 - Cash pledged as collateral for surety companies and issuers of letters of credit which in turn secure performance of Agway's and its subsidiaries (both debtor and non-debtor) performance under workers compensation, general liability and automobile liability policies. Over \$50 million in cash is pledged to secure such performance. The Trustee has filed objections to certain of the insurance companies' claims, but it is impossible to predict how much of and when the cash will be released. In the worst case scenario, the pledged cash would be held until all obligations under all insurance policies are satisfied.
 - As described in Section II above, Agway has received Bankruptcy Court approval to make certain amendments to the Agway Pension Plan and is awaiting a hearing on its motion for approval of the termination of the Agway Pension Plan. The Pension Guaranty Benefit Corporation ("PBGC") has filed a "protective" proof of claim for underfunding in the amount of \$36 million. Agway agreed to segregate \$36 million to secure payment of any amounts ultimately determined to be due to the PBGC. The Trust expects there to be no unfunded liability, resulting in the withdrawal of the PBGC claim and the release of \$36 million in cash securing payment of the PBGC claim and the recovery by the Trust of approximately \$7 Million in Pension Plan overfunding net proceeds.
 - Remaining indemnification liabilities secured by escrow accounts and holdbacks established at the closing of the sale of various Agway businesses are expected to be liquidated with the balance of the escrow accounts to be returned to the Trust. The Trust believes that a significant portion of the escrows and holdbacks will be recovered for the Trust and if

not, the Trustee will commence litigation where appropriate to protect the interests of the beneficial owners.

- Miscellaneous other assets, including claims against an insolvent insurance company, various deposits and the cash surrender value of life insurance policies are expected to generate net proceeds of approximately \$2.7 million.
- The Trust is responsible for disposing of surplus real estate assets owned by Agway and its affiliates. Approximately 7 surplus properties remain. While certain of the assets are readily saleable, many others have alleged environmental condition defects that impact on the ability to readily transfer title for valuable consideration. The Trust expects to ultimately receive proceeds of approximately \$1,700,000 from the disposition of the remaining properties.

V. REMAINING LIABILITIES

- The Trust's major remaining liabilities for Agway and its debtor subsidiaries include:
 - The self-insured retention portion of insured claims, estimated to equal \$22 million;
 - Obligations for environmental remediation, estimated to equal \$4 million; and
 - The costs of administering the Trust, including occupancy, insurance, staff, accounting and legal costs of approximately \$5 million through June 2007.
- The major remaining liabilities relating to Agway's non-debtor subsidiaries include:
 - The self-insured retention liability portion of insured claims estimated to equal \$11 million;
 - Environmental remediation obligations of approximately \$4 million; and

- Miscellaneous other obligations including unresolved or as yet unknown claims estimated to equal \$2 million.

Dated: March 1, 2006

Respectfully submitted,



D. Clark Ogle, Liquidating Trustee

Agway Liquidating Trust

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Agway Liquidating Trust
Valuation of Assets
December 31, 2005

(Thousands of Dollars)

	As of 12/31/04	As of 12/31/05	Notes
Cash and cash equivalents	\$ 77,396	\$ 69,715	
Other Assets	4,850	4,952	
Restricted Cash and cash equivalents	55,962	50,709	1
Net Investment in Non-debtor subs at FMV	12,160	16,926	2
Net Investment in Agway Inc. at FMV	19,115	12,579	3
Total Assets	\$ 169,483	\$ 154,881	
Payables and admin claims	(6,904)	(5,496)	
Estimated operating costs of LT incl. professional fees	(8,499)	(4,864)	4
Environmental and insured claim liabilities	(29,264)	(26,450)	5
Reserve for PBGC claim	(36,300)	(36,300)	6
Total Liabilities	(\$80,967)	(\$73,110)	
Net Assets	\$88,516	\$81,771	
Unsecured Allowed claims against Net Assets	\$453,083	\$454,709	7
Disputed Claims against Net Assets	\$55,974	\$40,576	7

Note 1: This includes \$24 million in Letter of Credit cash collateral and \$25 million in surety bond cash collateral. The Letter of credit cash collateral has decreased from the termination of certain letters of credit.

Note 2: Nondebtor subsidiaries equity value increased due to settled liabilities and liquidation of assets with favorable results.

Note 3: Agway Inc. has sold real estate and settled liabilities which has allowed cash to be transferred to the Liquidating Trust for payments to creditors.

Note 4: Payment of LT operating costs

Note 5: Reflects settlements and payments on insured claims and environmental liabilities

Note 6: The reserve for the PBGC claim exists today although the LT's projected final recovery assumes it will be released in full after the termination of the pension plan. This amount would increase the net assets to \$118,068.

Note 7: The Liquidating Trust has set aside \$17,724 in a Disputed Claims Reserve on behalf of Disputed Claims of \$40,576. The decrease in disputed claims reflects claim settlements. Some of these claims became allowed claims, therefore increasing the unsecured allowed claims total.

Subsequently, in January 2006, the Disputed Claims Reserve was lowered to \$13,736 on behalf of Disputed Claims of \$29,226 as of the 4th Distribution.

Agway Liquidating Trust
Statement of Receipts and Disbursements

(Thousands of Dollars)

	8 months Ended 12/31/2004		12 months Ended 12/31/2005
<u>Cash Receipts</u>			
Accounts Receivable collections	\$ 2,733	\$	1,545
Sale of Note receivable	6,099		0
Escrow release from business sales	504		925
Escrow release from L/C cash collateral	2,840		1,972
Escrow release from Fidelity cash collateral	7,434		1,712
Interest income	1,038		2,511
Reimbursement of transition service expenses	1,163		0
Insurance premium refunds	469		315
Dividend from Yawga / Agway Inc.	20,000		8,000
Miscellaneous Cash Receipts	1,488		316
Total Cash Receipts	\$ 43,768	\$	17,296
<u>Cash Disbursements</u>			
Professional Services	\$ 6,836	\$	2,891
Salaries & Wages	3,249	1	1,091
Letter of Credit and Bank fees	544		434
Insurance Expenses	862		223
Occupancy Expenses & Rent	550	2	254
Insured claim payments	1,283		357
Environmental liabilities payments	564		777
Miscellaneous Cash Disbursements	740		153
Check float and accounts payable	(228)		171
Bankruptcy Distribution - 1st Distribution special pymts	1,564	3	0
Bankruptcy Distribution - Employee claims	1,429		202
Bankruptcy Distribution - 2nd Distribution & spec pymts	24,083		0
Bankruptcy Distribution - 3rd Distribution & spec pymts	0		18,424
Total Cash Disbursements	\$ 41,476	\$	24,977
Net Increase (Decrease) in Cash	\$ 2,292	\$	(7,681)
Cash Balance , Beginning of Period	\$ 75,104	\$	77,396
Cash Balance , End of Period	\$ 77,396	\$	69,715
Difference	0		0

1 Included gross payroll from transition service employees which was reimbursed by asset buyers ; LT payroll 6 months ended 12/31/04 - \$897
Also includes residual employee and current retiree medical claim of \$1,024.

2 Included Agway main building expenses for 3 months and one-time moving and setup expenses for new office space

3 The 1st Distribution payments of \$131,208 (including convenience class) were made prior to the formation of the Liquidating Trust and are therefore not reflected here

Agway Liquidating Trust
Recovery Calculation Summary
Total Recovery Projected as of
December 31, 2005
(Millions of \$)

	Total Recovery Projected As of 12/31/05
Current Cash (incl. non-debtors)	\$155
Future cash to be received	\$14
Subtotal Cash proceeds	\$169
Funding needed (incl. non-debtors):	
Admin claims & payables	(\$5)
Environmental liabilities (incl. non-debtors)	(\$8)
Non-debtor subs liabilities	(\$2)
LT operating expenses	(\$5)
Non-debtor insured claims	(\$11)
Debtor insured claims	(\$22)
Subtotal liabilities	(\$53)
Net Available for Future Distributions	\$116
1st, 2nd & 3rd Distribution to Unsecureds	\$195
Future Distributions projected above	\$116
Grand Total Distributions	\$311
Current Allowed Claims	\$455
Disputed Claims as of 12/31/05	\$41
Total Claims	\$496
1st Distribution	29.5%
2nd Distribution	8.5%
3rd Distribution	5.0%
Estimated Future Distributions Total	23.4%
Total Recovery Rate	66.4%

Agway Liquidating Trust
Claim & Distribution Summary
December 31, 2005

(Thousands of Dollars)

	Dollars
	Paid
<u>Distributions - 1st, 2nd & 3rd</u>	
Class 1	\$ -
Class 2	\$ 19
Administrative	\$ 1,167
Priority Tax	\$ 42
Class 4A Convenience	\$ 2,785
Class 4C Unsecured	\$ 195,284
FCI - all Classes	\$ 549
Reclamation claims	\$ 568
Total Distributed	\$ 200,414

Claims

Unsecured Allowed Claims	\$ 454,709
Disputed Claims	\$ 40,576
Total Claims	\$ 495,285

Distributions

Unsecured Rate Paid 6/25/04 - 1st Distribution	\$ 0.295
Unsecured Rate Paid 12/9/04 - 2nd Distribution	\$ 0.085
Unsecured Rate Paid 6/25/05 - 3rd Distribution	\$ 0.050
Total Unsecured Rate paid thru 12/31/05	\$ 0.430

Claims

	POC filed	Unsecured	# of
	Amount	Allowed Claim	Claims
	Amount	Amount	Claims
Total Claim database at 1st dist. 6/25/04	\$ 2,081,112		39,743
Less: Claims withdrawn or expunged	\$ (1,418,069)		(1,393)
Less: Claims allowed	\$ (435,867)	\$ 433,575	(35,735)
Subtotal 1st Distribution database	\$ 227,176	\$ 433,575	2,615
Less: PBGC claim allowed	\$ (36,300)		(1)
Less: Claims not paid by DRX	\$ (13,692)		(152)
Total Disputed claims at 6/25/04	\$ 177,184	\$ 433,575	2,462
New claims filed & other adjustments	\$ 13,485		
Less: Claims settled & allowed thru 12/31/04	\$ (87,331)	\$ 19,508	(2,383)
Less: Adjustment to disputed claims	\$ (47,364)		
Total Disputed claims at 12/31/04	\$ 55,974	\$ 453,083	79
Less: Claims settled & allowed thru 6/25/05	\$ (15,398)	\$ 1,626	(16)
Total Disputed claims at 6/25/05	\$ 40,576	\$ 454,709	\$ 63

Insured and Legal Claims - December 2004 vs 2005								
Number of Claims								
	-----Insured-----		-----Legal & Other-----		-----Total-----			
	2004	2005	2004	2005	2004	2005	2004	2005
Debtor	124	95	50	39	174	134		
Non-Debtor	133	97	20	16	153	113		
Total	257	192	70	55	327	247		

Reserves (thousands of \$)								
	-----Insured-----		-----Legal & Other-----		-----Total-----			
	2004	2005	2004	2005	2004	2005	2004	2005
Debtor	25,127	22,633	265	59	25,392	22,692		
Non-Debtor	13,742	10,784	40	10	13,782	10,794		
Total	38,869	33,417	305	69	39,174	33,486		

