

CHOICEPOINT INC
Form 4
November 28, 2006

FORM 4

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

OMB APPROVAL

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STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

(Print or Type Responses)

1. Name and Address of Reporting Person *
ROBINSON RAY M

(Last) (First) (Middle)

CHOICEPOINT INC., 1000
ALDERMAN DRIVE

(Street)

ALPHARETTA, GA 30005

(City) (State) (Zip)

2. Issuer Name and Ticker or Trading Symbol
CHOICEPOINT INC [CPS]

3. Date of Earliest Transaction
(Month/Day/Year)
11/27/2006

4. If Amendment, Date Original Filed(Month/Day/Year)

5. Relationship of Reporting Person(s) to Issuer

(Check all applicable)

Director 10% Owner
 Officer (give title below) Other (specify below)

6. Individual or Joint/Group Filing(Check Applicable Line)
 Form filed by One Reporting Person
 Form filed by More than One Reporting Person

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)	5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Ownership (Instr. 4)
				(A) or (D) Code V Amount (D) Price			
Common stock					2,000	D	

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

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SEC 1474
(9-02)

Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned (e.g., puts, calls, warrants, options, convertible securities)

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1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)	5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)	6. Date Exercisable and Expiration Date (Month/Day/Year)	7. Title and Amount of Underlying Securities (Instr. 3 and 4)	8. Price of Derivative Security (Instr. 5)
Phantom stock units ⁽¹⁾	\$ 37.41	11/27/2006	11/27/2006	A	40	⁽¹⁾ ⁽¹⁾	common 40	\$ 37.41

Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other
ROBINSON RAY M CHOICEPOINT INC. 1000 ALDERMAN DRIVE ALPHARETTA, GA 30005	X			

Signatures

David W. Davis, Attorney-in-Fact for Ray M. Robinson 11/28/2006

__Signature of Reporting Person Date

Explanation of Responses:

- * If the form is filed by more than one reporting person, see Instruction 4(b)(v).
 - ** Intentional misstatements or omissions of facts constitute Federal Criminal Violations. See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).
 - (1) Phantom stock units acquired under the director's deferred compensation plan to be distributed in cash upon retirement from the Board.
- Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, see Instruction 6 for procedure. Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number. es new roman"> 27 8 185
- Interest expense - - (2) -
- Impairment of auction rate securities - - - (114)
- Unrealized holding gain - auction rate securities - (114) - -
- Gain on sale of investments - 114 - 114
- Other income

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	146	5	328	163
Net loss				
	\$(395)	\$(1,346)	\$(1,543)	\$(5,430)
Net loss per common share, basic and diluted				
	\$(0.01)	\$(0.04)	\$(0.04)	\$(0.14)
Weighted average common shares outstanding, basic and diluted				
	40,439,506	38,165,380	38,961,179	38,165,380

The accompanying notes are an integral part of these unaudited condensed consolidated interim financial statements

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NEPHROS, INC. AND SUBSIDIARY

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(Unaudited)
(In thousands)

	Nine Months Ended September 30,	
	2009	2008
Operating activities:		
Net loss	\$ (1,543)	\$ (5,430)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation	190	255
Amortization of research & development assets	-	12
Loss on disposal of equipment	-	3
Impairment of auction rate securities	-	114
Gain on sale of investments	-	(114)
Stock-based compensation	68	97
(Increase) decrease in operating assets:		
Accounts receivable	(114)	93
Inventory	118	(1)
Prepaid expenses and other current assets	49	48
Increase (decrease) in operating liabilities:		
Accounts payable and accrued expenses	(638)	594
Net cash used in operating activities	(1,870)	(4,329)
Investing activities:		
Purchase of property and equipment	-	(63)
Proceeds from sale of short-term investments	-	4,100
Maturities of short-term investments	7	593
Net cash provided by investing activities	7	4,630
Financing activities:		
Proceeds from private placement	1,251	-
Exercise of stock options	84	-
Net cash provided by investing activities	1,335	-
Effect of exchange rates on cash	17	(5)
Net increase (decrease) in cash and cash equivalents	(511)	296
Cash and cash equivalents, beginning of period	\$ 2,306	\$ 3,449
Cash and cash equivalents, end of period	1,795	3,745
Supplemental disclosure of cash flow information:		
Cash paid for interest	2	-
Cash paid for taxes	6	8

The accompanying notes are an integral part of these unaudited condensed consolidated interim financial statements

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NEPHROS, INC.

NOTES TO UNAUDITED CONDENSED CONSOLIDATED INTERIM FINANCIAL STATEMENTS

1. Basis of Presentation and Going Concern

Interim Financial Information

The accompanying unaudited condensed consolidated interim financial statements of Nephros, Inc. and its wholly owned subsidiary, Nephros International, Limited (collectively, the “Company”), should be read in conjunction with the audited consolidated financial statements and notes thereto included in the Company’s 2008 Annual Report on Forms 10-K and 10K/A filed with the Securities and Exchange Commission (the “SEC”) on March 31, 2009 and April 30, 2009, respectively. The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“GAAP”) for interim financial information and in accordance with the instructions to Form 10-Q and Article 8 and Article 10 of Regulation S-X. Accordingly, since they are interim statements, the accompanying consolidated financial statements do not include all of the information and notes required by GAAP for a complete financial statement presentation. The condensed consolidated balance sheet as of December 31, 2008 was derived from the Company’s audited consolidated financial statements but does not include all disclosures required by GAAP. In the opinion of management, the interim consolidated financial statements reflect all adjustments consisting of normal, recurring adjustments that are necessary for a fair presentation of the financial position, results of operations and cash flows for the condensed consolidated interim periods presented. Interim results are not necessarily indicative of results for a full year. All significant intercompany transactions and balances have been eliminated in consolidation.

Adoption of Standards

We follow accounting standards set by the Financial Accounting Standards Board (“FASB”). The FASB sets generally accepted accounting principles (“GAAP”) that we follow to ensure we consistently report our financial condition, results of operations, and cash flows. References to GAAP issued by the FASB in these footnotes are to the FASB Accounting Standards Codification,TM sometimes referred to as the Codification or “ASC.” In June 2009, the FASB issued ASC Topic 105, Generally Accepted Accounting Principals, which became the single source of authoritative nongovernmental U.S. GAAP, superseding existing FASB, American Institute of Certified Public Accountants (“AICPA”), Emerging Issues Task Force (“EITF”), and related accounting literature. This pronouncement reorganizes the thousands of GAAP pronouncements into roughly 90 accounting topics and displays them using a consistent structure. Also included is relevant Securities and Exchange Commission guidance organized using the same topical structure in separate sections and has been adopted by the Company for the quarter ended September 30, 2009. This has an impact on the Company’s financial disclosures since all future references to authoritative accounting literature will be referenced in accordance with ASC Topic 105.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the Company’s consolidated financial statements and accompanying notes. Actual results could differ materially from those estimates.

Going Concern and Management’s Response

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. The Company’s recurring losses and difficulty in generating sufficient cash flow to meet its obligations and

Explanation of Responses:

sustain its operations raise substantial doubt about its ability to continue as a going concern. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

On July 24, 2009, the Company raised gross proceeds of \$1,251,000 through the private placement to eight accredited investors of an aggregate of 1,345,161 shares of its common stock and warrants to purchase an aggregate of 672,581 shares of its common stock, representing 50% of the shares of common stock purchased by each investor. The Company sold the shares to investors at a price per share equal to \$0.93. The warrants have an exercise price of \$1.12, are exercisable immediately and will expire on July 24, 2014.

Each investor agreed that it will not sell, pledge, sell short or otherwise dispose of any of the purchased shares or warrants during the period commencing on the date of purchase and ending on January 31, 2010.

The shares of common stock and the warrants issued to the investors were not registered under the Securities Act of 1933, as amended, in reliance upon the exemption from registration provided by Section 4(2) and Regulation D thereunder.

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Based on the Company's current cash flow projections, it will need to raise additional funds through either the licensing or sale of its technologies or additional public or private offerings of its securities before the end of 2010. The Company continues to investigate strategic funding opportunities as they are identified. However, there is no guarantee that the Company will be able to obtain further financing. If it is unable to raise additional funds on a timely basis or at all, the Company would not be able to continue its operations. The Company has incurred significant losses in its operations in each quarter since inception. For the nine months ended September 30, 2009 and 2008, the Company has incurred net losses of approximately \$1,543,000 and \$5,430,000, respectively. In addition, the Company has not generated positive cash flow from operations for the nine months ended September 30, 2009 and 2008. To become profitable, the Company must increase revenue substantially and achieve and maintain positive gross and operating margins. If the Company is not able to increase revenue and gross and operating margins sufficiently to achieve profitability, the Company's results of operations and financial condition will be materially and adversely affected.

The Company's current operating plans primarily include the continued development and support of the Company's business in the European market, organizational changes necessary to begin the commercialization of the Company's water filtration business and the completion of current year milestones which are included in the Office of Naval Research appropriation. There can be no assurance that the Company's future cash flow will be sufficient to meet its obligations and commitments. If the Company is unable to generate sufficient cash flow from operations in the future to service its commitments, the Company will be required to adopt alternatives, such as seeking to raise debt or equity capital, curtailing its planned activities or ceasing its operations. There can be no assurance that any such actions could be effected on a timely basis or on satisfactory terms or at all, or that these actions would enable the Company to continue to satisfy its capital requirements.

2. Concentration of Credit Risk

For the nine months ended September 30, 2009 and 2008, the following customers accounted for the following percentages of the Company's sales, respectively.

Customer	2009	2008
A	45%	84%
B	42%	10%

As of September 30, 2009 and December 31, 2008, the following customers accounted for the following percentages of the Company's accounts receivable, respectively.

Customer	2009	2008
A	47%	66%
B	32%	23%

3. Revenue Recognition

Revenue is recognized in accordance with ASC Topic 605. Four basic criteria must be met before revenue can be recognized: (i) persuasive evidence that an arrangement exists; (ii) delivery has occurred or services have been rendered; (iii) the fee is fixed or determinable; and (iv) collectability is reasonably assured.

The Company recognizes revenue related to product sales when delivery is confirmed by its external logistics provider and the other criteria of ASC Topic 605 are met. Product revenue is recorded net of returns and allowances. All shipments are currently received directly by the Company's customers.

4. Stock-Based Compensation

The Company accounts for stock-based compensation in accordance with ASC 718 by recognizing the fair value of stock-based compensation in the statement of operations. The fair value of the Company's stock option awards are estimated using a Black-Scholes option valuation model. This model requires the input of highly subjective assumptions and elections including expected stock price volatility and the estimated life of each award. In addition, the calculation of compensation costs requires that the Company estimate the number of awards that will be forfeited during the vesting period. The fair value of stock-based awards is amortized over the vesting period of the award. For stock-based awards that vest based on performance conditions (e.g. achievement of certain milestones), expense is recognized when it is probable that the condition will be met.

For the three months ended September 30, 2009 and 2008, stock-based compensation expense was approximately \$33,000 for both periods. For the nine months ended September 30, 2009 and 2008, stock-based compensation expense was approximately \$68,000 and \$97,000, respectively.

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There was no tax benefit related to expense recognized in the three and nine months ended September 30, 2009 and 2008, as the Company is in a net operating loss position. As of September 30, 2009, there was approximately \$256,000 of total unrecognized compensation cost related to unvested share-based compensation awards granted under the equity compensation plans. Such amount does not include the effect of future grants of equity compensation, if any. Of this amount, approximately \$256,000 will be amortized over the weighted-average remaining requisite service period of 2.7 years. Of the total \$256,000, the Company expects to recognize approximately 10% in the remaining interim periods of 2009, approximately 37% in 2010, approximately 35% in 2011 and approximately 18% in 2012.

5. Comprehensive Income

The Company complies with the provisions of ASC 220-10, which requires companies to report all changes in equity during a period, except those resulting from investment by owners and distributions to owners, for the period in which they are recognized. Comprehensive income is the total of net income and all other non-owner changes in equity (or other comprehensive income (loss)) such as unrealized gains or losses on securities classified as available-for-sale and foreign currency translation adjustments. As of September 30, 2009 and December 31, 2008, accumulated other comprehensive income was approximately \$88,000 and \$70,000, respectively.

6. Loss per Common Share

In accordance with ASC 260-10, net loss per common share amounts (“basic EPS”) are computed by dividing net loss by the weighted-average number of common shares outstanding and excluding any potential dilution. Net loss per common share amounts assuming dilution (“diluted EPS”) are generally computed by reflecting potential dilution from conversion of convertible securities and the exercise of stock options and warrants. However, because their effect is antidilutive, the Company has excluded stock options and warrants aggregating 9,698,539 and 14,339,324 from the computation of diluted EPS for the three and nine month periods ended September 30, 2009 and 2008, respectively.

7. Recent Accounting Pronouncements

Fair Value Measurements – In September 2006, the FASB issued guidance regarding fair value measurements. This guidance defines fair value, establishes a framework for measuring fair value, and expands disclosures about fair value measurements. It applies to other accounting pronouncements where the FASB requires or permits fair value measurements but does not require any new fair value measurements. In February 2008, FASB issued a pronouncement, which delayed the effective date of its prior guidance regarding fair value measurements, specifically for certain non-financial assets and non-financial liabilities to fiscal years beginning after November 15, 2008, and interim periods within those fiscal years. The Company adopted the guidance for financial assets and liabilities on January 1, 2008. It did not have any impact on the Company’s results of operations or financial position and did not result in any additional disclosures and the Company adopted the guidance for non-financial assets and non-financial liabilities on January 1, 2009, resulting in no impact to the Company’s consolidated financial position, results of operations or cash flows.

In April 2009, the FASB issued new accounting guidance on determining fair value when the volume and level of activity for the asset or liability have significantly decreased and identifying transactions that are not orderly. The guidance affirms that the objective of fair value when the market for an asset is not active is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date under current market conditions. It provides guidance for estimating fair value when the volume and level of market activity for an asset or liability have significantly decreased and determining whether a transaction was orderly. It applies to all fair value measurements when appropriate. The adoption of this guidance did not have a significant impact on the Company’s consolidated financial position, results of operations or cash flows, or related

footnotes.

In April 2009, the FASB issued new accounting guidance on interim disclosures about fair value of financial instruments, which is effective for the Company for the quarterly period beginning April 1, 2009. The guidance requires an entity to provide the annual disclosures required by a prior pronouncement regarding disclosures about fair value of financial instruments, in its interim financial statements. The application of the guidance did not have a significant impact on the Company's consolidated financial position, results of operations or cash flows, or related footnotes.

In August 2009, the FASB issued an update to provide further guidance on how to measure the fair value of a liability, an area where practitioners have been seeking further guidance. It primarily does three things: 1) sets forth the types of valuation techniques to be used to value a liability when a quoted price in an active market for the identical liability is not available, 2) clarifies that when estimating the fair value of a liability, a reporting entity is not required to include a separate input or adjustment to other inputs relating to the existence of a restriction that prevents the transfer of the liability and 3) clarifies that both a quoted price in an active market for the identical liability at the measurement date and the quoted price for the identical liability when traded as an asset in an active market when no adjustments to the quoted price of the asset are required are Level 1 fair value measurements. This standard is effective beginning fourth quarter of 2009 for the Company. The adoption of this standard update is not expected to impact the Company's consolidated financial position, results of operations or cash flows.

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Business Combinations – In December 2007, the FASB issued new accounting guidance on business combinations. The pronouncement establishes principles and requirements for how the acquirer in a business combination recognizes and measures in its financial statements the fair value of identifiable assets acquired, the liabilities assumed and any noncontrolling interest in the acquiree at the acquisition date. The pronouncement determines what information to disclose to enable users of the financial statements to evaluate the nature and financial effects of the business combination. It is effective for fiscal years beginning after December 15, 2008. The Company adopted the pronouncement on January 1, 2009 resulting in no impact to the Company's consolidated financial position, results of operations or cash flows.

Subsequent Events – On May 28, 2009, the FASB issued guidance regarding subsequent events, which the Company adopted on a prospective basis beginning April 1, 2009. The guidance is intended to establish general standards of accounting and disclosure of events that occur after the balance sheet date but before financial statements are issued or are available to be issued. It requires the disclosure of the date through which an entity has evaluated subsequent events and the basis for selecting that date. The application of the pronouncement did not have an impact on the Company's consolidated financial position, results of operations or cash flows.

FASB Accounting Standards Codification – On June 29, 2009, the FASB issued an accounting pronouncement establishing the FASB Accounting Standards Codification as the source of authoritative accounting principles recognized by the FASB to be applied by nongovernmental entities. This pronouncement was effective for financial statements issued for interim and annual periods ending after September 15, 2009, for most entities. On the effective date, all non-SEC accounting and reporting standards will be superseded. The Company adopted this new accounting pronouncement for the quarterly period ended September 30, 2009, as required, and adoption did not have a material impact on the Company's consolidated financial position, results of operations or cash flows.

Recognition and Presentation of Other-Than-Temporary Impairments – In April 2009, the FASB issued an accounting pronouncement, which is effective for the Company for interim and annual reporting periods ending after June 15, 2009, that amends existing guidance for determining whether an other than temporary impairment of debt securities has occurred. Among other changes, the FASB replaced the existing requirement that an entity's management assert it has both the intent and ability to hold an impaired security until recovery with a requirement that management assert (a) it does not have the intent to sell the security, and (b) it is more likely than not it will not have to sell the security before recovery of its cost basis. The Company has no debt securities as of June 30, 2009 therefore there is no impact on the Company's September 30, 2009 consolidated financial position, results of operations or cash flows.

8. Fair Value of Financial Instruments

The carrying amounts of cash and cash equivalents, short-term investments, accounts receivable, accounts payable and accrued expenses approximate fair value due to the short-term maturity of these instruments.

The following table details the fair value measurements within the fair value hierarchy of the Company's financial assets at December 31, 2008:

	Total Fair Value at December 31, 2008	Fair Value Measurements at Reporting Date Using		
		Level 1	Level 2	Level 3
Certificate of deposit	\$ 7,000	\$ 7,000	\$ —	\$ —
Total	\$ 7,000	\$ 7,000	\$ —	\$ —

The Company had no financial assets held at fair value at September 30, 2009.

9. Inventory

Inventory is stated at the lower of cost or market using the first-in first-out method. The Company's inventory as of September 30, 2009 and December 31, 2008 was approximately as follows:

	Unaudited September 30, 2009	Audited December 31, 2008
Raw Materials	\$ 109,000	\$ 382,000
Finished Goods	498,000	342,000
Total Inventory	\$ 607,000	\$ 724,000

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10. Equity Transactions

Warrants

Class D Warrants — As disclosed in Note 8 to the December 31, 2008 consolidated financial statements, the Company issued Class D warrants to purchase an aggregate of 9,112,566 shares of the Company's common stock to the investors upon conversion of the purchased notes. The Company recorded the issuance of the Class D warrants at their approximate fair market value of \$3,763,000. The value of the Class D warrants was computed using the Black-Scholes option pricing model.

Placement Agent Warrants — As disclosed in Note 8 to the December 31, 2008 consolidated financial statements, the Company issued placement agent warrants to purchase an aggregate of 1,756,374 shares of the Company's common stock to the Company's placement agents in connection with their roles in the Company's fall 2007 financing ("the 2007 Financing"). The Company recorded the issuance of the placement agent warrants at their approximate fair market value of \$1,047,000. The value of the placement agent warrants was computed using the Black-Scholes option pricing model.

The following table summarizes certain terms of all of the Company's outstanding warrants at December 31, 2008.

Total Outstanding Warrants as of December 31, 2008

Title of Warrant	Date Issued	Expiry Date	Exercise Price	Total Common Shares Issuable
IPO Underwriter Warrants	3/24/2005	9/20/2009	\$ 7.50	200,000
Lancer Warrants	1/18/2006	1/18/2009	\$ 1.50	21,308
Class D Warrants	11/14/2007	11/14/2012	\$ 0.706	9,112,566
Placement Agent Warrants	11/14/2007	11/14/2012	\$ 0.90	1,756,374
Total all Outstanding Warrants			\$ 1.02(1)	11,090,248

(1) Weighted average.

The IPO Underwriter Warrants expired on September 20, 2009.

The Lancer Warrants expired on January 18, 2009.

Issuance of Common Stock due to Class D Warrants' Cashless Exercise Provision

The Series D warrants have a cashless exercise provision which states, "If, and only if, at the time of exercise pursuant to this Section 1 there is no effective registration statement registering, or no current prospectus available for, the sale of the Warrant Shares to the Holder or the resale of the Warrant Shares by the Holder and the VWAP (as defined below) is greater than the Per Share Exercise Price at the time of exercise, then this Warrant may also be exercised at such time and with respect to such exercise by means of a "cashless exercise" in which the Holder shall be entitled to receive a certificate for the number of Warrant Shares equal to the quotient obtained by dividing (i) the result of (x) the difference of (A) minus (B), multiplied by (y) (C), by (ii) (A), where:

(A) = the VWAP (as defined below) on the Trading Day (as defined below) immediately preceding the date of such election;

(B) = the Per Share Exercise Price of this Warrant, as adjusted; and

(C) = the number of Warrant Shares issuable upon exercise of this Warrant in accordance with the terms of this Warrant by means of a cash exercise rather than a cashless exercise.

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“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted for trading on the New York Stock Exchange, American Stock Exchange, NASDAQ Capital Market, NASDAQ Global Market, NASDAQ Global Select Market or the OTC Bulletin Board, or any successor to any of the foregoing (a “ Trading Market ”), the daily volume weighted average price of the Common Stock on the Trading Market on which the Common Stock is then listed or quoted for trading as reported by Bloomberg L.P. for such date if such date is a date on which the Trading Market on which the Common Stock is then listed or quoted for trading (a “ Trading Day ”) or the nearest preceding Trading Date (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)); (b) if the Common Stock is not then listed or quoted for trading on a Trading Market and if prices for the Common Stock are then reported in the “Pink Sheets” published by Pink Sheets, LLC (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported; or (c) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holder and reasonably acceptable to the Company.”

The Company did not have an effective registration statement or a current prospectus available for the sale of the warrant shares to the holder or the resale of the warrant shares by the holder and the VWAP (as defined above) was greater than the per share exercise price during the months of June through September 2009.

A Class D warrant holder elected to exercise 1,723,001 of the 9,112,566 Class D Warrants outstanding as of June 2009 pursuant to the cashless exercise provision of the warrant. As a result, 1,091,222 shares of common stock were issued to this Class D warrant holder in August 2009. The number of shares outstanding in the September 30, 2009 balance sheet and the number of shares outstanding used in the earnings per share calculation for the three and nine months ended September 30, 2009 include these shares.

Issuance of Common Stock due to Placement Agent Warrants’ Cashless Exercise Provision

National Securities Corporation (“NSC”) and Dinosaur Securities, LLC (“Dinosaur” and together with NSC, the “Placement Agents”) acted as co-placement agents in connection with the 2007 Financing pursuant to an Engagement Letter, dated June 6, 2007 and a Placement Agent Agreement dated September 18, 2007. The Placement Agents received (i) an aggregate cash fee equal to 8% of the face amount of the notes purchased in the 2007 Financing (“the Purchased Notes”) and paid 6.25% to NSC and 1.75% to Dinosaur, and (ii) warrants (“Placement Agent Warrant”) with a term of five years from the date of issuance to purchase 10% of the aggregate number of shares of the Company’s common stock issued upon conversion of the Purchased Notes with an exercise price per share of the Company’s common stock equal to \$0.706. The Company issued Placement Agents Warrants to purchase an aggregate of 1,756,374 shares of the Company’s common stock to the Placement Agent in November 2007 in connection with their roles in the 2007 Financing.

The Placement Agent Warrants have a cashless exercise provision identical to that in the Series D Warrants.

The Company did not have an effective registration statement or a current prospectus available for the sale of the warrant shares to the holders or the resale of the warrant shares by the holders and the VWAP (as defined above) was greater than the per share exercise price during the months of June through September 2009. Several Placement Agents elected to exercise the cashless exercise provision of their warrants.

Placement Agents elected to exercise 1,348,690 of the 1,756,374 Placement Agent Warrants outstanding in June 2009. All elected the Cashless Exercise provision of their warrants. As a result, 594,492 shares of common stock were issued to the Placement Agents in June 2009. The number of shares outstanding in the June 30, 2009 balance sheet and the number of shares outstanding used in the earnings per share calculation for the three and six months ended June 30, 2009 include these shares.

As of June 30, 2009 there were 407,684 Placement Agent Warrants outstanding.

Placement Agents elected to exercise 278,003 of the 407,684 Placement Agent Warrants outstanding in June 2009. All elected the cashless exercise provision of their warrants. As a result, 143,762 shares of common stock were issued to the Placement Agents in the three months ended September 30, 2009. The number of shares outstanding in the September 30, 2009 balance sheet and the number of shares outstanding used in the earnings per share calculation for the three and six months ended September 30, 2009 include these shares.

As of September 30, 2009 there were 129,681 Placement Agent Warrants outstanding.

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July 2009 Private Placement

On July 24, 2009, the Company raised gross proceeds of \$1,251,000 through the private placement to eight accredited investors of an aggregate of 1,345,161 shares of its common stock and warrants to purchase an aggregate of 672,581 shares of its common stock, representing 50% of the shares of common stock purchased by each investor. The Company sold the shares to investors at a price per share equal to \$0.93. The warrants have an exercise price of \$1.12, are exercisable immediately and will terminate on July 24, 2014.

Total Outstanding Warrants as of September 30, 2009

Title of Warrant	Date Issued	Expiry Date	Exercise Price	Total Common Shares Issuable
Class D Warrants	11/14/2007	11/14/2012	\$ 0.90	7,389,565
Placement Agent Warrants	11/14/2007	11/14/2012	\$ 0.706	129,681
July 2009 Warrants	7/24/2009	7/24/2014	\$ 1.12	672,581
Total all Outstanding Warrants			\$.92(1)	8,191,827

(1) Weighted average.

11. Contingencies

A former employee in the United States filed a claim in March 2009 against the Company and our CEO alleging breach of the individual's employment agreement and fraud. The individual was employed with us from April 2008 through January 8, 2009. The claim was settled as of September 30, 2009 for approximately \$11,000. An accrual of \$6,000 has been recorded as of September 30, 2009.

A third party has brought a claim against the Company alleging they incurred damages as a result of its cancellation of a transaction in 2008 involving the sale of Auction Rate Securities. The claim has been referred to a Financial Industry Regulatory Authority (FINRA) binding arbitration panel and is scheduled to be heard in March 2010. There is no specific amount of damages identified in the claim. The Company denies that a transaction agreement had been reached and denies any liability involving this claim. No contingent loss accrual has been recorded by the Company as of September 30, 2009.

12. Subsequent Events

A former employee in France filed a claim in October 2008 stating that the individual is due 30,000 Euro or approximately \$42,000 in back wages. The individual left our employment four years ago and signed a Separation Agreement which stated we had no further liability to the individual. Our attorney has advised us that the Separation Agreement is valid and should preclude us from having any liability. A judgment dated October 15, 2009 was issued by a French court whereby the claimant was awarded 11,707 Euro. The judgment is final. An accrual of \$18,000 has been recorded as of September 30, 2009 to cover this liability.

On October 26, 2009, the Company amended the certificate of incorporation to increase the authorized capital stock from 65,000,000 shares to 95,000,000 shares and the authorized common stock from 60,000,000 shares to 90,000,000 shares. This increase was approved by the Company's stockholders on October 22, 2009. The amount of authorized preferred stock, which is 5,000,000 shares, was not increased.

The Company has evaluated subsequent events through November 12, 2009, the date of issuance of these financial statements.

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PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution.

The following table sets forth the costs and expenses payable by the registrant in connection with the sale of the securities being registered. All amounts are estimates.

SEC Filing Fee	\$ 837
Printing expenses	\$ 3,000
Legal Fees and Expenses	\$ 45,000
Accounting Fees and Expenses	\$ 5,000
Miscellaneous	\$ 1,163
Total	\$ 55,000

Item 14. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law, or DGCL, permits a corporation, under specified circumstances, to indemnify its directors, officers, employees or agents against expenses (including attorneys' fees), judgments, fines and amounts paid in settlements actually and reasonably incurred by them in connection with any action, suit or proceeding brought by third parties by reason of the fact that they were or are directors, officers, employees or agents of the corporation, if such directors, officers, employees or agents acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reason to believe their conduct was unlawful. In a derivative action, that is one by or in the right of the corporation, indemnification may be made only for expenses actually and reasonably incurred by directors, officers, employees or agents in connection with the defense or settlement of an action or suit, and only with respect to a matter as to which they will have acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification will be made if such person will have been adjudged liable to the corporation, unless and only to the extent that the court in which the action or suit was brought will determine upon application that the defendant directors, officers, employees or agents are fairly and reasonably entitled to indemnity for such expenses despite such adjudication of liability.

Our Fourth Amended and Restated Certificate of Incorporation, as amended, provides for indemnification of our directors and officers of the registrant to the fullest extent permitted by the DGCL. Our Second Amended and Restated By-Laws provides that we will generally indemnify our directors, officers, employees or agents to the fullest extent permitted by the law against all losses, claims, damages or similar events. We have obtained liability insurance for each director and officer for certain losses arising from claims or charges made against them while acting in their capacities as directors or officers of our company.

Item 15. Recent Sales of Unregistered Securities.

On July 24, 2009, we raised gross proceeds of \$1,251,000 through the private placement to eight accredited investors of an aggregate of 1,345,161 shares of our common stock and warrants to purchase an aggregate of 672,581 shares of our common stock, representing 50% of the shares of common stock purchased by each investor. We sold the shares to investors at a price per share equal to \$0.93. The warrants have an exercise price of \$1.12, are exercisable immediately and will terminate on July 24, 2014.

In September 2007, we entered into a Subscription Agreement with Lambda Investors LLC, or Lambda, GPC 76, LLC, Lewis P. Schneider and Enso Global Equities Partnership LP (collectively, the "New Investors") pursuant to

which the New Investors purchased an aggregate of approximately \$12.7 million principal amount of Series A 10% Secured Convertible Notes due 2008 (the “Purchased Notes”) of Nephros, for the face value thereof (the “Offering”).

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Concurrently with the Offering, Nephros entered into an Exchange Agreement with each of Southpaw Credit Opportunity Master Fund LP, 3V Capital Master Fund Ltd, Distressed/High Yield Trading Opportunities, Ltd., Kudu Partners, L.P. and LJHS Company (collectively, the “Exchange Investors” and together with the New Investors, the “Investors”), pursuant to which the Exchange Investors agreed to exchange the principal and accrued but unpaid interest in an aggregate amount of approximately \$5.6 million under the 6% Secured Convertible Notes due 2012 (“Old Notes”) of Nephros, for new Series B 10% Secured Convertible Notes due 2008 in an aggregate principal amount of \$5.3 million (the “Exchange Notes”).

All principal and accrued but unpaid interest under the New Notes automatically converted into (i) an aggregate of 18,255,128 shares of our common stock, par value \$0.001 per share at a conversion price per share equal to \$0.706 and (ii) in the case of Purchased Notes, but not Exchange Notes, Class D Warrants to purchase an aggregate of 9,112,566 shares of common stock with an exercise price per share equal to \$0.706.

National Securities Corporation, or NSC, and Dinosaur Securities, LLC, or Dinosaur, acted as co-placement agents in connection with the Financing pursuant to an Engagement Letter, dated June 6, 2007 and a Placement Agent Agreement dated September 18, 2007. The co-placement agents received (i) an aggregate cash fee equal to 8% of the face amount of the Purchased Notes, allocated and paid 6.25% to NSC and 1.75% to Dinosaur, and (ii) warrants with a term of five years from the date of issuance to purchase an aggregate of 1,756,374 shares of common stock at an exercise price of \$0.706 per share.

All of the securities described above were issued under the exemption from registration provided by Section 4(2) of the Securities Act.

Item 16. Exhibits

(a) Exhibits. The following exhibits are filed as part of this registration statement:

Exhibit No.	Description
3.1	Fourth Amended and Restated Certificate of Incorporation of the Registrant.(5)
3.2	Certificate of Amendment to the Fourth Amended and Restated Certificate of Incorporation of the Registrant. (13)
3.3	Certificate of Amendment to the Fourth Amended and Restated Certificate of Incorporation of the Registrant. (13)
3.4	Certificate of Amendment to the Fourth Amended and Restated Certificate of Incorporation of the Registrant as filed with the Delaware Secretary of State on November 13, 2007. (14)
3.5*	Certificate of Amendment to the Fourth amended and Restated Certificate of Incorporation of the Registrant as filed with the Delaware Secretary of state on October 26, 2009.
3.6	Second Amended and Restated By-Laws of the Registrant.(16)
4.1	Specimen of Common Stock Certificate of the Registrant.(1)
4.2	Form of Underwriter’s Warrant.(1)
4.3	Warrant for the purchase of shares of common stock dated January 18, 2006, issued to Marty Steinberg, Esq., as Court-appointed Receiver for Lancer Offshore, Inc.(17)
4.4	Form of Series A 10% Secured Convertible Note due 2008 convertible into Common Stock and Warrants. (15)
4.5	Form of Series B 10% Secured Convertible Note due 2008 convertible into Common Stock.(15)
4.6	Form of Class D Warrant.(15)

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- 4.7 Form of Placement Agent Warrant.(15)
- 4.8 Form of Investor Warrant issued on July 24, 2009. (20)
- 5.1* Opinion of Wyrick Robbins Yates & Ponton LLP as to the legality of the securities being registered.
- 10.1 Amended and Restated 2000 Nephros Equity Incentive Plan.(1)(2)
- 10.2 2004 Nephros Stock Incentive Plan.(1)(2)
- 10.3 Amendment No. 1 to 2004 Nephros Stock Incentive Plan.(2)(5)
- 10.4 Amendment No. 2 to the Nephros, Inc. 2004 Stock Incentive Plan.(14)
- 10.5 Form of Subscription Agreement dated as of June 1997 between the Registrant and each Purchaser of Series A Convertible Preferred Stock. (1)
- 10.6 Amendment and Restatement to Registration Rights Agreement, dated as of May 17, 2000 and amended and restated as of June 26, 2003, between the Registrant and the holders of a majority of Registrable Shares (as defined therein). (1)

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- 10.7 Employment Agreement dated as of November 21, 2002 between Norman J. Barta and the Registrant. (1)(2)
- 10.8 Amendment to Employment Agreement dated as of March 17, 2003 between Norman J. Barta and the Registrant. (1)(2)
- 10.9 Amendment to Employment Agreement dated as of May 31, 2004 between Norman J. Barta and the Registrant. (1)(2)
- 10.10 Employment Agreement effective as of July 1, 2007 between Nephros, Inc. and Norman J. Barta. (14)
- 10.11 Form of Employee Patent and Confidential Information Agreement.(1)
- 10.12 Form of Employee Confidentiality Agreement.(1)
- 10.13 Settlement Agreement and Mutual Release dated June 19, 2002 between Plexus Services Corp. and the Registrant.(1)
- 10.14 Settlement Agreement dated as of January 31, 2003 between Lancer Offshore, Inc. and the Registrant. (1)
- 10.15 Settlement Agreement dated as of February 13, 2003 between Hermitage Capital Corporation and the Registrant. (1)
- 10.16 Supply Agreement between Nephros, Inc. and Membrana GmbH, dated as of December 17, 2003. (1)(3)
- 10.17 Amended Supply Agreement between Nephros, Inc. and Membrana GmbH dated as of June 16, 2005. (3)(7)
- 10.18 Manufacturing and Supply Agreement between Nephros, Inc. and Medica s.r.l., dated as of May 12, 2003. (1)(3)
- 10.19 Manufacturing and Supply Agreement between Nephros, Inc. and Medica s.r.l., dated as of March 22, 2005 supercedes prior Agreement dated May 12, 2003. (3)(8)
- 10.20 HDF-Cartridge License Agreement dated as of March 2, 2005 between Nephros, Inc. and Asahi Kasei Medical Co., Ltd. (4)
- 10.21 Subscription Agreement dated as of March 2, 2005 between Nephros, Inc. and Asahi Kasei Medical Co., Ltd. (4)
- 10.22 Non-employee Director Compensation Summary.(2)(6)
- 10.23 Named Executive Officer Summary of Changes to Compensation.(2)(6)
- 10.24 Stipulation of Settlement Agreement between Lancer Offshore, Inc. and Nephros, Inc. approved on December 19, 2005. (8)
- 10.25 Consulting Agreement, dated as of January 11, 2006, between the Company and Bruce Prashker. (2)(8)
- 10.26 Summary of Changes to Chief Executive Officer's Compensation.(2)(8)
- 10.27 Offer of Employment Agreement, dated as of February 24 2006, between the Company and Mark W. Lerner. (2)(8)
- 10.28 Form of 6% Secured Convertible Note due 2012 for June 1, 2006 Investors.(9)
- 10.29 Form of Common Stock Purchase Warrant.(9)
- 10.30 Form of Subscription Agreement, dated as of June 1, 2006.(9)
- 10.31 Form of Registration Rights Agreement, dated as of June 1, 2006.(9)
- 10.32 Form of 6% Secured Convertible Note due 2012 for June 30, 2006 Investors.(10)
- 10.33 Form of Subscription Agreement, dated as of June 30, 2006.(10)
- 10.34 Employment Agreement between Nephros, Inc. and William J. Fox, entered into on August 2, 2006. (2)(11)
- 10.35 Addendum to the Commercial Contract between Nephros, Inc. and Bellco S.p.A, effective as of January 1, 2007. (3)(12)
- 10.36 Form of Subscription Agreement between Nephros and Subscriber.(15)
- 10.37

Explanation of Responses:

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- Exchange Agreement, dated as of September 19, 2007, between Nephros and the Holders. (15)
- 10.38 Registration Rights Agreement, dated as of September 19, 2007, among Nephros and the Investors. (15)
- 10.39 Investor Rights Agreement, dated as of September 19, 2007, among Nephros and the Covered Holders as defined therein. (15)
- 10.40 Placement Agent Agreement, dated as of September 18, 2007, among Nephros, NSC and Dinosaur. (15)

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- 10.41 License Agreement, dated October 1, 2007, between the Trustees of Columbia University in the City of New York, and Nephros. (17)
- 10.42 Employment Agreement, dated as of April 1, 2008, between Nephros, Inc. and Gerald Kochanski. (2) (18)
- 10.43 Separation Agreement, dated as of April 28, 2008, between Nephros, Inc. and Mark W. Lerner. (2) (18)
- 10.44 Separation Agreement and Release, dated as of September 15, 2008, between Nephros, Inc. and Norman J. Barta. (2) (19)
- 10.45 Employment Agreement, dated as of September 15, 2008, between Nephros, Inc. and Ernest A. Elgin III. (2) (19)
- 10.46 Distribution Agreement between Nephros, Inc. and OLS, dated as of November 26, 2008.(20)
- 10.47 Lease Agreement between Nephros International LTD and Coldwell Banker Penrose & O'Sullivan dated November 30, 2008.(20)
- 10.48 Distribution Agreement between Nephros, Inc. and Aqua Services, Inc., dated as of December 3, 2008.(20)
- 10.49 Sales Management Agreement between Nephros, Inc. and Steve Adler, dated as of December 16, 2008.(20)
- 10.50 Amendment No. 3 to the Nephros, Inc. 2004 Stock Incentive Plan.(20)
- 10.51 Form of Subscription Agreement between Nephros, Inc. and various investors, dated July 24, 2009. (20)
- 21.1 Subsidiaries of Registrant.(12)
- 23.1 Consent of Rothstein Kass, Certified Public Accountants.
- 23.2* Consent of Wyrick Robbins Yates & Ponton LLP (contained in Exhibit 5.1).

*Previously filed.

- (1) Incorporated by reference to Nephros, Inc.'s Registration Statement on Form S-1, File No. 333-116162.
- (2) Management contract or compensatory plan arrangement.
- (3) Portions omitted pursuant to a request for confidential treatment.
- (4) Incorporated by reference to Nephros, Inc.'s Current Report on Form 8-K Filed with the Securities and Exchange Commission on March 3, 2005.
- (5) Incorporated by reference to Nephros, Inc.'s Registration Statement on Form S-8 (No. 333-127264), as filed with the Securities and Exchange Commission on August 5, 2005.
- (6) Incorporated by reference to Nephros, Inc.'s Quarterly Report on Form 10-QSB, filed with the Securities and Exchange Commission on May 16, 2005.
- (7) Incorporated by reference to Nephros, Inc.'s Quarterly Report on Form 10-QSB, filed with the Securities and Exchange Commission on August 15, 2005.
- (8) Incorporated by reference to Nephros, Inc.'s Annual Report on Form 10-KSB, filed with the Securities and Exchange Commission on April 20, 2006.
- (9) Incorporated by reference to Nephros, Inc.'s Current Report on Form 8-K filed with the Securities and Exchange Commission on June 2, 2006.
- (10) Incorporated by reference to Nephros, Inc.'s Current Report on Form 8-K filed with the Securities and Exchange Commission on July 7, 2006.
- (11) Incorporated by reference to Nephros, Inc.'s Current Report on Form 8-K filed with the Securities and Exchange Commission on August 4, 2006.
- (12)

Explanation of Responses:

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Incorporated by reference to Nephros, Inc.'s Annual Report on Form 10-KSB for the year ended December 31, 2006, filed with the Securities and Exchange Commission on April 10, 2007.

- (13) Incorporated by reference to Nephros, Inc.'s Quarterly Report on Form 10-QSB for the quarter ended June 30, 2007, filed with the Securities and Exchange Commission on August 13, 2007.
- (14) Incorporated by reference to Nephros, Inc.'s Quarterly Report on Form 10-QSB for the quarter ended September 30, 2007, filed with the Securities and Exchange Commission on November 13, 2007.

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- (15) Incorporated by reference to Nephros, Inc.'s Current Report on Form 8-K filed with the Securities and Exchange Commission on September 25, 2007.
- (16) Incorporated by reference to Nephros, Inc.'s Current Report on Form 8-K filed with the Securities and Exchange Commission on December 3, 2007.
- (17) Incorporated by reference to Nephros, Inc.'s Annual Report on Form 10-KSB for the year ended December 31, 2007, filed with the Securities and Exchange Commission on March 31, 2008.
- (18) Incorporated by reference to Nephros, Inc.'s Quarterly Report on Form 10-Q for the quarter ended March 31, 2008, filed with the Securities and Exchange Commission on May 15, 2008.
- (19) Incorporated by reference to Nephros, Inc.'s Quarterly Report on Form 10-Q for the quarter ended September 30, 2008, filed with the Securities and Exchange Commission on November 14, 2008.
- (20) Incorporated by reference to Nephros, Inc.'s Quarterly Report on Form 10-Q for the quarter ended June 30, 2009, filed with the Securities and Exchange Commission on August 14, 2009.

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Item 17. Undertakings.

(a) Insofar as indemnification for liabilities arising under the Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission, or SEC, such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

(b) The undersigned Registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective; and

(2) For purposes of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized in the City of River Edge, State of New Jersey, on January 21, 2010.

NEPHROS, INC.

Date: January 21, 2010

By: /s/ Ernest A. Elgin III
 Name: Ernest A. Elgin III
 Title: President, Chief Executive Officer and Director

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Ernest A. Elgin III Ernest A. Elgin III	President, Chief Executive Officer (Principal Executive Officer) and Director	January 21, 2010
/s/ Gerald J. Kochanski Gerald J. Kochanski	Chief Financial Officer (Principal Financial and Accounting Officer)	January 21, 2010
/s/ Arthur H. Amron* Arthur H. Amron	Director	January 21, 2010
/s/ Lawrence J. Centella* Lawrence J. Centella	Director	January 21, 2010
/s/ Paul A. Mieyal* Paul A. Mieyal	Director	January 21, 2010
/s/ James S. Scibetta* James S. Scibetta	Director	January 21, 2010

*By: Gerald J.
 Kochanski
 Gerald J.
 Kochanski
 Attorney-in-Fact

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