FOSTER L B CO
Form 10-Q
May 10, 2007

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**
**Washington, DC 20549**
**FORM 10-Q**

(Mark One)

þ **Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**
**For the quarterly period ended March 31, 2007**

**Or**

o **Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**
**For the transition period from __________ to __________**

**Commission File Number 0-10436**
**L. B. Foster Company**
(Exact name of Registrant as specified in its charter)

| | |
|---|---|
| Pennsylvania | 25-1324733 |
| (State of Incorporation) | (I. R. S. Employer Identification No.) |
| 415 Holiday Drive, Pittsburgh, Pennsylvania | 15220 |
| (Address of principal executive offices) | (Zip Code) |

(412) 928-3417
(Registrant s telephone number, including area code)

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 þ No o

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of accelerated filer and large accelerated filer in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer o Accelerated filer þ Non-accelerated filer o

Indicate by checkmark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes o No þ

Indicate the number of shares outstanding of each of the issuer s classes of common stock, as of the latest practicable date.

| Class | Outstanding at April 26, 2007 |
|---|---|
| Common Stock, Par Value $.01 | 10,570,245 Shares |

**Table of Contents**

L.B. FOSTER COMPANY AND SUBSIDIARIES

INDEX

**Table of Contents**

PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

L. B. FOSTER COMPANY AND SUBSIDIARIES

CONDENSED CONSOLIDATED BALANCE SHEETS

(In Thousands)

| | March 31, 2007 (Unaudited) | December 31, 2006 |
|---|---|---|
| ASSETS | | |
| Current Assets: | | |
| Cash and cash equivalents | $ 3,388 | $ 1,309 |
| Accounts and notes receivable: | | |
| Trade | 56,827 | 60,771 |
| Other | 360 | 779 |
| | 57,187 | 61,550 |
| Inventories | 110,120 | 99,803 |
| Current deferred tax assets | 2,653 | 2,653 |
| Other current assets | 1,660 | 1,133 |
| Prepaid income tax | 691 | 836 |
| Property held for resale | 2,522 | |
| Total Current Assets | 178,221 | 167,284 |
| Property, Plant & Equipment At Cost | 93,969 | 95,077 |
| Less Accumulated Depreciation | (47,178) | (45,158) |
| | 46,791 | 49,919 |
| Other Assets: | | |
| Goodwill | 350 | 350 |
| Other intangibles net | 59 | 62 |
| Investments | 16,924 | 16,676 |
| Deferred tax assets | 1,242 | 1,149 |
| Other assets | 367 | 393 |
| Total Other Assets | 18,942 | 18,630 |
| TOTAL ASSETS | $ 243,954 | $ 235,833 |
| LIABILITIES AND STOCKHOLDERS EQUITY | | |
| Current Liabilities: | | |
| Current maturities of long-term debt | $ 3,160 | $ 3,105 |
| Short-term borrowings | 775 | 726 |

| | | |
|---|---|---|
| Accounts payable trade | 52,122 | 57,446 |
| Accrued payroll and employee benefits | 7,190 | 6,892 |
| Current deferred tax liabilities | 3,184 | 3,203 |
| Other accrued liabilities | 5,292 | 4,215 |
| Current liabilities of discontinued operations | 233 | 235 |
| Total Current Liabilities | 71,956 | 75,822 |
| Long-Term Borrowings | 50,882 | 39,161 |
| Other Long-Term Debt | 14,281 | 15,112 |
| Deferred Tax Liabilities | 2,163 | 1,853 |
| Other Long-Term Liabilities | 3,401 | 5,852 |
| STOCKHOLDERS EQUITY: | | |
| Common stock | 106 | 105 |
| Paid-in capital | 40,094 | 39,696 |
| Retained earnings | 61,721 | 58,843 |
| Accumulated other comprehensive loss | (650) | (611) |
| Total Stockholders Equity | 101,271 | 98,033 |
| TOTAL LIABILITIES AND STOCKHOLDERS EQUITY | $ 243,954 | $ 235,833 |

See Notes to Condensed Consolidated Financial Statements.

**Table of Contents**

L. B. FOSTER COMPANY AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(In Thousands, Except Per Share Amounts)

| | Three Months Ended March 31, | |
|---|---|---|
| | 2007 | 2006 |
| | (Unaudited) | |
| Net Sales | $ 110,666 | $ 84,155 |
| Cost of Goods Sold | 96,476 | 74,351 |
| Gross Profit | 14,190 | 9,804 |
| Selling and Administrative Expenses | 8,401 | 7,731 |
| Interest Expense | 1,222 | 665 |
| Other Income | (258) | (431) |
| | 9,365 | 7,965 |
| Income From Continuing Operations Before Income Taxes | 4,825 | 1,839 |
| Income Tax Expense | 1,733 | 633 |
| Income From Continuing Operations | 3,092 | 1,206 |
| Discontinued Operations: | | |
| Income From Discontinued Operations Before Income Taxes | 12 | 2,819 |
| Income Tax Expense | 4 | 141 |
| Income From Discontinued Operations | 8 | 2,678 |
| Net Income | $ 3,100 | $ 3,884 |
| Basic Earnings Per Share | | |
| From continuing operations | $ 0.29 | $ 0.12 |
| From discontinued operations | 0.00 | 0.26 |
| Basic Earnings Per Share | $ 0.29 | $ 0.38 |
| Diluted Earnings Per Share | | |
| From continuing operations | $ 0.28 | $ 0.11 |
| From discontinued operations | 0.00 | 0.25 |

| | | | | |
|---|---|---|---|---|
| Diluted Earnings Per Share | $ | 0.28 | $ | 0.36 |

See Notes to Condensed Consolidated Financial Statements.

**Table of Contents**

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

| | Three Months Ended March 31, 2007 | Three Months Ended March 31, 2006 |
|---|---|---|
| | (Unaudited) | |
| CASH FLOWS FROM OPERATING ACTIVITIES: | | |
| Net income from continuing operations | $ 3,092 | $ 1,206 |
| Adjustments to reconcile net income to net cash used by operating activities: | | |
| Deferred income taxes | (24) | 22 |
| Depreciation and amortization | 2,121 | 1,386 |
| Gain on sale of property, plant and equipment | (6) | |
| Stock-based compensation | 31 | 63 |
| Unrealized gain on derivative mark-to-market | | (29) |
| Excess tax benefit from share-based compensation | (213) | |
| Change in operating assets and liabilities: | | |
| Accounts receivable | 4,363 | (7,422) |
| Inventories | (10,317) | (4,246) |
| Other current assets | (575) | (1,118) |
| Prepaid income tax | 358 | |
| Other noncurrent assets | (232) | (282) |
| Accounts payable trade | (5,324) | 5,169 |
| Accrued payroll and employee benefits | 298 | (1,868) |
| Other current liabilities | 478 | 1,003 |
| Other liabilities | (1,833) | 212 |
| Net Cash Used by Operating Activities | (7,783) | (5,904) |
| Net Cash Provided by Discontinued Operations | 6 | 426 |
| CASH FLOWS FROM INVESTING ACTIVITIES: | | |
| Proceeds from sale of property, plant and equipment | 10 | |
| Capital expenditures on property, plant and equipment | (1,467) | (5,160) |
| Net Cash Used by Continuing Investing Activities | (1,457) | (5,160) |
| Net Cash Provided by Discontinued Investing Activities | | 5,330 |
| CASH FLOWS FROM FINANCING ACTIVITIES: | | |
| Proceeds from revolving credit agreement | 11,721 | 3,661 |
| Proceeds from other short-term borrowings | | 1,061 |
| Proceeds from exercise of stock options and stock awards | 155 | 69 |
| Tax benefit related to stock options exercised | 213 | 69 |
| (Repayments) proceeds of long-term debt | (776) | 256 |

| | | |
|---|---|---|
| Net Cash Provided by Financing Activities | 11,313 | 5,116 |
| Net Increase (Decrease) in Cash and Cash Equivalents | 2,079 | (192) |
| Cash and Cash Equivalents at Beginning of Period | 1,309 | 1,596 |
| Cash and Cash Equivalents at End of Period | $ 3,388 | $ 1,404 |
| Supplemental Disclosure of Cash Flow Information: | | |
| Interest Paid | $ 1,133 | $ 666 |
| Income Taxes Paid | $ 1,311 | $ 181 |

The Company financed $49,000 and $71,000 in certain capital expenditures through short-term borrowings and the execution of capital leases during the first three months of 2007 and 2006, respectively.
See Notes to Condensed Consolidated Financial Statements.

**Table of Contents**

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

1. FINANCIAL STATEMENTS

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements. In the opinion of management, all estimates and adjustments (consisting of normal recurring accruals) considered necessary for a fair presentation have been included. However, actual results could differ from those estimates. The results of operations for interim periods are not necessarily indicative of the results that may be expected for the year ended December 31, 2007. Amounts included in the balance sheet as of December 31, 2006 were derived from our audited balance sheet. For further information, refer to the consolidated financial statements and footnotes thereto included in the Company s annual report on Form 10-K for the year ended December 31, 2006.

2. NEW ACCOUNTING PRINCIPLES

In July 2006, the Financial Accounting Standards Board (FASB) issued FASB Interpretation No. 48, Accounting for Uncertainty in Income Taxes an interpretation of FASB Statement No. 109 (FIN 48). This Interpretation applies to all open tax positions accounted for in accordance with SFAS 109. This Interpretation is intended to result in increased relevance and comparability in financial reporting of income taxes and to provide more information about the uncertainty in income tax assets and liabilities. The Company adopted this interpretation on January 1, 2007. See Note 11, Income Taxes.

In September 2006, the FASB issued Statement of Financial Accounting Standards 158, Employers Accounting for Defined Benefit Pension and Other Postretirement Plans an amendment of FASB Statements No. 87, 88, 106 and 132(R) (SFAS 158). SFAS 158 requires plan sponsors of defined benefit pension plans to recognize the funded status of their pension plans in the statement of financial position, measure the fair value of plan assets and benefit obligations as of the date of the fiscal year-end statement of financial position, and provide additional disclosures. On December 31, 2006, the Company adopted the recognition and disclosure provisions of SFAS 158. The effect of adopting SFAS 158 on the Company s financial condition at December 31, 2006 has been included in the accompanying condensed consolidated financial statements. SFAS 158 s provisions regarding the change in measurement date of pension plans are not applicable as the Company already uses a measurement date of December 31 for its pension plan.

In September 2006, the FASB issued SFAS No. 157, Fair Value Measurements, (SFAS 157). SFAS 157 defines fair value, establishes a framework for measuring fair value in accounting principles generally accepted in the United States, and expands disclosures about fair value measurements. SFAS 157 does not require any new fair value measurements, rather it applies under existing accounting pronouncements that require or permit fair value measurements. SFAS 157 is effective for fiscal years beginning after November 15, 2007. The adoption of this standard is not expected to have a significant effect on the Company s financial position or results of operations.

In February 2007, the FASB issued SFAS No. 159, The Fair Value Option for Financial Assets and Financial Liabilities, Including an Amendment of SFAS No. 115, (SFAS 159). SFAS 159 permits entities to measure eligible financial assets, financial liabilities and firm commitments at fair value, on an instrument-by-instrument basis, that are otherwise not permitted to be accounted for at fair value under other accounting principles generally accepted in the United States. The fair value measurement election is irrevocable and subsequent changes in fair value must be recorded in earnings. SFAS 159 is effective for fiscal years beginning after November 15, 2007. The adoption of this standard is not expected to have a significant effect on the Company s financial position or results of operations.

**Table of Contents**

3. ACCOUNTS RECEIVABLE

Credit is extended based upon an evaluation of the customer s financial condition and, generally, collateral is not required. Credit terms are consistent with industry standards and practices. Trade accounts receivable at March 31, 2007 and December 31, 2006 have been reduced by an allowance for doubtful accounts of ($1,297,000) and ($1,172,000), respectively. Bad debt expense was $125,000 and $54,000 for the three-month periods ended March 31, 2007 and 2006, respectively.

4. INVENTORIES

Inventories of the Company at March 31, 2007 and December 31, 2006 are summarized in the following table:

| *(in thousands)* | March 31, 2007 | December 31, 2006 |
|---|---|---|
| Finished goods | $ 92,274 | $ 84,578 |
| Work-in-process | 10,395 | 6,397 |
| Raw materials | 17,498 | 18,297 |
| Total inventories at current costs | 120,167 | 109,272 |
| Less: | | |
| LIFO reserve | (7,506) | (7,142) |
| Inventory valuation reserve | (2,541) | (2,327) |
| | $110,120 | $ 99,803 |

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

5. PROPERTY HELD FOR RESALE

In March 2007, the Company entered into an agreement to sell real estate located in Houston, TX used primarily by the Company s Tubular products segment and reclassified these assets as property held for resale under SFAS No. 144 Accounting for the Impairment or Disposal of Long-Lived Assets .

Pursuant to the terms of the agreement, the purchaser has until on or about May 28, 2007 to determine if the real estate is suitable for the Purchaser s intended use. If the purchaser, in its sole judgment, determines that the real estate is not suitable, the purchaser may terminate the agreement without penalty. If all conditions are satisfied, the transaction is anticipated to close in June 2007. The purchase price of the real estate is approximately $7,570,000 plus $300,000 for the wastewater capacity reservation.

6. RETIREMENT PLANS

The Company currently has four plans covering all hourly and salaried employees, specifically two defined benefit plans (one active/one frozen) and two defined contribution plans. Employees are eligible to participate under these specific plans based on their employment classification. The Company s funding to the defined benefit and defined contribution plans is governed by the Employee Retirement Income Security Act (ERISA) of 1974, applicable plan policy and investment guidelines. The Company policy is to contribute no less than the minimum funding required by ERISA.

**Table of Contents**

Defined Benefit Plans

Effective December 31, 2006, the Company froze its defined benefit plan for non-union hourly employees.

Net periodic pension costs for both the active plan and frozen plan for the three months ended March 31, 2007 and 2006 are as follows:

| | Three Months Ended March 31, | |
|---|---|---|
| *(in thousands)* | 2007 | 2006 |
| Service cost | $ 6 | $ 14 |
| Interest cost | 55 | 54 |
| Expected return on plan assets | (65) | (56) |
| Prior service cost | 2 | 2 |
| Transition asset | (2) | (2) |
| Recognized net actuarial loss | 13 | 17 |
| Net periodic benefit cost | $ 9 | $ 29 |

The Company expects to contribute $208,000 to the defined benefit plans in 2007. No contributions were made in the first quarter of 2007.

Defined Contribution Plans

Effective March 1, 2007, the Company merged its non-union hourly and salaried defined contribution plans into one plan covering all non-union hourly and salaried employees. This defined contribution plan contains a matched savings provision that permits both pretax and after-tax employee contributions. Participants can now contribute, subject to statutory limitations, between 1% and 75% of eligible pre-tax pay and between 1% and 100% of eligible after-tax pay. Effective March 1, 2007, the Company s employer match is 100% of the first 1% of deferred eligible compensation and 50% of the next 6% of deferred eligible compensation, for a total maximum match of 4%. The Company may also make discretionary contributions to the Plan. The expense associated with this plan for the three months ended March 31 was $457,000 in 2007 and $264,000 in 2006.

The Company also has a defined contribution plan for union hourly employees with contributions made by both the participants and the Company based on various formulas. The expense associated with this active plan for the three months ended March 31, 2007 and 2006 was $11,000 and $14,000, respectively.

7. <u>DISCONTINUED OPERATIONS</u>

In February 2006, the Company sold substantially all of the assets of its Geotechnical division for $4,000,000 plus the net asset value of the fixed assets, inventory, work in progress and prepaid items, resulting in a gain of approximately $3,005,000. The operations of the division qualified as a component of an entity under SFAS No. 144 Accounting for the Impairment or Disposal of Long-Lived Assets and thus, were reclassified as discontinued for all periods presented. Future expenses related to this business are expected to be immaterial.

**Table of Contents**

Net sales and income from discontinued operations were as follows:

| | Three Months Ended March 31, | |
|---|---|---|
| (in thousands) | 2007 | 2006 |
| Net sales | $ | $3,075 |
| Income from discontinued operations | $12 | $2,819 |
| Income tax expense | 4 | 141 |
| Income from discontinued operations, net of tax | $ 8 | $2,678 |

8. BORROWINGS

In May 2005, the Company entered into an amended and restated credit agreement with a consortium of commercial banks which provided for a $60,000,000 five year revolving credit facility expiring in May 2010. In September 2005, the Company s maximum credit line was increased to $75,000,000 under the First Amendment to the Revolving Credit and Security Agreement. Borrowings under the agreement are secured by substantially all the trade receivables and inventory owned by the Company, and are limited to 85% of eligible receivables and 60% of eligible inventory. Borrowings under the amended credit agreement bear interest at interest rates based upon either the base rate or LIBOR rate plus or minus applicable margins. The base rate is equal to the greater of (a) PNC Bank s base commercial lending rate or (b) the Federal Funds Rate plus .50%. The base rate spread ranged from a negative 1.00% to a positive 0.50%, and the LIBOR spread ranged from 1.50% to 2.50%. In February 2007, the Company entered into the third amendment to the agreement. Under this amendment, borrowings placed in LIBOR contracts are priced at prevailing LIBOR rates, plus 1.25%. Borrowings placed in other tranches are priced at the prevailing prime rate, minus 1.00%. Under the amended credit agreement, the Company maintains dominion over its cash at all times, as long as excess availability stays over $5,000,000 and there is no uncured event of default.

The agreement includes financial covenants requiring a minimum level for the fixed charge coverage ratio and a maximum level for the consolidated capital expenditures; however, expenditures up to $20,000,000 for plant construction and refurbishment related to the Company s concrete tie supply agreement are excluded from these covenants. The agreement also includes a minimum net worth covenant and restricts investments, indebtedness, and the sale of certain assets. As of March 31, 2007, the Company was in compliance with the agreement s covenants. At March 31, 2007 the Company had borrowed $50,882,000 under the agreement, which was classified as long-term, and had approximately $20,872,000 in unused borrowing commitment.

In addition, the Company has interim financing arrangements for approximately $775,000 primarily to provide funding for the expansion of the Concrete Tie division. This funding is classified as short-term borrowings.

**Table of Contents**

9. EARNINGS PER COMMON SHARE

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

| | Three Months Ended March 31, | |
|---|---|---|
| (in thousands, except earnings per share) | 2007 | 2006 |
| Numerator: | | |
| Numerator for basic and diluted earnings per common share - net income available to common stockholders: | | |
| Income from continuing operations | $ 3,092 | $ 1,206 |
| Income from discontinued operations | 8 | 2,678 |
| Net income | $ 3,100 | $ 3,884 |
| Denominator: | | |
| Weighted average shares | 10,555 | 10,195 |
| Denominator for basic earnings per common share | 10,555 | 10,195 |
| Effect of dilutive securities: | | |
| Employee stock options | 343 | 459 |
| Dilutive potential common shares | 343 | 459 |
| Denominator for diluted earnings per common share adjusted weighted average shares and assumed conversions | 10,898 | 10,654 |
| Basic earnings per common share: | | |
| Continuing operations | $ 0.29 | $ 0.12 |
| Discontinued operations | 0.00 | 0.26 |
| Basic earnings per common share | $ 0.29 | $ 0.38 |
| Diluted earnings per common share: | | |
| Continuing operations | $ 0.28 | $ 0.11 |
| Discontinued operations | 0.00 | 0.25 |
| Diluted earnings per common share | $ 0.28 | $ 0.36 |

10. STOCK-BASED COMPENSATION

The Company recorded stock compensation expense of $31,000 and $63,000 for the three month periods ending March 31, 2007 and 2006, respectively. The related deferred tax benefits were $12,000 and $22,000, respectively.

At March 31, 2007, there was $206,000 of compensation expense related to nonvested awards which is expected to be recognized over a weighted-average period of 1.7 years. At March 31, 2006, there was $380,000 of compensation expense related to nonvested awards which was expected to be recognized over a weighted-average period of 1.8 years.

Stock Option Awards

There were no stock options granted during the first quarter of 2007 or 2006.

At March 31, 2007 and 2006, Common stock options outstanding under the Plans had option prices ranging from $2.75 to $14.77, with a weighted average exercise price of $5.20 and $5.01 per share, respectively.

**Table of Contents**

The weighted average remaining contractual life of the stock options outstanding at March 31, 2007 and 2006 are 5.1 years and 5.4 years.

Options exercised during the three month periods ended March 31, 2007 and 2006 totaled 29,750 and 15,250 shares, respectively. The weighted average exercise price per share of the options exercised during the three month periods ended March 31, 2007 and 2006 were $5.18 and $4.54, respectively. The total intrinsic value of options exercised during the three month periods ended March 31, 2007 and 2006 were $607,000 and $203,000, respectively.

A summary of the option activity as of March 31, 2007 is presented below.

| | Shares | Weighted Average Exercise Price | Weighted Average Remaining Contractual Term | Aggregate Intrinsic Value |
|---|---|---|---|---|
| Outstanding at January 1, 2007 | 708,950 | $5.20 | 4.5 | |
| Granted | | $ | | |
| Canceled | | $ | | |
| Exercised | (29,750) | $5.18 | | |
| Outstanding at March 31, 2007 | 679,200 | $5.20 | 4.4 | $10,466,472 |
| Exercisable at March 31, 2007 | 616,050 | $4.70 | 4.0 | $ 9,801,356 |

Shares issued as a result of stock option exercises generally are authorized but previously unissued common stock.

Restricted Stock Awards

There were no restricted stock awards granted by the Company for the three months ended March 31, 2007 and 2006. Shares issued as a result of restricted stock awards generally are authorized but previously unissued common stock.

11. INCOME TAXES

In July 2006, the FASB issued FIN 48. The Company adopted FIN 48 on January 1, 2007 which has resulted in a transition adjustment reducing beginning retained earnings by $222,000; comprised of uncertain tax benefits of $93,000 (net of federal benefit on state issues), accrued interest of $71,000, and penalties of $58,000.

At January 1, 2007, the Company had $522,000 in unrecognized tax benefits, all of which would affect our effective tax rate if recognized. Included in this balance at January 1, 2007, is $383,000 related to tax positions for which it is reasonably possible that the total amounts could change significantly during the next twelve month period.

The Company and its subsidiaries are subject to U.S. federal income tax as well as income tax in multiple state jurisdictions. Federal tax returns for all years after 2002 are subject to future examination while tax returns for all years after 1996 are subject to examination by the state and local tax authorities. Presently, the federal income tax return for 2004 is currently under examination. The final outcome of this review is not yet determinable.

The Company s policy is to recognize interest and/or penalties related to income tax matters in income tax expense. At January 1, 2007, the Company had accrued $151,000 and $64,000 for the potential payment of interest and penalties, respectively, related to the preceding FIN 48 liability.

12. COMMITMENTS AND CONTINGENT LIABILITIES

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

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

In 2000, the Company s subsidiary sold concrete railroad crossing panels to a general contractor on a Texas transit project. Due to a variety of factors, including deficiencies in the owner s project specifications, certain panels have deteriorated and the owner has replaced all of the panels provided by the subsidiary. The general contractor and the owner are currently engaged in dispute resolution procedures, which we believe will be resolved in 2007. The administrative judge did, however, find that the general contractor was liable to the owners for alleged defects, among other matters, in the panels and that the new estimated damages connected with the panels ranged from $2,100,000 to $2,500,000. The Company has been advised that the general contractor has settled all disputes with the owner and that the general contractor may seek a contribution of less than $800,000 from the Company.

In the second