

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, 2009**

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, 2009¹.

¹ Certain transactions discussed herein occurred after December 31, 2009 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, 2009 through and including December 31, 2009 (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 pending actions, and effected the Ninth 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 2008 v. December 2009 (Exhibit "E").

II. OVERVIEW OF ACTIONS TAKEN DURING THE REPORTING PERIOD

- **DISTRIBUTIONS:** During the Reporting Period, the Trust made the Eighth Distribution under Agway's Plan, in the amount of 11.0% 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 Eighth Distribution was approximately \$51,000,000. As of December 31, 2009, the total amount distributed to the holders of allowed beneficial interest in the Trust equaled approximately \$328,863,000 or 71% of allowed claims.
- **CLAIMS OBJECTIONS:** Since confirmation of the 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. The Trustee continues to dispute approximately \$884,000 of a claim representing fees and expenses of a bond provider. 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 approximately 3 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.

- **TERMINATION OF AGWAY INC. EMPLOYEES' 401(K) THRIFT INVESTMENT PLAN:** During 2009, the Agway, Inc. Employees' 401(k) Thrift Investment Plan (the "Thrift Plan"), which is administered by the Trustee, hired an independent fiduciary to attempt to negotiate a discount from and final payment of the Thrift Plan's claim against the Trust. As the Thrift Plan's claim against the Trust was the only Thrift Plan asset that had not been converted to cash, the Thrift Plan could not be terminated, and the expense of maintaining the Thrift Plan would continue, until the final distribution was received from the Trust. The Trust and the Thrift Plan's independent fiduciary negotiated a discounted amount to release the Thrift Plan's claim in return for immediate payment. After the Court approved the settlement, notice of termination was given to each of the Thrift Plan participants or beneficiaries. Had the settlement not been negotiated and consummated, the Thrift Plan's continuing expenses would have exceeded the ultimate distribution and the Trust would have continued to incur overhead and administrative expenses in connection with the Plan. The settlement terminates the Thrift Plan expenses to both the Thrift Plan and Trust, permits Thrift Plan participants and beneficiaries to receive their final distributions from the Thrift Plan, and results in the Trust saving money on the distribution that was otherwise expected to be made to the Thrift Plan. The final termination of the Thrift Plan is expected to be completed in August or September of 2010.
- **RESOLUTION OF NON-DEBTOR LITIGATION:** In addition to resolving multiple claims filed against the Debtors, the Trustee, his staff and counsel successfully negotiated

resolutions of a number of product liability and property damage claims asserted against non-debtor entities. These claims typically arise out of a fire that a claimant asserts was caused by heating equipment installed by a non-debtor affiliate of the Debtors. After investigating the claims and engaging in pre-trial motion practice, these claims are typically settled for an amount significantly less than the reserve established for the claims. This permits the liability to be fixed, limits future litigation cost and enhances the ability to obtain releases of collateral from Agway's insurance carriers.

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 funds from a number of sources:
 - Delinquent Accounts Receivable in the amount of \$59,000 were collected;
 - Interest income of approximately \$26,000 was received;
 - Claims against the Disputed Claims Reserve remained unchanged;
 - Approximately 17 insured and legal claims, including those of non-debtor subsidiaries, were settled and/or paid, with litigation reserves mostly unchanged; and
 - Proceeds of \$214,000 from "key executive" life insurance policies owned by Agway were received.

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 \$38,058,000 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.

- Although the transaction will not be consummated until sometime in 2010, the efforts of the Trustee to negotiate a settlement of all claims under an insurance program appear to have been successful. Under the settlement, if approved by the Court, the insurance company will assume all liabilities under its issued policies (including the Debtors and non-debtors' large deductible liability), will be paid a stipulated amount from its collateral in exchange for assuming such liabilities, and will release the balance of the collateral for eventual recovery by the Trust. If this transaction is approved by the Court, it will be described in more detail in the report for 2010.
- 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 \$500,000.
- The Trust is responsible for disposing of surplus real estate assets owned by Agway and its affiliates. Three (3) surplus properties remain. Certain 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 \$300,000 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 \$20,000,000;
- The self-insured retention liability portion of insured claims for non-debtor subsidiaries estimated to equal \$7,000,000;
- 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 million through December 2011;
- Possible excise tax liability from sale of AWC stock and transfer of Retirement Plan sponsorship to AWC of \$5 million (but which amount is fully reserved against); and
- Miscellaneous other obligations including unresolved or as yet unknown claims estimated to equal \$2 million.

Dated: March 31, 2010

Respectfully submitted,



**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
Total Assets		\$334,605
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)
Total Liabilities		(\$102,254)
Net Assets		\$232,351
Unsecured Allowed claims against Net Assets		\$436,809

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, 2009
(Thousands of Dollars)

	As of 12/31/08	As of 12/31/09	Notes
Cash and cash equivalents	\$ 65,306	\$ 13,457	1
Other Assets	2,697	2,524	
Restricted Cash and cash equivalents	39,588	38,202	2
Net Investment in a Non-debtor sub at FMV	(2,136)	(4,106)	3
Net Investment in Agway Inc. at FMV	1,686	1,446	4
Total Assets	\$ 107,141	\$ 51,523	
Payables and admin claims	(194)	(123)	
Estimated operating costs of LT incl. professional fees	(3,814)	(3,700)	
Environmental and insured claim liabilities	(23,617)	(21,611)	5
Total Liabilities	(\$27,625)	(\$25,434)	
Net Assets	\$79,516	\$26,089	
Unsecured Allowed claims against Net Assets	\$460,517	\$457,441	6
Disputed Claims against Net Assets	\$0	\$0	6

Note 1: Cash decreased due to 8th bankruptcy distribution of \$50 million paid in January 2009.

Note 2: This includes \$15 million in Letter of Credit cash collateral and \$23 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 3: Nondebtor subsidiary's equity value decreased due to settlement of liabilities and liquidation of assets with favorable results. Some liabilities are being paid with Liquidating Trust cash but remain on the nondebtor subsidiary's balance sheet, creating a negative FMV.

Note 4: Agway Inc. has liquidated assets with favorable results.

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

Note 6: The Liquidating Trust has set aside \$6,425 in a Disputed Claims Reserve on behalf of Disputed Claims of \$0 as a conservative strategy.

EXHIBIT "B"

**Agway Liquidating Trust
Recovery Calculation Summary
Total Recovery Projected as of
December 31, 2009
(Millions of \$)**

	Total Recovery Projected As of 12/31/09
Current Cash (incl. non-debtors)	\$52
Future cash to be received	\$1
Subtotal Cash proceeds	\$53
Funding needed (incl. non-debtors):	
Admin claims & payables	(\$2)
Environmental liabilities (incl. non-debtors)	(\$4)
LT operating expenses	(\$4)
Excise tax reserve	(\$5)
Non-debtor insured claims	(\$7)
Debtor insured claims	(\$20)
Surety provider claims	(\$3)
Subtotal liabilities	(\$45)
Net Available for Future Distributions	\$8
1st - 8th Distribution to Unsecureds	\$328
Future Distributions projected above	\$8
Disputed Claim Reserve excess	\$6
Grand Total Distributions	\$342
Current Allowed Claims	\$457
Disputed Claims as of 12/31/09	\$0
Total Claims	\$457
1st Distribution	29.5%
2nd Distribution	8.5%
3rd Distribution	5.0%
4th Distribution	4.0%
5th Distribution	3.0%
6th Distribution	3.0%
7th Distribution	7.0%
8th Distribution	11.0%
Estimated Future Distributions Total	3.1%
Total Recovery Rate	74.1%

EXHIBIT "C"

Agway Liquidating Trust
Statement of Receipts and Disbursements
(Thousands of Dollars)

	<u>12 months Ended 12/31/2008</u>	<u>12 months Ended 12/31/2009</u>
<u>Cash Receipts</u>		
Accounts Receivable collections	\$ 190	\$ 59
Escrow release from business sales	100	92
Escrow release from L/C cash collateral	5,546	318
Escrow release from Fidelity cash collateral	4,336	951
Interest income	1,259	26
Vendor refunds and unclaimed property	284	30
Litigation Settlements	582	0
Reliance bankruptcy claim payment	493	0
Dividend from Yawga / Agway Inc.	43,021	0
Life insurance proceeds	0	214
Miscellaneous Cash Receipts	36	49
	<u>\$ 55,847</u>	<u>\$ 1,739</u>
<u>Cash Disbursements</u>		
Professional Services	\$ 1,793	\$ 909
Salaries & Wages	417	419
Letter of Credit and Bank fees	274	233
Insurance Expenses	149	190
Occupancy Expenses & Rent	222	163
Insured claim payments	394	372
Environmental liabilities payments	540	457
Check float and accounts payable	131	45
Escrow payment to buyer from business sale	0	92
Miscellaneous Cash Disbursements	102	0
Bankruptcy Distributions payments	37,293	50,708
	<u>\$ 41,315</u>	<u>\$ 53,588</u>
Net Increase (Decrease) in Cash	\$ 14,532	\$ (51,849)
Cash Balance , Beginning of Period	\$ 50,774	\$ 65,306
Cash Balance , End of Period	\$ 65,306	\$ 13,457

EXHIBIT "D"

**Agway Liquidating Trust
Claim & Distribution Summary
December 31, 2009**

(Thousands of Dollars)

	Dollars Paid
<u>Distributions - 1st thru 8th</u>	
Class 1	\$ -
Class 2	\$ 19
Administrative	\$ 1,167
Priority Tax	\$ 42
Class 4A Convenience	\$ 2,786
Class 4C Unsecured	\$ 323,732
FCI - all Classes	\$ 549
Reclamation claims	\$ 568
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Total Distributed	\$ 328,863

Claims

Unsecured Allowed Claims	\$ 457,441
Disputed Claims	\$ -
Total Claims	\$ 457,441

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
Unsecured Rate Paid 1/30/09 - 8th Distribution	\$ 0.110
	<hr/>
Total Unsecured Rate paid thru 12/31/09	\$ 0.710

Agway Liquidating Trust
Claim & Distribution Summary
December 31, 2009
(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)
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
Less: Claims settled & allowed thru 1/25/06	\$ (11,350)	\$ 971	(25)
Total Disputed claims at 1/25/06	\$ 29,226	\$ 455,680	38
Less: Claims settled & allowed thru 6/25/06	\$ (10,030)	\$ (964)	(6)
Total Disputed claims at 6/25/06	\$ 19,196	\$ 454,716	32
Less: Claims settled & allowed thru 8/24/07	\$ (8,658)	\$ 3	(17)
Total Disputed claims at 8/24/07	\$ 10,538	\$ 454,719	15
Less: Claims settled & allowed thru 2/28/08	\$ -	\$ (2,210)	0
Total Disputed claims at 2/28/08	\$ 10,538	\$ 452,509	15
Less: Claims settled & allowed thru 12/31/08	\$ (10,538)	\$ 8,008	(12)
Total Disputed claims at 12/31/08	\$ -	\$ 460,517	3
Less: Claims settled & allowed thru 12/31/09	\$ -	\$ (3,076)	0
Total Disputed claims at 12/31/09	\$ -	\$ 457,441	3

EXHIBIT "E"

Insured and Legal Claims - December 2008 vs 2009							
Number of Claims							
	Insured		Legal & Other		Total		
	2008	2009	2008	2009	2008	2009	
Debtor	41	41	4	2	45	43	
Non-Debtor	28	18	15	10	43	28	
Total	69	59	19	12	88	71	

Reserves (thousands of \$)							
	Insured		Legal & Other		Total		
	2008	2009	2008	2009	2008	2009	
Debtor	21,082	19,533	9	2	21,091	19,535	
Non-Debtor	4,801	4,008	3,081	3,015	7,882	7,023	
Total	25,883	23,541	3,090	3,017	28,973	26,558	

