

# FULBRIGHT & JAWORSKI L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP

666 FIFTH AVENUE, 31ST FLOOR

NEW YORK, NEW YORK 10103-3198

[WWW.FULBRIGHT.COM](http://WWW.FULBRIGHT.COM)

To: Unsecured Creditors of The Consumers Trust

From: Fulbright & Jaworski L.L.P., Legal Advisors to the  
Official Committee of Unsecured Creditors (the "Committee")

Date: December 19, 2006

Subject: *Committee Report to Unsecured Creditors*

---

Ladies and Gentlemen,

We are the legal advisors to the Official Committee of Unsecured Creditors of The Consumers Trust and we are enclosing our report to update unsecured creditors on the Committee's primary recent activities, as well as certain emerging events. The Committee is comprised of eleven (11) voucher holders such as yourself, randomly selected by the Office of the United States Trustee. The focus of this report is to provide a brief status update on the two primary areas of current activity in the case, namely: (i) the investigation of the Debtor's program, and (ii) asset recovery. We intend to use periodic reports of this sort to tell you as plainly as we can about the Committee's activities, what we are investigating and pursuing, and where we are headed.

The Committee continues to listen to input from many creditors on the <http://consumertrustcase.com> website and through other channels. As we proceed through the chapter 11 process we will endeavor to answer every email or call from all of you in order to provide you with the best information flow the law and time will allow.

The Committee thanks you for your patience and support, and pledges to diligently evaluate, communicate, and pursue all reasonable options for maximizing the unsecured creditor recovery.

**Fulbright & Jaworski L.L.P.**

David L. Barrack

212 318-3302

[dbarrack@fulbright.com](mailto:dbarrack@fulbright.com)

Scott T. Dillon

212 318-3334

[sdillon@fulbright.com](mailto:sdillon@fulbright.com)

Steve A. Peirce

210 270-7179

[speirce@fulbright.com](mailto:speirce@fulbright.com)

# The Consumers Trust

## Committee Report to the Unsecured Creditors

---

December 19, 2006

*This is an informal communication, on a public information basis, to unsecured creditors under Section 1102 of the Bankruptcy Code. It is not formal legal or financial advice, and is not a plan solicitation or proposal under the Bankruptcy Code, which can only be accomplished through a Court-approved disclosure statement and ballot for each creditor voting on a plan.*

### **Executive Summary**

The purpose of this report is to provide an update regarding the efforts of the Official Committee of Unsecured Creditors (the “Committee”) of The Consumers Trust (the “Debtor”) to all unsecured creditors regarding the two primary areas of current activity in the cases, namely: (i) the investigation of the Debtor’s program, and (ii) asset recovery. While described in greater detail below, the following points summarize the Committee’s primary activities and focus to date and the events going forward:

- The Committee’s forensic investigation is nearly complete due to the Committee having obtained court approval to interview all parties involved in the pre-petition control of the Debtor and those with information regarding the Debtor’s financial affairs.
- The Committee, based upon its investigation, believes that the estate maintains many claims against the control parties and will be commencing lawsuits to recover on such claims for the benefit of the voucher holders.

### **Investigation of the Debtor’s Program**

The Committee, in conjunction with the Debtor, has substantially concluded its forensic investigation of the Debtor and its pre-petition financial affairs and the parties who owned, counseled, and/or controlled the Debtor.

The Debtor was involved in a sales promotion program whereby it issued redeemable vouchers (“Vouchers”) to consumers through merchants (“Voucher Program”). Consumers who were issued a Voucher had the opportunity to redeem it for an amount up to the face amount of the Voucher. Pursuant to the Debtor’s contracts with merchants, merchants were supposed to pay the Debtor 15% of the face amount of each issued Voucher. According to the Debtor and its founder, Eurofinance, and Eurofinance’s principal Adrian Roman, the Debtor’s business model should have worked based upon consumers forgetting to submit their Vouchers for redemption, the rejection of Vouchers which did not meet the qualifications of the Voucher Program and the fact that if there were insufficient funds accumulated with respect to sub-funds created in respect of each week’s issued Vouchers, only a pro rata payment would be offered to the Voucher holder. Roman has represented to the High Court in London and the State Court in Missouri that the Debtor needed only 40% of the 15% paid by the merchants (i.e., 6% of the face amount of the Vouchers) to satisfy all validly redeemed Vouchers.

Based upon the structure of the Voucher Program, it appears that the Debtor received over \$24 million in respect of payments made by merchants who participated in the program. Approximately 60% (almost \$16 million) of the \$24 million was transferred out of the Debtor. According to the Debtor’s Statement of Financial Affairs filed with the Court on January 10, 2006, in the year before the Petition Date, insiders consisting of the Trustees and Eurofinance received over \$1 million.

The Committee sought and received court orders permitting the examination of and compelling the production of documents by the following parties: (i) Richard Caplan, Wesley Harrison, Andrew Davis and Dennis Bonley (collectively, the “Trustees”); (ii) Caplans Solicitors and the Davis Bonley accounting firm; (iii) Consumer Promotions, Inc. (“Consumer Promotions”), and its principal, James P. Rigsby (“Rigsby”); (iv) CP Promotions Ltd. (“CP Promotions”); (v) Eurofinance SA (“Eurofinance”) and its principal Adrian Roman (“Roman”); (vi) Robin Wertheimer, Esq.; (vii) Aaron J. Racine, Esq. and his law firm Monaco, Sanders, Gotfredson, Racine & Barber, L.C.; (viii) James R. Hobbs, Esq. and his law firm Wyrsh Hobbs & Mirakian, PC; (ix) GT Enterprises, Inc.; (x) Jeff Criswell; (xi) Graham Jaynes; and (xii) the Debtor (collectively, the “Rule 2004 Parties”).

Please note that the naming of any person or entity in an examination request is not necessarily intended to convey any culpability, and in many instances only reflects the Committee’s belief that such parties possessed information that will be of use to us in the investigation and asset recovery.

The Rule 2004 Parties were effectively the Voucher Program’s owners, operators, attorneys, management and sales agents. With the exception of the attorneys, they are the people who owned and utilized the Debtor to facilitate the Voucher Program. If the Debtor were a corporation, they would be management, the board of directors, the sole stockholder, a sales contractor and outside counsel. Because the Debtor is a trust, they have different titles, but serve the same functions. With exception of one of the attorneys, all of the Rule 2004 Parties received money from the Debtor, funds which over the last three years aggregate close to \$16 million. The Rule 2004 Parties had information regarding the Debtor’s financial and business affairs. Collectively, they are exclusively knowledgeable about the Debtor’s operations, the Debtor’s financial affairs and the circumstances which brought the Debtor to seek this Court’s protection.

Prior to the examinations, pursuant to orders of the Bankruptcy Court, the Rule 2004 Parties produced tens of thousands of pages of documents regarding the operation of the trust. All of the former attorneys of the Debtor turned over thousands of pages of documents relating to the pre-petition operation of the Debtor and its litigation strategies regarding the various actions brought by numerous Attorneys General, as well as civil actions brought by individual Voucher holders. Consumer Promotions, the Debtor’s marketing and sales agent in the United States, further produced thousands of pages of documents relating to the day to day operation of the Debtor. All of the documents were examined in preparation of the Committee’s examination of the Rule 2004 Parties. The documents proved to be extremely valuable, as they produced evidence of the financial and business affairs of the Debtor and the parties who had actual control of the Debtor.

Adrian Roman and Eurofinance have refused to participate in the Court-ordered examinations; Eurofinance claimed that it is not subject to the jurisdiction of the Court and Roman has never responded to any motion against him. Eurofinance argued that it merely formed the trust, has no control of the financial or business affairs who will receive little, if any, distribution after all other beneficiaries are paid. The Committee obtained evidence through the examinations of the Rule 2004 Parties and the document production that the trust is a business

which was formed to allow Eurofinance by Roman to operate a cash rebate voucher program. Like any other business, it had officers in the form of trustees, hired accountants and attorneys, entered into contracts in the form of vouchers, and distributed profits. At the Missouri A.G. preliminary injunction hearing, Roman testified that Eurofinance owns the rebate program by which the Debtor is obligated to pay the claimholder beneficiaries. Eurofinance admits that it settled, or incorporated the trust. Eurofinance by Roman chose and appointed the management and the trustees. Eurofinance capitalized the entity. Eurofinance by Roman determined the trustees' duties and who would be hired as accountants and attorneys for the trust. Roman testified that accountant trustees had only administrative, not financial functions. Eurofinance by Roman drafted the Vouchers which Roman testified were "binding contracts," contracts which bound the Debtor trust. Roman drafted the advertising and promotional materials for salesmen to use in selling the trust Voucher Program.

The Bankruptcy Court found the evidence overwhelming that Eurofinance and Roman were the control parties of the Debtor and recently ordered them to participate in examinations conducted by the Committee. Notwithstanding the Order, Eurofinance and Roman continue to refuse to participate in examinations and to willfully disobey orders entered by the Bankruptcy Court compelling their mandatory participation in the examinations. The Committee is presently seeking to hold Roman and Eurofinance, as the parties who had actual control of the Debtor, in contempt of court for not complying with the court order compelling their examination, with daily monetary sanctions for each day that they fail to participate in examinations.

The Committee, in conjunction with counsel for the Debtor, took the depositions of the vast majority of the Rule 2004 Parties. The depositions took place where those parties reside, so for example, all of the Rule 2004 Parties who reside in Missouri were examined in Missouri. The Trustees initially refused to participate in the Court-ordered examinations. However, the Committee was able to negotiate an agreement with the Trustees where they agreed to take part in examinations subject to those examinations taking place in London. The Committee took the examinations of the Trustee in London over the course of four days. Furthermore, some of the Debtor's attorneys were deposed in New York. The evidence produced in the examinations, in conjunction with the documents produced has been critical to accurately understand the pre-petition business and financial affairs of the Debtor and whom the actual control parties of the Debtor were. It is due solely to these examinations that the Committee is now in a position to attempt to recover funds from some of the Rule 2004 Parties for the benefit of the Voucher holders.

The examinations of the Rule 2004 Parties were not open to the general public. In fact, some of the examinations and the documents produced are subject to court approved confidentiality agreements, which prevent the Committee from disclosing any of the information without prior approval by the examined party. The information developed will remain confidential and privileged, but we shall provide a general report of the findings and recommendations to the Bankruptcy Court and creditors at the appropriate time and forum.

**Asset Recovery**

The Debtor did not have any tangible property, such as real estate, leases, or equipment, thus there are no assets to sell.

The Committee, based upon its investigation, believes that the estate has the right to sue several of the Rule 2004 Parties in order to recover money for the benefit of Voucher holders. Some of the claims will be based upon state law and some will be based upon federal law. Regardless, the Committee will endeavor to recover the most amount of money, in a cost effective manner. The Committee's mission is to take all the necessary steps to allow for the largest recovery in order to provide for the biggest distribution to the Voucher holders possible.

In the very near future, the Committee, in conjunction with the Debtor, will be commencing these lawsuits to recover on such claims for the benefit of the Voucher holders. At the present time, we cannot disclose which parties lawsuits will be brought against and what claims will be asserted. That information remains confidential and privileged. However, once the lawsuits have been commenced we shall provide a summary of the actions to you and shall further make the complaint available on the Committee website for your review and records.