WABASH NATIONAL CORP /DE
Form 10-Q
May 13, 2009

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
FORM 10-Q
(Mark One)

[x]	**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15 (d) OF THE SECURITIES EXCHANGE ACT OF 1934**
	FOR THE QUARTERLY PERIOD ENDED MARCH 31, 2009
	OR
[ ]	**TRANSITION REPORT UNDER SECTION 13 OR 15 (d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from __________ to __________
Commission File Number: 1-10883
WABASH NATIONAL CORPORATION
(Exact name of registrant as specified in its charter)

Delaware (State of Incorporation)	52-1375208 (IRS Employer Identification Number)
1000 Sagamore Parkway South, Lafayette, Indiana (Address of Principal Executive Offices)	47905 (Zip Code)

Registrant s telephone number, including area code: (765) 771-5300

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 x No ¨

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

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 o	Accelerated filer ý	Non-accelerated filer o (Do not check if a smaller reporting company)	Smaller reporting company o

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 common stock outstanding at May 7, 2009 was 31,090,835.

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WABASH NATIONAL CORPORATION
CONDENSED CONSOLIDATED BALANCE SHEETS
(Dollars in thousands)

	March 31, 2009 (Unaudited)	December 31, 2008
ASSETS		
CURRENT ASSETS		
Cash and cash equivalents	$ 4,828	$ 29,766
Accounts receivable, net	17,248	37,925
Inventories	84,619	92,896
Prepaid expenses and other	4,215	5,307
Total current assets	110,910	165,894
PROPERTY, PLANT AND EQUIPMENT, net	119,111	122,035
INTANGIBLE ASSETS	28,289	29,089
OTHER ASSETS	13,964	14,956
	$ 272,274	$ 331,974
LIABILITIES AND STOCKHOLDERS EQUITY		
CURRENT LIABILITIES		
Current portion of long-term debt	$ 52,962	$ 80,008
Current portion of capital lease obligation	337	337
Accounts payable	39,457	42,798
Other accrued liabilities	45,347	45,449
Total current liabilities	138,103	168,592
CAPITAL LEASE OBLIGATION	4,722	4,803
OTHER NONCURRENT LIABILITIES AND CONTINGENCIES	3,222	5,142
STOCKHOLDERS EQUITY		
Preferred stock, 25,000,000 shares authorized, no shares issued or outstanding	-	-
Common stock 75,000,000 shares authorized, $0.01 par value, 30,060,800 and 29,842,945 shares issued and outstanding, respectively	329	324
Additional paid-in capital	353,088	352,137
Retained deficit	(200,315)	(172,031)
Accumulated other comprehensive income	(1,398)	(1,516)
Treasury stock at cost, 1,675,600 common shares	(25,477)	(25,477)
Total stockholders equity	126,227	153,437

	$ 272,274	$ 331,974

See Notes to Condensed Consolidated Financial Statements.

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WABASH NATIONAL CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(Dollars in thousands, except per share amounts)
(Unaudited)

	Three Months Ended March 31, 2009	2008
NET SALES	$ 77,937	$ 161,061
COST OF SALES	93,413	155,156
Gross profit	(15,476)	5,905
GENERAL AND ADMINISTRATIVE EXPENSES	8,658	11,499
SELLING EXPENSES	3,185	3,443
Loss from operations	(27,319)	(9,037)
OTHER INCOME (EXPENSE)		
Interest expense	(1,005)	(1,174)
Gain on debt extinguishment	-	124
Other, net	55	7
Loss before income taxes	(28,269)	(10,080)
INCOME TAX EXPENSE (BENEFIT)	15	(3,693)
NET LOSS	$ (28,284)	$ (6,387)
COMMON STOCK DIVIDENDS DECLARED	$ -	$ 0.045
BASIC NET LOSS PER SHARE	$ (0.94)	$ (0.21)
DILUTED NET LOSS PER SHARE	$ (0.94)	$ (0.21)
COMPREHENSIVE LOSS		
Net loss	$ (28,284)	$ (6,387)
Changes in fair value of derivatives (net of tax)	118	-

NET COMPREHENSIVE LOSS	$ (28,166)	$ (6,387)

See Notes to Condensed Consolidated Financial Statements.

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WABASH NATIONAL CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Dollars in thousands)
(Unaudited)

	Three Months Ended March 31,	
	2009	2008
CASH FLOWS FROM OPERATING ACTIVITIES		
Net loss	$ (28,284)	$ (6,387)
Adjustments to reconcile net loss to net cash used in operating activities		
Depreciation and amortization	4,796	5,187
Net loss on the sale of assets	6	-
Gain on debt extinguishment	-	(124)
Deferred income taxes	-	(3,530)
Stock-based compensation	965	863
Changes in operating assets and liabilities		
Accounts receivable	20,677	3,266
Inventories	8,278	(20,100)
Prepaid expenses and other	1,092	878
Accounts payable and accrued liabilities	(4,724)	13,572
Other, net	(84)	101
Net cash provided by (used in) operating activities	2,722	(6,274)
CASH FLOWS FROM INVESTING ACTIVITIES		
Capital expenditures	(539)	(1,741)
Proceeds from the sale of property, plant and equipment	6	4
Net cash used in investing activities	(533)	(1,737)
CASH FLOWS FROM FINANCING ACTIVITIES		
Proceeds from exercise of stock options	-	4
Borrowings under revolving credit facilities	18,529	45,265
Payments under revolving credit facilities	(45,575)	(12,430)
Payments under long-term debt obligations	-	(58,412)
Principal payments under capital lease obligation	(81)	-
Common stock dividends paid	-	(1,363)
Net cash used in financing activities	(27,127)	(26,936)
NET DECREASE IN CASH AND CASH EQUIVALENTS	(24,938)	(34,947)
CASH AND CASH EQUIVALENTS AT BEGINNING OF QUARTER	29,766	41,224
CASH AND CASH EQUIVALENTS AT END OF QUARTER	$ 4,828	$ 6,277

See Notes to Condensed Consolidated Financial Statements.

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WABASH NATIONAL CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. GENERAL

The condensed consolidated financial statements of Wabash National Corporation (the Company) have been prepared without audit, pursuant to the rules and regulations of the Securities and Exchange Commission. Certain information and footnote disclosures normally included in financial statements prepared in accordance with generally accepted accounting principles have been condensed or omitted pursuant to such rules and regulations. In the opinion of management, the accompanying condensed consolidated financial statements contain all material adjustments (consisting only of normal recurring adjustments) necessary to present fairly the consolidated financial position of the Company, its results of operations and cash flows. The condensed consolidated financial statements included herein should be read in conjunction with the consolidated financial statements and the notes thereto included in the Company s 2008 Annual Report on Form 10-K. Certain reclassifications have been made to prior periods to confirm to the current year presentation. These reclassifications had no effect on net income for the periods previously reported. Note 1 to the Company s consolidated financial statements included in the Company s 2008 Annual Report on Form 10-K include a discussion of factors that raise substantial doubt about the Company s ability to continue as a going concern. The condensed consolidated financial statements included herein do not include any adjustments that might result from the outcome of that uncertainty. See Note 4 herein for further discussions related to the Company s Forebearance Agreement and Third Amendment to Second Amended and Restated Loan and Security Agreement (Forbearance Agreement) entered into on April 28, 2009.

2. NEW ACCOUNTING PRONOUNCEMENTS

In March 2008, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standards (SFAS) No. 161, *Disclosures about Derivative Instruments and Hedging Activities an amendment of FASB Statement No. 133*. The statement requires enhanced disclosures for derivative and hedging activities, including information that would enable financial statement users to understand how and why a company uses derivative instruments, how derivative instruments and related hedged items are accounted for under SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities*, and how derivative instruments and related hedged items affect an entity s financial position, financial performance and cash flows. This statement was effective for financial statements issued for fiscal years and interim periods beginning after November 15, 2008, and was adopted by the Company in the first quarter of 2009. As SFAS No. 161 only requires enhanced disclosures, this standard has not had a material impact on the Company s financial position, results of operations or cash flows. See Note 5 for further discussion of derivative instruments and hedging activities.

In September 2006, the FASB issued SFAS No. 157, *Fair Value Measurements.* The Statement provides guidance for using fair value to measure assets and liabilities and only applies when other standards require or permit the fair value measurement of assets and liabilities. It does not expand the use of fair value measurement. In February 2008, the FASB announced that it was deferring the effective date to fiscal years beginning after November 15, 2008 for certain non-financial assets and non-financial liabilities, except those that are recognized or disclosed at fair value in the financial statements on a recurring basis. For these financial and non-financial assets and liabilities that are remeasured at least annually, this statement was effective for fiscal years beginning after November 15, 2007. Derivative instruments and hedging activities are carried at fair value. The adoption of SFAS No. 157 has not and is not expected to have a material impact on the Company s financial position, results of operations or cash flows. See Note 6 for further discussion of fair value measurements.

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In June 2008, the FASB issued Staff Position No. EITF 03-6-1, *Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities* (EITF 03-6-1). This Staff Position states that unvested share-based payment awards that contain non-forfeitable rights to dividends or dividend equivalents (whether paid or unpaid) are participating securities and shall be included in the computation of earnings per share pursuant to the two-class method. EITF 03-6-1 is effective for financial statements issued for fiscal years beginning after December 15, 2008, and interim periods within those years. All prior period earnings per share data presented shall be adjusted retrospectively to conform with the provisions of this Staff Position. The Company does not expect the adoption of this accounting guidance to have a material impact on its results of operations, financial position or earnings per share.

3. INVENTORIES

Inventories consisted of the following (in thousands):

	March 31, 2009	December 31, 2008
Raw materials and components	$ 26,512	$ 23,758
Work in progress	3,177	373
Finished goods	39,948	48,997
Aftermarket parts	5,483	6,333
Used trailers	9,499	13,435
	$ 84,619	$ 92,896

4. DEBT

In March 2007, the Company entered into a loan and security agreement (Revolving Facility) with its lenders. As amended, the Revolving Facility has a capacity of $200 million, subject to a borrowing base, with a maturity date of March 6, 2012. Subsequent to the quarter ending March 31, 2009, events of default have occurred under the Revolving Facility, which permits the lenders to increase the interest on the outstanding principal by 2%, to cause an acceleration of the maturity of borrowings, to restrict advances, and to terminate the Revolving Facility. The events of default under the Revolving Facility include: the Company s failure to deliver audited financial statements for fiscal year 2008 by March 31, 2009; that the report of the Company s independent registered public accounting firm accompanying the Company s audited financial statements for fiscal year 2008 included an explanatory paragraph with respect to the Company s ability to continue as a going concern; the Company s failure to deliver prompt written notification of name changes of subsidiaries; the Company s failure to have a minimum fixed charge coverage ratio of 1.1:1.0 when the available borrowing capacity under the Revolving Facility is below $30 million; and, the Company requesting loans under the Revolving Facility during the existence of a default or event of default under the Revolving Facility. In accordance with the terms of the Revolving Facility, on April 1, 2009, the agent has increased the interest on the outstanding principal under the Revolving Facility by 2% and implemented availability reserves that result in a reduction of the Company s borrowing base under the Revolving Facility by $25 million.

On April 28, 2009, the Company entered into a Forbearance Agreement with the lenders under the Revolving Facility. Pursuant to the Forbearance Agreement, the lenders have agreed to refrain from accelerating maturity of the Revolving Facility due to specified existing or anticipated events of default, as described above, through the earlier of May 29, 2009 or the occurrence or existence of any event of default other than the existing or anticipated events of default.

In addition, the Forbearance Agreement waived the fixed charge covenant requirement and established a borrowing base reserve at $22.5 million. The Forbearance Agreement also requires the Company to engage a consultant on behalf of the lenders under the Revolving Facility to evaluate the financial operations and conditions of the Company and the potential restructuring of its business.

Based on these events, the Company has classified its obligations outstanding under the Revolving Facility as a current liability in the accompanying consolidated balance sheet as of March 31, 2009. The Company expects to continue negotiations with its lenders on the terms of a comprehensive amendment to the Revolving Facility; however, there can be no assurances that an amendment will be obtained.

5. DERIVATIVE INSTRUMENTS AND HEDGING ACTIVITIES

As discussed in Note 2, the Company adopted SFAS No. 161, *Disclosures about Derivative Instruments and Hedging Activities, an amendment of FASB Statement No. 133* (SFAS No. 161), during the first quarter of 2009. SFAS No. 161 requires enhanced disclosures for derivative instruments and hedging activities.

During 2008, the Company entered into two-year interest rate swap agreements (Swaps) whereby the Company pays a fixed interest rate and receives a variable interest rate. The notional amount of these Swaps at March 31, 2009 totaled $40.0 million. Under the provisions of SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities,* as amended and interpreted, the Company has designated these Swaps as cash flow hedges in an effort to reduce its exposure to fluctuations in interest rates by converting a portion of its variable rate borrowings to a fixed rate for a specific period of time. The effective portion of the change in the fair value of a derivative designated as a cash flow hedge is recorded in accumulated other comprehensive income (loss) (OCI) and is recognized in the statement of operations when the hedged item affects net income. If and when a derivative is determined not to be highly effective as a hedge, or the underlying hedged transaction is no longer likely to occur, or the derivative is terminated, hedge accounting is discontinued. Any past or future changes in the derivative s fair value, which will not be effective as an offset to the income effects of the item being hedged, are recognized currently in the income statement.

In April 2009, the Company and its counterparty mutually agreed to terminate the existing Swaps and settle based on the fair value of the Swap contracts of approximately $1.4 million. These contracts were originally set to mature through October 2010. The amounts paid or payable under the terms of these contracts are charged to interest expense over the designated hedge period and totaled $0.2 million in the first quarter of 2009. The amount of loss recorded in OCI as of March 31, 2009 that is expected to be reclassified to interest expense over the next twelve months is approximately $0.9 million. The cash flows from these contracts were recorded as operating activities in the consolidated statement of cash flows.

The fair values of the Swaps were estimated using Level 3 inputs, as described in Note 6. The fair value is an estimate of the net amount that the Company would be required to pay or would receive on March 31, 2009, if the agreements were transferred to another party or cancelled by the Company.

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The following table sets forth the fair values of derivative instruments designated as hedging instruments under SFAS No. 133 in the condensed consolidated balance sheet (in thousands):

	March 31, 2009	
	Classification	Fair value
Interest rate swap contracts	Other accrued liabilities	$1,398

6. FAIR VALUE MEASUREMENTS

As discussed in Note 2, in September 2006, the FASB issued SFAS No. 157, *Fair Value Measurements*, which addresses aspects of expanding the application of fair value accounting. The Company adopted SFAS 157 as of the beginning of the 2008 fiscal year as it relates to recurring financial assets and liabilities. As of the beginning of the 2009 fiscal year, the Company adopted SFAS 157 as it relates to nonrecurring fair value measurement requirements for nonfinancial assets and liabilities.

SFAS No. 157 establishes a three-level valuation hierarchy for fair value measurements. These valuation techniques are based upon the transparency of inputs (observable and unobservable) to the valuation of an asset or liability as of the measurement date. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect the Company s market assumptions. These two types of inputs create the following fair value hierarchy:

Level 1 Valuation is based on quoted prices for identical assets or liabilities in active markets;

Level 2 Valuation is based on quoted prices for similar assets or liabilities in active markets, or other inputs that are observable for the asset or liability, either directly or indirectly, for the full term of the financial instrument; and

Level 3 Valuation is based upon other unobservable inputs that are significant to the fair value measurement.

The following table sets forth by level within the fair value hierarchy the Company s financial assets and liabilities that were accounted for at fair value on a recurring basis (in thousands):

	March 31, 2009				December 31, 2008			
	Level 1	Level 2	Level 3	Total	Level 1	Level 2	Level 3	Total
Assets								
Interest rate derivatives	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Liabilities								
Interest rate derivatives	$ -	$ -	$ 1,398	$ 1,398	$ -	$ -	$ 1,516	$ 1,516

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Financial instruments classified as Level 3 in the fair value hierarchy represent derivative contracts in which management has used at least one significant unobservable input in the valuation model. The following table presents a reconciliation of activity for such derivative contracts on a net basis (in thousands):

	Three Months Ended March 31, 2009
Balance at beginning of period	$ (1,516)
Total unrealized gains included in other comprehensive income	118
Purchases, sales, issuances, and settlements	-
Transfers in and (or) out of Level 3	-
Balance at end of period	$ (1,398)

7. FAIR VALUE OF FINANCIAL INSTRUMENTS

SFAS No. 107, *Disclosures about Fair Value of Financial Instruments*, requires disclosure of fair value information for certain financial instruments. The differences between the carrying amounts and the estimated fair values, using the methods and assumptions listed below, of the Company s financial instruments at March 31, 2009, and December 31, 2008 were immaterial.

Cash and Cash Equivalents, Accounts Receivable and Accounts Payable. The carrying amounts reported in the Condensed Consolidated Balance Sheets approximate fair value.

Debt. The fair value of total borrowings is estimated based on current quoted market prices for similar issues or debt with the same maturities. The interest rates on the Company s bank borrowings under its Revolving Facility are adjusted regularly to reflect current market rates.

8. STOCK-BASED COMPENSATION

The Company adopted SFAS No. 123(R), *Share-Based Payment*, using the modified prospective method. This Statement requires that all share-based payments to employees, including grants of employee stock options, be recognized in the financial statements based upon their fair value.

SFAS No. 123(R) requires the use of a valuation model to calculate the fair value of stock option awards. The Company has valued new stock option awards granted using a binomial model, which incorporates various assumptions including volatility, expected life, dividend yield and risk-free interest rates. The expected life and volatility assumptions are based on the Company s historical experience as well as the terms and conditions of the stock option awards it grants to employees.

The Company s policy is to recognize expense for awards subject to graded vesting using the straight-line attribution method. The amount of compensation costs related to nonvested stock options and restricted stock not yet recognized was $15.6 million at March 31, 2009, for which the expense will be recognized through 2012.

9. CONTINGENCIES

Various lawsuits, claims and proceedings have been or may be instituted or asserted against the Company arising in the ordinary course of business, including those pertaining to product liability, labor and health related matters, successor liability, environmental matters and possible tax assessments. While the amounts claimed could be substantial, the ultimate liability cannot now be determined because of the considerable uncertainties that exist. Therefore, it is possible that results of operations or liquidity in a particular period could be materially affected by certain contingencies. However, based on facts currently available, management believes that the disposition of matters that are currently pending or asserted will not have a material adverse effect on the Company s financial position, liquidity or results of operations. Costs associated with the litigation and settlement of legal matters are reported within *General and Administrative Expenses* in the Consolidated Statements of Operations.

Brazil Joint Venture

In March 2001, Bernard Krone Indústria e Comércio de Máquinas Agrícolas Ltda. (BK) filed suit against the Company in the Fourth Civil Court of Curitiba in the State of Paraná, Brazil. Because of the bankruptcy of BK, this proceeding is now pending before the Second Civil Court of Bankruptcies and Creditors Reorganization of Curitiba, State of Paraná (No. 232/99).

The case grows out of a joint venture agreement between BK and the Company related to marketing of RoadRailerâ trailers in Brazil and other areas of South America. When BK was placed into the Brazilian equivalent of bankruptcy late in 2000, the joint venture was dissolved. BK subsequently filed its lawsuit against the Company alleging that it was forced to terminate business with other companies because of the exclusivity and non-compete clauses purportedly found in the joint venture agreement. BK asserts damages of approximately $8.4 million.

The Company answered the complaint in May 2001, denying any wrongdoing. The Company believes that the claims asserted by BK are without merit and it intends to defend its position. A trial date originally scheduled for December 2008 was continued indefinitely by the trial court. The Company believes that the resolution of this lawsuit will not have a material adverse effect on its financial position, liquidity or future results of operations; however, at this stage of the proceeding no assurances can be given as to the ultimate outcome of the case.

Intellectual Property

In October 2006, the Company filed a patent infringement suit against Vanguard National Corporation (Vanguard) regarding Wabash National s U.S. Patent Nos. 6,986,546 and 6,220,651 in the U.S. District Court for the Northern District of Indiana (Civil Action No. 4:06-cv-135). The Company amended the Complaint in April 2007. In May 2007, Vanguard filed its Answer to the Amended Complaint, along with Counterclaims seeking findings of non-infringement, invalidity, and unenforceability of the subject patents. The Company filed a reply to Vanguard s counterclaims in May 2007, denying any wrongdoing or merit to the allegations as set forth in the counterclaims.

The Company believes that the claims asserted by Vanguard are without merit and the Company intends to defend its position. The Company believes that the resolution of this lawsuit will not have a material adverse effect on its financial position, liquidity or future results of operations; however, at this stage of the proceeding, no assurance can be given as to the ultimate outcome of the case.

Environmental Disputes

In September 2003, the Company was noticed as a potentially responsible party (PRP) by the U.S. Environmental Protection Agency pertaining to the Motorola 52nd Street, Phoenix, Arizona Superfund Site pursuant to the Comprehensive Environmental Response, Compensation and Liability Act. PRPs include current and former owners and operators of facilities at which hazardous substances were allegedly disposed. EPA s allegation that the Company was a PRP arises out of the operation of a former branch facility located approximately five miles from the original site. The Company does not expect that these proceedings will have a material adverse effect on the Company s financial condition or results of operations.

In January 2006, the Company received a letter from the North Carolina Department of Environment and Natural Resources indicating that a site that the Company formerly owned near Charlotte, North Carolina has been included on the state s October 2005 Inactive Hazardous Waste Sites Priority List. The letter states that the Company was being notified in fulfillment of the state s statutory duty to notify those who own and those who at present are known to be responsible for each Site on the Priority List. No action is being requested from the Company at this time. The Company does not expect that this designation will have a material adverse effect on its financial condition or results of operations.

10. NET LOSS PER SHARE

Per share results have been computed based on the average number of common shares outstanding. The computation of basic and diluted net loss per share is determined using net income as the numerator and the number of shares included in the denominator as follows (in thousands, except per share amounts):

	Three Months Ended March 31,	
	2009	2008
Basic net loss per share		
Net loss applicable to common stockholders	$ (28,284)	$ (6,387)
Dividends paid on unvested restricted shares		(30)
Net loss applicable to common stockholders excluding amounts applicable to unvested restricted shares	$ (28,284)	$ (6,417)
Weighted average common shares outstanding	30,050	29,880
Basic net loss per share	$ (0.94)	$ (0.21)
Diluted net loss per share		
Net loss applicable to common stockholders	$ (28,284)	$ (6,387)
After-tax equivalent of interest on convertible notes	-	-
Diluted net loss applicable to common stockholders	$ (28,284)	$ (6,387)
Weighted average common shares outstanding	30,050	29,880
Dilutive stock options/shares	-	-
Convertible notes equivalent shares	-	-
Diluted weighted average common shares outstanding	30,050	29,880
Diluted net loss per share	$ (0.94)	$ (0.21)

Average diluted shares outstanding for the three months ended March 31, 2008 exclude the antidilutive effects of the Company s Convertible Notes. The after-tax equivalent of interest on Convertible Notes was $0.5 million and the Convertible Notes equivalent shares were 4.8 million. Diluted shares outstanding for the three months ended March 31, 2009 and 2008 also exclude the antidilutive effects of potentially dilutive stock options and restricted stock totaling less than 0.1 million and 0.1 million shares of common stock, respectively.

For the three month period ending March 31, 2009 and 2008, the computation of diluted earnings per share excludes options to purchase 2.3 million and 2.1 million shares of common stock, respectively, because the impact of these shares would have been antidilutive.

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11. INCOME TAXES

The Company has experienced cumulative operating losses over the most recent three year period. After considering these operating losses and various other available evidence, both positive and negative, management determined that it was necessary to record a full valuation allowance against its deferred tax assets created during the quarter ending March 31, 2009. As a result, effective income tax expense for the first quarter of 2009 was less than $0.1 million.

The following table provides reconciliation of differences from the U.S. federal statutory rate of 35% (in thousands):

	Three Months Ended March 31,	
	2009	2008
Pretax book loss	$ (28,269)	$ (10,080)
Federal tax benefit at 35% statutory rate	(9,894)	(3,528)
State and local income taxes	(1,398)	(363)
Provision for valuation allowance for net operating losses - U.S. and state	11,307	-
Other	-	198
Total income tax expense (benefit)	$ 15	$ (3,693)

12. PRODUCT WARRANTIES

The following table presents the changes in the product warranty accrual included in *Other Accrued Liabilities* (in thousands):

	2009	2008
Balance as of January 1	$ 17,027	$ 17,246
Provision for warranties issued in current year	223	547
Additional provisions for pre-existing warranties	70	331
Payments	(693)	(911)
Balance as of March 31	$ 16,627	$ 17,213

The Company offers a limited warranty for its products. With respect to Company products manufactured prior to 2005, the limited warranty coverage period is five years. Beginning in 2005, the coverage period for DuraPlate® trailer panels was extended to ten years, with all other products remaining at five years. The Company passes through component manufacturers warranties to the Company s customers. The Company s policy is to accrue the estimated cost of warranty coverage at the time of the sale.