

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

In re Agway, Inc.,  Debtor.	Case No. 02-65872 (Main Case) Jointly Administered Chapter 11 Proceedings
In re Agway General Agency, Inc.,  Debtor.	Case No. 02-65873
In re Brubaker Agronomic Consulting Service LLC,  Debtor.	Case No. 02-65874
In re Country Best Adams, LLC,  Debtor.	Case No. 02-65875
In re Country Best-DeBerry LLC,  Debtor.	Case No. 02-65875
In re Feed Commodities International LLC,  Debtor.	Case No. 02-65876

**REPORT OF THE LIQUIDATING TRUSTEE FOR  
THE PERIOD ENDING DECEMBER 31, 2008**

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, 2008<sup>1</sup>.

<sup>1</sup> Certain transactions discussed herein occurred after December 31, 2008 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, 2008 through and including December 31, 2008 (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, continued prosecution of objections to claims, continued prosecution of adversary proceedings to collect on claims owed to the Trust, continued prosecution of pending actions, and effected the Seventh Distribution under the Plan, as confirmed.

Attached to this report are summaries of the Trust's Valuation of Assets (Exhibits "A"), a Total Projected Recovery Calculation (Exhibit "B"), a statement of the Trust's Cash Receipts and Disbursements (Exhibit "C"), a Summary of Claim Payments (Exhibit "D"), and a Summary of Insured and Legal Claims – December 2007 v. December 2008 (Exhibit "E").

## II. OVERVIEW OF ACTIONS TAKEN DURING THE REPORTING PERIOD

- **DISTRIBUTIONS:** During the Reporting Period, the Trust made the Seventh Distribution under Agway's Plan, in the amount of 7.0% 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 Seventh Distribution was approximately \$32,000,000. As of December 31, 2008, the total amount distributed to the holders of allowed beneficial interest in the Trust equaled approximately \$279,158,000 or 60% of allowed claims. Subsequent to the Reporting Period, and on January 30, 2009, the Liquidating Trust paid an Eighth Distribution in the amount of 11% of Allowed Claim amounts. The total amount distributed now equals 71% of Allowed Claims.
- **PENSION PLAN TERMINATION:** Under the terms of the Plan, the Employees' Retirement Plan of Agway Inc. ("Retirement Plan") was 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 was a prerequisite to (i) the termination of the Retirement Plan, (ii) payment of all Retirement Plan claims in full, and (iii) reversion of the remainder of the Retirement Plan funds, if any, to the Trust. Progress on the resolution of claims against the Retirement Plan is required to allow the Pension Benefit Guaranty Corporation (the "PBGC") to determine that the Retirement Plan is overfunded, so that a \$36,000,000 reserve that has been established to secure the PBGC's \$36,000,000 claim may be released for distribution to the Beneficial Holders of the Trust. Agway originally expected that the IRS would provide a letter of approval by the Fall of 2004. After the IRS suspended Agway's request for approval due to a Congressional moratorium on IRS rulings affecting plans like the Retirement Plan, Agway filed a motion with 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 Court approved that motion on February 28, 2006. The amendment was effected and all benefits due to beneficiaries under the Retirement Plan have been paid to (or on behalf of) the beneficiaries, are currently being paid out to the beneficiaries, or, in the case of beneficiaries who have not been located or have not responded to multiple inquiries, are being held in the Retirement Plan. While the options for realizing the over-funding were being investigated, it became apparent that a change in the sponsorship of the Retirement Plan could enhance the LT's efforts, while having little or no impact on the beneficiaries of the Retirement Plan. Therefore in December 2006, the LT filed a motion with the United States Bankruptcy Court requesting authority to transfer sponsorship of the Retirement Plan to Agway Widewaters Corporation ("AWC"), a wholly owned subsidiary of Agway, Inc. Transferring the sponsorship of the Retirement Plan from Agway to

AWC will not reduce or eliminate Agway's financial responsibility for the Retirement Plan and will cause no adverse consequences to the Retirement Plan beneficiaries, but it will enhance the options available to the Liquidating Trustee to realize the over-funding from the Retirement Plan. That motion was granted on October 10, 2007. Pursuant to a motion filed by the LT on September 10, 2007, the LT was authorized to sell the stock of AWC for an amount that exceeds the anticipated reversion of funds if the Retirement Plan were terminated. Effective June 11, 2008, the LT consummated the transaction described above and sold the stock of AWC for consideration of \$18,500,000 in gross proceeds.

- **401(k) PLAN LITIGATIONS:** The Company Security Fund of the Agway, Inc. Employees' 401(k) Thrift Investment Plan, through a Litigation Fiduciary, and the United States Department of Labor continued their actions 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. These actions were settled in October 2008 and proceeds from the settlement were paid to the Company Security Fund to then be distributed to the participants of that Fund.
- **CLAIMS OBJECTIONS:** Since confirmation of Agway's Plan, 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. During the Reporting Period, an additional 12 disputed claims asserting values of over \$19,000,000 have been resolved. Two claims that had caused reserves of over \$10,000,000 to be established were allowed in a total amount of slightly over \$1,050,000. In addition, the Trustee agreed to the partial allowance of a bond provider's claim in the amount of \$8,652,000 (reflecting the amount paid to date on account of the bonds), while continuing to dispute approximately \$884,000 of the claim representing fees and

expenses. The LT has a separate escrow account that is sufficiently funded to pay the bond issuer's claim without recourse to the Disputed Claims Reserve. There remain three (3) unresolved disputed claims asserting liabilities of approximately \$14,015,000: two (2) of the claims totaling approximately \$13,100,000 are held by Agway's former insurers, the last claim is the disputed portion of the bond issuer's claim. As the claims are either collateralized or accounted for in a separate escrow account, no additional funding in the Disputed Claims Reserve is required.

### **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 \$190,000 were collected;
- Interest income of approximately \$1,259,000 was received;
- Claims against the Disputed Claims Reserve were reduced from \$10,538,000 to \$0;
- Approximately 9 insured and legal claims, including those of non-debtor subsidiaries, were settled and/or paid, with litigation reserves mostly unchanged;
- As a result of the withdrawal of the Retirement Plan termination request and after reviewing the alternative transaction described in Section II above with the PBGC, the LT obtained the release of the sum of \$36,000,000 that had been held in escrow in respect of the PBGC's contingent claim.
- The Trust received a distribution of \$493,000 from the insolvency proceedings involving Reliance Insurance;

- A reduction of cash collateral held by various insurance companies was successfully negotiated and approximately \$5,546,000 was released; and
- As described above, Agway consummated the sale of the stock of Agway Widewaters Corporation generating gross proceeds of \$18,500,000.

#### **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. Approximately \$39,446,000 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.
- 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 \$1,000,000.
- The Trust is responsible for disposing of surplus real estate assets owned by Agway and its affiliates. Four (4) surplus properties remain. Most of the remaining properties are alleged to have environmental condition defects that impact on the ability to readily transfer title for valuable consideration. The Trust expects to ultimately receive proceeds of approximately \$500,000 from the disposition of the remaining properties once the environmental contingencies are resolved.

## 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 \$21,000,000;
- The self-insured retention liability portion of insured claims for non-debtor subsidiaries estimated to equal \$8,000,000;
- Obligations for environmental remediation, including non-debtor subsidiaries, estimated to equal \$4,000,000;
- The costs of administering the Trust, including occupancy, insurance, staff, accounting and legal costs of approximately \$4,000,000 through December 2010;
- Possible excise tax liability from sale of AWC stock and transfer of Retirement Plan sponsorship to AWC of \$5,000,000 (but which amount is fully reserved against); and
- Miscellaneous other obligations including unresolved or as yet unknown claims estimated to equal \$2,000,000.

Dated: March 31, 2009

Respectfully submitted,



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**D. Clark Ogle, Trustee of the  
Agway Liquidating Trust**

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# EXHIBIT "A"

**Agway Liquidating Trust**  
**Valuation of Assets**  
**May 1, 2004**

Valuation of Assets  
 Agway Liquidating Trust  
 (Thousands of Dollars)  
 May 1, 2004

Cash and cash equivalents	\$	75,104
Receivables, net		2,812
Other Assets		9,257
Restricted Cash and cash equivalents		58,264
Net Investment in Non-debtor subs at FMV		41,976
Net Investment in Agway Inc. at FMV		15,968
Cash reserved for Initial Distribution		131,224
<b>Total Assets</b>		<b>\$334,605</b>
Payables and admin claims		(9,503)
Estimated operating costs of LT incl. professional fees		(14,416)
Environmental and insured claim liabilities		(42,035)
Reserve for PBGC claim		(36,300)
<b>Total Liabilities</b>		<b>(\$102,254)</b>
<b>Net Assets</b>		<b>\$232,351</b>
Unsecured Allowed claims against Net Assets		<b>\$436,809</b>

Note: The Liquidating Trust has set aside \$40,899 in a Disputed Claims Reserve on behalf of Disputed Claims of \$138,640.

**Agway Liquidating Trust**  
**Valuation of Assets**  
**December 31, 2008**

(Thousands of Dollars)

	As of 12/31/07	As of 12/31/08	Notes
Cash and cash equivalents	\$ 50,774	\$ 65,306	
Other Assets	3,299	2,697	
Restricted Cash and cash equivalents	49,545	39,588	1
Net Investment in a Non-debtor sub at FMV	17,408	(2,136)	2
Net Investment in Agway Inc. at FMV	14,479	1,686	3
<b>Total Assets</b>	<b>\$ 135,505</b>	<b>\$ 107,141</b>	
Payables and admin claims	(394)	(194)	
Estimated operating costs of LT incl. professional fees	(2,115)	(3,814)	4
Environmental and insured claim liabilities	(23,523)	(18,254)	5
Reserve for PBGC claim	(36,300)	0	6
<b>Total Liabilities</b>	<b>(\$62,332)</b>	<b>(\$22,262)</b>	
<b>Net Assets</b>	<b>\$73,173</b>	<b>\$84,879</b>	
Unsecured Allowed claims against Net Assets	\$454,719	\$460,517	7
Disputed Claims against Net Assets	\$10,538	\$0	7

Note 1: This includes \$16 million in Letter of Credit cash collateral and \$24 million in surety bond cash collateral. Balances have decreased from reduction in L/C's outstanding and payment to surety bond provider on unsecured bankruptcy claim created from surety bond payments to insurers.

Note 2: Nondebtor subsidiary's equity value decreased due to settlement of liabilities and liquidation of assets with favorable results and transfer of cash to the Liquidating Trust to pay bankruptcy claim distributions. Some liabilities are being paid with Liquidating Trust cash but remain on the nondebtor subsidiary's balance sheet, creating a negative FMV.

Note 3: Agway Inc. has liquidated assets with favorable results and transferred cash to the Liquidating Trust to pay bankruptcy claim distributions.

Note 4: Increase due to revised budget which includes significantly decreased interest revenue

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

Note 6: The reserve for the PBGC claim was extinguished in December as the PBGC released their claim. These funds will be paid to unsecured creditors in January 2009.

Note 7: The Liquidating Trust has set aside \$6,425 in a Disputed Claims Reserve on behalf of Disputed Claims of \$0 as a conservative strategy. The decrease in disputed claims reflects favorable claim settlements with little increase in allowed claims.

# EXHIBIT “B”

**Agway Liquidating Trust  
Recovery Calculation Summary  
Total Recovery Projected as of  
December 31, 2008  
(Millions of \$)**

	<b>Total Recovery Projected As of 12/31/08</b>
<b>Current Cash (incl. non-debtors)</b>	\$110
Future cash to be received	\$2
<b>Subtotal Cash proceeds</b>	<b>\$112</b>
<b>Funding needed (incl. non-debtors):</b>	
Admin claims & payables	(\$2)
Environmental liabilities (incl. non-debtors)	(\$4)
LT operating expenses	(\$4)
Excise tax reserve	(\$5)
Non-debtor insured claims	(\$8)
Debtor insured claims	(\$21)
Surety provider claims	(\$5)
<b>Subtotal liabilities</b>	<b>(\$49)</b>
<b>Net Available for Future Distributions</b>	<b>\$63</b>
1st - 7th Distribution to Unsecureds	\$279
Future Distributions projected above	\$63
Disputed Claim Reserve excess	\$6
<b>Grand Total Distributions</b>	<b>\$348</b>
<b>Current Allowed Claims</b>	<b>\$460</b>
<b>Disputed Claims as of 12/31/08</b>	<b>\$0</b>
<b>Total Claims</b>	<b>\$460</b>
<b>1st Distribution</b>	29.5%
<b>2nd Distribution</b>	8.5%
<b>3rd Distribution</b>	5.0%
<b>4th Distribution</b>	4.0%
<b>5th Distribution</b>	3.0%
<b>6th Distribution</b>	3.0%
<b>7th Distribution</b>	7.0%
<b>Estimated Future Distributions Total (*)</b>	15.0%
<b>Total Recovery Rate</b>	<b>75.0%</b>

\* Includes 11% distribution made on January 30, 2009.

# EXHIBIT "C"

**Agway Liquidating Trust**  
**Statement of Receipts and Disbursements**

(Thousands of Dollars)

	<u>12 months Ended 12/31/2007</u>	<u>12 months Ended 12/31/2008</u>
<b><u>Cash Receipts</u></b>		
Accounts Receivable collections	\$ 537	\$ 190
Escrow release from business sales	251	100
Escrow release from L/C cash collateral	2,991	5,546
Escrow release from Fidelity cash collateral	0	4,336
Interest income	3,311	1,259
Vendor refunds and unclaimed property	295	284
Litigation Settlements	582	582
Reliance bankruptcy claim payment	0	493
Dividend from Yawga / Agway Inc.	0	43,021
Miscellaneous Cash Receipts	78	36
	<u>\$ 8,045</u>	<u>\$ 55,847</u>
<b><u>Cash Disbursements</u></b>		
Professional Services	\$ 1,827	\$ 1,793
Salaries & Wages	722	417
Letter of Credit and Bank fees	358	274
Insurance Expenses	171	149
Occupancy Expenses & Rent	169	222
Insured claim payments	679	41
Environmental liabilities payments	607	540
Miscellaneous Cash Disbursements	114	455
Check float and accounts payable	(119)	131
Bankruptcy Distributions payments	8,137	37,293
	<u>\$ 12,665</u>	<u>\$ 41,315</u>
Net Increase (Decrease) in Cash	\$ (4,620)	\$ 14,532
Cash Balance , Beginning of Period	\$ 55,394	\$ 50,774
Cash Balance , End of Period	\$ 50,774	\$ 65,306

# EXHIBIT “D”

**Agway Liquidating Trust**  
**Claim & Distribution Summary**  
**December 31, 2008**  
(Thousands of Dollars)

	<b>Dollars</b>
	<b>Paid</b>
<b><u>Distributions - 1st thru 7th</u></b>	
Class 1	\$ -
Class 2	\$ 19
Administrative	\$ 1,167
Priority Tax	\$ 42
Class 4A Convenience	\$ 2,786
Class 4C Unsecured	\$ 274,027
FCI - all Classes	\$ 549
Reclamation claims	\$ 568
	<hr/>
<b>Total Distributed</b>	<b>\$ 279,158</b>

**Claims**

Unsecured Allowed Claims	\$ 460,517
Disputed Claims	\$ -
<b>Total Claims</b>	<b>\$ 460,517</b>

**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
Unsecured Rate Paid 1/25/06 - 4th Distribution	\$ 0.040
Unsecured Rate Paid 6/25/06 - 5th Distribution	\$ 0.030
Unsecured Rate Paid 8/24/07 - 6th Distribution	\$ 0.030
Unsecured Rate Paid 2/28/08 - 7th Distribution	\$ 0.070
<b>Total Unsecured Rate paid thru 12/31/08</b>	<b>\$ 0.600</b>

**Agway Liquidating Trust**  
**Claim & Distribution Summary**  
**December 31, 2008**  
(Thousands of Dollars)

**Claims Summary**

	POC filed Amount	Unsecured Allowed Claim Amount	# of 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)
<b>Subtotal 1st Distribution database</b>	<b>\$ 227,176</b>	<b>\$ 433,575</b>	<b>2,615</b>
Less: PBGC claim allowed	\$ (36,300)		(1)
Less: Claims not paid by DRX	\$ (13,692)		(152)
<b>Total Disputed claims at 6/25/04</b>	<b>\$ 177,184</b>	<b>\$ 433,575</b>	<b>2,462</b>
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)		
<b>Total Disputed claims at 12/31/04</b>	<b>\$ 55,974</b>	<b>\$ 453,083</b>	<b>79</b>
Less: Claims settled & allowed thru 6/25/05	\$ (15,398)	\$ 1,626	(16)
<b>Total Disputed claims at 6/25/05</b>	<b>\$ 40,576</b>	<b>\$ 454,709</b>	<b>63</b>
Less: Claims settled & allowed thru 1/25/06	\$ (11,350)	\$ 971	(25)
<b>Total Disputed claims at 1/25/06</b>	<b>\$ 29,226</b>	<b>\$ 455,680</b>	<b>38</b>
Less: Claims settled & allowed thru 6/25/06	\$ (10,030)	\$ (964)	(6)
<b>Total Disputed claims at 6/25/06</b>	<b>\$ 19,196</b>	<b>\$ 454,716</b>	<b>32</b>
Less: Claims settled & allowed thru 8/24/07	\$ (8,658)	\$ 3	(17)
<b>Total Disputed claims at 8/24/07</b>	<b>\$ 10,538</b>	<b>\$ 454,719</b>	<b>15</b>
Less: Claims settled & allowed thru 2/28/08	\$ -	\$ (2,210)	0
<b>Total Disputed claims at 2/28/08</b>	<b>\$ 10,538</b>	<b>\$ 452,509</b>	<b>15</b>
Less: Claims settled & allowed thru 12/31/08	\$ (10,538)	\$ 8,008	(12)
<b>Total Disputed claims at 12/31/08</b>	<b>\$ -</b>	<b>\$ 460,517</b>	<b>3</b>

# EXHIBIT “E”

**Insured and Legal Claims - December 2007 vs 2008**

Number of Claims						
	Insured		Legal & Other		Total	
	2007	2008	2007	2008	2007	2008
Debtor	49	41	9	4	58	45
Non-Debtor	30	28	9	15	39	43
<b>Total</b>	<b>79</b>	<b>69</b>	<b>18</b>	<b>19</b>	<b>97</b>	<b>88</b>

  

Reserves (thousands of \$)						
	Insured		Legal & Other		Total	
	2007	2008	2007	2008	2007	2008
Debtor	20,448	21,082	59	9	20,507	21,091
Non-Debtor	6,152	4,801	40	3,081	6,192	7,882
<b>Total</b>	<b>26,600</b>	<b>25,883</b>	<b>99</b>	<b>3,090</b>	<b>26,699</b>	<b>28,973</b>

