WABASH NATIONAL CORP /DE
Form 10-Q
November 04, 2009

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 SEPTEMBER 30, 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 shorter 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 definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Exchange Act.

Large accelerated filero	Accelerated filer x
Non-accelerated filer o (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 common stock outstanding at October 30, 2009 was 31,201,125.

WABASH NATIONAL CORPORATION

INDEX

FORM 10-Q

		Page
PART I – FINANCIAL INFORMATION		
Item 1.	Financial Statements	
	Condensed Consolidated Balance Sheets at September 30, 2009 and December 31, 2008	3
	Condensed Consolidated Statements of Operations for the three and nine months ended September 30, 2009 and 2008	4
	Condensed Consolidated Statements of Cash Flows for the nine months ended September 30, 2009 and 2008	5
	Notes to Condensed Consolidated Financial Statements	6
Item 2.	Management’s Discussion and Analysis of Financial Condition and Results of Operations	18
Item 3.	Quantitative and Qualitative Disclosures about Market Risks	32
Item 4.	Controls and Procedures	33
PART II – OTHER INFORMATION		
Item 1A.	Risk Factors	33
Item 6.	Exhibits	34
	Signature	34

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

	September 30, 2009 (Unaudited)	December 31, 2008
ASSETS		
CURRENT ASSETS		
Cash and cash equivalents	$ 2,798	$ 29,766
Accounts receivable, net	22,854	37,925
Inventories	59,507	92,896
Prepaid expenses and other	3,222	5,307
Total current assets	88,381	165,894
PROPERTY, PLANT AND EQUIPMENT, net	112,333	122,035
INTANGIBLE ASSETS	26,730	29,089
OTHER ASSETS	13,053	14,956
	$ 240,497	$ 331,974
LIABILITIES AND STOCKHOLDERS' EQUITY		
CURRENT LIABILITIES		
Current portion of long-term debt	$ -	$ 80,008
Current portion of capital lease obligation	337	337
Accounts payable	34,720	42,798
Other accrued liabilities	35,711	45,449
Warrant	67,208	-
Total current liabilities	137,976	168,592
LONG-TERM DEBT	30,069	-
CAPITAL LEASE OBLIGATION	4,553	4,803
OTHER NONCURRENT LIABILITIES AND CONTINGENCIES	4,115	5,142
PREFERRED STOCK, net of discount, 25,000,000 shares authorized, $0.01 par value, 35,000 and 0 shares issued and outstanding, respectively		
Series E, 20,000 and 0 shares issued and outstanding	10,694	-
Series F, 5,000 and 0 shares issued and outstanding	2,773	-
Series G, 10,000 and 0 shares issued and outstanding	5,937	-
STOCKHOLDERS' EQUITY		
Common stock 75,000,000 shares authorized, $0.01 par value, 30,331,970 and 29,842,945 shares issued and outstanding, respectively	331	324
Additional paid-in capital	355,276	352,137
Retained deficit	(285,750)	(172,031)
Accumulated other comprehensive income	-	(1,516)

Treasury stock at cost, 1,675,600 common shares		(25,477)		(25,477)
Total stockholders' equity		44,380		153,437
	$	240,497	$	331,974

See Notes to Condensed Consolidated Financial Statements

3

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
NET SALES	$ 88,324	$ 242,953	$ 252,467	$ 605,498
COST OF SALES	88,645	233,965	273,495	579,832
Gross profit	(321)	8,988	(21,028)	25,666
GENERAL AND ADMINISTRATIVE EXPENSES	7,320	10,060	24,493	32,016
SELLING EXPENSES	2,566	3,420	8,669	10,189
Loss from operations	(10,207)	(4,492)	(54,190)	(16,539)
OTHER INCOME (EXPENSE)				
Increase in fair value of warrant	(53,983)	-	(53,983)	-
Interest expense	(1,148)	(1,154)	(3,459)	(3,349)
(Loss) Gain on debt extinguishment	(303)	-	(303)	151
Other, net	(818)	28	(729)	(174)
Loss before income taxes	(66,459)	(5,618)	(112,664)	(19,911)
INCOME TAX BENEFIT	(55)	(1,288)	(41)	(5,991)
NET LOSS	(66,404)	(4,330)	(112,623)	(13,920)
PREFERRED STOCK DIVIDENDS	1,096	-	1,096	-
NET LOSS APPLICABLE TO COMMON STOCKHOLDERS	$ (67,500)	$ (4,330)	$ (113,719)	$ (13,920)
COMMON STOCK DIVIDENDS DECLARED	$ -	$ 0.045	$ -	$ 0.135
BASIC AND DILUTED NET LOSS PER SHARE	$ (2.23)	$ (0.15)	$ (3.77)	$ (0.47)
COMPREHENSIVE LOSS				
Net loss	$ (66,404)	$ (4,330)	$ (112,623)	$ (13,920)
Reclassification adjustment for interest rate swaps included in net loss	1,167	-	1,398	-
Changes in fair value of derivatives (net of tax)	-	(140)	118	(140)
NET COMPREHENSIVE LOSS	$ (65,237)	$ (4,470)	$ (111,107)	$ (14,060)

See Notes to Condensed Consolidated Financial Statements.

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

	Nine Months Ended September 30,	
	2009	2008
CASH FLOWS FROM OPERATING ACTIVITIES		
Net loss	$ (112,623)	$ (13,920)
Adjustments to reconcile net loss to net cash (used in) provided by operating activities		
Depreciation and amortization	14,432	15,535
Net loss on the sale of assets	5	236
Loss (Gain) on debt extinguishment	303	(151)
Increase in fair value of warrant	53,983	-
Deferred income taxes	-	(5,849)
Excess tax benefits from stock-based compensation	-	(6)
Stock-based compensation	2,906	3,452
Changes in operating assets and liabilities		
Accounts receivable	15,071	(7,104)
Inventories	33,389	(19,716)
Prepaid expenses and other	2,084	2,028
Accounts payable and accrued liabilities	(17,020)	33,705
Other, net	(76)	85
Net cash (used in) provided by operating activities	(7,546)	8,295
CASH FLOWS FROM INVESTING ACTIVITIES		
Capital expenditures	(669)	(8,037)
Proceeds from the sale of property, plant and equipment	125	131
Net cash used in investing activities	(544)	(7,906)
CASH FLOWS FROM FINANCING ACTIVITIES		
Proceeds from exercise of stock options	-	97
Excess tax benefits from stock-based compensation	-	6
Borrowings under revolving credit facilities	179,018	139,250
Payments under revolving credit facilities	(228,957)	(60,250)
Payments under long-term debt obligations	-	(104,133)
Principal payments under capital lease obligations	(250)	(107)
Proceeds from issuance of preferred stock and warrant	35,000	-
Debt issuance costs paid	(1,275)	(4)
Preferred stock issuance costs paid	(2,414)	-
Common stock dividends paid	-	(4,127)
Net cash used in financing activities	(18,878)	(29,268)
NET DECREASE IN CASH AND CASH EQUIVALENTS	(26,968)	(28,879)
CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD	29,766	41,224
CASH AND CASH EQUIVALENTS AT END OF PERIOD	$ 2,798	$ 12,345

See Notes to Condensed Consolidated Financial Statements

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/A. Note 1 to the Company's consolidated financial statements included in the Company's 2008 Annual Report on Form 10-K/A include a discussion of factors that raise substantial doubt about the Company's ability to continue as a going concern. The Company believes that the liquidity provided by the $35 million investment in the Company by Trailer Investments, LLC, on August 3, 2009, and the amendment and restatement of the Company's existing revolving credit facility effective on August 3, 2009, will be adequate to fund expected operating losses, working capital requirements and capital expenditures in 2009 and 2010, which is expected to be a period of economic uncertainty; therefore, the outstanding balances on the Company's Revolving Facility have been classified as long term. Additionally, the warrant, which is classified as a current liability, contains a put option for cash in the event of a specific default. If cash settlement of the warrant is required, it would have a material adverse impact on the Company's liquidity. See Notes 4 and 5 herein for further discussions related to these agreements.

2. NEW ACCOUNTING PRONOUNCEMENTS

In June 2009, the Financial Accounting Standards Board (the "FASB") issued a Statement on Accounting Standards Codification. The Statement establishes the Codification as the single official source of authoritative United States accounting and reporting standards for all non-governmental entities (other than guidance issued by the Securities Exchange Commission (the "SEC")). The Codification changes the referencing and organization on financial standards and is effective for interim and annual periods ending on or after September 15, 2009. The Company began applying the Codification to its disclosures in the third quarter of 2009. As Codification is not intended to change the existing accounting guidance, its adoption has not had an impact on the Company's financial position, results of operations or cash flows.

In May 2009, the FASB issued a Statement on Subsequent Events. The Statement establishes a general standard 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. Specifically, the Statement sets forth the period after the balance sheet date during which management should evaluate events or transactions that may occur for potential recognition or disclosure in the financial statements, the circumstances under which an entity should recognize events or transactions occurring after the balance sheet date in its financial statements, and the disclosures that an entity should make about events or transactions that occurred after the balance sheet date. In addition, the Company shall disclose the date through which subsequent events have been evaluated and whether that date is the date the financial statements were issued or the date the financial statements were available to be issued. The requirements of the Statement were effective for interim and annual financial periods ending after June 15, 2009. The Company evaluated its September 30, 2009 consolidated financial statements for subsequent events through the time of filing on November 4, 2009, which is the date that the Company's consolidated financial statements were filed with the SEC. See Note 14 for

further discussion in regards to subsequent event activities.

In March 2008, the FASB issued a Statement on Derivative Instruments and Hedging Activities. 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 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 the Statement only requires enhanced disclosures, it has not had a material impact on the Company's financial position, results of operations or cash flows. See Note 6 for further discussion of derivative instruments and hedging activities.

In September 2006, the FASB issued a Statement on 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 this Statement has not had a material impact on the Company's financial position, results of operations or cash flows. See Note 7 for further discussion of fair value measurements.

In June 2008, the FASB issued a Statement on Determining Whether Instruments Granted in Share-Based Payment Transactions are Participating Securities. The Statement identifies 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. This Statement 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 to the provisions of this Statement. While the Company's computations of earnings per share have been retrospectively restated, the adoption of this Statement did not have a material impact on the Company's results of operations, financial position or earnings per share for any period presented.

3. INVENTORIES

Inventories are stated at lower of cost, determined on the first-in, first-out (FIFO) method, or market. The cost of manufactured inventory includes raw material, labor and overhead. Inventories consisted of the following (in thousands):

	September 30, 2009	December 31, 2008
Raw materials and components	$ 20,600	$ 23,758
Work in progress	3,176	373
Finished goods	25,830	48,997
Aftermarket parts	4,432	6,333
Used trailers	5,469	13,435
	$ 59,507	$ 92,896

4. DEBT

In March 2007, the Company entered into a loan and security agreement (the "Revolving Facility") with its lenders. As amended, the Revolving Facility had a capacity of $200 million, subject to a borrowing base, with a maturity date of March 6, 2012. On April 1, 2009, events of default occurred under the Revolving Facility, which permitted 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 included: 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 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 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.

On May 28, 2009, the Company entered into a First Amendment to Forbearance Agreement and Fourth Amendment to Second Amended and Restated Loan and Security Agreement (Amendment) with the lenders under the Revolving Facility. Pursuant to the Amendment, the lenders agreed to continue 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 July 31, 2009 or the occurrence or existence of any event of default other than the existing or anticipated events of default. In addition to the extension of the forbearance period, the Amendment reduced the availability reserve to $17.5 million through July 31, 2009 and decreased the borrowing availability of eligible accounts receivable from 90% to 85%.

Pursuant to the terms of the Amendment, (i) the parties agreed to increase the applicable margin interest rate on the base rate portion of the revolving credit loans from 2.25% to 2.75% and on the LIBOR rate portion of the revolving credit loans from 3.75% to 4.25%, (ii) the Company agreed to provide the administrative agent under the Revolving Facility, by the third business day of each calendar week from and after May 28, 2009, a report setting forth a 13-week cash flow forecast for the Company as well as a comparison of the actual and projected cash flow statements for the immediately preceding calendar week, and (iii) on or before June 15, 2009, the Company agreed to deliver to the administrative agent a written report, in form and substance satisfactory to the administrative agent, updating the lenders on the status of its evaluation of strategic business alternatives.

On July 17, 2009, the Company entered into the Third Amended and Restated Loan and Security Agreement with its lenders, effective August 3, 2009 (the "Amended Facility"), with a maturity date of August 3, 2012. The Amended Facility has a capacity of $100 million, subject to a borrowing base, a $12.5 million reserve and other discretionary reserves. The lenders waived certain events of default that had occurred under the previous credit facility and waived the right to receive default interest during the time the events of default had continued. The interest rate on borrowings under the Amended Facility from the date of effectiveness through July 31, 2010 is LIBOR plus 4.25% or the prime rate of Bank of America, N.A. (the "Prime Rate") plus 2.75%. After July 31, 2010, the interest rate is based upon average unused availability and will range between LIBOR plus 3.75% to 4.25% and the Prime Rate plus 2.25% to 2.75%. The Company is required to pay a monthly unused line fee equal to 0.375% times the average daily unused availability along with other customary fees and expenses of the agent and the lenders.

5. ISSUANCE OF PREFERRED STOCK AND WARRANT

On July 17, 2009, the Company entered into a Securities Purchase Agreement (the "Securities Purchase Agreement") with Trailer Investments, LLC ("Trailer Investments") pursuant to which Trailer Investments purchased 20,000 shares of Series E redeemable preferred stock ("Series E Preferred"), 5,000 shares of Series F redeemable preferred stock ("Series F Preferred"), and 10,000 shares of Series G redeemable preferred stock ("Series G Preferred", and together with the Series E Preferred and the Series F Preferred, the "Preferred Stock") for an aggregate purchase price of $35.0 million. Trailer Investments also received a warrant that is exercisable at $0.01 per share for 24,762,636 newly issued shares of the Company's common stock representing, on August 3, 2009, the date the warrant was delivered, 44.21% of the Company's issued and outstanding common stock after giving effect to the issuance of the shares underlying the warrant, subject to upward adjustment to maintain that percentage if currently outstanding options are exercised. The number of shares of common stock subject to the warrant is also subject to upward adjustment to an amount equivalent to 49.99% of the issued and outstanding common stock of the Company outstanding immediately after the closing after giving effect to the issuance of the shares underlying the warrant in specified circumstances where the Company loses its ability to utilize its net operating loss carryforwards, including as a result of a stockholder of the Company acquiring greater than 5% of the outstanding common stock of the Company. Of the aggregate amount of $35.0 million received, approximately $13.2 million was attributed to the warrant and $21.8 million was attributed to the preferred stock based on the estimated fair values of these instruments as of the agreement date. The difference between the initial value and the liquidation value of the Preferred Stock, including issuance costs of approximately $2.5 million, will be accreted as preferred stock dividends over a period of five years using the effective interest method.

The Series E Preferred, Series F Preferred and Series G Preferred pay an annual dividend rate of 15%, 16% and 18%, respectively. The dividend on each series of Preferred Stock is payable quarterly and subject to increase by 0.5% every quarter if the applicable series of Preferred Stock is still outstanding after August 3, 2014. During the first two years following the issuance of the Preferred Stock, the Company may elect to accrue these dividends unpaid. The Preferred Stock also provides the holders with certain rights including an increase in the dividend rate upon the occurrence of any event of noncompliance.

The Company may at any time after one year from the date of issuance redeem all or any portion of the Preferred Stock at a liquidation value of $1,000 per share plus any accrued and unpaid dividends plus a premium adjustment ranging between 15% and 20% if redemption occurs before August 3, 2014. The premium for early redemption would be applied to the sum of the liquidation value and any accrued and unpaid dividends.

Upon occurrence of a change of control of the Company (as defined in the Certificates of Designation for the Preferred Stock, including if more than 50% of the voting power is transferred or acquired by any person other than Trailer Investments and its affiliates unless Trailer Investments or its affiliates acquire the Company), the Preferred Stock becomes immediately redeemable at the election of the holder at a premium of 200% of the sum of the liquidation price plus all accrued and unpaid dividends for the Series E Preferred and Series F Preferred and a premium of 225% for the Series G Preferred. The change of control provisions for the Preferred Stock are subject to a look-back provision, whereby if the shares of Preferred Stock are redeemed pursuant to the voluntary redemption provisions within 12 months prior to the occurrence of a change of control, the Company would still have to pay the additional amount to the holders of the Preferred Stock that was redeemed so that such holders would receive the aggregate payments equal to the change of control redemption amounts.

The warrant contains several conditions, including, among other things, an upward adjustment of shares upon the occurrence of certain contingent events and an option by the holder to settle the warrant for cash in event of a specific default. These provisions result in the classification of the warrant as a liability that is adjusted to fair value at each balance sheet date.

The warrant liability was recorded initially at fair value with subsequent changes in fair value reflected in earnings. Estimating fair value of the warrant requires the development of significant and subjective estimates that may, and are likely to, change over the duration of the warrant with related changes in internal and external market factors. In addition, option-based techniques are highly volatile and sensitive to changes in the trading market price of the Company's common stock, which has a high historical volatility. Since the warrant is initially and subsequently carried at fair value, the Company's Statements of Operations will reflect the volatility in these estimate and assumption changes. The fair value of the warrant was estimated using a binomial valuation model.

6. DERIVATIVE INSTRUMENTS AND HEDGING ACTIVITIES

As discussed in Note 2, the Company adopted the provisions of a Statement issued by the FASB on Derivative Instruments and Hedging Activities during the first quarter of 2009. The Statement 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 Company had 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 total amounts paid or payable under the terms of these contracts have been charged to interest or other expense and totaled $1.6 million in the first nine months of 2009. As of September 30, 2009, there was no amount of loss remaining in OCI as the forecasted transaction is considered no longer probable. The cash flows from these contracts were recorded as operating activities in the consolidated statement of cash flows.

7. FAIR VALUE MEASUREMENTS

As discussed in Note 2, in September 2006, the FASB issued a Statement on Fair Value Measurements, which addresses aspects of expanding the application of fair value accounting. The Company adopted the provisions of this Statement 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 the provisions of this Statement as it relates to nonrecurring fair value measurement requirements for nonfinancial assets and liabilities.

This FASB statement 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):

	September 30, 2009				December 31, 2008			
	Level 1	Level 2	Level 3	Total	Level 1	Level 2	Level 3	Total
Liabilities								
Warrant	$ -	$ 67,208	$ -	$ -	$ -	$ -	$ -	$ -
Interest rate derivatives	-	-	-	-	-	-	1,516	1,516
Total	$ -	$ 67,208	$ -	$ -	$ -	$ -	$ 1,516	$ 1,516

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):

	Nine Months Ended September 30, 2009	
Balance at beginning of period	$	(1,516)
Total unrealized gains included in other comprehensive income		118
Purchases, sales, issuances, and settlements		1,398
Transfers in and (or) out of Level 3		-
Balance at end of period	$	-

The carrying amounts of cash and cash equivalents, accounts receivable and accounts payable reported in the Condensed Consolidated Balance Sheets approximate fair value.

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 and thus carrying value approximates fair value.

8. STOCK-BASED COMPENSATION

The Company recognizes all share-based payments to employees, including grants of employee stock options, in the financial statements based upon their fair value. The Company uses a binomial valuation model, which incorporates various assumptions including volatility, expected life, dividend yield and risk-free interest rates, to value new stock option awards it grants. The expected life and volatility assumptions are based on the Company's historical experience as well as the terms and conditions of stock option awards granted 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 $9.6 million at September 30, 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 RoadRailer® 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 case has currently been stayed by agreement of the parties while the U.S. Patent and Trademark Office undertakes a reexamination of U.S. Patent Nos. 6,986,546. It is unknown when the stay will be lifted.

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 and the reexamination proceedings 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 loss applicable to common stockholders as the numerator and the number of shares included in the denominator as follows (in thousands, except per share amounts):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Net loss applicable to common stockholders	$ (67,500)	$ (4,330)	$ (113,719)	$ (13,920)
Dividends paid on unvested restricted shares	-	(34)	-	(100)
Net loss applicable to common stockholders excluding amounts applicable to unvested restricted shares, basic and diluted	$ (67,500)	$ (4,364)	$ (113,719)	$ (14,020)
Basic and diluted weighted average common shares outstanding	30,331	29,993	30,196	29,933
Basic and diluted net loss per share	$ (2.23)	$ (0.15)	$ (3.77)	$ (0.47)

The computation of diluted net loss per share for the three and nine month periods ending September 30, 2008 excludes the after-tax equivalent of interest on the Company's Senior Convertible Notes (Convertible Notes) of $0.1 million and $0.8 million, respectively. Average diluted shares outstanding for the three and nine month periods ending September 30, 2009 and 2008 also exclude the antidilutive effects of the following potential common shares (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Convertible Notes equivalent shares	-	472	-	2,281
Stock options and restricted stock	-	125	11	107
Redeemable warrants	20,333	-	6,852	-
Options to purchase common shares	2,143	1,502	2,164	1,618

11. INCOME TAXES

The Company has experienced cumulative operating losses over the most recent three year period. After considering these operating losses and 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 and year to date periods ended September 30, 2009. As a result, the effective income tax benefit for the first nine months 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):

	Nine Months Ended September 30,	
	2009	2008
Pretax book loss	$ (112,664)	$ (19,911)
Federal tax expense at 35% statutory rate	(39,432)	(6,969)
State and local income taxes	(5,621)	(724)
Provision for valuation allowance for net operating losses - U.S. and state	22,873	786
Foreign Taxes	-	94
Benefit of liquidation of Canadian subsidiary, net of reserves	-	(361)
Effect of non-deductible adjustment to FMV of warrants	21,593	-
Effect of non-deductible stock-based compensation	755	269
Other	(209)	914
Total income tax expense (benefit)	$ (41)	$ (5,991)

As of September 30, 2009, the Company had approximately $152 million of remaining U.S. federal income tax net operating loss carryforwards (“NOLs”), which will expire in 2022 if unused. The Company’s NOLs, including any future NOLs that may arise, are subject to limitations on use under the Internal Revenue Service rules, including Section 382 of the Internal Revenue Code of 1986, as revised. Section 382 limits the ability of a company to utilize NOLs in the event of an ownership change. The Company would undergo an ownership change if, among other things, the stockholders, or group of stockholders, who own or have owned, directly or indirectly, 5% or more of the value of the Company’s stock or are otherwise treated as 5% stockholders under Section 382 and the regulations promulgated thereunder increase their aggregate percentage ownership of the Company’s stock by more than 50 percentage points over the lowest percentage of its stock owned by these stockholders at any time during the testing period, which is generally the three-year period preceding the potential ownership change.

In the event of an ownership change, Section 382 imposes an annual limitation on the amount of post-ownership change taxable income a corporation may offset with pre-ownership change NOLs and certain recognized built-in losses. The limitation imposed by Section 382 for any post-change year would be determined by multiplying the value of our stock immediately before the ownership change (subject to certain adjustments) by the applicable long-term tax-exempt rate in effect at the time of the ownership change. Any unused annual limitation may be carried over to later years, and the limitation may under certain circumstances be increased by built-in gains that may be present in assets held by us at the time of the ownership change that are recognized in the five-year period after the ownership change. It is expected that any loss of the Company’s NOLs would cause its effective tax rate to go up significantly when we return to profitability.

Accordingly, the Company undertook a study to ensure that the change in ownership related to the issuance of the warrant did not result in a Section 382 limitation during the third quarter of 2009 and believes that such a limitation was not triggered. However, there can be no assurance that a subsequent change in ownership, as defined by the Section 382 guidelines, may trigger this limitation.

12.