

**Dairy Mart Liquidating Trust  
Summary of Trustee's Activities  
October 8, 2007**

On September 24, 2001, Dairy Mart Convenience Stores and all affiliated entities filed voluntary petitions in the Southern District of New York for reorganization relief under Chapter 11 of the Bankruptcy Code. Pursuant to the Post Confirmation Order signed by the Bankruptcy Court on March 5, 2003 ("Confirmation Order"), the Bankruptcy Court confirmed the First Amended Joint Plan of Liquidation of Dairy Mart under Chapter 11 of the Bankruptcy Code ("Plan"), which became effective March 14, 2003 ("Effective Date"). Dairy Mart Convenience Stores, Inc. operated approximately 550 convenience stores throughout Ohio and six (6) nearby states.

In accordance with the Plan, the Dairy Mart Liquidating Trust was established pursuant to the Liquidating Trust Agreement dated March 6, 2003 between Dairy Mart and Wayne Walker, as Liquidating Trustee. The Liquidating Trust Fund, as therein defined, was the aggregate of all the assets of Dairy Mart as of the Effective Date, which automatically vested in the Liquidating Trust. The general purpose of the Liquidating Trust is to liquidate and distribute the assets of the Liquidating Trust to holders of allowed unsecured claims and to complete the resolution of the disputed claims in accordance with the Plan. The valuation of these assets was approximately \$17 Million.

William Kaye of Coca-Cola North America, Peg Sibbet of American Express Financial Corporation and John Morgan of Highland Capital Management, LP were appointed as the initial members of the Liquidating Trust Committee. In addition, Pachulski, Stang, Ziehl, Young, Jones & Weintraub PC was retained as counsel to the Trustee and The Trumbull Group was employed as the Claims Agent.

The activities of the Liquidating Trust are summarized below:

**Trust Administration**

Upon confirmation of the Plan, the Trust was registered with the Internal Revenue Service as a legal entity and the Trust website was created and launched ([www.dairymartliquidatingtrust.com](http://www.dairymartliquidatingtrust.com)). All funds were transferred to new accounts at Wilmington Trust Bank and a central accounting system was established. All Dairy Mart communications and correspondence have been rerouted to the Liquidating Trustee's address and the corporation headquarters location was shut down.

**Claims Administration**

The Trumbull Group has been maintaining an active and current database of all claims pending against Dairy Mart and its affiliated debtors. The capabilities of this database were verified and this database has provided the majority of the data necessary for the completion of distributions. All administrative claims received by the Trust by the bar date of March 25, 2003 and all general unsecured claims filed by the bar date of February 22, 2002 have been registered in Trumbull's claims database (any claims untimely filed have or will be objected to in an Omnibus Objection). Throughout the year, trust

professionals have been working to reconcile all claims and filing objections where appropriate.

The Bankruptcy Court recently approved a settlement agreement with Robert Stein, Jr., a former employee of Dairy Mart and Elaine Stein. Robert and Elaine Stein filed a total of 33 claims in the bankruptcy. The total amount of claims filed was \$5,343,123, as well as 793,177 shares of common stock and numerous unliquidated claims. Robert Stein and the Trust agreed to settle all of the Stein claims for a \$4,300 priority claim and a \$1,750,000 general unsecured claim.

### **Distributions**

On or about March 31, 2004, an initial distribution was made to Dairy Mart's allowed general unsecured claimants in accordance with the First Amended Joint Plan of Liquidation. The total of the first distribution was \$4.5 million.

On June 14, 2004, a letter was sent to each bondholder of record ("Bondholders") instructing the Bondholder to surrender his/her bond, submit a letter of transmittal, and return the documents to Walker Nell Consultants Inc. On July 19, 2004, distributions were made to Bondholders of Dairy Mart 10.25% Senior Subordinate Notes and Series B notes. The July 19, 2004 distribution included all Bondholders who returned their forms and surrendered their bonds by June 30, 2004.

As of June 30, 2004, a second distribution of \$1,000,000.00 was made to Dairy Mart allowed claimants and Bondholders. This distribution included all Bondholders who submitted their forms by June 30, 2004 and all of Dairy Mart's allowed general unsecured claimants as of June 30, 2004.

A third distribution of \$600,000.00 was made as of September 30, 2004 to Bondholders and Dairy Mart's allowed claimants. Payments were distributed to all Bondholders who submitted their forms by September 30, 2004 and all of Dairy Mart's allowed general unsecured claimants as of September 30, 2004.

On September 30, 2005, a fourth distribution was made to unsecured creditors and Bondholders in the amount of \$800,000.

The final distribution has not yet been scheduled for the Bondholders or allowed General Unsecured Creditors. In preparation for the final distribution, Bondholders were given a deadline of December 31, 2005 to submit and surrender their bonds. Any bonds not received by that date will not receive any distribution.

### **401(k) Plan Termination**

The Dairy Mart 401(k) Plan has been fully distributed. There were approximately 1,700 Plan participants, of which nearly eight (800) hundred held balances under \$200.00. Those individuals were automatically cashed out and their checks were sent to them on September 12, 2003. Distribution request forms were mailed to the remaining participants so that they could choose one of several distribution options. Any

participants who have not returned their distribution request forms were automatically cashed out. The Trust has made a significant effort to locate current addresses for the many participants with invalid or no addresses.

### **Tax and Regulatory Compliance**

Trust professionals have prepared and filed all of the required tax returns for the Dairy Mart Convenience Stores Liquidating Trust and the Dairy Mart Convenience Stores and all related entities. This process consists of one tax return for the Liquidating Trust and twenty three (23) tax returns for the corporation and its related entities, as well as all applicable state and local income tax returns. However, after the dissolution of the companies occurred there was no longer a need to file tax returns for the corporation or its related entities.

### **Dissolution of Companies**

The Liquidating Trustee was required to dissolve all of the companies in their states of incorporation and places of business. It voluntarily dissolved the majority of companies. However, after having inactive status for a specific amount of time, a state will involuntarily dissolve a corporation. For some companies, the Trust decided that it was more cost effective to keep the company in its involuntarily dissolved status; otherwise, the Trust would have been incurred significant and unnecessary costs to return the company to good standing in order to voluntarily dissolve the corporation.

### **Asset Management**

The Liquidating Trustee, through the assistance of Pachulski, Stang, Ziehl, Young, Jones & Weintraub PC and Rottenberg, Lipman, Rich, P.C., have actively been pursuing, settling and collecting monies related to preference actions. Based on available corporate records and after extensive analysis, vendors receiving potential preference payments (payments made to vendors within the ninety days) were identified and preference actions were filed prior to the statutory deadline of September 24, 2003. To date, the total amount of all preference settlements is \$1,277,345.29 \_\_\_\_\_. The following is a list of some of the major preference settlements.

The Fedeli Group	\$ 47,565.90
Krispy Kreme Doughnut Corporation	\$ 53,978.76
Finova	\$ 50,000.00
Erie Petroleum Inc	\$ 65,000.00
Dean Management	\$ 99,999.99
G&J Pepsi-Cola	\$150,000.00
First Energy Company	\$170,000.00
Baker & Hostetler	\$230,000.00

### **Open Matters**

#### **Environmental Matters**

Trust professionals have identified various environmental compliance issues related to underground petroleum storage tanks at Dairy Mart Convenience Stores. Leaking underground storage tank (“LUST”) issues have been addressed in the states of MA, CT, RI, NY, KY and OH via various agreements with site owners and/or state regulatory agencies and Handex Environmental. In addition, approximately 18 sets of inactive underground storage tanks (“USTs”) have either been removed from service or negotiated settlements have been reached with the site owners. While Trust professionals, in conjunction with Handex Environmental, have resolved the majority of environmental compliance issues related to underground petroleum storage tanks at Dairy Mart Convenience Stores, Handex Environmental is continuing negotiations in an effort to resolve the remaining inactive UST sites, which should be resolved in the near term.

On [date], *Handex Group, Inc. filed for bankruptcy protection in the Middle District of Florida. As a result of its bankruptcy filing, it rejected the current contracts with the Dairy Mart Estates. The Liquidating Trustee is currently in the process of finding another environmental company to resolve the outstanding environmental issues.*

Also, in accordance with Handex’s rejection of its contracts with Dairy Mart, it has come to the attention of the Trust that there may be additional monies in Connecticut which Handex was entitled to, but never collected. Handex has agreed that since they never collected the funds and rejected Dairy Mart’s contracts, the Trust is entitled to seek those monies. Currently, our environmental attorneys at Orrick are looking into this issue.

The Trust has engaged an environmental consulting firm to provide a global proposal for required testing or corrective action on Dairy Mart sites with outstanding environmental issues. For those sites that are eligible for reimbursement by the state government, the consulting firm has agreed to perform the required clean up services and send claims directly to the state governments for reimbursement thereby avoiding out-of-pocket costs for the Trust. Several sites may not be eligible for reimbursement; however, the Trust is currently working with the consultant to determine the total non-reimbursable costs required to clean up these sites in order to establish a reserve in the Trust's account.

#### **Royal Alliance**

The Trust recently discovered an additional \$400,000 held in escrow for insurance claims. The Trust is currently negotiating with Royal Alliance to release a bulk of the funds. According to Royal Alliance, there are still outstanding claims that they are paying so they are unable to release all of the funds.

The Trust continues to negotiate a settlement amount to cover future costs for all outstanding claims before releasing the \$400,000 in collateral held by Royal Alliance.

#### **CIC Insurance**

Cincinnati Insurance Company (CIC) currently holds \$473,000 in insurance collateral for the Trust. CIC has offered a global settlement to return the collateral on the grounds that they retain a significant sum for unpaid insurance claims. The Trust is currently negotiating the amount to be retained by CIC.

### **McCord Road at Hill Avenue**

The Liquidating Trust is still in the process of trying to sell its remaining asset, 2.89 acres of property in Ohio. It has engaged the broker, Signature Associates, to sell the property in Ohio.

### **Trust Wind Down**

The Liquidating Trustee is currently addressing the remaining issues in preparation for final distribution. Please continue to search [www.dairymartliquidatingtrust.com](http://www.dairymartliquidatingtrust.com) for information regarding the Trust and the final distribution.

### **Abandonment of Debtor's Books and Records**

On September 28, 2006, the Liquidating Trustee filed a Motion Authorizing the Liquidating Trustee to Abandon the Debtor's Books and Records. The Trust has been incurring monthly storage fees to keep its outdated books and records. The Liquidating Trustee has determined that some of the information was no longer needed and received Court authorization to abandon these debtor's books and records.

### **Corporate Wind-Down**

Shortly after confirmation of the Plan, the corporation began its wind down process. The headquarters location was closed down and Dairy Mart there is no longer a need to retain any Dairy Mart personnel.