Ascent Solar Technologies, Inc.
Form PRE 14A
December 09, 2013
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
SCHEDULE 14A
(RULE 14a-101)
SCHEDULE 14A INFORMATION
Proxy Statement Pursuant to Section 14(a) of the
Securities Exchange Act of 1934
(Amendment No.)
Filed by the Registrant ý Filed by a Party other than the Registrant ¨
Check the appropriate box:
ý Preliminary Proxy Statement
¨ Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
¨ Definitive Proxy Statement
¨ Definitive Additional Materials
¨ Soliciting Material Pursuant to §240.14a-12
ASCENT SOLAR TECHNOLOGIES, INC.
(Name of Registrant as Specified in its Charter)
(Name of Person(s) Filing Proxy Statement, if other than the Registrant)
Payment of Filing Fee (Check the appropriate box):
ý No fee required.
¨ Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.
(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:
¨ Fee paid previously with preliminary materials:
¨ Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.
(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

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ASCENT SOLAR TECHNOLOGIES, INC.
12300 Grant Street
Thornton, Colorado 80241
(720) 872-5000

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS
[_____], 2014

December [ ], 2013
TO OUR STOCKHOLDERS:
NOTICE IS HEREBY GIVEN that a Special Meeting of Stockholders of Ascent Solar Technologies, Inc., a Delaware corporation, will be held on January [ ], 2014, at [2:00] p.m. Mountain Time at the Company's offices, 12300 Grant Street, Thornton, Colorado 80241, for the following purposes, as more fully described in the Proxy Statement accompanying this notice:

1. To approve the issuance by the Company, in accordance with a securities purchase agreement between the Company and Seng Wei Seow, dated June 17, 2013, of more than 20% of the Company's issued and outstanding common stock at a price that may be less than the greater of book or market value of the Company's common stock.

2. To approve the issuance by the Company, in accordance with a securities purchase agreement between the Company and Ironridge Technology Co., a division of Ironridge Global IV, Ltd., dated October 28, 2013, of more than 20% of the Company's issued and outstanding common stock at a price that may be less than the greater of book or market value of the Company's common stock.

3. To consider and approve a certificate of amendment to our Amended and Restated Certificate of Incorporation to increase the number of authorized shares of the Company's common stock from 125,000,000 to 250,000,000. Note: I am awaiting confirmation that brokers will be able to vote without instruction on the authorized increase proposal. If brokers cannot vote, then we should add another proposal that would let us adjourn the meeting if we are not able to obtain a quorum.

4. To transact such other business as may properly come before the special meeting or any adjournment thereof.

Stockholders who owned shares of our common stock at the close of business on December [ ], 2013 are entitled to receive notice of, attend and vote at the Special Meeting and any adjournment or postponement thereof. A complete list of these stockholders will be available at our corporate offices listed above during regular business hours for the ten days prior to the Special Meeting.
Your vote is important. Whether or not you plan to attend the Special Meeting, please vote as soon as possible. If you received notice of how to access the proxy materials over the Internet, a proxy card was not sent to you, but you may vote by telephone or online. If you received a proxy card and other proxy materials by mail, you may vote by mailing a completed proxy card, by telephone or over the Internet. For specific voting instructions, please refer to the information provided in the following Proxy Statement, together with your proxy card or the voting instructions you receive by e-mail or that are provided via the Internet.

By Order of the Board of Directors

Sincerely,

Victor Lee
President and Chief Executive Officer

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ASCENT SOLAR TECHNOLOGIES, INC.
12300 North Grant Street
Thornton, Colorado 80241
(720) 872-5000

PROXY STATEMENT

For the Special Meeting of Stockholders to be held on January [__], 2014

Your proxy is being solicited on behalf of the Board of Directors (the “Board”) of Ascent Solar Technologies, Inc., a Delaware corporation, for use at the Special Meeting of Stockholders (the “Special Meeting”) to be held at [2:00 p.m.] Mountain Time on January [_], 2014, or at any adjournment or postponement thereof, for the purposes set forth in this Proxy Statement. The Special Meeting will be held at the Company’s offices, 12300 Grant Street, Thornton, Colorado 80241.

These proxy materials are first being provided on or about December [__], 2013 to all stockholders as of the record date, December [_], 2013. Stockholders who owned our common stock at the close of business on December [__], 2013 are entitled to receive notice of, attend and vote at the Special Meeting. On the record date, there were [__________] shares of our common stock outstanding.

All proxies will be voted in accordance with the instructions contained on those proxies, and if no choice is specified, the proxies will be voted in favor of each matter set forth in the accompanying Notice of Meeting. Any proxy may be revoked by a stockholder at any time before it is exercised by delivery of written revocation to our corporate secretary.

References to the “Company,” “Ascent,” “Ascent Solar,” “our,” “us” or “we” mean Ascent Solar Technologies, Inc.

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VOTING AND RELATED MATTERS

Voting Procedures

As a stockholder of Ascent, you have a right to vote on certain business matters affecting us. The proposals that will be presented at the Special Meeting and upon which you are being asked to vote are discussed below. Each share of our common stock you owned as of the record date entitles you to one vote on each proposal presented at the Special Meeting.

Electronic Delivery of Proxy Materials

Under rules adopted by the SEC, we are furnishing proxy materials to our stockholders primarily via the Internet, instead of mailing printed copies of those materials to each stockholder. On or about December [__], 2013, we sent our stockholders (other than those who previously requested electronic or paper delivery) a Notice of Internet Availability containing instructions on how to access our proxy materials on the Internet. The Notice of Internet Availability also instructs stockholders on how they can vote over the Internet or by telephone.

If you would prefer to receive printed proxy materials, please follow the instructions included in the Notice of Internet Availability. If you have previously elected to receive our proxy materials electronically, you will continue to receive these materials via e-mail unless you elect otherwise.

Methods of Voting

You may vote over the Internet, by telephone, by mail or in person at the Special Meeting.

Voting over the Internet. You can vote via the Internet. The website address for Internet voting and the instructions for voting are provided on your Notice or proxy card. You will need to use the control number appearing on your Notice or proxy card to vote via the Internet. If you vote via the Internet you do not need to vote by telephone or return a proxy card.

Voting by Telephone. You can vote by telephone by calling the toll-free telephone number provided on your proxy card. You will need to use the control number appearing on your Notice or proxy card to vote by telephone. If you vote by telephone you do not need to vote over the Internet or return a proxy card.

Voting by Mail. If you received a printed proxy card, you can vote by marking, dating and signing it, and returning it in the postage-paid envelope provided. You may also download the form of proxy card off the Internet and mail it to us. Please promptly mail your proxy card to ensure that it is received prior to the closing of the polls at the Special Meeting.

Voting in Person at the Meeting. If you attend the Special Meeting and plan to vote in person, we will provide you with a ballot at the Special Meeting. If your shares are registered directly in your name, you are considered the stockholder of record, and you have the right to vote in person at the Special Meeting. If your shares are held in the name of your broker or other nominee, you are considered the beneficial owner of shares held in street name. As a beneficial owner, if you wish to vote at the Special Meeting, you will need to bring to the Special Meeting a legal proxy from your broker or other nominee authorizing you to vote those shares.

Revoking Your Proxy

You may revoke your proxy at any time before it is voted at the Special Meeting. To do this, you must:

- enter a new vote over the Internet or by telephone, or by signing and returning a replacement proxy card;

•provide written notice of the revocation to our Corporate Secretary at our principal executive offices, which are located at 12300 Grant Street, Thornton, Colorado 80241; or
•attend the Special Meeting and vote in person

Quorum and Voting Requirements To Approve Each Proposal

Stockholders of record at the close of business on December [__], 2013 are entitled to receive notice and vote at the meeting. On the record date, there were [_______] issued and outstanding shares of our common stock. Each holder of our common stock voting at the meeting, either in person or by proxy, may cast one vote per share of common stock held on all matters to be voted on at the meeting. Holders of our preferred stock do not have voting rights at the meeting.

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The presence, in person or by proxy, of the holders of a majority of the outstanding shares of common stock entitled to vote constitutes a quorum for the transaction of business at the meeting. Assuming that a quorum is present, the following table summarizes the voting requirements to approve each proposal:

Proposal	Vote Required	Broker Discretionary Voting Allowed
Proposal 1 - To approve the issuance by the Company, in accordance with a securities purchase agreement between the Company and Seng Wei Seow, dated June 17, 2013, of more than 20% of the Company's issued and outstanding common stock at a price that may be less than the greater of book or market value of the Company's common stock.	The affirmative vote of a majority of the votes cast at the Special Meeting.	No
Proposal 2 - To approve the issuance by the Company, in accordance with a securities purchase agreement between the Company and Ironridge Technology Co., a division of Ironridge Global IV, Ltd., dated October 28, 2013, of more than 20% of the Company's issued and outstanding common stock at a price that may be less than the greater of book or market value of the Company's common stock.	The affirmative vote of a majority of the votes cast at the Special Meeting.	No
Proposal 3 - Approval of the amendment to the Company's certificate of incorporation to increase the number of authorized common shares.	A majority of the outstanding shares of common stock.	Yes

Votes cast by proxy or in person at the meeting will be tabulated by the election inspectors appointed for the meeting. Such inspectors will also determine whether a quorum is present. The election inspectors will treat abstentions as shares that are present and entitled to vote for purposes of determining the presence of a quorum, but as unvoted for purposes of determining the approval of any matter submitted to the stockholders for a vote. Accordingly, abstentions will have no effect on whether Proposal 1 or Proposal 2 is approved at the Special Meeting. Abstentions will have the same effect as a vote "AGAINST" Proposal 3.

If your shares are held in street name and you do not instruct your broker on how to vote your shares, your brokerage firm, in its discretion, is permitted to either leave your shares unvoted or vote your shares on matters that are considered routine. Proposal 1 and Proposal 2 are considered non-routine matters. Proposal 3 is considered a routine matter. Consequently, without your voting instructions, your brokerage firm (i) will not be able to vote your shares on Proposal 1 or Proposal 2, but (ii) will be able to vote your shares on Proposal 3. These unvoted shares, called "broker non-votes," refer to shares held by brokers who have not received voting instructions from their clients and who do not have discretionary authority to vote on non-routine matters. Broker non-votes will not be counted as shares that are present and entitled to vote for purposes of determining the presence of a quorum. Assuming that a quorum is present, broker non-votes (i) will have no effect on whether Proposal 1 or Proposal 2 are approved at the Special Meeting and (ii) will have the same effect as a vote "AGAINST" Proposal 3.

Voting of Proxies

When a proxy is properly executed and returned, the shares it represents will be voted at the Special Meeting as directed. If no specification is indicated, the shares will be voted:

(1) "FOR" Proposal 1 to approve the issuance by the Company, in accordance with a securities purchase agreement between the Company and Seng Wei Seow, dated June 17, 2013, of more than 20% of the Company's issued and outstanding common stock at a price that may be less than the greater of book or market value of the Company's common stock;

(2) "FOR" Proposal 2 to approve the issuance by the Company, in accordance with a securities purchase agreement between the Company and Ironridge Technology Co., a division of Ironridge Global IV, Ltd., dated October 28, 2013, of more than 20% of the Company's issued and outstanding common stock at a price that may be less than the greater of book or market value of the Company's common stock;

(3) "FOR" Proposal 3: the amendment to the Company's Amended and Restated Certificate of Incorporation to increase the number of authorized shares of common stock from 125,000,000 to 250,000,000; and

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(4) at the discretion of your proxies on any other matter that may be properly brought before the Special Meeting.

If your shares are held in street name and you do not instruct your broker on how to vote your shares, your brokerage firm, in its discretion, may either leave your shares unvoted or vote your shares on matters which are considered routine. Proposal 1 and Proposal 2 are not routine matters; Proposal 3 is a routine matter. Consequently, without your voting instructions, your brokerage firm (i) will not be able to vote your shares at the Special Meeting on Proposal 1 or Proposal 2, but (ii) will be able to vote your shares at the Special Meeting on Proposal 3.

Voting Confidentiality

Proxies, ballots and voting tabulations are handled on a confidential basis to protect your voting privacy. This information will not be disclosed, except as required by law.

Voting Results

Voting results will be announced at the Special Meeting and published in a Form 8-K to be filed within four (4) business days after the Special Meeting.

Householding of Proxy Materials

In a further effort to reduce printing costs and postage fees, we have adopted a practice approved by the SEC called "householding." Under this practice, stockholders who have the same address and last name and do not participate in electronic delivery of proxy materials will receive only one copy of our proxy materials, unless one or more of these stockholders notifies us that he or she wishes to continue receiving individual copies.

We will promptly deliver a separate copy of these proxy materials to any stockholder upon written or oral request to our Corporate Secretary by mail at 12300 Grant Street, Thornton, Colorado 80241 or by phone at (720) 872-5000.

Any stockholder who wants to receive separate copies of proxy materials in the future, or any stockholder who is receiving multiple copies and would like to receive only one copy per household, should contact that stockholder's bank, broker, or other nominee record holder, or that stockholder may contact us at the above address and phone number.

Proxy Solicitation

We will bear the cost of this solicitation. In addition, we may reimburse brokerage firms and other persons representing beneficial owners of shares for reasonable expenses incurred in forwarding solicitation materials to such beneficial owners. Proxies also may be solicited by our directors, officers or employees, personally, or by mail, facsimile, telephone, messenger or via the Internet, without additional compensation.

Driving Directions to the Special Meeting

The Company's main office is approximately 29 miles from Denver International Airport. From the Airport, take Pena Boulevard to I-70 West to I-270 West to I-25 North. Exit 120th Avenue. Turn right onto 120th Avenue, then turn left onto Grant Street. The Company's offices are on the right.

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table shows information regarding the beneficial ownership of our common stock by our directors, executive officers and greater than 5% beneficial owners as of December 5, 2013.

Beneficial ownership is determined in accordance with the rules of the SEC and generally includes any shares over which a person exercises sole or shared voting or investment power. For purposes of calculating the percentage of our common stock beneficially owned, the number of shares of our common stock includes 60,546,289 shares of our common stock outstanding as of December 5, 2013.

Unless otherwise indicated, each of the stockholders listed below has sole voting and investment power with respect to the shares beneficially owned. The address for each director or named executive officer is c/o Ascent Solar Technologies, Inc., 12300 Grant Street, Thornton, Colorado 80241.

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Name of Beneficial Owner	No. of Shares Beneficially Owned	Percentage	
5% Stockholders:			
TFG Radiant Investment Group Ltd. (1)	16,032,842	26.48	%
Seng Wei Seow (2)	5,994,082	9.90	%
Ironridge Technology Co., a division of Ironridge Global IV, Ltd. (3)	4,148,194	6.85	%
Officers and Directors:			
Victor Lee (4)	—	*	
Bill Gregorak (5)	—	*	
Amit Kumar, Ph.D.(6)	454,311	*	
Kim J. Huntley (7)	90,723	*	
G. Thomas Marsh (8)	309,942	*	
Xu Biao (9)	—	*	
All directors and executive officers as a group (16 persons)	854,976	1.41	%

* Less than 1.0%.

(1) The address of TFG Radiant Investment Group Ltd. is Block B. 4th Floor, Jihong R&D Building, No.1 Binlang Road, Futian FTZ, Shenzhen, China 518038. Does not include 9,500,000 shares of common stock which could be issued to TFG Radiant upon exercise of an option granted to TFG Radiant in August 2011 and which has an exercise price of $1.55 per share.

(2) The address for Mr. Seow is 17 Jalan Haji Salam, Singapore 468784. Mr. Seow may be deemed to have beneficial ownership of 5,994,082 shares of common stock, which consist of (i) 3,123,900 shares of common stock issuable upon conversion of shares of Series A preferred stock held Seow (ii) 2,766,484 shares of common stock held by Seow, and (iii) 103,698 shares of common stock issuable upon exercise of warrants held by Seow. The foregoing excludes 2,521,302 shares of common stock issuable upon exercise of warrants held by Seow, because the shares of Series A preferred stock and the warrants held by Seow are subject to blocker provisions under which Seow does not have the right to convert his Series A preferred stock or exercise his warrants to the extent that such conversion or exercise, respectively, would result in beneficial ownership by Seow of more than 9.9% of the common stock of Ascent. Without such blocker provisions, Seow may be deemed to have beneficial ownership of 8,515,384 shares of common stock. The Series A preferred stock and common stock warrants owned by Mr. Seow do not have voting rights. Accordingly, Mr. Seow will not be able to vote such securities on any proposal considered at the Special Meeting.

(3) The address for Ironridge is Harbour House, 2nd Floor, Waterfront Drive, Road Town, Tortola, British Virgin Islands VG1110. Ironridge may be deemed to have beneficial ownership of 4,148,194 shares of common stock, which consist of (i) 3,478,261 shares of common stock issuable upon conversion of 400 outstanding shares of Series B-1 preferred stock held Ironridge, and (ii) 669,933 shares of common stock held by Ironridge. Does not include any shares of common stock issuable upon conversion of 500 shares of Series B-1 or Series B-2 preferred stock, as applicable, that Ironridge would acquire in an additional closing if Proposal 2 is approved by our stockholders at the Special Meeting. If the Company issues Series B-1 preferred stock in such additional closing, such Series B-1 preferred stock would be convertible into 4,347,826 additional shares of common stock. If the Company issues Series B-2 preferred stock in such additional closing, such Series B-2 preferred stock would be convertible into 3,333,333 additional shares of common stock. The outstanding Series B-1 preferred stock owned by Ironridge does not have voting rights. Accordingly, Ironridge will not be able to vote such securities on any proposal considered at the Special Meeting.

(4) Does not include securities held by TFG Radiant Investment Group Ltd., our largest stockholder. Mr. Lee is managing director of Tertius Financial Group Pte Ltd. a 50% owner of TFG Radiant Investment Group Ltd., and disclaims beneficial ownership of our securities held by TFG Radiant Investment Group Ltd. Does not include options to purchase 200,000 shares of common stock held by Mr. Lee but which will not vest within 60 days of December 5, 2013.

(5) Does not include options to purchase 50,000 shares of common stock held by Mr. Gregorak which will not be vested within 60 days of December 5, 2013.

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(6) Includes 399,941 shares of common stock and 46,370 restricted stock units which will be vested within 60 days of December 5, 2013, and 8,000 options to purchase shares of common stock which are vested.

(7) Includes 60,482 shares of common stock, and 30,241 restricted stock units which will be vested within 60 days of December 5, 2013.

(8) Includes 279,701 shares of common stock, and 30,241 restricted stock units which will be vested within 60 days of December 5, 2013.

(9) Does not include securities held by TFG Radiant Investment Group Ltd., our largest stockholder. Mr. Xu is an investor in TFG Radiant Investment Group Ltd., and disclaims beneficial ownership of our securities held by TFG Radiant Investment Group Ltd.

PROPOSAL NO. 1:

APPROVAL OF THE ISSUANCE OF MORE THAN 20% OF THE COMPANY'S ISSUED AND OUTSTANDING COMMON STOCK PURSUANT TO A SECURITIES PURCHASE AGREEMENT, DATED JUNE 17, 2013.

Terms of the Seow Transaction

On June 17, 2013, the Company entered into a Securities Purchase Agreement (the "Seow Purchase Agreement") with Seng Wei Seow ("Seow"), pursuant to which Seow agreed to purchase from the Company, and we agreed to sell to Seow (subject to the terms and conditions set forth therein), an aggregate of 750,000 shares of Series A preferred stock at a price of $8.00 per share of Series A preferred stock and warrants (the "Warrants") to purchase up to 2,625,000 shares of common stock of the Company at an exercise price of $0.90 per share of common stock. The Warrants have a three year term.
The securities covered by the Seow Purchase Agreement were issued by the Company in three closings which occurred in June and August, 2013, resulting in gross proceeds to the Company of $6 million.
The Series A preferred stock may be converted into shares of common stock at the option of the Company if the closing price of the common stock exceeds $1.60, as adjusted, for 20 consecutive trading days, or by the holder at any time. The Company has the right to redeem the Series A preferred stock at a price of $8.00 per share, plus any accrued and unpaid dividends, plus the make-whole amount (if applicable). The holder of the preferred shares may convert to common shares at any time, at no cost, at a ratio of 1 preferred share into 10 common shares (subject to standard ratable anti-dilution adjustments). Accordingly, the 750,000 shares of Series A preferred stock may be converted into an aggregate 7,500,000 shares of common stock. Upon any conversion (whether at the option of the Company or the holder), the holder is entitled to receive any accrued but unpaid dividends and also any make-whole amount (if applicable).
Holders of Series A Preferred Stock are entitled to cumulative dividends at a rate of 8.0% per annum (subject to adjustment in certain circumstances) when and if declared by the board of directors. The dividends may be paid in cash or in the form of common stock (valued at 10% below market price, but not to exceed the lowest closing price during the applicable measurement period), at the discretion of the board of directors. The dividend rate on the Series A preferred stock is indexed to the Company's stock price and subject to upward and downward adjustment. In addition, the Series A preferred stock contains a "make-whole" provision whereby, conversion or redemption of the Series A preferred stock within 4 years of issuance will require dividends for the full four year period to be paid by the Company in cash or common stock (valued at 10% below market price, but not to exceed the lowest closing price during the applicable measurement period).
The Company has the right to redeem all or a portion of the Series A Preferred Stock at any time at a redemption price of $8.00 per share, plus any accrued and unpaid dividends and plus the make-whole amount (if any).

Upon any liquidation, dissolution or winding up of the Company, after payment or provision for payment of debts and other liabilities of the Company, the holders of Series A Preferred Stock shall be entitled to receive, pari passu with any distribution to the holders of common stock of the Company, an amount equal to $8.00 per share of Series A Preferred Stock plus any accrued and unpaid dividends.
The Series A preferred stock ranks senior to the Company's common stock with respect to dividend rights, pari passu with respect to rights upon liquidation to the Company's common stock, and junior to all existing and future indebtedness. Except as otherwise required by law (or with respect to approval of certain actions), the Series A preferred stock has no voting rights.

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At no time will the Company issue shares of common stock in connection with the securities issued pursuant to the Seow Purchase Agreement (whether upon exercise of Warrants, conversion of Series A Preferred Stock, payment of dividends in common stock or payment of make-whole amounts in common stock) if such transaction (when aggregated with all other issuances in connection with the Seow Purchase Agreement) would result in the issuance of more than 19.999% of the amount of common stock of the Company issued and outstanding on the date of the Seow Purchase Agreement unless (i) the Company's stockholders shall have approved the issuance of shares of common stock in excess of 19.999% limit or (ii) Nasdaq has provided a waiver of its Listing Rule 5635(d).

Why the Company Needs Stockholder Approval

Our common stock is listed on the Nasdaq Global Market and, as such, we are subject to the Nasdaq Marketplace Rules. Nasdaq Marketplace Rule 5635(d) is referred to as the “Nasdaq 20% Rule.” The Nasdaq 20% Rule requires that an issuer obtain stockholder approval prior to certain issuances of common stock or securities convertible into or exchangeable for common stock at a price less than the greater of market price or book value of such securities (on an as exercised basis) if such issuance equals 20% or more of the common stock or voting power of the issuer outstanding before the transaction. Shares of our common stock that might be issued upon exercise of the Warrants or the conversion of the Series A preferred stock are considered common stock issued for the purposes of determining whether the 20% limit has been reached. Shares of our common stock that might be issued in payment of make-whole amounts or dividends on the Series A preferred stock are also considered common stock issued for the purposes of determining whether the 20% limit has been reached.

The aggregate number of shares of our common stock issuable in connection with the Seow Purchase Agreement could result in the issuance of more than 20% of our outstanding common stock as of June 17, 2013 (the date of the Seow Purchase Agreement) at a price less than the greater of the book value or market of the shares. Our common stock had a book value of $0.5433 and market value of $0.73 on June 17, 2013. In particular, it is possible that the Company would elect to pay dividends and make-whole amounts on the Series A preferred stock in the form of common stock, rather than cash, so that such issuances would be subject to the Nasdaq 20% Rule. Accordingly, we need stockholder approval of the potential issuance of more than 20% of the Company’s issued and outstanding common stock at a price that may be less than the greater of book or market value of the Company’s common stock as of June 17, 2013.

Nasdaq Marketplace Rule 5635(b) requires us to obtain stockholder approval prior to certain issuances with respect to common stock or securities convertible into common stock which could result in a change of control of the issuer. This rule is referred to as the “Nasdaq Change of Control Rule.” Generally, Nasdaq interpretations provide that the acquisition of 20% of the shares of an issuer by one person or group of affiliated persons may be considered a change of control of such issuer. The issuance of common stock upon the conversion of the Series A preferred stock, upon the exercise of the Warrants, and upon payment of dividends and make-whole amounts in the form of common stock, rather than cash, could result in Seow acquiring more than 20% of our shares of common stock. Accordingly, we need stockholder approval of the issuance of shares of common stock in excess of 20% of the amount of common stock issued and outstanding as of June 17, 2013.

In order to comply with the Nasdaq 20% Rule and the Nasdaq Change of Control Rule, we are seeking stockholder approval for the potential issuance of securities in excess of the Nasdaq limitations.

We did not seek advance stockholder approval of all potential share issuances related to the Seow Purchase Agreement because the Seow Purchase Agreement restricts the number of shares that can be issued (whether upon exercise of Warrants, conversion of Series A preferred stock, payment of dividends in common stock or payment of make-whole amounts in common stock) to an amount that would not be in excess of the applicable Nasdaq limitations. Therefore, advance stockholder approval was not required by the Nasdaq Marketplace Rules. If stockholders do not approve Proposal 1 at the Special Meeting, this limit will remain in place.

No Dissenters’ Rights

Under applicable Delaware law, our stockholders are not entitled to dissenters’ or appraisal rights with respect to the approval of the issuance of shares related to the Seow Purchase Agreement.

Effect of Proposal 1 on Current Stockholders

If Proposal 1 is adopted, we would be able to issue shares of common stock in excess of 19.999% of our outstanding shares of common stock as of June 17, 2013 upon conversion of the Series A preferred stock, exercise of the Warrants, and payment of dividends and make-whole amounts in the form of common stock, rather than cash. The issuance of such shares could result in significant dilution to our stockholders, and afford them a smaller percentage interest in the voting power, liquidation value and aggregate book value of the Company. Additionally, the sale or any resale into the public markets of the common stock issued

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upon conversion of the Series A preferred stock, exercise of the Warrants, or payment of dividends or make-whole amounts in the form of common stock could cause the market price of our common stock to decline.

Further Information

The terms of the Seow Purchase Agreement, the Series A preferred stock and the Warrants are complex and only briefly summarized above. For further information, please refer to the descriptions contained in the Company's Current Report on Form 8-K filed with the SEC on June 21, 2013, and the transaction documents filed as exhibits to such report. The discussion herein is qualified in its entirety by reference to such filed transaction documents.

Required Vote

Approval of the issuance of more than 20% of the Company's issued and outstanding common stock pursuant to the Seow Purchase Agreement at a price that may be less than the greater of book or market value in accordance therewith requires the receipt of the affirmative vote of the holders of a majority of the shares of the Company's common stock present in person or by proxy and voting at the Special Meeting.

Any shares of common stock held by Seow shall not be entitled to vote on Proposal 1.

RECOMMENDATION OF THE BOARD FOR PROPOSAL 1:

THE BOARD RECOMMENDS A VOTE FOR APPROVAL OF THE ISSUANCE OF MORE THAN 20% OF THE COMPANY'S ISSUED AND OUTSTANDING COMMON STOCK IN ACCORDANCE WITH THE SECURITIES PURCHASE AGREEMENT, DATED JUNE 17, 2013.

PROPOSAL 2:

APPROVAL OF THE ISSUANCE OF MORE THAN 20% OF THE COMPANY'S ISSUED AND OUTSTANDING COMMON STOCK PURSUANT TO A SECURITIES PURCHASE AGREEMENT, DATED OCTOBER 28, 2013.

Terms of the Ironridge Transaction

On June 17, 2013, the Company entered into a Securities Purchase Agrstyle="DISPLAY: inline; FONT-SIZE: 10pt; FONT-FAMILY: times new roman">CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

(In Thousands, Except Per Share Amounts)

Three Months

Nine Months

Ended September 30,

Ended September 30,

2010

2009

2010

2009

(Unaudited)

(Unaudited)

Net Sales	$125,561	$97,888	$327,067	$298,849
Cost of Goods Sold	105,519	80,130	274,637	254,577
Gross Profit	20,042	17,758	52,430	44,272
Selling and Administrative Expenses	9,858	9,068	29,825	26,707
Interest Expense	211	328	697	989
Interest Income	(114)	(169)	(295)	(676)
Gain on Sale of Marketable Securities	-	(1,194)	-	(1,194)
Equity in Losses of Nonconsolidated Investments	31	-	272	-
Other Income	(46)	(116)	(199)	(445)
	9,940	7,917	30,300	25,381
Income Before Income Taxes	10,102	9,841	22,130	18,891
Income Tax Expense	3,589	3,697	7,877	7,076
Net Income	$6,513	$6,144	$14,253	$11,815
Basic Earnings Per Share	$0.64	$0.60	$1.40	$1.16
Diluted Earnings Per Share	$0.63	$0.60	$1.38	$1.15

See Notes to Condensed Consolidated Financial Statements.

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L. B. FOSTER COMPANY AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In Thousands)

	Nine Months Ended September 30,	
	2010	2009
CASH FLOWS FROM OPERATING ACTIVITIES:	(Unaudited)	
Net income	$14,253	$11,815
Adjustments to reconcile net income to net cash provided by operating activities:		
Deferred income taxes	7	(4)
Depreciation and amortization	6,640	6,466
Equity in losses of nonconsolidated investments	272	-
Gain on sale of marketable securities	-	(1,194)
Loss on sale of property, plant and equipment	1	14
Deferred gain amortization on sale-leaseback	(161)	(161)
Stock-based compensation	1,199	737
Excess tax benefit from share-based compensation	(623)	(128)
Unrealized loss on derivative mark-to-market	11	32
Change in operating assets and liabilities:		
Accounts receivable	(1,209)	12,545
Inventories	5,212	5,930
Other current assets	75	(201)
Prepaid income tax	160	(119)
Other noncurrent assets	85	4
Accounts payable - trade	(9,228)	(14,973)
Deferred revenue	16,247	333
Accrued payroll and employee benefits	177	(2,388)
Other current liabilities	(384)	(717)
Other liabilities	(79)	28
Net Cash Provided by Operating Activities	32,655	18,019
CASH FLOWS FROM INVESTING ACTIVITIES:		
Capital expenditures on property, plant and equipment	(4,064)	(4,773)
Acquisitions	(5,050)	-
Capital contributions to equity method investment	(800)	(1,250)
Proceeds from sale of marketable securities	-	2,115
Proceeds from sale of property, plant and equipment	-	1
Net Cash Used by Investing Activities	(9,914)	(3,907)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Repayments of long-term debt, term loan	(2,143)	(2,143)
Repayments of other long-term debt	(2,155)	(3,355)
Proceeds from exercise of stock options and stock awards	272	65
Excess tax benefit from share-based compensation	623	128
Treasury stock acquisitions	-	(1,863)
Net Cash Used by Financing Activities	(3,403)	(7,168)

Net Increase in Cash and Cash Equivalents	19,338	6,944
Cash and Cash Equivalents at Beginning of Period	124,845	115,074
Cash and Cash Equivalents at End of Period	$144,183	$122,018
Supplemental Disclosure of Cash Flow Information:		
Interest Paid	$605	$871
Income Taxes Paid	$7,766	$9,624

The Company financed $0.1 million in certain capital expenditures through the execution of capital leases during the first nine
months of 2010. There were no such expenditures during the 2009 period.

See Notes to Condensed Consolidated Financial Statements.

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L. B. FOSTER COMPANY AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

1. FINANCIAL STATEMENTS

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements. In the opinion of management, all estimates and adjustments (consisting of normal recurring accruals) considered necessary for a fair presentation have been included. However, actual results could differ from those estimates. The results of operations for interim periods are not necessarily indicative of the results that may be expected for the year ended December 31, 2010. Amounts included in the balance sheet as of December 31, 2009 were derived from our audited balance sheet. For further information, refer to the consolidated financial statements and footnotes thereto included in the Company's annual report on Form 10-K for the year ended December 31, 2009.

Certain accounts in the prior year consolidated financial statements have been reclassified for comparative purposes to conform with the presentation in the current year consolidated financial statements, including reclassification of certain shipping and handling costs from sales to cost of goods sold.

2. NEW ACCOUNTING PRINCIPLES

In June 2009, the FASB issued changes to the consolidation guidance applicable to a variable interest entity (VIE). FASB ASC Topic 810, "Consolidation," amends the guidance governing the determination of whether an enterprise is the primary beneficiary of a VIE, and is, therefore, required to consolidate an entity, by requiring a qualitative analysis rather than a quantitative analysis. The qualitative analysis will include, among other things, consideration of who has the power to direct the activities that most significantly impact the entity's economic performance and who has the obligation to absorb losses or the right to receive benefits from the VIE that could potentially be significant to the VIE. This standard also requires continuous reassessments of whether an enterprise is the primary beneficiary of a VIE. Previously, FIN 46R required reconsideration of whether an enterprise was the primary beneficiary of a VIE only when specific events had occurred. FASB ASC 810 also requires enhanced disclosures about an enterprise's involvement with a VIE. The Company adopted the changes issued by the FASB to accounting for VIE's on January 1, 2010.

In January 2010, the FASB issued Accounting Standards Update No. 2010-06, "Improving Disclosures about Fair Value Measurements." This Update provides amendments to FASB ASC 820, "Fair Value Measurements," that requires entities to disclose separately the amounts of significant transfers in and out of Level 1 and Level 2 fair value measurements and describe the reasons for the transfers. In addition, the Update requires entities to present separately information about purchases, sales, issuances and settlements in the reconciliation for fair value measurements using significant unobservable inputs (Level 3). The disclosures related to Level 1 and Level 2 fair value measurements are effective for the Company beginning in 2010 and the disclosures related to Level 3 fair value measurements are effective for the Company in 2011. The Update requires only new disclosures and had no impact on the Company's financial statements.

3. BUSINESS SEGMENTS

The Company is organized and evaluated by product group, which is the basis for identifying reportable segments. The Company is engaged in the manufacture, fabrication and distribution of rail, construction and tubular products.

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The following table illustrates revenues and profits of the Company by segment:

	Three Months Ended, September 30, 2010		Nine Months Ended, September 30, 2010	
(in thousands)	Net Sales	Segment Profit	Net Sales	Segment Profit
Rail products	$54,897	$ 3,256	$148,642	$8,255
Construction products	62,845	5,873	158,226	14,199
Tubular products	7,819	1,515	20,199	2,319
Total	$125,561	$ 10,644	$327,067	$24,773

	Three Months Ended, September 30, 2009		Nine Months Ended, September 30, 2009	
(in thousands)	Net Sales	Segment Profit/(Loss)	Net Sales	Segment Profit
Rail products	$42,776	$ 1,186	$145,448	$137
Construction products	51,868	4,264	137,652	9,593
Tubular products	3,244	(1,137)	15,749	267
Total	$97,888	$ 4,313	$298,849	$9,997

Segment profits, as shown above, include internal cost of capital charges for assets used in the segment at a rate of, generally, 1% per month. There has been no change in the measurement of segment profit from December 31, 2009.

The following table provides a reconciliation of reportable segment net profit to the Company's consolidated total:

	Three Months Ended September 30,		Nine Months Ended September 30,	
(in thousands)	2010	2009	2010	2009
Income for reportable segments	$10,644	$4,313	$24,773	$9,997
Cost of capital for reportable segments	3,950	4,436	12,006	14,135
Interest expense	(211)	(328)	(697)	(989)
Interest income	114	169	295	676
Gain on sale of marketable securities	-	1,194	-	1,194
Equity in losses of nonconsolidated investments	(31)	-	(272)	-
Other income	46	116	199	445
LIFO credit	673	4,918	1,424	6,675
Corporate expense and other unallocated charges	(5,083)	(4,977)	(15,598)	(13,242)
Income before income taxes	$10,102	$9,841	$22,130	$18,891

4. ACQUISITIONS

Interlocking Deck Systems International, LLC

On March 23, 2010, the Company purchased, pursuant to an Asset Purchase Agreement (Purchase Agreement), certain assets of Interlocking Deck Systems International, LLC (IDSI) for $7,000,000. The purchase price was $5,050,000 in cash paid on the closing date and $1,000,000 payable on the first anniversary of the closing, as defined in the Purchase Agreement, and $950,000 payable on the second anniversary of the closing, with the deferred payment obligations being embodied in a promissory note. No liabilities were assumed in this acquisition. The proforma

results for this acquisition are not material to the Company’s financial results.

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The acquisition of IDSI will strengthen the Company's position as a leading supplier of steel bridge decking. The acquisition has been accounted for in accordance with ASC 805, "Business Combinations." The Company is in the process of completing its fair market appraisals, including the valuation of certain identifiable intangible assets. Accordingly, the preliminary purchase price allocation is subject to change. The following table presents the preliminary allocation of the aggregate purchase price based on estimated fair values:

		(in thousands)
Equipment	$	1,241
Inventory		918
Proprietary software		90
Non-compete agreements and other intangible assets		1,830
Goodwill		2,861
Net assets acquired	$	6,940

Due to the timing of the closing, the above purchase price allocation is based on a preliminary valuation. The measurement period for purchase price allocations ends as soon as information on the facts and circumstances becomes available, but does not exceed a period of 12 months. If new information is obtained about facts and circumstances that existed as of the acquisition date that, if known, would have affected the measurement of the amounts recognized for assets assumed, the Company will retrospectively adjust the amounts recognized as of the acquisition date.

The amount allocated to goodwill reflects the premium paid for the right to control the business acquired and synergies the Company expects to realize from expanding its steel bridge decking business and from eliminating redundant selling and administrative responsibilities and workforce efficiencies. The goodwill is deductible for tax purposes and has been allocated to the Construction Products Segment.

Pursuant to the Purchase Agreement, other than the specifically identified assets included above, no other assets or liabilities of IDSI were included in the acquisition. Acquisition costs were approximately $7,000 and $24,000 for the three and nine month periods ended September 30, 2010 and were classified as "Selling and administrative expenses."

Portec Rail Products, Inc.

On February 16, 2010, the Company, Foster Thomas Company, a West Virginia corporation and a wholly-owned subsidiary of the Company (Purchaser), and Portec Rail Products, Inc., a West Virginia corporation (Portec), entered into an Agreement and Plan of Merger (Merger Agreement).

Pursuant to the terms of the Merger Agreement, Purchaser commenced a tender offer (Offer) for all of the issued and outstanding shares of common stock, $1.00 par value per share (Company Common Stock), of Portec at a price equal to $11.71 per share of Company Common Stock (Shares), or approximately $112,400,000, net to the seller in cash (Per-Share Amount), without interest (and subject to applicable withholding taxes). Upon the terms and subject to the conditions set forth in the Merger Agreement, following a successful completion of the Offer, Purchaser will be merged with and into Portec with Portec surviving the merger as a wholly-owned subsidiary of the Company (Merger). In the Merger, each Share (other than Shares owned by the Company, Purchaser, or shareholders, if any, who have perfected statutory dissenters' rights under West Virginia law) will be converted into the right to receive the Per-Share Amount, without interest (and subject to applicable withholding taxes). The consummation of the Merger is conditioned, among other matters, upon the receipt of necessary approvals under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (HSR Act).

Concurrently with the execution of the Merger Agreement, the Company also entered into a Tender and Voting Agreement, dated as of February 16, 2010 (Tender Agreement), with Purchaser and all of the directors and executive

officers of Portec (Shareholders). The Shareholders have agreed to tender all of the Shares that each of them owns, including any Shares which such Shareholder acquires ownership of after the date of the Tender Agreement and prior to the termination of the Tender Agreement, to Purchaser in the Offer. Furthermore, each Shareholder has agreed, at any meeting of the shareholders of Portec, to vote all Shares (a) in favor of adopting the Merger Agreement and any transactions contemplated thereby, including the Merger, (b) against any alternative transaction proposal and (c) against any action that would delay, prevent or frustrate the Offer and the Merger and the related transactions contemplated by the Merger Agreement.

On May 13, 2010, the Company, Purchaser and Portec executed the First Amendment to the Merger Agreement (First Amendment) pursuant to which the Drop Dead Date was extended until the close of business on August 31, 2010.

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The Antitrust Division of the US Department of Justice (DOJ) raised antitrust concerns to the Company's proposed acquisition of Portec. The DOJ has expressed concern that the proposed acquisition may have a potentially anti-competitive effect with respect to the rail joint business. As a condition to the proposed acquisition, the DOJ is requiring restructuring alternatives, primarily the sale of certain assets associated with Portec's rail joint business.

On August 30, 2010, the Company entered into the Second Amendment (Amendment No. 2) to the Merger Agreement as amended by the First Amendment. Amendment No. 2 increased the Offer price to $11.80 per Share. Consummation of the Offer by Purchaser is subject to certain conditions, including the condition that the number of Shares that have been validly tendered and not withdrawn together with the number of Shares then owned by the Company or any of its subsidiaries, represents at least 65% of the total number of outstanding Shares, on a fully diluted basis (Minimum Condition).

The Merger Agreement provided that either Portec or the Company may terminate the Merger Agreement if the Company has not accepted for payment a number of Shares equal to the Minimum Condition by the earlier of the expiration of the Offer in accordance with its terms or the close of business on August 31, 2010 (Drop Dead Date). Pursuant to Amendment No. 2, the Drop Dead Date was extended to the close of business on December 30, 2010.

In addition to extending the Drop Dead Date, Amendment No. 2 defines a "Permitted Divestiture" as the divestiture upon terms that are usual and customary with respect to divestitures required by the Antitrust Division of the Department of Justice, of (i) Portec's Huntington, West Virginia facility, (ii) the tangible assets used primarily in connection with Portec's bonded insulated rail joints (assemblies and kits), Thermabond insulated joint kits, polyurethane coat insulated rail joints, end posts, poly gage and tie plates, fiberglass (CyPly) joint kits, plastic insulation joint kits and plastic and canvas insulated gage plates, standard joints, compromise and transition joints, and Weldmate joint bars, and (iii) Portec's intangible assets used primarily in connection with, or necessary in the production of, the foregoing products; but not including the tangible and intangible assets used in connection with the lubrication and friction management business, the shipping systems division business, the curv bloc business and the car repair business.

Amendment No. 2 provides that the Company will be obligated to pay a termination fee of $2,000,000 to Portec if either the Company or Portec terminates the Merger Agreement and (i) the Minimum Condition was satisfied as of the expiration of the Offer, (ii) no order or decree was entered by a court of competent jurisdiction after August 30, 2010 which enjoined the Offer, (iii) Portec was not at the time of termination in breach of any representation or warranty that is reasonably expected to result in a Material Adverse Effect, (iv) Portec’s directors determines that another bidder has offered terms superior to those offered by the Company, or (v) Portec had reasonably cooperated with the Company in the Company’s efforts to effectuate a Permitted Divestiture or any other divestiture.

On September 30, 2010, Purchaser extended the Offer until 12:00 midnight (one minute after 11:59 p.m.) New York City, New York time on Monday, November 15, 2010, unless further extended.

Acquisition costs were approximately $82,000 and $1,237,000 for the three and nine month periods ended September 30, 2010 and were classified as “Selling and administrative expenses.”

5. GOODWILL AND OTHER INTANGIBLE ASSETS

The change in the carrying amount of goodwill for the nine month period ended September 30, 2010 is as follows (in thousands):

		(in thousands)
Balance at December 31, 2009	$	350
Goodwill from acquisition of IDSI		2,861

Balance at September 30, 2010	$	3,211

The goodwill from the IDSI acquisition is included in the Construction Products segment.

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The components of the Company's intangible assets are as follows:

	September 30, 2010		December 31, 2009	
	Gross Carrying Amount	Accumulated Amortization	Gross Carrying Amount	Accumulated Amortization
	(in thousands)			
Non-compete agreements and other intangible assets	$2,180	$ (533)	$350	$ (350)
Patents	125	(109)	125	(100)
	$2,305	$ (642)	$475	$ (450)

In connection with the acquisition of IDSI, the Company preliminarily recorded $1,830,000 of additional non-compete agreements and other intangible assets. The IDSI intangible assets are being amortized over a period of 60 months. The amount recorded as non-compete agreements and other intangible assets is an estimate as of September 30, 2010 and is subject to adjustment during the measurement period.

As the Company has no indefinite lived intangible assets, all intangible assets are amortized over their useful lives ranging from 5 to 10 years. Amortization expense for the three and nine month periods ending September 30, 2010 was approximately $95,000 and $192,000, respectively. Amortization expense for the three and nine month periods ending September 30, 2009 was approximately $3,000 and $9,000, respectively. Estimated amortization expense over the succeeding five years is as follows:

	(In thousands)
2010	$ 95
2011	379
2012	366
2013	366
2014	366
Thereafter	91
	$ 1,663

6. ACCOUNTS RECEIVABLE

Credit is extended based upon an evaluation of the customer's financial condition and, generally, collateral is not required. Credit terms are consistent with industry standards and practices. Trade accounts receivable at September 30, 2010 and December 31, 2009 have been reduced by an allowance for doubtful accounts of ($1,386,000) and ($1,055,000), respectively.

7. INVENTORIES

Inventories of the Company at September 30, 2010 and December 31, 2009 are summarized in the following table:

(in thousands)	September 30, 2010	December 31, 2009
Finished goods	$85,228	$92,190
Work-in-process	7,024	7,814

Raw materials	18,069	16,049
Total inventories at current costs	110,321	116,053
Less:		
LIFO reserve	(8,853)	(10,277)
Inventory valuation reserve	(6,780)	(6,794)
	$94,688	$98,982

Inventories of the Company are generally valued at the lower of last-in, first-out (LIFO) cost or market. Other inventories of the Company are valued at average cost or market, whichever is lower. An actual valuation of inventory under the LIFO method is made at the end of each year based on the inventory levels and costs at that time. Accordingly, interim LIFO calculations are based on management's estimates of expected year-end levels and costs.

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8. INVESTMENTS

Investments of the Company at September 30, 2010 and December 31, 2009 are summarized in the following table:

(in thousands)	September 30, 2010	December 31, 2009
Available-for-sale marketable equity securities	$2,125	$1,958
Equity method investment	1,928	1,400
	$4,053	$3,358

Additional information regarding the Company's marketable securities is as follows:

	September 30, 2010			
	Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
	(In thousands)			
Available-for-sale marketable equity securities	$ 794	$ 1,331	$ -	$ 2,125

	December 31, 2009			
	Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
	(In thousands)			
Available-for-sale marketable equity securities	$ 794	$ 1,164	$ -	$ 1,958

9. INVESTMENT IN JOINT VENTURE

The Company completed the formation of a joint venture with L B Industries, Inc. and James Legg for a period of 9.5 years commencing May 2009. The Company, along with L B Industries, Inc., has a 45% ownership interest in the joint venture, L B Pipe & Coupling Products, LLC (JV), which commenced operations in January 2010. The venture manufactures, markets and sells various products for the energy, utility and construction markets. In August 2010 the Company contributed an additional $300,000, in connection with an amendment to the JV agreement, raising its capital contributions to $2,200,000.

Under applicable guidance for variable interest entities in ASC 810, "Consolidation," the Company determined that the JV is a variable interest entity, as the JV has not demonstrated that it has sufficient equity to support its operations without additional financial support. The Company concluded that it is not the primary beneficiary of the variable interest entity, as the Company does not have a controlling financial interest and does not have the power to direct the activities that most significantly impact the economic performance of the JV. Accordingly, the Company concluded that the equity method of accounting remains appropriate.

The Company's exposure to loss results from its capital contributions, net of the Company's share of the venture's gains or losses, and its net investment in the direct financing lease covering the facility used by the JV for its operations. The carrying amounts with the maximum exposure to loss of the Company at September 30, 2010 are as follows:

	(in thousands)
Equity method investment	$ 1,928

Net investment in direct financing lease		1,023
	$	2,951

The Company is leasing 5 acres of land and a facility to the JV over a period of 9.5 years, with a 5.5 year renewal period. Monthly rent over the term of the lease is approximately $10,000, with a balloon payment of approximately $488,000 which is required to be paid either at the termination of the lease, allocated over the renewal period or during the initial term of the lease. This lease qualifies as a direct financing lease under the applicable guidance in ASC 840-30, “Leases.” At September 30, 2010, the Company maintained a net investment in this direct financing lease of approximately $1,023,000.

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The Company recorded equity in the losses of the JV, under a consistent one-month reporting lag, of approximately $31,000 and $272,000 for the three and nine month periods ended September 30, 2010.

10. DEFERRED REVENUE

Deferred revenue consists of customer payments received for which the sales process has been substantially completed but the right to recognize revenue has not yet been met. Deferred revenue as of September 30, 2010 related primarily to one customer. The Company has significantly fulfilled its obligations under the contract and the customer has paid, but due to the Company's continuing involvement with the material while in storage, revenue is precluded from being recognized until the customer takes possession.

11. BORROWINGS

The Company's maximum credit line is $90,000,000 under a fourth amendment to the Amended and Restated Revolving Credit and Security Agreement (Agreement) with a syndicate of three banks led by PNC Bank, N.A. The revolving credit facility is secured by substantially all of the trade receivables and inventory owned by the Company. Revolving credit facility availability under the Agreement is limited by the amount of eligible accounts receivable and inventory, applied against certain advance rates, and is limited to 85% of eligible receivables and 60% of eligible inventory. Additionally, the fourth amendment established a $20,000,000 term loan that was immediately applied to pay down existing amounts outstanding on the revolving credit facility. The term loan is being amortized on a term of seven years with a balloon payment on the remaining outstanding principal due at the maturity of the Agreement, May 2011. If average availability should fall below $10,000,000 over a 30-day period, the loans become immediately secured by a lien on the Company's equipment that is not encumbered by other liens.

Revolving credit facility borrowings placed in LIBOR contracts are priced at prevailing LIBOR rates, plus 1.25%. Borrowings placed in other tranches are priced at the prevailing prime rate, minus 1.00%. The term loan base rate spread is fixed at prime minus 0.75% and the LIBOR spread is fixed at plus 1.50%.

The Company is permitted to use various additional debt instruments to finance capital expenditures, outside of borrowings under the Agreement, under limitations as defined in the Agreement. Under the amended Agreement, the Company maintains dominion over its cash at all times, as long as excess availability stays over $5,000,000 and there is no uncured event of default.

In March 2009, the Company entered into a fifth amendment to the Agreement which became effective as of December 31, 2008 and changed certain financial covenants included in the Agreement by creating an exclusion standard in the Agreement. This standard, which is met by the Company when revolving credit facility borrowings do not exceed $20,000,000 and unused borrowing commitment is at least $50,000,000, allows for certain items, as defined in the amendment, to be excluded in determining the fixed charge coverage ratio. Additionally, the amendment redefines the Company's calculation of earnings before interest and taxes by excluding any charges and credits related to the Company's LIFO method of accounting for inventory.

The fifth amendment also includes a revised minimum net worth covenant and a revised maximum level for annual consolidated capital expenditures of $15,000,000.

In November 2009, the Company entered into a sixth amendment to the Agreement. This amendment permits the Company to spend up to $15,000,000, subject to overall limitations on acquisitions, to acquire non-domestic entities which do not become a borrower, as defined by the Agreement, to the Agreement. This amendment also raised the limit to $15,000,000 on the amount of assets, as defined in the Agreement, which the Company is permitted to sell. Additionally, the sixth amendment eliminated the unscheduled prepayments of debt from the calculation of the fixed charge coverage ratio, as defined in the agreement.

As of September 30, 2010, the Company was in compliance with all of the Agreement's covenants.

Under the term loan, the Company had $10,952,000 outstanding at September 30, 2010 none of which was classified as noncurrent. At December 31, 2009 the Company had $13,095,000 outstanding of which $10,476,000 was noncurrent.

At September 30, 2010, there were no outstanding borrowings under the revolving credit facility and the Company had approximately $71,553,000 in unused borrowing availability.

The Company's ability to pay cash dividends is limited by the Agreement.

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12. EARNINGS PER COMMON SHARE

The following table sets forth the computation of basic and diluted earnings per common share:

	Three Months Ended September 30,		Nine Months Ended September 30,	
(in thousands, except earnings per share)	2010	2009	2010	2009
Numerator:				
Numerator for basic and diluted earnings per common share -				
net income available to common stockholders:	$6,513	$6,144	$14,253	$11,815
Denominator:				
Weighted average shares	10,246	10,160	10,203	10,170
Denominator for basic earnings per common share	10,246	10,160	10,203	10,170
Effect of dilutive securities:				
Employee stock options	56	99	76	100
Other stock compensation plans	52	33	45	45
Dilutive potential common shares	108	132	121	145
Denominator for diluted earnings per common share -				
adjusted weighted average shares and assumed conversions	10,354	10,292	10,324	10,315
Basic earnings per common share	$0.64	$0.60	$1.40	$1.16
Diluted earnings per common share	$0.63	$0.60	$1.38	$1.15

13. STOCK-BASED COMPENSATION

The Company applies the provisions of ASC 718, “Compensation – Stock Compensation,” to account for the Company’s share-based compensation. Share-based compensation cost is measured at the grant date based on the calculated fair value of the award and is recognized over the employees’ requisite service period. The Company recorded stock compensation expense of $400,000 and $192,000 for the three month periods ended September 30, 2010 and 2009, respectively, and $1,199,000 and $737,000 for the nine month periods ended September 30, 2010 and 2009, respectively, related to stock option awards, restricted stock awards and performance unit awards as discussed below.

Stock Option Awards

The Company recorded no stock compensation expense related to stock option awards for the three and nine month periods ended September 30, 2010. The Company recorded stock compensation expense of $25,000 for the nine month period ended September 30, 2009 with related deferred tax benefits of $9,000. There was no expense recorded related to stock option awards during the three month period ended September 30, 2009.

There were no nonvested awards at September 30, 2010 and 2009. There were no stock options granted during the first nine months of 2010 or 2009.

At September 30, 2010 and 2009, common stock options outstanding under the plans had option prices ranging from $2.75 to $14.77, with a weighted average exercise price of $6.68 and $5.60 per share, respectively.

The weighted average remaining contractual life of the stock options outstanding at September 30, 2010 and 2009 was 2.8 and 2.9 years, respectively.

Options exercised during the nine month period ended September 30, 2010 totaled 70,000 shares. The weighted average exercise price per share of the options exercised during the nine month period ended September 30, 2010 was $3.90. The total intrinsic value of options exercised during the nine month period ended September 30, 2010 was $1,638,000. There were no options exercised during the three month period ended September 30, 2010. Options exercised during the three and nine month periods ended September 30, 2009 totaled 8,250 and 13,750 shares, respectively. The weighted average exercise price per share of the options exercised during the nine month period ended September 30, 2009 was $4.73. The total intrinsic value of options exercised during the three and nine month periods ended September 30, 2009 was $207,000 and $359,000, respectively.

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A summary of the option activity as of September 30, 2010 is presented below.

	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term	Aggregate Intrinsic Value
Outstanding and Exercisable at January 1, 2010	180,950	$5.60	2.7	-
Granted	-	-	-	-
Canceled	-	-	-	-
Exercised	(70,000)	3.90	-	-
Outstanding and Exercisable at September 30, 2010	110,950	$6.68	2.8	$2,469,747

The total intrinsic value of options outstanding and exercisable at September 30, 2009 was $4,520,000.

Shares issued as a result of stock option exercises generally are previously issued shares which have been reacquired by the Company and held as Treasury shares or authorized but previously unissued common stock.

Restricted Stock Awards

During the nine month periods ended September 30, 2010 and 2009 there were 12,000 and 10,500, respectively, fully vested restricted stock awards granted to the outside directors of the Company. The weighted average fair value per share of these restricted stock awards was $28.32 and $29.89, respectively. Compensation expense recorded by the Company related to these restricted stock awards was approximately $340,000 and $314,000, respectively, for the nine month periods ended September 30, 2010 and 2009.

A summary of the restricted stock awards activity as of September 30, 2010 is presented below.

	Restricted Shares	Weighted Average Fair Value	Weighted Average Remaining Contractual Term	Aggregate Fair Value
Outstanding at January 1, 2010	-	$-	-	$-
Granted	12,000	28.32	-	339,840
Vested	(12,000)	28.32	-	(339,840)
Canceled	-	-	-	-
Outstanding at September 30, 2010	-	$-	-	$-

For the nine month periods ended September 30, 2010 and 2009, the Company granted approximately 32,000 and 18,000 shares, respectively, of restricted stock to individuals who are not outside directors:

Grant Date	Units	Grant Date Fair Value	Aggregate Fair Value	Vesting Date
March 3, 2009	17,561	$ 20.63	$ 362,283	March 3, 2013
March 3, 2010	12,185	31.92	388,945	March 3, 2014
May 28, 2010	2,500	28.07	70,175	February 28, 2012
May 28, 2010	17,500	28.07	491,225	May 28, 2014

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Performance Unit Awards

Under separate three year incentive programs pursuant to the 2006 Omnibus Plan, as amended, the Company granted the following performance units during the nine month periods ended September 30:

Incentive Plan	Grant Date	Units	Grant Date Fair Value	Aggregate Fair Value	Vesting Date
2009 - 2011	March 3, 2009	52,672	$ 20.63	$ 1,086,623	March 3, 2012
2010 - 2012	March 2, 2010	36,541	31.83	1,163,100	March 2, 2013

These awards can be earned based upon the Company's performance relative to performance conditions established under the programs. These awards are subject to forfeiture, cannot be transferred until four years after their grant date and will be converted into common stock of the Company based upon conversion multiples as defined in the underlying plan. The aggregate fair value in the above table is based upon reaching 100% of the performance targets as defined in the underlying plan. The number of shares awarded under the 2010 – 2012 Three Year Incentive Plan was determined using an average grant date fair value of $29.39 over a ten day period in February 2010. The number of shares awarded under the 2009 – 2011 Three Year Incentive Plan was determined using an average grant date fair value of $23.21 over a ten day period in February 2009.

For restricted stock awards granted to the non-outside directors and the performance unit awards, the Company recorded compensation expense of $400,000 and $192,000, respectively, for the three month periods ended September 30, 2010 and 2009. For the nine month periods ended September 30, 2010 and 2009, the Company recorded compensation expense of $859,000 and $398,000, respectively, for these awards. Shares issued as a result of restricted stock awards generally are previously issued shares which have been reacquired by the Company and held as Treasury shares or authorized but previously unissued common stock.

These forfeitable restricted stock awards time-vest after a four year holding period, unless indicated otherwise by the underlying agreement.

14. RETIREMENT PLANS

Retirement Plans

The Company has four plans covering all hourly and salaried employees, specifically two defined benefit plans (one active and one frozen) and two defined contribution plans. Employees are eligible to participate in these specific plans based on their employment classification. The Company's funding to the defined benefit and defined contribution plans is governed by the Employee Retirement Income Security Act of 1974 (ERISA), applicable plan policy and investment guidelines. The Company policy is to contribute at least the minimum funding required by ERISA.

Defined Benefit Plans

Net periodic pension costs for both plans for the three and nine month periods ended September 30, 2010 and 2009 are as follows:

	Three Months Ended	Nine Months Ended

(in thousands)	September 30, 2010	2009	September 30, 2010	2009
Service cost	$7	$7	$20	$21
Interest cost	66	65	199	195
Expected return on plan assets	(71)	(57)	(212)	(171)
Prior service cost	-	1	-	3
Recognized net actuarial loss	27	35	79	105
Net periodic benefit cost	$29	$51	$86	$153

The Company contributed approximately $89,000 to its defined benefit plans in 2010.

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Defined Contribution Plans

The Company has a defined contribution plan that covers all non-union hourly and all salaried employees. This plan permits both pretax and after-tax employee contributions. Participants can contribute, subject to statutory limitations, between 1% and 75% of eligible pre-tax pay and between 1% and 100% of eligible after-tax pay. The Company's employer match is 100% of the first 1% of deferred eligible compensation and, based on years of service, up to 50% of the next 6% of deferred eligible compensation, for a total maximum potential match of 4%. The Company may also make discretionary contributions to the Plan. The expense associated with this plan for the three and nine month periods ended September 30, 2010 was $327,000 and $1,109,000, respectively. The expense associated with this plan for the three and nine month periods ended September 30, 2009 was $483,000 and $1,236,000, respectively.

The Company also has a defined contribution plan for union hourly employees with contributions made by both the participants and the Company based on various formulas. The expense associated with this active plan for the three month periods ended September 30, 2010 and 2009 was $9,000 and $8,000, respectively, and $25,000 and $24,000 for the nine month periods ended September 30, 2010 and 2009, respectively.

15. FAIR VALUE MEASUREMENTS

FASB ASC Topic 820, "Fair Value Measurements and Disclosures," defines fair value, establishes a framework for measuring fair value in accordance with accounting principles generally accepted in the United States, and expands disclosures about fair value measurements. ASC 820 does not require any new fair value measurements, but it does apply to existing accounting pronouncements that require or permit fair value measurements. The Company applies the provisions of Topic 820 to all its assets and liabilities that are being measured and reported on a fair value basis.

ASC 820 discusses valuation techniques, such as the market approach (comparable market prices), the income approach (present value of future income or cash flow) and the cost approach (cost to replace the service capacity of an asset or replacement cost). Topic 820 enables readers of financial statements to assess the inputs used to develop those measurements by establishing a hierarchy, which prioritizes those inputs used, for ranking the quality and reliability of the information used to determine fair values. The standard requires that each asset and liability carried at fair value be classified into one of the following categories:

Level 1: Quoted market prices in active markets for identical assets or liabilities.
Level 2: Observable market based inputs or unobservable inputs that are corroborated by market data.
Level 3: Unobservable inputs that are not corroborated by market data.

The Company has an established process for determining fair value for its financial assets and liabilities, principally cash and cash equivalents, available-for-sale securities and foreign exchange contracts. Fair value is based on quoted market prices, where available. If quoted market prices are not available, fair value is based on assumptions that use as inputs market-based parameters. The following sections describe the valuation methodologies used by the Company to measure different financial instruments at fair value, including an indication of the level in the fair value hierarchy in which each instrument is generally classified. Where appropriate the description includes details of the key inputs to the valuations and any significant assumptions.

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Cash equivalents. Included within “Cash and cash equivalents” are principally investments in tax-free and taxable money market funds with municipal bond issuances as the underlying securities as well as government agency obligations and corporate bonds, all of which maintain AAA credit ratings. Also included within cash equivalents are our investments in bank certificates of deposit. The Company uses quoted market prices to determine the fair value of these investments and they are classified in Level 1 of the fair value hierarchy. The carrying amounts approximate fair value because of the short maturity of the instruments.

Available-for-sale equity securities. The Company uses quoted market prices to determine the fair value of its available-for-sale securities. These instruments consist of exchange-traded equity securities, are included within “Investments” and are classified in Level 1 of the fair value hierarchy. Unrealized gains and temporary unrealized losses are included in accumulated other comprehensive income or loss, respectively.

IDSI acquisition notes. The Company issued non-interest bearing notes associated with its acquisition of IDSI. The Company determined the fair value of these notes by computing the present value of the note payments using an interest rate formula applicable to the Company’s long-term debt. The short-term note is included within “Current maturities of other long-term debt”, the long-term note is included within “Other long-term debt" and are classified in Level 2 of the fair value hierarchy.

Derivative contracts. The Company uses significant other observable inputs that are readily available in public markets or can be derived from information available in publicly quoted markets to determine the fair value of its derivative contracts. These instruments consist of foreign exchange contracts, are included within “Other accrued liabilities,” and are classified in Level 2 of the fair value hierarchy. Fluctuations in the fair values of derivative instruments are recorded in accumulated other comprehensive loss and reclassified into earnings as the underlying hedged items affect earnings. There were no such instruments as of September 30, 2010.

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The following assets and liabilities were measured at fair value on a recurring basis subject to the disclosure requirements of ASC Topic 820 at September 30, 2010 and December 31, 2009:

		Fair Value Measurements at Reporting Date Using		
(in thousands)	September 30, 2010	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Assets				
Money market funds	$ 133,327	$ 133,327	$ -	$ -
Bank certificates of deposit	10,077	10,077	-	-
Cash equivalents at fair value	143,404	143,404	-	-
Available-for-sale securities	2,125	2,125	-	-
Total investments	2,125	2,125	-	-
Total Assets	$ 145,529	$ 145,529	$ -	$ -
Liabilities				
IDSI acquisition short-term note	$ (990)	$ -	$ (990)	$ -
Total current maturities of other long-term debt	(990)	-	(990)	-
IDSI acquisition long-term note	(921)	-	(921)	-
Total other long-term debt	(921)	-	(921)	-
Total Liabilities	$ (1,911)	$ -	$ (1,911)	$ -

		Fair Value Measurements at Reporting Date Using		
(in thousands)	December 31, 2009	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Assets				
Money market funds	$ 109,131	$ 109,131	$ -	$ -
Bank certificates of deposit	15,115	15,115	-	-
Cash equivalents at fair value	124,246	124,246	-	-
Available-for-sale securities	1,958	1,958	-	-
Total investments	1,958	1,958	-	-
Total Assets	$ 126,204	$ 126,204	$ -	$ -
Liabilities				
Derivatives	$ (18)	$ -	$ (18)	$ -
Total other accrued liabilities	(18)	-	(18)	-

Total Liabilities	$	(18	)	$	-	$	(18	)	$	-

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16. COMPREHENSIVE INCOME

Comprehensive income represents net income plus certain stockholders' equity changes not reflected in the Condensed Consolidated Statements of Operations. The components of comprehensive income, net of tax, were as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
(in thousands)	2010	2009	2010	2009
Net income	$6,513	$6,144	$14,253	$11,815
Market value adjustments for investments	27	(64)	103	590
Unrealized derivative gains on cash flow hedges	-	-	11	34
Comprehensive income	$6,540	$6,080	$14,367	$12,439

17. COMMITMENTS AND CONTINGENT LIABILITIES

The Company is subject to laws and regulations relating to the protection of the environment, and the Company's efforts to comply with environmental regulations may have an adverse effect on its future earnings. In the opinion of management, compliance with the present environmental protection laws will not have a material adverse effect on the financial condition, results of operations, cash flows, competitive position, or capital expenditures of the Company.

The Company is subject to legal proceedings and claims that arise in the ordinary course of its business. In the opinion of management, the amount of ultimate liability with respect to these actions will not materially affect the financial condition or liquidity of the Company. The resolution, in any reporting period, of one or more of these matters could have a material effect on the Company's results of operations for that period.

In November 2005, the City of Clearfield, Utah, filed suit in the Second District Court, Davis County, Utah, against the Utah Department of Transportation, a general contractor, four design engineers and/or consultants, a bonding company and the Company. The City alleged that the design and engineering of an overpass in 2000 had been faulty and that the Company had provided the mechanical stabilized earth wall system for the project. The City alleged that the embankment to the overpass began, in 2001, to fail and slide away from the stabilized earth wall system, resulting in damage in excess of $3,000,000. The City has agreed to settle its claims against several of the defendants and this settlement has been challenged by other defendants. The Company believes that it has meritorious defenses to these claims, that the Company's products complied with all applicable specifications and that other factors accounted for any alleged failure. The Company has referred this matter to its insurance carrier, which, although it reserved its right to deny coverage, has undertaken the defense of this claim.

On March 2, 2010, Portec was served with a lawsuit related to the Offer and Merger which was filed on February 19, 2010 in the Circuit Court of Kanawha County, West Virginia, and captioned Barbara Petkus v. Portec Rail Products, Inc. et al., against Portec and each of Portec's directors, on behalf of a purported class of public stockholders of Portec. The complaint alleges that the director defendants breached their fiduciary duties in connection with the Offer and Merger. Based on these allegations, the plaintiffs seek, among other relief, preliminary and permanent injunctive relief against the Offer and Merger, direction to the director defendants to properly exercise their fiduciary duties with respect to the Offer and Merger or another transaction, and the costs and expenses for the transaction, including reasonable allowance for attorneys' and experts' fess and expenses. This litigation has been largely inactive.

On April 21, 2010, the Court of Common Pleas of Allegheny County, Pennsylvania (Court) entered an order in the matter captioned In re Portec Rail Products, Inc. Shareholders Litigation preliminarily enjoining Purchaser from completing the Offer. On June 24, the Court dissolved the preliminary injunction.

In March 2009, the Company discovered that some of the prestressed concrete railroad ties manufactured in 2004 and 2005 by its CXT Rail operation in Grand Island, NE had failed in track. The Company believes the cause was related to equipment fatigue on one production line at its Grand Island, NE facility before it was retrofitted with new equipment in the fall of 2005. The Company recorded a charge of $1,600,000 within cost of goods sold for the Company's estimate of cracked concrete ties for the three month period ended March 31, 2009.

During the second quarter of 2009, the Company, along with customer personnel, inspected the ties in question to confirm the number of cracked concrete ties. Upon conclusion of this inspection, the Company recorded an additional charge of $1,124,000 within cost of goods sold during the second quarter ended June 30, 2009 bringing the cumulative warranty charge related to this issue to $2,724,000.

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For certain manufactured products, the Company maintains a product liability accrual which is adjusted on a monthly basis as a percentage of cost of sales. This product liability accrual is periodically adjusted based on the identification or resolution of known individual product liability claims. The following table illustrates the Company's product warranty accrual:

	(in thousands)
Balance at December 31, 2009	$ 3,367
Additions to warranty liability	957
Warranty liability utilized	(2,071)
Balance at September 30, 2010	$ 2,253

Included within the above table is the remaining concrete tie warranty related to the previously discussed cracked concrete tie charges of approximately $819,000 as of September 30, 2010. While the Company believes this is a reasonable estimate of this potential warranty claim, this estimate could change due to new information and future events. We have had recent discussions with a large customer regarding additional ties that this customer contends are damaged ties subject to warranty replacement. We believe that most of these ties are either structurally sound or damaged due to causes other than those which would require warranty replacement. Based upon our preliminary assessment, we do not believe that these requests for warranty replacements, which relate to ties made with equipment and processes that were replaced in 2005, are valid. There can be no assurance at this point that future potential costs pertaining to this claim or other potential future claims will not have a material impact on our results of operations.

At September 30, 2010 the Company had outstanding letters of credit of approximately $959,000.

18. DERIVATIVE FINANCIAL INSTRUMENTS AND HEDGING ACTIVITIES

The Company adopted the required enhanced disclosures of FASB ASC Topic 815, “Derivatives and Hedging” on January 1, 2009. Topic 815 requires enhanced disclosures about an entity's derivative and hedging activities, including (i) how and why an entity uses derivative instruments, (ii) how derivative instruments and related hedged items are accounted, and (iii) how derivative instruments and related hedged items affect an entity's financial position, results of operations and cash flows.

The Company does not purchase or hold any derivative financial instruments for trading purposes. The Company uses derivative financial instruments to manage interest rate exposure on variable-rate debt, primarily by using interest rate collars and variable interest rate swaps. The Company's primary source of variable-rate debt comes from its revolving credit agreement.

At contract inception, the Company designates its derivative instruments as hedges. The Company recognizes all derivative instruments on the balance sheet at fair value. Fluctuations in the fair values of derivative instruments designated as cash flow hedges are recorded in accumulated other comprehensive income and reclassified into earnings within other income as the underlying hedged items affect earnings. To the extent that a change in interest rate derivative does not perfectly offset the change in value of the interest rate being hedged, the ineffective portion is recognized in earnings immediately.

The Company is not subject to significant exposures to changes in foreign currency exchange rates. The Company will, however, manage its exposure to changes in foreign currency exchange rates on firm sale and purchase commitments by entering into foreign currency forward contracts. The Company's risk management objective is to reduce its exposure to the effects of changes in exchange rates on these transactions over the duration of the transactions.

In the fourth quarter of 2008, the Company entered into a commitment with a notional amount of approximately $630,000 to buy Euro funds based on the anticipated receipt of Euro funds from the purchase of certain rail in the first quarter of 2009. During the first quarter of 2009, the Company determined that the receipt of Euros would not coincide with the purchase commitment and the Company recorded a loss of approximately $7,000 to record this commitment at market which was reported as “Other Income” within the Consolidated Statements of Operations.

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In the first quarter of 2009, the Company entered into commitments with notional amounts totaling approximately $974,000 to buy Euro funds based on the anticipated receipt of Euro funds from the purchase of certain rail in the second quarter of 2009. During the second quarter of 2009, these commitments matured for a realized gain of approximately $105,000 which was reported as "Other Income" within the Consolidated Statements of Operations.

In the fourth quarter of 2009, the Company entered into commitments with notional amounts totaling approximately $2,624,000 to sell Canadian funds based on the anticipated receipt of Canadian funds from the sale of certain rail in first quarter of 2010. During the first quarter of 2010, the Company determined that the receipt of Canadian funds would not coincide with the purchase commitment and the Company recorded a loss of approximately $59,000 to record this commitment at market. During the first quarter of 2010, the Company entered into commitments with notional amounts totaling approximately $2,683,000 to sell Canadian funds based on the anticipated receipt of Canadian funds from the aforementioned sale of certain rail in the first quarter of 2010. This contract matured for a realized gain of approximately $59,000. These gains and losses were reported as "Other Income" within the Consolidated Statements of Operations.

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Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Overview

General

L. B. Foster Company is a leading manufacturer, fabricator and distributor of products for the rail, construction, utility and energy markets. The Company is comprised of three business segments: Rail products, Construction products and Tubular products.

Recent Developments

On February 16, 2010 we entered into a Merger Agreement with Portec to acquire all of the issued and outstanding shares of Portec's common stock at a price equal to $11.71 per share, or approximately $112.4 million. Concurrently with the execution of the Merger Agreement, we also made a cash Tender Offer to purchase all of the shares of Portec.

On August 30, 2010 we entered into the second amendment (Amendment No. 2) to the Merger Agreement. Amendment No. 2 increased the Offer price to $11.80 per share, extended the Drop Dead Date to the close of business on December 30, 2010 and included a definition of "Permitted Divestiture" which means the divestiture upon terms that are usual and customary with respect to divestitures required by the Antitrust Division of the Justice Department related to Portec's Huntington, West Virginia facility.

Amendment No. 2 provides that we will be obligated to pay a termination fee of $2.0 million to Portec if either we or Portec terminates the Merger Agreement and (i) the Minimum Condition was satisfied as of the expiration of the Offer, (ii) no order or decree was entered by a court of competent jurisdiction after August 30, 2010 which enjoined the Offer, (iii) Portec was not at the time of termination in breach of any representation or warranty that is reasonably expected to result in a Material Adverse Effect, (iv) Portec's directors determines that another bidder has offered terms superior to those offered by us, or (v) Portec had reasonably cooperated with us in our efforts to effectuate a Permitted Divestiture or any other divestiture.

On September 30, 2010 we extended the Offer until 12:00 midnight on Monday, November 15, 2010. As of September 29, 2010, shareholders collectively owning 6,686,741 shares, approximately 69.63% of the outstanding shares, agreed to tender all such shares and vote in favor of adopting the Merger Agreement.

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Critical Accounting Policies

The accompanying consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States. When more than one accounting principle, or method of its application, is generally accepted, management selects the principle or method that is appropriate in the Company's specific circumstances. Application of these accounting principles requires management to make estimates about the future resolution of existing uncertainties. As a result, actual results could differ from these estimates. In preparing these financial statements, management has made its best estimates and judgments of the amounts and disclosures included in the financial statements giving due regard to materiality. There have been no material changes in the Company's critical accounting policies or estimates since December 31, 2009. For more information regarding the Company's critical accounting policies, please see the Management's Discussion & Analysis of Financial Condition and Results of Operations in Form 10-K for the year ended December 31, 2009.

New Accounting Pronouncements

In June 2009, the FASB issued changes to the consolidation guidance applicable to a variable interest entity (VIE). FASB ASC Topic 810, "Consolidation," amends the guidance governing the determination of whether an enterprise is the primary beneficiary of a VIE, and is, therefore, required to consolidate an entity, by requiring a qualitative analysis rather than a quantitative analysis. The qualitative analysis will include, among other things, consideration of who has the power to direct the activities of the entity that most significantly impact the entity's economic performance and who has the obligation to absorb losses or the right to receive benefits of the VIE that could potentially be significant to the VIE. This standard also requires continuous reassessments of whether an enterprise is the primary beneficiary of a VIE. Previously, FIN 46R required reconsideration of whether an enterprise was the primary beneficiary of a VIE only when specific events had occurred. FASB ASC 810 also requires enhanced disclosures about an enterprise's involvement with a VIE. We adopted the changes issued by the FASB to accounting for VIE's on January 1, 2010.

In January 2010, the FASB issued Accounting Standards Update No. 2010-06, "Improving Disclosures about Fair Value Measurements." This Update provides amendments to FASB ASC 820, "Fair Value Measurements," that requires entities to disclose separately the amounts of significant transfers in and out of Level 1 and Level 2 fair value measurements and describe the reasons for the transfers. In addition, the Update requires entities to present separately information about purchases, sales, issuances and settlements in the reconciliation for fair value measurements using significant unobservable inputs (Level 3). The disclosures related to Level 1 and Level 2 fair value measurements are effective for the Company beginning in 2010 and the disclosures related to Level 3 fair value measurements are effective for the Company in 2011. The Update requires only new disclosures and had no impact on our financial statements.

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Quarterly Results of Operations

	Three Months Ended September 30,		Percent of Total Net Revenues Three Months Ended September 30,		Percent Increase/(Decrease)
	2010	2009	2010	2009	2010 vs. 2009
	Dollars in thousands				
Net Sales:					
Rail Products	$ 54,897	$ 42,776	43.7 %	43.7 %	28.3 %
Construction Products	62,845	51,868	50.1	53.0	21.2
Tubular Products	7,819	3,244	6.2	3.3	141.0
Total Net Sales	$ 125,561	$ 97,888	100.0 %	100.0 %	28.3 %

	Three Months Ended September 30,		Gross Profit Percentage Three Months Ended September 30,		Percent Increase/(Decrease)
	2010	2009	2010	2009	2010 vs. 2009
	Dollars in thousands				
Gross Profit:					
Rail Products	$ 6,882	$ 5,148	12.5 %	12.0 %	33.7 %
Construction Products	10,890	8,927	17.3	17.2	22.0
Tubular Products	2,026	(634)	25.9	(19.5)	419.6
LIFO Credit	673	4,918	0.5	5.0	**
Other	(429)	(601)	(0.3)	(0.6)	(28.6)
Total Gross Profit	$ 20,042	$ 17,758	16.0 %	18.1 %	12.9 %

	Three Months Ended September 30,		Percent of Total Net Revenues Three Months Ended September 30,		Percent Increase/(Decrease)
	2010	2009	2010	2009	2010 vs. 2009
	Dollars in thousands				
Expenses:					
Selling and Administrative Expenses	$ 9,858	$ 9,068	7.9 %	9.3 %	8.7 %
Interest Expense	211	328	0.2	0.3	(35.7)
Interest Income	(114)	(169)	(0.1)	(0.2)	(32.5)
Gain on Sale of Marketable Securities	-	(1,194)	-	(1.2)	**
	31	-	-	-	**

Equity in Losses of Nonconsolidated Investment					
Other Income	(46)	(116)	-	(0.1)	(60.3)
Total Expenses	9,940	7,917	7.9	8.1	25.6
Income Before Income Taxes	10,102	9,841	8.0	10.1	2.7
Income Tax Expense	3,589	3,697	2.9	3.8	(2.9)
Net Income	$ 6,513	$ 6,144	5.2 %	6.3 %	6.0 %

** Results of calculation are not meaningful for presentation purposes.

Third Quarter 2010 Compared to Third Quarter 2009 – Company Analysis

Net income for the third quarter of 2010 was $0.63 per diluted share, compared to $0.60 per diluted share for the third quarter of 2009. We account for a portion of our inventory under the LIFO method. The LIFO reserve requirements can be positively or negatively impacted by falling or rising prices. Our estimate of the credit to gross profit resulting from this LIFO adjustment was lower in 2010 than in 2009.

An increase in 2010 results-driven incentive compensation costs of approximately $0.5 million coupled with increased bad debt expense of $0.3 million led to the increase in selling and administrative expenses. Reported as part of net income in the prior year period was a gain associated with the sale of marketable securities. The decreased effective income tax rate for the third quarter of 2010 to 35.5% from 37.6% in the prior year quarter resulted from an increased domestic manufacturing deduction.

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Results of Operations – Segment Analysis

Rail Products

	Three Months Ended September 30, 2010	2009	Increase/ (Decrease) 2010 vs. 2009	Percent Increase/(Decrease) 2010 vs. 2009
	Dollars in thousands			
Net Sales	$ 54,897	$ 42,776	$ 12,121	28.3 %
Gross Profit	$ 6,882	$ 5,148	$ 1,734	33.7 %
Gross Profit Percentage	12.5 %	12.0 %	0.5 %	4.2 %

Third Quarter 2010 Compared to Third Quarter 2009

All of the divisions within our Rail Products segment reported improved 2010 sales, generally from improved volumes, over the prior year quarter. Our transit division's growth in volumes was aided by Federal stimulus spending. While the 2010 sales volumes have strengthened from the prior year period, they have yet to return to the pre-recession levels of 2008.

Due to increased purchases by the Union Pacific Railroad (UPRR) at both our Grand Island, NE and Tucson, AZ facilities, our sales of CXT concrete railroad ties increased in 2010 over the prior year quarter. While these two facilities are actively pursuing product sales opportunities to other third parties, the UPRR is the predominate customer. Although our CXT concrete tie division's sales increased overall, our Spokane, WA facility experienced reduced volumes in the 2010 third quarter compared to the prior year quarter due to a difficult industrial market. The majority of this facility's sales are to customers other than the UPRR.

Our CXT concrete tie division, exclusive of our Spokane, WA facility, ARP and trackwork divisions, were able to deliver volume related gross profit gains. Our rail distribution division gross profit has declined due to lower selling prices while our transit division has seen its product mix change in the current 2010 quarter lowering gross profit. In addition to the lower volumes, our Spokane, WA tie facility has also been impacted by increased material costs.

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Construction Products

	Three Months Ended September 30,		Increase/ (Decrease)	Percent Increase/(Decrease)
	2010	2009	2010 vs. 2009	2010 vs. 2009
	Dollars in thousands			
Net Sales	$ 62,845	$ 51,868	$ 10,977	21.2 %
Gross Profit	$ 10,890	$ 8,927	$ 1,963	22.0 %
Gross Profit Percentage	17.3 %	17.2 %	0.1 %	0.7 %

Third Quarter 2010 Compared to Third Quarter 2009

Our Construction Products divisions reported improved sales during the 2010 third quarter, led by our piling division. Improved sales volumes of sheet piling was partially offset by declines in sales prices yielding piling sales growth. Our concrete buildings division benefitted from significantly increased orders received from federal agencies, much of which is attributable to stimulus legislation. As evidenced by its increased backlog, relative to September 30, 2009, our fabricated products division is working through timing issues which has decreased its current period sales.

Our 2010 Construction Products gross profit margins were relatively flat compared to the 2009 period with the exception of an increase at our fabricated products division.

Tubular Products

	Three Months Ended September 30,		Increase/ (Decrease)	Percent Increase/(Decrease)
	2010	2009	2010 vs. 2009	2010 vs. 2009
	Dollars in thousands			
Net Sales	$ 7,819	$ 3,244	$ 4,575	141.0 %
Gross Profit	$ 2,026	$ (634)	$ 2,660	419.6 %
Gross Profit Percentage	25.9 %	(19.5 %)	45.5 %	232.6 %

Third Quarter 2010 Compared to Third Quarter 2009

Third quarter sales more than doubled, led by a more than four fold increase in sales levels from our coated pipe division. Our coated pipe division was adversely impacted by the recession driven, industry wide slowdown in the prior year period.

Our Tubular Products 2010 third quarter gross profit was significantly improved as our coated pipe division reported strong results and our threaded products division returned to profitability after being negatively impacted by reductions in pipe pricing, unfavorable manufacturing variances and slow moving inventory charges in the prior year period.

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Year-to-date Results of Operations

	Nine Months Ended September 30,		Percent of Total Net Revenues Nine Months Ended September 30,		Percent Increase/(Decrease)
	2010	2009	2010	2009	2010 vs. 2009
	Dollars in thousands				
Net Sales:					
Rail Products	$ 148,642	$ 145,448	45.4 %	48.7 %	2.2 %
Construction Products	158,226	137,652	48.4	46.1	14.9
Tubular Products	20,199	15,749	6.2	5.3	28.3
Total Net Sales	$ 327,067	$ 298,849	100.0 %	100.0 %	9.4 %

	Nine Months Ended September 30,		Gross Profit Percentage Nine Months Ended September 30,		Percent Increase/(Decrease)
	2010	2009	2010	2009	2010 vs. 2009
	Dollars in thousands				
Gross Profit:					
Rail Products	$ 19,515	$ 12,610	13.1 %	8.7 %	54.8 %
Construction Products	28,801	24,304	18.2	17.7	18.5
Tubular Products	3,952	1,999	19.6	12.7	97.7
LIFO Credit	1,424	6,675	0.4	2.2	**
Other	(1,262)	(1,316)	(0.4)	(0.4)	(4.1)
Total Gross Profit	$ 52,430	$ 44,272	16.0 %	14.8 %	18.4 %

	Nine Months Ended September 30,		Percent of Total Net Revenues Nine Months Ended September 30,		Percent Increase/(Decrease)
	2010	2009	2010	2009	2010 vs. 2009
	Dollars in thousands				
Expenses:					
Selling and Administrative Expenses	$ 29,825	$ 26,707	9.1 %	8.9 %	11.7 %
Interest Expense	697	989	0.2	0.3	(29.5)
Interest Income	(295)	(676)	(0.1)	(0.2)	(56.4)
Gain on Sale of Marketable Securities	-	(1,194)	-	(0.4)	**
	272	-	0.1	-	**

Equity in Losses of Nonconsolidated Investment					
Other Income	(199)	(445)	(0.1)	(0.1)	(55.3)
Total Expenses	30,300	25,381	9.3	8.5	19.4
Income Before Income Taxes	22,130	18,891	6.8	6.3	17.1
Income Tax Expense	7,877	7,076	2.4	2.4	11.3
Net Income	$ 14,253	$ 11,815	4.4 %	4.0 %	20.6 %

** Results of calculation are not meaningful for presentation purposes.

First Nine Months of 2010 Compared to First Nine Months of 2009 – Company Analysis

Net income for the first nine months of 2010 was $1.38 per diluted share, compared to net income of $1.15 per diluted share for the same 2009 period. The prior year period included the aforementioned gain on the sale of a portion of our investment in Portec. The 2010 improvement in gross profit is due principally to negative adjustments of approximately $5.3 million taken in the 2009 period due to concrete tie issues as well as a significant current period improvement in manufacturing variances. We account for a portion of our inventory under the LIFO method. The LIFO reserve requirements can be positively or negatively impacted by falling or rising prices. Our estimate of the credit to gross profit resulting from this LIFO adjustment was $5.3 million lower in 2010 than in 2009.

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The foremost causes of the increased Selling and Administrative costs for the 2010 year-to-date period are acquisition costs of $1.3 million, incentive compensation costs of $1.3 million and bad debt expense of $0.9 million. The negative bad debt comparison is due primarily to a credit recorded in the prior period as opposed to any problems in our current receivable portfolio. Lower outstanding debt, coupled with moderately lower interest rates, resulted in a reduction of interest expense over the 2009 period. The reduction in interest income was due to weak interest rates earned by our investment portfolio. Included in net income for the current nine months is our share of the gains and losses from our equity investment in the joint venture, which is reported as “Equity in Losses of Nonconsolidated Investment.” The effective income tax rate for the 2010 period was 35.6% compared to 37.5% in the prior year period. The decrease was due to an increased domestic manufacturing deduction and the reversal of a $0.1 million reserve previously recorded for an uncertain tax position.

Year-to-date Results of Operations – Segment Analysis

Rail Products

	Nine Months Ended September 30,		Increase/ (Decrease) 2010 vs.	Percent Increase/(Decrease)
	2010	2009	2009	2010 vs. 2009
	Dollars in thousands			
Net Sales	$ 148,642	$ 145,448	$ 3,194	2.2 %
Gross Profit	$ 19,515	$ 12,610	$ 6,905	54.8 %
Gross Profit Percentage	13.1 %	8.7 %	4.5 %	51.4 %

First Nine Months of 2010 Compared to First Nine Months of 2009

Lower selling prices within our rail distribution business have partially offset the improved performance from the rest of our Rail Products divisions. In addition to increased purchases by the UPRR in 2010, our CXT concrete tie division prior year sales were hampered when the UPRR refused to accept, due to the alleged quality of certain raw materials, certain prestressed concrete railroad ties produced at our Grand Island, NE facility which reduced sales by approximately $2.8 million. Finally, both our ARP and transit divisions improving volumes delivered increased sales over the prior year period.

Improvements in our Rail Products gross profit were due primarily to the prior year charges of $5.3 million related to concrete tie issues which occurred in 2009. Additionally, improvements in selling margins including material variances, as well as improved manufacturing variances, had a positive impact on 2010 reported results.

Except for the $5.3 million in concrete tie gross profit charges, our Rail Products segment gross profit would have increased approximately 80 basis points compared to the 2009 period. Our expectations are that Class 1 railroad capital spending will remain consistent with 2010 levels with possible moderate increases as we head into 2011. We anticipate the industrial market will remain challenged in 2010 and into 2011 further hampering our sales of various rail products.

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Construction Products

	Nine Months Ended September 30, 2010	2009	Increase/ (Decrease) 2010 vs. 2009	Percent Increase/(Decrease) 2010 vs. 2009
	Dollars in thousands			
Net Sales	$ 158,226	$ 137,652	$ 20,574	14.9 %
Gross Profit	$ 28,801	$ 24,304	$ 4,497	18.5 %
Gross Profit Percentage	18.2 %	17.7 %	0.5 %	3.1 %

First Nine Months of 2010 Compared to First Nine Months of 2009

With the exception of our fabricated products division, all of the divisions within our Construction Products segment experienced strong sales increases in 2010. While not as robust during the 2010 third quarter, our concrete building division, realizing benefits from Federal spending partially due to the stimulus legislation, has delivered this segment's most significant sales growth. Additionally, while sales prices have declined due to lower commodity prices and a highly competitive market, our piling sales volumes have increased over 2009, resulting in moderate growth over prior year levels. Finally, our fabricated products division continues to benefit from a renewed focus on improving the nation's bridge infrastructure and its sales levels have remained consistent over both periods, however, the backlog within this division has increased approximately 62% over the prior year period.

Our Construction Products gross profit margin improved in all divisions with the exception of our piling division. Our piling division has experienced margin compression due to an intensely competitive bidding environment and a weak industrial market.

We have started to see a mixed rebound in our heavy civil and public works construction markets as we experience increased volumes that have been partially offset by declines in pricing. Finally, while we have seen opportunities generated from the stimulus bill, we do not expect this activity to compensate for the shortfalls created by the economic downturn.

Tubular Products

	Nine Months Ended September 30, 2010	2009	Increase/ (Decrease) 2010 vs. 2009	Percent Increase/(Decrease) 2010 vs. 2009
	Dollars in thousands			
Net Sales	$ 20,199	$ 15,749	$ 4,450	28.3 %
Gross Profit	$ 3,952	$ 1,999	$ 1,953	97.7 %
Gross Profit Percentage	19.6 %	12.7 %	6.9 %	54.1 %

First Nine Months of 2010 Compared to First Nine Months of 2009

The robust 2010 third quarter growth from our coated pipe division coupled with the improved performance of our threaded products division from the first half of 2010 has delivered solid growth over the 2009 period. In addition to the volume-related positive gross profit impacts both divisions have delivered in 2010, our threaded products division

was negatively impacted by $0.5 million of slow-moving inventory charges in 2009. We continue to expect the markets served by both our coated pipe and threaded products to be challenged as they work to recover from the recession.

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Liquidity and Capital Resources

Our capitalization is as follows:

Debt: (In millions)	September 30, 2010	December 31, 2009
Term loan, due May 2011	$11.0	$13.1
Capital leases and interim lease financing	3.5	5.5
IDSI acquisition notes	1.9	-
Total Debt	16.4	18.6
Equity	249.1	232.6
Total Capitalization	$265.5	$251.2

Total debt as a percentage of capitalization was approximately 6.2% as of September 30, 2010 compared to 7.4% at December 31, 2009. This measure reflects a strong financial position as there is minimal leverage and our cash balance covers debt by a multiple of approximately 8.8 times, exclusive of the impact that the successful closing of the Portec acquisition would have on our cash balances.

Our need for liquidity relates primarily to seasonal working capital requirements, capital expenditures, common stock repurchases, debt service obligations and acquisitions.

The following liquidity and capital resources discussion is as of September 30, 2010 and does not take into account the February 2010 announced merger agreement between us and Portec. Based on our August 2010 amended tender offer, we propose to acquire the outstanding shares of Portec for $11.80 per share, or approximately $114.9 million in cash. We plan to fund this acquisition with our available cash and cash equivalents.

The following table summarizes the year-to-date impact of these items:

(In millions)	September 30, 2010	2009
Liquidity needs:		
Working capital and other assets and liabilities	$11.1	$0.5
Common stock purchases	-	(1.9)
Capital expenditures	(4.1)	(4.8)
JV capital contributions	(0.8)	(1.2)
IDSI acquisition	(5.1)	-
Scheduled repayments of long-term debt	(2.1)	(2.1)
Other long-term debt scheduled repayments	(2.2)	(3.4)
Cash interest paid	(0.6)	(0.9)
Net liquidity requirements	(3.8)	(13.8)
Liquidity sources:		
Internally generated cash flows before interest paid	22.2	18.4
Proceeds from the sale of marketable securities	-	2.1

Equity transactions	0.9	0.2
Net liquidity sources	23.1	20.7
Net Change in Cash	$19.3	$6.9

Cash Flow from Operating Activities

During the current 2010 period, cash flows from operations provided $32.7 million, an increase of $14.6 million compared to the prior year period. Net income and adjustments to net income provided $21.6 million for the 2010 period. Working capital provided $11.1 million, an increase of $10.6 million over the prior year period.

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Cash Flow from Investing Activities

We funded a portion of the $7.0 million to acquire IDSI through cash payments totaling $5.1 million with the residual by issuing notes payable of $1.0 million due on the first and second anniversary of the closing. We contributed an additional $0.8 million in capital to the joint venture as part of our amended capital contributions compared to $1.3 million in the prior year period. Capital expenditures were $4.1 million for the first nine months of 2010 compared to $4.8 million for the same 2009 period. Current period expenditures were primarily used for facilities maintenance, yard upgrades and technology infrastructure. We anticipate total capital spending in 2010 will range between $6.0 million and $7.0 million and will be funded by cash flow from operations.

Cash Flow from Financing Activities

The decrease in cash used by financing activities in 2010 as compared to 2009 is due primarily to the absence of any expenditures pursuant to our share repurchase program. Also contributing to this decrease were the cash flows from the exercise of stock options.

Financial Condition

We continue to operate in this period of economic uncertainty in an extremely strong financial position. As of September 30, 2010, we had approximately $144.2 million in cash and cash equivalents and a revolving credit facility with approximately $71.6 million of availability while carrying only $16.4 million in total debt. We believe this capacity will afford us the flexibility to take advantage of opportunities that we may encounter as well as weather the continued weak economy.

Included within cash and cash equivalents are primarily investments in tax-free and taxable money market funds and bank certificates of deposit. The money market funds include municipal bond issuances as the underlying securities as well as government agency obligations and corporate bonds all of which maintain AAA credit ratings. Our priority continues to be the maintenance of our principal balances.

Our revolving credit agreement, which expires in May 2011, provides for up to $90.0 million in borrowings to support our working capital and other liquidity requirements. Borrowings under this agreement are secured by substantially all the trade receivables and inventory owned by us, and are limited to 85% of eligible receivables and 60% of eligible inventory.

Under the term loan, we had $11.0 million outstanding at September 30, 2010 all of which was classified as current. Revolving credit facility borrowings placed in LIBOR contracts are priced at prevailing LIBOR rates, plus 1.25%. Borrowings placed in other tranches are priced at the prevailing prime rate, minus 1.00%. The term loan base rate spread is fixed at prime minus 0.75% and the LIBOR spread is fixed at plus 1.50%. As of September 30, 2010 we were in compliance with all of the Agreement's covenants. We anticipate that we will complete the renegotiation of our current revolving credit facility and replace it with a new facility during 2010.

Off-Balance Sheet Arrangements

The Company's off-balance sheet arrangements include operating leases, purchase obligations and standby letters of credit. A schedule of the Company's required payments under financial instruments and other commitments as of December 31, 2009 is included in the "Liquidity and Capital Resources" section of the Company's 2009 Annual Report filed on Form 10-K. These arrangements provide the Company with increased flexibility relative to the utilization and investment of cash resources.

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Outlook

Our businesses and results of operations have been impacted by the downturn in the global economy. We believe that the recession, continued credit concerns and expected reductions in federal and state government tax receipts will present challenges to many of the end markets to which we sell. As a result of continued soft demand for certain of our products as well as heightened competition, we expect to battle margin compression for at least the next six months. We expect to be challenged in 2010 and into 2011 by moderating sales volumes, production volumes and heightened competition caused by the recessionary economic environment. However, we also expect to be profitable and to generate positive cash flow. We believe that when conditions do improve the markets we participate in will be poised to benefit. We continue to navigate through this period of uncertainty in an extremely strong financial position.

We have received increased orders from the Union Pacific Railroad (UPRR) for concrete ties at both our Grand Island, NE and Tucson, AZ facilities increasing capacity utilization to approximately 80%. We are actively pursuing, albeit in a difficult industrial market, product sales opportunities to other third parties at both of these locations.

During 2009 we recorded approximately $2.7 million in warranty charges related to in-track failures of concrete railroad ties. While we believe this is a reasonable estimate of this potential warranty claim, this estimate could change due to new information and future events. We have had recent discussions with the UPRR regarding additional ties that this customer contends are damaged ties subject to warranty replacement. We believe that most of these ties are either structurally sound or damaged due to causes other than those which would require warranty replacement. Based upon our preliminary assessment, we do not believe that these communications requesting warranty replacements, which relate to ties made with equipment and processes that were replaced in 2005, are valid. There can be no assurance, however, at this point that future potential costs pertaining to this claim or other potential future claims will not have a material impact on our results of operations.

Our agreement with the UPRR includes their purchasing concrete ties from our Grand Island, NE facility through 2010 and our Tucson, AZ facility through 2012. We are currently negotiating a short-term extension to our supply agreement with the UPRR at our Grand Island, NE location. However, we are unsure as to how the aforementioned warranty issue may impact this negotiation with the UPRR. As a result, we are currently unable to determine when or if this extension will be executed.

Our ARP facilities in Niles, OH and Pueblo, CO have contracts with Class 1 railroads that are periodically subject to renewal which account for a significant portion of this division’s business. If we are unable to successfully renew these contracts, our results of operations and financial position could be negatively impacted.

Certain of our businesses rely heavily on spending authorized by the federal highway and transportation funding bill, SAFETEA-LU, enacted in August 2005. This legislation authorized $286 billion for United States transportation improvement spending over a six-year period and expired in September 2009. This legislation has been extended through December 31, 2010. While certain estimates of the amounts that may be authorized under successor legislation to SAFETEA-LU range from $400 to $500 billion, there is significant uncertainty as to the timing of the renewal of this multi-year surface transportation legislation and the potential impact it may have on our markets. SAFETEA-LU was not approved until nearly two years after the previous authorization expired. This delay had a material detrimental impact upon the demand and spending levels in certain markets where we participated during 2003 to 2005.

We entered into a joint venture to manufacture, market and sell various products for the energy, utility and construction markets. In connection with the amended joint venture agreement we were required to make capital

contributions of $2.2 million. No assurances can be given that additional capital contributions will not be required or that the joint venture will perform in accordance with our expectations.

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Although backlog is not necessarily indicative of future operating results, total Company backlog at September 30, 2010, was approximately $204.9 million, a 14.8% and 23.6% increase compared to December 31, 2009 and June 30, 2009, respectively. The following table provides the backlog by business segment:

	Backlog		
(In thousands)	September 30, 2010	December 31, 2009	September 30, 2009
Rail Products	$87,177	$54,505	$56,116
Construction Products	113,675	120,845	106,205
Tubular Products	4,074	3,221	3,476
Total Backlog	$204,926	$178,571	$165,797

We continue to evaluate the overall performance of our operations. A decision to down-size or terminate an existing operation could have a material adverse effect on near-term earnings but would not be expected to have a material adverse effect on the financial condition of the Company.

Market Risk and Risk Management Policies

The Company adopted the required enhanced disclosures of FASB ASC Topic 815, “Derivatives and Hedging” on January 1, 2009. Topic 815 requires enhanced disclosures about an entity’s derivative and hedging activities, including (i) how and why an entity uses derivative instruments, (ii) how derivative instruments and related hedged items are accounted, and (iii) how derivative instruments and related hedged items affect an entity’s financial position, results of operations and cash flows.

The Company does not purchase or hold any derivative financial instruments for trading purposes. The Company uses derivative financial instruments to manage interest rate exposure on variable-rate debt, primarily by using interest rate collars and variable interest rate swaps. The Company’s primary source of variable-rate debt comes from its revolving credit agreement.

At contract inception, the Company designates its derivative instruments as hedges. The Company recognizes all derivative instruments on the balance sheet at fair value. Fluctuations in the fair values of derivative instruments designated as cash flow hedges are recorded in accumulated other comprehensive income and reclassified into earnings within other income as the underlying hedged items affect earnings. To the extent that a change in interest rate derivative does not perfectly offset the change in value of the interest rate being hedged, the ineffective portion is recognized in earnings immediately.

The Company is not subject to significant exposures to changes in foreign currency exchange rates. The Company will, however, manage its exposure to changes in foreign currency exchange rates on firm sale and purchase commitments by entering into foreign currency forward contracts. The Company’s risk management objective is to reduce its exposure to the effects of changes in exchange rates on these transactions over the duration of the transactions.

Forward-Looking Statements

There are no assurances regarding the closing of the merger agreement involving L. B. Foster and Portec and the expected benefits of the transaction, including potential synergies and cost savings, future financial and operating results, and the combined company's plans and objectives. Risks and uncertainties include the satisfaction of closing

conditions for the acquisition, including clearance under the Hart-Scott-Rodino Antitrust Improvements Act; the risk that the US Department of Justice may impose conditions on the Portec acquisition that are unacceptable to the Company or that the Company may not meet; the tender of sixty-five percent of the outstanding shares of common stock of Portec Rail Products, Inc., calculated on a fully diluted basis; the possibility that the transaction will not be completed, or if completed, not completed on a timely basis; the potential that market segment growth will not follow historical patterns or be otherwise unsatisfactory; general industry conditions and competition; business and economic conditions, such as interest rate and currency exchange rate fluctuations; technological advances and patents attained by competitors; and domestic and foreign governmental laws and regulations. L.B. Foster can give no assurance that any of the transactions related to the tender offer will be completed or that the conditions to the tender offer and the merger will be satisfied.

There are no assurances that the purchase of IDSI will result in improved operating results.

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Statements relating to the value of the Company's share of potential future contingent payments related to the DM&E merger with the Canadian Pacific Railway Limited (CP) are forward-looking statements and are subject to numerous contingencies and risk factors. The CP has stated that it may take years for it to determine whether to construct the Powder River Basin Expansion Project.

Our agreement with the UPRR includes their purchasing concrete ties from our Grand Island, NE facility through 2010 and our Tucson, AZ facility through 2012. We are currently negotiating a short-term extension to our supply agreement with the UPRR at our Grand Island, NE location. However, we are unsure as to how the aforementioned warranty issue may impact this negotiation with the UPRR. As a result, we are currently unable to determine when or if this extension will be executed.

Our businesses could be affected adversely by significant changes in the price of steel, concrete, and other raw materials or the availability of existing and new piling and rail products. Our operating results may also be affected negatively by adverse weather conditions.

A substantial portion of our operations are heavily dependent on governmental funding of infrastructure projects. Many of these projects have "Buy America" or "Buy American" provisions. Significant changes in the level of government funding of these projects could have a favorable or unfavorable impact on our operating results. Additionally, government actions concerning "Buy America" provisions, taxation, tariffs, the environment, or other matters could impact our operating results.

Unexpected events including production delays or other problems encountered at our manufacturing facilities, equipment failures, failure to meet product specifications, concrete railroad tie warranty issues and the availability of existing and new piling and rail products may cause our operating costs to increase or otherwise impact our financial performance.

The Company cautions readers that various factors could cause the actual results of the Company to differ materially from those indicated by forward-looking statements made from time to time in news releases, reports, proxy statements, registration statements and other written communications (including the preceding sections of this Management's Discussion and Analysis), as well as oral statements, such as references made to the future profitability, made from time to time by representatives of the Company. For a discussion of some of the specific risk factors, that may cause such differences, see the Company's Form 10-K for the year ended December 31, 2009.

Except for historical information, matters discussed in such oral and written communications are forward-looking statements that involve risks and uncertainties, including but not limited to general business conditions, the availability of material from major suppliers, labor disputes, the impact of competition, the seasonality of the Company's business, the adequacy of internal and external sources of funds to meet financing needs, the Company's ability to curb its working capital requirements, taxes, inflation and governmental regulations. Sentences containing words such as "believes," "intends," "anticipates," "expects," or "will" generally should be considered forward-looking statements.

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Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

See the “Market Risk and Risk Management Policies” section under Item 2, Management’s Discussion and Analysis of Financial Condition and Results of Operations.

Item 4. CONTROLS AND PROCEDURES

a) L. B. Foster Company (the Company) carried out an evaluation, under the supervision and with the participation of the Company’s management, including the Chief Executive Officer and the Chief Financial Officer, of the effectiveness of the design and operation of the Company’s disclosure controls and procedures (as defined in Rules 13a - 15(e) under the Securities and Exchange Act of 1934, as amended) as of September 30, 2010. Based upon that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that the Company’s disclosure controls and procedures are effective to timely alert them to material information relating to the Company (including its consolidated subsidiaries) required to be included in the Company’s periodic SEC filings.

b) There have been no significant changes in the Company’s internal controls over financial reporting that occurred in the period covered by this report that have materially affected or are likely to materially affect the Company’s internal controls over financial reporting.

PART II OTHER INFORMATION

Item 1. LEGAL PROCEEDINGS

See Note 17, “Commitments and Contingent Liabilities”, to the Condensed Consolidated Financial Statements.

Item 1A. RISK FACTORS

There has not been any material change in the risk factors disclosure from that contained in the Company’s 10-K for the year ended December 31, 2009. In February 2010, the Securities and Exchange Commission published guidance regarding its existing disclosure requirements as they apply to climate change matters. A number of governments or governmental bodies have introduced or are contemplating legislative and regulatory change in response to the potential impacts of climate change including pending U.S. legislation that, if enacted, would limit and reduce greenhouse gas emissions through a “cap and trade” system of allowances and credits, among other provisions. In addition, the U. S. Environmental Protection Agency has for the first time required large emitters of greenhouse gases to collect and report data with respect to their greenhouse gas emissions. Assessments of the potential impact, both positive or negative, of future climate change legislation, regulation and international treaties and accords are uncertain, given that these regulatory mechanisms may be either voluntary or legislated and may impact our operations directly or indirectly through our suppliers or customers.

Item 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

The Company had no purchases of its equity securities for the three or nine month periods ended September 30, 2010. Purchases under the following plan have not been suspended:

	Total Number of Shares	Approximate Dollar Value of Shares

	Total Number Of Shares Purchased (1)	Average Price Paid per Share	Purchased as Part of Publicly Announced Plans or Programs	that May Yet Be Purchased Under the Plans or Programs
As of September 30, 2010	951,673	$29.78	951,673	$11,654,894

(1) On May 12, 2008, the Board of Directors authorized the repurchase of up to $25,000,000 of the Company's common shares until June 30, 2010. On October 28, 2008, the Board of Directors authorized the repurchase of up to an additional $15,000,000 of the Company's common shares until December 31, 2010 at which time this authorization will expire.

Item 5. OTHER INFORMATION

None.

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Item 6. EXHIBITS

The Exhibits marked with an asterisk are filed herewith. All exhibits are incorporated herein by reference:

2.1 Agreement and Plan of Merger, dated February 16, 2010, by and among L.B. Foster Company, Foster Thomas Company and Portec Rail Products, Inc. filed as Exhibit 2.1 to Form 8-K on February 17, 2010.

2.1 First Amendment to Agreement and Plan of Merger, dated as of May 13, 2010, by and among Portec Rail Products, Inc., L.B. Foster Company and Foster Thomas Company filed as Exhibit 2.1 to Form 8-K on May 13, 2010.

2.1 Second Amendment to Agreement and Plan of Merger, dated August 30, 2010, by and among Portec Rail Products, Inc., L.B. Foster Company and Foster Thomas Company filed as Exhibit 2.1 to Form 8-K on August 30, 2010.

3.1 Restated Certificate of Incorporation, filed as Exhibit 3.1 to Form 10-Q for the quarter ended March 31, 2003.

3.2 Bylaws of the Registrant, as amended and filed as Exhibit 3.2 to Form 10-K for the year ended December 31, 2007.

4.0 Rights Amendment, dated as of May 15, 1997 between L. B. Foster Company and American Stock Transfer & Trust Company, including the form of Rights Certificate and the Summary of Rights attached thereto, filed as Exhibit 4.0 to Form 10-K for the year ended December 31, 2002.

4.1 Rights Amendment, dated as of October 24, 2006, between L. B. Foster Company and American Stock Transfer & Trust Company, including the form of Rights Certificate and the Summary of Rights attached thereto, filed as Exhibit 4B to Form 8-K on October 27, 2006.

10.0 Amended and Restated Revolving Credit Agreement dated May 5, 2005, between Registrant and PNC Bank, N.A., LaSalle Bank N.A., and First Commonwealth Bank, filed as Exhibit 10.0 to Form 10-Q for the quarter ended March 31, 2005.

10.0.1 First Amendment to Revolving Credit and Security Agreement dated September 13, 2005, between Registrant and PNC Bank, N.A., LaSalle Bank N.A., and First Commonwealth Bank, filed as Exhibit 10.0.1 to Form 8-K on September 14, 2005.

10.0.3 Third Amendment to Revolving Credit and Security Agreement dated February 8, 2007, between Registrant and PNC Bank, N.A., LaSalle Bank N.A., and First Commonwealth Bank, filed as Exhibit 10.0.3 to Form 8-K on February 9, 2007.

10.0.5 Fifth Amendment to Revolving Credit and Security Agreement dated March 4, 2009, between Registrant and PNC Bank, N.A., Bank of America, N.A., and First Commonwealth Bank, filed as Exhibit 10.0.5 to Form 10-K for the year ended December 31, 2008.

10.1 Form of Tender and Voting Agreement, dated February 16, 2010, by and among L.B. Foster Company, Foster Thomas Company and identified persons for the indicated

number of shares of Portec Rail Products, Inc. filed as Exhibit 10.1 to Form 8-K on February 17, 2010.

10.12 Lease between CXT Incorporated and Pentzer Development Corporation, dated April 1, 1993, filed as Exhibit 10.12 to Form 10-K for the year ended December 31, 2004.

10.12.1 Second Amendment dated March 12, 1996 to lease between CXT Incorporated and Crown West Realty, LLC, successor, filed as Exhibit 10.12.1 to Form 10-K for the year ended December 31, 2004.

10.12.2 Third Amendment dated November 7, 2002 to lease between CXT Incorporated and Crown West Realty, LLC, filed as Exhibit 10.12.2 to Form 10-K for the year ended December 31, 2002.

10.12.3 Fourth Amendment dated December 15, 2003 to lease between CXT Incorporated and Crown West Realty, LLC, filed as Exhibit 10.12.3 to Form 10-K for the year ended December 31, 2003.

10.12.4 Fifth Amendment dated June 29, 2004 to lease between CXT Incorporated and Park SPE, LLC, filed as Exhibit 10.12.4 to Form 10-K for the year ended December 31, 2004.

10.12.5 Sixth Amendment dated May 9, 2006 to lease between CXT Incorporated and Park SPE, LLC, filed as Exhibit 10.12.5 to Form 10-Q for the quarter ended June 30, 2006.

10.12.6 Seventh Amendment dated April 28, 2008 to lease between CXT Incorporated and Park SPE, LLC, filed as Exhibit 10.12.6 to Form 8-K on May 2, 2008.

10.12.7 Eighth Amendment dated July 6, 2010 to lease between CXT Incorporated and Park SPE, LLC filed as Exhibit 10.12.7 to Form 8-K on July 7, 2010.

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10.13 Lease between CXT Incorporated and Crown West Realty, LLC, dated December 20, 1996, filed as Exhibit 10.13 to Form 10-K for the year ended December 31, 2004.

10.13.1 Amendment dated June 29, 2001 between CXT Incorporated and Crown West Realty, filed as Exhibit 10.13.1 to Form 10-K for the year ended December 31, 2007.

10.14 Lease of property in Tucson, AZ between CXT Incorporated and the Union Pacific Railroad Company dated May 27, 2005, filed as Exhibit 10.14 to Form 10-Q for the quarter ended June 30, 2005.

10.15 Lease of property in Grand Island, NE between CXT Incorporated and the Union Pacific Railroad Company, dated May 27, 2005, and filed as Exhibit 10.15 to Form 10-Q for the quarter ended June 30, 2005.

10.15.1 Industry Track Contract between CXT Incorporated and the Union Pacific Railroad Company, dated May 27, 2005, filed as Exhibit 10.15 to Form 10-Q for the quarter ended June 30, 2005.

10.16 Lease Agreement dated March 3, 2008 between CCI-B Langfield I, LLC, as Lessor, and Registrant as Lessee, related to Registrant's threading operation in Harris County, Texas and filed as Exhibit 10.16 to Form 8-K on March 7, 2008.

10.16.1 First Amendment dated April 1, 2008 to lease between CCI-B Langfield I, LLC, as Lessor, and Registrant as Lessee, related to Registrant's threading operation in Harris County, Texas, filed as Exhibit 10.16.1 to Form 8-K on May 1, 2008.

10.16.2 Second Amendment dated January 6, 2009 to lease between CCI-B Langfield I, LLC, as lessor, and Registrant as Lessee, related to Registrant's threading operation in Harris County, Texas, filed as Exhibit 10.16.2 to Form 10-K for the year ended December 31, 2008.

10.17 Lease between Registrant and the City of Hillsboro, TX dated February 22, 2002, and filed as Exhibit 10.17 to Form 10-K for the year ended December 31, 2007.

10.19 Lease between Registrant and American Cast Iron Pipe Company for pipe-coating facility in Birmingham, AL, dated December 11, 1991, filed as Exhibit 10.19 to Form 10-K for the year ended December 31, 2002.

10.19.1 Amendment to Lease between Registrant and American Cast Iron Pipe Company for pipe-coating facility in Birmingham, AL dated November 15, 2000, and filed as Exhibit 10.19.1 to Form 10-Q for the quarter ended March 31, 2006.

10.19.2 Third Amendment dated July 6, 2010 to lease between CXT Incorporated and Park SPE, LLC filed as Exhibit 10.19.2 to Form 8-K on July 7, 2010.

^10.21 Agreement for Purchase and Sales of Concrete Ties between CXT Incorporated and the Union Pacific Railroad dated January 24, 2005, and filed as Exhibit 10.21 to Form 10-K for the year ended December 31, 2004.

^10.21.1 Amendment to Agreement for Purchase and Sales of Concrete Ties between CXT Incorporated and the Union Pacific Railroad dated October 28, 2005, and filed as Exhibit 10.21.1 to Form 8-K on November 14, 2005.

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10.24 Asset Purchase Agreement by and between the Registrant and The Reinforced Earth Company dated February 15, 2006, filed as Exhibit 10.24 to Form 10-K for the year ended December 31, 2005.

10.25 Asset Purchase Agreement between Interlocking Deck Systems International, LLC and the Registrant dated March 23, 2010 filed as Exhibit 10.25 to Form 8-K on March 29, 2010.

10.33.2 Amended and Restated 1985 Long-Term Incentive Plan as of May 25, 2005, filed as Exhibit 10.33.2 to Form 10-Q for the quarter ended June 30, 2005. **

10.34 Amended and Restated 1998 Long-Term Incentive Plan as of May 25, 2005, filed as Exhibit 10.34 to Form 10-Q for the quarter ended June 30, 2005. **

10.34.1 Amendment, effective May 24, 2006, to Amended and Restated 1998 Long-Term Incentive Plan as of May 25, 2005, filed as Exhibit 10.34.1 to Form 8-K on May 31, 2006. **

10.45 Medical Reimbursement Plan (MRP1) effective January 1, 2006, filed as Exhibit 10.45 to Form 10-K for the year ended December 31, 2005. **

10.45.1 Medical Reimbursement Plan (MRP2) effective January 1, 2006, filed as Exhibit 10.45.1 to Form 10-K for the year ended December 31, 2005. **

10.46 Leased Vehicle Plan as amended and restated on September 1, 2007, filed as Exhibit 10.46 to Form 10-Q for the quarter ended September 30, 2007. **

10.51 Supplemental Executive Retirement Plan as Amended and Restated on January 1, 2009, filed as Exhibit 10.51 to Form 10-K for the year ended December 31, 2008. **

10.53 Directors' resolution dated March 6, 2008, under which directors' compensation was established, filed as Exhibit 10.53 to Form 10-Q for the quarter ended March 31, 2008. **

10.55 Management Incentive Compensation Plan for 2007, filed as Exhibit 10.55 to Form 8-K on March 8, 2007. **

10.57.1 2006 Omnibus Plan, as amended and restated March 6, 2008, filed as exhibit 10.57.1 to Form 8-K on March 12, 2008. **

10.58 Special Bonus Arrangement, effective May 24, 2006, filed as Exhibit 10.58 to Form 8-K on May 31, 2006. **

10.59 Executive Annual Incentive Compensation Plan, filed as Exhibit 10.59 to Form 8-K on March 12, 2008. **

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10.60 Letter agreement on Lee B. Foster II's retirement, filed as Exhibit 10.59 to Form 8-K on April 22, 2008. **

10.61 Restricted Stock Agreement between Registrant and Stan L. Hasselbusch dated May 28, 2010 filed as Exhibit 10.61 to Form 8-K on June 1, 2010.

10.62 Restricted Stock Agreement between Registrant and David J. Russo dated May 28, 2010 filed as Exhibit 10.62 to Form 8-K on June 1, 2010.

19 Exhibits marked with an asterisk are filed herewith.

*31.1 Certification of Chief Executive Officer under Section 302 of the Sarbanes-Oxley Act of 2002.

*31.2 Certification of Chief Financial Officer under Section 302 of the Sarbanes-Oxley Act of 2002.

*32.0 Certification of Chief Executive Officer and Chief Financial Officer under Section 906 of the Sarbanes-Oxley Act of 2002.

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* Exhibits marked with an asterisk are filed herewith.

** Identifies management contract or compensatory plan or arrangement required to be filed as an Exhibit.

^ Portions of the exhibit have been omitted pursuant to a confidential treatment request.

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SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

	L.B. FOSTER COMPANY (Registrant)
Date: November 8, 2010	By: /s/ David J. Russo David J. Russo Senior Vice President, Chief Financial and Accounting Officer and Treasurer (Duly Authorized Officer of Registrant)

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