

RPM INTERNATIONAL INC/DE/

Form 10-Q

April 08, 2010

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**UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

Form 10-Q

- QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the quarterly period ended February 28, 2010,
- 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 No. 1-14187

RPM International Inc.

(Exact name of Registrant as specified in its charter)

DELAWARE

*(State or other jurisdiction of
incorporation or organization)*

02-0642224

*(IRS Employer
Identification No.)*

**P.O. BOX 777;
2628 PEARL ROAD;
MEDINA, OHIO**

(Address of principal executive offices)

44258

(Zip Code)

(330) 273-5090

(Registrant's telephone number including area code)

Not Applicable

(Former name, former address and former fiscal year, if changed since last report)

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 (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes 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 No .

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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. (Check one):

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company
(Do not check if a 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 .

As of April 1, 2010
129,637,774 Shares of RPM International Inc. Common Stock were outstanding.

RPM INTERNATIONAL INC. AND SUBSIDIARIES*

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* As used herein, the terms "RPM" and the "Company" refer to RPM International Inc. and its subsidiaries, unless the context indicates otherwise.

Table of ContentsPART I. FINANCIAL INFORMATIONITEM 1. FINANCIAL STATEMENTSRPM INTERNATIONAL INC. AND SUBSIDIARIESCONSOLIDATED BALANCE SHEETS

	February 28, 2010 (Unaudited) (In thousands, except share and per share amounts)	May 31, 2009
<u>ASSETS</u>		
Current Assets		
Cash and cash equivalents	\$ 256,199	\$ 253,387
Trade accounts receivable (less allowances of \$24,270 and \$22,934, respectively)	502,190	638,659
Inventories	441,578	406,175
Deferred income taxes	44,215	44,540
Prepaid expenses and other current assets	222,689	210,155
Total current assets	1,466,871	1,552,916
Property, Plant and Equipment, at Cost	1,067,577	1,056,555
Allowance for depreciation and amortization	(622,618)	(586,452)
Property, plant and equipment, net	444,959	470,103
Other Assets		
Goodwill	882,739	856,166
Other intangible assets, net of amortization	366,127	358,097
Deferred income taxes, non-current	62,474	92,500
Other	114,195	80,139
Total other assets	1,425,535	1,386,902
Total Assets	\$ 3,337,365	\$ 3,409,921
<u>LIABILITIES AND STOCKHOLDERS EQUITY</u>		
Current Liabilities		
Accounts payable	\$ 230,361	\$ 294,814
Current portion of long-term debt	5,534	168,547
Accrued compensation and benefits	121,856	124,138

Accrued loss reserves	74,562	77,393
Asbestos-related liabilities	75,000	65,000
Other accrued liabilities	132,271	119,270
Total current liabilities	639,584	849,162
Long-Term Liabilities		
Long-term debt, less current maturities	902,563	762,295
Asbestos-related liabilities	357,891	425,328
Other long-term liabilities	200,924	204,021
Deferred income taxes	28,389	23,815
Total long-term liabilities	1,489,767	1,415,459
Stockholders Equity		
Preferred stock, par value \$0.01; authorized 50,000 shares; none issued		
Common stock, par value \$0.01 authorized 300,000 shares; issued 131,781 and outstanding 129,601 as of February 2010; issued 131,230 and outstanding 128,501 as of May 2009	1,296	1,285
Paid-in capital	798,721	796,441
Treasury stock, at cost	(40,237)	(50,453)
Accumulated other comprehensive (loss)	(20,441)	(29,928)
Retained earnings	468,675	427,955
Total stockholders equity	1,208,014	1,145,300
Total Liabilities and Stockholders Equity	\$ 3,337,365	\$ 3,409,921

The accompanying notes to consolidated financial statements are an integral part of these statements.

Table of Contents**RPM INTERNATIONAL INC. AND SUBSIDIARIES****CONSOLIDATED STATEMENTS OF INCOME**

	Three Months Ended		Nine Months Ended	
	February 28,		February 28,	
	2010	2009	2010	2009
	(Unaudited)			
	(In thousands, except share and per share amounts)			
Net Sales	\$ 666,594	\$ 635,396	\$ 2,441,205	\$ 2,510,826
Cost of Sales	406,762	400,738	1,424,332	1,515,853
Gross Profit	259,832	234,658	1,016,873	994,973
Selling, General and Administrative Expenses	257,212	265,618	800,763	837,290
Interest Expense	15,802	12,350	43,271	42,309
Investment Expense (Income), Net	(1,833)	1,170	(4,984)	(809)
Income (Loss) Before Income Taxes	(11,349)	(44,480)	177,823	116,183
Provision (Benefit) for Income Taxes	(1,949)	(13,547)	58,305	35,873
Net Income (Loss)	\$ (9,400)	\$ (30,933)	\$ 119,518	\$ 80,310
Average Number of Shares of Common Stock Outstanding:				
Basic	127,500	126,575	126,940	126,295
Diluted	127,500	126,575	127,539	128,015
Basic Earnings (Loss) per Share of Common Stock	\$ (0.07)	\$ (0.24)	\$ 0.93	\$ 0.63
Diluted Earnings (Loss) per Share of Common Stock	\$ (0.07)	\$ (0.24)	\$ 0.93	\$ 0.62
Cash Dividends Declared per Share of Common Stock	\$ 0.205	\$ 0.200	\$ 0.610	\$ 0.590

The accompanying notes to consolidated financial statements are an integral part of these statements.

Table of ContentsRPM INTERNATIONAL INC. AND SUBSIDIARIESCONSOLIDATED STATEMENTS OF CASH FLOWS

	Nine Months Ended February 28, 2010 2009 (Unaudited) (In thousands)	
Cash Flows From Operating Activities:		
Net income	\$ 119,518	\$ 80,310
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation	46,622	47,433
Amortization	16,600	16,709
Other-than-temporary impairments on marketable securities	236	7,371
Deferred income taxes	23,765	6,780
Other	6,057	5,604
Changes in assets and liabilities, net of effect from purchases and sales of businesses:		
Decrease in receivables	154,567	317,443
(Increase) decrease in inventory	(27,732)	17,398
(Increase) decrease in prepaid expenses and other current and long-term assets	(16,906)	23,641
(Decrease) in accounts payable	(72,592)	(188,436)
(Decrease) in accrued compensation and benefits	(10,246)	(52,486)
(Decrease) increase in accrued loss reserves	(2,830)	5,279
Increase (decrease) in other accrued liabilities	4,887	(73,175)
Payments made for asbestos-related claims	(57,437)	(52,196)
Other	4,364	(27,088)
Cash From Operating Activities	188,873	134,587
Cash Flows From Investing Activities:		
Capital expenditures	(14,069)	(37,024)
Acquisition of businesses, net of cash acquired	(63,669)	(6,649)
Purchase of marketable securities	(76,166)	(71,583)
Proceeds from sales of marketable securities	66,375	65,452
Other	(186)	777
Cash (Used For) Investing Activities	(87,715)	(49,027)
Cash Flows From Financing Activities:		
Additions to long-term and short-term debt	304,106	108,146
Reductions of long-term and short-term debt	(327,472)	(51,563)
Cash dividends	(78,798)	(76,152)
Repurchase of stock	(1,832)	(45,188)
Exercise of stock options	6,919	1,980

Cash (Used For) Financing Activities	(97,077)	(62,777)
Effect of Exchange Rate Changes on Cash and Cash Equivalents	(1,269)	(48,797)
Net Change in Cash and Cash Equivalents	2,812	(26,014)
Cash and Cash Equivalents at Beginning of Period	253,387	231,251
Cash and Cash Equivalents at End of Period	\$ 256,199	\$ 205,237

The accompanying notes to consolidated financial statements are an integral part of these statements.

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RPM INTERNATIONAL INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

FEBRUARY 28, 2010

(Unaudited)

NOTE 1 BASIS OF PRESENTATION

The accompanying unaudited consolidated financial statements have been prepared in accordance with the instructions to Form 10-Q and do not include all of the information and notes required by generally accepted accounting principles in the U.S. (GAAP) for complete financial statements. In our opinion, all adjustments (consisting of normal, recurring accruals) considered necessary for a fair presentation have been included for the three and nine month periods ended February 28, 2010 and 2009. For further information, refer to the Consolidated Financial Statements and Notes included in our Annual Report on Form 10-K for the year ended May 31, 2009.

Our business is dependent on external weather factors. Historically, we have experienced strong sales and net income in our first, second and fourth fiscal quarters comprising the three month periods ending August 31, November 30 and May 31, respectively, with weaker performance in our third fiscal quarter (December through February).

Certain reclassifications have been made to prior year amounts to conform to the current year presentation. Please refer to Note 10, Segment Information, for information pertaining to a change in the composition of our reportable segments during the current fiscal year.

NOTE 2 NEW ACCOUNTING PRONOUNCEMENTS

Accounting Standards Codification In June 2009, the Financial Accounting Standards Board (the FASB) issued the FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles (the ASC), which identifies itself as the source of authoritative accounting principles recognized by the FASB to be applied by nongovernmental entities in the preparation of financial statements in conformity with GAAP. Rules and interpretive releases of the SEC under authority of federal securities laws are also sources of authoritative GAAP for SEC registrants. The ASC became effective for financial statements issued for interim and annual periods ending after September 15, 2009. The ASC does not change GAAP, but is intended to simplify user access to all authoritative GAAP by providing all the authoritative literature related to a particular topic in one place. Effective September 15, 2009, all of our public filings reference the ASC as the sole source of authoritative literature.

Subsequent Events In February 2010, the FASB issued guidance which establishes general standards of accounting for and disclosures of events that occur after the balance sheet date but before financial statements are issued or are available to be issued. Under the new guidance, entities that are SEC filers are required to evaluate subsequent events through the date the financial statements are issued. The guidance was effective upon issuance of the new provisions. Our adoption of the provisions of this new guidance had no impact on our financial position, results of operations or cash flows. Refer to Note 13, Subsequent Events.

Financial Instruments In April 2009, the FASB issued new guidance regarding disclosures of the fair values of financial instruments for interim and annual reporting periods. The guidance is effective for interim reporting periods ending after June 15, 2009. We adopted the new guidance as of June 1, 2009. Refer to Note 5, Fair Value Measurements, for additional discussion.

Business Combinations In December 2007, the FASB issued guidance regarding the accounting for business combinations. Under the updated guidance, transaction costs are no longer considered part of the fair value of an acquisition, but are required to be expensed as incurred. Additionally under the updated guidance, upon initially obtaining control of another entity or business, an acquirer must recognize 100% of the fair values of assets acquired, including goodwill and liabilities assumed, with limited exceptions, even if the acquirer has not acquired 100% of the target. We adopted the provisions of this guidance as of June 1, 2009. The impact of our adoption will depend upon the nature and significance of any acquisitions subject to this statement.

Consolidation of Noncontrolling Interests In December 2007, the FASB issued guidance surrounding the accounting and reporting of noncontrolling interests, which requires entities to report noncontrolling (minority)

Table of Contents**RPM INTERNATIONAL INC. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

interests in subsidiaries as equity in the Consolidated Financial Statements. Our June 1, 2009 adoption of this new guidance did not have a material impact on our financial statements.

Convertible Debt In May 2008, the FASB issued guidance which requires the issuer of certain convertible debt instruments that may be settled in cash upon conversion to separately account for liability and equity components of the instrument in a manner that reflects the issuer's nonconvertible debt borrowing rate. Although we called for redemption all of our outstanding Senior Convertible Notes due May 13, 2033 during the first fiscal quarter of 2009, the FASB's guidance requires retrospective application to all years presented. We adopted this new guidance effective June 1, 2009, and as a result, recorded additional interest expense of \$5.0 million during our fiscal year ended May 31, 2008, which resulted in an after-tax decrease to reported net income of \$3.3 million and a reduction of reported basic and diluted earnings per share of \$0.03 per share of common stock. The cumulative effect of our adoption of this guidance as of June 1, 2008 was a reduction of retained earnings of approximately \$15.5 million. Additionally, our fiscal 2008 financial statements will be restated in our fiscal 2010 Annual Report on Form 10-K. The following table illustrates the retrospective changes made to our comparative financial statements for fiscal 2009:

	As Reported	May 31, 2009 Adjustment (In thousands)	Restated
Paid-in Capital	\$ 780,967	\$ 15,474	\$ 796,441
Retained Earnings	\$ 443,429	\$ (15,474)	\$ 427,955

NOTE 3 INVENTORIES

Inventories were composed of the following major classes:

	February 28, 2010	May 31, 2009
	(In thousands)	
Raw material and supplies	\$ 143,624	\$ 133,708
Finished goods	297,954	272,467
Total Inventory	\$ 441,578	\$ 406,175

NOTE 4 MARKETABLE SECURITIES

The following tables summarize marketable securities held at February 28, 2010 and May 31, 2009 by asset type:

Available-For-Sale Securities

February 28, 2010	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value (Net Carrying Amount)
	(In thousands)			
Equity securities:				
Stocks	\$ 44,210	\$ 6,703	\$ (413)	\$ 50,500
Mutual funds	21,275	3,660	(70)	24,865
Total equity securities	65,485	10,363	(483)	75,365
Fixed maturity:				
U.S. treasury and other government	21,403	347	(47)	21,703
Corporate	8,483	739	(25)	9,197
Total fixed maturity securities	29,886	1,086	(72)	30,900
Total	\$ 95,371	\$ 11,449	\$ (555)	\$ 106,265

Table of Contents**RPM INTERNATIONAL INC. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

	Available-For-Sale Securities			Estimated Fair Value (Net Carrying Amount)
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	
May 31, 2009				
Equity securities:				
Stocks	\$ 36,475	\$ 1,949	\$ (2,686)	\$ 35,738
Mutual funds	21,321	804	(963)	21,162
Total equity securities	57,796	2,753	(3,649)	56,900
Fixed maturity:				
U.S. treasury and other government	9,164	258	(7)	9,415
Corporate	16,075	1,028	(117)	16,986
Total fixed maturity securities	25,239	1,286	(124)	26,401
Total	\$ 83,035	\$ 4,039	\$ (3,773)	\$ 83,301

Marketable securities, included in other current and long-term assets, are composed of available-for-sale securities and are reported at fair value. Realized gains and losses on sales of investments are recognized in net income on the specific identification basis. Changes in the fair values of securities that are considered temporary are recorded as unrealized gains and losses, net of applicable taxes, in accumulated other comprehensive income (loss) within stockholders' equity. Other-than-temporary declines in market value from original cost are reflected in income before income taxes in the period in which the unrealized losses are deemed other-than-temporary. In order to determine whether an other-than-temporary decline in market value has occurred, the duration of the decline in value and our ability to hold the investment are considered in conjunction with an evaluation of the strength of the underlying collateral and the extent to which the investment's amortized cost or cost, as appropriate, exceeds its related market value.

Gross gains and losses realized on sales of investments were \$0.9 million and \$0.5 million, respectively, for the quarter ended February 28, 2010. Gross gains and losses realized on sales of investments were \$0.7 million and \$0.1 million, respectively, for the quarter ended February 28, 2009. During the third quarter of fiscal 2010 and 2009, we recognized losses of \$0.1 million and \$4.0 million, respectively, for securities deemed to have other-than-temporary impairments.

Gross gains and losses realized on sales of investments were \$2.3 million and \$1.0 million, respectively, for the nine months ended February 28, 2010. Gross gains and losses realized on sales of investments were \$4.4 million and \$2.5 million, respectively, for the nine months ended February 28, 2009. During the first nine months of fiscal 2010 and fiscal 2009, we recognized losses of \$0.2 million and \$7.4 million, respectively, for securities deemed to have other-than-temporary impairments. These amounts are included in investment income, net in the Consolidated

Statements of Income.

Summarized below are the securities we held at February 28, 2010 and May 31, 2009 that were in an unrealized loss position included in accumulated other comprehensive income, aggregated by the length of time the investments had been in that position:

	February 28, 2010		May 31, 2009	
	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses
	(In thousands)			
Total investments with unrealized losses	\$ 20,422	\$ (555)	\$ 43,624	\$ (3,773)
Unrealized losses with a loss position for less than 12 months	19,020	(521)	43,013	(3,721)
Unrealized losses with a loss position for more than 12 months	1,402	(34)	611	(52)

Table of Contents**RPM INTERNATIONAL INC. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

Included in the figures above is our investment in Kemrock Industries, which has a fair value of \$16.0 million and an unrealized gain of \$1.3 million at February 28, 2010. At May 31, 2009, our investment in Kemrock Industries had a fair value of \$9.2 million, and an unrealized loss of \$2.0 million. We have reviewed all of the securities included in the table above and have concluded that we have the ability and intent to hold these investments until their cost can be recovered, based upon the severity and duration of the decline. Therefore, we did not recognize any other-than-temporary impairment losses on these investments. Unrealized losses at February 28, 2010 were generally related to the volatility in valuations over the last several months for a portion of our portfolio of investments in marketable securities. The unrealized losses generally relate to investments whose fair values at February 28, 2010 were less than 15% below their original cost or have been in a loss position for less than six consecutive months. Although we have begun to see recovery in general economic conditions, if we were to experience continuing or significant unrealized losses within our portfolio of investments in marketable securities in the future, we may recognize additional other-than-temporary impairment losses. Such potential losses could have a material impact on our results of operations in any given reporting period. As such, we continue to closely evaluate the status of our investments and our ability and intent to hold these investments.

The net carrying values of debt securities at February 28, 2010, by contractual maturity, are shown below. Expected maturities will differ from contractual maturities because the issuers of the securities may have the right to prepay obligations without prepayment penalties.

	Amortized Cost	Fair Value
	(In thousands)	
Due:		
Less than one year	\$ 5,554	\$ 5,550
One year through five years	11,583	11,953
Six years through ten years	6,635	6,868
After ten years	6,114	6,529
	\$ 29,886	\$ 30,900

NOTE 5 FAIR VALUE MEASUREMENTS

Financial instruments recorded on the balance sheet include cash and cash equivalents, accounts receivable, notes and accounts payable, and debt. The carrying amount of cash and cash equivalents, accounts receivable, and notes and accounts payable approximates fair value because of their short-term maturity.

An allowance for anticipated uncollectible trade receivable amounts is established using a combination of specifically identified accounts to be reserved, and a reserve covering trends in collectibility. These estimates are based on an analysis of trends in collectibility, past experience, and individual account balances identified as doubtful based on specific facts and conditions. Receivable losses are charged against the allowance when we confirm uncollectibility.

All derivative instruments are recognized on the balance sheet and measured at fair value. Changes in the fair values of derivative instruments that do not qualify as hedges and/or any ineffective portion of hedges are recognized as a gain or (loss) in our Consolidated Statement of Income in the current period. Changes in the fair value of derivative instruments used effectively as fair value hedges are recognized in earnings (losses), along with the change in the value of the hedged item. We do not hold or issue derivative instruments for speculative purposes.

The carrying amount of our debt instruments approximates fair value based on quoted market prices, variable interest rates or borrowing rates for similar types of debt arrangements, with the exception of our contingently-convertible notes due 2033. We called these notes for redemption during fiscal 2009. Please refer to Note 11, Debt, for further information.

Table of Contents**RPM INTERNATIONAL INC. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

Effective June 1, 2008, we implemented new guidance issued by the FASB relating to fair value accounting. The guidance clarifies the definition of fair value, establishes a framework for measuring fair value based on the inputs used to measure fair value and expands the disclosures of fair value measurements. Effective June 1, 2009, we implemented the portion of this new guidance which pertains to our nonfinancial assets and nonfinancial liabilities. Our implementation of these provisions did not have a material impact on our financial statements.

The valuation techniques utilized for establishing the fair values of assets and liabilities are based on observable and unobservable inputs. Observable inputs reflect readily obtainable data from independent sources, while unobservable inputs reflect management's market assumptions. The fair value hierarchy has three levels based on the reliability of the inputs used to determine fair value, as follows:

Level 1 Inputs Quoted prices for identical instruments in active markets.

Level 2 Inputs Quoted prices for similar instruments in active markets; quoted prices for identical or similar instruments in markets that are not active; and model-derived valuations whose inputs are observable or whose significant value drivers are observable.

Level 3 Inputs Instruments with primarily unobservable value drivers.

The following table presents our assets and liabilities that are measured at fair value on a recurring basis and are categorized using the fair value hierarchy.

	Quoted Prices in Active Markets for Identical Assets (Level 1)		Significant Other Observable Inputs (Level 2)		Significant Unobservable Inputs (Level 3)		Fair Value at February 28, 2010
			(In thousands)				
Marketable equity securities	\$ 75,365	\$			\$	\$	75,365
Marketable debt securities			30,900				30,900
Cross-currency swap			(17,227)				(17,227)
Total	\$ 75,365	\$	13,673		\$	\$	89,038

Our marketable securities are composed of mainly available-for-sale securities, and are valued using a market approach based on quoted market prices for identical instruments. The availability of inputs observable in the market varies from instrument to instrument and depends on a variety of factors including the type of instrument, whether the instrument is actively traded, and other characteristics particular to the transaction. For most of our financial

instruments, pricing inputs are readily observable in the market, the valuation methodology used is widely accepted by market participants, and the valuation does not require significant management discretion. For other financial instruments, pricing inputs are less observable in the market and may require management judgment.

Our cross-currency swap was designed to fix our interest and principal payments in euros for the life of the debt, which resulted in an effective euro fixed-rate borrowing of 5.31%. The basis for determining the rates for this swap included three legs at the inception of the agreement: the USD fixed rate to a USD floating rate; the euro floating to euro fixed rate; and the dollar to euro basis fixed rate at inception. Therefore, we essentially exchanged fixed payments denominated in USD for fixed payments denominated in fixed euros, paying fixed euros at 5.31% and receiving fixed USD at 6.70%. The ultimate payments are based on the notional principal amounts of 150 million USD and approximately 125 million euros. There will be an exchange of the notional amounts at maturity. The rates included in this swap are based upon observable market data, but are not quoted market prices, and therefore, the cross-currency swap is considered a Level 2 liability on the fair value hierarchy. Additionally, our cross-currency swap has been designated as a hedging instrument, and is classified as other long-term liabilities in our consolidated balance sheets.

Table of Contents**RPM INTERNATIONAL INC. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

The carrying value of our current financial instruments, which include cash and cash equivalents, marketable securities, trade accounts receivable, accounts payable, and short-term debt, approximates fair value because of the short-term maturity of these financial instruments. At February 28, 2010, the fair value of our long-term debt was estimated using active market quotes, based on our current incremental borrowing rates for similar types of borrowing arrangements which are considered to be Level 2 inputs. Based on the analysis performed, the fair value and the carrying value of our financial instruments and long-term debt as of February 28, 2010 are as follows:

	Carrying Value	Fair Value
	(In thousands)	
Cash and cash equivalents	\$ 256,199	\$ 256,199
Marketable equity securities	75,365	75,365
Marketable debt securities	30,900	30,900
Long-term debt, including current portion	908,097	974,337

NOTE 6 CONTINGENCIES AND OTHER ACCRUED LOSSES*Asbestos-related Contingencies*

Certain of our wholly-owned subsidiaries, principally Bondex International, Inc. (collectively referred to as the subsidiaries), are defendants in various asbestos-related bodily injury lawsuits filed in various state courts with the vast majority of current claims pending in six states – Texas, Florida, Maryland, Illinois, Mississippi and Ohio. These cases generally seek unspecified damages for asbestos-related diseases based on alleged exposures to asbestos-containing products previously manufactured by our subsidiaries or others.

As of February 28, 2010, our subsidiaries had a total of 10,329 active asbestos cases, compared to a total of 10,281 cases as of February 28, 2009. For the quarter ended February 28, 2010, our subsidiaries secured dismissals and/or settlements of 644 cases, compared to a total of 228 cases dismissed and/or settled for the quarter ended February 28, 2009. For the nine months ended February 28, 2010, our subsidiaries secured dismissals and/or settlements of 1,301 cases, compared to a total of 2,253 cases dismissed and/or settled for the nine months ended February 28, 2009.

Of the 2,253 cases that were dismissed in the nine months ended February 28, 2009, 1,420 were non-malignancies or unknown disease cases that had been maintained on an inactive docket in Ohio and were administratively dismissed by the Cuyahoga County Court of Common Pleas during our second fiscal quarter ended November 30, 2008. These claims were dismissed without prejudice and may be re-filed should the claimants involved be able to demonstrate disease in accordance with medical criteria laws established in the State of Ohio.

For the quarter ended February 28, 2010, our subsidiaries made total cash payments of \$19.9 million relating to asbestos cases, which included defense-related payments paid during the quarter of \$7.0 million, compared to total cash payments of \$19.8 million relating to asbestos cases during the quarter ended February 28, 2009, which included defense-related payments paid during the quarter of \$6.9 million. For the nine months ended February 28, 2010, our subsidiaries made total cash payments of \$57.4 million relating to asbestos cases, which included defense-related payments of \$22.1 million, compared to total cash payments of \$52.2 million relating to asbestos cases during the nine

months ended February 28, 2009, which included defense-related payments of \$19.7 million.

During the third quarter of fiscal 2009, one payment totaling \$3.6 million was made to satisfy an adverse judgment in a previous trial that occurred in calendar 2006 in California. This payment, which included a significant amount of accrued pre-judgment interest as required by California law, was made on December 8, 2008, approximately two and a half years after the adverse verdict and after all post-trial and appellate remedies had been exhausted. Such satisfaction of judgment amounts are not included in incurred costs until available appeals are exhausted and the final payment amount is determined. As a result, the timing and amount of any such payments could have a significant impact on quarterly settlement costs.

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Excluding defense-related payments, the average payment made to settle or dismiss a case approximated \$20,000 and \$56,600 for each of the quarters ended February 28, 2010 and 2009, respectively, and approximated \$27,100 and \$14,400 for each of the nine month periods ended February 28, 2010 and 2009, respectively. The amount and timing of dismissals and settlements can fluctuate significantly from period to period, resulting in volatility in the average cost to resolve a case in any given quarter or year. In addition, in some jurisdictions, cases may involve more than one individual claimant. As a result, settlement or dismissal payments on a per case basis are not necessarily reflective of the payment amounts on a per claimant basis. For example, the average amount paid to settle or dismiss a case can vary widely depending on a variety of factors, including the mix of malignancy and non-malignancy claimants and the amount of defense expenditures incurred during the period.

Estimating the future cost of asbestos-related contingent liabilities was and continues to be subject to many uncertainties that may change over time, including (i) the ultimate number of claims filed; (ii) the amounts required to resolve both currently known and future unknown claims; (iii) the amount of insurance, if any, available to cover such claims, including the outcome of coverage litigation against our subsidiaries' third-party insurers; (iv) future earnings and cash flow of our subsidiaries; (v) the impact of bankruptcies of other companies whose share of liability may be imposed on our subsidiaries under certain state liability laws; (vi) the unpredictable aspects of the litigation process including a changing trial docket and the jurisdictions in which trials are scheduled; (vii) the outcome of any such trials including judgments or jury verdicts, as a result of our more aggressive defense posture, which includes taking selective cases to verdict; (viii) the lack of specific information in many cases concerning exposure to products for which one of our subsidiaries is responsible and the claimants' diseases; (ix) potential changes in applicable federal and/or state law; and (x) the potential impact of various proposed structured settlement transactions or subsidiary bankruptcies by other companies, some of which are the subject of federal appellate court review, the outcome of which could materially affect any future asbestos-related liability estimates.

In fiscal 2006, we retained Crawford & Winiarski (C&W), an independent, third-party consulting firm with expertise in the area of asbestos valuation work, to assist us in calculating an estimate of our liability for unasserted-potential-future-asbestos-related claims. The methodology used by C&W to project our liability for unasserted-potential-future-asbestos-related claims included C&W doing an analysis of: (a) widely accepted forecast of the population likely to have been exposed to asbestos; (b) epidemiological studies estimating the number of people likely to develop asbestos-related diseases; (c) historical rate at which mesothelioma incidences resulted in the payment of claims by us; (d) historical settlement averages to value the projected number of future compensable mesothelioma claims; (e) historical ratio of mesothelioma-related indemnity payments to non-mesothelioma indemnity payments; and (f) historical defense costs and their relationship with total indemnity payments.

During fiscal 2006, we recorded a liability for asbestos claims in the amount of \$380.0 million, while paying out \$59.9 million for dismissals and/or settlements, which resulted in our accrued liability balance moving from \$101.2 million at May 31, 2005 to \$421.3 million at May 31, 2006. This increase was based largely upon C&W's analysis of our total estimated liability for unasserted-potential-future-asbestos-related claims through May 31, 2016. This amount was calculated on a pre-tax basis and was not discounted for the time value of money. In light of the uncertainties inherent in making long-term projections, we determined at that time that a ten-year period was the most reasonable time period over which reasonably accurate estimates might still be made for projecting asbestos liabilities and defense costs and, accordingly, our accrual did not include asbestos liabilities for any period beyond ten years.

During the fiscal year ended May 31, 2008, we reviewed and evaluated our ten-year asbestos liability established as of May 31, 2006. As part of that review and evaluation process, the credibility of epidemiological studies of our mesothelioma claims, first introduced to management by C&W some two-and-one-half years earlier, was validated. At the core of our evaluation process, and the basis of C&W's actuarial work on behalf of Bondex, is the *Nicholson Study*. The *Nicholson Study* is the most widely recognized reference in bankruptcy trust valuations, global settlement negotiations and the Congressional Budget Office's work done on the proposed FAIR Act in 2006. Based on our ongoing comparison of the *Nicholson Study* projections and Bondex's specific actual experience,

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which at that time continued to bear an extremely close correlation to the study's projections, we decided to extend our asbestos liability projection out to the year 2028. C&W assisted us in calculating an estimate of our liability for unasserted-potential-future-asbestos-related claims out to that twenty-year period.

C&W projected that the cost of extending the asbestos liability to 2028, coupled with an updated evaluation of our current known claims to reflect our most recent actual experience, would be \$288.1 million. Therefore, we added \$288.1 million to our existing asbestos liability, which brought our total asbestos-related balance sheet liabilities at May 31, 2008 to \$559.7 million. Of that total, \$65.0 million was estimated to be the short-term liability due in fiscal 2009, with the remaining \$494.7 million balance reflected as a long-term liability. The material components of the accruals are: (i) the gross number of open malignancy claims (principally mesothelioma claims) as these claims have the most significant impact on our asbestos settlement costs; (ii) historical and current settlement costs and dismissal rates by various categories; (iii) analysis of the jurisdiction and governing laws of the states in which these claims are pending; (iv) outside defense counsel's opinions and recommendations with respect to the merits of such claims; and (v) analysis of projected liabilities for unasserted potential future claims.

In determining the amount of our asbestos liability, we relied on assumptions that are based on currently known facts and projection models. Our actual expenses could be significantly higher or lower than those recorded if assumptions used in our calculations vary significantly from actual results. Key variables in these assumptions include the period of exposure to asbestos claims, the number and type of new claims to be filed each year, the rate at which mesothelioma incidences result in compensable claims against us, the average cost of disposing of each such new claim, the dismissal rates each year and the related annual defense costs. Furthermore, predictions with respect to these variables are subject to greater uncertainty as the projection period lengthens. A significant upward or downward trend in the number of claims filed, depending on the nature of the alleged injury, the jurisdiction where filed, the average cost of resolving each such claim and the quality of the product identification, could change our estimated liability, as could any substantial adverse verdict at trial. A federal legislative solution, further state tort reform or a structured-settlement transaction could also change the estimated liability.

Subject to the foregoing variables, and based on currently available data, we believe that our current asbestos liability is sufficient to cover asbestos-related expenses for our known pending and unasserted-potential-future-asbestos-related claims through 2028. However, given the uncertainties associated with projecting matters into the future and numerous other factors outside of our control, we believe that it is reasonably possible we may incur additional material asbestos liabilities in periods before 2028. Due to the uncertainty inherent in the process undertaken to estimate our losses, we are unable at the present time to estimate an additional range of loss in excess of our existing accruals. While it is reasonably possible that such excess liabilities could be material to operating results in any given quarter or year, we do not believe that it is reasonably possible that such excess liabilities would have a material adverse effect on our long-term results of operations, liquidity or consolidated financial position.

During fiscal 2004, certain of our subsidiaries' third-party insurers claimed exhaustion of coverage. On July 3, 2003, certain of our subsidiaries filed the case of *Bondex International, Inc. et al. v. Hartford Accident and Indemnity Company et al.*, Case No. 1:03-cv-1322, in the United States District Court for the Northern District of Ohio, for declaratory judgment, breach of contract and bad faith against these third-party insurers, challenging their assertion that their policies covering asbestos-related claims have been exhausted. The coverage litigation involves, among other matters, insurance coverage for claims arising out of alleged exposure to asbestos containing products

manufactured by the previous owner of the Bondex tradename before March 1, 1966. On March 1, 1966, Republic Powdered Metals Inc. (as it was known then), purchased the assets and assumed the liabilities of the previous owner of the Bondex tradename. That previous owner subsequently dissolved and was never a subsidiary of Republic Powdered Metals, Bondex, RPM, Inc. or the Company. Because of the earlier assumption of liabilities, however, Bondex has historically responded, and must continue to respond, to lawsuits alleging exposure to these asbestos-containing products. We discovered that the defendant insurance companies in the coverage litigation had wrongfully used cases alleging exposure to these pre-1966 products to erode their aggregate limits. This conduct, apparently known by the insurance industry based on discovery conducted to date, was in breach of the insurers

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policy language. Two of the defendant insurers have filed counterclaims seeking to recoup certain monies should plaintiffs prevail on their claims.

During the second fiscal quarter ended November 30, 2006, plaintiffs and one of the defendant insurers reached a settlement of \$15.0 million, the terms of which are confidential by agreement of the parties. The settling defendant was dismissed from the case.

In 2007, plaintiffs had filed motions for partial summary judgment against the defendants and defendants had filed motions for summary judgment against plaintiffs. In addition, plaintiffs had filed a motion to dismiss the counterclaim filed by one of the defendants. On December 1, 2008, the court decided the pending motions for summary judgment and dismissal. The court denied the plaintiffs' motions for partial summary judgment and granted the defendants' motions for summary judgment against plaintiffs on a narrow ground. The court also granted the plaintiffs' motion to dismiss one defendant's amended counterclaim. In light of its summary judgment rulings, the court entered judgment as a matter of law on all remaining claims and counterclaims, including the counterclaim filed by another defendant, and dismissed the action. The court also dismissed certain remaining motions as moot. Plaintiffs have filed a notice of appeal to the United States Sixth Circuit Court of Appeals and will continue to aggressively pursue their claims on appeal. Certain defendants have filed cross-appeals. On December 17, 2009, the Sixth Circuit Court of Appeals issued a briefing schedule. Plaintiffs' first brief on appeal was filed on January 26, 2010. On February 2, 2010, the Ohio Manufacturers' Association filed an amicus brief in support of plaintiffs. Defendants moved for an extension of time to file their briefs, which was granted by the Sixth Circuit Court of Appeals. As a result, defendants' briefs were filed on March 31, 2010, and final briefs are due on April 28, 2010.

We are unable at the present time to predict the timing or ultimate outcome of this insurance coverage litigation or whether there will be any further settlements. Consequently, we are unable to predict whether, or to what extent, any additional insurance may be available to cover a portion of our subsidiaries' asbestos liabilities. We have not included any potential benefits from this litigation in calculating our current asbestos liability. Our wholly-owned captive insurance companies have not provided any insurance or reinsurance coverage for any of our subsidiaries' asbestos-related claims.

The following table illustrates the movement of current and long-term asbestos-related liabilities through February 28, 2010:

**Asbestos Liability Movement
(Current and Long-Term)**

	Balance at Beginning of Period	Additions to Asbestos Charge	Deductions*	Balance at End of Period
		(In thousands)		
Nine Months Ended February 28, 2010	\$ 490,328		\$ 57,437	\$ 432,891
Year Ended May 31, 2009	559,745		69,417	490,328
Year Ended May 31, 2008	354,268	\$ 288,100	82,623	559,745

* Deductions include payments for defense-related costs and amounts paid to settle claims.

EIFS Litigation

As of February 28, 2010, Dryvit, one of our wholly owned subsidiaries, was a defendant or co-defendant in various single family residential exterior insulating finishing systems (EIFS) cases, the majority of which are pending in the southeastern region of the country. Dryvit is also defending EIFS lawsuits involving commercial structures, townhouses and condominiums. The vast majority of Dryvit 's EIFS lawsuits seek monetary relief for

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water intrusion related property damages, although some claims in certain lawsuits allege personal injuries from exposure to mold.

Third-party excess insurers have historically paid varying shares of Dryvit's defense and settlement costs in the individual commercial and residential EIFS lawsuits under various cost-sharing agreements. Dryvit has assumed a greater share of the costs associated with its EIFS litigation as it seeks funding commitments from our third-party excess insurers and will likely continue to do so pending the outcome of coverage litigation involving these same third-party insurers. This coverage litigation, *Dryvit Systems, Inc. et al v. Chubb Insurance Company et al*, Case No. CV 05 578004, is pending in the Cuyahoga Court of Common Pleas. As previously reported, all parties filed motions for partial summary judgment in 2008. The motions were filed pursuant to an order entered by the trial court on March 17, 2008, which requested the parties to address the following three issues: (1) whether the policies of Defendants contain a duty to defend; (2) whether the policies contain an obligation to reimburse defense costs; and (3) whether Defendants' policy obligations are triggered through exhaustion of the underlying coverage.

On November 23, 2009, the trial court filed its Journal Entry ruling upon the parties' motions for partial summary judgment. The trial court decided issues one and two relating to defense coverage in favor of Chubb and Agricultural. The court ruled that Chubb and Agricultural do not have a duty to pay defense costs under their respective 1995 and 1996 policies. As a result, the trial court denied another Defendant's motion to dismiss the broker negligence and breach of contract claims asserted by RPM and Dryvit.

With respect to the third issue, the trial court ruled that the 1995 Agricultural policy was not properly exhausted because Agricultural did not pay \$10 million in indemnity payments to settle claims. The trial court found that the \$5.2 million Agricultural paid for defense costs under its 1995 policy did not reduce its aggregate limit of liability. The trial court also determined that the 1995 Chubb excess policy is not required to pay indemnity for Dryvit EIFS claims at this time.

The trial court's November 23, 2009 Journal Entry is not a final appealable order, and the court denied the broker Defendant's motion seeking a certification of the ruling for an interlocutory appeal. The parties may appeal from the trial court's ruling after other claims and defenses in the litigation are decided by motion or at trial.

The parties are required by court order to engage in settlement negotiations through private mediation. If the mediation is not successful, the parties will complete discovery, which will include discovery on damages and expert witnesses in anticipation of filing additional summary judgment motions and conducting a jury trial.

Other Contingencies

We provide, through our wholly-owned insurance subsidiaries, certain insurance coverage, primarily product liability, to our other subsidiaries. Excess coverage is provided by third-party insurers. Our reserves provide for these potential losses as well as other uninsured claims.

We also offer warranty programs at several of our industrial businesses and have established a product warranty liability. We review this liability for adequacy on a quarterly basis and adjust it as necessary. The primary factors that could affect this liability may include changes in the historical system performance rate as well as the costs of replacement. Provision for estimated warranty costs is recorded at the time of sale and periodically adjusted, as

required, to reflect actual experience. It is probable that we will incur future losses related to warranty claims we have received, but that have not been fully investigated, and claims not yet received, which are not currently estimable due to the significant number of variables contributing to the extent of any necessary remediation. While our warranty liability represents our best estimate at February 28, 2010, we can provide no assurances that we will not experience material claims in the future or that we will not incur significant costs to

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resolve such claims beyond the amounts accrued or beyond what we may recover from our suppliers. Product warranty expense is recorded within selling, general and administrative expense.

The following table includes the changes in our accrued warranty balances:

Quarter Ended		Nine Months Ended	
February 28,		February 28,	
2010	2009	2010	2009