BROWN & BROWN INC
Form 10-Q
August 07, 2014
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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

x **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended June 30, 2014

Or

¨ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____ to _____

Commission file number 001-13619

BROWN & BROWN, INC.

(Exact name of Registrant as specified in its charter)

Florida	**59-0864469**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification Number)**
220 South Ridgewood Avenue, Daytona Beach, FL	**32114**
(Address of principal executive offices)	**(Zip Code)**

Registrant s telephone number, including area code: (386) 252-9601

Registrant s Website: www.bbinsurance.com

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months, and (2) has been subject to such filing requirements for the past 90 days. Yes x No ¨

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes x No ¨

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer, and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer x	Accelerated filer ¨
Non-accelerated filer ¨ (Do not check if a smaller reporting company)	Smaller reporting company ¨

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ¨ No x

The number of shares of the Registrant s common stock, $.10 par value, outstanding as of June 30, 2014 was 144,544,117.

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Disclosure Regarding Forward-Looking Statements

Brown & Brown, Inc., together with its subsidiaries (collectively, we, Brown & Brown or the Company), make forward-looking statements within the safe harbor provision of the Private Securities Litigation Reform Act of 1995, as amended, throughout this report and in the documents we incorporate by reference into this report. You can identify these statements by forward-looking words such as may, will, should, expect, anticipate, believe, intend, plan and continue or similar words. We have based these statements on our current expectations about potential future events. Although we believe the expectations expressed in the forward-looking statements included in this Form 10-Q and the reports, statements, information and announcements incorporated by reference into this report are based on reasonable assumptions within the bounds of our knowledge of our business, a number of factors could cause actual results to differ materially from those expressed in any forward-looking statements, whether oral or written, made by us or on our behalf. Many of these factors have previously been identified in filings or statements made by us or on our behalf. Important factors which could cause our actual results to differ materially from the forward-looking statements in this report include the following items, in addition to those matters described in Part I, Item 2 Management s Discussion and Analysis of Financial Condition and Results of Operations :

Projections of revenues, income, losses, cash flows, capital expenditures;

Future prospects;

Plans for future operations;

Expectations of the economic environment;

Material adverse changes in economic conditions in the markets we serve and in the general economy;

Future regulatory actions and conditions in the states in which we conduct our business;

Competition from others in the insurance agency, wholesale brokerage, insurance programs and service business;

The occurrence of adverse economic conditions, an adverse regulatory climate, or a disaster in California, Florida, Georgia, Illinois, Indiana, Kansas, Massachusetts, Michigan, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Texas, Virginia and Washington, because a significant portion of business written by Brown & Brown is for customers located in these states;

The integration of our operations with those of businesses or assets we have acquired, including our acquisition of The Wright Insurance Group, LLC (Wright), and the failure to realize the expected benefits of

such acquisition and integration;

Exposure units, and premium rates set by insurance companies which have traditionally varied and are difficult to predict;

Our ability to forecast liquidity needs through at least the end of 2014;

Our ability to renew or replace expiring leases;

Outcome of legal proceedings and governmental investigations;

Policy cancellations which can be unpredictable;

Potential changes to the tax rate that would affect the value of deferred tax assets and liabilities;

The inherent uncertainty in making estimates, judgments, and assumptions in the preparation of financial statements in accordance with generally accepted accounting principles in the United States of America (U.S. GAAP);

The performance of acquired businesses and its effect on estimated acquisition earn-out payable; and

Other risks and uncertainties as may be detailed from time to time in our public announcements and Securities and Exchange Commission (SEC) filings.

Assumptions as to any of the foregoing and all statements are not based on historical fact, but rather reflect our current expectations concerning future results and events. Forward-looking statements that we make or that are made by others on our behalf are based on a knowledge of our business and the environment in which we operate, but because of the factors listed above, among others, actual results may differ from those in the forward-looking statements. Consequently, these cautionary statements qualify all of the forward-looking statements we make herein. We cannot assure you that the results or developments anticipated by us will be realized or, even if substantially realized, that those results or developments will result in the expected consequences for us or affect us, our business or our operations in the way we expect. We caution readers not to place undue reliance on these forward-looking statements, which speak only as of their dates. We assume no obligation to update any of the forward-looking statements.

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PART I FINANCIAL INFORMATION

ITEM 1 FINANCIAL STATEMENTS (UNAUDITED)

BROWN & BROWN, INC.

CONDENSED CONSOLIDATED STATEMENTS OF INCOME

(UNAUDITED)

(in thousands, except per share data)	For the three months ended June 30,		For the six months ended June 30,	
	2014	2013	2014	2013
REVENUES				
Commissions and fees	$ 394,690	$ 324,150	$ 756,697	$ 657,943
Investment income	194	239	297	425
Other income, net	2,880	1,403	4,364	2,436
Total revenues	397,764	325,792	761,358	660,804
EXPENSES				
Employee compensation and benefits	196,397	163,514	380,507	323,012
Non-cash stock-based compensation	5,994	3,623	13,509	7,473
Other operating expenses	60,546	47,397	113,007	93,736
Amortization	20,623	16,121	38,499	32,282
Depreciation	5,242	4,263	9,882	8,430
Interest	7,004	3,997	11,076	7,981
Change in estimated acquisition earn-out payables	177	656	6,260	2,178
Total expenses	295,983	239,571	572,740	475,092
Income before income taxes	101,781	86,221	188,618	185,712
Income taxes	40,026	34,214	74,448	73,574
Net income	$ 61,755	$ 52,007	$ 114,170	$ 112,138
Net income per share:				
Basic	$ 0.43	$ 0.36	$ 0.79	$ 0.78
Diluted	$ 0.42	$ 0.36	$ 0.78	$ 0.77
Dividends declared per share	$ 0.1000	$ 0.0900	$ 0.2000	$ 0.1800

See accompanying notes to condensed consolidated financial statements.

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BROWN & BROWN, INC.

CONDENSED CONSOLIDATED BALANCE SHEETS

(UNAUDITED)

(in thousands, except per share data)	June 30, 2014	December 31, 2013
ASSETS		
Current Assets:		
Cash and cash equivalents	$ 309,107	$ 202,952
Restricted cash and investments	300,354	250,009
Short-term investments	12,300	10,624
Premiums, commissions and fees receivable	433,113	395,915
Reinsurance recoverable	28,109	
Prepaid reinsurance premiums	309,020	
Deferred income taxes	16,312	29,276
Other current assets	50,920	39,260
Total current assets	1,459,235	928,036
Fixed assets, net	86,370	74,733
Goodwill	2,509,280	2,006,173
Amortizable intangible assets, net	828,961	618,888
Investments	19,194	16
Other assets	27,432	21,662
Total assets	$ 4,930,472	$ 3,649,508
LIABILITIES AND SHAREHOLDERS EQUITY		
Current Liabilities:		
Premiums payable to insurance companies	$ 634,797	$ 534,360
Losses and loss adjustment expense	28,109	
Unearned premiums	309,020	
Premium deposits and credits due customers	98,532	80,959
Accounts payable	55,856	34,158
Accrued expenses and other liabilities	137,695	157,400
Current portion of long-term debt	6,609	100,000
Total current liabilities	1,270,618	906,877
Long-term debt	1,168,125	380,000
Deferred income taxes, net	337,520	291,704
Other liabilities	72,695	63,786
Shareholders Equity:		

Common stock, par value $0.10 per share; authorized 280,000 shares; issued 145,389 and outstanding 144,544 at 2014 and issued and outstanding 145,419 at 2013	14,539	14,542
Additional paid-in capital	386,233	371,960
Treasury stock, at cost 845 and 0 shares at 2014 and 2013, respectively	(25,025)	
Retained earnings	1,705,767	1,620,639
Total shareholders equity	2,081,514	2,007,141
Total liabilities and shareholders equity	$ 4,930,472	$ 3,649,508

See accompanying notes to condensed consolidated financial statements.

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BROWN & BROWN, INC.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(UNAUDITED)

(in thousands)	For the six months ended June 30, 2014	2013
Cash flows from operating activities:		
Net income	$ 114,170	$ 112,138
Adjustments to reconcile net income to net cash provided by operating activities:		
Amortization	38,499	32,282
Depreciation	9,882	8,430
Non-cash stock-based compensation	13,509	7,473
Change in estimated acquisition earn-out payables	6,260	2,178
Deferred income taxes	14,425	20,922
Income tax benefit from exercise of shares from the stock benefit plans	(2,467)	(307)
Net gain on sales of investments, fixed assets and customer accounts	(2,804)	(974)
Payments on acquisition earn-outs in excess of original estimated payables	(2,539)	(1,926)
Changes in operating assets and liabilities, net of effect from acquisitions and divestitures:		
Restricted cash and investments (increase)	(50,345)	(45,974)
Premiums, commissions and fees receivable (increase)	(21,396)	(6,307)
Reinsurance recoverables (increase)	(2,871)	
Prepaid reinsurance premiums (increase)	(20,007)	
Other assets (increase)	(14,295)	(1,386)
Premiums payable to insurance companies increase	74,646	69,008
Premium deposits and credits due customers increase (decrease)	17,542	(1,651)
Losses and loss adjustment expense increase	2,871	
Unearned premiums increase	20,007	
Accounts payable increase	35,461	6,725
Accrued expenses and other liabilities (decrease) increase	(34,714)	27,517
Other liabilities (decrease)	(18,232)	(6,263)
Net cash provided by operating activities	177,602	221,885
Cash flows from investing activities:		
Additions to fixed assets	(12,577)	(7,123)
Payments for businesses acquired, net of cash acquired	(694,737)	(14,384)
Proceeds from sales of fixed assets and customer accounts	3,207	513
Purchases of investments	(8,515)	(9,935)
Proceeds from sales of investments	8,371	5,914
Net cash used in investing activities	(704,251)	(25,015)

Cash flows from financing activities:		
Proceeds from long-term debt	550,000	
Payments on long-term debt	(230,000)	(60)
Payments on acquisition earn-outs	(8,890)	(6,153)
Borrowings on revolving credit facilities	375,000	
Income tax benefit from exercise of shares from the stock benefit plans	2,467	307
Issuances of common stock for employee stock benefit plans	942	725
Repurchase stock benefit plan shares for employees to fund tax withholdings	(2,648)	(73)
Purchase of treasury stock	(25,025)	
Cash dividends paid	(29,042)	(25,912)
Net cash provided by (used in) financing activities	632,804	(31,166)
Net increase in cash and cash equivalents	106,155	165,704
Cash and cash equivalents at beginning of period	202,952	219,821
Cash and cash equivalents at end of period	$ 309,107	$ 385,525

See accompanying notes to condensed consolidated financial statements.

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BROWN & BROWN, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

(UNAUDITED)

NOTE 1· Nature of Operations

Brown & Brown, Inc., a Florida corporation, and its subsidiaries (collectively, Brown & Brown or the Company) is a diversified insurance agency, wholesale brokerage, insurance programs and services organization that markets and sells to its customers insurance products and services, primarily in the property and casualty area. Brown & Brown s business is divided into four reportable segments: the Retail Division, which provides a broad range of insurance products and services to commercial, public entity, professional and individual customers; the National Programs Division, acting as a managing general agent (MGA), provides professional liability and related package products for certain professionals, flood coverage, targeted products and services designated for specific industries, trade groups, governmental entities and market niches all of which are delivered through nationwide networks of independent agents, and markets; the Wholesale Brokerage Division, which markets and sells excess and surplus commercial insurance and reinsurance, primarily through independent agents and brokers; and the Services Division, which provides insurance-related services, including third-party claims administration and comprehensive medical utilization management services in both the workers compensation and all-lines liability arenas, as well as Medicare set-aside services, Social Security disability and Medicare benefits advocacy services, and catastrophe claims adjusting services. In addition, as the result of our acquisition of the stock of The Wright Insurance Group, LLC (Wright), in May 2014, we own a flood insurance carrier that is a Wright subsidiary. This carrier s business consists of policies written pursuant to the National Flood Insurance Program (NFIP), the program administered by the Federal Emergency Management Agency (FEMA) and several excess flood insurance policies which are fully reinsured.

NOTE 2· Basis of Financial Reporting

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP) for interim financial information and with the instructions for Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by U.S. GAAP for complete financial statements. In the opinion of management, all adjustments (consisting of normal recurring accruals) considered necessary for a fair presentation have been included. These unaudited condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and the notes thereto set forth in the Company s Annual Report on Form 10-K for the year ended December 31, 2013.

Results of operations for the three and six months ended June 30, 2014 are not necessarily indicative of the results that may be expected for the year ending December 31, 2014

NOTE 3· Net Income Per Share

Effective in 2009, the Company adopted new Financial Accounting Standards Board (FASB) authoritative guidance that states that unvested share-based payment awards that contain non-forfeitable rights to dividends or dividend equivalents are participating securities and, therefore, are included in computing earnings per share (EPS) pursuant to the two-class method. The two-class method determines EPS for each class of common stock and participating securities according to dividends or dividend equivalents and their respective participation rights in undistributed earnings. Performance stock shares granted to employees under the Company s Performance Stock Plan and under the

Company s Stock Incentive Plan are considered participating securities as they receive non-forfeitable dividend equivalents at the same rate as common stock.

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Basic EPS is computed based on the weighted average number of common shares (including participating securities) issued and outstanding during the period. Diluted EPS is computed based on the weighted average number of common shares issued and outstanding plus equivalent shares, assuming the exercise of stock options. The dilutive effect of stock options is computed by application of the treasury-stock method. The following is a reconciliation between basic and diluted weighted average shares outstanding:

(in thousands, except per share data)	For the three months ended June 30, 2014	For the three months ended June 30, 2013	For the six months ended June 30, 2014	For the six months ended June 30, 2013
Net income	$ 61,755	$ 52,007	$ 114,170	$ 112,138
Net income attributable to unvested awarded performance stock	(1,531)	(1,157)	(2,915)	(2,467)
Net income attributable to common shares	$ 60,224	$ 50,850	$ 111,255	$ 109,671
Weighted average number of common shares outstanding basic	144,840	144,041	145,133	143,984
Less unvested awarded performance stock included in weighted average number of common shares outstanding basic	(3,590)	(3,205)	(3,705)	(3,168)
Weighted average number of common shares outstanding for basic earnings per common share	141,250	140,836	141,428	140,816
Dilutive effect of stock options	1,782	2,185	1,741	2,122
Weighted average number of shares outstanding diluted	143,032	143,021	143,169	142,938
Net income per share:				
Basic	$ 0.43	$ 0.36	$ 0.79	$ 0.78
Diluted	$ 0.42	$ 0.36	$ 0.78	$ 0.77

NOTE 4· Business Combinations

Acquisitions in 2014

During the six months ended June 30, 2014, Brown & Brown acquired the assets and assumed certain liabilities of five insurance intermediaries, all of the stock of one insurance intermediary that owns an insurance carrier and a book of business (customer accounts). Additionally, miscellaneous adjustments were recorded to the purchase price allocation of certain prior acquisitions completed within the last twelve months as permitted by ASC Topic 805 *Business Combinations* (ASC 805). The aggregate purchase price of these acquisitions and the miscellaneous adjustments totaled $1,140,408,000 including $720,102,000 of cash payments, the issuance of $125,000 in other payables, the assumption of $407,023,000 of liabilities and $13,158,000 of recorded earn-out payables. All of these acquisitions were acquired primarily to expand Brown & Brown s core business and to attract and hire high-quality individuals. Acquisition purchase prices are typically based on a multiple of average annual operating profit earned

over a one- to three-year period within a minimum and maximum price range. The recorded purchase price for all acquisitions consummated after January 1, 2009 included an estimation of the fair value of liabilities associated with any potential earn-out provisions. Subsequent changes in the fair value of earn-out obligations will be recorded in the Condensed Consolidated Statement of Income when incurred.

The fair value of earn-out obligations is based on the present value of the expected future payments to be made to the sellers of the acquired businesses in accordance with the provisions outlined in the respective purchase agreements. In determining fair value, the acquired business s future performance is estimated using financial projections developed by management for the acquired business and reflects market participant assumptions regarding revenue growth and/or profitability. The expected future payments are estimated on the basis of the earn-out formula and performance targets specified in each purchase agreement compared to the associated financial projections. These payments are then discounted to present value using a risk-adjusted rate that takes into consideration the likelihood that the forecasted earn-out payments will be made.

Based on the acquisition date and the complexity of the underlying valuation work, certain amounts included in the Company s Condensed Consolidated Financial Statements may be provisional and thus subject to further adjustments within the permitted measurement period, as defined in ASC 805. For the six months ended June 30, 2014, several adjustments were made within the permitted measurement period that resulted in an increase in the aggregate purchase price of the affected acquisitions of $33,000 relating to the assumption of certain liabilities.

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The following table summarizes the aggregate purchase price allocations made as of the date of the acquisitions for the current-year acquisitions and adjustments made during the measurement period for prior-year acquisitions:

(in thousands)

Name	Business Segment	Effective Date of Acquisition	Cash Paid	Other Payable	Recorded Earn-Out Payable	Net Assets Acquired	*Maximum Potential Earn-Out Payable*
The Wright Insurance Group, LLC.	National Programs	May 1, 2014	610,158			610,158	
Pacific Resources Benefits Advisors, LLC	Retail	May 1, 2014	$ 90,000	$	$ 8,819	$ 98,819	*$ 35,000*
Axia Strategies, Inc.	Wholesale Brokerage	May 1, 2014	9,870		1,824	11,694	*5,200*
Other	Various	Various	10,074	125	2,515	12,714	*6,028*
Total			$ 720,102	$ 125	$ 13,158	$ 733,385	*$ 46,228*

The following table summarizes the adjustments made to the estimated fair values along with the aggregate assets and liabilities acquired as of the date of each acquisition:

(in thousands)	PacRes	Axia	Wright	Other	Total
Cash	$	$	$ 25,365	$	$ 25,365
Other current assets	2,383		16,768	436	19,587
Fixed assets	53	24	7,445	1,719	9,241
Reinsurance recoverables			25,238		25,238
Prepaid reinsurance premiums			289,013		289,013
Goodwill	70,255	7,377	417,539	7,936	503,107
Purchased customer accounts	26,460	4,252	213,958	2,842	247,512
Non-compete agreements	21	41	1,119	119	1,300
Other assets			20,045		20,045
Total assets acquired	99,172	11,694	1,016,490	13,052	1,140,408
Other current liabilities	(353)		(14,911)	(338)	(15,602)
Losses and loss adjustment expense			(25,238)		(25,238)
Unearned premiums			(289,013)		(289,013)
Deferred income tax, net			(44,476)		(44,476)
Other liabilities			(32,694)		(32,694)
Total liabilities assumed	(353)		(406,332)	(338)	(407,023)
Net assets acquired	$ 98,819	11,694	610,158	$ 12,714	$ 733,385

The weighted average useful lives for the acquired amortizable intangible assets are as follows: purchased customer accounts, 15.0 years; and non-compete agreements, 3.3 years.

Goodwill of $503,107,000 was allocated to the Retail, National Programs, Wholesale Brokerage, and Services Divisions in the amounts of $78,395,000, $417,539,000, $(239,000), $7,412,000, respectively. Of the total goodwill of $503,107,000, $148,592,000 is currently deductible for income tax purposes and $341,357,000 is non-deductible. The remaining $13,158,000 relates to the recorded earn-out payables and will not be deductible until it is earned and paid.

The results of operations for the acquisitions completed during 2014 have been combined with those of the Company since the acquisition date. The total revenues and income before income taxes from the acquisitions completed through June 30, 2014, included in the Condensed Consolidated Statement of Income for the six months ended June 30, 2014, were $29,796,000 and $1,294,000, respectively. If the acquisitions had occurred as of the beginning of the period, the Company s results of operations would be as shown in the following table. These unaudited pro forma results are not necessarily indicative of the actual results of operations that would have occurred had the acquisitions actually been made at the beginning of the respective periods.

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(UNAUDITED) (in thousands, except per share data)	For the three months ended June 30, 2014	2013	For the six months ended June 30, 2014	2013
Total revenues	$ 410,801	$ 365,964	$ 812,972	$ 737,673
Income before income taxes	$ 106,186	99,431	$ 206,102	211,003
Net income	$ 64,427	59,975	$ 124,753	127,408
Net income per share:				
Basic	$ 0.44	$ 0.42	$ 0.86	$ 0.88
Diluted	$ 0.44	$ 0.41	$ 0.85	$ 0.87
Weighted average number of shares outstanding:				
Basic	141,250	140,836	141,428	140,816
Diluted	143,032	143,021	143,169	142,938

Acquisitions in 2013

During the six months ended June 30, 2013, Brown & Brown acquired the assets and assumed certain liabilities of two insurance intermediaries and a book of business (customer accounts). The aggregate purchase price of these acquisitions was $17,865,000, including $14,366,000 of cash payments, the issuance of $85,000 in other payables, the assumption of $860,000 of liabilities and $2,554,000 of recorded earn-out payables. All of these acquisitions were acquired primarily to expand Brown & Brown s core businesses and to attract and hire high-quality individuals. Acquisition purchase prices are typically based on a multiple of average annual operating profit earned over a one- to three-year period within a minimum and maximum price range. The recorded purchase price for all acquisitions consummated after January 1, 2009 included an estimation of the fair value of liabilities associated with any potential earn-out provisions. Subsequent changes in the fair value of earn-out obligations will be recorded in the condensed consolidated statement of income when incurred.

The fair value of earn-out obligations is based on the present value of the expected future payments to be made to the sellers of the acquired businesses in accordance with the provisions outlined in the respective purchase agreements. In determining fair value, the acquired business s future performance is estimated using financial projections developed by management for the acquired business and reflects market participant assumptions regarding revenue growth and/or profitability. The expected future payments are estimated on the basis of the earn-out formula and performance targets specified in each purchase agreement compared to the associated financial projections. These payments are then discounted to present value using a risk-adjusted rate that takes into consideration the likelihood that the forecasted earn-out payments will be made.

Based on the acquisition date and the complexity of the underlying valuation work, certain amounts included in the Company s Condensed Consolidated Financial Statements may be provisional and thus subject to further adjustments within the permitted measurement period, as defined in ASC Topic 805 *Business Combinations* (ASC 805). For the six months ended June 30, 2013, several adjustments were made within the permitted measurement period that resulted in reduction to the aggregate purchase price of the applicable acquisitions of $1,115,000, including $18,000 of cash payments, a reduction of $454,000 in other payables, the assumption of $42,000 of liabilities and the reduction of $721,000 in recorded earn-out payables.

The following table summarizes the aggregate purchase price allocations made as of the date of each acquisition for current year acquisitions and adjustments made during the measurement period for prior year acquisitions:

(in thousands)

Name	Business Segment	Date of Acquisition	Cash Paid	Other Payable	Recorded Earn-Out Payable	Net Assets Acquired	*Maximum Potential Earn-Out Payable*
Arrowhead General Insurance Agency Superholding Corporation	National Programs; Services	January 9, 2012	$	$ (454)	$	$ (454)	*$*
Insurcorp & GGM Investments LLC	Retail	May 1, 2012			(834)	(834)	
Richard W. Endlar Insurance Agency, Inc.	Retail	May 1, 2012			220	220	
Texas Security General Insurance Agency, Inc.	Wholesale Brokerage	September 1, 2012			(107)	(107)	
The Rollins Agency, Inc.	Retail	June 1, 2013	13,792	50	2,256	16,098	*4,300*
Other	Various	Various	592	35	298	925	*448*
Total			$ 14,384	$ (369)	$ 1,833	$ 15,848	*$ 4,748*

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The following table summarizes the estimated fair values of the aggregate assets and liabilities acquired as of the date of each acquisition and adjustments made during the measurement period for prior year acquisitions:

(in thousands)	Rollins	Arrowhead	Insurcorp	Endlar	Texas Security	Other	Total
Other current assets	$	$	$	$	$ 25	$ 1,455	$ 1,480
Fixed assets	30					1	31
Goodwill	13,019	(454)	(566)	216	(843)	(685)	10,687
Purchased customer accounts	3,876		(268)	4	708	170	4,490
Non-compete agreements	31					31	62
Total assets acquired	16,956	(454)	(834)	220	(110)	972	16,750
Other current liabilities	(858)				3	(47)	(902)
Net assets acquired	$ 16,098	$ (454)	$ (834)	$ 220	$ (107)	$ 925	$ 15,848

The weighted average useful lives for the acquired amortizable intangible assets are as follows: purchased customer accounts, 15.0 years; and non-compete agreements, 5.0 years.

Goodwill of $10,687,000, was allocated to the Retail, National Programs and Wholesale Brokerage Divisions in the amounts of $11,984,000, ($454,000) and ($843,000), respectively. Of the total goodwill of $10,687,000, $9,308,000 is currently deductible for income tax purposes and ($454,000) is non-deductible. The remaining $1,833,000 relates to the earn-out payables and will not be deductible until it is earned and paid.

The results of operations for the acquisitions completed during 2013 have been combined with those of the Company since their respective acquisition dates. The total revenues and income before income taxes from the acquisitions completed through June 30, 2013, included in the Condensed Consolidated Statement of Income for the three and six months ended June 30, 2013, were $627,000 and $142,000, respectively. If the acquisitions had occurred as of the beginning of the period, the Company s results of operations would be as shown in the following table. These unaudited pro forma results are not necessarily indicative of the actual results of operations that would have occurred had the acquisitions actually been made at the beginning of the respective periods.

(UNAUDITED) (in thousands, except per share data)	For the three months ended June 30, 2013	2012	For the six months ended June 30, 2013	2012
Total revenues	$ 326,753	$ 292,242	$ 663,460	$ 596,931
Income before income taxes	86,506	71,528	186,503	154,953
Net income	52,179	42,700	112,616	92,511
Net income per share:				
Basic	$ 0.36	$ 0.30	$ 0.78	$ 0.65
Diluted	$ 0.36	$ 0.29	$ 0.77	$ 0.63
Weighted average number of shares outstanding:				
Basic	140,836	139,086	140,816	139,044

Diluted	143,021	141,828	142,938	141,664

As of June 30, 2014, the maximum future contingency payments related to all acquisitions totaled $153,019,000, all of which relates to acquisitions consummated subsequent to January 1, 2009.

ASC 805 is the authoritative guidance requiring an acquirer to recognize 100% of the fair values of acquired assets, including goodwill, and assumed liabilities (with only limited exceptions) upon initially obtaining control of an acquired entity. Additionally, the fair value of contingent consideration arrangements (such as earn-out purchase arrangements) at the acquisition date must be included in the purchase price consideration. As a result, the recorded purchase prices for all acquisitions consummated after January 1, 2009 include an estimation of the fair value of liabilities associated with any potential earn-out provisions. Subsequent changes in these earn-out obligations will be recorded in the condensed consolidated statement of income when incurred. Potential earn-out obligations are typically based upon future earnings of the acquired entities, usually between one and three years.

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As of June 30, 2014 and 2013, the fair values of the estimated acquisition earn-out payables were re-evaluated and measured at fair value on a recurring basis using unobservable inputs (Level 3). The resulting additions, payments, and net changes, as well as the interest expense accretion on the estimated acquisition earn-out payables, for the three and six months ended June 30, 2014 and 2013, were as follows:

	For the three months ended June 30,		For the six months ended June 30,	
(in thousands)	**2014**	**2013**	**2014**	**2013**
Balance as of the beginning of the period	$ 48,806	$ 49,469	$ 43,058	$ 52,987
Additions to estimated acquisition earn-out payables	14,527	2,554	14,807	1,833
Payments for estimated acquisition earn-out payables	(10,814)	(3,761)	(11,429)	(8,080)
Subtotal	52,519	48,262	46,436	46,740
Net change in earnings from estimated acquisition earn-out payables:				
Change in fair value on estimated acquisition earn-out payables	(375)	159	5,228	1,156
Interest expense accretion	552	497	1,032	1,022
Net change in earnings from estimated acquisition earn-out payables	177	656	6,260	2,178
Balance as of June 30	$ 52,696	$ 48,918	$ 52,696	$ 48,918

Of the $52,696,000 estimated acquisition earn-out payables as of June 30, 2014, $20,278,000 was recorded as accounts payable and $32,418,000 was recorded as other non-current liabilities.

NOTE 5· Goodwill

Goodwill is subject to at least an annual assessment for impairment by applying a fair value-based test. Brown & Brown completed its most recent annual assessment as of November 30, 2013, and identified no impairment as a result of the evaluation.

The changes in the carrying value of goodwill by reportable segment for the six months ended June 30, 2014 are as follows:

(in thousands)	**Retail**	**National Programs**	**Wholesale Brokerage**	**Services**	**Total**
Balance as of January 1, 2014	$ 1,131,257	$ 467,144	$ 287,242	$ 120,530	$ 2,006,173
Goodwill of acquired businesses	78,395	417,539	7,412	(239)	503,107
Balance as of June 30, 2014	$ 1,209,652	$ 884,683	$ 294,654	$ 120,291	$ 2,509,280

NOTE 6· Amortizable Intangible Assets

Amortizable intangible assets at June 30, 2014 and December 31, 2013, consisted of the following:

	June 30, 2014				December 31, 2013			
(in thousands)	Gross Carrying Value	Accumulated Amortization	Net Carrying Value	Weighted Average Life (Years)(1)	Gross Carrying Value	Accumulated Amortization	Net Carrying Value	Weighted Average Life (Years)(1)
Purchased customer accounts	$ 1,367,293	$ (542,432)	$ 824,861	15.0	$ 1,120,719	$ (505,137)	$ 615,582	14.9
Non-compete agreements	29,415	(25,315)	4,100	6.8	28,115	(24,809)	3,306	7.0
Total	$ 1,396,708	$ (567,747)	$ 828,961		$ 1,148,834	$ (529,946)	$ 618,888	

(1) Weighted average life calculated as of the date of acquisition.

Amortization expense for amortizable intangible assets for the years ending December 31, 2014, 2015, 2016, 2017 and 2018 is estimated to be $82,503,000, $86,861,000, $82,331,000, $79,377,000, and $73,977,000, respectively.

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NOTE 7· Long-Term Debt

Long-term debt at June 30, 2014 and December 31, 2013, consisted of the following:

(in thousands)	2014	2013
Unsecured senior notes	$ 799,734	$ 480,000
Revolving credit facilities	375,000	
Total debt	1,174,734	480,000
Less current portion	(6,609)	(100,000)
Long-term debt	$ 1,168,125	$ 380,000

In July 2004, the Company completed a private placement of $200.0 million of unsecured senior notes (the Notes). The $200.0 million was divided into two series: (1) Series A, which closed on September 15, 2004, for $100.0 million due in 2011 and bore interest at 5.57% per year; and (2) Series B, which closed on July 15, 2004, for $100.0 million due in 2014 and bearing interest at 6.08% per year. The Company has used the proceeds from the Notes for general corporate purposes, including acquisitions and repayment of existing debt. On September 15, 2011, the $100.0 million of Series A Notes were redeemed on their normal maturity date through use of funds from the Master Agreement (defined below). As of June 30, 2014 and December 31, 2013, there was an outstanding balance on the Series B Notes of $100.0 million. It is management s intention to pay off the Series B Notes at the time of maturity with proceeds from the revolving portion of the JPM Credit Facility (as described in Note 13, Subsequent Events).

On December 22, 2006, the Company entered into a Master Shelf and Note Purchase Agreement (the Master Agreement) with a national insurance company (the Purchaser). On September 30, 2009, the Company and the Purchaser amended the Master Agreement to extend the term of the agreement until August 20, 2012. The Purchaser also purchased Notes issued by the Company in 2004. The Master Agreement provides for a $200.0 million private uncommitted shelf facility for the issuance of senior unsecured notes over a three-year period, with interest rates that may be fixed or floating and with such maturity dates, not to exceed ten years, as the parties may determine. The Master Agreement includes various covenants, limitations and events of default similar to the Notes issued in 2004. The initial issuance of notes under the Master Agreement occurred on December 22, 2006, through the issuance of $25.0 million in Series C Senior Notes due December 22, 2016, with a fixed interest rate of 5.66% per year. On February 1, 2008, $25.0 million in Series D Senior Notes due January 15, 2015, with a fixed interest rate of 5.37% per year, were issued. It is management s intention to pay off the Series D Senior Notes at the time of maturity with proceeds from the revolving portion of the Credit Facility. On September 15, 2011, and pursuant to a Confirmation of Acceptance (the Confirmation), dated January 21, 2011, in connection with the Master Agreement, $100.0 million in Series E Senior Notes were issued and are due September 15, 2018, with a fixed interest rate of 4.50% per year. The Series E Senior Notes were issued for the sole purpose of retiring the Series A Senior Notes. As of June 30, 2014, and December 31, 2013, there was an outstanding debt balance issued under the provisions of the Master Agreement of $150.0 million.

On October 12, 2012, the Company entered into a Master Note Facility Agreement (the New Master Agreement) with another national insurance company (the New Purchaser). The New Purchaser also purchased Senior Notes issued by the Company in 2004. The New Master Agreement provides for a $125.0 million private uncommitted shelf facility for the issuance of unsecured senior notes over a three-year period, with interest rates that may be fixed or floating and with such maturity dates, not to exceed ten years, as the parties may determine. The New Master Agreement includes

various covenants, limitations and events of default similar to the Master Agreement. At June 30, 2014 and December 31, 2013, there were no borrowings against this facility.

On January 9, 2012, the Company entered into: (1) an amended and restated revolving and term loan credit agreement (the SunTrust Agreement) with SunTrust Bank (SunTrust) that provides for (a) a $100.0 million term loan (the SunTrust Term Loan) and (b) a $50.0 million revolving line of credit (the SunTrust Revolver) and (2) a $50.0 million promissory note (the JPM Note) in favor of JPMorgan Chase Bank, N.A. (JPMorgan), pursuant to a letter agreement executed by JP Morgan (together with the JPM Note, the JPM Agreement) that provided for a $50.0 million uncommitted line of credit bridge facility (the JPM Bridge Facility). The SunTrust Term Loan, the SunTrust Revolver and the JPM Bridge Facility were each funded on January 9, 2012, and provided the financing for the Arrowhead acquisition. The SunTrust Agreement amended and restated the Prior Loan Agreement. The SunTrust Revolver and JPM Bridge Facility were paid off by the JPM Term Loan (defined below).

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The maturity date for the SunTrust Term Loan and the SunTrust Revolver was December 31, 2016, at which time all outstanding principal and unpaid interest would have been due. Both the SunTrust Term Loan and the SunTrust Revolver were able to be increased by up to $50.0 million (bringing the total amount available to $150.0 million for the SunTrust Term Loan and $100.0 million for the SunTrust Revolver) prior to their termination. The calculation of interest and fees for the SunTrust Agreement was generally based on the Company s funded debt-to-EBITDA ratio. Interest was charged at a rate equal to 1.00% to 1.40% above LIBOR or 1.00% below the Base Rate, each as more fully described in the SunTrust Agreement. Fees included an up-front fee, an availability fee of 0.175% to 0.25%, and a letter of credit margin fee of 1.00% to 1.40%. The obligations under the SunTrust Term Loan and SunTrust Revolver were unsecured and the SunTrust Agreement included various covenants, limitations and events of default that are customary for similar facilities for similar borrowers and that are substantially similar to those contained in the Prior Loan Agreement. On May 20, 2014, in connection with closing the Wright acquisition and funding of the Credit Facility (as defined below), the SunTrust Term Loan was paid in full using proceeds from the Credit Facility (as defined below) and the SunTrust Revolver was also terminated at that time.

The maturity date for the JPM Bridge Facility was February 3, 2012, at which time all outstanding principal and unpaid interest would have been due. On January 26, 2012, the Company entered into a term loan agreement (the JPM Agreement) with JPMorgan that provided for a $100.0 million term loan (the JPM Term Loan). The JPM Term Loan was fully funded on January 26, 2012, and provided the financing to fully repay (1) the JPM Bridge Facility and (2) the SunTrust Revolver. As a result of the January 26, 2012 financing and repayments, the JPM Bridge Facility was terminated and the SunTrust Revolver s amount outstanding was reduced to zero.

The maturity date for the JPM Term Loan was December 31, 2016, at which time all outstanding principal and unpaid interest would have been due. Interest was charged at a rate equal to the Alternative Base Rate or 1.00% above the Adjusted LIBOR Rate, each as more fully described in the JPM Agreement. Fees included an up-front fee. The obligations under the JPM Term Loan were unsecured and the JPM Agreement includes various covenants, limitations and events of default that are customary for similar facilities for similar borrowers. On May 20, 2014, in connection with closing the Wright acquisition and funding of the Credit Facility (as defined below), the JPM Term Loan was paid in full and terminated using proceeds from the Credit Facility (as defined below).

On July 1, 2013, in conjunction with the acquisition of Beecher Carlson, the Company entered into: (1) a revolving loan agreement (the Wells Fargo Agreement) with Wells Fargo Bank, N.A. that provides for a $50.0 million revolving line of credit (the Wells Fargo Revolver) and (2) a term loan agreement (the Bank of America Agreement) with Bank of America, N.A. (Bank of America) that provided for a $30.0 million term loan (the Bank of America Term Loan).

The maturity date for the Wells Fargo Revolver is December 31, 2016, at which time all outstanding principal and unpaid interest will be due. The Wells Fargo Revolver may be increased by up to $50.0 million (bringing the total amount available to $100.0 million). The calculation of interest and fees for the Wells Fargo Agreement is generally based on the Company s funded debt-to-EBITDA ratio. Interest is charged at a rate equal to 1.00% to 1.40% above LIBOR or 1.00% below the Base Rate, each as more fully described in the Wells Fargo Agreement. Fees include an up-front fee, an availability fee of 0.175% to 0.25%, and a letter of credit margin fee of 1.00% to 1.40%. The obligations under the Wells Fargo Revolver are unsecured and the Wells Fargo Agreement includes various covenants, limitations and events of default that are customary for similar facilities for similar borrowers. The Wells Fargo Revolver was drawn down in the amount of $30.0 million on July 1, 2013. As of April 16, 2014, in connection with the agreement of the Credit Facility (as defined below), an amendment to the agreement was established to reduce the total revolving loan commitment from $50.0 million to $25.0 million. There were no borrowings against the Wells Fargo Revolver as of June 30, 2014 and December 31, 2013.

The maturity date for the Bank of America Term Loan was December 31, 2016, at which time all outstanding principal and unpaid interest would have been due. The calculation of interest for the Bank of America Agreement was generally based on the Company s fixed charge coverage ratio. Interest was charged at a rate equal to the Alternative Base Rate or 1.00% to 1.40% above the Adjusted LIBOR Rate, each as more fully described in the Bank of America Agreement. Fees included an up-front fee. The obligations under the Bank of America Term Loan were unsecured and the Bank of America Agreement included various covenants, limitations and events of default that are customary for similar facilities for similar borrowers. The Bank of America Term Loan was funded in the amount of $30.0 million on July 1, 2013. On May 20, 2014, in connection with closing the Wright acquisition and funding of the Credit Facility, the term loan was paid in full using proceeds from the Credit Facility (as defined below).

The 30-day Adjusted LIBOR Rate as of June 30, 2014 was 0.19%.

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On April 17, 2014, the Company entered into a credit agreement with JPMorgan Chase Bank, N.A. as administrative agent and certain other banks as co-syndication agents and co-documentation agents (the Credit Agreement). The Credit Agreement in the amount of $1,350.0 million provides for an unsecured revolving credit facility in the initial amount of $800.0 million and unsecured term loans in the initial amount of $550.0 million, either or both of which may, subject to lenders discretion, potentially be increased by up to $500.0 million. The Credit Facility was funded on May 20, 2014 in conjunction with the closing of the Wright acquisition, with the $550.0 million term loan being funded as well as a drawdown of $375.0 million on the revolving loan facility. Use of these proceeds were to retire existing term loan debt including the JPM Term Loan Agreement, SunTrust Term Loan Agreement and Bank of America Term Loan Agreement in total of $230.0 million (as described above) and to facilitate the closing of the Wright acquisition as well as other acquisitions. The Credit Facility terminates on May 20, 2019, but either or both of the revolving credit facility and the term loans may be extended for two additional one-year periods at the Company s request and at the discretion of the respective lenders. Interest and facility fees in respect to the Credit Facility are based on the better of the Company s net debt leverage ratio or a non-credit enhanced senior unsecured long-term debt rating. Based on the Company s net debt leverage ratio, the rates of interest for the first two quarters charged on the term loan and revolving loan will be 1.375% and 1.175% respectively and above the adjusted LIBOR rate for outstanding amounts drawn. There are fees included in the facility which include a facility fee based on the revolving credit commitments of the lenders (whether used or unused) at a rate of 0.20% and letter of credit fees based on the amounts of outstanding secured or unsecured letters of credit. The Credit Facility includes various covenants, limitations and events of default customary for similar facilities for similarly rated borrowers. As of June 30, 2014, there was an outstanding debt balance issued under the provisions of the Credit Facility in total of $925.0 million.

The Notes, the Master Agreement and the Credit Facility Agreement all require the Company to maintain certain financial ratios and comply with certain other covenants. The Company was in compliance with all such covenants as of June 30, 2014 and December 31, 2013.

NOTE 8· Supplemental Disclosures of Cash Flow Information and Non-Cash Financing and Investing Activities

	For the six months ended June 30,	
(in thousands)	**2014**	**2013**
Cash paid during the period for:		
Interest	$ 11,070	$ 7,660
Income taxes	$ 58,079	$ 52,077

Brown & Brown s significant non-cash investing and financing activities are summarized as follows:

	For the six months ended June 30,	
(in thousands)	**2014**	**2013**
Other payable issued for purchased customer accounts	$ 125	$ 257
Estimated acquisition earn-out payables and related charges	$ 13,158	$ 1,833
Notes received on the sale of fixed assets and customer accounts	$ 131	$ 614

NOTE 9· Legal and Regulatory Proceedings

The Company is involved in numerous pending or threatened proceedings by or against Brown & Brown, Inc. or one or more of its subsidiaries that arise in the ordinary course of business. The damages that may be claimed against the Company in these various proceedings are in some cases substantial, including in many instances claims for punitive or extraordinary damages. Some of these claims and lawsuits have been resolved, others are in the process of being resolved and others are still in the investigation or discovery phase. The Company will continue to respond appropriately to these claims and lawsuits and to vigorously protect its interests.

Although the ultimate outcome of such matters cannot be ascertained and liabilities in indeterminate amounts may be imposed on Brown & Brown, Inc. or its subsidiaries, on the basis of present information, availability of insurance and legal advice, it is the opinion of management that the disposition or ultimate determination of such claims will not have a material adverse effect on the Company s condensed consolidated financial position. However, as (i) one or more of the Company s insurance companies could take the position that portions of these claims are not covered by the Company s insurance, (ii) to the extent that payments are made to resolve claims and lawsuits, applicable insurance policy limits are eroded, and (iii) the claims and lawsuits relating to these matters are continuing to develop, it is possible that future results of operations or cash flows for any particular quarterly or annual period could be materially affected by unfavorable resolutions of these matters.

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NOTE 10· Segment Information

Brown & Brown s business is divided into four reportable segments: the Retail Division, which provides a broad range of insurance products and services to commercial, public and quasi-public entities, and to professional and individual customers; the National Programs Division, which provides professional liability and related package products for certain professionals delivered through nationwide networks of independent agents, and markets targeted products and services designed for specific industries, trade groups, public and quasi-public entities, and market niches; the Wholesale Brokerage Division, which markets and sells excess and surplus commercial and personal lines insurance, and reinsurance, primarily through independent agents and brokers; and the Services Division, which provides insurance-related services, including third-party claims administration and comprehensive medical utilization management services in both the workers compensation and all-lines liability arenas, as well as Medicare set-aside services, Social Security disability and Medicare benefits advocacy services and catastrophe claims adjusting services.

Brown & Brown conducts all of its operations within the United States of America, except for one wholesale brokerage operation based in London, England, and retail operations in Bermuda and the Cayman Islands. These three operations earned $3.8 million and $2.8 million of total revenues for the three months ended June 30, 2014 and 2013, respectively. These operations earned $7.0 million and $5.9 million of total revenues for the six months ended June 30, 2014 and 2013, respectively. Additionally, these operations earned $12.2 million of total revenues for the year ended December 31, 2013. Long-lived assets held outside of the United States during the six months ended June 30, 2014 and 2013 were not material.

The accounting policies of the reportable segments are the same as those described in Note 1 of the Company s Annual Report on Form 10-K for the year ended December 31, 2013. Brown & Brown evaluates the performance of its segments based upon revenues and income before income taxes. Inter-segment revenues are eliminated.

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Summarized financial information concerning Brown & Brown s reportable segments is shown in the following table. The Other column includes any income and expenses not allocated to reportable segments and corporate-related items, including the inter-company interest expense charge to the reporting segment.

	For the three months ended June 30, 2014					
(in thousands)	Retail	National Programs	Wholesale Brokerage	Services	Other	Total
Total revenues	$ 210,976	$ 90,875	$ 60,059	$ 35,757	$ 97	$ 397,764
Investment income	$ 16	$ 66	$ 7	$	$ 105	$ 194
Amortization	$ 10,457	$ 6,214	$ 2,932	$ 1,010	$ 10	$ 20,623
Depreciation	$ 1,614	$ 1,842	$ 670	$ 628	$ 488	$ 5,242
Interest expense	$ 11,224	$ 12,447	$ 523	$ 1,971	$ (19,161)	$ 7,004
Income before income taxes	$ 49,098	$ 9,685	$ 17,376	$ 5,008	$ 20,614	$ 101,781
Total assets	$ 3,166,802	$ 2,406,240	$ 990,355	$ 278,137	$ (1,911,062)	$ 4,930,472
Capital expenditures	$ 1,567	$ 5,159	$ 517	$ 244	$ 363	$ 7,850

	For the three months ended June 30, 2013					
(in thousands)	Retail	National Programs	Wholesale Brokerage	Services	Other	Total
Total revenues	$ 171,819	$ 68,354	$ 54,823	$ 30,403	$ 393	$ 325,792
Investment income	$ 23	$ 5	$ 4	$	$ 207	$ 239
Amortization	$ 8,789	$ 3,511	$ 2,887	$ 925	$ 9	$ 16,121
Depreciation	$ 1,371	$ 1,326	$ 716	$ 401	$ 449	$ 4,263
Interest expense	$ 5,649	$ 5,590	$ 723	$ 1,883	$ (9,848)	$ 3,997
Income before income taxes	$ 44,482	$ 11,226	$ 15,760	$ 2,589	$ 12,164	$ 86,221
Total assets	$ 2,501,084	$ 1,224,175	$ 925,901	$ 246,235	$ (1,571,075)	$ 3,326,320
Capital expenditures	$ 1,488	$ 1,420	$ 561	$ 379	$ 328	$ 4,176

	For the six months ended June 30, 2014					
(in thousands)	Retail	National Programs	Wholesale Brokerage	Services	Other	Total
Total revenues	$ 413,667	$ 165,045	$ 115,079	$ 67,399	$ 168	$ 761,358
Investment income	$ 32	$ 71	$ 11	$ 2	$ 181	$ 297
Amortization	$ 20,608	$ 9,989	$ 5,815	$ 2,067	$ 20	$ 38,499
Depreciation	$ 3,198	$ 3,309	$ 1,320	$ 1,091	$ 964	$ 9,882
Interest expense	$ 21,937	$ 17,888	$ 942	$ 3,941	$ (33,632)	$ 11,076
Income before income taxes	$ 90,343	$ 25,808	$ 30,114	$ 7,823	$ 34,530	$ 188,618
Total assets	$ 3,166,802	$ 2,406,240	$ 990,355	$ 278,137	$ (1,911,062)	$ 4,930,472
Capital expenditures	$ 3,679	$ 6,857	$ 999	$ 535	$ 507	$ 12,577

	For the six months ended June 30, 2013					
(in thousands)	Retail	National Programs	Wholesale Brokerage	Services	Other	Total
Total revenues	$ 346,387	$ 137,294	$ 103,520	$ 73,050	$ 553	$ 660,804
Investment income	$ 46	$ 10	$ 9	$ 1	$ 359	$ 425
Amortization	$ 17,600	$ 7,030	$ 5,784	$ 1,849	$ 19	$ 32,282

Depreciation	$ 2,742	$ 2,574	$ 1,423	$ 798	$ 893	$ 8,430
Interest expense	$ 11,849	$ 11,284	$ 1,478	$ 3,804	$ (20,434)	$ 7,981
Income before income taxes	$ 90,693	$ 25,238	$ 26,122	$ 16,542	$ 27,117	$ 185,712
Total assets	$ 2,501,084	$ 1,224,175	$ 925,901	$ 246,235	$ (1,571,075)	$ 3,326,320
Capital expenditures	$ 2,823	$ 2,312	$ 1,097	$ 498	$ 393	$ 7,123

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NOTE 11· Investments

Investments at June 30, 2014 and December 31, 2013 consisted of the following:

	June 30, 2014 Carrying Value		December 31,2013 Carrying Value	
(in thousands)	Current	Non-Current	Current	Non-Current
Certificates of deposit, U.S. Treasury securities and obligations of U.S. Government agencies, Corporate debt and other securities	$ 12,300	$ 19,021	$ 10,624	$ 16

Certificates of deposit and other securities with maturities of less than one year are classified as short-term investments and are carried at fair value, which approximates cost. Fixed maturity securities are classified as available-for-sale and are carried at fair value. The contractual cash flows of the U.S. Treasury Securities and obligations of U.S. Government agencies investments are either guaranteed by the U.S. Government or an agency of the U.S. Government. The corporate securities are highly rated securities with no indicators of potential impairment.

NOTE 12· Reinsurance

The Company protects itself from claims related losses by reinsuring all claims related risk exposure. The only line of insurance the Company writes is flood insurance associated with the Wright acquisition, with all exposure reinsured with the FEMA for basic admitted policies conforming to the NFIP. For excess flood insurance policies, all exposure is reinsured with a reinsurance carrier. Reinsurance does not legally discharge the ceding insurer from the primary liability for the full amount due under the reinsured policies. Reinsurance premiums, commissions, expense reimbursement and related reserves related to ceded business are accounted for on a basis consistent with the accounting for the original policies issued and the terms of reinsurance contracts. Premiums earned and losses and loss adjustment expenses incurred are reported net of reinsurance amounts. Other underwriting expenses are shown net of earned ceding commission income. The liabilities for unpaid losses and loss adjustment expenses and unearned premiums are reported gross of ceded reinsurance recoverable.

Balances due from reinsurers on unpaid losses and loss adjustment expenses, including an estimate of such recoverables related to reserves for incurred but not reported (IBNR) losses, are reported as assets and are included in reinsurance recoverable even though amounts due on unpaid loss and loss adjustment expense are not recoverable from the reinsurer until such losses are paid. The Company does not believe it is exposed to any material credit risk through its reinsurance as the reinsurer is the FEMA for basic admitted flood policies and a national reinsurance carrier for excess flood policies, which is rated A+ from AM Best. Historically, no amounts due from reinsurance have been written off as uncollectible.

NOTE 13· Subsequent Events

On July 15, 2014, the Series B Senior Notes totaling $100.0 million matured and the principal plus remaining interest were paid off. In a planned event to retire the notes on the maturity date, the Company borrowed $100.0 million from the revolving portion of the JPM Credit Facility Revolving Loan. The Company has an outstanding balance of $475.0 million of the $800.0 million revolving portion of the JPM Credit Facility Revolving Loan.

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

THE FOLLOWING DISCUSSION UPDATES THE MD&A CONTAINED IN THE COMPANY S ANNUAL REPORT ON FORM 10-K FOR THE FISCAL YEAR ENDED DECEMBER 31, 2013, AND THE TWO DISCUSSIONS SHOULD BE READ TOGETHER.

GENERAL

We are a diversified insurance agency, wholesale brokerage, insurance programs and services organization headquartered in Daytona Beach, Florida. As an insurance intermediary, our principal sources of revenue are commissions paid by insurance companies and, to a lesser extent, fees paid directly by customers. Commission revenues generally represent a percentage of the premium paid by an insured and are materially affected by fluctuations in both premium rate levels charged by insurance companies and the insureds underlying insurable exposure units, which are units that insurance companies use to measure or express insurance exposed to risk (such as property values, or sales and payroll levels) to determine what premium to charge the insured. Insurance companies establish these premium rates based upon many factors, including reinsurance rates paid by such insurance companies, none of which we control.

The volume of business from new and existing customers, fluctuations in insurable exposure units and changes in general economic and competitive conditions all affect our revenues. For example, level rates of inflation or a general decline in economic activity could limit increases in the values of insurable exposure units. Conversely, the increasing costs of litigation settlements and awards have caused some customers to seek higher levels of insurance coverage. Historically, our revenues have typically grown as a result of, among other things, our focus on net new business growth and acquisitions.

We attempt to foster a strong, decentralized sales culture with a goal of consistent, sustained profitable growth over the long term.

We increased revenues every year from 1993 to 2013, with the exception of 2009, when our revenues dropped 1.0%. Our revenues grew from $95.6 million in 1993 to $1.4 billion in 2013, reflecting a compound annual growth rate of 14.2%. In the same 20-year period, we increased net income from $8.0 million to $217.1 million in 2013, a compound annual growth rate of 17.9%.

The years 2007 through 2011 posed significant challenges for us and for our industry in the form of a prevailing decline in insurance premium rates, commonly referred to as a soft market and increased significant governmental involvement in the Florida insurance marketplace which resulted in a substantial loss of revenues for us. Additionally, beginning in the second half of 2008 and throughout 2011, there was a general decline in insurable exposure units as the consequence of the general weakening of the economy in the United States. As a result, from the first quarter of 2007 through the fourth quarter of 2011 we experienced negative internal revenue growth each quarter. The continued declining exposure units during 2010 and 2011 had a greater negative impact on our commissions and fees revenues than declining insurance premium rates.

Beginning in the first quarter of 2012, many insurance premium rates began to slightly increase. Additionally, in the second quarter of 2012, the general declines in insurable exposure units started to flatten and these exposure units subsequently began to gradually increase during the year. With certain limited exceptions, these trends have continued through 2013 and the second quarter of 2014.

For the three and six-month periods ended June 30, 2014, our consolidated internal revenue growth rates were 3.1% and 0.8%, respectively, but excluding the impact of revenues associated with Hurricane Sandy, our consolidated internal growth rates for the three and six month periods ended June 30, 2014 were 3.8% and 3.9% respectively. Additionally, each of our four divisions recorded positive internal revenue growth for each quarter of 2014. In the event that the gradual increases in insurance premium rates and insurable exposure units that occurred in 2013 and in the first half of 2014 continue for the remainder of 2014, we believe we will continue to see positive quarterly internal revenue growth rates for the remaining six months of 2014.

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We also earn profit-sharing contingent commissions, which are profit-sharing commissions based primarily on underwriting results, but which may also reflect considerations for volume, growth and/or retention. These commissions are primarily received in the first and second quarters of each year, based on the aforementioned considerations for the prior year(s). Over the last three years, profit-sharing contingent commissions have averaged approximately 4.4% of the previous year s total commissions and fees revenue. Profit-sharing contingent commissions are typically included in our total commissions and fees in the Condensed Consolidated Statement of Income in the year received. The term core commissions and fees excludes profit-sharing contingent commissions and guaranteed supplemental commissions, and therefore represents the revenues earned directly from specific insurance policies sold, and specific fee-based services rendered. In contrast, the term core organic commissions and fees is our core commissions and fees less (i) the core commissions and fees earned for the first twelve months by newly-acquired operations and (ii) divested business (core commissions and fees generated from offices, books of business or niches sold or terminated during the comparable period). Core organic commissions and fees are reported in this manner in order to express the current year s core commissions and fees on a comparable basis with the prior year s core commissions and fees. The resulting net change reflects the aggregate changes attributable to (i) net new and lost accounts, (ii) net changes in our clients exposure units, and (iii) net changes in insurance premium rates. The net changes in each of these three components are determined for each of our customers. Core organic commissions and fees can reflect either positive growth with a net increase in revenues, or negative growth with a net decrease in revenues.

Beginning a few years ago, five to six national insurance companies replaced their loss-ratio based profit-sharing contingent commission agreements with new guaranteed fixed-base agreements, referred to as Guaranteed Supplemental Commissions (GSCs). For 2013, only four national insurance companies still used GSCs in lieu of loss-ratio based profit-sharing contingent commissions. Since GSCs are not subject to the uncertainty of loss ratios, they are accrued throughout the year based on actual premiums written. As of December 31, 2013, we accrued and earned $8.3 million of GSCs during 2013, most of which were collected in the first quarter of 2014. For the three-month periods ended June 30, 2014 and 2013, we earned $2.1 million and $1.7 million, respectively, from GSCs. For the six-month periods ended June 30, 2014 and 2013, we earned $5.0 million and $3.9 million, respectively, from GSCs.

Fee revenues relate to fees negotiated in lieu of commissions, which are recognized as services are rendered. Fee revenues have historically been generated primarily by: (1) our Services Division, which provides insurance-related services, including third-party claims administration and comprehensive medical utilization management services in both the workers compensation and all-lines liability arenas, as well as Medicare set-aside services, Social Security disability and Medicare benefits advocacy services, and catastrophe claims adjusting services, and (2) our National Programs and Wholesale Brokerage Divisions, which earn fees primarily for the issuance of insurance policies on behalf of insurance companies. These services are provided over a period of time, typically one year. However, in conjunction with our July 1, 2013 acquisition of Beecher Carlson, which has a focus on large customers that generally pay us fees directly, the fee revenues in our Retail Division for 2014 have increased by nearly $39.5 million to $53.8 million. Fee revenues, on a consolidated basis, as a percentage of our total commissions and fees, represented 23.1% in 2013, 21.7% in 2012 and 16.4% in 2011.

Historically, investment income has consisted primarily of interest earnings on premiums and advance premiums collected and held in a fiduciary capacity before being remitted to insurance companies. Our policy is to invest available funds in high-quality, short-term fixed income investment securities. As a result of the bank liquidity and solvency issues in the United States in the last quarter of 2008, we moved substantial amounts of our cash into non-interest-bearing checking accounts so that they would be fully insured by the Federal Deposit Insurance Corporation (FDIC) or into money-market investment funds (a portion of which is FDIC insured) of SunTrust and Wells Fargo, two large national banks. Effective January 1, 2013, the FDIC ceased providing insurance guarantees on

non-interest-bearing checking accounts and since that time we have invested in both interest bearing and non-interest-bearing checking accounts. Investment income also includes gains and losses realized from the sale of investments. Other income primarily reflects net gains on sales of customer accounts and fixed assets, but also includes sub-rental income, legal settlements and other miscellaneous income.

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Company Overview Second Quarter of 2014

We continued the trend that began in the first quarter of 2012, of achieving a quarterly positive growth rate of our core organic commissions and fees in the second quarter of 2014. When the revenues associated with Hurricane Sandy reported by our Colonial Claims business in our Services Division in the second quarter of 2013 are excluded, we produced a positive growth rate of 3.8% for the second quarter of 2014. This accounted for $11.9 million of new core organic commissions and fees.

Additionally, our profit-sharing contingent commissions and GSCs for the three months ended June 30, 2014 decreased by $4.7 million compared to the second quarter of 2013. A material portion of this decrease was related to reporting the contingent revenues within our FIU business in our Programs Division in the first quarter of the current year versus the second quarter of 2013. Other income increased by $1.5 million primarily as a result of gains on book of business sales.

Income before income taxes in the three month period ended June 30, 2014 increased from the second quarter of 2013 by $15.6 million, primarily as a result of new acquisitions and net new business.

Acquisitions

Approximately 38,500 independent insurance agencies are estimated to be operating currently in the United States. Part of our continuing business strategy is to attract high-quality insurance intermediaries to join our operations. From 1993 through the second quarter of 2014, we acquired 455 insurance intermediary operations, excluding acquired books of business (customer accounts). In the second quarter of 2014, we acquired a flood insurance carrier with business consisting of flood policies written through the National Flood Insurance Program administered by FEMA. For excess flood insurance policies, all exposure is reinsured with a reinsurance carrier.

A summary of our acquisitions and related adjustments to the purchase price of prior acquisitions for the six months ended June 30, 2014 and 2013 are as follows (in millions, except for number of acquisitions):

	Number of Acquisitions		Estimated Annual	Cash	Note	Other	Liabilities	Recorded Earn-Out	Aggregate Purchase
	Asset	Stock	Revenues	Paid	Payable	Payable	Assumed	Payable	Price
2014	5	1	$ 154.8	$ 720.1	$	$ 0.1	$ 407.0	$ 13.2	$ 1,140.4
2013	2		$ 6.0	$ 14.4	$	$ (0.3)	$ 0.9	$ 1.8	$ 16.8

Critical Accounting Policies

Our Condensed Consolidated Financial Statements are prepared in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP). The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses. We continually evaluate our estimates, which are based on historical experience and on various other assumptions that we believe to be reasonable under the circumstances. These estimates form the basis for our judgments about the carrying values of our assets and liabilities, which values are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

We believe that of our significant accounting and reporting policies, the more critical policies include our accounting for revenue recognition, business acquisitions and purchase price allocations, intangible asset impairments and reserves for litigation. In particular, the accounting for these areas requires significant judgments to be made by management. Different assumptions in the application of these policies could result in material changes in our consolidated financial position or consolidated results of operations. Refer to Note 1 in the Notes to Consolidated Financial Statements in our Annual Report on Form 10-K for the year ended December 31, 2013 on file with the Securities and Exchange Commission (SEC) for details regarding our critical and significant accounting policies.

RESULTS OF OPERATIONS FOR THE THREE AND SIX MONTHS ENDED JUNE 30, 2014 AND 2013

The following discussion and analysis regarding results of operations and liquidity and capital resources should be considered in conjunction with the accompanying Condensed Consolidated Financial Statements and related Notes.

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Financial information relating to our Condensed Consolidated Financial Results for the three and six months ended June 30, 2014 and 2013 is as follows (in thousands, except percentages):

	For the three months ended June 30,			For the six months ended June 30,		
	2014	2013	% Change	2014	2013	% Change
REVENUES						
Core commissions and fees	$ 389,850	$ 314,571	23.9%	$ 717,177	$ 621,103	15.5%
Profit-sharing contingent commissions	2,756	7,879	(65.0)%	34,504	32,918	4.8%
Guaranteed supplemental commissions	2,084	1,700	22.6%	5,016	3,922	27.9%
Investment income	194	239	(18.8)%	297	425	(30.1)%
Other income, net	2,880	1,403	105.3%	4,364	2,436	79.1%
Total revenues	397,764	325,792	22.1%	761,358	660,804	15.2%
EXPENSES						
Employee compensation and benefits	196,397	163,514	20.1%	380,507	323,012	17.8%
Non-cash stock-based compensation	5,994	3,623	65.4%	13,509	7,473	80.8%
Other operating expenses	60,546	47,397	27.7%	113,007	93,736	20.6%
Amortization	20,623	16,121	27.9%	38,499	32,282	19.3%
Depreciation	5,242	4,263	23.0%	9,882	8,430	17.2%
Interest	7,004	3,997	75.2%	11,076	7,981	38.8%
Change in estimated acquisition earn-out payables	177	656	(73.0)%	6,260	2,178	NMF(1)
Total expenses	295,983	239,571	23.5%	572,740	475,092	20.6%
Income before income taxes	101,781	86,221	18.0%	188,618	185,712	1.6%
Income taxes	40,026	34,214	17.0%	74,448	73,574	1.2%
NET INCOME	$ 61,755	$ 52,007	18.7%	$ 114,170	$ 112,138	1.8%
Net internal growth rate core organic commissions and fees	3.1%	7.4%		0.8%	8.8%	
Employee compensation and benefits ratio	49.4%	50.2%		50.0%	48.9%	
Other operating expenses ratio	15.2%	14.5%		14.8%	14.2%	
Capital expenditures	$ 7,850	$ 4,176		$ 12,577	$ 7,123	
Total assets at June 30, 2014 and				$ 4,930,472	$ 3,326,320	

2013

(1) NMF = Not a meaningful figure

Commissions and Fees

Commissions and fees, including profit-sharing contingent commissions and GSCs, for the second quarter of 2014 increased $70.5 million to $394.7 million, or 21.8%, over the same period in 2013. Profit-sharing contingent commissions and GSCs for the second quarter of 2014 decreased $4.7 million, or 49.5%, over the second quarter of 2013. The net decrease of $4.7 million in the second quarter was due largely to timing of certain profit sharing commissions which were recognized in the first quarter of 2014 as compared to the second quarter of 2013. Core commissions and fees revenue for the second quarter of 2014 increased $75.3 million on a net basis, of which approximately $67.2 million represented core commissions and fees from agencies acquired since the second quarter of 2013. After divested business of $1.7 million, the remaining net increase of $9.8 million represented net new business, which reflects an internal growth rate of 3.1% for core organic commissions and fees. The internal growth rate for core organic commissions and fees after adjusting for Colonial Claims revenue related to Hurricane Sandy in the second quarter of 2013 was 3.8%.

For the six months ended June 30, 2014 commissions and fees increased $98.8 million to $756.7 million, or 15.0% over the same period in 2013. Profit-sharing contingent commissions and GSCs for the six months ended June 30, 2014 increased $2.7 million, or 7.3%, over the same period in 2013. The net increase of $2.7 million was largely due to activity from acquired businesses. Core commissions and fees revenue for the six months ended June 30, 2014 increased $96.1 million to $717.2 million or 15.5% over the same period in 2013. After net acquired business of $94.7 million and divested business of $ 3.5 million, the remaining increase of $4.9 million represents 0.8% organic growth in core commissions and fees. The internal growth rate for core organic commissions and fees after adjusting for Colonial Claims revenue related to Hurricane Sandy in 2013 was 3.9% for the six month period ended June 30, 2014.

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Investment Income

Investment income for the three months ended June 30, 2014, was essentially flat from the same period in 2013. Investment income for the six months ended June 30, 2014, decreased $0.1 million, or 30.1%, from the same period in 2013. This decrease is the result of lower average invested balances in 2014, primarily as a result of increased acquisition activity.

Other Income, net

Other income for the three months ended June 30, 2014, reflected income of $2.9 million, compared with $1.4 million in the same period in 2013. Other income for the six months ended June 30, 2014, reflected income of $4.4 million, compared with $2.4 million in the same period in 2013. Other income consists primarily of gains and losses from the sale and disposition of assets. Although we are not in the business of selling customer accounts, we periodically will sell an office or a book of business (one or more customer accounts) that we believe does not produce reasonable margins or demonstrate a potential for growth, or because doing so is otherwise in the Company s best interest. The $1.5 million increase for the three months ended June 30, 2014 and the $2.0 million increase for the six months ended June 30, 2014 over the comparable periods of 2013 are primarily due to additional book of business sales.

Employee Compensation and Benefits

Employee compensation and benefits expense as a percentage of total revenues decreased to 49.4% for the three months ended June 30, 2014, from 50.2% for the three months ended June 30, 2013. Employee compensation and benefits for the second quarter of 2014 increased, on a net basis, approximately 20.1%, or $32.9 million, over the same period in 2013. However, that net increase included $29.8 million of compensation costs related to new acquisitions. Therefore, employee compensation and benefits expense attributable to those offices that existed in the same three-month period ended June 30, 2014 and 2013 increased by $3.1 million or 1.9%. The employee compensation and benefits expense increases in these offices were primarily related to an increase in staff salaries.

For the six months ended June 30, 2014 employee compensation and benefits expense as a percentage of total revenues was 50.0% as compared to 48.9% in the same period for 2013. The increase of $57.5 million over the same period in 2013 is principally attributable to new team mates from acquisitions. Employee compensation and benefits expense attributable to those offices that existed in the same six-month period ended June 30, 2014 and 2013 (including the new acquisitions that combined with, or folded into those offices) increased 3.3% with approximately $1.0 million of costs incurred in the first quarter of 2014 related to the retirement of the previous CFO as well as additional costs incurred in hiring the new CFO.

Non-Cash Stock-Based Compensation

The Company has an employee stock purchase plan, and grants stock options and non-vested stock awards under other equity-based plans to its employees. Compensation expense for all share-based awards is recognized in the financial statements based upon the grant-date fair value of those awards. Non-cash stock-based compensation expense for the three months ended June 30, 2014 increased $2.4 million, or 65.4%, over the same period in 2013. Non-cash stock-based compensation expense for the six months ended June 30, 2014 increased $6.0 million, or 80.8%, over the same period in 2013. These increases were the result of new non-vested stock awards granted on July 1, 2013 and smaller grants that are issued periodically when approved by the Board of Directors, primarily to a broad-based group of producers, profit center leaders, and senior leaders. Non-cash stock-based compensation will fluctuate based upon actual participation within the plans.

Other Operating Expenses

As a percentage of total revenues, other operating expenses represented 15.2% in the second quarter of 2014, an increase over the 14.5% reported in the second quarter of 2013. The adjusted 2014 and 2013 percentages were 14.2% and 14.6% respectively, after disregarding the effect of new acquisitions that were stand-alone offices (including the Beecher Carlson large accounts business whose revenues are cyclical in nature and whose expense base is relatively stable) and the effect of Colonial Claims due to the effects of Hurricane Sandy on the 2013 margins. Other operating expenses for the second quarter of 2014 increased $13.1 million, or 27.7%, over the same period of 2013, of which $13.5 million related to acquisitions that joined us as stand-alone offices since June 2013. Therefore, other operating expenses from those offices that existed in both the three-month periods ended June 30, 2014 and 2013 (including the new acquisitions that folded into those offices) decreased by $0.4 million.

Other operating expenses represented 14.8% of total revenues for the six months ended June 30, 2014, an increase from the 14.2% ratio for the six months ended June 30, 2013. Other operating expenses for the six months ended June 30, 2014 increased $19.3 million, or 20.6%, over the same period of 2013, of which $20.3 million related to acquisitions that joined us as stand-alone offices since the second quarter of 2013. Therefore, other operating expenses from those offices that existed in both the six-month periods ended June 30, 2014 and 2013 (including the new acquisitions that folded into those offices) decreased by $1.0 million. The other operating expense decreases in these offices were primarily related to lower E&O and insurance costs.

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Amortization

Amortization expense for the second quarter of 2014 increased $4.5 million, or 27.9%, over the second quarter of 2013. Amortization expense for the six months ended June 30, 2014, increased $6.2 million, or 19.3%, over the six months ended June 30, 2013. These increases are due primarily to the amortization of additional intangible assets as the result of recent acquisitions.

Depreciation

Depreciation expense for the second quarter of 2014 increased $1.0 million, or 23.0%, over the second quarter of 2013. Depreciation expense for the six months ended June 30, 2014, increased $1.5 million, or 17.2%, over the six months ended June 30, 2013. These increases are due primarily to the addition of fixed assets as a result of recent acquisitions.

Interest Expense

Interest expense for the second quarter of 2014 increased $3.0 million, or 75.2%, over the second quarter of 2013. Interest expense for the six months ended June 30, 2014 increased $3.1 million, or 38.8%, over the same period in 2013. These increases are due to the increased borrowings in 2014 associated with the establishment of our Credit Facility related to the Wright acquisition which provides increased financial flexibility and a lower effective interest rate.

Change in Estimated Acquisition Earn-out Payables

Accounting Standards Codification (ASC) Topic 805 *Business Combinations* is the authoritative guidance requiring an acquirer to recognize 100% of the fair values of acquired assets, including goodwill, and assumed liabilities (with only limited exceptions) upon initially obtaining control of an acquired entity. Additionally, the fair value of contingent consideration arrangements (such as earn-out purchase arrangements) at the acquisition date must be included in the purchase price consideration. As a result, the recorded purchase prices for all acquisitions consummated after January 1, 2009 include an estimation of the fair value of liabilities associated with any potential earn-out provisions. Subsequent changes in these earn-out obligations are required to be recorded in the consolidated statement of income when incurred. Estimations of potential earn-out obligations are typically based upon future earnings of the acquired entities, usually for periods ranging from one to three years.

The net charge or credit to the Condensed Consolidated Statement of Income for the period is the combination of the net change in the estimated acquisition earn-out payables balance, and the interest expense imputed on the outstanding balance of the estimated acquisition earn-out payables.

As of June 30, 2014 and 2013, the fair values of the estimated acquisition earn-out payables were re-evaluated and measured at fair value on a recurring basis using unobservable inputs (Level 3). The resulting net changes, as well as the interest expense accretion on the estimated acquisition earn-out payables, for the three and six month periods ended June 30, 2014 and 2013 were as follows:

	For the three months ended June 30,		For the six months ended June 30,	
(in thousands)	**2014**	**2013**	**2014**	**2013**

Change in fair value on estimated acquisition earn-out payables	$ (375)	$ 159	$ 5,228	$ 1,156
Interest expense accretion	552	497	1,032	1,022
Net change in earnings from estimated acquisition earn-out payables	$ 177	$ 656	$ 6,260	$ 2,178

For the three months ended June 30, 2014 and 2013, the fair value of estimated earn-out payables was re-evaluated and decreased by $0.4 million and increased by $0.2 million, respectively, which resulted in a credit and a charge to the Condensed Consolidated Statement of Income. For the six months ended June 30, 2014 and 2013, the fair value of estimated earn-out payables was re-evaluated and increased by $5.2 million and $1.2 million, respectively, which resulted in charges to the Condensed Consolidated Statement of Income. An acquisition is considered to be performing well if its operating profit exceeds the level needed to reach the minimum purchase price. However, a reduction in the estimated acquisition earn-out payable can occur even though the acquisition is performing well, if it is not performing at the level contemplated by our original estimate.

As of June 30, 2014, the estimated acquisition earn-out payables equaled $52,696,000, of which $20,278,000 was recorded as accounts payable and $32,418,000 was recorded as other non-current liability.

Income Taxes

The effective tax rate on income from operations for the three months ended June 30, 2014 and 2013, was 39.3% and 39.7%, respectively. The effective tax rate on income from operations for the six months ended June 30, 2014 and 2013, was 39.5% and 39.6%, respectively. The lower effective annual tax rates were primarily the result of lower average effective state income tax rates.

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RESULTS OF OPERATIONS SEGMENT INFORMATION

As discussed in Note 10 of the Notes to Condensed Consolidated Financial Statements, we operate four reportable segments or divisions: the Retail, National Programs, Wholesale Brokerage, and Services Divisions. On a divisional basis, increases in amortization, depreciation and interest expenses result from completed acquisitions within a given division in a particular year. Likewise, other income in each division primarily reflects net gains on sales of customer accounts and fixed assets. As such, in evaluating the operational efficiency of a division, management places emphasis on the net internal growth rate of core organic commissions and fees revenue, the gradual improvement of the ratio of total employee compensation and benefits to total revenues, and the gradual improvement of the ratio of other operating expenses to total revenues.

The term core commissions and fees excludes profit-sharing contingent commissions and GSCs, and therefore represents the revenues earned directly from specific insurance policies sold, and specific fee-based services rendered. In contrast, the term core organic commissions and fees is our core commissions and fees less (i) the core commissions and fees earned for the first twelve months by newly-acquired operations and (ii) divested business (core commissions and fees generated from offices, books of business or niches sold or terminated during the comparable period). Core organic commissions and fees attempts to express the current year s core commissions and fees on a comparable basis with the prior year s core commissions and fees. The resulting net change reflects the aggregate changes attributable to (i) net new and lost accounts, (ii) net changes in our clients exposure units, and (iii) net changes in insurance premium rates. The net changes in each of these three components can be determined for each of our customers. However, because our agency management accounting systems do not aggregate such data, it is not reportable. Core organic commissions and fees reflect either positive growth with a net increase in revenues, or negative growth with a net decrease in revenues.

The internal growth rates for our core organic commissions and fees for the three months ended June 30, 2014 and 2013, by Division, are as follows (in thousands, except percentages):

2014	For the three months ended June 30, 2014	2013	Total Net Change	Total Net Growth %	Less Acquisition Revenues	Internal Net Growth $	Internal Net Growth %[2]
Retail[1]	$ 205,887	$ 167,315	$ 38,572	23.1%	$ 35,157	$ 3,415	2.0%
National Programs	89,814	62,438	27,376	43.8%	26,027	1,349	2.2%
Wholesale Brokerage	58,563	52,858	5,705	10.8%	1,383	4,322	8.2%
Services	35,586	30,271	5,315	17.6%	4,609	706	2.3%
Total core commissions and fees	$ 389,850	$ 312,882	$ 76,968	24.6%	$ 67,176	$ 9,792	3.1%

The reconciliation of the above internal growth schedule to the total Commissions and Fees included in the Condensed Consolidated Statements of Income for the three months ended June 30, 2014, and 2013, is as follows (in thousands):

	For the three months ended June 30,	
	2014	2013

Total core commissions and fees	$ 389,850	$ 312,882
Profit-sharing contingent commissions	2,756	7,879
Guaranteed supplemental commissions	2,084	1,700
Divested business		1,689
Total commissions and fees	$ 394,690	$ 324,150

(1) The Retail Division includes commissions and fees reported in the Other column of the Segment Information in Note 10 of the Notes to the Condensed Consolidated Financial Statements, which includes corporate and consolidation items.

(2) There would be a 3.8% Internal Net Growth rate when excluding the $2.1 million related to Hurricane Sandy within the Colonial Claims business for the second quarter of 2013.

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The internal growth rates for our core organic commissions and fees for the three months ended June 30, 2013 and 2012, by Division, are as follows (in thousands, except percentages):

2013	For the three months ended June 30, 2013	2012	Total Net Change	Total Net Growth %	Less Acquisition Revenues	Internal Net Growth $	Internal Net Growth %
Retail[1]	$ 168,582	$ 158,035	$ 10,547	6.7%	$ 6,922	$ 3,625	2.3%
National Programs	62,860	53,135	9,725	18.3%		9,725	18.3%
Wholesale Brokerage	52,858	46,286	6,572	14.2%	1,592	4,980	10.8%
Services	30,271	27,521	2,750	10.0%		2,750	10.0%
Total core commissions and fees	$ 314,571	$ 284,977	$ 29,594	10.4%	$ 8,514	$ 21,080	7.4%

The reconciliation of the above internal growth schedule to the total Commissions and Fees included in the Condensed Consolidated Statements of Income for the three months ended June 30, 2013, and 2012, is as follows (in thousands):

	For the three months ended June 30, 2013	2012
Total core commissions and fees	$ 314,571	$ 284,977
Profit-sharing contingent commissions	7,879	1,043
Guaranteed supplemental commissions	1,700	2,258
Divested business		1,664
Total commissions and fees	$ 324,150	$ 289,942

(1) The Retail Division includes commissions and fees reported in the Other column of the Segment Information in Note 10 of the Notes to the Condensed Consolidated Financial Statements, which includes corporate and consolidation items.

The internal growth rates for our core organic commissions and fees for the six months ended June 30, 2014 and 2013, by Division, are as follows (in thousands, except percentages):

2014	For the six months ended June 30, 2014	2013	Total Net Change	Total Net Growth %	Less Acquisition Revenues	Internal Net Growth $	Internal Net Growth %
Retail[1]	$ 387,709	$ 324,842	$ 62,867	19.4%	$ 55,522	$ 7,345	2.3%
National Programs	154,578	123,710	30,868	25.0%	28,483	2,385	1.9%
Wholesale Brokerage	107,794	96,129	11,665	12.1%	2,241	9,424	9.8%
Services	67,096	72,876	(5,780)	(7.9)%	8,470	(14,250)	(19.6)%

Total core commissions and fees	$ 717,177	$ 617,557	$ 99,620	16.1%	$ 94,716	$ 4,904	0.8%(2)

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The reconciliation of the above internal growth schedule to the total Commissions and Fees included in the Condensed Consolidated Statements of Income for the six months ended June 30, 2014, and 2013, is as follows (in thousands):

	For the six months ended June 30,	
	2014	2013
Total core commissions and fees	$ 717,177	$ 617,557
Profit-sharing contingent commissions	34,504	32,918
Guaranteed supplemental commissions	5,016	3,922
Divested business		3,546
Total commissions and fees	$ 756,697	$ 657,943

(1) The Retail Division includes commissions and fees reported in the Other column of the Segment Information in Note 10 of the Notes to the Condensed Consolidated Financial Statements, which includes corporate and consolidation items.

(2) There would be a 3.9% Internal Net Growth rate when excluding the $18.3 million related to Hurricane Sandy within the Colonial Claims business for the second quarter of 2013.

The internal growth rates for our core organic commissions and fees for the six months ended June 30, 2013 and 2012, by Division, are as follows (in thousands, except percentages):

2013	For the six months ended June 30,		Total Net Change	Total Net Growth %	Less Acquisition Revenues	Internal Net Growth $	Internal Net Growth %
	2013	2012					
Retail[1]	$ 327,532	$ 308,006	$ 19,526	6.3%	$ 14,752	$ 4,774	1.5%
National Programs	124,566	106,765	17,801	16.7%	1,483	16,318	15.3%
Wholesale Brokerage	96,129	84,652	11,477	13.6%	3,139	8,338	9.8%
Services	72,876	53,283	19,593	36.8%	657	18,936	35.5%
Total core commissions and fees	$ 621,103	$ 552,706	$ 68,397	12.4%	$ 20,031	$ 48,366	8.8%

The reconciliation of the above internal growth schedule to the total Commissions and Fees included in the Condensed Consolidated Statements of Income for the six months ended June 30, 2013, and 2012, is as follows (in thousands):

	For the six months ended June 30,	
	2013	2012
Total core commissions and fees	$ 621,103	$ 552,706
Profit-sharing contingent commissions	32,918	25,264

Guaranteed supplemental commissions	3,922	4,850
Divested business		3,655
Total commissions and fees	$ 657,943	$ 586,475

(1) The Retail Division includes commissions and fees reported in the Other column of the Segment Information in Note 10 of the Notes to the Condensed Consolidated Financial Statements, which includes corporate and consolidation items.

Retail Division

The Retail Division provides a broad range of insurance products and services to commercial, public and quasi-public, professional and individual insured customers. Approximately 87.0% of the Retail Division s commissions and fees revenue is commission-based. Because most of our other operating expenses do not change as premiums fluctuate, we believe that a portion of any fluctuation in the commissions, net of related compensation, which we receive, will be reflected in our income before income taxes.

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Financial information relating to Brown & Brown s Retail Division for the three and six months ended June 30, 2014 and 2013 is as follows (in thousands, except percentages):

	For the three months ended June 30,			For the six months ended June 30,		
	2014	2013	% Change	2014	2013	% Change
REVENUES						
Core commissions and fees	$ 205,966	$ 168,589	22.2%	$ 388,050	$ 327,685	18.4%
Profit-sharing contingent commissions	997	1,003	(0.6)%	18,406	14,304	28.7%
Guaranteed supplemental commissions	1,672	1,513	10.5%	3,931	3,232	21.6%
Investment income	16	23	(30.4)%	32	46	(30.4)%
Other income, net	2,325	691	NMF(1)	3,248	1,120	NMF(1)
Total revenues	210,976	171,819	22.8%	413,667	346,387	19.4%
EXPENSES						
Employee compensation and benefits	102,335	84,484	21.1%	202,967	168,926	20.2%
Non-cash stock-based compensation	3,029	1,533	97.6%	5,831	3,076	89.6%
Other operating expenses	33,272	26,254	26.7%	64,672	52,096	24.1%
Amortization	10,457	8,789	19.0%	20,608	17,600	17.1%
Depreciation	1,614	1,371	17.7%	3,198	2,742	16.6%
Interest	11,224	5,649	98.7%	21,937	11,849	85.1%
Change in estimated acquisition earn-out payables	(53)	(743)	(92.9)%	4,111	(595)	NMF(1)
Total expenses	161,878	127,337	27.1%	323,324	255,694	26.4%
Income before income taxes	$ 49,098	$ 44,482	10.4%	$ 90,343	$ 90,693	(0.4)%
Net internal growth rate core organic commissions and fees	2.0%	2.3%		2.3%	1.5%	
Employee compensation and benefits ratio	48.5%	49.2%		49.1%	48.8%	
Other operating expenses ratio	15.8%	15.3%		15.6%	15.0%	
Capital expenditures	$ 1,567	$ 1,488		$ 3,679	$ 2,823	
Total assets at June 30, 2014 and 2013				$ 3,166,802	$ 2,501,084	

(1) NMF = Not a meaningful figure

The Retail Division s total revenue during the three months ended June 30, 2014 increased 22.8%, or $39.2 million, over the same period in 2013, to $211.0 million. The $37.4 million net increase in core commissions and fees revenue resulted from the following factors: (i) an increase of approximately $35.2 million related to the core commissions and fees revenue from acquisitions that had no comparable revenues in the same period of 2013; (ii) a net increase of $3.5 million related to net new business; and (iii) an offsetting decrease of $1.3 million related to commissions and fees revenue recorded in the second quarter of 2013 from business since divested. Profit-sharing contingent commissions and GSCs for the second quarter of 2014 increased $0.2 million, or 6.2%, from the second quarter of 2013, to $2.7 million. The Retail Division s internal growth rate for core organic commissions and fees revenue was 2.0% for the second quarter of 2014, and was driven by revenue from net new business written during the preceding twelve months, modest to no increases in exposure units in most areas of the United States, and a slight contraction in property insurance premium rates.

Income before income taxes for the three months ended June 30, 2014 increased 10.4%, or $4.6 million, from the same period in 2013, to $49.1 million. The primary factors affecting this increase were: (i) total compensation including non-cash stock-based compensation increased by $19.3 million or 22.5%; of the $34.5 million increase in total expenses, $35.6 million related to acquisitions completed in the previous twelve months, largely driven by the seasonality of these new acquisitions where the expenses are relatively stable but the revenue steam is weighted toward the last six months of the year. The remaining $1.1 million expenses decrease reflects incremental margin improvement for the previously existing profit centers; (ii) operating expenses increased by $7.0 million or 26.7%; and (iii) the inter-company interest charge increased by $5.6 million or 98.7%.

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The Retail Division s total revenues during the six months ended June 30, 2014, increased 19.4%, or $67.3 million, over the same period in 2013, to $413.7 million. Profit-sharing contingent commissions and GSCs for the first half of 2014 increased $4.8 million, or 27.4%, over the same period of 2013, to $22.3 million. The $60.4 million net increase in core commissions and fees revenue resulted from the following factors: (i) an increase of approximately $55.5 million related to the core commissions and fees revenue from acquisitions that had no comparable revenues in the same period of 2013; (ii) a decrease of $2.4 million related to commissions and fees revenues recorded for the first half of 2013 from business since divested; and (iii) the remaining net increase of $7.3 million primarily related to net new business. The Retail Division s internal growth rate for core organic commissions and fees revenue was 2.3% for the first six months of 2014, and was driven by net new business written during the preceding twelve months, coupled with slightly increasing insurable exposure units in most areas of the United States.

Income before income taxes for the six months ended June 30, 2014, decreased 0.4%, or $0.4 million, over the same period in 2013, to $90.3 million. This slight decrease reflects the seasonality of acquisitions made within the last twelve months. Approximately, 46.8% of annual budgeted revenues for those acquisitions were received to support 50.9% of annual budgeted expenses for a net negative seasonal variance for the first six months of $2.9 million. With total revenues increased by 19.4%, the impact of the higher incremental percentage of expenses associated with those recent acquisitions, are seen in the following: (i) total compensation expenses non-cash stock-based compensation expenses increased $36.8 million or 21.4%; and (ii) other operating expenses increased $12.6 million or 24.1%. Other factors negatively impacting income before income taxes were an inter-company interest expense allocation increase of $10.1 million or 85.1% and an increased expense of $4.7 million due to changes in estimated acquisition earn-out payables.

National Programs Division

The Wright Insurance Group acquisition was completed effective May 1, 2014. With the Wright acquisition completed, the National Programs Division manages over 50 programs consisting of annual aggregated written premium of over $2.5 billion with 40 well-capitalized carrier partners. The National Programs Division now generates approximately $410.0 million in annual revenue and has over 9,000 distribution points of contact. In most cases, the insurance carriers that support the programs have delegated underwriting and, in many instances, claims-handling authority to our programs operations. These programs are generally distributed through nationwide networks of independent agents and offer targeted products and services designed for specific industries, trade groups, professions, public entities and market niches. The National Programs Division operations can be grouped into five broad categories: Commercial Programs, Professional Programs, Arrowhead Insurance Group Programs, Wright Insurance Group and Public Entity-Related Programs. Like the Retail and Wholesale Brokerage Divisions, the National Programs Division s revenue is primarily commission-based.

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Financial information relating to our National Programs Division for the three and six months ended June 30, 2014 and 2013 is as follows (in thousands, except percentages):

	For the three months ended June 30,			For the six months ended June 30,		
	2014	2013	% Change	2014	2013	% Change
REVENUES						
Core commissions and fees	$ 89,814	$ 62,860	42.9%	$ 154,578	$ 124,566	24.1%
Profit-sharing contingent commissions	756	5,358	(85.9)%	10,062	12,202	(17.5)%
Guaranteed supplemental commissions	5	(173)	(102.3)%	7	(59)	(110.2)%
Investment income	66	5	NMF(1)	71	10	NMF(1)
Other income, net	234	304	(23.0)%	327	575	(43.1)%
Total revenues	90,875	68,354	32.9%	165,045	137,294	20.2%
EXPENSES						
Employee compensation and benefits	40,306	32,535	23.9%	73,015	64,694	12.9%
Non-cash stock-based compensation	1,103	953	15.7%	2,163	1,900	13.8%
Other operating expenses	19,235	13,162	46.1%	32,786	25,319	29.5%
Amortization	6,214	3,511	77.0%	9,989	7,030	42.1%
Depreciation	1,842	1,326	38.9%	3,309	2,574	28.6%
Interest	12,447	5,590	122.7%	17,888	11,284	58.5%
Change in estimated acquisition earn-out payables	43	51	(15.7)%	87	(745)	(111.7)%
Total expenses	81,190	57,128	42.1%	139,237	112,056	24.3%
Income before income taxes	$ 9,685	$ 11,226	(13.7)%	$ 25,808	$ 25,238	2.3%
Net internal growth rate core organic commissions and fees	2.2%	18.3%		1.9%	15.3%	
Employee compensation and benefits ratio	44.4%	47.6%		44.2%	47.1%	
Other operating expenses ratio	21.2%	19.3%		19.9%	18.4%	
Capital expenditures	$ 5,159	$ 1,420		$ 6,857	$ 2,312	
Total assets at June 30, 2014 and 2013				$ 2,406,240	$ 1,224,175	

(1) NMF = Not a meaningful figure

National Programs revenue for the three months ended June 30, 2014, increased 32.9%, or $22.5 million, over the same period in 2013, to a total of $90.9 million. Core commissions and fees revenue increased by $27.0 million primarily related to acquisitions completed during the twelve months after the quarter ended June 30, 2013. Profit-sharing contingent commissions and GSCs were $0.8 million for the second quarter of 2014 which is a decrease of $4.4 million from the second quarter of 2013. The decreased contingent commissions of $4.4 million were mainly due to the FIU profit center recording its $5.0 million in contingent income from their carrier partners in the first quarter of 2014, while recording the same contingent commissions in the second quarter of 2013. The National Programs Division s internal growth rate for commissions and fees revenue was 2.2% for the three months ended June 30, 2014. The primary reason for the 2.2% internal growth in the second quarter of 2014 was due to the new Arrowhead Auto Programs that generated $1.5 million in new revenue, offset by lower performance in other programs.

Income before income taxes for the three months ended June 30, 2014 decreased 13.7%, or $1.5 million, from the same period in 2013, to $9.7 million. The decrease was primarily due to the $2.7 million in increased amortization from the Wright acquisition and from the increase in interest expense related to the Wright acquisition allocated cost of capital.

National Programs revenue for the six months ended June 30, 2014, increased 20.2%, or $27.8 million, over the same period in 2013, to a total $165.0 million. Core commissions and fees revenue increased by $30.0 million primarily related to acquisitions completed during the twelve months after the quarter ended June 30, 2013. Profit-sharing contingent commissions and GSCs were $10.1 million for the first six months of 2014 which is a decrease of $2.1 million from the same period in 2013. This decrease is mainly due to a reduction of $2.6 million in profit sharing contingent commissions received by Proctor Financial, due to a worse loss ratio in the first quarter of 2014 versus the first quarter of 2013 caused by market driven rate reductions and a higher number of claims. The National Programs Division s internal growth rate for commissions and fees revenue was 1.9% for the first six months of 2014.

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Income before income taxes for the six months ended June 30, 2014 increased 2.3%, or $0.6 million, from the same period in 2013, to $25.8 million. The increase was primarily related to acquisitions completed during the twelve months after the quarter ended June 30, 2013.

Wholesale Brokerage Division

The Wholesale Brokerage Division markets and sells excess and surplus commercial and personal lines insurance and reinsurance, primarily through independent agents and brokers. Like the Retail and National Programs Divisions, the Wholesale Brokerage Division s revenues are primarily commission-based.

Financial information relating to our Wholesale Brokerage Division for the three and six months ended June 30, 2014 and 2013 is as follows (in thousands, except percentages):

	For the three months ended June 30,			For the six months ended June 30,		
	2014	2013	% Change	2014	2013	% Change
REVENUES						
Core commissions and fees	$ 58,563	$ 52,858	10.8%	$ 107,794	$ 96,129	12.1%
Profit-sharing contingent commissions	1,002	1,518	(34.0)%	6,035	6,412	(5.9)%
Guaranteed supplemental commissions	407	360	13.1%	1,078	749	43.9%
Investment income	7	4	75.0%	11	9	22.2%
Other income, net	80	83	(3.6)%	161	221	(27.1)%
Total revenues	60,059	54,823	9.6%	115,079	103,520	11.2%
EXPENSES						
Employee compensation and benefits	28,689	25,651	11.8%	54,989	48,866	12.5%
Non-cash stock-based compensation	717	356	101.4%	1,371	713	92.3%
Other operating expenses	9,058	8,928	1.5%	18,662	18,682	(0.1)%
Amortization	2,932	2,887	1.6%	5,815	5,784	0.5%
Depreciation	670	716	(6.4)%	1,320	1,423	(7.2)%
Interest	523	723	(27.7)%	942	1,478	(36.3)%
Change in estimated acquisition earn-out payables	94	(198)	NMF(1)	1,866	452	NMF(1)
Total expenses	42,683	39,063	9.3%	84,965	77,398	9.8%
	$ 17,376	$ 15,760	10.3%	$ 30,114	$ 26,122	15.3%

Income before income taxes					
Net internal growth rate core organic commissions and fees	8.2%	10.8%	9.8%	9.8%	
Employee compensation and benefits ratio	47.8%	46.8%	(42,486)	(30,073)	
Dividends on Series A-1 convertible preferred stock	(206)	(204)	(203)	(204)	(3,159)
Net loss attributable to common stockholders	$(120,898)	$(127,199)	$(88,084)	$(42,690)	$(33,232)
Net loss attributable to common stockholders per common share, basic and diluted	$(1.23)	$(1.46)	$(1.13)	$(0.71)	$(1.12)
Weighted average number of common shares outstanding, basic and diluted	98,415	87,070	78,212	59,754	29,766

	As of December 31,				
	2017	2016	2015	2014	2013
	(in thousands)				
Condensed Consolidated Balance Sheet Data:					
Cash, cash equivalents and short-term investments	$60,187	$76,437	$171,668	$40,224	$27,352
Total current assets	73,554	91,312	184,095	42,670	28,175
Total assets	138,402	156,986	242,228	74,527	34,835
Total current liabilities	56,438	40,851	28,934	9,229	10,296
Long-term debt, less current portion	142,385	130,542	114,326	4,769	5,384
Stockholders' (deficit) equity	(75,816)	(39,126)	70,728	23,018	(4,481)

(1) Given our history of incurring operating losses, no income tax benefit has been recognized in our consolidated statements of operations for the years ended December 31, 2017, 2016, 2014, and 2013 because of the loss before income taxes, and the need to recognize a valuation allowance on the portion of our deferred tax assets which will not be offset by the reversal of deferred tax liabilities. For the year ended December 31, 2015, we recognized an income tax benefit as a result of the deferred tax liabilities recognized in connection with the PhosImmune and XOMA antibody manufacturing facility acquisitions.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Overview

We are a clinical-stage immuno-oncology ("I-O") company dedicated to becoming a leader in the discovery and development of innovative combination therapies and committed to bringing effective medicines to patients with cancer. Our business is designed to drive success in I-O through speed, innovation, and effective combination therapies. We have assembled fully integrated capabilities from novel target discovery, antibody generation, cell line development, and good manufacturing practice ("GMP") manufacturing together with a comprehensive portfolio consisting of antibody-based therapeutics, adjuvants and cancer vaccine platforms. We leverage our immune biology platforms to identify effective combination therapies for development and have developed productive partnerships to advance our innovation.

We are developing a comprehensive I-O portfolio driven by the following platforms and programs, which we intend to utilize individually and in combination:

- our antibody discovery platforms, including our Retrocyte Display™, SECANT® yeast display, and phage display technologies designed to drive the discovery of future CPM antibody candidates;
- our antibody candidate programs, including our CPM programs;
- our vaccine programs, including Prophage™, AutoSynVax™ and PhosPhoSynVax™; and
- our saponin-based vaccine adjuvants, principally our QS-21 Stimulon® adjuvant, or QS-21 Stimulon.

We assess development, commercialization and partnering strategies for each of our product candidates periodically based on several factors, including pre-clinical and clinical trial results, competitive positioning and funding requirements and resources. We have formed collaborations with companies such as Incyte Corporation ("Incyte"), Merck Sharpe & Dohme and Recepta Biopharma SA ("Recepta"). Through these alliances, as well as our own internal programs, we currently have more than a dozen antibody programs in pre-clinical or early phase development, including our anti-CTLA-4 and anti-PD-1 antibody programs (both partnered with Recepta for certain South America territories) and anti-GITR and anti-OX40 antibody programs (both partnered with Incyte). In February 2017, we amended our collaboration agreement with Incyte to, among other things, convert the GITR and OX40 programs from profit-share to royalty-bearing programs. We are now eligible to receive royalties on global net sales at a flat 15% rate for each of these programs. There are no longer any profit-share programs remaining under the collaboration, and we are eligible to receive up to a total of $510.0 million in future potential development, regulatory and commercial milestones across all programs in the collaboration. Pursuant to the amended agreement, we received accelerated milestone payments of $20.0 million from Incyte related to the clinical development of INCAGN1876 (anti-GITR agonist) and INCAGN1949 (anti-OX40 agonist). Concurrent with the execution of the amendment, we and Incyte also entered into the Stock Purchase Agreement whereby Incyte purchased an additional 10 million shares of our common stock at $6.00 per share, resulting in additional proceeds of $60.0 million to us.

In addition to our antibody platforms and CPM programs, we are also advancing a series of vaccine programs to treat cancer. In January 2017, we announced a clinical trial collaboration with the National Cancer Institute ("NCI"), which is a double-blind, randomized controlled Phase 2 trial that is evaluating the effect of our autologous vaccine candidate, Prophage, in combination with pembrolizumab (Keytruda®, Merck & Co., Inc. ("Merck")) in patients with ndGBM. Under this collaboration, we are supplying Prophage, Merck is supplying pembrolizumab and the NCI and Brain Tumor Trials Collaborative member sites are recruiting patients and conducting the trial.

Our QS-21 Stimulon adjuvant is also partnered with GlaxoSmithKline ("GSK") and is a key component in multiple GSK vaccine programs. These programs are in various stages, with the most advanced being GSK's shingles program. In 2015, we monetized a portion of the future royalties we were contractually entitled to receive from GSK from sales of its shingles and malaria vaccines through a Note Purchase Agreement ("NPA") and received net proceeds of approximately $78 million. In October 2017, GSK's shingles vaccine was approved in the United States by the FDA and granted marketing authorization in Canada by Health Canada and in November 2017, we exercised our option to issue the $15.0 million in additional notes in accordance with the terms of the NPA. In January 2018, we entered into

a Royalty Purchase Agreement with Healthcare Royalty Partners III, L.P. and certain of its affiliates (together, “HCR”), pursuant to which HCR purchased 100% of our worldwide rights to receive royalties from GSK on GSK’s sales of vaccines containing our QS-21 Stimulon adjuvant. We used a portion of the upfront proceeds from HCR to redeem all of the notes issued pursuant to the Note Purchase Agreement, resulting in net proceeds to us of approximately $28.0 million at closing. We do not incur clinical development costs for products partnered with GSK.

Our business activities include product research and development, intellectual property prosecution, manufacturing, regulatory and clinical affairs, corporate finance and development activities, and support of our collaborations. Our product candidates require clinical trials and approvals from regulatory agencies, as well as acceptance in the marketplace. Part of our strategy is to develop and

commercialize some of our product candidates by continuing our existing arrangements with academic and corporate collaborators and licensees and by entering into new collaborations.

In October 2017, we announced the launch of a subsidiary that is advancing our cell therapy business, AgenTus Therapeutics. The subsidiary is focused on the discovery, development, and commercialization of breakthrough “living drugs” to advance cures for cancer patients. AgenTus licenses intellectual property assets from Agenus, and has its own management and governance.

Our common stock is currently listed on The Nasdaq Capital Market under the symbol “AGEN.”

Our research and development expenses for the years ended December 31, 2017, 2016, and 2015, were $116.1 million, $95.0 million, and $70.4 million, respectively. We have incurred significant losses since our inception. As of December 31, 2017, we had an accumulated deficit of $1,026.5 million.

To date, we have financed our operations primarily through the sale of equity and debt securities. We believe that, based on our current plans and activities, including additional funding we anticipate from multiple sources between now and the end of the second quarter of 2018, including out-licensing and/or partnering opportunities, our working capital resources at December 31, 2017, along with the net proceeds of approximately $28.0 million received from HCR in January 2018 in connection with our royalty transaction, will be sufficient to satisfy our liquidity requirements through the first quarter of 2019. We may attempt to raise additional funds by: (1) pursuing collaboration, out-licensing and/or partnering opportunities for our portfolio programs and product candidates with one or more third parties, (2) renegotiating third party agreements, (3) selling assets, (4) securing additional debt financing and/or (5) selling equity securities. Satisfying long-term liquidity needs may require the successful commercialization and/or substantial out-licensing or partnering arrangements for our antibody discovery platforms, CPM antibody programs, and HSP-based vaccines. Our long-term success will also be dependent on the successful identification, development and commercialization of potential other product candidates, each of which will require additional capital with no certainty of timing or probability of success. If we incur operating losses for longer than we expect and/or we are unable to raise additional capital, we may become insolvent and be unable to continue our operations.

Historical Results of Operations

Year Ended December 31, 2017 Compared to the Year Ended December 31, 2016

Revenue: We generated revenue of $42.9 million and $22.6 million during the years ended December 31, 2017 and 2016, respectively. Revenue primarily includes fees earned under our license agreements, including approximately $14.6 million and $16.2 million, respectively for the years ended December 31, 2017, and 2016, related to reimbursement of development costs under our Collaboration Agreement with Incyte. The increase in total revenue for the year ended December 31, 2017 is primarily attributable to the $20.0 million in accelerated milestones, recognized as revenue during the twelve months ended December 31, 2017, related to the antibody candidates targeting GITR and OX40 received in connection with the February 14, 2017 amendment to our License, Development and Commercialization Agreement with Incyte. During the years ended December 31, 2017 and 2016, we recorded revenue of $3.1 million and $3.5 million, respectively, from the amortization of deferred revenue.

Research and Development: Research and development expenses include the costs associated with our internal research and development activities, including compensation and benefits, occupancy costs, clinical manufacturing costs, contract research organization costs, costs of consultants, and related administrative costs. Research and development expense increased 22% to $116.1 million for the year ended December 31, 2017 from $95.0 million for the year ended December 31, 2016. Increased expenses in 2017 primarily relate to a $17.6 million increase in third-party services and other expenses relating largely to the advancement of our CPM antibody programs, a $3.3 million increase in payroll related costs primarily due to increased headcount, and a $0.6 million increase in

depreciation expense, offset by a $0.4 million decrease in expense for our foreign subsidiaries due to the closure of our facility in Basel, Switzerland, which decrease was partially offset by increased expenses attributable to Agenus UK.

General and Administrative: General and administrative expenses consist primarily of personnel costs, facility expenses, and professional fees. General and administrative expenses increased 2% to $33.7 million for the year ended December 31, 2017 from $33.1 million for the year ended December 31, 2016. Increased general and administrative expenses in 2017 primarily relate to a $1.8 million increase in payroll related costs primarily due to increased headcount offset by a $0.6 million decrease in professional fees due to the reduced use of consultants and a $0.6 million decrease in expense for our foreign subsidiaries due to the closure of our facility in Basel, Switzerland, which decrease was partially offset by increased expenses attributable to Agenus UK.

Contingent purchase price consideration fair value adjustment: Contingent purchase price consideration fair value adjustment represents the change in the fair value of our contingent purchase price consideration during the year ended December 31, 2017, which resulted from changes in our market capitalization and share price and changes in the credit spread since the prior year end. The fair

value of our contingent purchase price consideration is based on estimates from a Monte Carlo simulation of our market capitalization and share price.

Non-operating income (expense): Non-operating income increased by $4.2 million for the year ended December 31, 2017, from an expense of $2.2 million for the year ended December 31, 2016, to income of $2.0 million for the year ended December 31, 2017, primarily due to our increased foreign currency exchange gains in 2017 compared to losses in 2016.

Interest Expense, net: Interest expense, net increased to $18.9 million for the year ended December 31, 2017 from $17.3 million for the year ended December 31, 2016 due to the compounding of interest on our debt under our Note Purchase Agreement and the issuance of additional notes under our NPA in November 2017.

Year Ended December 31, 2016 Compared to the Year Ended December 31, 2015

Revenue: We generated revenue of $22.6 million and $24.8 million during the years ended December 31, 2016 and 2015, respectively. Revenue primarily includes fees earned under our license agreements, including approximately $16.2 million and $14.5 million, for the years ended December 31, 2016, and 2015, respectively, related to reimbursement of development costs under our Collaboration Agreement with Incyte. The decrease in revenue for the year ended December 31, 2016 is primarily attributable to decreased amortization of deferred revenue, offset by increased reimbursement of development costs under our Collaboration Agreement with Incyte. During the years ended December 31, 2016 and 2015, we recorded revenue of $3.5 million and $9.2 million, respectively, from the amortization of deferred revenue.

Research and development: Research and development expense increased 35% to $95.0 million for the year ended December 31, 2016 from $70.4 million for the year ended December 31, 2015. Increased expenses in 2016 primarily include the $18.3 million increase in third-party services and other expenses relating largely to the advancement of our CPM antibody programs, a $17.0 million increase in payroll related costs and share-based compensation due to increased headcount, and $3.1 million increase in depreciation expense, offset by a $13.2 million decrease in in-process research and development related to a 2015 asset acquisition.

General and administrative: General and administrative expenses increased 17% to $33.1 million for the year ended December 31, 2016 from $28.4 million for the year ended December 31, 2015. Increased general and administrative expenses in 2016 primarily relate to a $2.0 million increase in payroll related expenses due to increased headcount and a $1.9 million increase in share-based compensation.

Contingent purchase price consideration fair value adjustment: Contingent purchase price consideration fair value adjustment represents the change in the fair value of our contingent purchase price consideration during the year ended December 31, 2016, which resulted from changes in our market capitalization and share price and changes in the credit spread since the prior year end. The fair value of our contingent purchase price consideration is based on estimates from a Monte Carlo simulation of our market capitalization and share price.

Non-operating income (expense): Non-operating expense increased by $3.8 million for the year ended December 31, 2016 which primarily represents our increased foreign currency exchange loss of $1.7 million, offset by the absence of the prior year change in the fair value of our contingent royalty obligation of $6.9 million, loss on extinguishment of our senior subordinated promissory notes issued in April 2013, and corresponding offset by the $1.5 million gain on the purchase related to the antibody manufacturing facility acquisition from XOMA Corporation in December 2015.

Interest expense, net: Interest expense net increased to $17.3 million for the year ended December 31, 2016 from $6.6 million for the year ended December 31, 2015 due to the outstanding 2015 Subordinated Notes, issued in February

2015 and the Notes under our NPA, executed in September 2015.

Income tax benefit: For the year ended December 31, 2015, an income tax benefit arose from deferred tax liabilities recognized in connection with our PhosImmune and XOMA acquisitions during the year and relates to the resulting release of our existing valuation allowance on our deferred tax assets. There was no similar benefit for the year ended December 31, 2016.

Inflation

We believe that inflation has not had a material adverse effect on our business, results of operations, or financial condition to date.

Research and Development Programs

For the year ended December 31, 2017, our research and development programs consisted largely of our CPM antibody programs as indicated in the following table (in thousands).

Research and Development Program	Product	For the Year Ended December 31, 2017	2016	2015	Prior to 2015	Total
Heat shock proteins for cancer	Prophage and ASV	$12,499	$8,202	$5,508	$309,681	$335,890
Antibody programs*	Various	95,656	83,919	63,290	13,422	256,287
Vaccine adjuvant	QS-21 Stimulon	222	77	142	13,657	14,098
Other research and development programs		7,748	2,772	1,504	66,318	78,342
Total research and development expenses		$116,125	$94,970	$70,444	$403,078	684,617

*Prior to 2014, costs were incurred by 4-AB, which we acquired in February 2014.

Research and development program costs include compensation and other direct costs plus an allocation of indirect costs, based on certain assumptions and our review of the status of each program. Our product candidates are in various stages of development and significant additional expenditures will be required if we start new clinical trials, encounter delays in our programs, apply for regulatory approvals, continue development of our technologies, expand our operations, and/or bring our product candidates to market. The total cost of any particular clinical trial is dependent on a number of factors such as trial design, length of the trial, number of clinical sites, number of patients, and trial sponsorship. The process of obtaining and maintaining regulatory approvals for new therapeutic products is lengthy, expensive, and uncertain. Because our CPM antibody programs are early stage, and because further development of HSP-based vaccines is dependent on clinical trial results, among other factors, we are unable to reliably estimate the cost of completing our research and development programs or the timing for bringing such programs to various markets or substantial partnering or out-licensing arrangements, and, therefore, when, if ever, material cash inflows are likely to commence. Active programs involving QS-21 Stimulon depend on our licensee successfully completing clinical trials, successfully manufacturing QS-21 Stimulon to meet demand, obtaining regulatory approvals and successfully commercializing product candidates containing QS-21 Stimulon.

Product Development Portfolio

Antibody Discovery Platforms and CPM Programs

Checkpoint antibodies regulate immune response against pathogens that invade the body and are achieving positive outcomes in a number of cancers that were untreatable only a few years ago. Two classes of checkpoint targets include:

1. inhibitory checkpoints that help suppress an immune response in order to prevent excessive immune reaction resulting in undesired inflammation and/or auto-immunity, and
2. stimulatory checkpoints that can enhance or amplify an antigen-specific immune response.

We possess a suite of antibody discovery platforms that are designed to drive the discovery of future CPM antibody candidates. We are planning to employ a variety of techniques to identify and optimize mono-specific and multi-specific antibody candidates, internally.

We and our partners currently have more than a dozen antibody programs in pre-clinical or early phase development, including our anti-CTLA-4 and anti-PD-1 antibody programs (both partnered with Recepta for certain South America territories) and anti-GITR and anti-OX40 antibody programs (both partnered with Incyte). For additional information regarding our antibody discovery platforms and checkpoint antibody program, please read Part I-Item 1. “Business” of this Annual Report on Form 10-K.

Prophage Vaccine Candidates

Our Prophage cancer vaccine candidate, HSPPC-96, is an autologous cancer vaccine therapy derived from cancer tissues that are surgically removed from an individual patient. As a result, a Prophage vaccine contains a broad sampling of potentially antigenic mutant proteins from each patient’s own tumor. Prophage vaccines are designed to program the body’s immune system to target only the specific cells that express those mutant antigens, thereby reducing the risk that the body’s immune response against the tumor after

vaccination will also affect healthy tissue. Enhancing immune response using personalized vaccines, particularly in combination with CPMs, could be useful in cancers where a low number of mutant proteins leads to weakened immunogenicity.

To date, more than 1,000 patients have been treated with Prophage vaccines in clinical trials internationally, covering a broad range of cancer types, and no serious immune-mediated side effects have been observed. The results of these trials have been published and/or presented at scientific conferences. These results indicate observable clinical and/or immunological activity across many types of cancer.

In January 2017, we announced a clinical trial collaboration with the National Cancer Institute ("NCI"). The double-blind, randomized controlled Phase 2 trial is evaluating the effect of Prophage in combination with pembrolizumab (Keytruda®) in patients with ndGBM. The trial is being conducted by the Brain Tumor Trials Collaborative ("BTTC"), a consortium of top academic centers led by Dr. Mark Gilbert, Chief of the Neuro-Oncology Branch at the NCI Center for Cancer Research. The trial consists of two-arms with one arm receiving pembrolizumab as a monotherapy and a second arm receiving both Prophage and pembrolizumab in combination. Forty-five patients are being randomly assigned to each arm. Under this collaboration, we are supplying Prophage, Merck is supplying pembrolizumab (Keytruda®) and NCI and BTTC member sites are recruiting patients and conducting the trial. For additional information regarding regulatory risks and uncertainties, please read the risks identified under Part I-Item 1A. "Risk Factors" of this Annual Report on Form 10-K.

Neoantigen Vaccine Platforms

Mutation-based neo-epitopes, which will form the basis for the immunogens used in ASV, appear to be almost always particular to a given patient. Therefore, ASV is a largely individualized vaccine product candidate. With a small amount of a patient's tumor as a sample, our ASV program is designed to utilize next generation sequencing technologies coupled with complex bioinformatics algorithms to identify mutations in a tumor's DNA and RNA. Once these mutations have been identified, we plan to manufacture synthetic peptides encoding these neoepitopes, load these peptides on to our recombinant HSP70 and deliver a fully synthetic polyvalent vaccine to the patient. This program is based on the hypothesis that the HSP70 platform would shuttle the mutated peptides to sites where they could be recognized by the immune system and elicit a cytotoxic and helper T cell response in patients with cancer.

Biochemically based neoantigens, such as those arising from dysregulated phosphorylation of various proteins in malignant cells, can serve as a tumor fingerprint across a broad histology of tumors. Through the acquisition of PhosImmune, we have a portfolio of proprietary phosphorylated antigenic targets that can be used for therapeutic development. PSV is a vaccine candidate designed to induce immunity against this novel class of tumor specific neoepitopes. PSV is intended to induce cellular immunity to abnormal phosphopeptide neoepitopes that are characteristic of these various forms of cancer. Phosphopeptides (or phosphopeptide analogues) can be synthesized and complexed with HSP70, using an approach analogous to that used in the generation of our previous HerpV vaccine candidate. HerpV demonstrated good cellular and humoral responses to synthetic peptide immunogens complexed with HSP70 in a placebo-controlled Phase 2 study. We believe that similar responses could be obtained to phosphopeptide or phosphopeptide analogues bound to HSP70 when used as vaccines. Phosphorylation-based neoepitopes can apparently be found on specific types of cancer in many patients. Studies to optimize the immunogens to be used in PSV are ongoing. For additional information regarding our Neoantigen Vaccine Platforms, please read Part I-Item 1. "Business" of this Annual Report on Form 10-K.

QS-21 Stimulon Adjuvant

QS-21 Stimulon is an adjuvant, which is a substance added to a vaccine or other immunotherapy that is intended to enhance an immune response to the target antigens. QS-21 Stimulon is a natural product, a triterpene glycoside, or saponin, purified from the bark of the Chilean soapbark tree, Quillaja saponaria. QS-21 Stimulon has the ability to stimulate an antibody-mediated immune response and has also been shown to activate cellular immunity. It has

become a key component in the development of investigational preventive vaccine formulations across a wide variety of diseases. These studies have been carried out by academic institutions and pharmaceutical companies in the United States and internationally. A number of these studies have shown QS-21 Stimulon to be significantly more effective in stimulating immune responses than aluminum hydroxide or aluminum phosphate, the adjuvants most commonly used in approved vaccines in the United States today. For additional information regarding QS-21 Stimulon, please read Part I-Item 1. “Business” of this Annual Report on Form 10-K.

Liquidity and Capital Resources

We have incurred annual operating losses since inception, and we had an accumulated deficit of $1,026.5 million as of December 31, 2017. We expect to incur significant losses over the next several years as we continue development of our technologies and product candidates, manage our regulatory processes, initiate and continue clinical trials, and prepare for potential commercialization of products. To date, we have financed our operations primarily through the sale of equity and debt securities, and

interest income earned on cash, cash equivalents, and short-term investment balances. From our inception through December 31, 2017, we have raised aggregate net proceeds of approximately $923.9 million through the sale of common and preferred stock, the exercise of stock options and warrants, proceeds from our Employee Stock Purchase Plan, and the issuance of convertible and other notes.

In October 2017, we filed, and the Securities and Exchange Commission declared effective a Registration Statement on Form S-3 (file no. 333-221008) (the "2017 Registration Statement"), covering the offering of up to $250 million of common stock, preferred stock, warrants, debt securities and units. The 2017 Registration Statement included a prospectus covering the offering, issuance and sale of up to 15 million shares of our common stock from time to time in "at-the-market offerings" pursuant to a Controlled Equity Offering℠ sales agreement (the "Sales Agreement") entered into with Cantor Fitzgerald & Co. (the "Sales Agent"). As of December 31, 2017, we had 15 million shares available for sale under the Sales Agreement. In January 2018, we received net proceeds of approximately $2.5 million from the sale of approximately 635,000 shares of our common stock in at-the-market offerings under the Sales Agreement.

In October 2017, we also exercised our right under that certain At Market Issuance Sales Agreement by and between us and MLV & Co. LLC dated as of October 10, 2014 (the "2014 ATM Program") to terminate the 2014 ATM Program, which termination became effective upon effectiveness of the 2017 Registration Statement. We sold approximately 1.3 million shares of our common stock pursuant to the 2014 ATM Program during the year ended December 31, 2017 and received aggregate net proceeds of $5.6 million.

As of December 31, 2017, we had debt outstanding of $129.1 million in principal, and $36.8 million in accrued interest. In February 2015, we issued subordinated notes in the aggregate principal amount of $14.0 million with annual interest at 8% (the "2015 Subordinated Notes"). The 2015 Subordinated Notes are due in February 2020. In September 2015, we and our wholly-owned subsidiary Antigenics LLC ("Antigenics") entered into the Note Purchase Agreement ("NPA") with certain purchasers pursuant to which Antigenics issued, and we guaranteed, limited recourse notes in the aggregate principal amount of $100.0 million, with an option to issue an additional $15.0 million principal amount of limited recourse notes, which was exercised in November 2017. In January 2018, we entered into a Royalty Purchase Agreement with HCR whereby we received proceeds of $190.0 million. We used $161.9 million of these proceeds to redeem all of the notes issued pursuant to the Note Purchase Agreement. See Note 22 for additional information.

Our cash, cash equivalents, and short-term investments at December 31, 2017 were $60.2 million, a decrease of $16.3 million from December 31, 2016, principally as a result cash used in operations. We believe that, based on our current plans and activities, including additional funding we anticipate from multiple sources between now and the end of the second quarter of 2018, including out-licensing and/or partnering opportunities, our working capital resources at December 31, 2017, along with the net proceeds of approximately $28.0 million received from HCR in January 2018 in connection with our royalty transaction, will be sufficient to satisfy our liquidity requirements through the first quarter of 2019. We continue to monitor the likelihood of success of our key initiatives and are prepared to discontinue funding of such activities if they do not prove to be feasible, restrict capital expenditures and/or reduce the scale of our operations.

Our future liquidity needs will be determined primarily by the success of our operations with respect to the progression of our product candidates and key development and regulatory events in the future. Potential sources of additional funding include: (1) pursuing collaboration, out-licensing and/or partnering opportunities for our portfolio programs and product candidates with one or more third parties, (2) renegotiating third party agreements, (3) selling assets, (4) securing additional debt financing and/or (5) selling equity securities. Satisfying long-term liquidity needs may require the successful commercialization and/or substantial out-licensing or partnering arrangements for our antibody discovery platforms, CPM antibody programs, and HSP-based vaccines. Our long-term success will also be dependent on the successful identification, development and commercialization of potential other product candidates, each of which will require additional capital with no certainty of timing or probability of success. If we incur operating losses for longer than we expect, and/or we are unable to raise additional capital, we may become insolvent

and be unable to continue our operations.

Our future cash requirements include, but are not limited to, supporting clinical trial and regulatory efforts and continuing our other research and development programs. Since inception, we have entered into various agreements with contract manufacturers, institutions, and clinical research organizations (collectively "third party providers") to perform pre-clinical activities and to conduct and monitor our clinical studies. Under these agreements, subject to the enrollment of patients and performance by the applicable third-party provider, we have estimated our total payments to be $182.1 million over the term of the related activities. Through December 31, 2017, we have expensed $130.2 million as research and development expenses and $124.1 million has been paid under these agreements. The timing of expense recognition and future payments related to these agreements is subject to the enrollment of patients and performance by the applicable third-party provider. We have also entered into sponsored research agreements related to our product candidates that required payments of $9.3 million, $8.1 million of which have been paid as of December 31, 2017. We

plan to enter into additional agreements with third party providers as well as sponsored research agreements, and we anticipate significant additional expenditures will be required to initiate and advance our various programs.

Part of our strategy is to develop and commercialize some of our product candidates by continuing our existing collaboration arrangements with academic and collaboration partners and licensees and by entering into new collaborations. As a result of our collaboration agreements, we will not completely control the efforts to attempt to bring those product candidates to market. For example, our collaboration with Incyte for the development, manufacture and commercialization of CPM antibodies against certain targets is managed by a joint steering committee, which is controlled by Incyte.

Net cash used in operating activities for the years ended December 31, 2017 and 2016 was $94.2 million and $80.0 million, respectively. The first product containing QS-21 Stimulon was launched in the fourth quarter of 2017. We are generally entitled to royalties on sales by GSK of vaccines using QS-21 Stimulon for at least ten years after commercial launch, with some exceptions. In September 2015, we entered into the NPA and partially monetized the potential royalties we are entitled to receive from GSK. In January 2018 we entered into a Royalty Purchase Agreement with HCR, pursuant to which HCR purchased 100% of our worldwide rights to receive royalties from GSK on GSK's sales of vaccines containing our QS-21 Stimulon adjuvant. We used a portion of the upfront proceeds from HCR to redeem all of the notes issued pursuant to the NPA. Our future ability to generate cash from operations will depend on achieving regulatory approval and market acceptance of our product candidates, achieving benchmarks as defined in existing collaboration agreements, and our ability to enter into new collaborations. Please see the "Note Regarding Forward-Looking Statements" of this Annual Report on Form 10-K and the risks highlighted under Part I-Item 1A. "Risk Factors" of this Annual Report on Form 10-K.

The table below summarizes our contractual obligations as of December 31, 2017 (in thousands).

		Payments by Period			
	Total	Less than 1 Year	1-3 Years	3-5 Years	More than 5 Years
Long-term debt (1)	$131,595	$16,322	$15,273	$—	$100,000
Operating leases (2)	14,212	3,179	4,718	3,846	2,469
Capital lease	720	288	432	—	—
Total	$146,527	$19,789	$20,423	$3,846	$102,469

(1) Includes fixed interest payments. Under the terms of the NPA, interest accrues as 13.5%, compounded quarterly and may vary based on the timing of the royalty stream under our contract with GSK and therefore the table above excludes such interest which was approximately $36.8 million as of December 31, 2017. In January 2018, we entered into a Royalty Purchase Agreement with HCR. We used a portion of the upfront proceeds from HCR to redeem all of the notes issued pursuant to the Note Purchase Agreement. See Note 22 for additional information.

(2) The leases and subleases for our properties expire at various times between 2018 and 2025.

Off-Balance Sheet Arrangements

At December 31, 2017, we had no off-balance sheet arrangements.

Critical Accounting Policies and Estimates

The SEC defines “critical accounting policies” as those that require the application of management’s most difficult, subjective, or complex judgments, often as a result of the need to make estimates about the effect of matters that are inherently uncertain and may change in subsequent periods.

The preparation of consolidated financial statements in conformity with U.S. generally accepted accounting principles requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. We base those estimates on historical experience and on various assumptions that are believed to be reasonable under the circumstances. Actual results could differ from those estimates.

The following listing is not intended to be a comprehensive list of all of our accounting policies. Our significant accounting policies are described in Note 2 of the notes to our consolidated financial statements contained elsewhere in this Annual Report on Form 10-K. In many cases, the accounting treatment of a particular transaction is dictated by U.S. generally accepted accounting principles, with no need for our judgment in its application. There are also areas in which our judgment in selecting an available alternative would not produce a materially different result. We have identified the following as our critical accounting policies.

Share-Based Compensation

We recognize share-based compensation expense in accordance with the fair value recognition provisions of the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 718, Compensation—Stock Compensation. Compensation expense is recognized on a straight-line basis over the requisite service period of the award. Forfeitures are recognized as they occur.

Share-based awards granted to certain non-employees have been accounted for based on the fair value method of accounting in accordance with ASC 505-50, Equity- Equity-Based Payments to Non-Employees. As a result, the non-cash charge to operations for non-employee awards with vesting or other performance criteria is affected each reporting period by changes in the fair value of our common stock. Under the provisions of ASC 505-50, the change in fair value of vested awards issued to non-employees is reflected in the statement of operations each reporting period, until the options are exercised or expire.

Determining the appropriate fair value model and calculating the fair value of share-based awards requires the use of highly subjective assumptions, including the expected life of the share-based awards and stock price volatility. The assumptions used in calculating the fair value of share-based awards represent management's best estimates, but these estimates involve inherent uncertainties and the application of management judgment. As a result, if factors change and we use different assumptions, our share-based compensation expense could be materially different in the future. For performance condition awards, we estimate the probability that the performance condition will be met. See Note 11 of the notes to our consolidated financial statements contained elsewhere in this Annual Report on Form 10-K for a further discussion on share-based compensation.

Revenue Recognition

Revenue recognized from collaborative agreements is based upon the provisions of ASC 605-25, Revenue Recognition—Multiple Element Arrangements, as amended by Accounting Standards Update 2009-13. License fees and royalties are recognized as they are earned. Non-refundable milestone payments that represent the completion of a separate earnings process are recognized as revenue when earned. Revenue for services under research and development contracts are recognized as the services are performed, or as clinical trial materials are provided.

Fair Value Measurements

In accordance with ASC 820, Fair Value Measurements and Disclosures, we measure fair value based on a hierarchy for inputs used in measuring fair value that maximizes the use of observable inputs and minimizes the use of unobservable inputs by requiring that observable inputs be used when available. The fair value hierarchy is broken down into three levels based on the source of inputs.

We measure our contingent purchase price considerations at fair value in accordance with ASC 825, Financial Instruments. The fair value contingent purchase price considerations are based on significant inputs not observable in the market, which require them to be reported as a Level 3 liability within the fair value hierarchy. The fair values of our 4-AB and PhosImmune contingent purchase price considerations are based on estimates from a Monte Carlo simulation of our market capitalization and share price, respectively. Market capitalization and share price were evolved using a geometric brownian motion, calculated daily for the life of the contingent purchase price consideration.

Business Combinations

In February 2014 and December 2015, we acquired all of the outstanding capital stock of 4-AB and PhosImmune, respectively in business combination transactions. In December 2015, we also acquired an antibody manufacturing pilot facility from XOMA Corporation which under the applicable accounting guidance is being accounted for as a

business combination. The acquisition method of accounting requires that the assets acquired and liabilities assumed be recorded as of the date of the merger or acquisition at their respective fair values with limited exceptions. Assets acquired and liabilities assumed in a business combination that arise from contingencies are recognized at fair value if fair value can reasonably be estimated. If the acquisition date fair value of an asset acquired or liability assumed that arises from a contingency cannot be determined, the asset or liability is recognized if probable and reasonably estimable; if these criteria are not met, no asset or liability is recognized. Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Accordingly, we may be required to value assets at fair value measures that do not reflect our intended use of those assets. Any excess of the purchase price (consideration transferred) over the estimated fair values of net assets acquired is recorded as goodwill. In the event the value of the net assets acquired exceeds the purchase price consideration, then a bargain purchase has occurred. The resulting bargain purchase on the transaction will be recognized as a gain in the period in which the acquisition was executed. The operating results of the acquired businesses are reflected in our consolidated financial statements after the date of the merger or acquisition. If we determine the assets acquired do not meet the definition of a business under the acquisition method of accounting, the transaction will be accounted for as

an acquisition of assets rather than a business combination and, therefore, no goodwill will be recorded. The fair values of intangible assets, including acquired in-process research and development ("IPR&D"), are determined utilizing information available near the merger or acquisition date based on expectations and assumptions that are deemed reasonable by management. The judgments made in determining estimated fair values assigned to assets acquired and liabilities assumed in a business combination, as well as asset lives, can materially affect the Company's results of operations.

Acquired Intangible Assets, including IPR&D

IPR&D acquired in a business combination represents the fair value assigned to research and development assets that have not reached technological feasibility. The value assigned to acquired IPR&D is determined by estimating the costs to develop the acquired technology into commercially viable products, estimating the resulting revenue from the projects, and discounting the net cash flows to present value. The revenue and costs projections used to value acquired IPR&D are, as applicable, reduced based on the probability of success of developing a new drug. Additionally, the projections consider the relevant market sizes and growth factors, expected trends in technology, and the nature and expected timing of new product introductions by us and our competitors. The rates utilized to discount the net cash flows to their present value are commensurate with the stage of development of the projects and uncertainties in the economic estimates used in the projections. Upon the acquisition of IPR&D, we complete an assessment of whether our acquisition constitutes the purchase of a single asset or a group of assets. We consider multiple factors in this assessment, including the nature of the technology acquired, the presence or absence of separate cash flows, the development process and stage of completion, quantitative significance and our rationale for entering into the transaction.

We review amounts capitalized as acquired IPR&D for impairment at least annually, as of October 31, and whenever events or changes in circumstances indicate that the carrying value of the assets might not be recoverable. When performing our impairment assessment, we have the option to first assess qualitative factors to determine whether it is necessary to recalculate the fair value of our acquired IPR&D. If we elect this option and believe, as a result of the qualitative assessment, that it is more-likely-than-not that the fair value of our acquired IPR&D is less than its carrying amount, we calculate the fair value using the same methodology as described above. If the carrying value of our acquired IPR&D exceeds its fair value, then the intangible asset is written-down to its fair value. Alternatively, we may elect to bypass the qualitative assessment and immediately recalculate the fair value of our acquired IPR&D.

Finite-lived intangible asset are amortized over their useful life. We review finite-lived intangible assets for impairment whenever events or changes in circumstances indicate that the carrying value of the assets might not be recoverable.

Goodwill

Goodwill is tested at least annually for impairment on a reporting unit basis. We have concluded that we consist of a single operating segment and one reporting unit. We assess goodwill for impairment by performing a quantitative analysis to determine whether the fair value of our single reporting unit exceeds its carrying value. We perform our annual impairment test as of October 31 of each year and the first step of our impairment analysis compares the fair value to our net book value to determine if there is an indicator of impairment. Fair value is based on the quoted market price of our common stock to derive the market capitalization as of the date of the impairment test.

Recent Accounting Pronouncements

Refer to Note 2 to our consolidated financial statements included within Item 8 of this Annual Report on Form 10-K for a description of recent accounting pronouncements applicable to our business.

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Item 7A. Quantitative and Qualitative Disclosures About Market Risk

Our primary market risk exposure is foreign currency exchange rate risk. International revenues and expenses are generally transacted by our foreign subsidiary and are denominated in local currency. Approximately 18% and 39% of our cash used in operations for the years ended December 31, 2017 and 2016, respectively, was from a foreign subsidiary. Additionally, in the normal course of business, we are exposed to fluctuations in interest rates as we seek debt financing and invest excess cash. We are also exposed to foreign currency exchange rate fluctuation risk related to our transactions denominated in foreign currencies. We do not currently employ specific strategies, such as the use of derivative instruments or hedging, to manage these exposures. Our currency exposures vary, but are primarily concentrated in the Euro, pound sterling, and Swiss Franc, in large part due to our wholly-owned subsidiaries, 4-AB, a company with operations in Switzerland, and Agenus UK Limited, a company with operations in the United Kingdom. During the year ended December 31, 2017, there has been no material change with respect to our approach toward those exposures.

We had cash, cash equivalents and short-term investments at December 31, 2017 of $60.2 million, which are exposed to the impact of interest and foreign currency exchange rate changes, and our interest income fluctuates as interest rates change. Due to the short-term nature of our investments in money market funds, our carrying value approximates the fair value of these investments at December 31, 2017, however, we are subject to investment risk.

We invest our cash and cash equivalents in accordance with our investment policy. The primary objectives of our investment policy are to preserve principal, maintain proper liquidity to meet operating needs, and maximize yields. We review our investment policy annually and amend it as deemed necessary. Currently, the investment policy prohibits investing in any structured investment vehicles and asset-backed commercial paper. Although our investments are subject to credit risk, our investment policy specifies credit quality standards for our investments and limits the amount of credit exposure from any single issue, issuer, or type of investment. We do not invest in derivative financial instruments. Accordingly, we do not believe that there is currently any material market risk exposure with respect to derivatives or other financial instruments that would require disclosure under this item.

Item 8. Financial Statements and Supplementary Data

INDEX TO FINANCIAL STATEMENTS

Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors
Agenus Inc.:

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of Agenus Inc. and subsidiaries (the Company) as of December 31, 2017 and 2016, the related consolidated statements of operations and comprehensive loss, stockholders' (deficit) equity, and cash flows for each of the years in the three year period ended December 31, 2017, and the related notes (collectively, the consolidated financial statements). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2017 and 2016, and the results of its operations and its cash flows for each of the years in the three year period ended December 31, 2017, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2017, based on criteria established in Internal Control – Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission, and our report dated March 16, 2018 expressed an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

Going Concern

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the consolidated financial statements, the Company has suffered recurring losses from operations and has a net capital deficiency that raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ KPMG LLP

We have served as the Company's auditor since 1997.

Boston, Massachusetts

March 16, 2018

AGENUS INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS

	December 31, 2017	December 31, 2016
ASSETS		
Cash and cash equivalents	$60,186,617	$71,448,016
Short-term investments	-	4,988,751
Inventories	79,491	88,200
Accounts Receivable	1,134,493	11,352,022
Prepaid expenses	11,070,960	2,596,675
Other current assets	1,081,993	838,538
Total current assets	73,553,554	91,312,202
Property, plant and equipment, net of accumulated amortization and depreciation of $34,029,085 and $31,243,967 at December 31, 2017 and 2016, respectively	26,178,622	25,633,985
Goodwill	23,048,804	22,392,411
Acquired intangible assets, net of accumulated amortization of $5,461,834 and $3,193,092 at December 31, 2017 and 2016, respectively	14,406,650	16,364,726
Other long-term assets	1,214,394	1,282,662
Total assets	$138,402,024	$156,985,986
LIABILITIES AND STOCKHOLDERS' DEFICIT		
Current portion, long-term debt	$20,639,735	$146,061
Current portion, deferred revenue	4,484,882	2,610,719
Accounts payable	8,086,992	5,428,452
Accrued liabilities	21,569,449	27,874,703
Other current liabilities	1,657,063	4,791,265
Total current liabilities	56,438,121	40,851,200
Long-term debt	142,385,024	130,542,424
Deferred revenue	7,748,284	12,344,782
Contingent purchase price consideration	4,373,000	7,561,000
Other long-term liabilities	3,273,387	4,812,846
Commitments and contingencies (Notes 15 and 18)		
STOCKHOLDERS' DEFICIT		
Preferred stock, par value $0.01 per share; 5,000,000 shares authorized:		
Series A-1 convertible preferred stock; 31,620 shares designated, issued, and outstanding at December 31, 2017 and 2016; liquidation value of $32,625,220, and $32,419,678 at December 31, 2017, and 2016, respectively	316	316
Common stock, par value $0.01 per share; 240,000,000 shares authorized; 101,706,117 shares and 87,794,933 shares issued at December 31, 2017 and 2016, respectively	1,017,061	877,949
Additional paid-in capital	951,811,958	866,854,348
Accumulated other comprehensive loss	(2,169,354)	(1,529,559)

Accumulated deficit	(1,026,475,773)	(905,329,320)
Total stockholders' deficit	(75,815,792)	(39,126,266)
Total liabilities and stockholders' deficit	$138,402,024	$156,985,986

See accompanying notes to consolidated financial statements.

AGENUS INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS

For the Years Ended December 31, 2017, 2016, and 2015

	2017	2016	2015
Revenue:			
Grant revenue	$168,051	$32,404	$24,118
Service revenue	—	147,456	—
Research and development	42,709,035	22,393,443	24,792,907
Total revenues	42,877,086	22,573,303	24,817,025
Operating expenses:			
Research and development	(116,125,299)	(94,971,379)	(70,444,259)
General and administrative	(33,741,183)	(33,125,690)	(28,370,001)
Contingent purchase price consideration fair value adjustment	3,188,000	(1,953,000)	(6,703,700)
Operating loss	(103,801,396)	(107,476,766)	(80,700,936)
Other income (expense):			
Non-operating income (expense)	1,977,398	(2,202,336)	(5,968,170)
Interest expense, net	(18,868,494)	(17,316,073)	(6,599,083)
Loss before taxes	(120,692,492)	(126,995,175)	(93,268,188)
Income tax benefit	—	—	5,387,067
Net loss	(120,692,492)	(126,995,175)	(87,881,121)
Dividends on Series A-1 convertible preferred stock	(205,541)	(204,246)	(202,960)
Net loss attributable to common stockholders	$(120,898,033)	$(127,199,421)	$(88,084,081)
Per common share data:			
Basic and diluted net loss attributable to common stockholders	$(1.23)	$(1.46)	$(1.13)
Weighted average number of common shares outstanding:			
Basic and diluted	98,415,414	87,070,189	78,212,094
Other comprehensive (loss) income:			
Foreign currency translation (loss) gain	$(615,213)	$677,536	$164,150
Unrealized loss on investments	—	—	(1,690)
Pension liability	(24,582)	(153,952)	(245,183)
Other comprehensive (loss) income	(639,795)	523,584	(82,723)
Comprehensive loss	$(121,537,828)	$(126,675,837)	$(88,166,804)

See accompanying notes to consolidated financial statements.

AGENUS INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' (DEFICIT) EQUITY

For the Years Ended December 31, 2017, 2016, and 2015

	Series A-1 Convertible Preferred Stock		Common Stock			Treasury Stock				
	Number of Shares	Par Value	Number of Shares	Par Value	Additional Paid-In Capital	Number of Shares	Amount	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total
Balance at December 31, 2014	31,620	$316	62,720,065	$627,201	$715,667,633	-	$-	$(1,970,420)	$(691,306,343)	$23,018,387
Net loss									(87,881,121)	(87,881,121)
Other comprehensive loss	—	—	—	—	—	—	—	(82,723)	—	(82,723)
Shares sold in underwritten public offering	—	—	12,650,000	126,500	74,543,480	—	—	—	—	74,669,980
Share-based compensation	—	—	—	—	8,098,650	—	—	—	—	8,098,650
Reclassification of liability classified option grants	—	—	—	—	(495,742)	—	—	—	—	(495,742)
Vesting of nonvested shares	—	—	35,332	353	(353)	—	—	—	—	—
Issuance of stock for acquisition of SECANT yeast display technology	—	—	574,140	5,741	2,994,259	—	—	—	—	3,000,000
Shares sold under Stock Purchase	—	—	7,763,968	77,640	34,922,361	—	—	—	—	35,000,001

Agreement										
Issuance of shares related to milestone achievement	—	—	80,493	805	343,736	—	—	—	—	344,541
Issuance of warrants	—	—	—	—	3,038,438					3,038,438
Issuance of stock in connection with XOMA antibody manufacturing facility acquisition	—	—	109,211	1,092	498,908	—	—	—	—	500,000
Issuance of stock in connection with PhosImmune acquisition	—	—	1,631,521	16,315	7,383,685	—	—	—	—	7,400,000
Issuance of stock for settlement of contingent royalty obligation	—	—	300,000	3,000	2,139,000	—	—	—	—	2,142,000
Exercise of stock options and employee share purchases	—	—	525,967	5,260	1,969,879	—	—	—	—	1,975,139
Balance at December 31, 2015	31,620	$316	86,390,697	$863,907	$851,103,934	—	$—	$(2,053,143)	$(779,187,464)	$70,727,550

See accompanying notes to consolidated financial statements.

AGENUS INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' (DEFICIT) EQUITY

(Continued)

For the Years Ended December 31, 2017, 2016, and 2015

	Series A-1 Convertible Preferred Stock		Common Stock			Treasury Stock				
	Number of Shares	Par Value	Number of Shares	Par Value	Additional Paid-In Capital	Number of Shares	Amount	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total
ss									(126,995,175)	(126,995
rehensive e	—	—	—	—	—	—	—	523,584	—	523,584
-based ensation	—	—	—	—	13,323,616	—	—	—	—	13,323,6
ssification ility										
sified grants	—	—	—	—	(318,677)	—	—	—	—	(318,677
g of sted	—	—	570,037	5,701	(5,701)	(185,117)	(768,236)	—	—	(768,236
s sold at arket	—	—	496,520	4,965	2,162,105	—	—	—	—	2,167,07
ce of or shares ensation	—	—	23,110	231	161,332	—	—	—	—	161,563
ment of ry shares	—	—	(188,184)	(1,882)	(1,632,554)	188,184	781,117	—	853,319	-
ce of for ones	—	—	157,513	1,575	885,223	—	—	—	—	886,798
se of options mployee purchases	—	—	345,240	3,452	1,175,070	(3,067)	(12,881)	—	—	1,165,64

ce at nber 31,	31,620	$316	87,794,933	$877,949	$866,854,348	—	$—	$(1,529,559)	$(905,329,320)	$(39,126,

See accompanying notes to consolidated financial statements.

AGENUS INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' (DEFICIT) EQUITY

(Continued)

For the Years Ended December 31, 2017, 2016, and 2015

	Series A-1 Convertible Preferred Stock		Common Stock			Treasury Stock				
	Number of Shares	Par Value	Number of Shares	Par Value	Additional Paid-In Capital	Number of Shares	Amount	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total
									(120,692,492)	(120,6
ensive	—	—	—	—	—	—	—	(639,795)	—	(639,7
f ng	—	—	—	—	1,210,916	—	—	—	(1,292,230)	(81,31
old ock e ent			10,000,000	100,000	59,900,000	—	—	—	—	60,000
sed ation	—	—	—	—	10,924,122	—	—	—	—	10,924
fication ty ed rants	—	—	—	—	2,015,974	—	—	—	—	2,015
of d	—	—	1,097,243	10,972	(10,972)	(155,523)	(527,223)	—	—	(527,2
old at et	—	—	1,315,288	13,153	5,546,553	—	—	—	—	5,559
ment to rrants	—	—	—	—	731,498	—	—	—	—	731,4
ent of shares	—	—	(155,523)	(1,555)	(1,363,937)	155,523	527,223	—	838,269	—
	—	—	373,351	3,734	1,482,203	—	—	—	—	1,485

of r es										
of on of T yeast										
gy	—	—	999,317	9,993	3,537,582	—	—	—	—	3,547
of tions loyee rchases	—	—	281,508	2,815	983,671	—	—	—	—	986,4
at er 31,	31,620	$316	101,706,117	$1,017,061	$951,811,958	—	$—	$(2,169,354)	$(1,026,475,773)	$(75,81

See accompanying notes to consolidated financial statements.

AGENUS INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS

For the Years Ended December 31, 2017, 2016, and 2015

	2017	2016	2015
Cash flows from operating activities:			
Net loss	$(120,692,492)	$(126,995,175)	$(87,881,121)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization	6,006,299	4,947,787	1,957,591
Share-based compensation	12,428,655	13,188,364	7,438,308
Non-cash interest expense	18,242,299	16,530,437	5,626,918
Loss on disposal of assets	23,558	14,733	—
Change in fair value of contingent obligations	(3,188,000)	1,953,000	13,567,000
Gain on issuance of milestone payment in stock	(566,488)	—	—
In-process research and development purchase	—	—	12,245,231
Loss on extinguishment of debt	—	—	154,117
Bargain purchase	—	—	(1,522,377)
Deferred tax benefit	—	—	(5,387,067)
Changes in operating assets and liabilities:			
Accounts receivable	10,217,529	(1,549,798)	(9,331,622)
Inventories	8,709	-	7,500
Prepaid expenses	(8,453,082)	(650,824)	(703,424)
Accounts payable	1,647,430	419,708	2,668,064
Deferred revenue	(2,722,020)	(3,939,619)	15,957,820
Accrued liabilities and other current liabilities	(4,848,372)	18,275,940	9,565,639
Other operating assets and liabilities	(2,329,168)	(2,155,364)	(11,538,019)
Net cash used in operating activities	(94,225,143)	(79,960,811)	(47,175,441)
Cash flows from investing activities:			
Cash paid for acquisitions	—	—	(7,182,069)
Proceeds from sale of plant and equipment	120,000	—	—
Purchases of plant and equipment	(3,120,357)	(12,519,738)	(3,591,335)
Purchases of available-for-sale securities	(14,936,047)	(54,884,101)	(34,993,100)
Proceeds from sale of available-for-sale securities	20,000,000	85,000,000	14,534,486
Net cash provided by (used in) investing activities	2,063,596	17,596,161	(31,232,018)
Cash flows from financing activities:			
Net proceeds from sale of equity	65,559,706	2,167,070	109,669,980
Proceeds from employee stock purchases and option exercises	986,486	1,183,598	1,975,139
Purchase of treasury shares to satisfy tax withholdings	(527,223)	(667,050)	—
Proceeds from issuance of long-term debt	15,000,000	—	109,000,000
Debt issuance costs	(150,000)	—	(1,774,323)
Payments of debt	—	—	(1,111,111)
Payment of contingent purchase price consideration	—	—	(8,180,000)
Payment under a purchase agreement for in-process research and development	—	(5,000,000)	—
Payment of contingent royalty obligation	—	—	(20,000,000)
Payment of capital lease obligation	(330,744)	(144,658)	—

Net cash provided by (used in) financing activities	80,538,225	(2,461,040)	189,579,685
Effect of exchange rate changes on cash	361,923	(429,167)	(183,873)
Net (decrease) increase in cash and cash equivalents	(11,261,399)	(65,254,857)	110,988,354
Cash and cash equivalents, beginning of period	71,448,016	136,702,873	25,714,519
Cash and cash equivalents, end of period	$60,186,617	$71,448,016	$136,702,873
Supplemental cash flow information:			
Cash paid for interest	$1,120,000	$1,120,000	$1,053,447
Supplemental disclosures - non-cash activities:			
Purchases of plant and equipment in accounts payable and accrued liabilities	$968,400	$695,466	$105,245

Issuance of common stock, $0.01 par value, issued in connection with the settlement of milestone obligation	1,485,937	886,798	—
Issuance of common stock, $0.01 par value, issued to directors as compensation	—	161,332	—
Issuance of common stock, $0.01 par value, in connection with the acquisition of the SECANT yeast display technology	3,547,575	—	3,000,000
Issuance of common stock, $0.01 par value, in connection with acquisition of PhosImmune	—	—	7,400,000
Issuance of common stock, $0.01 par value, in connection with the acquisition the XOMA antibody manufacturing facility	—	—	500,000
Issuance of common stock, $0.01 par value, issued in connection with the settlement of the contingent royalty obligation	—	—	2,142,000
Issuance of common stock, $.01 par value, in connection with payment of the contingent purchase price obligation	—	—	344,541
Contingent purchase price consideration in connection with the acquisition of PhosImmune	—	—	2,484,000

See accompanying notes to consolidated financial statements.

AGENUS INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(1) Description of Business

Agenus Inc. (including its subsidiaries, collectively referred to as “Agenus,” the “Company,” “we,” “us,” and “our”) is a clinical-stage immuno-oncology (“I-O”) company dedicated to becoming a leader in the discovery and development of innovative combination therapies and committed to bringing effective medicines to patients with cancer. Our business is designed to drive success in I-O through speed, innovation, and effective combination therapies. We have assembled fully integrated capabilities from novel target discovery, antibody generation, cell line development, and good manufacturing practices (“GMP”) manufacturing together with a comprehensive portfolio consisting of antibody-based therapeutics, adjuvants and cancer vaccine platforms. We leverage our immune biology platforms to identify effective combination therapies for development and have developed productive partnerships to advance our innovation.

We are developing a comprehensive I-O portfolio driven by the following platforms and programs, which we intend to utilize individually and in combination:

- our antibody discovery platforms, including our Retrocyte Display™, SECANT® yeast display, and phage display technologies designed to drive the discovery of future CPM antibody candidates;
- our antibody candidate programs, including our CPM programs;
- our vaccine programs, including Prophage™, AutoSynVax™ and PhosPhoSynVax™; and
- our saponin-based vaccine adjuvants, principally our QS-21 Stimulon® adjuvant, or QS-21 Stimulon.

Our business activities include product research and development, intellectual property prosecution, manufacturing, regulatory and clinical affairs, corporate finance and development activities, and support of our collaborations. Our product candidates require clinical trials and approvals from regulatory agencies, as well as acceptance in the marketplace. Part of our strategy is to develop and commercialize some of our product candidates by continuing our existing arrangements with academic and corporate collaborators and licensees and by entering into new collaborations.

Our cash, cash equivalents, and short-term investments at December 31, 2017 were $60.2 million, a decrease of $16.3 million from December 31, 2016.

	(Unaudited)				
	Quarter Ended				Month Ended
	March 31, 2017	June 30, 2017	September 30, 2017	December 31, 2017	January 31, 2018
Cash, cash equivalents and short-term investments	$123.8	$96.8	$ 70.1	$ 60.2	$ 86.8
Increase (decrease) in cash, cash equivalents and short-term investments	$47.4	$(27.0)	$ (26.7)	$ (9.9)	$ 26.6
Cash used in operating activities	$(14.8)	$(27.4)	$ (26.2)	$ (25.8)	
Reported net loss	$(17.1)	$(31.7)	$ (36.8)	$ (35.0)	

We have incurred significant losses since our inception. As of December 31, 2017, we had an accumulated deficit of $1,026.5 million. Since our inception, we have financed our operations primarily through the sale of equity and convertible and other notes, and interest income earned on cash, cash equivalents, and short-term investment balances. We believe that, based on our current plans and activities, including additional funding we anticipate from multiple sources between now and the end of the second quarter of 2018, including out-licensing and/or partnering opportunities, our working capital resources at December 31, 2017, along with the net proceeds of approximately $28.0 million received from HCR in January 2018 in connection with our royalty transaction, will be sufficient to satisfy our liquidity requirements for more than one year from when these financial statements were issued. We continue to monitor the likelihood of success of our key initiatives and are prepared to discontinue funding of such activities if they do not prove to be feasible, restrict capital expenditures and/or reduce the scale of our operations. However, in spite of these anticipated sources of funding and our ability to control our cash burn, in accordance with the requirements of ASU 2014-15, we are required to disclose the existence of a substantial doubt regarding our ability to continue as a going concern for twelve months from when these financial statements were issued.

Our future liquidity needs will be determined primarily by the success of our operations with respect to the progression of our product candidates and key development and regulatory events in the future. Potential sources of additional funding include: (1) pursuing collaboration, out-licensing and/or partnering opportunities for our portfolio programs and product candidates with one or more third parties, (2) renegotiating third party agreements, (3) selling assets, (4) securing additional debt financing and/or (5) selling equity securities. We believe the execution of one or more of these transactions will enable us to fund our planned operations for at

least one year from when these financial statements were issued. Our ability to address our liquidity needs will largely be determined by the success of our product candidates and key development and regulatory events and our decisions in the future as well as the execution of one or more of the aforementioned contemplated transactions.

Research and development program costs include compensation and other direct costs plus an allocation of indirect costs, based on certain assumptions, and our review of the status of each program. Our product candidates are in various stages of development and significant additional expenditures will be required if we start new trials, encounter delays in our programs, apply for regulatory approvals, continue development of our technologies, expand our operations, and/or bring our product candidates to market. The eventual total cost of each clinical trial is dependent on a number of factors such as trial design, length of the trial, number of clinical sites, and number of patients. The process of obtaining and maintaining regulatory approvals for new therapeutic products is lengthy, expensive, and uncertain. Because our antibody and neoantigen vaccine programs are early stage, and because any further development of HSP-based vaccines is dependent on clinical trial results, among other factors, we are unable to reliably estimate the cost of completing our research and development programs or the timing for bringing such programs to various markets or substantial partnering or out-licensing arrangements, and, therefore, when, if ever, material cash inflows are likely to commence. We will continue to adjust our spending as needed in order to preserve liquidity.

(2) Summary of Significant Accounting Policies

(a) Basis of Presentation and Principles of Consolidation

The consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles and include the accounts of Agenus and our wholly-owned subsidiaries. All significant intercompany transactions and accounts have been eliminated in consolidation.

(b) Segment Information

We are managed and operated as one business segment. The entire business is managed by a single executive operating committee that reports to the chief executive officer. We do not operate separate lines of business with respect to any of our product candidates or geographic locations. Accordingly, we do not prepare discrete financial information with respect to separate product areas or by location and do not have separately reportable segments as defined by Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) 280, Segment Reporting.

(c) Use of Estimates

The preparation of consolidated financial statements in conformity with U.S. generally accepted accounting principles requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. We base those estimates on historical experience and on various assumptions that are believed to be reasonable under the circumstances. Actual results could differ from those estimates.

(d) Cash and Cash Equivalents

We consider all highly liquid investments purchased with maturities at acquisition of three months or less to be cash equivalents. Cash equivalents consist primarily of money market funds and U.S. Treasury Bills.

(e) Investments

We classify investments in marketable securities at the time of purchase. At December 31, 2017 and 2016, all marketable securities are classified as available for sale and as such, the investments are recorded at fair value. Gains and losses on the sale of marketable securities are recognized in operations based on the specific identification method. At December 31, 2017, we had no holdings classified as investments, and at December 31, 2016, our investments consisted of U.S. Treasury Bills.

(f) Concentrations of Credit Risk

Financial instruments that potentially subject us to concentrations of credit risk are primarily cash equivalents, investments, and accounts receivable. We invest our cash, cash equivalents and short-term investments in accordance with our investment policy, which specifies high credit quality standards and limits the amount of credit exposure from any single issue, issuer, or type of investment. We carry balances in excess of federally insured levels, however, we have not experienced any losses to date from this practice.

(g) Inventories

Inventories are stated at the lower of cost or market. Cost has been determined using standard costs that approximate the first-in, first-out method. Inventory as of December 31, 2017 and 2016 consisted solely of finished goods.

(h) Accounts Receivable

Accounts receivable are primarily amounts due from our collaboration partner as a result of research and development services provided and reimbursements under co-funded research and development programs. We considered the need for an allowance for doubtful accounts and have concluded that no allowance was needed as of December 31, 2017 and 2016, as the estimated risk of loss on our accounts receivable was determined to be minimal.

(i) Property, Plant and Equipment

Property, plant and equipment, including software developed for internal use, are carried at cost. Depreciation is computed using the straight-line method over the estimated useful lives of the assets. Amortization of leasehold improvements is computed over the shorter of the lease term or estimated useful life of the asset. Additions and improvements are capitalized, while repairs and maintenance are charged to expense as incurred. Amortization and depreciation of plant and equipment was $3.8 million, $2.7 million, and $1.4 million, for the years ended December 31, 2017, 2016, and 2015, respectively.

(j) Fair Value of Financial Instruments

The estimated fair values of all our financial instruments, excluding debt, approximate their carrying amounts in the consolidated balance sheets. The fair value of our outstanding debt is based on a present value methodology. The outstanding principal amount of our debt, including the current portion, was $129.1 million and $114.1 million at December 31, 2017 and 2016, respectively.

(k) Revenue Recognition

Revenue for services under research and development contracts are recognized as the services are performed, or as clinical trial materials are provided. Non-refundable milestone payments that represent the completion of a separate earnings process are recognized as revenue when earned. License fees and royalties are recognized as they are earned. Grant revenue is recognized when the related expense is recorded. Revenue recognized from collaborative agreements is based upon the provisions of ASC 605-25, Revenue Recognition – Multiple-Element Arrangements, as amended by Accounting Standards Update (“ASU”) 2009-13 (“Topic 605”). For the years ended December 31, 2017 and 2016, 87% of our revenue was earned from one collaboration partner. For the year ended December 31, 2015, 95% of our revenue was earned from one collaboration partner.

(l) Foreign Currency Transactions

Gains and losses from our foreign currency based accounts and transactions, such as those resulting from the translation and settlement of receivables and payables denominated in foreign currencies, are included in the consolidated statements of operations within other (expense) income. We do not currently use derivative financial instruments to manage the risks associated with foreign currency fluctuations. We recorded a foreign currency gain of $1.9 million for the year ended December 31, 2017 and foreign currency losses of $2.1 million, and $866,000, for the years ended December 31, 2016 and 2015, respectively.

(m) Research and Development

Research and development expenses include the costs associated with our internal research and development activities, including salaries and benefits, share-based compensation, occupancy costs, clinical manufacturing costs, related administrative costs, and research and development conducted for us by outside advisors, such as sponsored university-based research partners and clinical study partners. We account for our clinical study costs by estimating the total cost to treat a patient in each clinical trial and recognizing this cost based on estimates of when the patient receives treatment, beginning when the patient enrolls in the trial. Research and development expenses also include the cost of clinical trial materials shipped to our research partners. Research and development costs are expensed as incurred.

(n) Share-Based Compensation

We account for share-based compensation in accordance with the provisions of ASC 718, Compensation—Stock Compensation and ASC 505-50, Equity-Based Payments to Non-Employees. Share-based compensation expense is recognized based on the estimated grant date fair value. Compensation cost is recognized on a straight-line basis over the requisite service period of the award.

Forfeitures are recognized as they occur. The non-cash charge to operations for non-employee awards with vesting or other performance criteria is affected each reporting period by changes in the fair value of our common stock. Under the provisions of ASC 505-50, the change in fair value of vested options issued to non-employees is reflected in the statement of operations each reporting period, until the options are exercised or expire. See Note 11 for a further discussion on share-based compensation.

(o) Income Taxes

Income taxes are accounted for under the asset and liability method with deferred tax assets and liabilities recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis and net operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which such items are expected to be reversed or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in the consolidated statement of operations in the period that includes the enactment date. Deferred tax assets are recognized when they are more likely than not expected to be realized.

The Tax Cuts and Jobs Act ("the Act") was enacted on December 22, 2017. The Act reduces the US federal corporate tax rate from 34% to 21%, requires companies to pay a one-time transition tax on earnings of certain foreign subsidiaries that were previously tax deferred and creates new taxes on certain foreign sourced earnings. On December 22, 2017, the Securities and Exchange Commission issued guidance under Staff Accounting Bulletin No. 118, Income Tax Accounting Implications of the Tax Cuts and Jobs Act ("SAB 118") directing taxpayers to consider the impact of the U.S. legislation as "provisional" when it does not have the necessary information available, prepared or analyzed (including computations) in reasonable detail to complete its accounting for the change in tax law.

At December 31, 2017, we have completed our accounting for the tax effects of enactment of the Act, as described below.

The impacts of the Act relate to the reduction in the U.S. corporate income tax rate to 21 percent, which resulted in re-measuring our deferred tax assets and liabilities using the new 21 percent federal tax rate. This did not result in any net tax expense or benefit as there were corresponding and offsetting impacts to our deferred tax asset valuation allowance. For the year ended December 31, 2017, we have recognized no transition tax in the current year and expect no income tax effect in future periods as a result of our accumulated losses since inception of our foreign subsidiaries, beginning in 2002.

Other significant provisions that are not yet effective but may impact income taxes in future years include: an exemption from U.S. tax on dividends of future foreign earnings, limitation on the current deductibility of net interest expense in excess of 30 percent of adjusted taxable income, a limitation of net operating losses generated after fiscal 2018 to 80 percent of taxable income, an incremental tax (base erosion anti-abuse tax or "BEAT") on excessive amounts paid to foreign related parties, and a minimum tax on certain foreign earnings in excess of 10 percent of the foreign subsidiaries tangible assets (i.e., global intangible low-taxed income or "GILTI"). We are still evaluating whether to make a policy election to treat the GILTI tax as a period cost to provide U.S. deferred taxes on foreign temporary differences that are expected to generate GILTI income when they reverse in future years. In all cases, we will continue to make and refine our calculations as additional analysis is completed. In addition, our estimates may also be affected as we gain a more thorough understanding of the tax law.

(p) Net Loss Per Share

Basic income and loss per common share is calculated by dividing the net loss attributable to common stockholders by the weighted average number of common shares outstanding (including common shares issuable under our Directors' Deferred Compensation Plan). Diluted income per common share is calculated by dividing net income attributable to common stockholders by the weighted average number of common shares outstanding (including common shares

issuable under our Directors' Deferred Compensation Plan) plus the dilutive effect of outstanding instruments such as warrants, stock options, non-vested shares, convertible preferred stock, and convertible notes. Because we reported a net loss attributable to common stockholders for all periods presented, diluted loss per common share is the same as basic loss per common share, as the effect of utilizing the fully diluted share count would have reduced the net loss per common share. Therefore, the following potentially dilutive securities have been excluded from the computation of diluted weighted average shares outstanding as of December 31, 2017, 2016, and 2015, as they would be anti-dilutive:

	Year Ended		
	2017	2016	2015
Warrants	4,351,450	4,351,450	4,351,450
Stock options	14,366,787	11,693,400	8,345,835
Nonvested shares	1,313,550	1,942,476	1,730,604
Convertible preferred stock	333,333	333,333	333,333

(q) Goodwill

Goodwill represents the excess of cost over the fair value of net assets of businesses acquired. Goodwill is not amortized, but instead tested for impairment at least annually. Annually we assess whether there is an indication that goodwill is impaired, or more frequently if events and circumstances indicate that the asset might be impaired during the year. We perform our annual impairment test as of October 31 of each year. The first step of our impairment analysis compares our fair value to our net book value to determine if there is an indicator of impairment. We operate as a single operating segment and single reporting unit and our fair value is based on the quoted market price of our common stock to derive the market capitalization as of the date of the impairment test. ASC 350, Intangibles, Goodwill and Other states that if the carrying value of the reporting unit is negative, the second step of the impairment test shall be performed to measure the amount of impairment loss, if any, if qualitative factors indicate that it is more likely than not that a goodwill impairment exists. No goodwill impairment has been recognized for the periods presented.

(r) In-process Research and Development

Acquired in-process research and development ("IPR&D") represents the fair value assigned to research and development assets that have not reached technological feasibility. The value assigned to acquired IPR&D is determined by estimating the costs to develop the acquired technology into commercially viable products, estimating the resulting revenue from the projects, and discounting the net cash flows to present value. The revenue and cost projections used to value acquired IPR&D are, as applicable, reduced based on the probability of success of developing a new drug. Additionally, the projections consider the relevant market sizes and growth factors, expected trends in technology, and the nature and expected timing of new product introductions by us and our competitors. The rates utilized to discount the net cash flows to their present value are commensurate with the stage of development of the projects and uncertainties in the economic estimates used in the projections. Upon the acquisition of IPR&D, we complete an assessment of whether our acquisition constitutes the purchase of a single asset or a group of assets. We consider multiple factors in this assessment, including the nature of the technology acquired, the presence or absence of separate cash flows, the development process and stage of completion, quantitative significance and our rationale for entering into the transaction.

If we acquire an asset or group of assets that do not meet the definition of a business under applicable accounting standards, then the acquired IPR&D is expensed on its acquisition date. Future costs to develop these assets are recorded to research and development expense as they are incurred.

We review amounts capitalized as acquired IPR&D for impairment at least annually, as of October 31, or whenever events or changes in circumstances indicate that the carrying value of the assets might not be recoverable. When performing our impairment assessment, we have the option to first assess qualitative factors to determine whether it is necessary to estimate the fair value of our acquired IPR&D. If we elect this option and believe, as a result of the qualitative assessment, that it is more-likely-than-not that the fair value of our acquired IPR&D is less than its carrying amount, we estimate the fair value using the same methodology as described above. If the carrying value of our acquired IPR&D exceeds its fair value, then the intangible asset is written-down to its fair value. Alternatively, we may elect to not first assess qualitative factors and immediately estimate the fair value of our acquired IPR&D. No IPR&D impairments were recognized for the years presented.

(s) Accounting for Asset Retirement Obligations

We record the fair value of an asset retirement obligation as a liability in the period in which we incur a legal obligation associated with the retirement of tangible long-lived assets that result from the acquisition, construction, development, and/or normal use of the assets. A legal obligation is a liability that a party is required to settle as a result of an existing or enacted law, statute, ordinance, or contract. We are also required to record a corresponding asset that is depreciated over the life of the asset. Subsequent to the initial measurement of the asset retirement

obligation, the obligation will be adjusted at the end of each period to reflect the passage of time (accretion) and changes in the estimated future cash flows underlying the obligation. Changes in the liability due to accretion are charged to the consolidated statement of operations, whereas changes due to the timing or amount of cash flows are an adjustment to the carrying amount of the related asset. Our asset retirement obligations primarily relate to the expiration of our facility lease and anticipated costs to be incurred based on our lease terms.

(t) Long-lived Assets

If required based on certain events and circumstances, recoverability of assets to be held and used, other than goodwill and intangible assets not being amortized, is measured by a comparison of the carrying amount of an asset to the undiscounted future net cash flows expected to be generated by the asset or asset group. If the carrying amount of an asset exceeds its estimated future undiscounted cash flows, an impairment charge is recognized for the amount by which the carrying amount of the asset exceeds the fair value of the asset. Authoritative guidance requires companies to separately report discontinued operations and extends that reporting to a component of an entity that either has been disposed of (by sale, abandonment, or in a distribution to owners) or is classified as held for sale. Assets to be disposed of are reported at the lower of the carrying amount or fair value less costs to sell.

(u) Recent Accounting Pronouncements

In May 2014, the FASB issued ASU No. 2014-09, Revenue from Contracts with Customers, ("ASU 2014-09"). ASU 2014-09 amends revenue recognition principles and provides a single set of criteria for revenue recognition among all industries. This new standard provides a five-step framework whereby revenue is recognized when promised goods or services are transferred to a customer at an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. The standard also requires enhanced disclosures pertaining to revenue recognition in both interim and annual periods. In March 2016, the FASB issued an amendment to the standard, ASU 2016-8, Revenue from Contracts with Customers (Topic 606): Principal versus Agent Considerations (Reporting Revenue Gross versus Net) (“ASU 2016-08”), which clarifies the implementation guidance on principal versus agent considerations. In April 2016, the FASB issued an additional amendment to the standard, ASU 2016-10, Revenue from Contracts with Customers (Topic 606): Identifying Performance Obligations and Licensing (“ASU 2016-10”), which clarifies the guidance on identifying performance obligations and the implementation guidance on licensing. In August 2015, the FASB issued ASU No. 2015-14, which defers the effective date by one year to December 15, 2017 for annual reporting periods beginning after that date, including interim periods within those periods. The FASB also approved permitting early adoption of the standard, but not before the original effective date of December 15, 2016. ASU 2014-09 is effective for interim and annual periods beginning after December 15, 2017. Two adoption methods are permitted: retrospectively to all prior reporting periods presented, with certain practical expedients permitted; or retrospectively with the cumulative effect of initially adopting the ASU recognized at the date of initial application. We adopted the new standard effective January 1, 2018 under the modified retrospective method.

Under ASC 606, an entity recognizes revenue when its customer obtains control of promised goods or services, in an amount that reflects the consideration which the entity expects to receive in exchange for those goods or services. To determine revenue recognition for arrangements that an entity determines are within the scope of ASC 606, the entity performs the following five steps: (i) identify the contract(s) with a customer; (ii) identify the performance obligations in the contract; (iii) determine the transaction price; (iv) allocate the transaction price to the performance obligations in the contract; and (v) recognize revenue when (or as) the entity satisfies a performance obligation.

To date, our sources of collaboration and other revenue have primarily been collaboration, license and research agreements. The most significant differences between Topic 606 and previous guidance for license and collaboration revenue are: (i) allocating consideration to performance obligations; and (ii) estimating and determining the timing of recognition of variable consideration received from licensees, contingent milestones and royalties. Revenues from contingent milestone payments may be recognized earlier under Topic 606 than under Topic 605, based on an assessment of the probability of a significant reversal of such milestone revenue at each reporting date. This assessment may result in recognizing milestone revenue before the milestone event has been achieved. Under previous guidance, milestone revenue was typically recognized when the milestone event was achieved.

We are in the process of completing our assessment of the impact that the new standard will have on our consolidated financial statements. Currently, we anticipate a potential impact from the allocation of the transaction price to performance obligations, and the related timing of revenue recognition for the identified performance obligations. Our collaboration, license and research agreements, which are discussed further in Notes 12 and 13, are our sole sources of revenue and therefore the only arrangements impacted by the adoption of the new standard.

ASC 606 also requires more robust disclosures than required by previous guidance, including disclosures related to disaggregation of revenue into appropriate categories, performance obligations, the judgments made in revenue recognition determinations, adjustments to revenue which relate to activities from previous quarters or years, any significant reversals of revenue, and costs to obtain or fulfill contracts.

In February 2016, the FASB issued ASU 2016-02, Leases (Topic 842) ("ASU 2016-02") which supersedes Topic 840, Leases. ASU 2016-02 requires lessees to recognize a right-of-use asset and a lease liability on their balance sheets for all leases with terms greater than twelve months. Based on certain criteria, leases will be classified as either financing or operating, with classification affecting the pattern of expense recognition in the income statement. For leases with a term of 12 months or less, a lessee is permitted to make an accounting policy election by class of underlying asset not to recognize lease assets and lease liabilities. If a lessee makes this election, it should recognize lease expense for such leases generally on a straight-line basis over the lease term. ASU 2016-2 is effective for fiscal years beginning after December 15, 2018, and interim periods within those years, with early adoption permitted. In transition, lessees and lessors are required to recognize and measure leases at the beginning of the earliest period presented using a modified retrospective approach. The modified retrospective approach includes a number of optional practical expedients primarily focused on leases that commenced before the effective date of Topic 842, including continuing to account for leases that commence before the effective date in accordance with previous guidance, unless the lease is modified. Note 15 provides details on our current lease arrangements. While we continue to evaluate the provisions of ASU 2016-02 to determine how it will be affected, the primary effect of adopting the new standard will be to record assets and obligations for current operating leases. Upon adoption, based on leases in place as of December 31, 2017, we expect to recognize assets and liabilities of approximately $8.2 million related to our operating leases. The adoption of ASU 2016-02 is not expected to have a material impact on our results of operations or cash flows.

In March 2016, the FASB issued ASU 2016-09, Compensation – Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting, ("ASU 2016-09"). ASU 2016-09 provides for the simplification of the accounting for share-based payment transactions, including the income tax consequences, an option to recognize gross stock-based compensation expense with actual forfeitures recognized as they occur, classification of awards as either equity or liabilities, and classification on the statement of cash flows. ASU 2016-09 applies to all entities and is effective for the annual effective for annual periods beginning after December 15, 2016, and interim periods within those annual periods. We adopted ASU 2016-09 on January 1, 2017 and recorded a cumulative adjustment of $1.2 million in retained earnings to reflect the retrospective change in awards expected to vest.

In January 2017, the FASB issued ASU 2017-01, Business Combinations (Topic 805): Clarifying the Definition of a Business ("ASU 2017-01"), which provides guidance regarding the definition of a business, with the objective of adding guidance to assist entities with evaluating whether transactions should be accounted for as acquisitions (or disposals) of assets or businesses. ASU 2017-01 is effective for the Company in the first quarter of 2018, with early adoption permitted, and prospective application required.

In January 2017, the FASB issued ASU 2017-04, Intangibles – Goodwill and Other (Topic 350) ("ASU 2017-04") that will eliminate the requirement to calculate the implied fair value of goodwill to measure a goodwill impairment charge. Instead, any impairment charge will be based on the excess of a reporting unit's carrying amount over its fair value. The guidance is effective for the Company in the first quarter of 2020. Early adoption is permitted. We do not anticipate the adoption of this guidance to have a material impact on our consolidated financial statements, absent any goodwill impairment.

In May 2017, the FASB issued ASU No. 2017-09, Compensation – Stock Compensation (Topic 718) Scope of Modification Accounting ("ASU 2017-09"). The amendments in ASU 2017-09 provide guidance about which changes to the terms or conditions of a share-based payment award require an entity to apply modification accounting in Topic 718. The adoption of ASU 2017-09, which will become effective for annual periods beginning after December 15, 2017 and for interim periods within those annual periods, is not expected to have any impact on our financial statement presentation or disclosures.

(3) Business Acquisitions

4-Antibody

On January 10, 2014, we entered into a Share Exchange Agreement (the "Share Exchange Agreement") providing for our acquisition of all of the outstanding capital stock of Agenus Switzerland Inc. (formerly known as 4-Antibody AG) ("4-AB"), from the shareholders of 4-AB (the "4-AB Shareholders"). The transaction closed on February 12, 2014 (the "Closing Date"). In exchange for their shares, the 4-AB Shareholders received an aggregate of 3,334,079 shares of our common stock paid upon closing and valued at $10.1 million. Contingent milestone payments of up to $40.0 million (the "contingent purchase price consideration"), payable in cash or shares of our common stock at our option, are due to the 4-AB Shareholders as follows: (i) $20.0 million upon our market capitalization exceeding $300.0 million for 10 consecutive trading days prior to the earliest of (a) the fifth anniversary of the Closing Date (b) the sale of the 4-AB or (c) the sale of Agenus; (ii) $10.0 million upon our market capitalization exceeding $750.0 million for 30 consecutive trading days prior to the earliest of (a) the tenth anniversary of the Closing Date (b) the sale of 4-AB, or (c) the sale of Agenus, and (iii) $10.0 million upon our market capitalization exceeding $1.0 billion for 30 consecutive trading days prior to the earliest of (a) the tenth anniversary of the Closing Date, (b) the sale of 4-AB, or (c) the sale of Agenus. We assigned an acquisition date fair value of $9.7 million to the contingent purchase price consideration. During January 2015, the first milestone noted above was achieved. This acquisition provided us with the Retrocyte Display technology platform for the rapid discovery and optimization of fully-human and humanized monoclonal antibodies

against a wide array of molecular targets and a portfolio of CPM antibodies.

PhosImmune Inc.

On December 23, 2015 (the "PhosImmune Closing Date"), we entered into a Purchase Agreement with PhosImmune Inc., a privately-held Virginia corporation ("PhosImmune"), the securityholders of PhosImmune (the "PhosImmune Securityholders") and Fanelli Haag PLLC, as representative of the PhosImmune Securityholders providing for the acquisition of all outstanding securities of PhosImmune. On the PhosImmune Closing Date, in exchange for their shares, the PhosImmune Securityholders received $2.5 million in cash and an aggregate of 1,631,521 of our common stock paid upon closing and valued at $7.4 million. Contingent milestone payments up to $35.0 million payable in cash and/or stock at our option are due as follows: (i) $5.0 million upon the closing trading price of our common stock equals or exceeds $8.00 for 60 consecutive trading days prior to the earlier of (a) the fifth anniversary of the PhosImmune Closing Date or (b) the sale of Agenus; (ii) $15.0 million if the closing trading price of our common stock equals or exceeds $13.00 for 60 consecutive trading days prior to the earlier of (a) the tenth anniversary of the PhosImmune Closing Date or (b) the sale of Agenus; and (iii) $15.0 million if the closing trading price of our common stock equals or exceeds $19.00 for 60 consecutive trading days prior to the earlier of (a) the tenth anniversary of the PhosImmune Closing Date or (b) the sale of Agenus. We assigned an acquisition date fair value of $2.5 million to the contingent purchase price consideration. This acquisition expands our I-O pipeline and strengthens our neoantigen capabilities to enable the development of best-in-class cancer vaccines and other novel therapies.

Antibody Manufacturing Facility

On November 5, 2015, we entered into Asset Purchase Agreement (the "Asset Purchase Agreement") providing for our acquisition of an antibody manufacturing pilot plant and related capabilities from XOMA Corporation ("XOMA"). The transaction closed on December 31, 2015. As consideration for the purchased assets, we paid XOMA $4.7 million in cash and issued XOMA

109,211 shares of our common stock valued at $500,000. XOMA is entitled to receive an additional 109,211 shares of our common stock subject to the satisfaction of conditions set forth in the Asset Purchase Agreement. We do not believe it is probable that XOMA will satisfy these conditions and therefore have not ascribed a value to the contingent consideration. The transaction with XOMA provides us with an antibody pilot manufacturing facility enabling the production and manufacture of CPM antibodies under our programs and those of our collaborations.

In accordance with the guidance of ASC 805 Business Combinations, when the fair value of the assets acquired exceed the total purchase consideration, a bargain purchase has occurred and the resulting gain is to be recognized in earning as of the date of the transaction. In July 2015, XOMA experienced a set-back in a late-stage clinical trial and as a result of the setback, began the immediate divestiture of their antibody body production capabilities at values less than the prevailing market rates for the assets. For the year ended December 31, 2015, we recorded a bargain purchase gain of approximately $1.5 million on the acquisition of the antibody manufacturing pilot facility and related capabilities in non-operating (expense) income in our consolidated statements of operations and comprehensive loss.

(4) Asset Purchase Agreements

Celexion, LLC

On April 7, 2015 (the “Celexion Closing Date”), we entered into an Asset Purchase Agreement (the “Celexion Purchase Agreement”) with Celexion, LLC (“Celexion”) and each of the members of Celexion, pursuant to which, we acquired Celexion’s SECANT yeast display antibody discovery platform, its full-length IgG antibody library, its technology for the discovery of molecules targeting cell membrane-associated antigens, and certain other related intellectual property assets (collectively, the “Purchased Assets”). As consideration for the Purchased Assets, on the Celexion Closing Date we paid Celexion $1.0 million in cash and issued Celexion 574,140 shares of our common stock valued at approximately $5.23 per share. As additional consideration for the Purchased Assets, we agreed under the Celexion Purchase Agreement to pay to Celexion (i) $1.0 million in cash payable on each of the 9-month and 18-month anniversaries of the Celexion Closing Date and (ii) $4.0 million on each of the 12-month and 24-month anniversaries of the Celexion Closing Date payable at our discretion in cash, shares of our common stock, or any combination thereof. If we elect to pay any of the additional consideration in shares of our common stock, such shares will be issued at a price per share equal to the simple average of the daily closing volume weighted average price over the 20 trading days preceding the date of issuance. We agreed to file one or more registration statements under the Securities Act to cover the resale of all shares issued as consideration under the Celexion Purchase Agreement. In May 2015, we filed a registration statement covering the resale of the 574,140 shares issued to Celexion on the Celexion Closing Date, and the SEC declared the registration statement effective in June 2015. This transaction was accounted for as an asset acquisition in accordance with ASC 805 Business Combinations. In accordance with ASC 730 Research and Development, the purchase price of approximately $13.2 million was recorded as research and development expense in our consolidated statement of operations and comprehensive loss for the year December 31, 2015 as the IPR&D was deemed to have no future alternative use.

On November 9, 2017 we made the final payment under the Celexion Purchase Agreement. We issued to Celexion 999,317 shares of our common stock based on the preceding 20 trading day average of approximately $4.10 per share. The closing price of our common stock on November 9, 2017 was $3.55 per share. As such, we recorded a gain of approximately $550,000 at issuance. Also on November 9, 2017, we filed a registration statement covering the sale of

the 999,317 shares issued to Celexion. The SEC declared the registration statement effective in January 2018.

(5) Goodwill and Acquired Intangible Assets

The following table sets forth the changes in the carrying amount of goodwill for year ended December 31, 2017 (in thousands):

Balance, December 31, 2016	$22,392
Effect of foreign currency	657
Balance, December 31, 2017	$23,049

Acquired intangible assets consisted of the following at December 31, 2017 and 2016 (in thousands):

	As of December 31, 2017			
	Amortization period (years)	Gross carrying amount	Accumulated amortization	Net carrying amount
Intellectual Property	7-15 years	$ 16,545	$ (4,290)	$ 12,255
Trademarks	4.5 years	826	(711)	115
Other	2-6 years	570	(461)	109
In-process research and development	Indefinite	1,928	—	1,928
Total		$ 19,869	$ (5,462)	$ 14,407

	As of December 31, 2016			
	Amortization period (years)	Gross carrying amount	Accumulated amortization	Net carrying amount
Intellectual Property	7-15 years	$ 16,358	$ (2,385)	$ 13,973
Trademarks	4.5 years	791	(505)	286
Other	2-6 years	563	(303)	260
In-process research and development	Indefinite	1,846	—	1,846
Total		$ 19,558	$ (3,193)	$ 16,365

The weighted average amortization period of our finite-lived intangible assets is approximately 9 years. Amortization expense for the years ended December 31, 2017, 2016, and 2015 was $2.3 million, $2.2 million, and $525,000, respectively. Amortization expense related to acquired intangibles is estimated at $2.0 million for 2018, and $1.9 million for each of 2019, 2020, 2021, and 2022.

The acquired IPR&D asset relates to the six pre-clinical antibody programs acquired in the Agenus Switzerland transaction. IPR&D acquired in a business combination is capitalized at fair value until the underlying project is completed and is subject to impairment testing. Once the project is completed, the carrying value of IPR&D is amortized over the estimated useful life of the asset. Post-acquisition research and development expenses related to the acquired IPR&D are expensed as incurred.

(6) Investments

Cash Equivalents and Short-term Investments

Cash equivalents and short-term investments consisted of the following as of December 31, 2017 and 2016 (in thousands):

	December 31, 2017		December 31, 2016	
	Cost	Estimated Fair Value	Cost	Estimated Fair Value
Institutional Money Market Funds	$57,036	$ 57,036	$38,913	$ 38,913
U.S. Treasury Bills	—	—	14,978	14,978
Total	$57,036	$ 57,036	$53,891	$ 53,891

We received proceeds of approximately $20.0 million, $85.0 million, and $14.5 from the maturity of U.S. Treasury Bills classified as short-term investments for the years ended December 31, 2017, 2015, and 2014, respectively. No securities were sold before their maturity in 2017. As a result of the short-term nature of our investments, there were minimal unrealized holding gains or losses as of December 31, 2017 and 2016, and 2015.

Of the investments listed above, $57.0 million and $48.9 million have been classified as cash equivalents on our consolidated balance sheet as of December 31, 2017 and 2016, respectively. Approximately $5.0 million was classified as short-term investments as of December 31, 2016.

(7) Property, Plant and Equipment

Property, plant and equipment, net as of December 31, 2017 and 2016 consist of the following (in thousands):

	2017	2016	Estimated Depreciable Lives
Land	$2,230	$2,230	Indefinite
Building and building improvements	4,682	4,605	35 years
Furniture, Fixtures, and other	5,409	3,993	3 to 10 years
Laboratory and manufacturing equipment	17,438	16,107	4 to 10 years
Leasehold improvements	23,415	23,154	2 to 12 years
Software and computer equipment	7,034	6,789	3 years
	60,208	56,878	
Less accumulated depreciation and amortization	(34,029)	(31,244)	
Total	$26,179	$25,634	

(8) Income Taxes

We are subject to taxation in the U.S. and in various state, local, and foreign jurisdictions. We remain subject to examination by U.S. Federal, state, local, and foreign tax authorities for tax years 2014 through 2017. With a few exceptions, we are no longer subject to U.S. Federal, state, local, and foreign examinations by tax authorities for the tax year 2013 and prior. However, net operating losses from the tax year 2013 and prior would be subject to examination if and when used in a future tax return to offset taxable income. Our policy is to recognize income tax related penalties and interest, if any, in our provision for income taxes and, to the extent applicable, in the corresponding income tax assets and liabilities, including any amounts for uncertain tax positions.

As of December 31, 2017, we had available net operating loss carryforwards of $809.1 million and $279.3 million for Federal and state income tax purposes, respectively, which are available to offset future Federal and state taxable income, if any, and expire between 2018 and 2037. The Company adopted ASU 2016-09, Improvements to Employee Share-Based Payment Accounting, on January 1, 2017, upon which the net operating loss carryforward deferred tax assets were increased by the excess tax benefits of $0.3 million (tax-effected) with a corresponding increase to the Company’s valuation allowance. Our ability to use these net operating losses is limited by change of control provisions under Internal Revenue Code Section 382 and may expire unused. In addition, we have $8.9 million and $13.4 million of Federal and state research and development credits, respectively, available to offset future taxable income. These Federal and state research and development credits expire between 2018 and 2036 and 2018 and 2032, respectively. Additionally, we have $0.2 million of state investment tax credits, available to offset future taxable income and expire between 2018 and 2020. We also have foreign income tax net operating loss carryforwards of approximately $54.6 million which are available to offset future foreign taxable income, if any, and expire between 2018 and 2024. The potential impacts of such provisions are among the items considered and reflected in management’s assessment of our valuation allowance requirements.

The tax effect of temporary differences and net operating loss and tax credit carryforwards that give rise to significant portions of the deferred tax assets and deferred tax liabilities as of December 31, 2017 and 2016 are presented below

(in thousands).

	2017	2016
Deferred tax assets:		
U.S. Federal and State net operating loss carryforwards	$185,535	$241,572
Foreign net operating loss carryforwards	16,209	13,075
Research and development tax credits	19,597	17,723
Share-based compensation	8,249	13,165
Other	6,221	15,513
Total deferred tax assets	235,811	301,048
Less: valuation allowance	(232,443)	(295,502)
Net deferred tax assets	3,368	5,546
Deferred tax liabilities	(3,960)	(6,197)
Net deferred tax liability	$(592)	$(651)

In assessing the realizability of deferred tax assets, we consider whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which the net operating loss and tax credit carryforwards can be utilized or the temporary differences become deductible. We consider projected future taxable income and tax planning strategies in making this assessment. In

order to fully realize the deferred tax asset, we will need to generate future taxable income sufficient to utilize net operating losses prior to their expiration. Based upon our history of not generating taxable income due to our business activities focused on product development, we believe that it is more likely than not that deferred tax assets will not be realized through future earnings. Accordingly, a valuation allowance has been established for deferred tax assets which will not be offset by the reversal of deferred tax liabilities. The valuation allowance on the deferred tax assets decreased by $63.1 million during the year ended December 31, 2017, which primarily related to the “Tax Cuts and Jobs Act”, which reduced the federal tax rate from 34% to 21%, and the valuation allowance increased by $35.3 during the year ended December 31, 2016.

Income tax benefit was nil for the years ended December 31, 2017 and 2016, and $5.4 million for the year ended December 31, 2015. The income tax benefit of $5.4 million for the year ended December 31, 2015 was entirely related to a deferred tax benefit recognized as a result of deferred tax liabilities recorded in connection with our acquisitions of PhosImmune and certain assets from XOMA. Income taxes recorded differed from the amounts computed by applying the U.S. Federal income tax rate of 34% to loss before income taxes as a result of the following (in thousands).

	2017	2016	2015
Computed “expected” Federal tax benefit	$(41,035)	$(42,781)	$(31,669)
(Increase) reduction in income taxes benefit resulting from:			
Change in valuation allowance	(63,868)	35,471	25,908
(Decrease) increase due to uncertain tax positions	—	(203)	203
State and local income benefit, net of Federal income tax benefit	(4,561)	(3,452)	(3,869)
Change in federal tax rate	104,764	—	—
Foreign rate differential	2,084	4,398	(314)
Other, net	2,616	6,567	4,354
Income tax benefit	$—	$—	$(5,387)

A reconciliation of the beginning and ending amount of gross unrecognized tax benefits is as follows (in thousands):

	2017	2016	2015
Balance, January 1	$5,278	$5,481	$5,778
Increase related to current year positions	—	—	203
Decrease related to previously recognized positions	—	(203)	(500)
Decrease related to change in federal tax rate	(929)	—	—
Balance, December 31	$4,349	$5,278	$5,481

These unrecognized tax benefits would all impact the effective tax rate if recognized. There are no positions which we anticipate could change within the next twelve months.

(9) Accrued and Other Current Liabilities

Accrued liabilities consist of the following as of December 31, 2017 and 2016 (in thousands):

	December 31, 2017	December 31, 2016
Payroll	$ 7,790	$ 6,504
Professional fees	2,021	2,373
Contract manufacturing costs	5,528	10,492
Research services	4,663	5,639
Leasehold improvements	—	1,280
Other	1,567	1,587
Total	$ 21,569	$ 27,875

Other current liabilities consisted of the following as of December 31, 2017 and 2016 (in thousands):

	December 31, 2017	December 31, 2016
Current portion of deferred purchase price (Note 4)	$ —	$ 3,948
Other	1,657	843
Total	$ 1,657	$ 4,791

(10) Equity

Effective June 14, 2016, our certificate of incorporation was amended to increase the number of authorized shares of common stock from 140,000,000 to 240,000,000.

Under the terms and conditions of the Certificate of Designation creating the Series A-1 Preferred Stock, this stock is convertible by the holder at any time into our common stock, is non-voting, has an initial conversion price of $94.86 per common share, subject to adjustment, and is redeemable by us at its face amount ($31.6 million), plus any accrued and unpaid dividends, on or after September 24, 2013. The Certificate of Designation does not contemplate a sinking fund. The Series A-1 Preferred Stock ranks senior to our common stock. In a liquidation, dissolution, or winding up of the Company, the Series A-1 Preferred Stock's liquidation preference must be fully satisfied before any distribution could be made to the holders of the common stock. Other than in such a liquidation, no terms of the Series A-1 Preferred Stock affect our ability to declare or pay dividends on our common stock as long as the Series A-1 Preferred Stock's dividends are accruing. The liquidation value of this Series A-1 Preferred stock is equal to $1,000 per share outstanding plus any accrued unpaid dividends. Dividends in arrears with respect to the Series A-1 Preferred Stock were approximately $1.0 million or $31.79 per share, and $800,000, or $25.29 per share, at December 31, 2017 and 2016, respectively.

In January 2008, we entered into a private placement agreement (the "January 2008 private placement") pursuant to which we sold 1,451,450 shares of common stock for $18.00 for each share sold. Investors also received (i) 10-year warrants to purchase, at an exercise price of $18.00 per share, up to 1,451,450 shares of common stock and (ii) unit warrants to purchase, at an exercise price of $18.00 per unit, contingent upon a triggering event as defined in the January 2008 private placement documents, (a) up to 1,451,450 shares of common stock and (b) additional 10-year warrants to purchase, at an exercise price of $18.00 per share, up to 1,451,450 additional shares of common stock. In accordance with the terms of the January 2008 private placement, the 10-year warrants became exercisable for a period of 9.5 years as of July 9, 2008. Our private placement in April 2008 qualified as a triggering event, and therefore the unit warrants became exercisable for a period of eighteen months as of July 9, 2008. The unit warrants expired unexercised in January 2010. In February 2008, we filed, and the Securities and Exchange Commission (the "SEC") declared effective, the required registration statement covering the resale of the 1,451,450 shares of common stock issued and the 1,451,450 shares issuable upon the exercise of the 10-year warrants issued in the January 2008 private placement. In connection with the January 2008 private placement, of the 1,451,450 warrants issued, 284,785 of the warrants were issued to Garo Armen, our CEO. These 10-year warrants expired unexercised in January 2018.

During September 2013, we sold approximately 3,333,000 shares of our common stock and warrants to purchase 1,000,000 shares of our common stock in a registered direct public offering raising net proceeds of approximately $9.5 million, after deducting offering expenses. The common stock and warrants were sold in units, with each unit consisting of one share of common stock and a warrant to purchase 0.3 of a share of common stock. Subject to certain ownership limitations, the warrants became exercisable beginning 6 months following issuance and will expire five

years from the date they become exercisable, at an exercise price of $3.75 per share. The number of shares issuable upon exercise of the warrants and the exercise price of the warrants are adjustable in the event of stock splits, stock dividends, combinations of shares and similar recapitalization transactions. As of the year ended December 31, 2017 all warrants remain unexercised.

In October 2014, we filed, and the SEC declared effective, a Registration Statement on Form S-3 (the “2014 Registration Statement”), covering the offering of up to $150.0 million of common stock, preferred stock, warrants, debt securities and units. The 2014 Registration Statement included a prospectus covering the offering, issuance and sale of up to 10 million shares of our common stock from time to time in “at the market offerings” pursuant to an At Market Sales Issuance Agreement entered into with MLV on October 10, 2014 (the “2014 ATM Program”). During the year ended December 31, 2017 we sold an aggregate of 1,315,000 shares of our common stock in at the market offerings under the 2014 ATM Program and received net proceeds of $5.6 million after deducting offering costs of approximately $172,000.

On January 9, 2015, in connection with the execution of the Collaboration Agreement, we also entered into the Stock Purchase Agreement (the “Stock Purchase Agreement”) with Incyte Corporation, pursuant to which Incyte purchased approximately 7.76 million shares of our common stock (the “Shares”) in February 2015 for an aggregate purchase price of $35.0 million, or approximately $4.51 per share. Under the Stock Purchase Agreement, we agreed to register the Shares for resale under the Securities Act of 1933, as amended (the "Securities Act"). Subsequently, we filed, and the SEC declared effective, a registration statement

covering the resale of the 7,760,000 shares of our common stock issued. On February 14, 2017, we entered into an additional Stock Purchase Agreement (the "Additional Stock Purchase Agreement") with Incyte, pursuant to which Incyte purchased 10 million shares of our common stock (the "Additional Shares") at a purchase price of $6.00 per share. Immediately following the transaction, Incyte owned approximately 18.1% of our outstanding shares. Under the Additional Stock Purchase Agreement, Incyte agreed not to dispose of any of the Additional Shares for a period of 12 months and to vote the Additional Shares in accordance with the recommendations of the Company's board of directors in connection with certain equity incentive plan or compensation matters for a period of 18 months, and we agreed to certain registration rights with respect to the Additional Shares. The parties also revised the existing standstill provision to permit Incyte's acquisition of the Additional Shares, but Incyte is precluded from acquiring any additional shares of our voting stock until December 31, 2019.

In connection with the January 2015 achievement of the first contingent milestone, pursuant to the Agenus Switzerland Share Exchange Agreement, we issued a total of 80,493 shares of our common stock valued at approximately $345,000 as payment of a portion of our obligation.

In May 2015, we issued and sold 12,650,000 shares of our common stock in an underwritten public offering. Net proceeds after deducting offering expenses were approximately $75.0 million.

In September 2015, in accordance with the terms of the Assignment and Termination Agreement detailed in Note 16, we issued 300,000 shares of our common stock to Ingalls valued at $2.1 million.

In September 2016, in accordance with the terms of the Technology Transfer and License Agreement with Iontas Limited ("Iontas"), we issued 157,513 shares of our common stock to Iontas valued at approximately $887,000. In March 2017, we issued an additional 373,351 shares of our common stock, valued at approximately $1.5 million, to Iontas in accordance with the terms of the Technology Transfer and License Agreement. Subsequently, we filed, and the SEC declared effective, a registration statement covering the resale of the 530,864 shares of our common stock issued.

In October 2017, we filed, and the SEC declared effective, a Registration Statement on Form S-3 (the "2017 Registration Statement"), covering the offering of up to $250 million of common stock, preferred stock, warrants, debt securities and units. The 2017 Registration Statement included a prospectus covering the offering, issuance and sale of up to 15 million shares of our common stock from time to time in "at-the-market offerings" pursuant to a Controlled Equity Offering^{SM} sales agreement (the "Sales Agreement") entered into with Cantor Fitzgerald & Co. (the "Sales Agent") on October 30, 2017. Pursuant to the Sales Agreement, sales will be made only upon instructions by us to the Sales Agent, and we cannot provide any assurances that it will issue any shares pursuant to the Sales Agreement. On October 18, 2017, we exercised our right under that certain At Market Issuance Sales Agreement by and between us and MLV & Co. LLC, dated as of October 10, 2014 (the "2014 ATM Program") to terminate the 2014 ATM Program, which termination took effect upon the effectiveness of the 2017 Registration Statement. During the year ended December 31, 2017, we sold no shares of our common stock in at-the-market offerings under the Sales Agreement.

(11) Share-based Compensation Plans

Our 1999 Equity Incentive Plan, as amended (the "1999 EIP") authorized awards of incentive stock options within the meaning of Section 422 of the Internal Revenue Code (the "Code"), non-qualified stock options, non-vested (restricted) stock, and unrestricted stock for up to 2.0 million shares of common stock (subject to adjustment for stock splits and similar capital changes and exclusive of options exchanged at the consummation of mergers) to employees and, in the case of non-qualified stock options, non-vested (restricted) stock, and unrestricted stock, to consultants and directors

as defined in the 1999 EIP. The plan terminated on November 15, 2009. On March 12, 2009, our Board of Directors adopted, and on June 10, 2009, our stockholders approved, our 2009 Equity Incentive Plan (the "2009 EIP"). The 2009 EIP provides for the grant of incentive stock options intended to qualify under Section 422 of the Code, nonstatutory stock options, restricted stock, unrestricted stock and other equity-based awards, such as stock appreciation rights, phantom stock awards, and restricted stock units, which we refer to collectively as Awards, for up to 20.2 million shares of our common stock (subject to adjustment in the event of stock splits and other similar events). The Board of Directors appointed the Compensation Committee to administer the 1999 EIP and the 2009 EIP. No awards will be granted under the 2009 EIP after June 10, 2019.

On March 12, 2009, our Board of Directors adopted, and on June 10, 2009, our stockholders approved, the 2009 Employee Stock Purchase Plan (the "2009 ESPP") to provide eligible employees the opportunity to acquire our common stock in a program designed to comply with Section 423 of the Code. There are currently 166,666 shares of common stock reserved for issuance under the 2009 ESPP. Rights to purchase common stock under the 2009 ESPP are granted at the discretion of the Compensation Committee, which determines the frequency and duration of individual offerings under the plan and the dates when stock may be purchased. Eligible employees participate voluntarily and may withdraw from any offering at any time before the stock is purchased.

Participation terminates automatically upon termination of employment. The purchase price per share of common stock in an offering is 85% of the lesser of its fair value at the beginning of the offering period or on the applicable exercise date and may be paid through payroll deductions, periodic lump sum payments, the delivery of our common stock, or a combination thereof. Unless otherwise permitted by the Board of Directors, no participant may acquire more than 3,333 shares of stock in any offering period. No participant is allowed to purchase shares under the 2009 ESPP if such employee would own or would be deemed to own stock possessing 5% or more of the total combined voting power or value of the Company. No offerings will be made under the 2009 ESPP after June 10, 2019.

Our Director's Deferred Compensation Plan, as amended, permits each outside director to defer all, or a portion of, their cash compensation until their service as a director ends or until a specified date into a cash account or a stock account. There are 325,000 shares of our common stock reserved for issuance under this plan. As of December 31, 2017, 72,081 shares had been issued. Amounts deferred to a cash account will earn interest at the rate paid on one-year Treasury bills with interest added to the account annually. Amounts deferred to a stock account will be converted on a quarterly basis into a number of units representing shares of our common stock equal to the amount of compensation which the participant has elected to defer to the stock account divided by the applicable price for our common stock. The applicable price for our common stock has been defined as the average of the closing price of our common stock for all trading days during the calendar quarter preceding the conversion date as reported by The Nasdaq Capital Market. Pursuant to this plan, a total of 287,868 units, each representing a share of our common stock at a weighted average common stock price of $5.24, had been credited to participants' stock accounts as of December 31, 2017. The compensation charges for this plan were immaterial for all periods presented.

On November 4, 2015, our Board of Directors adopted and approved our 2015 Inducement Equity Plan (the "2015 IEP") in compliance with and in reliance on NASDAQ Listing Rule 5635(c)(4), which exempts inducement grants from the general requirement of the NASDAQ Listing Rules that equity-based compensation plans and arrangements be approved by stockholders. There are 1,500,000 shares of our common stock reserved for issuance under the 2015 IEP.

We primarily use the Black-Scholes option pricing model to value options granted to employees and non-employees, as well as options granted to members of our Board of Directors. All stock option grants have 10-year terms and generally vest ratably over a 3 or 4-year period. The non-cash charge to operations for the non-employee options with vesting or other performance criteria is affected each reporting period, until the non-employee options vest, by changes in the fair value of our common stock.

The fair value of each option granted during the periods was estimated on the date of grant using the following weighted average assumptions:

	2017	2016	2015
Expected volatility	65 %	65 %	77 %
Expected term in years	4	4	6
Risk-free interest rate	1.7 %	1.0 %	1.6 %
Dividend yield	0 %	0 %	0 %

Expected volatility is based exclusively on historical volatility data of our common stock. The expected term of stock options granted is based on historical data and other factors and represents the period of time that stock options are expected to be outstanding prior to exercise. The risk-free interest rate is based on U.S. Treasury strips with maturities that match the expected term on the date of grant.

A summary of option activity for 2017 is presented below:

	Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value
Outstanding at December 31, 2016	11,693,400	$ 4.51		
Granted	4,499,342	3.81		
Exercised	(160,325)	3.47		
Forfeited	(1,164,758)	4.29		
Expired	(500,872)	7.42		
Outstanding at December 31, 2017	14,366,787	$ 4.22	7.24	$ 707,661
Vested or expected to vest at December 31, 2017	14,366,787	$ 4.22	7.24	$ 707,661
Exercisable at December 31, 2017	8,164,576	$ 4.37	6.03	$ 699,061

The weighted average grant-date fair values of options granted during the years ended December 31, 2017, 2016, and 2015, was $1.97, $4.65, and $3.55, respectively.

The aggregate intrinsic value in the table above represents the difference between our closing stock price on the last trading day of fiscal 2017 and the exercise price, multiplied by the number of in-the-money options that would have been received by the option holders had all option holders exercised their options on December 31, 2017 (the intrinsic value is considered to be zero if the exercise price is greater than the closing stock price). This amount changes based on the fair market value of our stock. The total intrinsic value of options exercised during the years ended December 31, 2017, 2016, and 2015, determined on the dates of exercise, was $132,000, $445,000, and $1.2 million, respectively.

During 2017, 2016, and 2015, all options were granted with exercise prices equal to the market value of the underlying shares of common stock on the grant date other than certain awards dated March 31, 2016. In March 2016, our Board of Directors approved certain awards subject to forfeiture in the event shareholder approval was not obtained to increase the shares available under our 2009 EIP. This approval was obtained in June 2016. Accordingly, these awards have a grant date of June 2016 with an exercise price as of the date the Board of Director's approved the awards in March 2016.

As of December 31, 2017, there was $10.6 million of total unrecognized compensation cost related to stock options granted to employees and directors expected to be recognized over a weighted average period of 2.5 years.

As of December 31, 2017, unrecognized expense for options granted to outside advisors for which performance (vesting) has not yet been completed but the exercise price of the option was known was approximately $650,000. Such amount is subject to change each reporting period based upon changes in the fair value of our common stock, expected volatility, and the risk-free interest rate, until the outside advisor completes his or her performance under the option agreement.

Certain employees and consultants have been granted non-vested stock. The fair value of non-vested market based awards is calculated based on a Monte Carlo simulation as of the date of issuance. The fair value of other non-vested stock is calculated based on the closing sale price of our common stock on the date of issuance.

A summary of non-vested stock activity for 2017 is presented below:

	Nonvested Shares	Weighted Average Grant Date Fair Value
Outstanding at December 31, 2016	1,942,476	$ 6.45
Granted	711,300	1.84
Vested	(1,097,243)	7.75
Forfeited	(242,983)	6.21
Outstanding at December 31, 2017	1,313,550	$ 2.91

As of December 31, 2017, there was $1.8 million of unrecognized share-based compensation expense related to these non-vested shares for which, if all milestones are achieved, will be recognized over a period of 2.7 years. The total intrinsic value of shares vested during the years ended December 31, 2017, 2016, and 2015, was $3.8 million, $2.4 million, and $140,000, respectively.

Cash received from option exercises and purchases under our 2009 ESPP for the years ended December 31, 2017, 2016, and 2015, was $1.0 million, $1.2 million, and $2.0 million, respectively. We issue new shares upon option exercises, purchases under our 2009 ESPP, vesting of non-vested stock, and under the Director's Deferred Compensation Plan. During the years ended December 31, 2017, 2016, and 2015, 121,183 shares, 121,228 shares, and 63,539 shares, were issued under the 2009 ESPP, respectively. During the years ended December 31, 2017, 2016, and 2015, 1.1 million shares, 570,037 shares, and 35,332 shares, respectively, were issued as a result of the vesting of non-vested stock.

The impact on our results of operations from share-based compensation for the years ended December 31, 2017, 2016, and 2015, was as follows (in thousands).

	Year Ended		
	2017	2016	2015
Research and development	$6,159	$6,507	$2,654
General and administrative	6,270	6,681	4,784
Total share-based compensation expense	$12,429	$13,188	$7,438

(12) License, Research, and Other Agreements

In May 2001, we entered into a license agreement with the University of Connecticut Health Center (“UConn”), which was amended in March 2003 and June 2009. Through the license agreement, we obtained an exclusive license to patent rights resulting from inventions discovered under a research agreement that was effective from February 1998 until December 2006. The term of the license agreement ends when the last of the licensed patents expires (2024) or becomes no longer valid. UConn may terminate the agreement: (1) if, after 30 days written notice for breach, we continue to fail to make any payments due under the license agreement, or (2) we cease to carry on our business related to the patent rights or if we initiate or conduct actions in order to declare bankruptcy. We may terminate the agreement upon 90 days written notice. We are still required to make royalty payments on any obligations created prior to the effective date of termination of the license agreement. Upon expiration or termination of the license agreement due to breach, we have the right to continue to manufacture and sell products covered under the license agreement which are considered to be works in progress for a period of 6 months. The license agreement contains aggregate milestone payments of $1.2 million for each product we develop covered by the licensed patent rights. These milestone payments are contingent upon regulatory filings, regulatory approvals and commercial sales of products. We have also agreed to pay UConn a royalty on the net sales of products covered by the license agreement as well as annual license maintenance fees beginning in May 2006. Royalties otherwise due on the net sales of products covered by the license agreement may be credited against the annual license maintenance fee obligations. As of December 31, 2017, we had paid approximately $900,000 to UConn under the license agreement. The license agreement gives us complete discretion over the commercialization of products covered by the licensed patent rights, but also requires us to use commercially reasonable diligent efforts to introduce commercial products within and outside the United States. If we fail to meet these diligence requirements, UConn may be able to terminate the license agreement.

In March 2003, we entered into an amendment agreement that amended certain provisions of the license agreement with UConn. The amendment agreement granted us a license to additional patent rights. In consideration for execution of the amendment agreement, we agreed to pay UConn an upfront payment and to make future payments for licensed patents or patent applications. Through December 31, 2017, we have paid approximately $100,000 to UConn under the license agreement, as amended.

On December 5, 2014, Agenus Switzerland, entered into a license agreement with the Ludwig Institute for Cancer Research Ltd., or Ludwig, which replaced and superseded a prior agreement entered into between the parties in May 2011. Pursuant to the terms of the license agreement, Ludwig granted Agenus Switzerland an exclusive, worldwide license under certain intellectual property rights of Ludwig and Memorial Sloan Kettering Cancer Center arising from the prior agreement to further develop and commercialize GITR, OX40 and TIM-3 antibodies. On January 25, 2016, we and Agenus Switzerland entered into a second license agreement with Ludwig, on substantially similar terms, to develop CTLA-4 and PD-1 antibodies. Pursuant to the December 2014 license agreement, Agenus Switzerland made

an upfront payment of $1.0 million to Ludwig. The December 2014 license agreement also obligates Agenus Switzerland to make potential milestone payments of up to $20.0 million for events prior to regulatory approval of licensed GITR, OX40 and TIM-3 products, and potential milestone payments in excess of $80.0 million if such licensed products are approved in multiple jurisdictions, in more than one indication, and certain sales milestones are achieved. Under the January 2016 license agreement, we are obligated to make potential milestone payments of up to $12.0 million for events prior to regulatory approval of CTLA-4 and PD-1 licensed products, and potential milestone payments of up to $32.0 million if certain sales milestones are achieved. Under each of these license agreements, we and/or Agenus Switzerland will also be obligated to pay low to mid-single digit royalties on all net sales of licensed products during the royalty period, and to pay Ludwig a percentage of any sublicensing income, ranging from a low to mid-double digit percentage depending on various factors. During the year ended December 31, 2017, we paid a percentage of sublicensing income totaling $2.0 million to Ludwig under the license agreements. The license agreements may each be terminated as follows: (i) by either party if the other party commits a material, uncured breach; (ii) by either party if the other party initiates bankruptcy, liquidation or similar proceedings; or (iii) by Agenus Switzerland or us (as applicable) for convenience upon 90 days' prior written notice. The license agreements also contain customary representations and warranties, mutual indemnification, confidentiality and arbitration provisions.

In connection with the December 2015 acquisition of PhosImmune, we obtained exclusive rights to a portfolio of patent applications and one issued patent relating to phosphopeptide tumor targets (PTTs) under a patent license agreement with the University of Virginia ("UVA"). The UVA license gives us exclusive rights to develop and commercialize the PTT technology and an

exclusive option to license any further PTT technology arising from ongoing research at UVA until December 2018. Under the license agreement, we will pay low to mid-single digit running royalties on net sales of PTT products, and a modest flat percentage of sublicensing income. In addition, we may be obligated to make milestone payments of up to $2.7 million for each indication of a licensed PTT product to complete clinical trials and achieve certain sales thresholds. If we fail to meet certain diligence milestones, we may also be required to pay penalties in excess of $150,000. The term of the UVA license agreement ends when the last of the licensed patents expires or becomes no longer valid. The term of the UVA license agreement ends when the last of the licensed patents expires or becomes no longer valid. The UVA license agreement may be terminated as follows: (i) by UVA in connection with our bankruptcy or cessation of business relating to the licensed technology, (ii) by UVA if we commit a material, uncured breach or (iii) by us for our convenience on 180 days written notice.

We have entered into various agreements with contract manufacturers, institutions, and clinical research organizations (collectively "third party providers") to perform pre-clinical activities and to conduct and monitor our clinical studies. Under these agreements, subject to the enrollment of patients and performance by the applicable third-party provider, we have estimated our total payments to be $182.1 million over the term of the studies. For the years ended December 31, 2017, 2016, and 2015, $35.8 million, $23.1 million, and $19.9 million, respectively, have been expensed in the accompanying consolidated statements of operations related to these third-party providers. Through December 31, 2017, we have expensed $130.2 million as research and development expenses and $124.1 million of this amount has been paid. The timing of expense recognition and future payments related to these agreements is subject to the enrollment of patients and performance by the applicable third-party provider.

In July 2006, we entered into a license agreement and a supply agreement with GlaxoSmithKline (“GSK”) for the use of QS-21 Stimulon (the “GSK License Agreement” and the “GSK Supply Agreement”, respectively). In January 2009, we entered into an Amended and Restated Manufacturing Technology Transfer and Supply Agreement (the “Amended GSK Supply Agreement”) under which GSK has the right to manufacture all of its requirements of commercial grade QS-21 Stimulon. GSK is obligated to supply us (or our affiliates, licensees, or customers) certain quantities of commercial grade QS-21 Stimulon for a stated period of time. In March 2012 we entered into a First Right to Negotiate and Amendment Agreement amending the GSK License Agreement and the Amended GSK Supply Agreement to clarify and include additional rights for the use of QS-21 Stimulon (the “GSK First Right to Negotiate Agreement”). In addition, we granted GSK the first right to negotiate for the purchase of the Company or certain of our assets, which expired in March 2017. As consideration for entering into the GSK First Right to Negotiate Agreement, GSK paid us an upfront, non-refundable payment of $9.0 million, $2.5 million of which is creditable toward future royalty payments. We sometimes refer to the GSK License Agreement, the Amended GSK Supply Agreement and the GSK First Right to Negotiate Agreement, the “GSK Agreements”. As of December 31, 2017, we had received all of the potential $24.3 million in upfront and milestone payments related to the GSK Agreements. We are generally entitled to receive 2% royalties on net sales of prophylactic vaccines for a period of 10 years after the first commercial sale of a resulting GSK product, with some exceptions. The GSK License and Amended GSK Supply Agreements may be terminated by either party upon a material breach if the breach is not cured within the time specified in the respective agreement. The termination or expiration of the GSK License Agreement does not relieve either party from any obligation which accrued prior to the termination or expiration. Among other provisions, the license rights granted to GSK survive expiration of the GSK License Agreement. The license rights and payment obligations of GSK under the Amended GSK Supply Agreement survive termination or expiration, except that GSK's license rights and future royalty obligations do not survive if we terminate due to GSK's material breach unless we elect otherwise.

In January 2018, we entered into a Royalty Purchase Agreement with Healthcare Royalty Partners III, L.P. and certain of its affiliates (together, “HCR”). Pursuant to the terms of the Royalty Purchase Agreement, HCR purchased 100% of our worldwide rights to receive royalties from GSK on sales of GSK’s vaccines containing our QS-21 Stimulon adjuvant. See Note 22 for additional information.

For the year ended December 31, 2017, we recognized revenue of $1.0 million related to payments received under our GSK License and Amended GSK Supply Agreements. For the years ended December 31, 2016 and 2015, no revenue was recognized under our GSK License and Amended GSK Supply Agreements. Deferred revenue of $2.5 million related to the GSK Agreements is included in the current portion of deferred revenue on our consolidated balance sheet as of December 31, 2017.

(13) Collaboration Agreement

Incyte Corporation

On January 9, 2015 and effective February 19, 2015, we entered into a global license, development and commercialization agreement (the “Collaboration Agreement”) with Incyte Corporation pursuant to which the parties plan to develop and commercialize novel immuno-therapeutics using our antibody discovery platforms. The Collaboration Agreement was initially focused on four checkpoint modulator programs directed at GITR, OX40, LAG-3 and TIM-3. In addition to the four identified antibody programs, the parties have an option to jointly nominate and pursue the development and commercialization of antibodies against additional targets during a five year discovery period which, upon mutual agreement of the parties for no additional consideration, can be extended for

an additional three years. In November 2015, we and Incyte jointly nominated and agreed to pursue the development and commercialization of three additional undisclosed CPM targets. In February 2017, we amended the Collaboration Agreement by entering into a First Amendment to License, Development and Commercialization Agreement (the "Amendment"). See "Amendment" section below.

On January 9, 2015, we also entered into the Stock Purchase Agreement with Incyte Corporation whereby, for an aggregate purchase price of $35.0 million, Incyte purchased approximately 7.76 million shares of our common stock. See Note 10 for more details.

Agreement Structure

Under the terms of the Collaboration Agreement, we received non-creditable, nonrefundable upfront payments totaling $25.0 million. In addition, until the amendment, the parties shared all costs and profits for the GITR, OX40 and two of the additional antibody programs on a 50:50 basis (profit-share products), and we were eligible to receive up to $20.0 million in future contingent development milestones under these programs. Incyte is obligated to reimburse us for all development costs that we incur in connection with the TIM-3, LAG-3 and one of the additional antibody programs (royalty-bearing products) and we are eligible to receive (i) up to $155.0 million in future contingent development, regulatory, and commercialization milestone payments and (ii) tiered royalties on global net sales at rates generally ranging from 6% to 12%. For each royalty-bearing product, we will also have the right to elect to co-fund 30% of development costs incurred following initiation of pivotal clinical trials in return for an increase in royalty rates. Additionally, we had the option to retain co-promotion participation rights in the United States on any profit-share product. Through the direction of a joint steering committee, the parties anticipate that, for each program, we will serve as the lead for pre-clinical development activities through IND application filing, and Incyte will serve as the lead for clinical development activities. The parties initiated the first clinical trials of antibodies arising from these programs in 2016. For each additional program beyond GITR, OX40, TIM-3 and LAG-3 that the parties elect to bring into the collaboration, we will have the option to designate it as a profit-share product or a royalty-bearing product.

The Collaboration Agreement will continue as long as (i) any product is being developed or commercialized or (ii) the discovery period remains in effect. After the first anniversary of the effective date of the Collaboration Agreement, Incyte may terminate the Collaboration Agreement or any individual program for convenience upon 12 months' notice. The Collaboration Agreement may also be terminated by either party upon the occurrence of an uncured material breach of the other party or by us if Incyte challenges patent rights controlled by us. In addition, either party may terminate the Collaboration Agreement as to any program if the other party is acquired and the acquiring party controls a competing program.

Amendment

Pursuant to the terms of the Amendment, the GITR and OX40 programs immediately converted from profit-share programs to royalty-bearing programs and we became eligible to receive a flat 15% royalty on global net sales should any candidates from either of these two programs be approved. Incyte is now responsible for global development and commercialization and all associated costs for these programs. In addition, the profit-share programs relating to TIGIT and one undisclosed target were removed from the collaboration, with the undisclosed target reverting to Incyte and TIGIT to us. Should any of those programs be successfully developed by a party, the other party will be eligible to receive the same milestone payments as the royalty-bearing programs and royalties at a 15% rate on global net sales. The terms for the remaining three royalty-bearing programs targeting TIM-3, LAG-3 and one undisclosed target remain unchanged, with Incyte being responsible for global development and commercialization and all associated costs. The Amendment gives Incyte exclusive rights and all decision-making authority for manufacturing, development, and commercialization with respect to all royalty-bearing programs.

In connection with the Amendment, Incyte paid us $20.0 million in accelerated milestones related to the clinical development of the antibody candidates targeting GITR and OX40. We are now eligible to receive up to an additional $510.0 million in future potential development, regulatory and commercial milestones across all programs in the collaboration. We recognized the $20.0 million received as revenue during the year ended December 31, 2017.

In February 2017, we also entered into a Stock Purchase Agreement with Incyte, pursuant to which Incyte purchased 10 million shares of our common stock at a purchase price of $6.00 per share. See Note 10 for more details.

Collaboration Revenue

For the years ended December 31, 2017, 2016, and 2015 we recognized revenue of approximately $37.3 million, $19.7 million, and $23.5 million, respectively, under the Collaboration Agreement, of which, $2.7 million, $3.5 million, and $9.1 million, respectively, was related to the amortization of the $25.0 million non-creditable, nonrefundable upfront payment. As of December 31, 2017, we had deferred revenue remaining under the Collaboration Agreement of approximately $9.7 million, of which approximately

$2.0 million and $7.7 million are classified as current and long-term, respectively, on our consolidated balance sheet. As of December 31, 2016, we had deferred revenue remaining under the Collaboration Agreement of approximately $12.4 million, of which approximately $2.6 million and $9.8 million are classified as current and long-term, respectively, on our consolidated balance sheet.

(14) Related Party Transactions

Effective February 12, 2014, in connection with our acquisition of the capital stock of 4-AB and pursuant to the Share Exchange Agreement, our Board of Directors elected Shahzad Malik, M.D. as a director. Dr. Malik is a General Partner of Advent Venture Partners LLP (“Advent”). Advent, through its affiliated entities, was Agenus Switzerland’s largest shareholder prior to the completion of the acquisition. Upon completion of the acquisition, Advent and its affiliates received 996,088 shares of our common stock, having a value of approximately $3.0 million. In connection with the achievement of the first milestone in January 2015 under the Share Exchange Agreement, Advent and its affiliates received consideration of approximately $6.2 million. The above listed consideration was received by Advent and its affiliated entities, not Dr. Malik in his individual capacity. In May 2015, we issued and sold shares of our common stock in an underwritten public offering for net proceeds of approximately $75.0 million. Of the 12,650,000 shares of our common stock issued and sold, 1,587,302 of these shares of common stock were issued and sold to Advent. As of June 2017, Dr. Malik is no longer a member of our Board of Directors.

Our Audit and Finance Committee approved a charitable contribution to the Children of Armenia Fund (“COAF”) totaling $125,000 for 2017. Dr. Garo H. Armen, our CEO, is the founder and chairman of COAF. The 2017 charitable contribution was comprised of a cash component and a non-cash component. The cash component was $75,000, which we paid in quarterly installments. The non-cash component was $50,000, which was the estimated value of a portion of office space made available to COAF employees.

We also consider our transactions with Incyte, as disclosed in Note 13, to be related party transactions.

(15) Leases

We lease manufacturing, research and development, and office facilities under various lease arrangements. Rent expense (before sublease income) was $2.6 million, $3.3 million, and $2.3 million, for the years ended December 31, 2017, 2016, and 2015, respectively.

We lease a facility in Lexington, Massachusetts for our manufacturing, research and development, and corporate offices. During December 2012 we entered into a commercial lease for approximately 5,600 square feet of office space in New York, New York for use as corporate offices. Through our acquisition of Agenus Switzerland, we leased facilities in Basel, Switzerland for manufacturing, research and development and corporate offices. During the year ended December 31, 2017 we terminated the lease of the facilities in Basel, Switzerland.

In December 2015, in connection with the XOMA antibody manufacturing facility asset acquisition, we executed lease agreements in Berkeley, California for manufacturing and corporate offices. In December 2015, we additionally executed a lease for research and development, and corporate offices in Cambridge, United Kingdom.

In February 2016, we executed a lease agreement in Charlottesville, Virginia for research and development and corporate offices.

The future minimum rental payments under our facility lease agreements, which expire at various times between 2018 and 2025, are as follows (in thousands):

Year ending December 31,	
2018	$3,179
2019	2,445
2020	2,273
2021	1,902
2022	1,944
Thereafter	2,469
Total	$14,212

In connection with the Lexington facility, we maintain a fully collateralized letter of credit of $1.0 million. No amounts had been drawn on the letter of credit as of December 31, 2017. In addition, for our properties, we are required to have an aggregate deposit of approximately $200,000 with the landlords as interest-bearing security deposits pursuant to our obligation under the leases.

We sublet a portion of our facilities and received rental payments of $562,000, $733,000, and $780,000 for the years ended December 31, 2017, 2016, and 2015, respectively.

During 2016, we entered into an agreement which is classified as a capital lease for a piece of laboratory equipment. It is included in our property and equipment as follows (in thousands):

	2017	2016	Estimated Depreciable Lives
Laboratory and manufacturing equipment	$1,021	$1,021	4 years
Less accumulated depreciation and amortization	(153)	(51)	
Total	$868	$970	

Under the terms of the capital lease agreement, we will remit payments to the lessor of $288,000 for each of the years 2018 and 2019 and $144,000 for the year ending December 31, 2020.

(16) Debt

Debt obligations consisted of the following as of December 31, 2017 and 2016 (in thousands):

Debt instrument	Principal at December 31, 2017	Non-cash Interest	Unamortized Debt Issuance Costs	Unamortized Debt Discount	Balance at December 31, 2017
Current Portion:					
Debentures	$ 146	$—	$ —	$ —	$146
Note Purchase Agreement	15,000	5,494			20,494
Total current	15,146	5,494	—	—	20,640
Long-term Portion:					
2015 Subordinated Notes	14,000	—	—	(1,375)	12,625

Note Purchase Agreement	100,000	31,323	(1,362)	(201)	129,760
Total long-term	114,000	31,323	(1,362)	(1,576)	142,385
Total	$ 129,146	$ 36,816	$ (1,362)	$ (1,576)	$ 163,025

Debt instrument	Principal at December 31, 2016	Non-cash Interest	Unamortized Debt Issuance Costs	Unamortized Debt Discount	Balance at December 31, 2016
Current Portion:					
Debentures	$ 146	$ —	$ —	$ —	$ 146
Long-term Portion:					
2015 Subordinated Notes	14,000	—	—	(1,311)	12,689
Note Purchase Agreement	100,000	19,421	(1,345)	(222)	117,853
Total long-term	114,000	19,421	(1,345)	(1,533)	130,542
Total	$ 114,146	$ 19,421	$ (1,345)	$ (1,533)	$ 130,688

Subordinated Notes

On February 20, 2015, we, certain existing investors and certain additional investors entered into an Amended and Restated Note Purchase Agreement, pursuant to which we (i) canceled our senior subordinated promissory notes issued in April 2013 (the “2013 Notes”) in exchange for new senior subordinated promissory notes (the “2015 Subordinated Notes”) in the aggregate principal amount of $5.0 million, (ii) issued additional 2015 Subordinated Notes in the aggregate principal amount of $9.0 million and (iii) issued five year warrants (the “2013 Warrants”) to purchase 1,400,000 shares of our common stock at an exercise price of $5.10 per share.

The 2015 Subordinated Notes bear interest at a rate of 8% per annum, payable in cash on the first day of each month in arrears. Among other default and acceleration terms customary for indebtedness of this type, the 2015 Subordinated Notes include default

provisions which allow for the noteholders to accelerate the principal payment of the 2015 Subordinated Notes in the event we become involved in certain bankruptcy proceedings, become insolvent, fail to make a payment of principal or (after a grace period) interest on the 2015 Subordinated Notes, default on other indebtedness with an aggregate principal balance of $13.5 million or more if such default has the effect of accelerating the maturity of such indebtedness, or become subject to a legal judgment or similar order for the payment of money in an amount greater than $13.5 million if such amount will not be covered by third-party insurance. The 2015 Subordinated Notes are not convertible into shares of our common stock and will mature on February 20, 2020, at which point we must repay the outstanding balance in cash. The Company may prepay the 2015 Subordinated Notes at any time, in part or in full, without premium or penalty.

The exchange of the 2013 Notes for the 2015 Subordinated Notes was accounted for as a debt extinguishment under the guidance of ASC 470 Debt. For the year ended December 31, 2015, we recorded a loss on debt extinguishment of approximately $154,000 in non-operating (expense) income in our consolidated statements of operations and comprehensive loss. The debt discount of approximately $3.0 million, which relates to the warrants issued in connection with the 2015 Subordinated Notes, is being amortized using the effective interest method over three years, the expected life of the 2015 Subordinated Notes.

The warrants to purchase 500,000 shares of the Company’s common stock issued in connection with the 2013 Notes (the “2013 Warrants”) have an exercise price of $4.41 per share; and are scheduled to expire on April 15, 2019.

In March 2017, we and the holders of the 2015 Subordinated Notes entered into an Amendment to Notes and Warrants, pursuant to which we (i) extended the term of the 2013 Warrants by two years from April 15, 2017 to April 15, 2019 and (ii) extended the maturity date of the 2015 Notes by two years from February 20, 2018 to February 20, 2020. This resulted in an additional debt discount of $0.7 million, which will be amortized using the effective interest method over three years, the expected life of the 2015 Subordinated Notes. The 2013 Warrants and 2015 Notes are otherwise unchanged. The Amendment to Notes and Warrants was accounted for as a debt modification.

Note Purchase Agreement Related to Future Royalties

On September 4, 2015, we and our wholly-owned subsidiaries, Antigenics and Aronex Pharmaceuticals, Inc. (“Aronex”), entered into a NPA with Oberland Capital SA Zermatt LLC, as collateral agent (“Oberland”), an affiliate of Oberland as the lead purchaser and other purchasers. Pursuant to the terms of the NPA, on September 8, 2015 (the “Closing Date”), Antigenics issued $100.0 million aggregate principal amount of limited recourse notes (the “Notes”) to the purchasers. Antigenics has the option to issue an additional $15.0 million aggregate principal amount of Notes (the “Additional Notes”) to the purchasers within 15 days after approval of GSK’s shingles vaccine, HZ/su, by the U.S. Food and Drug Administration (the “FDA”), provided such approval occurs on or before June 30, 2018. On November 2, 2017, following the October 20, 2017 approval of GSK’s shingles vaccine by the FDA, we exercised our option to issue the Additional Notes. On December 31, 2017 the outstanding aggregate principal amount of the Notes was $115.0 million.

The Notes accrue interest at a rate of 13.5% per annum, compounded quarterly, from and after the Closing Date computed on the basis of a 360-day year and the actual number of days elapsed. Principal and interest payments are due on each of March 15, June 15, September 15 and December 15, and shall be made solely from the royalties paid from GSK to Antigenics on sales of GSK’s shingles and malaria vaccines. The Notes are limited recourse and secured solely by a first priority security interest in the royalties and accounts and payment intangibles relating thereto plus various rights of Antigenics related to the royalties under its contracts with GSK (the “Collateral”). GSK will send all royalty payments to a segregated bank account, and to the extent there are insufficient royalties deposited into the account to fund a quarterly interest payment, the interest will be capitalized and added to the aggregate principal balance of the loan. As of December 31, 2017 we have capitalized interest of $36.8 million. The final legal maturity date of the Notes is the earlier of (i) the 10th anniversary of the first commercial sale of GSK’s shingles or malaria vaccines and (ii) September 8, 2030 (the “Maturity Date”). Antigenics’ obligation to repay all principal and accrued and

unpaid interest by the Maturity Date is secured only by the Collateral.

At our option, we may redeem all, but not less than all, of the Notes at any time prior to the Maturity Date. The redemption price is equal to the outstanding principal amount of the Notes, plus all accrued and unpaid interest thereon, plus a premium payment that would yield an aggregate internal rate of return ("IRR") for the purchasers as follows: (i) an IRR of 20% if the redemption occurs within 24 months of the Closing Date, (ii) an IRR of 17.5% if the redemption occurs after 24 months but within 48 months of the Closing Date, and (iii) an IRR of 15% if the redemption occurs more than 48 months after the Closing Date (the "Redemption Payment").

On September 8, 2018, each purchaser has the option to require Antigenics to repurchase up to 15% of the Notes issued to such purchaser on the Closing Date (the "Put Notes") at a purchase price equal to the principal amount thereof plus accrued and unpaid interest thereon (the "Put Payment"). Antigenics is required to complete any such repurchase within 90 days after September 8, 2018. Accordingly, the portion of the principal and interest attributable to the Put Notes is classified as short-term debt.

On the earlier of (i) September 8, 2027 and (ii) the Maturity Date, Antigenics is required to pay the purchasers an amount equal to the following (the "Make-Whole Payment"): $100.0 million (or $115.0 million if the Additional Notes are sold) minus the aggregate amount of all payments made in respect of the Notes (regardless of whether characterized as principal or interest at the time of payment), including the original principal amount of any repaid Put Notes.

The NPA specifies a number of events of default (some of which are subject to applicable cure periods), including (i) failure to cause royalty payments to be deposited into the segregated bank account, (ii) payment defaults, (iii) breaches of representations and warranties made at the time the Notes were issued, (iv) covenant defaults, (v) a final and unappealable judgment against Antigenics for the payment of money in excess of $1.0 million, (vi) bankruptcy or insolvency defaults, (vii) the failure to maintain a first-priority perfected security interest in the Collateral in favor of the collateral agent and (viii) the occurrence of a change of control of Agenus. Upon the occurrence of an event of default, subject to cure periods in certain circumstance and some limited exceptions, Oberland may declare the Notes immediately due and payable, in which case Antigenics would owe a payment equal to the Redemption Payment (the "Accelerated Default Payment"). Upon the occurrence and during the continuance of any event of default, interest on the Notes also increases by 2.5% per annum.

Agenus and Aronex (together, the "Guarantors"), are parties to the NPA as guarantors of certain of Antigenics' obligations under the NPA. The Guarantors generally guarantee the Put Payment, the Make-Whole Payment, the Redemption Payment and the Accelerated Default Payment.

In accordance with the guidance of ASC 470 Debt, we determined the NPA represents a debt transaction and does not purport to be a sale; the balance of the outstanding notes and interest will be repaid over the estimated term of the NPA.

We will periodically assess the expected royalties using a combination of historical results, internal projections and forecasts from external sources. To the extent such payments are greater or less than our initial estimates or the timing of such payments is materially different than our original estimates, we will prospectively adjust the estimated time period over which the debt and interest will be repaid. There are a number of factors that could materially affect the amount and timing of royalty payments from GSK, all of which are not within our control. Such factors include, but are not limited to, changing standards of care, the introduction of competing products, manufacturing or other delays, biosimilar competition, patent protection, adverse events that result in governmental health authority imposed restrictions on the use of the drug products, significant changes in foreign exchange rates, and other events or circumstances that could result in reduced royalty payments from GSK, all of which would result in a reduction of royalty revenues and the interest expense over the life of the NPA.

As royalties are remitted to the purchasers, we will record non-cash royalty revenues and non-cash interest expense within our consolidated statements of operations and comprehensive loss over the term of the NPA as interest accrues and royalties are generated. We have not recognized any royalty revenue to date and recorded $17.4 million and $15.1 million in non-cash interest expense for the years ended December 31, 2017 and 2016, respectively, within our consolidated statement of operations and comprehensive loss.

In connection with the execution of the NPA, we reimbursed the purchasers for legal fees of $250,000 and incurred debt issuance costs of approximately $1.5 million. Under the relevant accounting guidance, legal fees and debt issuance costs have been recorded as a reduction to the gross proceeds. These amounts are being amortized over 12 years, the expected term of the Notes, using the effective interest rate method. In connection with the issuance of the Additional Notes, we incurred debt issuance cost of approximately $150,000. As with the costs incurred in connection with the execution of the NPA, these additional debt issuance costs have been recorded as a reduction to the gross proceeds and are being amortized over the remaining expected term of the Notes using the effective interest rate method.

In January 2018, we entered into a Royalty Purchase Agreement with HCR. We used a portion of the upfront proceeds from HCR to redeem all of the notes issued pursuant to the NPA. See Note 22 for additional information.

Other

In June 2016, we executed a capital lease agreement that expires in June 2020 for equipment with a carrying value of approximately $1.0 million, which is included in property, plant and equipment, net on our consolidated balance sheets as of December 31, 2017. As of December 31, 2017, our remaining obligations under the capital lease agreement are approximately $623,000, of which $289,000 and $334,000 are classified as other current and other long-term liabilities, respectively, on our condensed consolidated balance sheets.

At December 31, 2017, approximately $146,000 of debentures we assumed in our merger with Aquila Biopharmaceuticals are outstanding. These debentures carry interest at 7% and are callable by the holders. Accordingly, they are classified as short-term debt.

Revenue Interest Assignment Termination

On April 15, 2013, we and Antigenics entered into a Revenue Interests Assignment Agreement (the "Original Agreement") with Ingalls & Snyder Value Partners, L.P. and Arthur Koenig (together, "Ingalls"), pursuant to which we and Antigenics sold to Ingalls 20% of all the royalties Antigenics was entitled to receive from GSK and Janssen Sciences Ireland Uc on products associated with Agenus's QS-21 Stimulon (collectively, the "Assigned Interests").

On September 4, 2015, we and Antigenics entered into a Revenue Interest Assignment and Termination Agreement (the "Assignment and Termination Agreement") with Ingalls, pursuant to which we terminated the Original Agreement and repurchased the Assigned Interests in exchange for (i) $20.0 million in cash and (ii) 300,000 shares of Agenus common stock for total consideration of approximately $22.1 million. The closing under the Assignment and Termination Agreement took place on September 8, 2015 immediately prior to the closing under the NPA. Effective September 8, 2015, we have no further obligations under the Original Agreement.

During the year ended December 31, 2015, we recorded a fair value adjustment of approximately $6.9 million recorded within non-operating (expense) income in our consolidated statement of operations and comprehensive loss.

(17) Fair Value Measurements

We measure our cash equivalents and short-term investments and contingent purchase price considerations at fair value. For the year ended December 31, 2016, our cash equivalents and short-term investments were comprised solely of U.S. Treasury Bills that were valued using quoted market prices with no valuation adjustments applied. Accordingly, these securities were categorized as Level 1 assets.

We measure our contingent purchase price consideration at fair value. The fair values of our Agenus Switzerland and PhosImmune contingent purchase price consideration, $2.7 million and $1.7 million, respectively, are based on significant inputs not observable in the market, which require them to be reported as Level 3 liabilities within the fair value hierarchy. The valuation of the liabilities uses assumptions we believe would be made by a market participant. The fair value of our Agenus Switzerland and PhosImmune contingent purchase price consideration is based on estimates from a Monte Carlo simulation of our market capitalization and share price, respectively, and other factors impacting the probability of triggering the milestone payments. Market capitalization and share price were evolved using a geometric brownian motion, calculated daily for the life of the contingent purchase price consideration.

Assets and liabilities measured at fair value are summarized below (in thousands):

Description	December 31, 2017	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Assets:				
Cash equivalents	$ —	$ —	$ —	$ —
Short-term investments	—	—	—	—
Total	$ —	$ —	$ —	$ —
Liabilities:				
Contingent purchase price consideration	4,373	—	—	4,373
Total	$ 4,373	$ —	$ —	$ 4,373

Description	December 31, 2016	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Assets:				
Cash equivalents	$ 9,990	$ 9,990		
Short-term investments	4,988	4,988	—	—
Total	$ 14,978	$ 14,978	$ —	$ —
Liabilities:				
Contingent purchase price consideration	7,561	—	—	7,561
Total	$ 7,561	$ —	$ —	$ 7,561

The following table presents our liabilities measured at fair value using significant unobservable inputs (Level 3), as of December 31, 2017 (amounts in thousands):

Balance, December 31, 2016	$7,561
Change in fair value of contingent purchase price consideration during the period	(3,188)
Balance, December 31, 2017	$4,373

There were no changes in the valuation techniques during the period and there were no transfers into or out of Levels 1 and 2.

The fair value of our outstanding debt balance at December 31, 2017 and 2016 was $205.9 million and $129.2 million, respectively, based on the Level 2 valuation hierarchy of the fair value measurements standard using a present value methodology which was derived by evaluating the nature and terms of each note and considering the prevailing economic and market conditions at the balance sheet date. The principal amount of our outstanding debt balance at December 31, 2017 and 2016 was $129.1 million and $114.1, respectively.

(18) Contingencies

We may currently be, or may become, a party to legal proceedings. While we currently believe that the ultimate outcome of any of these proceedings will not have a material adverse effect on our financial position, results of operations, or liquidity, litigation is subject to inherent uncertainty. Furthermore, litigation consumes both cash and management attention.

(19) Benefit Plans

We sponsor a defined contribution 401(k) Savings Plan in the US and, beginning in 2016, a defined contribution Group Personal Pension Plan in the UK (the "Plans") for all eligible employees, as defined in the Plans. Participants may contribute a portion of their compensation, subject to a maximum annual amount, as established by the applicable taxing authority. Each participant is fully vested in his or her contributions and related earnings and losses. During the years ended December 31, 2017, 2016, and 2015 we made discretionary contributions to the Plans of $487,000, $334,000, and $307,000, respectively. For the years ended December 31, 2017, 2016, and 2015, we expensed $487,000, $334,000, and $307,000, respectively, related to the discretionary contribution to the Plans.

We also participated in a multiple employer benefit plan that covers certain international employees. During the year ended December 31, 2017, in connection with the closure of our facility in Basel, Switzerland, we ended our participation in the plan. When an employee terminates employment prior to retirement, the amounts invested in the plan are withdrawn and invested in the plan of the employee's new employer.

The annual measurement date for our multiple employer benefit plan is December 31. Benefits are based upon years of service and compensation. We are required to recognize the funded status (the difference between the fair value of plan assets and the projected benefit obligations) of our multiple employer plan in our consolidated balance sheets which, for the years ended December 31, 2017, and 2016 amounted to a liability of approximately nil and $1.2 million, respectively, with a corresponding adjustment to accumulated other comprehensive loss of $25,000 and $154,000 for the years ended December 31, 2017 and 2016, respectively. During the years ended December 31, 2017, and 2016, we contributed approximately $127,000 and $153,000, respectively, to our multiple employer benefit plan. In connection with the termination of our multiple employer benefit plan we recognized a settlement gain of approximately $1.5 million within operating expense for the year ended December 31, 2017. No future contributions are expected. As of December 31, 2017, our participation in the multiple employer benefit plan has ended, as such no future benefits are expected to be paid under the plan.

(20) Geographic Information

The following is geographical information regarding our revenues for the years ended December 31, 2017, 2016 and 2015 and our long-lived assets as of December 31, 2017 and 2016 (in thousands):

	2017	2016	2015
Revenue:			
United States	$38,883	$20,332	$23,668
Europe	3,994	2,242	1,149
	$42,877	$22,573	$24,817

Revenue by geographic region is allocated based on the domicile of our respective business operations.

	2017	2016
Long-lived Assets:		
United States	$22,993	$22,360
Europe	4,400	4,557
Total	$27,393	$26,917

Long-lived assets include “Property, plant and equipment, net” and “Other long-term assets” from the consolidated balance sheets, by the geographic location where the asset resides.

(21) Quarterly Financial Data (Unaudited)

	Quarter Ended March 31,	June 30,	September 30,	December 31,
2017				
Revenue	$26,956	$4,208	$3,359	$8,354
Net loss	(17,103)	(31,713)	(36,842)	(35,035)
Net loss attributable to common shareholders	(17,154)	(31,764)	(36,893)	(35,087)
Per common share, basic and diluted:				
Basic and diluted net loss attributable to common stockholders	(0.18)	(0.32)	(0.37)	(0.35)
2016				
Revenue	$5,959	$6,592	$4,446	$5,576
Net loss	(31,779)	(28,320)	(40,774)	(26,122)
Net loss attributable to common shareholders	(31,829)	(28,371)	(40,825)	(26,174)
Per common share, basic and diluted:				
Basic and diluted net loss attributable to common stockholders	(0.37)	(0.33)	(0.47)	(0.30)

Net loss attributable to common stockholders per share is calculated independently for each of the quarters presented. Therefore, the sum of the quarterly net loss per share amounts will not necessarily equal the total for the full fiscal year.

(22) Subsequent Events

Royalty Purchase Agreement

On January 6, 2018, we, through our wholly-owned subsidiary, Antigenics, entered into a Royalty Purchase Agreement (the “Royalty Purchase Agreement”) with HCR. The closing under the Royalty Purchase Agreement occurred on January 19, 2018 (the “Closing”). Pursuant to the terms of the Royalty Purchase Agreement, HCR purchased 100% of Antigenics’ worldwide rights to receive royalties from GSK on sales of GSK’s vaccines containing our QS-21 Stimulon® adjuvant. As consideration for the purchase of the royalty rights, HCR paid $190.0 million at Closing, less certain transaction expenses. Antigenics is also entitled to receive up to $40.35 million in milestone payments based on sales of GSK’s vaccines as follows: (i) $15.1 million upon reaching $2.0 billion last-twelve-months net sales any time prior to 2024 and (ii) $25.25 million upon reaching $2.75 billion last-twelve-months net sales any time prior to 2026. Antigenics would owe approximately $25.9 million to HCR in 2021 (the “Rebate Payment”) if neither of the following sales milestones are achieved: (i) 2019 sales of the GSK vaccines exceed $1.0 billion or (ii) 2020 sales of the GSK vaccines exceed $1.75 billion. As part of the transaction, we provided a guaranty for the potential Rebate Payment and secured the obligation with substantially all of our assets pursuant to a security

agreement, subject to certain customary exceptions and excluding all assets necessary for AgenTus Therapeutics, Inc.

At the Closing, approximately $161.9 million of the proceeds were used to redeem Antigenics' $115.0 million principal amount of notes issued pursuant to the Note Purchase Agreement dated September 4, 2015 with Oberland Capital SA Zermatt LLC and the purchasers named therein (the "Note Purchase Agreement"), as well as the associated accrued and unpaid interest, and the Note Purchase Agreement and the notes issued thereunder have been redeemed in full and terminated.

The Royalty Purchase Agreement contains certain representations and warranties regarding Antigenics' rights and obligations with respect to GSK and the commercialization of GSK's vaccines, as well as customary representations and warranties regarding Antigenics generally. The Royalty Purchase Agreement also contains certain covenants around Antigenics' rights and obligations with respect to GSK and the commercialization of GSK's vaccines, as well as customary covenants, including covenants that limit or restrict Antigenics' ability to incur indebtedness or liens or otherwise merge, consolidate or acquire assets or securities. This transaction will be reflected as a liability in the consolidated financial statements.

At the Market Offerings

In January 2018, we received net proceeds of approximately $2.5 million from the sale of approximately 635,000 shares of our common stock in at-the-market offerings under our Controlled Equity Offering^{SM} sales agreement with Cantor Fitzgerald & Co.

Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure
Not applicable.

Item 9A. Controls and Procedures
Conclusion Regarding the Effectiveness of Disclosure Controls and Procedures

Under the supervision and with the participation of our management, including our Chief Executive Officer and Principal Financial Officer, we conducted an evaluation of the effectiveness of our disclosure controls and procedures, as such term is defined under Rule 13a-15(e) promulgated under the Exchange Act. Based on this evaluation, our Chief Executive Officer and our Principal Financial Officer concluded that our disclosure controls and procedures were functioning effectively as of the end of the period covered by this Annual Report on Form 10-K to provide reasonable assurance that the Company can meet its disclosure obligations.

Management's Annual Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rule 13a-15(f). Under the supervision and with the participation of our management, including our Chief Executive Officer and Principal Financial Officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in Internal Control—Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on our evaluation under the framework, our management concluded that our internal control over financial reporting was effective as of December 31, 2017.

KPMG LLP, our independent registered public accounting firm, has issued their report, included herein, on the effectiveness of our internal control over financial reporting.

Changes in Internal Control Over Financial Reporting

There was no change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) that occurred during the fourth quarter 2017 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors
Agenus Inc.:

Opinion on Internal Control Over Financial Reporting

We have audited Agenus Inc. and subsidiaries' (the Company) internal control over financial reporting as of December 31, 2017, based on criteria established in Internal Control – Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission. In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2017, based on criteria established in Internal Control – Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated balance sheets of the Company as of December 31, 2017 and 2016, the related consolidated statements of operations and comprehensive loss, stockholders' (deficit) equity, and cash flows for each of the years in the three-year period ended December 31, 2017, and the related notes (collectively, the consolidated financial statements), and our report dated March 16, 2018 expressed an unqualified opinion on those consolidated financial statements. Our report contains an explanatory paragraph that states that the Company has suffered recurring losses from operations and has a net capital deficiency, that raise substantial doubt about its ability to continue as a going concern. The consolidated financial statements do not include any adjustments that might result from the outcome of that uncertainty.

Basis for Opinion

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Annual Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and Limitations of Internal Control Over Financial Reporting

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that

transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ KPMG LLP

Boston, Massachusetts

March 16, 2018

Item 9B. Other Information

None.

PART III

Item 10. Directors, Executive Officers and Corporate Governance

Information regarding our executive officers is incorporated herein by reference to the information contained in Part I of this Annual Report on Form 10-K under the heading "Executive Officers of the Registrant." The balance of the information required by this Item is incorporated herein by reference to the information that will be contained in our proxy statement related to the 2018 Annual Meeting of Stockholders, which we intend to file with the Securities and Exchange Commission within 120 days of the end of our fiscal year pursuant to General Instruction G(3) of Form 10-K.

Item 11. Executive Compensation

The information required by this Item is incorporated herein by reference to the information that will be contained in our proxy statement related to the 2018 Annual Meeting of Stockholders, which we intend to file with the Securities and Exchange Commission within 120 days of the end of our fiscal year pursuant to General Instruction G(3) of Form 10-K.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

The information required by this Item is incorporated herein by reference to the information that will be contained in our proxy statement related to the 2018 Annual Meeting of Stockholders, which we intend to file with the Securities and Exchange Commission within 120 days of the end of our fiscal year pursuant to General Instruction G(3) of Form 10-K.

Item 13. Certain Relationships and Related Transactions, and Director Independence

The information required by this Item is incorporated herein by reference to the information that will be contained in our proxy statement related to the 2018 Annual Meeting of Stockholders, which we intend to file with the Securities and Exchange Commission within 120 days of the end of our fiscal year pursuant to General Instruction G(3) of Form 10-K.

Item 14. Principal Accounting Fees and Services

The information required by this Item is incorporated herein by reference to the information that will be contained in our proxy statement related to the 2018 Annual Meeting of Stockholders, which we intend to file with the Securities and Exchange Commission within 120 days of the end of our fiscal year pursuant to General Instruction G(3) of Form 10-K.

PART IV

Item 15. Exhibits and Financial Statement Schedules

(a) 1. Consolidated Financial Statements

The consolidated financial statements are listed under Item 8 of this Annual Report on Form 10-K.

2. Financial Statement Schedules

The financial statement schedules required under this Item and Item 8 are omitted because they are not applicable, or the required information is shown in the consolidated financial statements or the footnotes thereto.

3. Exhibits

The exhibits are listed below under Part IV Item 15(b).

(b) Exhibits

Exhibit No.	Description
3.1	Amended and Restated Certificate of Incorporation of Antigenics Inc. Filed as Exhibit 3.1 to our Current Report on Form 8-K (File No. 0-29089) filed on June 10, 2002 and incorporated herein by reference.
3.1.1	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Antigenics Inc. Filed as Exhibit 3.1 to our Current Report on Form 8-K (File No. 0-29089) filed on June 11, 2007 and incorporated herein by reference.
3.1.2	Certificate of Ownership and Merger changing the name of the corporation to Agenus Inc. Filed as Exhibit 3.1 to our Current Report on Form 8-K (File No. 0-29089) filed on January 6, 2011 and incorporated herein by reference.
3.1.3	Certificate of Second Amendment to the Amended and Restated Certificate of Incorporation of Agenus Inc. Filed as Exhibit 3.1 to our Current Report on Form 8-K (File No. 0-29089) filed on September 30, 2011 and incorporated herein by reference.
3.1.4	Certificate of Third Amendment to the Amended and Restated Certificate of Incorporation of Agenus Inc. Filed as Exhibit 3.1.4 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended June 30, 2012 and incorporated herein by reference.
3.1.5	Certificate of Fourth Amendment to the Amended and Restated Certificate of Incorporation of Agenus Inc. Filed as Exhibit 3.1 to our Current Report on Form 8-K (File No. 0-29089) filed on April 25, 2014 and incorporated herein by reference.
3.1.6	Certificate of Fifth Amendment to the Amended and Restated Certificate of Incorporation of Agenus Inc. Filed as Exhibit 3.1 to our Current Report on Form 8-K (File No. 0-29089) filed on June 16, 2016

	and incorporated herein by reference.
3.3	Certificate of Designation, Preferences and Rights of the Series A Convertible Preferred Stock of Agenus Inc. filed with the Secretary of State of the State of Delaware on September 24, 2003. Filed as Exhibit 3.1 to our Current Report on Form 8-K (File No. 0-29089) filed on September 25, 2003 and incorporated herein by reference.
3.4	Certificate of Designations, Preferences and Rights of the Class B Convertible Preferred Stock of Agenus Inc. Filed as Exhibit 3.1 to our Current Report on Form 8-K (File No. 0-29089) filed on September 5, 2007 and incorporated herein by reference.
3.5	Certificate of Designations, Preferences and Rights of the Series A-1 Convertible Preferred Stock of Agenus Inc. Filed as Exhibit 3.1 to our Current Report on Form 8-K (File No. 0-29089) filed on February 5, 2013 and incorporated herein by reference.
4.1	Form of Common Stock Certificate. Filed as Exhibit 4.1 to our Current Report on Form 8-K (File No. 0-29089) filed on January 6, 2011 and incorporated herein by reference.
4.2	Form of Amended and Restated Note under the Securities Purchase Agreement dated as of October 30, 2006 (as amended), by and among Agenus Inc., a Delaware corporation and the investors listed on the Schedule of Buyers thereto. Filed as Exhibit 4.4 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2010 and incorporated herein by reference.

Exhibit No.	Description
4.3	Form of Warrant under the Securities Purchase Agreement dated January 9, 2008. Filed as Exhibit 4.1 to our Current Report on Form 8-K (File No. 0-29089) filed on January 11, 2008 and incorporated herein by reference.
4.4	Purchase Agreement dated August 31, 2007 by and between Agenus Inc. and Fletcher International. Filed as Exhibit 99.1 to our Current Report on Form 8-K (File No. 0-29089) filed on September 5, 2007 and incorporated herein by reference.
4.5	Securities Purchase Agreement dated April 8, 2008. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on April 10, 2008 and incorporated herein by reference.
4.6	Form of Warrant to purchase common stock dated April 9, 2008. Filed as Exhibit 4.1 to our Current Report on Form 8-K (File No. 0-29089) filed on April 10, 2008 and incorporated herein by reference.
4.7	Securities Purchase Agreement by and between Agenus Inc. and the investors identified on Schedule I attached to the agreement, dated January 9, 2008. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on January 11, 2008 and incorporated herein by reference.
4.8	Form of 4 Year Warrant under the Securities Purchase Agreement dated July 30, 2009. Filed as Exhibit 4.2 to our Current Report on Form 8-K (File No. 0-29089) filed on August 3, 2009 and incorporated herein by reference.
4.9	Form of 4 Year Warrant under the Securities Purchase Agreement dated August 3, 2009. Filed as Exhibit 4.2 to our Current Report on Form 8-K (File No. 0-29089) filed on August 5, 2009 and incorporated herein by reference.
4.10	Securities Purchase Agreement dated as of July 30, 2009 by and among Agenus Inc. and the investors listed on the Schedule of Buyers thereto. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on August 3, 2009 and incorporated herein by reference.
4.11	Securities Exchange Agreement dated as of February 4, 2013 by and between Agenus Inc., and Mr. Brad Kelley. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on February 5, 2013 and incorporated herein by reference.
4.12	Note Purchase Agreement dated as of April 15, 2013 by and between Agenus Inc., and the Purchasers listed on Schedule 1.1 thereto. Filed as Exhibit 4.1 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended March 31, 2013 and incorporated herein by reference.
4.13	Form of Senior Subordinated Note under the Note Purchase Agreement dated as of April 15, 2013 by and between Agenus Inc., and the Purchasers listed on Schedule 1.1 thereto. Filed as Exhibit 4.2 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended March 31, 2013 and incorporated herein by reference.
4.14	Form of Warrant under the Note Purchase Agreement dated as of April 15, 2013 by and between Agenus Inc., and the Purchasers listed on Schedule 1.1 thereto. Filed as Exhibit 4.3 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended March 31, 2013 and incorporated herein by reference.

4.15	Securities Purchase Agreement, dated September 18, 2013, as amended, by and between Agenus Inc. and the investors party thereto. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on September 19, 2013 and incorporated herein by reference.
4.16	Form of Warrant under the Securities Purchase Agreement, dated September 18, 2013, as amended, by and between Agenus Inc. and the investors party thereto. Filed as Exhibit 4.1 to our Current Report on Form 8-K (File No. 0-29089) filed on September 19, 2013 and incorporated herein by reference.
4.17	Share Exchange Agreement, dated January 10, 2014, by and among Agenus Inc., 4-Antibody AG, certain shareholders of 4-Antibody AG and Vischer AG. Filed as Exhibit 2.1 to our Current Report on Form 8-K (File No. 0-29089) filed on January 13, 2014 and incorporated herein by reference.
4.18	Securities Purchase Agreement dated as of August 3, 2009 by and among Agenus Inc. and the investors listed on the Schedule of Buyers thereto. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on August 5, 2009 and incorporated herein by reference.
4.19	Stock Purchase Agreement dated as of January 9, 2015, by and between Agenus Inc. and Incyte Corporation. Filed as Exhibit 4.21 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2014 and incorporated herein by reference.

Exhibit No.	Description
4.20(1)	Amended and Restated Note Purchase Agreement dated as of February 20, 2015, as amended, by and between Agenus Inc. and the Purchasers listed on Schedule 1.1 thereto. Filed as Exhibit 4.2 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended March 31, 2015 and incorporated herein by reference.
4.21	Form of Senior Subordinated Note under the Amended and Restated Note Purchase Agreement dated as of February 20, 2015, as amended, by and between Agenus Inc. and the Purchasers listed on Schedule 1.1 thereto. Filed as Exhibit 4.3 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended March 31, 2015 and incorporated herein by reference.
4.22	Form of Warrant under the Amended and Restated Note Purchase Agreement dated as of February 20, 2015, as amended, by and between Agenus Inc. and the Purchasers listed on Schedule 1.1 thereto. Filed as Exhibit 4.4 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended March 31, 2015 and incorporated herein by reference.
4.23	Amendment to Notes and Warrants dated as of March 15, 2017 by and among Agenus Inc. and the Investors listed therein. Filed as Exhibit 4.27 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2016 and incorporated herein by reference.
4.24(1)	Note Purchase Agreement, by and among Antigenics LLC, the guarantors named therein, Oberland Capital SA Zermatt LLC, as collateral agent ("Oberland"), an affiliate of Oberland as the lead purchaser and the other purchasers, dated September 4, 2015. Filed as Exhibit 4.1 to our Current Report on Form 8-K/A (File No. 0-29089) filed on September 11, 2015 and incorporated herein by reference.
4.25	Form of Limited Recourse Note under the Note Purchase Agreement, by and among Antigenics LLC, the guarantors named therein, Oberland Capital SA Zermatt LLC, as collateral agent ("Oberland"), an affiliate of Oberland as the lead purchaser and the other purchasers, dated September 4, 2015. Filed as Exhibit 4.2 to our Current Report on Form 8-K/A (File No. 0-29089) filed on September 11, 2015 and incorporated herein by reference.
4.26	Revenue Interest Assignment and Termination Agreement, by and among Agenus Inc., Antigenics LLC, Ingalls & Snyder Value Partners, L.P. and Arthur Koenig, dated September 4, 2015. Filed as Exhibit 4.3 to our Current Report on Form 8-K/A (File No. 0-29089) filed on September 11, 2015 and incorporated herein by reference.
4.27	Stock Purchase Agreement dated as of February 14, 2017, by and between Agenus Inc. and Incyte Corporation. Filed as Exhibit 4.1 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended March 31, 2017 and incorporated herein by reference.
4.28	Form of Indenture. Filed as Exhibit 4.1 to our Registration Statement on Form S-3 (File No. 333-221008) and incorporated herein by reference.
	Employment Agreements and Compensation Plans
10.1*	1999 Equity Incentive Plan, as amended. Filed as Exhibit 10.1 to our Annual Report on Form
	10-K (File No. 0-29089) for the year ended December 31, 2008 and incorporated herein by reference.
10.1.1*	

	Form of Non-Statutory Stock Option. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on December 15, 2004 and incorporated herein by reference.
10.1.2*	Form of 2007 Restricted Stock Award Agreement. Filed as Exhibit 10.1.5 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2007 and incorporated herein by reference.
10.1.3*	Form of 2008 Restricted Stock Award Agreement. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on March 11, 2008 and incorporated herein by reference.
10.1.4*	Sixth Amendment to the Agenus Inc. 1999 Equity Incentive Plan. Filed as Appendix D to our Definitive Proxy Statement on Schedule 14A filed on April 27, 2009 and incorporated herein by reference.
10.2*	Agenus Inc. Amended and Restated 2009 Equity Incentive Plan. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on June 16, 2016 and incorporated herein by reference.
10.2.1*	Form of Restricted Stock Award Agreement for the Agenus Inc. Amended and Restated 2009 Equity Incentive Plan. Filed as Exhibit 10.2 to our Current Report on Form 8-K (File No. 0-29089) filed on June 15, 2009 and incorporated herein by reference.

Exhibit No.	Description
10.2.2*	Form of Stock Option Agreement for the Agenus Inc. Amended and Restated 2009 Equity Incentive Plan. Filed as Exhibit 10.3 to our Current Report on Form 8-K (File No. 0-29089) filed on June 15, 2009 and incorporated herein by reference.
10.3*	Agenus Inc. 2009 Employee Stock Purchase Plan. Filed as Appendix B to our Definitive Proxy Statement on Schedule 14A filed on April 27, 2009 and incorporated herein by reference.
10.4	Agenus Inc. Directors' Deferred Compensation Plan, as amended to date. Filed as Exhibit 10.4 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2012 and incorporated herein by reference.
10.4.1	Seventh Amendment to Agenus Directors' Deferred Compensation Plan. Filed as Appendix C to our Definitive Proxy Statement on Schedule 14A filed on April 30, 2015 and incorporated herein by reference.
10.5*	Amended and Restated Executive Change-in-Control Plan applicable to Christine M. Klaskin. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on November 3, 2010 and incorporated herein by reference.
10.5.1*	Modification of Rights in the Event of a Change of Control, dated as of June 14, 2012, by and between Agenus Inc. and Christine Klaskin. Filed as Exhibit 10.1 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended June 30, 2012 and incorporated herein by reference.
10.6*	2004 Executive Incentive Plan, as amended. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on January 27, 2011 and incorporated herein by reference.
10.6.1	Agenus Inc. 2016 Executive Incentive Plan. Filed as Exhibit 10.2 to our Current Report on Form 8-K (File No. 0-29089) filed on June 16, 2016 and incorporated herein by reference.
10.8*	Employment Agreement dated December 1, 2005 between Agenus Inc. and Garo Armen. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on December 7, 2005 and incorporated herein by reference.
10.8.1*	First Amendment to Employment Agreement dated July 2, 2009 between Agenus Inc. and Garo Armen. Filed as Exhibit 10.1 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended September 30, 2009 and incorporated herein by reference.
10.8.2*	Second Amendment to Employment Agreement dated December 15, 2010 between Agenus Inc. and Garo Armen. Filed as Exhibit 10.12.2 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2010 and incorporated herein by reference.
10.9*	Employment Agreement dated September 16, 2008 between Agenus Inc. and Karen Valentine. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on September 19, 2008 and incorporated herein by reference.
10.9.1*	First Amendment to Employment Agreement dated July 2, 2009 between Agenus Inc. and Karen Valentine. Filed as Exhibit 10.3 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter

ended September 30, 2009 and incorporated herein by reference.

10.9.2* Second Amendment to Employment Agreement dated December 15, 2010 between Agenus Inc. and Karen Valentine. Filed as Exhibit 10.20.2 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2010 and incorporated herein by reference.

10.10* Agenus Inc. 2015 Inducement Equity Plan. Filed as Exhibit 4.14 to our Registration Statement on Form S-8 (File No. 333-209074) filed on January 21, 2016 and incorporated herein by reference.

10.10.1* Form of Stock Option Agreement for the Agenus Inc. 2015 Inducement Equity Plan. Filed as Exhibit 4.15 to our Registration Statement on Form S-8 (File No. 333-209074) filed on January 21, 2016 and incorporated herein by reference.

10.10.2* Form of Restricted Stock Award Agreement for the Agenus Inc. 2015 Inducement Equity Plan. Filed as Exhibit 4.16 to our Registration Statement on Form S-8 (File No. 333-209074) filed on January 21, 2016 and incorporated herein by reference.

10.10.3* Form of Restricted Stock Unit Agreement for the Agenus Inc. 2015 Inducement Equity Plan. Filed as Exhibit 4.17 to our Registration Statement on Form S-8 (File No. 333-209074) filed on January 21, 2016 and incorporated herein by reference.

10.11* Employment Agreement dated June 30, 2015 between Agenus Inc. and Dr. Robert Stein. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on June 30, 2015 and incorporated herein by reference.

Exhibit No.	Description
10.12*	Separation Agreement dated as of April 1, 2017 by and between Agenus Inc. and Dr. Robert Stein. Filed as Exhibit 10.3 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended March 31, 2017 and incorporated herein by reference.
10.13*	Consulting Agreement dated as of April 1, 2017 by and between Agenus Inc. and Dr. Robert Stein. Filed as Exhibit 10.4 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended March 31, 2017 and incorporated herein by reference.
10.14*	Form of Restricted Stock Unit Agreement for the Agenus Inc. Amended and Restated 2009 Equity Incentive Plan. Filed as Exhibit 10.2 to our Current Report on Form 8-K (File No. 0-29089) filed on June 30, 2015 and incorporated herein by reference.
10.15*	Employment Agreement dated March 10, 2017 between Agenus Inc. and Dr. Jean-Marie Cuillerot. Filed as Exhibit 10.16 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2016 and incorporated herein by reference.
	License and Collaboration Agreements
10.16(1)	Patent License Agreement between Agenus Inc. and Mount Sinai School of Medicine dated November 1, 1994, as amended on June 5, 1995. Filed as Exhibit 10.8 to our registration statement on Form S-1 (File No. 333-91747) and incorporated herein by reference.
10.17(1)	License Agreement between the University of Connecticut Health Center and Agenus Inc. dated May 25, 2001, as amended on March 18, 2003. Filed as Exhibit 10.2 to the Amendment No. 1 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended March 31, 2003 and incorporated herein by reference.
10.17.1(1)	Letter Agreement by and between Agenus Inc. and The University of Connecticut Health Center dated May 11, 2009. Filed as Exhibit 10.5 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended June 30, 2009 and incorporated herein by reference.
10.17.2(1)	Amendment Number Two to License Agreement by and between Agenus Inc. and The University of Connecticut Health Center dated June 5, 2009. Filed as Exhibit 10.6 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended June 30, 2009 and incorporated herein by reference.
10.18(1)	License Agreement by and between Agenus Inc. and GlaxoSmithKline Biologicals SA dated July 6, 2006. Filed as Exhibit 10.1 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended June 30, 2006 and incorporated herein by reference.
10.19(1)	Amended and Restated Manufacturing Technology Transfer and Supply Agreement by and between Agenus Inc. and GlaxoSmithKline Biologicals SA dated January 19, 2009. Filed as Exhibit 10.1 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended March 31, 2009 and incorporated herein by reference.
10.20(1)	First Right to Negotiate and Amendment Agreement between Agenus Inc., Antigenics LLC and GlaxoSmithKline Biologicals SA, dated March 2, 2012. Filed as Exhibit 10.1 to our Quarterly Report on

	Form 10-Q (File No. 0-29089) for the quarter ended March 31, 2012 and incorporated herein by reference.
10.21(1)	Revenue Interests Assignment Agreement dated as of April 15, 2013 by and among Agenus Inc., Ingalls & Snyder Value Partners L.P., Arthur Koenig and Antigenics LLC. Filed as Exhibit 10.1 to our Quarterly Report on Form 10-Q (File No. 0-029089) for the quarter ended March 31, 2013 and incorporated herein by reference.
10.22(1)	License Agreement dated as of December 5, 2014 by and between 4-Antibody AG, a limited liability company organized under the laws of Switzerland (and wholly-owned subsidiary of Agenus Inc.) and Ludwig Institute for Cancer Research Ltd. Filed as Exhibit 10.21 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2014 and incorporated herein by reference.
10.23.1(1)	License, Development and Commercialization Agreement dated as of January 9, 2015 by and among Agenus Inc., 4-Antibody AG, a limited liability company organized under the laws of Switzerland (and wholly-owned subsidiary of Agenus Inc.), Incyte Corporation and Incyte Europe Sarl, a Swiss limited liability company (and wholly-owned subsidiary of Incyte Corporation). Filed as Exhibit 10.22 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2014 and incorporated herein by reference.

Exhibit No.	Description
10.23.2(1)	First Amendment to License, Development and Commercialization Agreement dated as of February 14, 2017 by and among Agenus Inc., Agenus Switzerland Inc. (f/k/a 4-Antibody AG) and Incyte Europe Sarl. Filed as Exhibit 10.1 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended March 31, 2017 and incorporated herein by reference.
10.24(1)	License Agreement dated March 19, 2013, as amended, by and between the University of Virginia Patent Foundation d/b/a University of Virginia Licensing and Ventures Group and Agenus Inc. (as successor by merger to PhosImmune Inc.). Filed as Exhibit 10.24 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2015 and incorporated herein by reference.
10.25(1)	License Agreement dated as of January 25, 2016 by and among Agenus Inc., 4-Antibody AG, a limited liability company organized under the laws of Switzerland (and wholly-owned subsidiary of Agenus Inc.), and Ludwig Institute for Cancer Research Ltd. Filed as Exhibit 10.25 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2015 and incorporated herein by reference.
10.26(1)	Development and Manufacturing Services Agreement dated April 14, 2017 by and between Agenus Inc. and CMC ICOS Biologics, Inc. Filed as Exhibit 10.1 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended June 30, 2017 and incorporated herein by reference.
	Real Estate Leases
10.27	Lease of Premises at 3 Forbes Road, Lexington, Massachusetts dated as of December 6, 2002 from BHX, LLC, as Trustee of 3 Forbes Realty Trust, to Agenus Inc. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on January 8, 2003 and incorporated herein by reference.
10.27.1	First Amendment of Lease dated as of August 15, 2003 from BHX, LLC, as trustee of 3 Forbes Road Realty, to Agenus Inc. Filed as Exhibit 10.1 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended March 31, 2004 and incorporated herein by reference.
10.27.2	Second Amendment of Lease dated as of March 7, 2007 from BHX, LLC as trustee of 3 Forbes Road Realty, to Agenus Inc. Filed as Exhibit 10.1 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended March 31, 2007 and incorporated herein by reference.
10.27.3	Third Amendment to Lease dated April 23, 2008 between TBCI, LLC, as successor to BHX, LLC, as Trustee of 3 Forbes Road Realty Trust, and Agenus Inc. Filed as Exhibit 10.2 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended June 30, 2008 and incorporated herein by reference.
10.27.4	Fourth Amendment to Lease dated September 30, 2008 between TBCI, LLC, as successor to BHX, LLC, as Trustee of 3 Forbes Road Realty Trust, and Agenus Inc. Filed as Exhibit 10.2 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended September 30, 2008 and incorporated herein by reference.
10.27.5	Fifth Amendment to Lease dated April 11, 2011 between TBCI, LLC, as successor to BHX, LLC, as Trustee of 3 Forbes Road Realty Trust, and Agenus Inc. Filed as Exhibit 10.3 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended March 31, 2011 and incorporated herein by reference.
10.28	

	Standard Form of Office Lease dated December 13, 2012 between 149 Fifth Ave. Corp. and Agenus Inc. Filed as Exhibit 10.22 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2012 and incorporated herein by reference.
	Sales Agreement
10.29	Form of Controlled Equity Offering[SM] Sales Agreement by and between Agenus Inc. and Cantor Fitzgerald & Co. Filed as Exhibit 1.2 to our Registration Statement on Form S-3 (File No. 333-221008) and incorporated herein by reference.
21.1	Subsidiaries of Agenus Inc. Filed herewith.
23.1	Consent of KPMG LLP, independent registered public accounting firm. Filed herewith.
31.1	Certification of Chief Executive Officer pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as amended. Filed herewith.
31.2	Certification of Principal Financial Officer pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as amended. Filed herewith.

Exhibit No.	Description
32.1	Certification of Chief Executive Officer and Principal Financial Officer pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. Submitted herewith.
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	XBRL Label Linkbase Document
101.PRE	XBRL Taxonomy Presentation Linkbase Document

* Indicates a management contract or compensatory plan.
(1) Certain confidential material contained in the document has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 406 of the Securities Act or Rule 24b-2 of the Securities Exchange Act.

Item 16. Form 10-K Summary

None.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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.

AGENUS INC.

By: /s/ GARO H. ARMEN, PH.D.
Garo H. Armen, Ph.D.
Chief Executive Officer and
Chairman of the Board

Dated: March 16, 2018

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/S/ GARO H. ARMEN, PH.D. Garo H. Armen, Ph.D.	Chief Executive Officer and Chairman of the Board of Directors (Principal Executive Officer)	March 16, 2018
/S/ CHRISTINE M. KLASKIN Christine M. Klaskin	Vice President Finance (Principal Financial and Accounting Officer)	March 16, 2018
/S/ ULF WIINBERG Ulf Wiinberg	Director	March 16, 2018
/S/ BRIAN CORVESE Brian Corvese	Director	March 16, 2018
/S/ WADIH JORDAN Wadih Jordan	Director	March 16, 2018
/S/ SHALINI SHARP Shalini Sharp	Director	March 16, 2018
/S/ TIMOTHY R. WRIGHT Timothy R. Wright	Director	March 16, 2018