11-092 thru
11-094

KPMG

# FRESENIUS MEDICAL CARE HOLDINGS, INC. AND SUBSIDIARIES

Consolidated Financial Statements

December 31, 2010 and 2009

(With Independent Auditors' Report Thereon)

**FRESENIUS MEDICAL CARE HOLDINGS, INC.
AND SUBSIDIARIES**

## Table of Contents

KPMG

**KPMG LLP**
Two Financial Center
60 South Street
Boston, MA 02111

## Independent Auditors' Report

The Shareholders
Fresenius Medical Care Holdings, Inc.:

We have audited the accompanying consolidated balance sheets of Fresenius Medical Care Holdings, Inc. and subsidiaries (the Company) as of December 31, 2010 and 2009 and the related consolidated statements of operations, comprehensive income, changes in equity, and cash flows for each of the years in the three-year period ended December 31, 2010. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2010 and 2009, and the results of their operations and their cash flows for each of the years in the three-year period ended December 31, 2010 in conformity with U.S. generally accepted accounting principles.

KPMG LLP

Boston, Massachusetts
April 28, 2011

**FRESENIUS MEDICAL CARE HOLDINGS, INC.**
**AND SUBSIDIARIES**

Consolidated Balance Sheets

December 31, 2010 and 2009

(Dollars in thousands)

| **Assets** | | **2010** | **2009** |
|---|---|---|---|
| Current assets: | | | |
| Cash and cash equivalents | $ | 163,292 | 153,303 |
| Trade accounts receivable, less allowances of $209,791 in 2010 and $203,279 in 2009 | | 1,176,849 | 1,067,621 |
| Receivables from affiliates | | 322,676 | 311,042 |
| Inventories | | 335,103 | 352,624 |
| Deferred income taxes | | 291,074 | 278,430 |
| Other current assets | | 464,688 | 453,679 |
| Total current assets | | 2,753,682 | 2,616,699 |
| Property, plant and equipment, net of accumulated depreciation and amortization of $1,154,863 and $1,001,607, respectively | | 1,384,114 | 1,366,009 |
| Other assets: | | | |
| Goodwill | | 7,162,623 | 6,832,695 |
| Other intangible assets, net of accumulated amortization of $345,593 and $286,211, respectively | | 497,792 | 721,140 |
| Other assets and deferred charges | | 219,407 | 303,869 |
| Total other assets | | 7,879,822 | 7,857,704 |
| Total assets | $ | 12,017,618 | 11,840,412 |
| **Liabilities and Equity** | | | |
| Current liabilities: | | | |
| Short-term borrowings | $ | 546,612 | 230,144 |
| Current portion of long-term debt and capital lease obligations | | 107,967 | 150,139 |
| Current portion of mandatorily redeemable preferred securities | | — | 465,813 |
| Current portion of borrowings from affiliates | | 231,974 | 12,803 |
| Accounts payable | | 223,901 | 185,851 |
| Accrued liabilities | | 774,154 | 757,059 |
| Accrued special charge for legal matters | | 115,828 | 115,970 |
| Accounts payable to affiliates | | 43,669 | 90,658 |
| Accrued income taxes | | 140,456 | 160,989 |
| Total current liabilities | | 2,184,561 | 2,169,426 |
| Long-term debt | | 1,363,138 | 1,587,785 |
| Noncurrent borrowings from affiliates | | 494,231 | 707,954 |
| Capital lease obligations | | 2,001 | 2,265 |
| Long-term mandatorily redeemable preferred securities | | 665,500 | 665,500 |
| Deferred income taxes | | 467,135 | 378,962 |
| Other liabilities | | 279,423 | 331,781 |
| Total liabilities | | 5,455,989 | 5,843,673 |
| Noncontrolling interests subject to put provisions | | 273,022 | 231,303 |
| Equity: | | | |
| Preferred stock, $1 par value | | 1,379,916 | 1,487,731 |
| Common stock, $1 par value. Authorized 300,000,000 shares; outstanding 90,000,000 shares | | 90,000 | 90,000 |
| Additional paid-in capital | | 1,906,036 | 1,909,976 |
| Retained earnings | | 2,909,317 | 2,304,412 |
| Accumulated other comprehensive loss | | (82,678) | (113,474) |
| Total Fresenius Medical Care Holdings Inc. equity | | 6,202,591 | 5,678,645 |
| Noncontrolling interests not subject to put provisions | | 86,016 | 86,791 |
| Total equity | | 6,288,607 | 5,765,436 |
| Total liabilities and equity | $ | 12,017,618 | 11,840,412 |

See accompanying notes to consolidated financial statements.

**FRESENIUS MEDICAL CARE HOLDINGS, INC.**
**AND SUBSIDIARIES**

Consolidated Statements of Operations

Years ended December 31, 2010, 2009 and 2008

(Dollars in thousands, except share data)

| | | 2010 | 2009 | 2008 |
|---|---|---|---|---|
| Net revenues: | | | | |
| Health care services | $ | 7,248,628 | 6,756,613 | 6,213,512 |
| Medical supplies | | 774,958 | 759,098 | 697,116 |
| | | 8,023,586 | 7,515,711 | 6,910,628 |
| Expenses: | | | | |
| Cost of health care services | | 4,568,136 | 4,379,157 | 4,045,967 |
| Cost of medical supplies | | 529,610 | 492,573 | 415,752 |
| General and administrative expenses | | 1,099,776 | 968,311 | 877,635 |
| Provision for doubtful accounts | | 209,001 | 198,200 | 209,248 |
| Depreciation and amortization | | 285,481 | 263,983 | 237,411 |
| Research and development | | 30,879 | 26,604 | 22,342 |
| Interest expense, net, and related financing costs (including $170,956, $177,548 and $101,986 of interest with affiliates) | | 210,871 | 239,943 | 214,343 |
| | | 6,933,754 | 6,568,771 | 6,022,698 |
| Income before income taxes | | 1,089,832 | 946,940 | 887,930 |
| Provision for income taxes | | 407,535 | 355,414 | 342,593 |
| Net income | | 682,297 | 591,526 | 545,337 |
| Less net income attributable to noncontrolling interests | | 76,767 | 68,242 | 35,654 |
| Net income attributable to Fresenius Medical Care Holdings, Inc. | $ | 605,530 | 523,284 | 509,683 |
| Basic and diluted net income per share | $ | 6.73 | 5.81 | 5.66 |

See accompanying notes to consolidated financial statements.

**FRESENIUS MEDICAL CARE HOLDINGS, INC.**
**AND SUBSIDIARIES**

Consolidated Statements of Comprehensive Income

Years ended December 31, 2010, 2009 and 2008

(Dollars in thousands)

| | | 2010 | 2009 | 2008 |
|---|---|---|---|---|
| Net income | $ | 682,297 | 591,526 | 545,337 |
| Other comprehensive income (loss): | | | | |
| Foreign currency translation adjustments | | 2,492 | 2,958 | (2,121) |
| Pension asset (liability) adjustments, (net of deferred tax of $8,377, $(1,809) and $16,840, respectively) | | (12,883) | 5,977 | (25,260) |
| Derivative instruments, (net of deferred tax of $(26,779), $(21,379) and $41,598, respectively) | | 41,187 | 33,577 | (65,821) |
| Total other comprehensive income (loss) | | 30,796 | 42,512 | (93,202) |
| Total comprehensive income | | 713,093 | 634,038 | 452,135 |
| Comprehensive income attributable to noncontrolling interests | | 76,767 | 68,242 | 35,654 |
| Comprehensive income attributable to Fresenius Medical Care Holdings, Inc. | $ | 636,326 | 565,796 | 416,481 |

See accompanying notes to consolidated financial statements.

**FRESENIUS MEDICAL CARE HOLDINGS, INC.
AND SUBSIDIARIES**

Consolidated Statements of Changes in Equity

Years ended December 31, 2010, 2009 and 2008

(Dollars in thousands)

| | Preferred stock | | Common stock | | Additional paid-in capital | Retained earnings | Accumulated other comprehensive income (loss) | Total FMCH, Inc. shareholders' equity | Noncontrolling interests not subject to put provisions | Total equity |
|---|---|---|---|---|---|---|---|---|---|---|
| | Shares | Amount | Shares | Amount | | | | | | |
| Balance, December 31, 2007 | 5,000,000 | $ 1,520,262 | 90,000,000 | $ 90,000 | 1,919,150 | 1,271,628 | (63,024) | 4,738,016 | 47,310 | 4,785,326 |
| Net income | — | — | — | — | — | 509,683 | — | 509,683 | 22,025 | 531,708 |
| Other comprehensive income | — | — | — | — | — | — | (93,202) | (93,202) | — | (93,202) |
| Exercise of stock options and related tax effects | — | — | — | — | 4,431 | — | — | 4,431 | — | 4,431 |
| Compensation expense related to stock options | — | — | — | — | 23,212 | — | — | 23,212 | — | 23,212 |
| Series C preferred stock – marked to market | — | (83,031) | — | — | — | — | — | (83,031) | — | (83,031) |
| Cash contributions noncontrolling interests | — | — | — | — | — | — | — | — | 4,105 | 4,105 |
| Dividends paid noncontrolling interests | — | — | — | — | — | — | — | — | (16,370) | (16,370) |
| Purchase (sale) of noncontrolling interests | — | — | — | — | — | — | — | — | 21,499 | 21,499 |
| Changes in fair value of noncontrolling interests subject to put provisions | — | — | — | — | (24,258) | — | — | (24,258) | — | (24,258) |
| Other reclassifications | — | — | — | — | (57) | 50 | 7 | — | — | — |
| Balance, December 31, 2008 | 5,000,000 | 1,437,231 | 90,000,000 | 90,000 | 1,922,478 | 1,781,361 | (156,219) | 5,074,851 | 78,569 | 5,153,420 |
| Net income | — | — | — | — | — | 523,284 | — | 523,284 | 39,636 | 562,920 |
| other comprehensive income | — | — | — | — | — | — | 42,512 | 42,512 | — | 42,512 |
| exercise of stock options and related tax effects | — | — | — | — | 2,728 | — | — | 2,728 | — | 2,728 |
| compensation expense related to stock options | — | — | — | — | 24,688 | — | — | 24,688 | — | 24,688 |
| Series C preferred stock – marked to market | — | 50,500 | — | — | — | — | — | 50,500 | — | 50,500 |
| Cash contributions noncontrolling interests | — | — | — | — | — | — | — | — | 551 | 551 |
| Dividends paid noncontrolling interests | — | — | — | — | — | — | — | — | (38,836) | (38,836) |
| Purchase (sale) of noncontrolling interests | — | — | — | — | (113) | — | — | (113) | 6,882 | 6,769 |
| Changes in fair value of noncontrolling interests subject to put provisions | — | — | — | — | (39,816) | — | — | (39,816) | — | (39,816) |
| Other reclassifications | — | — | — | — | 11 | (233) | 233 | 11 | (11) | — |
| Balance, December 31, 2009 | 5,000,000 | 1,487,731 | 90,000,000 | 90,000 | 1,909,976 | 2,304,412 | (113,474) | 5,678,645 | 86,791 | 5,765,436 |
| Net income | — | — | — | — | — | 605,530 | — | 605,530 | 47,929 | 653,459 |
| Other comprehensive income | — | — | — | — | — | — | 30,796 | 30,796 | — | 30,796 |
| Exercise of stock options and related tax effects | — | — | — | — | 5,618 | — | — | 5,618 | — | 5,618 |
| Compensation expense related to stock options | — | — | — | — | 20,330 | — | — | 20,330 | — | 20,330 |
| Series C preferred stock – marked to market | — | (107,815) | — | — | — | — | — | (107,815) | — | (107,815) |
| Cash contributions noncontrolling interests | — | — | — | — | — | — | — | — | 3,700 | 3,700 |
| Dividends paid noncontrolling interests | — | — | — | — | — | — | — | — | (53,721) | (53,721) |
| Purchase (sale) of noncontrolling interests | — | — | — | — | (5,669) | — | — | (5,669) | 1,305 | (4,364) |
| Changes in fair value of noncontrolling interests subject to put provisions | — | — | — | — | (24,223) | — | — | (24,223) | — | (24,223) |
| Other reclassifications | — | — | — | — | 4 | (625) | — | (621) | 12 | (609) |
| Balance, December 31, 2010 | 5,000,000 | $ 1,379,916 | 90,000,000 | $ 90,000 | 1,906,036 | 2,909,317 | (82,678) | 6,202,591 | 86,016 | 6,288,607 |

See accompanying notes to consolidated financial statements.

## FRESENIUS MEDICAL CARE HOLDINGS, INC.
## AND SUBSIDIARIES

Consolidated Statements of Cash Flows

Years ended December 31, 2010, 2009, and 2008

(Dollars in thousands)

| | 2010 | 2009 | 2008 |
|---|---|---|---|
| Cash flows from operating activities: | | | |
| Net income | $ 682,297 | 591,526 | 545,337 |
| Adjustments to reconcile net income to net cash provided by operating activities: | | | |
| Depreciation and amortization | 285,483 | 263,983 | 237,411 |
| Provision for doubtful accounts | 209,001 | 198,200 | 209,248 |
| Deferred income taxes | 44,481 | 9,863 | 101,121 |
| Gain on sale of interest in investments and divestitures | (1,694) | (703) | (18,604) |
| Amortization of discount on Senior Note | 887 | 888 | 888 |
| Equity investment income | (6,737) | — | — |
| Loss on disposal of properties and equipment | 3,129 | 6,780 | 2,829 |
| Compensation expense related to stock options | 20,330 | 24,688 | 23,212 |
| Amortization of discount on investments | 587 | 979 | 498 |
| Loss (gain) on forward sale and currency exchange agreements | 20,267 | (19,877) | (5,503) |
| Changes in operating assets and liabilities, net of effects of purchase acquisitions and foreign exchange: | | | |
| Increase in trade accounts receivable | (316,706) | (131,935) | (307,156) |
| Decrease (increase) in inventories | 17,588 | (34,887) | (41,880) |
| Increase in other current assets | (19,037) | (95,679) | (73,168) |
| Decrease (increase) in other assets and deferred charges | 6,993 | (6,017) | (6,445) |
| Increase (decrease) in accounts payable | 36,807 | (22,214) | 31,616 |
| (Decrease) increase in accrued income taxes | (17,627) | 55,415 | 108,133 |
| Increase (decrease) in accrued liabilities | 15,571 | 19,603 | (41,074) |
| Decrease in accrued special charge for legal matters | (142) | (531) | (498) |
| (Decrease) increase in other long-term liabilities | (12,345) | 3,852 | 12,573 |
| Net changes due to/from affiliates | (81,908) | (47,295) | (9,498) |
| Distributions received on equity investments | 6,000 | — | — |
| Other, net | 7,972 | 1,007 | 2,606 |
| Net cash provided by operating activities | 901,197 | 817,646 | 771,646 |
| Cash flows from investing activities: | | | |
| Capital expenditures | (279,495) | (293,435) | (371,580) |
| Proceeds from sale of property, plant and equipment | 1,096 | 2,814 | 6,895 |
| Acquisitions and investments, net of cash acquired | (125,921) | (121,750) | (118,175) |
| Proceeds from sale of interests and divestitures | 10,288 | 916 | 53,087 |
| Equity investment (contributions) | (1,800) | — | — |
| Net cash used in investing activities | (395,832) | (411,455) | (429,773) |
| Cash flows from financing activities: | | | |
| Net increase (decrease) in borrowings from affiliates | 5,448 | (47,658) | (738,948) |
| Net increase (decrease) from receivable financing facility | 296,000 | (325,000) | 454,000 |
| Net (decrease) increase on debt and capital leases | (714,429) | 46,044 | (72,522) |
| Distributions to noncontrolling interests | (92,685) | (55,766) | (22,918) |
| Debt issuance costs | (21,815) | — | — |
| Contributions from noncontrolling interests | 8,989 | 5,659 | — |
| Proceeds from sale of noncontrolling interests | 17,384 | 6,880 | — |
| Purchases of noncontrolling interests | (10,366) | (6,483) | — |
| Tax benefit on stock options | 13,313 | 7,696 | 7,121 |
| Net cash used in financing activities | (498,161) | (368,628) | (373,267) |
| Effects of changes in foreign exchange rates | 2,785 | 6,394 | (3,255) |
| Change in cash and cash equivalents | 9,989 | 43,957 | (34,649) |
| Cash and cash equivalents at beginning of year | 153,303 | 109,346 | 143,995 |
| Cash and cash equivalents at end of year | $ 163,292 | 153,303 | 109,346 |

See accompanying notes to consolidated financial statements.



(Continued)

**FRESENIUS MEDICAL CARE HOLDINGS, INC.**
**AND SUBSIDIARIES**

Consolidated Statements of Cash Flows

Years ended December 31, 2010, 2009, and 2008

(Dollars in thousands)

| | | 2010 | 2009 | 2008 |
|---|---|---|---|---|
| Supplemental disclosures of cash flow information: | | | | |
| Cash paid during the period for: | | | | |
| Interest | $ | 233,073 | 229,896 | 169,180 |
| Interest on mandatorily redeemable preferred securities | | 50,884 | 36,866 | 64,308 |
| Income taxes, net | | 389,912 | 283,387 | 123,892 |
| Details for acquisitions: | | | | |
| Assets acquired | | (166,328) | (161,043) | (116,315) |
| Liabilities assumed | | 5,050 | 1,712 | 1,963 |
| Noncontrolling Interests | | 17,782 | 29,400 | (3,836) |
| Notes assumed in connection with acquisition | | 15,606 | — | — |
| Cash paid | | (127,890) | (129,931) | (118,188) |
| Less cash acquired | | 1,969 | 5,167 | 13 |
| Net cash paid for acquisitions | $ | (125,921) | (124,764) | (118,175) |

See accompanying notes to consolidated financial statements.

## (1) The Company

Fresenius Medical Care Holdings, Inc., a New York corporation (the Company or FMCH) is a subsidiary of Fresenius Medical Care AG & Co. KGaA, a German partnership limited by shares (FMCAG & KGaA or the Parent Company). The Company conducts its operations through five principal subsidiaries, National Medical Care, Inc. (NMC), Fresenius USA Marketing, Inc., Fresenius USA Manufacturing, Inc. and SRC Holding Company, Inc., all Delaware corporations and Fresenius USA, Inc., a Massachusetts corporation.

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries and those financial statements where the Company controls professional corporations in accordance with Financial Accounting Standards Board (FASB) Accounting Standards Codification 810, *Consolidation*. The consolidated financial statements include all companies in which the Company has legal or effective control. Noncontrolling interest represents the proportionate equity interest of owners in the Company's consolidated entities that are not wholly owned.

The Company is primarily engaged in (i) providing kidney dialysis services and clinical laboratory testing (ii) manufacturing and distributing products and equipment for kidney dialysis treatment and (iii) providing other medical ancillary services.

### *(a) Basis of Presentation*

The Company has reclassified and revalued noncontrolling interests subject to put provisions in the consolidated balance sheets. As a result, at December 31, 2009, 2008, and 2007, the Company reclassified \$85,658, \$56,337, and \$32,556, respectively, from "Noncontrolling interests" and \$145,645, \$105,829, and \$81,571, respectively, from "Additional paid in capital" to "Noncontrolling interests subject to put provisions." The Company has also renamed the remaining balance of "Noncontrolling interests" as "Noncontrolling interests not subject to put provisions." The consolidated statement of changes in equity has been adjusted accordingly. There is no impact on the consolidated statements of operations.

Certain items in the prior years' consolidated financial statements may have been reclassified to conform with the current year's presentation. Net operating results have not been affected by the reclassifications.

The Company has evaluated subsequent events through April 28, 2011, which is the date these consolidated financial statements were issued. See note 2(v).

### *(b) Basis of Consolidation*

The consolidated financial statements in this report at December 31, 2010 and 2009 and for each of the years in the three-year period ended December 31, 2010 have been prepared in accordance with U.S. Generally Accepted Accounting Principles (U.S. GAAP). These consolidated financial statements reflect all adjustments that, in the opinion of management, are necessary for the fair presentation of the consolidated results for all periods presented. All significant intercompany accounts and transactions have been eliminated in consolidation.

### *(c) United States Health Care Reform*

The Patient Protection and Affordable Care Act was enacted in the United States on March 23, 2010 and subsequently amended by the Health Care and Educational Affordability Reconciliation Act (as amended, ACA). ACA will implement broad healthcare system reforms, including (i) provisions to facilitate access to affordable health insurance for all Americans, (ii) expansion of the Medicaid program, (iii) an industry fee on pharmaceutical companies starting in 2011 based on sales of brand name pharmaceuticals to government healthcare programs, (iv) a 2.3% excise tax on manufacturers' medical device sales starting in 2013, (v) increases in Medicaid prescription drug rebates effective January 1, 2010, (vi) commercial insurance market reforms that protect consumers, such as bans on lifetime and annual limits, coverage of pre-existing conditions, and limits on waiting periods, (vii) provisions encouraging integrated care, efficiency and coordination among providers and (viii) provisions for reduction of healthcare program waste and fraud. ACA's medical device excise tax, Medicaid drug rebate increases and annual pharmaceutical industry fees will adversely impact the Company's product business earnings and cash flows. The Company expects modest favorable impact from ACA's integrated care and commercial insurance consumer protection provisions.

## (2) Summary of Significant Accounting Policies

### *(a) Cash and Cash Equivalents*

Cash and cash equivalents comprise cash funds and all short-term, highly liquid investments with original maturities of up to three months.

### *(b) Allowance for Doubtful Accounts*

Estimates for allowances for accounts receivable are based on an analysis of collection experience, recognizing the difference between payors and aging of accounts receivable. From time to time, accounts receivable are reviewed for changes from the historic collection experience to ensure the appropriateness of the allowances.

### *(c) Inventories*

Inventories are stated at the lower of cost (determined by using the average or first-in, first-out method) or market value (see note 4).

### *(d) Property, Plant and Equipment*

Property, plant, and equipment are stated at cost less accumulated depreciation (see note 10). Significant improvements are capitalized; repairs and maintenance costs that do not extend the useful lives of the assets are charged to expense as incurred. Property, plant and equipment under capital leases are stated at the present value of future minimum lease payments at the inception of the lease, less accumulated depreciation. The cost and accumulated depreciation of assets sold or otherwise disposed of are removed from the accounts, and any gain or loss is included in income when the assets are disposed.

The cost of property, plant and equipment is depreciated over estimated useful lives on a straight-line basis as follows: buildings – 20 to 40 years, equipment and furniture – 3 to 10 years, equipment under capital leases and leasehold improvements – the shorter of the lease term or useful life of the asset. For income tax purposes, depreciation is calculated using accelerated methods to the extent permitted.

The Company capitalizes interest on borrowed funds during construction periods. Interest capitalized during 2010, 2009 and 2008 was $4,854, $8,554 and $7,800, respectively.

*(e)* ***Other Intangible Assets and Goodwill***

Intangible assets such as noncompete agreements, lease agreements, tradenames, management contracts, technology, patents, distribution rights, software, acute care agreements and licenses acquired in a purchase method business combination are recognized and reported apart from goodwill.

Goodwill and identifiable intangibles with indefinite useful lives are not amortized but tested for impairment annually or when an event becomes known that could trigger an impairment. The Company identified trade names and certain qualified management contracts as intangible assets with indefinite useful lives because, based on an analysis of all of the relevant factors, there is no foreseeable limit to the period over which those assets are expected to generate net cash inflows for the Company. Intangible assets with finite useful lives are amortized over their respective useful lives to their residual values. The Company amortizes noncompete agreements over their average useful life of 8 years. Technology is amortized over its useful life of 15 years. The iron products distribution and manufacturing agreement is amortized over its ten-year contractual license period based upon the annual estimated units of sale of the licensed product. All other intangible assets are amortized over their individual estimated useful lives between 3 and 25 years. Intangible assets with finite useful lives are evaluated for impairment when events have occurred that may give rise to an impairment.

To perform the annual impairment test of goodwill, the Company identified its reporting units and determined their carrying value by assigning the assets and liabilities, including the existing goodwill and intangible assets, to those reporting units. A reporting unit is usually defined one level below the segment level based on regions or legal entities. Two reporting units were identified, Renal Therapy Group and Fresenius Medical Services.

In a first step, the Company compares the fair value of a reporting unit to its carrying amount. Fair value is determined using estimated future cash flows for the unit discounted by a weighted average cost of capital (WACC) specific to that reporting unit. Estimating the discounted future cash flows involves significant assumptions, especially regarding future reimbursement rates and sales prices, number of treatments, sales volumes and costs. In determining discounted cash flows, the Company utilizes for every reporting unit, its three-year budget, projections for years 4 to 10 and a corresponding growth rate for all remaining years. Projections for up to ten years are possible due to the stability of the Company's business which, due to the nondiscretionary nature of the healthcare services the Company provides, the need for products utilized to provide such services and the availability of government reimbursement for a substantial portion of their services, has been largely independent from the economic cycle. The reporting units' respective expected growth rates for the period beyond ten years are: Renal Therapy Group 1% and Fresenius Medical Services 1%. The discount factor is determined by the Company's WACC. The Company's WACC consists of a basic rate of 6.38% for 2010.

In the case that the fair value of the reporting unit is less than its book value, a second step is performed which compares the fair value of the reporting unit's goodwill to the carrying value of its goodwill. If the fair value of the goodwill is less than the book value, the difference is recorded as an impairment.

To evaluate the recoverability of intangible assets with indefinite useful lives, the Company compares the fair values of intangible assets with their carrying values. An intangible asset's fair value is determined using a discounted cash flow approach and other appropriate methods.

In connection with its annual impairment tests, the Company determined that there was no impairment of goodwill or other intangible assets. Accordingly the Company did not record any impairment charges during 2010, 2009 or 2008.

***(f) Derivative Instruments and Hedging Activities***

The Company accounts for derivatives and hedging activities by recognizing all derivative instruments as either assets or liabilities in the consolidated balance sheets at their respective fair values. For derivatives designated as hedges, changes in the fair value are either offset against the change in fair value of the assets and liabilities through earnings, or recognized in accumulated other comprehensive income until the hedged item is recognized in earnings.

For all hedging relationships the Company formally documents the hedging relationship and its risk-management objective and strategy for undertaking the hedge, the hedging instrument, the hedged item, the nature of the risk being hedged, how the hedging instrument's effectiveness in offsetting the hedged risk will be assessed prospectively and retrospectively, and a description of the method of measuring ineffectiveness. The Company also formally assesses, both at the hedge's inception and on an ongoing basis, whether the derivatives that are used in hedging transactions are highly effective in offsetting cash flows of hedged items. Changes in the fair value of a derivative that is highly effective and that is designated and qualifies as a cash-flow hedge are recorded in accumulated other comprehensive income to the extent that the derivative is effective as a hedge, until earnings are affected by the variability in cash flows of the designated hedged item. The ineffective portion of the change in fair value of a derivative instrument that qualifies as a cash-flow hedge is reported in earnings.

The Company discontinues hedge accounting prospectively when it is determined that the derivative is no longer effective in offsetting cash flows of the hedged item, the derivative expires or is sold, terminated, or exercised, the derivative is dedesignated as a hedging instrument, because it is unlikely that a forecasted transaction will occur, or management determines that designation of the derivative as a hedging instrument is no longer appropriate.

In all situations in which hedge accounting is discontinued and the derivative is retained, the Company continues to carry the derivative at its fair value on the consolidated balance sheets and recognizes any subsequent changes in its fair value in earnings. When it is probable that a hedged forecasted transaction will not occur, the Company discontinues hedge accounting and recognizes immediately in earnings gains and losses that were accumulated in other comprehensive income.

The table below summarizes the derivative financial instruments pre-tax and after-tax effect on accumulated other comprehensive income (loss) in equity for the years ended December 31, 2010, 2009 and 2008:

| | | Year ended December 31 | | |
|---|---|---|---|---|
| | | **2010** | **2009** | **2008** |
| | | | (Dollars in millions) | |
| Interest rate swaps: | | | | |
| Pre-tax (gain) loss | $ | (57.0) | (49.9) | 103.3 |
| After-tax (gain) loss | | (34.6) | (30.5) | 63.2 |
| Forecasted raw material product purchases and other obligations: | | | | |
| Pre-tax (gain) loss | $ | (0.2) | (3.4) | 5.7 |
| After-tax (gain) loss | | (0.1) | (2.1) | 3.4 |
| Euro denominated mandatorily redeemable preferred stock: | | | | |
| Pre-tax (gain) loss | $ | (10.7) | (1.6) | (1.6) |
| After-tax (gain) loss | | (6.5) | (1.0) | (0.8) |

The interest rate swaps are designated as cash flow hedges effectively converting certain variable interest rate payments into fixed interest rate payments. After-tax gains and losses were deferred in other comprehensive income and subsequently reclassified to earnings when the hedged item also affects earnings. Interest payable and receivable under the swap terms are accrued and recorded as adjustments to interest expense at each reporting date.

The Company enters into forward rate agreements that are designated and effective as hedges of forecasted raw material purchases and other obligations. After-tax gains and losses were deferred in other comprehensive income and will be reclassified into cost of sales in the period during which the hedged transactions affect earnings. All deferred amounts will be reclassified into earnings within the next twelve months.

The Company enters into forward rate agreements that are designated and effective as hedges of changes in the fair value of the Euro-denominated mandatorily redeemable preferred stock. Changes in fair value are recorded in earnings and offset against gains and losses resulting from the underlying exposures. After-tax gains and losses were deferred in other comprehensive income.

The Company entered into a forward sale agreement related to preference shares (Preferred Stock) of FMCH issued to Fresenius Medical Care North America Holdings Limited Partnership (DLP). This instrument is reflected in the consolidated balance sheets at fair value as part of Preferred Stock with changes in fair value recognized in earnings. Pre-tax (losses) and gains recorded in the consolidated statements of operations for the years ended December 31, 2010, 2009 and 2008 were $107.8 million, $(50.5) million and $83.0 million, respectively. After-tax (losses) and gains recorded in the consolidated statements of operations for the years ended December 31, 2010, 2009 and 2008 were $68.1 million, $(30.9) million and $52.3 million, respectively.

The Company also entered into a currency exchange agreement with DLP. The notional principal amounts of the currency exchange agreement is $1,250,000 U.S. dollars and a Euro amount with equal market value applying the market foreign exchange rate at the time the exchange agreement was entered into. The currency exchange agreement requires that at each periodic settlement date, DLP is obligated to pay to FMCH, Euro interest on the Euro equivalent of $1.25 billion. Conversely, at the periodic settlement date, FMCH is obligated to pay to DLP, the interest on $1.25 billion in U.S. dollars.

Upon maturity (March 31, 2013) or termination of the exchange agreement, DLP is obligated to pay to FMCH, the Euro equivalent of $1.25 billion converted at spot rate and FMCH will pay to DLP the final settlement amount of $1.25 billion (plus any outstanding period interest payments). This instrument is reflected in the consolidated balance sheets at fair value as a derivative asset at the reporting date with changes in fair value recognized in earnings. Pre-tax gains and (losses) recorded in the consolidated statements of operations for the years ended December 31, 2010, 2009 and 2008 were $(104.8) million, $58.6 million and $(61.6) million, respectively. After-tax gains and (losses) recorded in the consolidated statements of operations for the years ended December 31, 2010, 2009 and 2008 were $(66.2) million, $36.1 million and $(38.8) million, respectively.

Periodically, the Company enters into derivative instruments with related parties to form a natural hedge for currency exchange rate exposures on intercompany obligations. These instruments are reflected in the consolidated balance sheets at fair value with changes in fair value recognized in earnings. Pre-tax losses (gains) recorded in the consolidated statements of operations for the years ended December 31, 2010, 2009 and 2008 were $1.1 million, $0.3 million and $(0.9) million, respectively.

### *(g) Foreign Currency Translation*

For purposes of these consolidated financial statements, the U.S. dollar is the reporting currency. Substantially all assets and liabilities of the Company's non-U.S. subsidiaries are translated at year-end exchange rates, while revenue and expenses are translated at exchange rates prevailing during the year. Adjustments for foreign currency translation fluctuations are excluded from net income and are reported in accumulated other comprehensive income (loss). In addition, the translation of certain intercompany borrowings denominated in foreign currencies, which are considered foreign equity investments, are reported in accumulated other comprehensive income (loss).

Gains and losses resulting from the translation of revenues and expenses and intercompany borrowings, which are not considered equity investments, are included in the statements of operations within general and administrative expenses. Translation gains (losses) amounted to $4,773, $(3,927) and $780 for the years ended December 31, 2010, 2009 and 2008, respectively.

### *(h) Revenue Recognition*

Dialysis care revenues are recognized on the date services and related products are provided and are recorded at amounts estimated to be received under reimbursement arrangements with third-party payors, including Medicare and Medicaid. The Company establishes appropriate allowances based upon factors surrounding credit risks of specific third-party payors, historical trends and other information. Retroactive adjustments are accrued on an estimated basis in the period the related services are rendered and adjusted in future periods as final settlements are determined.

Dialysis product revenues are recognized when title to the product passes to the customers either at the time of shipment, upon receipt by the customer or upon terms that clearly define passage of title. As product returns are not typical, no return allowances are established. In the event a return is required, the appropriate reductions to sales, accounts receivables and cost of sales are made. Sales are stated net of discounts and rebates.

Net revenues from machines sales for 2010, 2009 and 2008 include $80.0 million, $80.2 million, and $76.0 million, respectively, of net revenues for machines sold to a third-party leasing company which are utilized by the Fresenius Medical Services division to provide services to customers. The profits on these sales are deferred and amortized to earnings over the lease terms.

Any tax assessed by a governmental authority that is incurred as a result of a revenue transaction (e.g. sales tax) is excluded from revenues and reported on a net basis.

### *(i) Research and Development*

Research and development costs are expensed as incurred.

### *(j) Income Taxes*

The Company recognizes deferred tax assets and liabilities for future consequences attributable to temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis as well as on consolidation procedures affecting net income and tax loss carryforwards which are more likely than not to be utilized. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. A valuation allowance is recorded to reduce the carrying amount of the deferred tax assets unless it is more likely than not that such assets will be realized (see note 9).

It is the Company's policy to recognize interest and penalties related to its tax positions as income tax expense.

### *(k) Impairment*

The Company reviews the carrying value of its long-lived assets or asset groups with definite useful lives to be held and used for impairment whenever events or changes in circumstances indicate that the carrying value of these assets may not be recoverable. Recoverability of these assets is measured by a comparison of the carrying value of an asset to the future net cash flow directly associated with the asset. If assets are considered to be impaired, the impairment recognized is the amount by which the carrying value exceeds the fair value of the asset. The Company uses a discounted cash flow approach or other methods, if appropriate, to assess fair value.

Long-lived assets to be disposed of by sale are reported at the lower of carrying value or fair value less cost to sell and depreciation is ceased. Long-lived assets to be disposed of other than by sale are considered to be held and used until disposal.

### *(l) Debt Issuance Costs*

Costs related to the issuance of debt are amortized over the term of the related obligation (see note 6).

### *(m) Self-Insurance Programs*

The Company is partially self-insured for professional, product and general liability, auto liability and worker's compensation claims under which the Company assumes responsibility for incurred claims up to predetermined amounts above which third-party insurance applies. Reported balances for the year include estimates of the anticipated expense for claims incurred (both reported and incurred but not reported) based on historical experience and existing claim activity. This experience includes both the rate of claims incidence (number) and claim severity (cost) and is combined with individual claim expectations to estimate the reported amounts.

### *(n) Use of Estimates*

The preparation of consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

### *(o) Concentration of Credit Risk*

The Company is engaged in providing kidney dialysis services, clinical laboratory testing, and other medical ancillary services, and in the manufacture and sale of products for all forms of kidney dialysis, principally to healthcare providers. The Company performs ongoing evaluations of its customers' financial condition and, generally, requires no collateral.

Approximately 48% in 2010 and 2009 and 53% in 2008 of the Company's revenues were earned and subject to regulations under governmental healthcare programs, Medicare and Medicaid, administered by various states and the United States government.

See note 19 for concentration of supplier risks.

### *(p) Comprehensive Income*

Comprehensive income consists of net income, foreign currency translation adjustments, pension liability adjustments and changes in derivative instruments and is presented in the consolidated statements of comprehensive income.

### *(q) Net Income per Share*

Basic net income per share is computed by dividing net income available to common shareholders by the weighted average number of common shares outstanding during the year. Diluted net income per share includes the effect of all dilutive potential common shares that were outstanding during the year. The number of shares used to compute basic and diluted net income per share was 90,000,000 in all periods as there were no potential common shares and no adjustments to income available to common shareholders to be considered for purposes of the diluted net income per share calculation.

| | Year ended December 31 | | |
|---|---|---|---|
| | 2010 | 2009 | 2008 |
| The weighted average number of shares of common stock were as follows | 90,000,000 | 90,000,000 | 90,000,000 |

Net income available for common shareholders used in the computation of basic and fully dilutive net income per share is as follows:

| | Year ended December 31 | | |
|---|---|---|---|
| | 2010 | 2009 | 2008 |
| Net income attributable to FMCH | $ 605,530 | 523,284 | 509,683 |
| Income available to common shareholders | $ 605,530 | 523,284 | 509,683 |
| Basic and diluted net income per share | $ 6.73 | 5.81 | 5.66 |

### *(r) Employee Benefit Plans*

The Company recognizes the underfunded status of its defined benefit plans, measured as the difference between plan assets at fair value and the benefit obligation, as a liability. Changes in the funded status of a plan, net of tax, resulting from actuarial gains or losses and prior service costs or credits that are not recognized as components of the net periodic benefit cost will be recognized through accumulated other comprehensive income in the year in which they occur. Actuarial gains or losses and prior service costs are subsequently recognized as components of net periodic benefit cost pursuant to the recognition and amortization provisions of those standards. The Company uses December 31 as the measurement date when measuring the funded status of all plans.

*(s)* ***Stock Option Plans***

Effective January 1, 2006, the Company adopted the provisions of the accounting standards for share-based payments using the modified prospective transition method. Under this transition method, compensation cost recognized in 2006 includes applicable amounts of: (a) compensation cost of all stock-based payments granted prior to, but not yet vested as of January 1, 2006 and (b) compensation cost for all stock-based payments subsequent to January 1, 2006 based on the grant-date fair value estimated in accordance with the provisions of these standards.

*(t)* ***Legal Contingencies***

From time to time, during the ordinary course of the Company's operations, the Company is party to litigation and arbitration and is subject to investigations relating to various aspects of its business (see note 18). The Company regularly analyzes current information about such claims for probable losses and provides accruals for such matters, including the estimated legal expenses and consulting services in connection with these matters, as appropriate. The Company utilizes its internal legal department as well as external resources for these assessments. In making the decision regarding the need for loss accrual, the Company considers the degree of probability of an unfavorable outcome and its ability to make a reasonable estimate of the amount of loss.

The filing of a suit or formal assertion of a claim or assessment, or the disclosure of any such suit or assertion, does not necessarily indicate that accrual of a loss is appropriate.

*(u)* ***Recent Pronouncements***

**Recently Implemented Accounting Statements**

In July 2010, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update 2010-20 (ASU 2010-20), *Disclosures about the Credit Quality of Financing Receivables and the Allowance for Credit Losses.* ASU 2010-20 is an update of Accounting Standards Codification Topic 310, *Receivables*. This update requires enhanced disclosures on a disaggregated basis about:

- The nature of the credit risk inherent in the portfolio of financing receivables,
- How that risk is analyzed and assessed in arriving at the allowance for credit losses and
- The changes and reasons for those changes in the allowance for credit losses.

The disclosures required under ASU 2010-20 as of the end of a reporting period are effective for interim and annual reporting periods ending on or after December 15, 2010. Disclosures about activity that occurs during a reporting period are effective for interim and annual reporting periods beginning on or after December 15, 2010. The Company adopted the provisions of ASU 2010-20 as of December 31, 2010.

In June 2009, the FASB issued Accounting Standards Update 2009-17 (ASU 2009-17) (originally issued as FASB Statement No. 167), ASC 810, *Consolidations – Improvements to Financial Reporting by Enterprises Involved with Variable Interest Entities*. ASU 2009-17 requires reporting entities to evaluate former Qualifying Special Purpose Entities (QSPE) for consolidation and changes the approach to determining a VIE's primary beneficiary from a quantitative assessment to a qualitative assessment designed to identify a controlling financial interest. In addition, ASU 2009-17 increases the frequency of required reassessments to determine whether a company is the primary beneficiary of a VIE. It also clarifies, but does not significantly change, the characteristics that identify a VIE. ASU 2009-17 also requires additional year-end and interim disclosures about risks related to continuing involvement in transferred financial assets.

The amendments contained in ASU 2009-17 were effective as of the beginning of a company's first fiscal year that begins after November 15, 2009 and for subsequent interim and annual reporting periods. All former QSPEs and other variable interest entities needed to be reevaluated under the amended consolidation requirements as of the beginning of the first annual reporting period that began after November 15, 2009. Early adoption was prohibited. The Company implemented the amendments prescribed by ASU 2009-17 as of January 1, 2010.

In June 2009, the FASB issued Accounting Standards Update 2009-16 (ASU 2009-16) (originally issued as FASB Statement No. 166), ASC 60, *Transfers and Servicing – Accounting for Transfers of Financial Assets*. ASU 2009-16 eliminates the QSPE concept, creates more stringent conditions for reporting a transfer of a portion of a financial asset as a sale, clarifies the derecognition criteria, revises how retained interests are initially measured, and removes the guaranteed mortgage securitization recharacterization provisions. ASU 2009-16 also requires additional year-end and interim disclosures about risks related to variable interest entities.

ASU 2009-16 is effective as of the beginning of a company's first fiscal year that begins after November 15, 2009, and for subsequent interim and annual reporting periods. ASU 2009-16's disclosure requirements must be applied to transfers that occurred before and after its effective date. Early adoption is prohibited. The Company adopted provisions of ASU 2009-16 as of January 1, 2010.

*(v)* ***Subsequent Events***

On February 3, 2011, Fresenius Medical Care U.S. Finance, Inc. (U.S. Finance), a wholly owned subsidiary of FMCAG & KGaA, issued $650,000 aggregate principal amount of senior unsecured notes with a coupon of 5.75% (the 5.75% Senior Notes) at an issue price of 99.060% and FMC Finance VII S.A. (Finance VII), a wholly owned subsidiary of FMCAG & KGaA, issued €300,000 aggregate principal amount ($412,350 at date of issuance) of senior unsecured notes with a coupon 5.25% (the 5.25% Senior Notes) at par. The 5.75% Senior Notes have a yield to maturity of 5.875% and are due February 15, 2021. The 5.25% Senior Notes are due February 15, 2021. U.S. Finance and Finance VII may redeem the 5.75% Senior Notes and 5.25% Senior Notes, respectively, at any time at 100% of principal plus accrued interest and a premium calculated pursuant to the terms of the applicable indenture. The holders of the 5.75% Senior Notes and the 5.25% Senior Notes have a right to request that the respective issuers of the notes repurchase the applicable issue of notes at

101% of principal plus accrued interest upon the occurrence of a change of control of FMCAG & KGaA followed by a decline in the rating of the respective notes. FMCAG & KGaA used or will use the net proceeds of approximately $1,035,000 to repay indebtedness outstanding under its asset securitization facility (see note 5) and the revolving credit facility of the Amended 2006 Senior Credit Agreement, for acquisitions, and for general corporate purposes to support its renal dialysis products and services business. The 5.75% Senior Notes and the 5.25% Senior Notes are guaranteed on a senior basis jointly and severally by FMCAG & KGaA, Fresenius Medical Care Holdings, Inc. and Fresenius Medical Care Deutschland GmbH.

## (3) Acquisitions

During 2010 and 2009, the Company made acquisitions mostly of dialysis centers in the normal course of its operations, totaling $125,921 and $124,781, respectively.

The assets and liabilities of all acquisitions were recorded at their estimated fair values at the dates of the acquisitions and are included in the Company's consolidated financial statements and operating results from the effective date of acquisition.

## (4) Other Balance Sheet Items

### *(a) Inventories*

As of December 31, 2010 and 2009, inventories consisted of the following:

| | | 2010 | 2009 |
|---|---|---|---|
| Inventories: | | | |
| Raw materials | $ | 100,878 | 96,880 |
| Manufactured goods in process | | 14,018 | 22,327 |
| Manufactured and purchased inventory available for sale | | 130,450 | 132,128 |
| | | 245,346 | 251,335 |
| Health care supplies | | 89,757 | 101,289 |
| Total | $ | 335,103 | 352,624 |

Under the terms of certain unconditional purchase commitments, the Company is obligated to purchase raw materials and healthcare supplies of $2,135,449 of which $345,001 is committed at December 31, 2010 for fiscal year 2011. The terms of these agreements run 1 to 9 years.

Inventories as of December 31, 2010 and 2009 include $32,987 and $34,788, respectively, of Erythropoietin (EPO), which is supplied by a single source supplier.

### *(b) Other Current Assets*

As of December 31, 2010 and 2009, other current assets consisted of the following:

| | | 2010 | 2009 |
|---|---|---|---|
| Vendor rebates | $ | 161,886 | 182,083 |
| Miscellaneous accounts receivable | | 204,253 | 174,534 |
| Deposits and prepaid expenses | | 98,549 | 97,062 |
| Total | $ | 464,688 | 453,679 |

### *(c) Accrued Liabilities*

As of December 31, 2010 and 2009, accrued liabilities consisted of the following:

| | | 2010 | 2009 |
|---|---|---|---|
| Accounts receivable credit balances | $ | 168,896 | 192,216 |
| Accrued salaries and wages | | 211,937 | 178,059 |
| Accrued insurance | | 162,628 | 169,168 |
| Accrued operating expenses | | 75,408 | 63,745 |
| Accrued lease obligations | | 80,979 | 75,807 |
| Accrued legal and compliance | | 18,070 | 17,154 |
| Accrued physician compensation | | 4,626 | 8,061 |
| Accrued interest | | 3,136 | 1,850 |
| Accrued other | | 48,474 | 50,999 |
| Total | $ | 774,154 | 757,059 |

Accounts receivable credit balances principally reflect overpayments from third-party payors and are in the process of repayment.

## (5) Sale of Accounts Receivable

The Company has an asset securitization facility (the AR Facility) which is typically renewed in October of each year and was most recently renewed and increased from $650,000 to $700,000 on September 28, 2010. Under the AR Facility, certain receivables are sold to NMC Funding Corporation (NMC Funding), a wholly owned subsidiary. NMC Funding then assigns undivided ownership interests in the accounts receivable to certain bank investors. Under the terms of the AR Facility, NMC Funding retains the right to recall all transferred interests in the accounts receivable assigned to the banks under the AR facility. As the Company has the right at any time to recall the then outstanding interests, the receivables remain on the consolidated balance sheet and the proceeds from the transfer of undivided interests are recorded as short-term borrowings.

At December 31, 2010 and 2009 there were outstanding short-term borrowings under the AR Facility of $510,000 and $214,000, respectively. NMC Funding pays interest to the bank investors, calculated based on the commercial paper rates for the particular tranches selected. The average interest rate during 2010 and 2009 was 1.86% and 2.90%, respectively. Annual refinancing fees, which include legal costs and bank fees (if any), are amortized over the term of the facility.

## (6) Short Term Borrowings and Long-Term Debt

### *Short-Term Borrowings*

At December 31, 2010 and 2009, short-term borrowings consisted of the following:

| | | December 31 | |
|---|---|---|---|
| | | 2010 | 2009 |
| AR facility | $ | 510,000 | 214,000 |
| Commercial paper | | 10,985 | 11,791 |
| Other | | 25,627 | 4,353 |
| Total short-term borrowings | $ | 546,612 | 230,144 |

### *Long-Term Debt*

#### *(a) Amended 2006 Senior Credit Agreement*

FMCAG & KGaA, FMCH, and certain other subsidiaries of the Company that are borrowers and/or guarantors thereunder, including Fresenius Medical Care Deutschland GmbH (D-GmbH), entered into a $4,600,000 syndicated credit facility (the 2006 Senior Credit Agreement) with Bank of America, N.A.; Deutsche Bank AG New York Branch; The Bank of Nova Scotia, Credit Suisse, Cayman Islands Branch; JPMorgan Chase Bank, National Association; and certain other lenders (collectively, the Lenders) on March 31, 2006 which replaced its prior credit agreement.

Since entering into the 2006 Senior Credit Agreement, the Parent Company arranged several amendments with the lenders and effected voluntary prepayments of the term loans, which led to a change in the total amount available under this facility. Pursuant to an amendment together with an extension arranged on September 29, 2010 the revolving facility was increased from $1,000,000 to $1,200,000 and the Term Loan A facility by $50,000 to $1,365,000. The maturity for both tranches was extended from March 31, 2011 to March 31, 2013 (a 2 year extension). Additionally, the early repayment requirement for the Term Loan B, which stipulated that Term Loan B was subject to early retirement if the Trust Preferred Securities due June 15, 2011 were not paid, refinanced or extended prior to March 1, 2011, has been removed. The definition of the Parent Company's Consolidated Leverage Ratio, which is used to determine the applicable margin, was amended to allow for the reduction of up to $250,000 (increased from $30,000) of cash and cash equivalents from Consolidated Funded Debt, as defined in the initial 2006 Senior Credit Agreement. In addition, the amendment includes increases in certain types of permitted borrowings outside of the Amended 2006 Senior Credit Agreement and provides further flexibility for certain types of investments. Furthermore, the parties agreed to change the limitation on dividends and other restricted payments for up to $330,000 in 2011. Thereafter, these limitations increase by $30,000 each year through 2013.

As of December 31, 2010, the Amended 2006 Senior Credit Agreement consists of:

- a $1,200,000 revolving credit facility (of which up to $400,000 is available for letters of credit, up to $400,000 is available for borrowings in certain non-U.S. currencies, up to $150,000 is available as swing line loans in U.S. dollars, up to $250,000 is available as a competitive loan facility and up to $50,000 is available as swing line loans in certain non-U.S. currencies, the total of which cannot exceed $1,200,000) which will be due and payable on March 31, 2013.
- a term loan facility (Term Loan A) of $1,335,000, also scheduled to mature on March 31, 2013. Quarterly repayments of $30,000 are required at the end of each quarter with the remaining balance outstanding due on March 31, 2013.
- a term loan facility (Term Loan B) of $1,292,764 scheduled to mature on March 31, 2013 with 5 quarterly repayments of $4,036 followed by 4 quarterly repayments of $379,396 each due at the end of its respective quarter.

Interest on these facilities will be, at the Parent Company's option, depending on the interest periods chosen, at a rate equal to either (i) LIBOR plus an applicable margin or (ii) the higher of (a) Bank of America's prime rate or (b) the Federal Funds rate plus 0.5%, plus an applicable margin.

The applicable margin is variable and depends on the Parent Company's Consolidated Leverage Ratio which is a ratio of its Consolidated Funded Debt less up to $250,000 cash and cash equivalents to Consolidated EBITDA (as these terms are defined in the Amended 2006 Senior Credit Agreement).

In addition to scheduled principal payments, indebtedness outstanding under the Amended 2006 Senior Credit Agreement will be reduced by mandatory prepayments utilizing portions of the net cash proceeds from certain sales of assets, securitization transactions other than the Company's existing AR Facility, the issuance of subordinated debt other than certain intercompany transactions, certain issuances of equity and excess cash flow.

Obligations under the Amended 2006 Senior Credit Agreement are secured by pledges of capital stock of certain material subsidiaries in favor of the lenders. The Amended 2006 Senior Credit Agreement contains affirmative and negative covenants with respect to the Parent Company and its subsidiaries and other payment restrictions. Certain of the covenants limit indebtedness of the Parent Company and investments by the Parent Company, and require the Parent Company to maintain certain financial ratios defined in the agreement. In default, the outstanding balance under the Amended 2006 Senior Credit Agreement becomes immediately due and payable at the option of the Lenders. As of December 31, 2010, the Company is in compliance with all covenants under the Amended 2006 Senior Credit Agreement.

The following table shows the Company's outstanding amounts under the Amended 2006 Senior Credit Agreement at December 31, 2010 and 2009:

| | | Balance outstanding December 31 | |
|---|---|---|---|
| | | 2010 | 2009 |
| Revolving credit facility | $ | 81,126 | 277,782 |
| Loan A | | 85,000 | 123,418 |
| Loan B | | 1,292,764 | 1,308,908 |
| | $ | 1,458,890 | 1,710,108 |

In addition, at December 31, 2010 and 2009, $121,518 and $97,287, respectively, were utilized as letters of credit which are not included as part of the balances outstanding at those dates.

In conjunction with the Amended 2006 Senior Credit Agreement and the related variable rate based interest payments, the Company entered into additional interest rate swaps in the notional amount of $1,215,000 with FMCAG & KGaA. As of December 31, 2010 and 2009 the Company had total interest rates swaps in the notional amount of $900,000 and $1,150,000, respectively. These instruments, designated as cash flow hedges, effectively convert forecasted LIBOR-based interest payments into fixed rate based interest payments which fix the interest rate on $900,000 of the financing under the Amended 2006 Senior Credit Agreement at a weighted average rate of 4.66% plus an applicable margin. These swaps are denominated in U.S. dollars and expire at various dates between 2011 and 2013.

The weighted average interest rate for all Company debt outstanding as of December 31, 2010 and 2009 was approximately 4.91% and 5.06%, respectively, including the effects of interest rate swaps in effect during the period.

### *(b) Senior Notes*

On July 2, 2007, FMC Finance III S.A., a wholly owned subsidiary of FMCAG & KGaA issued $500,000 aggregate principal amount of 7 1/8% Senior Notes due 2017 at a discount. The Senior Notes are guaranteed on a senior basis jointly and severally by FMCAG & KGaA and by its subsidiaries FMCH and Fresenius Medical Care Deutschland GmbH (D-GmbH). The proceeds, net of discounts and bank fees but prior to the payment of other offering related expenses totaling approximately $484,875 were used to reduce Loan A by $150,000 and Loan B by $150,000 under the Company's 2006 Senior Credit Agreement. The remaining $184,875 was applied to the outstanding balance under the Company's AR Facility (see note 5). The $500,000 of funds provided was recorded as intercompany borrowings from FMC Finance III, S.A. The discount is being amortized over the life of the Senior Notes.

### (c) *Long-Term Debt*

At December 31, 2010 and 2009, long-tenn debt consisted of the following:

| | | December 31 | |
|---|---|---|---|
| | | 2010 | 2009 |
| Amended 2006 Senior Credit Agreement | $ | 1,458,890 | 1,710,108 |
| RSI deferred and milestone payments | | — | 9,488 |
| Iron License Agreement (see note 7(a)) | | 11,830 | 17,908 |
| Other | | 124 | 194 |
| | | 1,470,844 | 1,737,698 |
| Less amounts classified as current | | 107,706 | 149,913 |
| | $ | 1,363,138 | 1,587,785 |

### (d) *Borrowings (Receivables) from Affiliates*

| | | December 31 | |
|---|---|---|---|
| | | 2010 | 2009 |
| Borrowings (receivables) from affiliates consists of: | | | |
| Fresenius Medical Care AG & Co. KGaA borrowings (receivables) primarily at interest rates approximating 0.0% and 0.39%, respectively | $ | 298 | (4,105) |
| RTC Holdings International, Inc. borrowings at a fixed interest rate of 1.00% and 1.55%, respectively | | 12,961 | 12,803 |
| Fresenius Medical Care Trust Finance S.a.r.l. borrowings at fixed interest rate of 8.25% | | 218,715 | 218,715 |
| FMC Finance III S.A. borrowings, net of discounts at a fixed rate of 7.019% | | 494,231 | 493,344 |
| Fresenius Medical Care North America Holdings Limited Partnership receivables at a rate of LIBOR plus 1% | | (322,676) | (311,042) |
| | | 403,529 | 409,715 |
| Less amounts classified as current | | (90,702) | (298,239) |
| Total | $ | 494,231 | 707,954 |



(Continued)

Scheduled maturities of long-term debt and borrowings (receivables) from affiliates are as follows:

| | | |
|---|---|---|
| 2011 | $ | 17,004 |
| 2012 | | 5,393 |
| 2013 | | 1,142,223 |
| 2014 | | 215,522 |
| 2015 | | — |
| 2016 and thereafter | | 494,231 |
| Total | $ | 1,874,373 |

## (7) Goodwill and Other Intangible Assets

At December 31, 2010 and 2009, the carrying value and accumulated amortization of other intangible assets consisted of the following:

| | | December 31, 2010 | | | December 31, 2009 | | |
|---|---|---|---|---|---|---|---|
| | | Gross carrying value | Accumulated amortization | Carrying value | Gross carrying value | Accumulated amortization | Carrying value |
| Amortizable intangible assets: | | | | | | | |
| Noncompete agreements | $ | 228,663 | (163,951) | 64,712 | 195,945 | (130,696) | 65,249 |
| Acute care agreements | | 140,190 | (130,334) | 9,856 | 133,165 | (122,655) | 10,510 |
| License and distribution agreements | | 52,984 | (11,033) | 41,951 | 52,984 | (6,424) | 46,560 |
| Technology | | 65,536 | (17,640) | 47,896 | 65,536 | (13,320) | 52,216 |
| Other intangibles | | 92,501 | (22,635) | 69,866 | 73,831 | (13,116) | 60,715 |
| Construction in progress | | 50,894 | — | 50,894 | 58,567 | — | 58,567 |
| | | 630,768 | (345,593) | 285,175 | 580,028 | (286,211) | 293,817 |
| Nonamortizable intangible assets: | | | | | | | |
| Tradename | | 209,454 | — | 209,454 | 209,454 | — | 209,454 |
| Management contracts | | 3,163 | — | 3,163 | 217,869 | — | 217,869 |
| | | 212,617 | — | 212,617 | 427,323 | — | 427,323 |
| Net intangibles | $ | 843,385 | (345,593) | 497,792 | 1,007,351 | (286,211) | 721,140 |

Amortization expense for amortizable intangible assets for the years ended December 31, 2010, 2009 and 2008 was $37,200, $31,790 and $25,191, respectively. Amortization expense is estimated to be $40,000 for 2011, $39,000 for 2012, $40,000 for 2013, $41,000 for 2014 and $42,000 for 2015.

### *(a) License and Distribution Agreement*

In July 2008, the Parent Company, entered into two separate and independent license and distribution agreements, one for the United States and one for certain countries in Europe and the Middle East, to market and distribute Galenica's intravenous iron products, such as Venofer® and Ferinject® for dialysis treatment. In North America, the license agreement among FMCH, Luitpold Pharmaceuticals Inc, American Regent, and Vifor (International), Inc. provides FMCH with exclusive rights to manufacture and distribute Venofer® to freestanding (nonhospital based) U.S. dialysis facilities. In addition, it grants FMCH similar rights for Injectafer® (ferric carboxymaltose), a proposed new IV iron medication currently under clinical study in the U.S. The U.S. license agreement has a term of ten years, includes FMCH extension options, and requires payment by FMCH over the ten-year term of aggregate royalties of approximately $2,000,000 which the Company will expense as incurred (based upon the annual estimated units of sale of the licensed product), subject to certain early termination provisions. In addition to these payments, the Company will pay a total of approximately $47,000 over a four-year period of which $6,667, $6,111 and $22,000 was paid in 2010, 2009 and 2008, respectively. The Company recorded a liability for the balance. The cost of the agreement and related transaction costs of $5,947 will be amortized over the 10-year expected useful life (based upon annual estimated units of sale of the licensed product).

### *(b) Goodwill*

A change in New York state regulations allowed for the direct ownership of facilities in that state, which had previously been prohibited by state law. Due to this prohibition, the Company had historically used a combination of administrative service contracts, stock option agreements, and asset acquisitions to qualify for consolidation of such facilities under guidance originally issued as Emerging Issues Task Force 97-2, *Application of FASB Statement No. 94 and APB Opinion No. 16 to Physicians Practice Management Entities and Certain Other Entities with Contractual Management Arrangements*, which is now included within FASB Accounting Standards Codification Topic 810-10, *Consolidation: Overall*. In such qualifying transactions, a portion of the purchase price was allocated to identifiable intangible assets with the remainder classified as an "Administrative Services Agreement" intangible asset that was accounted for in the same manner as goodwill and was shown on the consolidated balance sheets at December 31, 2009, under the category Management Contracts within Intangible Assets. With the regulatory approval gained on April 1, 2010, the Company obtained the full ownership of these facilities and reclassified the $214,706 of Administrative Services Agreement intangible asset to goodwill effective April 1, 2010, to be consistent with other clinic acquisitions where the Company obtained control via legal ownership.

Changes in the reporting unit's carrying amount of goodwill for the years ended December 31, 2010 and 2009 are as follows:

| | December 31 | | | | | |
|---|---|---|---|---|---|---|
| | 2010 | | | 2009 | | |
| | Fresenius Medical Services | Renal Therapy Group | Total | Fresenius Medical Services | Renal Therapy Group | Total |
| Carrying value as of beginning of year | $ 5,316,998 | 1,515,697 | 6,832,695 | 5,193,698 | 1,515,766 | 6,709,464 |
| Goodwill acquired | 118,632 | 18 | 118,650 | 133,348 | — | 133,348 |
| Other reclassifications | 211,228 | 50 | 211,278 | (10,048) | (69) | (10,117) |
| Carrying value as of end of year | $ 5,646,858 | 1,515,765 | 7,162,623 | 5,316,998 | 1,515,697 | 6,832,695 |

## (8) Special Charge for Legal Matters

In 2001, the Company recorded a $258,159 special charge to address legal matters relating to transactions pursuant to the Agreement and Plan of Reorganization dated as of February 4, 1996 by and between W. R. Grace & Co. and Fresenius AG (the Merger), estimated liabilities and legal expenses arising in connection with the W. R. Grace & Co. Chapter 11 proceedings (the Grace Chapter 11 Proceedings) and the cost of resolving pending litigation and other disputes with certain commercial insurers. During the second quarter of 2003, the court supervising the Grace Chapter 11 Proceedings approved a definitive settlement agreement entered into among the Company, the committee representing the asbestos creditors and W. R. Grace & Co. Under the settlement agreement, the Company will pay $115,000, without interest, upon plan confirmation (see note 18). With the exception of the proposed $115,000 payment under the Settlement Agreement, all other matters included in the special charge have been resolved.

At December 31, 2010, there is a remaining balance of $115,828 for the accrual for the special charge for legal matters. During the years ended December 31, 2010 and 2009, $142 and $529, respectively, in charges were applied against the accrued special charge for legal matters.

## (9) Income Taxes

Income before income taxes are as follows:

| | | Year ended December 31 | | |
|---|---|---|---|---|
| | | 2010 | 2009 | 2008 |
| Domestic | $ | 1,090,111 | 940,885 | 879,226 |
| Foreign | | (279) | 6,055 | 8,704 |
| Total income before income taxes | $ | 1,089,832 | 946,940 | 887,930 |

The provisions for income taxes are as follows:

| | Year ended December 31 | | |
|---|---|---|---|
| | 2010 | 2009 | 2008 |
| Current tax expense: | | | |
| Federal | $ 304,737 | 282,738 | 198,774 |
| State | 57,330 | 61,319 | 40,030 |
| Foreign | 987 | 1,494 | 2,668 |
| Total current | 363,054 | 345,551 | 241,472 |
| Deferred tax expense (benefit): | | | |
| Federal | 28,243 | 12,527 | 93,816 |
| State | 15,043 | (3,518) | 7,305 |
| Foreign | 1,195 | 854 | — |
| Total deferred tax expense | 44,481 | 9,863 | 101,121 |
| Total provision | $ 407,535 | 355,414 | 342,593 |

The provision for income taxes for the years ended December 31, 2010, 2009, and 2008 differed from the amount of income taxes determined by applying the applicable statutory federal income tax rate to pre-tax earnings as a result of the following differences:

| | Year ended December 31 | | |
|---|---|---|---|
| | 2010 | 2009 | 2008 |
| Statutory federal tax rate | 35.0% | 35.0% | 35.0% |
| State income taxes, net of federal tax benefit | 4.1 | 4.0 | 3.8 |
| Provision for tax audit liability | 0.7 | 0.9 | 0.4 |
| Noncontrolling partnership interests | (2.5) | (2.5) | (1.5) |
| Gain on sale of interest in clinics | — | — | 0.4 |
| Foreign losses and taxes | 0.1 | — | 0.3 |
| Manufacturing deduction | (0.2) | (0.1) | (0.2) |
| Other | 0.2 | 0.2 | 0.4 |
| Effective tax rate | 37.4% | 37.5% | 38.6% |



(Continued)

Deferred tax liabilities (assets) are comprised of the following:

| | | December 31 | |
|---|---|---|---|
| | | 2010 | 2009 |
| Reserves and other accrued liabilities | $ | (188,555) | (246,319) |
| Depreciation and amortization | | 486,898 | 487,659 |
| Special charge not currently deductible | | (44,030) | (44,479) |
| Derivatives | | (23,513) | (50,292) |
| Pension valuation | | (34,681) | (26,305) |
| Stock based compensation expense | | (20,058) | (19,732) |
| Net deferred tax liabilities | $ | 176,061 | 100,532 |

The Company has established valuation allowances for deferred tax assets of $15,209 and $11,739 at December 31, 2010 and 2009, respectively.

The net increase (decrease) in the valuation allowance for deferred tax assets was $3,470, $(3,030) and $1,234 for the years ended December 31, 2010, 2009, and 2008, respectively. The changes for all three years relate to activities incurred in foreign jurisdictions.

It is the Company's expectation that it is more likely than not to generate future taxable income to utilize its remaining deferred tax assets.

At December 31, 2010, there is a federal net operating loss carryover of $23,806 the majority of which will begin to expire in 2020. In addition, there is a Federal Tax Credit of $1,270 which will begin to expire in 2020. State net operating loss carryovers are $176,257 with varying expiration dates and foreign net operating losses are $19,133, the majority of which expire within seven years.

Provision has not been made for additional federal, state, or foreign taxes on $31,968 of undistributed earnings of foreign subsidiaries. Prior to a decision on the evaluation discussed below, those earnings have been and will continue to be reinvested. The earnings could be subject to additional tax if they were remitted as dividends, if foreign earnings were loaned to the Company or a U.S. affiliate or if the Company should sell its stock in these subsidiaries. The Company estimates that the distribution of these earnings would result in $11,948 of additional foreign withholding tax and U.S. federal income taxes.

The Company adopted ASC 740, *Income Taxes* (ASC 740), formerly FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes – an interpretation of FASB Statement No. 109*, as of January 1, 2007. ASC 740 prescribes a two-step approach to the recognition and measurement of all tax positions taken or expected to be taken in a tax return. The enterprise must determine whether it is more-likely than-not that a tax position will be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. If the threshold is met, the tax position is measured at the largest amount of benefit that is greater than 50% likely of being realized upon ultimate settlement and is recognized in the financial statements. The implementation of this interpretation had no impact on the assets and liabilities of the Company.

The Company filed claims for refunds contesting the Internal Revenue Service's (IRS) disallowance of FMCH's civil settlement payment deductions taken by FMCH in prior year tax returns. As a result of a settlement agreement with the IRS to resolve the Company's appeal of the IRS's disallowance of deductions for the civil settlement payments made to qui tam relators in connection with the resolution of the 2000 U.S. government investigation, the Company received a refund in September 2008 of $37,000, inclusive of interest. The settlement agreement preserves the right to continue to pursue claims in the U.S. federal courts for refunds of all other disallowed deductions. On December 22, 2008, the Company filed a complaint for a complete refund in the United States District Court for the District of Massachusetts, styled as FMCH v. United States. On June 24, 2010, the court denied FMCH's motion for summary judgment and the litigation is proceeding towards trial. The unrecognized tax benefit relating to these deductions is included in the total unrecognized tax benefit noted below.

The federal tax audit for the years 2002 through 2006 have been completed. The IRS has disallowed all deductions taken during these audit periods related to intercompany mandatorily redeemable preferred shares. The Company has protested the disallowed deductions and will avail itself of all remedies. An adverse determination with respect to the disallowed deductions related to the mandatorily redeemable preferred shares could have a material adverse effect on the results of operations and liquidity. In addition, the IRS proposed other adjustments which have been recognized in the consolidated financial statements.

Fiscal years 2007 and 2008 are currently under audit and 2009 and 2010 are open to audit. There are a number of state audits in progress and various years are open to audit in various states. All expected results have been recognized in the consolidated financial statements.

Upon adoption of ASC 740, the Company had $77,755 of unrecognized tax benefits including the amounts relating to the tax audit items noted above. The following table shows the reconciliation of the beginning and ending amounts of unrecognized tax benefits:

| | | 2010 | 2009 | 2008 |
|---|---|---|---|---|
| Unrecognized tax benefits (net of interest): | | | | |
| Balance at January 1 | $ | 100,928 | 92,552 | 80,377 |
| Increases in unrecognized tax benefits prior periods | | 11,346 | 26,272 | 9,797 |
| Decreases in unrecognized tax benefits prior periods | | (9,880) | (11,998) | — |
| Increases in unrecognized tax benefits current periods | | 1,510 | — | 4,420 |
| Changes related to settlements with tax authorities | | (33,051) | (5,898) | (2,042) |
| Reductions due to statute of limitations | | (128) | — | — |
| Balance at December 31 | $ | 70,725 | 100,928 | 92,552 |

Included in the balance at December 31, 2010 are $41,907 of unrecognized tax benefits which would affect the effective tax rate if recognized. The Company is currently not in a position to forecast the timing and magnitude of changes in the unrecognized tax benefits.

During the year ended December 31, 2010, the Company recognized $8,221 in interest and penalties. The Company has paid $1,025 in interest and penalties at December 31, 2010.

## (10) Property, Plant and Equipment

As of December 31, 2010 and 2009, property, plant and equipment consisted of the following:

| | | December 31 | |
|---|---|---|---|
| | | **2010** | **2009** |
| Land and improvements | $ | 12,034 | 11,911 |
| Buildings | | 181,233 | 177,866 |
| Capital lease property | | 363 | 363 |
| Leasehold improvements | | 1,039,337 | 983,654 |
| Equipment and furniture | | 1,149,540 | 1,039,334 |
| Construction in progress | | 156,470 | 154,488 |
| | | 2,538,977 | 2,367,616 |
| Accumulated depreciation and amortization | | (1,154,863) | (1,001,607) |
| Property, plant and equipment, net | $ | 1,384,114 | 1,366,009 |

Depreciation expense relating to property, plant and equipment amounted to $248,281, $232,192, and $212,220 for the years ended December 31, 2010, 2009, and 2008, respectively.

Included in property, plant and equipment as of December 31, 2010 and 2009 were $81,477 and $59,996, respectively, of peritoneal dialysis cycler machines which the Company leases to customers with end-stage renal disease on a month-to-month basis. Rental income for the peritoneal dialysis cycler machines was $8,202, $6,715, and $10,837 for the years ended December 31, 2010, 2009, and 2008, respectively.

### *Leases*

The Company leases buildings and machinery and equipment under various lease agreements expiring on dates through 2019. Rental expense for operating leases was $400,626, $376,020, and $347,702 for the years ended December 31, 2010, 2009, and 2008, respectively. Amortization of properties under capital leases amounted to $2, $3, and $9 for the years ended December 31, 2010, 2009, and 2008, respectively.

Future minimum payments under noncancelable leases (principally for clinics, offices and equipment) for the five years succeeding December 31, 2010 and thereafter are as follows:

| | | Operating leases | Capital leases | Total |
|---|---|---|---|---|
| 2011 | $ | 368,455 | 471 | 368,926 |
| 2012 | | 331,287 | 482 | 331,769 |
| 2013 | | 290,572 | 493 | 291,065 |
| 2014 | | 242,242 | 504 | 242,746 |
| 2015 | | 202,874 | 399 | 203,273 |
| 2016 and beyond | | 679,528 | 656 | 680,184 |
| Total minimum payments | $ | 2,114,958 | 3,005 | 2,117,963 |
| Less interest and operating costs | | | 742 | |
| Present value of minimum lease payments ($262 payable in 2011) | | | $ 2,263 | |

Lease agreements frequently include renewal options and require that the Company pay for utilities, taxes, insurance and maintenance expenses. Options to purchase are also included in some lease agreements, particularly capital leases.

## (11) Mandatorily Redeemable Preferred Securities

FMCAG & KGaA issued Trust Preferred Securities through Fresenius Medical Care Capital Trusts, statutory trusts organized under the laws of the state of Delaware. FMCAG & KGaA owns all of the common securities of these trusts. The sole asset of each trust is a senior subordinated note of FMCAG & KGaA or a wholly owned subsidiary of FMCAG & KGaA. FMCAG & KGaA, Fresenius Medical Care Deutschland GmbH (D-GmbH) and FMCH have guaranteed payment and performance of the senior subordinated notes to the Fresenius Medial Care Capital Trusts. The Trust Preferred Securities are guaranteed by FMCAG & KGaA through series of undertakings by FMCAG & KGaA and FMCH and D-GmbH.

The table below provides information for the remaining Redeemable Preferred Securities for the periods indicated:

| | | December 31 | |
|---|---|---|---|
| | | 2010 | 2009 |
| Mandatorily redeemable preferred securities: | | | |
| Series A preferred stock, 100 shares | $ | 665,500 | 665,500 |
| Series I preferred stock, 1,000 shares | | — | 245,000 |
| Series J preferred stock, 1,000 shares | | — | 202,581 |
| | | 665,500 | 1,113,081 |
| Mark to market adjustment | | — | 18,232 |
| Total mandatorily redeemable | | 665,500 | 1,131,313 |
| Less amounts classified as current | | — | 465,813 |
| Long-term mandatorily redeemable | $ | 665,500 | 665,500 |

These securities are similar in substance except for the order of preference both as to dividends and liquidation, dissolution or winding-up of the subsidiary. The order of preference among the various series corresponds to the alphabetical order of Series A through Series J. In addition, the holders of the Redeemable Preferred Securities are entitled to receive dividends in an amount of dollars per share that varies from approximately 3% to 5% of the purchase price depending on the Series. The dividends will be declared and paid in cash at least annually. All the Redeemable Preferred Securities have a par value of $0.01 per share.

Upon liquidation or dissolution or winding up of the issuer of the Redeemable Preferred Securities, the holders of the Redeemable Preferred Securities are entitled to an amount equal to the liquidation preference for each share of stock plus an amount equal to all accrued and unpaid dividends thereon through the date of distribution. The liquidation preference is the sum of the issuance price plus, for each year or portion thereof, an amount equal to one-half of one percent of the issue price, not to exceed 5% of the issue price in the aggregate.

The remaining Redeemable Preferred Securities will be sold back to the Company ranging in periods of three years to six years from their respective date of issuance for a total amount equal to €153,278 (Series J) and U.S. dollars $910,500 (Series A and I) plus any accrued and unpaid dividends. Series I were offered in May 2004 in the amount of $97,500 and were increased in the third quarter of 2004 by $147,500 to a total of $245,000 and were redeemed in May 2010. Series J were offered in December 2004 in the amount of €138,944 and were increased in the second quarter of 2005 by €14,334 to a total of €153,278 and were redeemed in May 2010. Series A were offered in March 2007 and have a redemption date in March 2013.

Dividends were recorded and classified as part of interest expense in the consolidated statements of operations in the amounts of $31,253, $48,499, and $53,767, for the years ended December 31, 2010, 2009 and 2008, respectively. During the years ended December 31, 2010, 2009 and 2008, cash dividend payments were made totaling $40,543, $50,139 and $64,308, respectively.

The Company records mark to market adjustments based on fluctuations in currency rates and records the offset to accumulated other comprehensive income.

The holders of the Redeemable Preferred Securities have the same participation rights as the holders of all other classes of capital stock of the issuing subsidiary.

## (12) Pension and Other Post Retirement Benefits

### *(a) National Medical Care, Inc. Defined Benefit Pension Plan*

The Company has a noncontributory, defined benefit pension plan (NMC plan). Each year the Company contributes at least the minimum required by the Employee Retirement Income Security Act of 1974, as amended. Plan assets consist primarily of publicly traded common stock, fixed income securities and cash equivalents.

During the first quarter of 2002, the Company curtailed its defined benefit and supplemental executive retirement plans. Under the curtailment amendment for substantially all employees eligible to participate in the plan, benefits have been frozen as of the curtailment date and no additional defined benefits for future services will be earned. The Company has retained all employee benefit obligations as of the curtailment date. There was no minimum funding requirement for FMCH for the defined benefit plan in 2010 and 2009. The Company did not contribute any amounts for the years ended December 31, 2010, 2009 and 2008. The Company does not expect to contribute any amounts to plan assets during 2011.

The following table shows the changes in benefit obligations, the changes in plan assets, and the funded status of the NMC plan:

| | | Year ended December 31 | | |
|---|---|---|---|---|
| | | 2010 | 2009 | 2008 |
| Change in benefit obligation: | | | | |
| Benefit obligation at beginning of year | $ | 251,147 | 235,552 | 209,712 |
| Service cost | | 1,625 | 1,445 | 1,885 |
| Interest cost | | 15,086 | 14,000 | 13,606 |
| Actuarial loss (gain) | | 11,586 | 11,711 | 15,468 |
| Benefits paid | | (7,571) | (5,568) | (5,119) |
| Curtailments | | — | (5,993) | — |
| Benefit obligation at end of year | | 271,873 | 251,147 | 235,552 |
| Change in plan assets: | | | | |
| Fair value of plan assets at beginning of year | | 236,633 | 214,616 | 228,581 |
| Actual return on plan assets | | 3,191 | 29,382 | (9,092) |
| Employer contribution | | 72 | 264 | 246 |
| Settlements | | — | (2,061) | — |
| Benefits paid | | (7,571) | (5,568) | (5,119) |
| Fair value of plan assets at end of year | | 232,325 | 236,633 | 214,616 |
| Funded status at year-end | $ | 39,548 | 14,514 | 20,936 |

The pension liability recognized as of December 31, 2010, is equal to the amount shown as 2010 funded status at end of year in the table above. The funded status of $39,548 is recorded as noncurrent pension liability in the consolidated balance sheet.

The accumulated benefit obligation for the NMC plan was $269,212 and $248,337 at December 31, 2010 and 2009, respectively. The accumulated benefit obligation for the NMC plan with an obligation in excess of plan assets was $36,887 and $11,704 at December 31, 2010 and 2009, respectively. The related plan assets had a fair value of $232,325 and $236,633 at December 31, 2010 and 2009, respectively.

The pre-tax changes in the table below for 2010 and 2009 reflect actuarial losses (gains) in other comprehensive income relating to pension liabilities. As of December 31, 2010 there are no cumulative effects of prior service costs included in other comprehensive income.

| | | Actuarial losses (gains) |
|---|---|---|
| Adjustments related to pensions at January 1, 2008 | $ | 74,235 |
| Additions | | (5,836) |
| Releases | | (5,215) |
| Adjustments related to pensions at December 31, 2009 | | 63,184 |
| Additions | | 25,848 |
| Releases | | (5,032) |
| Adjustments related to pensions at December 31, 2010 | $ | 84,000 |

The actuarial loss expected to be amortized from other comprehensive income into net periodic pension cost over the next year is $6,846.

The following weighted average assumptions were utilized in determining benefit obligations as of December 31:

| | 2010 | 2009 | 2008 |
|---|---|---|---|
| Discount rate | 5.80% | 6.00% | 6.10% |
| Rate of compensation increase | 4.50 | 4.50 | 4.50 |

The NMC plan net periodic benefit costs are comprised of the following components:

| | | 2010 | 2009 | 2008 |
|---|---|---|---|---|
| Components of net periodic benefit cost: | | | | |
| Service cost | $ | 1,625 | 1,445 | 1,885 |
| Interest cost | | 15,086 | 14,000 | 13,606 |
| Expected return on plan assets | | (17,453) | (15,767) | (16,931) |
| Settlement | | — | 812 | — |
| Amortization of unrealized losses | | 5,032 | 4,403 | 1,713 |
| Net periodic benefit cost | $ | 4,290 | 4,893 | 273 |



(Continued)

The discount rates for all plans are derived from an analysis and comparison of yields of portfolios of equity and highly rated debt instruments with maturities that mirror the plan's benefit obligation. The Company's discount rate is the weighted average of these plans based upon their benefit obligations at December 31, 2010. The following weighted average assumptions were used in determining net periodic benefit cost for the years ended December 31:

| | 2010 | 2009 | 2008 |
|---|---|---|---|
| Discount rate | 6.00% | 6.50% | 6.50% |
| Expected return on plan assets | 7.50 | 7.50 | 7.50 |
| Rate of compensation increase | 4.50 | 4.50 | 4.50 |

Expected benefit payments for the NMC plan for the next five years and in the aggregate for the five years thereafter are as follows:

| | | |
|---|---|---|
| 2011 | $ | 8,869 |
| 2012 | | 9,925 |
| 2013 | | 10,528 |
| 2014 | | 11,461 |
| 2015 | | 12,569 |
| 2016 through 2020 | | 79,362 |

### *(b) Everest Employees' Retirement Plan and Trust*

The Company's Everest employees participated in the Everest Employees Retirement Plan (Everest Plan), a noncontributory defined benefit pension plan. The defined benefit plan covered all the employees of Everest and a related party with common ownership, Nephrology Associates of Northern Illinois, Ltd (NANI), who met certain eligibility requirements. Retirement benefit payments were based on years of credited service and average compensation over the final five years of employment. The funding policy was to contribute annually amounts, which were deductible for federal income tax purposes. Effective May 16, 1996, all participant plan benefits in the defined benefit plans were frozen. Everest and NANI ceased funding the defined benefit plans as of May 16, 1996 and no additional years of benefit service were accrued by plan participants subsequent to that date.

Effective December 31, 2009, the Everest Plan was merged into the NMC Plan.

### *(c) Supplemental Executive Retirement Plan*

The Company's supplemental executive retirement plan provides certain key executives with benefits in excess of normal pension benefits. This plan was also curtailed during the first quarter 2002. The projected benefit obligation was $10,919 and $10,135 at December 31, 2010 and 2009, respectively. Pension expense for this plan, for the years ended December 31, 2010, 2009 and 2008 was $876, $765, and $774, respectively. The Company has recorded $3,604 and $3,168 to accumulated other comprehensive income to recognize the additional liability for this plan at

December 31, 2010 and 2009, respectively. The Company contributed $528 and $494 to this plan during 2010 and 2009, respectively. Expected funding for 2011 is $661.

The pension liability recognized as of December 31, 2010 of $10,919, includes a current portion of $642 which is recognized as a current liability in the line item "accrued liabilities" within the consolidated balance sheets. The noncurrent portion of $10,277 is recorded as noncurrent pension liability in "other liabilities" within the consolidated balance sheet.

The Company does not provide any post retirement benefits to its employees other than those provided under its pension plan and supplemental executive retirement plan.

### *(d) Plan Assets*

The following table presents the fair values of the Company's pension plan assets at December 31, 2010:

| | | Fair value measurements at December 31, 2010 | | | Fair value measurements at December 31, 2009 | |
|---|---|---|---|---|---|---|
| | Total | Quoted prices in active markets for identical assets (Level 1) | Significant observable Inputs (Level 2) | Total | Quoted prices in active markets for identical assets (Level 1) | Significant observable Inputs (Level 2) |
| Asset category: | | | | | | |
| Equity investments: | | | | | | |
| Common stocks | $ 2,565 | 2,565 | — | $ 5,904 | 5,904 | — |
| Index Funds [1] | 65,621 | — | 65,621 | 71,406 | — | 71,406 |
| Fixed income investments: | | | | | | |
| Government Securities [2] | 4,479 | 1,967 | 2,512 | 3,655 | 394 | 3,261 |
| Corporate Bonds [3] | 152,564 | — | 152,564 | 149,367 | — | 149,367 |
| Other Bonds [4] | 2,442 | — | 2,442 | 163 | — | 163 |
| U.S. Treasury Money Market Funds [5] | 4,232 | 4,232 | — | 5,776 | 5,776 | — |
| Other types of investments: | | | | | | |
| Cash, Money Market and Mutual Funds [6] | 422 | 422 | — | 362 | 362 | — |
| Total | $ 232,325 | 9,186 | 223,139 | $ 236,633 | 12,436 | 224,197 |

1 This Category comprises low-cost equity index funds not actively managed that track the S&P 500, S&P 400, Russell 2000, MSCI EAFE Index, MSCI Emerging Markets Index for both 2010 and 2009 and the Barclays Capital Long Corporate Index in 2009.

2 This Category comprises fixed income investments by the U.S. government and government sponsored entities.

3 This Category represents investment grade bonds of U.S issuers from diverse industries.

[4] This Category comprises private placement bonds as well as collateralized mortgage obligations.

[5] This Category represents funds that invest in treasury obligations directly or in treasury-backed obligations.

[6] This Category represents cash, money market funds as well as mutual funds comprised of high grade corporate bonds.

The methods and inputs used to measure the fair value of plan assets are as follows:

Common stocks and index funds are valued at their market prices as of the balance sheet date.

Index funds are valued based on market quotes.

The majority of the fair values of the government bonds are measured based on market quotes. The remaining government bonds are valued at their market prices.

Corporate bonds and other bonds are valued based on market quotes as of the balance sheet date.

Cash is stated at nominal value which equals the fair value.

U.S. Treasury money market funds as well as other money market and mutual funds are valued at their market price.

### *(e) Plan Investment Policy and Strategy*

The Company periodically reviews the assumption for long-term expected return on pension plan assets. As part of the assumptions review, independent consulting actuaries determine a range of reasonable expected investment returns for the pension plan as a whole based on their analysis of expected future returns for each asset class weighted by the allocation of the assets. The range of returns developed relies both on forecasts, which include the actuarial firm's expected long-term rates of return for each significant asset class or economic indicator, and on broad-market historical benchmarks for expected return, correlation, and volatility for each asset class. As a result, the Company's expected rate of return on pension plan assets was 7.50% for 2010, 2009 and 2008.

The Company's overall investment strategy is to achieve a mix of approximately 98% of investments for long-term growth and 2% for near-term benefit payments with a wide diversification of asset types, fund strategies and fund managers.

The investment policy, utilizing a revised target investment allocation of 35% equity and 65% long-term U.S. bonds, considers that there will be a time horizon for invested funds of more than 5 years. The total portfolio will be measured against a policy index that reflects the asset class benchmarks and the target asset allocation. The Plan policy does not allow investments in securities of the Company or other related-party securities. The performance benchmarks for the separate asset classes include: S&P 500 Index, S&P 400 Index, Russell 2000 Growth Index, MSCI EAFE Index, MSCI Emerging Markets Index, Barclays Capital Long Term Government Index and Barclays Capital 20 Year U.S. Treasury Strip Index.

### *(f) Defined Contribution Plans*

Most of the Company's employees are eligible to join a 401(k) savings plan. Employees can deposit up to 75% of their pay up to a maximum of $16.5 if under 50 years old ($22.0 if 50 or over) under this savings plan. The Company will match 50% of the employee deposit up to a maximum Company contribution of 3% of the employee's pay. The Company's total expense under this defined contribution plan for the years ended December 31, 2010, 2009 and 2008 was $31,583, $28,567, and $26,096, respectively.

## (13) Noncontrolling Interests Subject to Put Provisions

The Company has potential obligations to purchase the noncontrolling interests held by third parties in certain of its consolidated subsidiaries. These obligations are in the form of put provisions and are exercisable at the third-party owners' discretion within specified periods as outlined in each specific put provision. If these put provisions were exercised, the Company would be required to purchase all or part of third-party owners' noncontrolling interests at the appraised fair value. The methodology the Company uses to estimate the fair values of the noncontrolling interest subject to put provisions assumes the greater of net book value or a multiple of earnings, based on historical earnings, development stage of the underlying business and other factors. The estimated fair values of the noncontrolling interests subject to these put provisions can also fluctuate and the implicit multiple of earnings at which these noncontrolling interest obligations may ultimately be settled could vary significantly from the current estimates depending upon market conditions.

As of December 31, 2010 and 2009 the Company's potential obligations under these put options are $273,022 and $231,303, respectively, of which, at December 31, 2010, $88,471 were exercisable. In the last three fiscal years ending December 31, 2010, three puts have been exercised for a total consideration of $6,535.

During 2008, the Company received cash contributions from holders of noncontrolling interests in the amount of $17,174. This amount was recorded in net cash provided by operating activities in the cash flow statement.

Following is a rollforward of noncontrolling interests subject to put provisions for the years ended December 31:

| | | 2010 | 2009 | 2008 |
|---|---|---|---|---|
| Beginning balance | $ | 231,303 | 162,166 | 116,539 |
| Dividend paid | | (38,964) | (16,930) | (14,494) |
| Purchase/sale of noncontrolling interests | | 22,333 | 12,548 | 9,148 |
| Contributions from noncontrolling interests | | 5,289 | 5,108 | 13,069 |
| Changes in fair value of noncontrolling interests | | 24,223 | 39,816 | 24,258 |
| Net income | | 28,838 | 28,595 | 13,646 |
| Ending balance | $ | 273,022 | 231,303 | 162,166 |

## (14) Equity

### *(a) Preferred Stock $1.00 Par Value*

During 2006, the Company issued to Fresenius Medical Care North America Holdings Limited Partnership (DLP), 5,000,000 shares at $1.00 par value of Series C Preferred Stock. The Company received proceeds of $1,250,000. Simultaneously to the issuance of the securities the Company entered into a conditional forward sale contract on the shares with DLP (see note 16 (d)). At December 31, 2009, the securities were marked to market at the Euro spot rate, increasing the fair value of the shares to $1,487,731 with the change in fair value ($50,500) recognized in earnings. At December 31, 2010, the securities were marked to market at the Euro spot rate, decreasing the fair value of the shares to $1,379,916 with the change in fair value ($107,815) recognized in earnings.

At December 31, 2010 and 2009, the components of the Company's preferred stocks as presented in the consolidated balance sheets consisted of the following:

| | | December 31 | |
|---|---|---|---|
| | | 2010 | 2009 |
| Preferred stock $1.00 par value cumulative class C; 5,000,000 shares authorized and outstanding | $ | 1,379,916 | 1,487,731 |
| Total preferred stock | $ | 1,379,916 | 1,487,731 |

### *(b) Stock Options*

In connection with its stock option program, the Company incurred compensation expense of $20,330, $24,688, and $23,212 for the years ended December 31, 2010, 2009, and 2008, respectively. There were no capitalized compensation costs in any of the three years presented. The Company also recorded a related deferred income tax of $8,020, $9,740, and $9,158 for the years ended December 31, 2010, 2009, and 2008, respectively.



(Continued)

In 1996, FMCAG adopted a stock incentive plan (the FMCAG Plan) under which the Parent Company and the Company's key management and executive employees are eligible. Under the FMCAG Plan, eligible employees will have the right to acquire preference shares of FMCAG. Options granted under the FMCAG Plan will be evidenced by a nontransferable convertible bond and corresponding nonrecourse loan to the employee, secured solely by the bond with which it was made. The bonds mature in ten years and are generally fully convertible after three to five years. Each convertible bond, which is deutsche mark (DM) denominated, entitles the holder thereof to convert the bond in preference shares equal to the face amount of the bond divided by the preference share's nominal value.

During 1998, FMCAG adopted a new stock incentive plan (FMCAG 98 Plan) under which the Parent Company and the Company's key management and executive employees are eligible. Under the FMCAG 98 Plan, eligible employees will have the right to acquire Preference Shares of FMCAG. Options granted under the FMCAG 98 Plan will be evidenced by a nontransferable convertible bond and a corresponding nonrecourse loan to the employee, secured solely by the bond with which it was made. Each convertible bond, which is DM denominated, will entitle the holder thereof to convert the bond in Preference Shares equal to the face amount of the bond divided by the preference share's nominal value. Effective September 2001, no additional grants or options will be awarded under the FMCAG 98 Plan.

On May 23, 2001, by resolution of the FMCAG shareholders, the FMCAG 98 Plan was replaced by a new plan (FMCAG International Plan). Under the FMCAG International Plan, options in the form of convertible bonds with a principal of up to 10,240 euros were issued to the members of the FMCAG Management Board and other employees of the Company representing grants for up to 4 million nonvoting preference shares. The convertible bonds originally had a par value of 2.56 euros and bear interest at a rate of 5.5%. In connection with the share split effected in 2007, the principal amount was adjusted in the same proportion as the share capital out of the capital increase and the par value of the convertible bonds was adjusted to 0.85 euros without affecting the interest rate. Except for the members of the FMCAG Management Board, eligible employees may purchase the bonds by issuing a nonrecourse note with terms corresponding to the terms of and secured by the bond. The Parent Company has the right to offset its obligation on a bond against the employee's obligation on the related note; therefore, the convertible bond obligations and employee note receivables represent stock options issued by the Parent Company and are not reflected in the Parent Company's consolidated financial statements. The options expire ten years from issuance and can be exercised beginning two, three or four years after issuance.

Upon issuance of the option, the employees had the right to choose options with or without a stock price target. The conversion price of options subject to a stock price target corresponds to the stock exchange quoted price of the preference shares upon the first time the stock exchange quoted price exceeds the initial value by at least 25%. The initial value (Initial Value) is the average price of the preference shares during the last 30 trading days prior to the date of grant. In the case of options not subject to a stock price target, the number of convertible bonds awarded to the eligible employee would be 15% less than if the employee elected options subject to the stock price target. The conversion price of the options without a stock price target is the Initial Value. Each option entitles the holder thereof, upon payment of the respective conversion price, to acquire one preference share.

 (Continued)

Effective May 2006, no further grants can be issued under the FMCAG International Plan and no options were granted under the FMCAG International Plan after 2005.

On May 9, 2006 as amended on May 15, 2007 the FMCAG & KGaA Stock Option Plan 2006 (the 2006 Amended Plan) was established by resolution of the FMCAG & KGaA annual general meeting with a conditional capital increase up to 15,000 euros subject to the issue of up to fifteen million no par value bearer ordinary shares with a nominal value of 1.00 euros each. Under the 2006 Amended Plan, up to 15 million options can be issued to members of the management board and to other employees of FMCAG and the Company.

Options under the 2006 Amended Plan can be granted the last Monday in July and/or the first Monday in December. The exercise price of the options granted under the 2006 Amended Plan shall be the average closing price on the Frankfurt Stock Exchange of FMCAG & KGaA ordinary shares during the 30 calendar days immediately prior to each grant date. Options granted under the 2006 Amended Plan have a seven-year term but can be exercised only after a three-year vesting period. The vesting of options granted is subject to satisfaction of performance targets measured over a three-year period from the grant date. The performance targets for 2010, 2009 and 2008 were met. Vesting of a portion or portions of a grant for a year in which the performance target is met does not occur until completion of the entire three-year vesting period. Upon the exercise of vested options, FMCAG & KGaA has the right to issue ordinary shares it owns or that it purchases on the market in place of increasing capital by the issuance of new shares.

Options granted under the 2006 Amended Plan to U.S. participants are nonqualified stock options under the United States Internal Revenue Code of 1986, as amended. Options under the 2006 Amended Plan are not transferable by a participant or a participant's heirs, and may not be pledged, assigned, or otherwise disposed of.

The table below provides reconciliations for options outstanding at December 31, 2010, as compared to December 31, 2009.

| | Options (In thousands) | | Weighted average exercise price |
|---|---|---|---|
| Ordinary shares: | | | |
| Balance at December 31, 2009 | 7,550 | $ | 42.17 |
| Granted | 1,995 | | 57.07 |
| Exercised | 1,764 | | 39.16 |
| Forfeited | 15 | | 36.87 |
| Balance at December 31, 2010 | 7,766 | | 46.69 |
| Preference shares: | | | |
| Balance at December 31, 2009 | 136 | | 24.57 |
| Exercised | 62 | | 25.01 |
| Forfeited | 15 | | 18.65 |
| Balance at December 31, 2010 | 59 | | 25.65 |

The following table provides a summary of fully vested options outstanding and exercisable for both preference and ordinary shares at December 31, 2010:

| | Fully vested outstanding and exercisable options | | | | |
|---|---|---|---|---|---|
| | Number of options (In thousands) | Weighted average remaining contractual life in years | | Weighted average exercise price | Aggregate intrinsic value |
| Options for preference shares | 59 | 3.38 | $ | 25.65 | 1,255 |
| Options for ordinary shares | 2,171 | 3.56 | | 37.32 | 44,380 |

At December 31, 2010, there is $31,452 of total unrecognized compensation costs related to Nonvested options granted under all plans. These costs are expected to be recognized over a weighted average period of 1.6 years.

During the years ended December 31, 2010, 2009, and 2008, the Parent Company received cash of $70,638, $49,730, and $26,135, respectively, from the exercise of stock options. The intrinsic value of options exercised for the years ended December 31, 2010, 2009, and 2008, were $33,746, $20,640, and $18,468, respectively. The Company recorded a related tax benefit of $13,313, $8,123, and $7,285 for the years ended December 31, 2010, 2009, and 2008, respectively.



(Continued)

### (c) *Fair Value Information*

The Parent Company used a binomial option-pricing model in determining the fair value of the awards under the 2006 Plan. Option valuation models require the input of highly subjective assumptions including expected stock price volatility. The Parent Company's assumptions are based upon its past experiences, market trends and the experiences of other entities of the same size and in similar industries. Expected volatility is based on historical volatility of the Parent Company's shares. To incorporate the effects of expected early exercise in the model, an early exercise of vested options was assumed as soon as the share price exceeds 155% of the exercise price. The Parent Company's stock options have characteristics that vary significantly from traded options and changes in subjective assumptions can materially affect the fair value of the option. The assumptions used to determine the fair value of the 2010, 2009 and 2008 grants are as follows:

| | | 2010 | 2009 | 2008 |
|---|---|---|---|---|
| Expected dividend yield | | 1.98% | 2.39% | 1.85% |
| Risk-free interest rate | | 2.28 | 3.11 | 4.38 |
| Expected volatility | | 22.92 | 25.85 | 25.58 |
| Expected life of options | | 7 years | 7 years | 7 years |
| Weighted average exercise price | $ | 57.07 | 46.22 | 49.38 |

## (15) Financial Instruments

As a supplier of dialysis services and products, the Company is faced with a concentration of credit risks due to the nature of the reimbursement system which are often provided by the governments of the jurisdictions in which the Company operates. Changes in reimbursement rates or scope of coverage could have a material adverse effect on the Company's business, financial condition and results of operations and thus on its capacity to generate cash flow. In the past the Company experienced and also expects in the future generally stable reimbursements for its dialysis services. This includes the balancing of favorable and unfavorable reimbursement changes. Due to the fact that a large portion of the Company's reimbursement is provided by public healthcare organizations and private insurers, the Company expects that most of its accounts receivables will be collectable.

*Nonderivative Financial Instruments*

The following table presents the carrying amounts and fair values of the Company's nonderivative financial instruments at December 31, 2010 and 2009:

| | | 2010 | | 2009 | |
|---|---|---|---|---|---|
| | | Carrying amount | Fair value | Carrying amount | Fair value |
| Nonderivatives: | | | | | |
| Assets: | | | | | |
| Cash and cash equivalents | $ | 163,292 | 163,292 | 153,303 | 153,303 |
| Receivables | | 1,176,849 | 1,176,849 | 1,067,621 | 1,067,621 |
| Receivables from affiliates | | 322,676 | 322,676 | 311,042 | 311,042 |
| Liabilities: | | | | | |
| Accounts payable | $ | 267,570 | 267,570 | 276,509 | 276,509 |
| Short-term borrowings | | 546,612 | 546,612 | 230,144 | 230,144 |
| Long-term debt and capital lease obligations | | 1,473,106 | 1,473,106 | 1,740,189 | 1,740,189 |
| Mandatorily redeemable preferred securities | | 665,500 | 665,500 | 1,131,313 | 1,131,313 |
| Borrowings from affiliates | | 726,205 | 726,205 | 720,757 | 720,757 |

The carrying amounts in the table are included in the consolidated balance sheets under the indicated captions, except derivatives, which are included in other assets or other liabilities.

The significant methods and assumptions used in estimating the fair values of financial instruments are as follows:

Cash and cash equivalents are stated at nominal value which equals the fair value.

Short-term financial instruments like accounts receivable and payable and short-term borrowings are valued at their carrying amounts, which are reasonable estimates of the fair value due to the relatively short period to maturity of these instruments.

The fair value of mandatorily redeemable preferred securities and borrowings from affiliates are based on market prices and quotes as of the balance sheet date. The fair values of other long-term financial liabilities, for which market quotes are not available, are calculated at the present value of the respective future cash flows. To determine these present values, the prevailing interest rates and credit spreads for the Company as of the balance sheet date are used.

## (16) Derivative Financial Instruments

The Company is exposed to market risk from changes in interest rates and foreign exchange rates. In order to manage the risk of interest rate and currency exchange rate fluctuations, the Company enters into various hedging transactions with highly rated financial institutions as authorized by the Parent Company.

On a quarterly basis an assessment of the Company counterparty credit risk is performed, which the Company considers to be low. The Company does not use financial instruments for trading purposes.

The Company established guidelines for risk assessment procedures and controls for the use of financial instruments. They include a clear segregation of duties with regard to execution on one side and administration, accounting and controlling on the other.

### *(a) Foreign Currency Contracts*

The Company uses foreign exchange contracts as a hedge against foreign exchange risks associated with the settlement of foreign currency denominated payables and firm commitments. At December 31, 2010 and 2009, the Company had outstanding foreign currency contracts for the purchase of Euros (EUR) totaling 53,783 and 219,403, respectively, contracts for the purchase of 225,860 and 114,242 Mexican pesos, respectively, and contracts for the sale of 12,856 and 32,493 Canadian dollars, respectively. The contracts outstanding at December 31, 2010 include forward contracts for purchase of EUR at rates ranging from $1.281 to $1.417 per EUR, forward contracts for the purchase of Mexican Pesos at rates ranging from 11.695 to 13.522 per U.S. dollar, and outright sale contracts for Canadian dollars at rates ranging from $0.895 to $0.958 per Canadian dollar. All contracts are for periods between January 2011 and May 2011.

The fair value of currency contracts are the estimated amounts that the Company would receive or pay to terminate the agreements at the reporting date, taking into account the current exchange rates and the current creditworthiness of the counterparties in addition to the Company's own nonperformance risk. At December 31, 2010, the Company would have received approximately $715 to terminate these contracts and at December 31, 2009, the Company would have received approximately $8,564 to terminate these contracts.

### *(b) Interest Rate Agreements*

The Company enters into derivatives, particularly interest rate swaps to hedge interest exposures arising from long-term debt at floating rates by effectively swapping them into fixed rates.

At December 31, 2010, the Company had interest rate swaps outstanding with various commercial banks for notional amounts totaling $900,000. All of these agreements were solely entered into for interest rate hedging purposes.

For a notional amount of $900,000, the interest rate swaps effectively change the Company's interest rate exposure on its variable-rate loans under the FMCH Credit Agreement (drawn as of December 31, 2010: $85,000 Loan A and $1,292,764 Loan B) to fixed rates of interest approximating 4.66%.

The fair value of the interest rate swaps and options is the estimated amount that the Company would receive or pay to terminate the agreements at the reporting date, taking into account the current exchange rates and the current creditworthiness of the counterparties in addition to the Company's own nonperformance risk. The fair value of these agreements at December 31, 2010 and 2009 would generate a negative cash flow of $61,582 and $118,630, respectively. These estimates are subjective in nature and involve uncertainties and matters of significant judgment and therefore cannot be determined with precision. Changes in assumptions significantly affect the estimates.

*(c)* ***Credit Risk***

The Company is exposed to credit risk to the extent of potential nonperformance by counterparties on financial instruments. As of December 31, 2010, the Company's credit exposure was insignificant and limited to the fair value stated above; the Company believes the risk of incurring losses due to credit risk is remote. Also, the Company does not require collateral or other security to support financial instruments subject to credit risk. The Company's standard contracts do not contain credit-risk-related contingent features whereby the Company would be required to post cash collateral as a result of a credit event.

*(d)* ***Forward Sale and Currency Exchange Agreements***

The Company entered into a conditional forward sale agreement related to preference shares (Preferred Stock) issued to DLP. The conditional aspects of the contract are not certain to occur and are related to dissolution or reorganization of DLP. However, if the conditions were to occur, the forward sale agreement requires that the Company redeem the securities at the same Euro value that was used to acquire the shares when initially issued plus any accumulated and declared but unpaid dividends at the spot rate in effect on the settlement date. At year-end, the securities were marked to market at the Euro spot rate. Changes in fair value are recognized in earnings.

The Company also entered into a currency exchange agreement with DLP. The notional principal amount of the currency exchange agreement is $1,250,000 and a Euro amount with equal market value applying the market foreign exchange rate at the time the exchange agreement was entered into. The currency exchange agreement requires that at each periodic settlement date, DLP is obligated to pay to FMCH, Euro interest on the Euro equivalent of $1.25 billion. Conversely, at the periodic settlement date, FMCH is obligated to pay DLP, the interest on $1.25 billion in U.S. dollars.

Upon maturity (March 31, 2013) or execution of the currency exchange agreement, DLP is obligated to pay to FMCH, the Euro equivalent of $1.25 billion converted at the spot rate and FMCH will pay to DLP the final settlement amount of $1.25 billion (plus any outstanding period interest payments).

This instrument is reflected in other assets and deferred charges within the consolidated balance sheets at fair value as a derivative asset at the reporting date with changes in fair value recognized in earnings. At December 31, 2010 and 2009, the fair value of the derivative asset was $130 million and $235 million, respectively.

The following table shows the Company's derivatives at December 31, 2010 and 2009:

| | 2010 | | 2009 | |
|---|---|---|---|---|
| | Assets (2) | Liabilities (2) | Assets (2) | Liabilities (2) |
| Derivatives in cash flow hedging relationships (1): | | | | |
| Current: | | | | |
| Foreign currency contracts | $ 2,256 | (2,167) | 12,104 | (3,238) |
| Dollar interest rate hedges | — | (1,372) | — | (345) |
| Noncurrent: | | | | |
| Foreign currency contracts | 130,533 | (49) | 235,141 | (222) |
| Dollar interest rate hedges | — | (60,211) | — | (118,285) |
| Total | $ 132,789 | (63,799) | 247,245 | (122,090) |

(1) As of December 31, 2010 and 2009, the valuation of the Company's derivatives was determined using Significant Other Observable inputs (Level 2) in accordance with the fair value hierarchy levels established in the Codification.

(2) Derivative instruments are marked to market each reporting period resulting in carrying amounts being equal to fair values at each reporting date.

The carrying amounts for the current portion of derivatives indicated as assets in the table above are included in other current assets in the consolidated balance sheets while the current portion of those indicated as liabilities are included in other current liabilities. The noncurrent portions indicated as assets or liabilities are included in the consolidated balance sheets in other assets or other liabilities, respectively.

The significant methods and assumptions used in estimating the fair values of derivative financial instruments are as follows:

The fair value of interest rate swaps is calculated by discounting the future cash flows on the basis of the market interest rates applicable for the remaining term of the contract as of the balance sheet date. To determine the fair value of foreign exchange forward contracts, the contracted forward rate is compared to the current forward rate for the remaining term of the contract as of the balance sheet date. The result is then discounted on the basis of the market interest rates prevailing at the balance sheet date for the applicable currency.

The Company includes its own credit risk when measuring the fair value of derivative financial instruments.

### The Effect of Derivatives on the Consolidated Financial Statements

| | Amount of gain (loss) recognized in OCI on derivatives (effective portion) December 31 | | Location of gain (loss) reclassified from OCI in income (effective portion) | Amount of gain (loss) reclassified from OCI in income (effective portion) for the twelve months ended December 31 | |
|---|---|---|---|---|---|
| | 2010 | 2009 | | 2010 | 2009 |
| Dollar interest rate hedges | $ (41,077) | (41,837) | Interest income/expense | $ 98,124 | 91,764 |
| Foreign currency contracts | (11,849) | 9,118 | General and administrative expenses | 18,232 | (7,495) |
| | | | Cost of medical supplies | 4,536 | 3,406 |
| | $ (52,926) | (32,719) | | $ 120,892 | 87,675 |

The Company expects to recognize $55,000 of losses deferred in accumulated other comprehensive income at December 31, 2010, in earnings during the next twelve months.

As of December 31, 2010, the Company had foreign currency contracts with maturities of up to 5 months and dollar interest rate hedges with maturities of up to 15 months.

## (17) Related-Party Transactions

### *(a) Services*

Related-party transactions pertaining to services performed and products purchased/sold between affiliates are recorded as net accounts payable to affiliates on the consolidated balance sheets. At December 31, 2010 and 2009, the Company had net accounts payable of $43,669 and $90,658, respectively.

### *(b) Borrowings with Affiliates*

The Company has various outstanding borrowings with FMCAG and affiliates. The funds were used for general corporate purposes. The loans are due at various maturities. See notes 6(c) and 11.

## (18) Legal Proceedings

### *(a) Commercial Litigation*

The Company was originally formed as a result of a series of transactions it completed pursuant to the Agreement and Plan of Reorganization dated as of February 4, 1996, by and between W.R. Grace & Co. and Fresenius SE (the Merger). At the time of the Merger, a W.R. Grace & Co. subsidiary known as W.R. Grace & Co.-Conn. had, and continues to have, significant liabilities arising out of product-liability related litigation (including asbestos-related actions), pre-Merger tax claims and other claims unrelated to National Medical Care, Inc. (NMC), which was W.R. Grace & Co.'s dialysis business prior to the Merger. In connection with the Merger, W.R. Grace & Co.-Conn. agreed to indemnify the Company, FMCH, and NMC against all liabilities of W.R. Grace & Co., whether relating to events occurring before or after the Merger, other than liabilities arising from or relating to NMC's operations. W.R. Grace & Co. and certain of its subsidiaries filed for reorganization under Chapter 11 of the U.S. Bankruptcy Code (the Grace Chapter 11 Proceedings) on April 2, 2001.

Prior to and after the commencement of the Grace Chapter 11 Proceedings, class action complaints were filed against W.R. Grace & Co. and FMCH by plaintiffs claiming to be creditors of W.R. Grace & Co.-Conn., and by the asbestos creditors' committees on behalf of the W.R. Grace & Co. bankruptcy estate in the Grace Chapter 11 Proceedings, alleging among other things that the Merger was a fraudulent conveyance, violated the uniform fraudulent transfer act and constituted a conspiracy. All such cases have been stayed and transferred to or are pending before the U.S. District Court as part of the Grace Chapter 11 Proceedings.

In 2003, the Company reached agreement with the asbestos creditors' committees on behalf of the W.R. Grace & Co. bankruptcy estate and W.R. Grace & Co. in the matters pending in the Grace Chapter 11 Proceedings for the settlement of all fraudulent conveyance and tax claims against it and other claims related to the Company that arise out of the bankruptcy of W.R. Grace & Co. Under the terms of the settlement agreement as amended (the Settlement Agreement), fraudulent conveyance and other claims raised on behalf of asbestos claimants will be dismissed with prejudice and the Company will receive protection against existing and potential future W.R. Grace & Co. related claims, including fraudulent conveyance and asbestos claims, and indemnification against income tax claims related to the non-NMC members of the W.R. Grace & Co. consolidated tax group upon confirmation of a W.R. Grace & Co. bankruptcy reorganization plan that contains such provisions. Under the Settlement Agreement, the Company will pay a total of $115,000 without interest to the W.R. Grace & Co. bankruptcy estate, or as otherwise directed by the Court, upon plan confirmation. No admission of liability has been or will be made. The Settlement Agreement has been approved by the U.S. District Court. On January 31, 2011, the U.S. Bankruptcy Court approved W.R. Grace & Co.'s plan of reorganization, including the Settlement Agreement, and recommended approval of the plan to the U.S. District Court. Subsequent to the Merger, W.R. Grace & Co. was involved in a multi-step transaction involving Sealed Air Corporation (Sealed Air, formerly known as Grace Holding, Inc.). The Company is engaged in litigation with Sealed Air to confirm its entitlement to indemnification from Sealed Air for all losses and expenses incurred by the Company relating to pre-Merger tax liabilities and Merger-related claims. Under the Settlement Agreement, upon final confirmation of a plan of reorganization that satisfies the conditions of the Company's payment obligation, this litigation will be dismissed with prejudice.

On April 4, 2003, FMCH filed a suit in the U. S. District Court for the Northern District of California, styled Fresenius USA, Inc., et al., v. Baxter International Inc., et al., Case No. C 03-1431, seeking a declaratory judgment that FMCH does not infringe patents held by Baxter International Inc. and its subsidiaries and affiliates (Baxter), that the patents are invalid, and that Baxter is without right or authority to threaten or maintain suit against FMCH for alleged infringement of Baxter's patents. In general, the asserted patents concern the use of touch screen interfaces for hemodialysis machines. Baxter filed counterclaims against FMCH seeking more than $140,000 in monetary damages and injunctive relief, and alleging that FMCH willfully infringed on Baxter's patents. On July 17, 2006, the court entered judgment on a jury verdict in favor of FMCH finding that all the asserted claims of the Baxter patents are invalid as obvious and/or anticipated in light of prior art.



(Continued)

On February 13, 2007, the court granted Baxter's motion to set aside the jury's verdict in favor of FMCH and reinstated the patents and entered judgment of infringement. Following a trial on damages, the court entered judgment on November 6, 2007 in favor of Baxter on a jury award of $14,300. On April 4, 2008, the court denied Baxter's motion for a new trial, established a royalty payable to Baxter of 10% of the sales price for continuing sales of FMCH's 2008K hemodialysis machines and 7% of the sales price of related disposables, parts and service beginning November 7, 2007, and enjoined sales of the touchscreen-equipped 2008K machine effective January 1, 2009. The Company appealed the court's rulings to the United States Court of Appeals for the Federal Circuit (Federal Circuit). In October 2008, the Company completed design modifications to the 2008K machine that eliminate any incremental hemodialysis machine royalty payment exposure under the original District Court order. On September 10, 2009, the Federal Circuit reversed the district court's decision and determined that the asserted claims in two of the three patents at issue are invalid. As to the third patent, the Federal Circuit affirmed the district court's decision; however, the Court also vacated the injunction and award of damages. These issues were remanded to the District Court for reconsideration in light of the invalidity ruling on most of the claims. As a result, FMCH is no longer required to fund the court-approved escrow account set up to hold the royalty payments ordered by the district court, although funds already contributed will remain in escrow until the case is finally concluded. On March 18, 2010, the U.S. Patent and Trademark Office (USPTO) and the Board of Patent Appeals and Interferences ruled in reexamination that the remaining Baxter patent is invalid. On October 5, 2010, Baxter appealed the Board's ruling to the Federal Circuit.

On April 28, 2008, Baxter filed suit in the U.S. District Court for the Northern District of Illinois, Eastern Division (Chicago), styled Baxter International, Inc. and Baxter Healthcare Corporation v. Fresenius Medical Care Holdings, Inc. and Fresenius USA, Inc., Case No. CV 2389, asserting that FMCH's hemodialysis machines infringe four patents issued in 2007 and 2008, all of which are based on one of the patents at issue in the April 2003 Baxter case described above. The new patents expire in April 2011 and relate to trend charts shown on touch screen interfaces and the entry of ultrafiltration profiles (ultrafiltration is the removing of liquid from a patient's body using osmotic pressure). This case is currently stayed pursuant to court order. The Company believes that its hemodialysis machines do not infringe any valid claims of the Baxter patents at issue. All the asserted patents now stand rejected in an ongoing reexamination at the USPTO.

On October 17, 2006, Baxter and DEKA Products Limited Partnership (DEKA) filed suit in the U.S. District Court for the Eastern District of Texas which was subsequently transferred to the Northern District of California, styled Baxter Healthcare Corporation and DEKA Products Limited Partnership v. Fresenius Medical Care Holdings, Inc. d/b/a Fresenius Medical Care North America and Fresenius USA, Inc., Case No. CV 438 TJW. The complaint alleged that FMCH's Liberty™ cycler infringes nine patents owned by or licensed to Baxter. During and after discovery, seven of the asserted patents were dropped from the suit. On July 28, 2010, at the conclusion of the trial, the jury returned a verdict in favor of FMCH finding that the Liberty™ cycler does not infringe any of the asserted claims of the Baxter patents. Baxter has asked the District Court to overturn the jury verdict.

### *(b) Other Litigation and Potential Exposures*

Renal Care Group, Inc. (RCG) is named as a nominal defendant in a complaint originally filed September 13, 2006 in the Chancery Court for the State of Tennessee Twentieth Judicial District at Nashville styled Indiana State District Council of Laborers and Hod Carriers Pension Fund v. Gary Brukardt et al. Following the trial court's dismissal of the complaint, plaintiff's appeal in part, and reversal in part by the appellate court, the cause of action purports to be a class action on behalf of former shareholders of RCG and seeks monetary damages only against the individual former directors of RCG. The individual defendants, however, may have claims for indemnification and reimbursement of expenses against the Company. The Company expects to continue as a defendant in the litigation, which is proceeding toward trial in the Chancery Court, and believes that defendants will prevail.

On July 17, 2007, resulting from an investigation begun in 2005, the United States Attorney filed a civil complaint in the United States District Court for the Eastern District of Missouri (St. Louis) against Renal Care Group, Inc., its subsidiary RCG Supply Company, and FMCH in its capacity as RCG's current corporate parent. The complaint seeks monetary damages and penalties with respect to issues arising out of the operation of RCG's Method II supply company through 2005, prior to FMCH's acquisition of RCG in 2006. The complaint is styled United States of America ex rel. Julie Williams et al. vs. Renal Care Group, Renal Care Group Supply Company and FMCH. On August 11, 2009, the Missouri District Court granted RCG's motion to transfer venue to the United States District Court for the Middle District of Tennessee (Nashville). On March 22, 2010, the Tennessee District Court entered judgment against defendants for approximately $23,000 in damages and interest under the unjust enrichment count of the complaint but denied all relief under the six False Claims Act counts of the complaint. The Company appealed the Tennessee District Court's decision to the United States Court of Appeals for the Sixth Circuit and secured a stay of enforcement of the judgment pending appeal. The United States Attorney filed a cross appeal, but also asked the Tennessee District Court for an indicative or supplemental ruling. On June 23, 2010, the Tennessee District Court issued an indicative ruling to the effect that, if the case were remanded to the District Court, it would expect to enter a judgment under the False Claims Act against the Company for approximately $104,000. On September 23, 2010, the Court of Appeals remanded the case to the Tennessee District Court to permit revision or supplementation of the original judgment, after which the Company may pursue its appeals to the Court of Appeals. The Company believes that RCG's operation of its Method II supply company was in compliance with applicable law, that no relief is due to the United States, and that its position in the litigation will ultimately be sustained.

On November 27, 2007, the United States District Court for the Western District of Texas (El Paso) unsealed and permitted service of two complaints previously filed under seal by a qui tam relator, a former FMCH local clinic employee. The first complaint alleged that a nephrologist unlawfully employed in his practice an assistant to perform patient care tasks that the assistant was not licensed to perform and that Medicare billings by the nephrologist and FMCH therefore violated the False Claims Act. The second complaint alleged that FMCH unlawfully retaliated against the relator by discharging her from employment constructively. The United States Attorney for the Western District of Texas declined to intervene and to prosecute on behalf of the United States. On March 30, 2010, the District Court issued final judgment in favor of defendants on all counts based on a jury verdict rendered on February 25, 2010 and on rulings of law made by the Court during the trial. The plaintiff has appealed from the District Court judgment.

On February 15, 2011, *a qui tam* relator's complaint under the False Claims Act against FMCH was unsealed by order of the United States District Court of the District of Massachusetts and served by the relator. The United States has not intervened in the case. *United States ex rel. John Doe v. Fresenius Medical Holdings, Inc.*, 2009 Civ. 10179 (D. Mass). The relator's complaint, which was first filed under seal in February 2009, alleges that FMCH seeks and receives reimbursement from government payers for medically unnecessary serum ferritin and hepatitis B antigen and antibody laboratory tests. On March 6, 2011, the United States Attorney for the District of Massachusetts issued a Civil Investigative Demand seeking the production of documents related to the same laboratory tests that are the subject of the relator's complaint. FMCH will cooperate fully in responding to the additional Civil Investigative Demand, and will vigorously contest the relator's complaint.

The Company filed claims for refunds contesting the Internal Revenue Service's (IRS) disallowance of FMCH's civil settlement payment deductions taken by FMCH in prior year tax returns. As a result of a settlement agreement with the IRS, the Company received a partial refund in September 2008 of $37,000, inclusive of interest and preserved its right to pursue claims in the United States Courts for refunds of all other disallowed deductions. On December 22, 2008, the Company filed a complaint for complete refund in the United States District Court for the District of Massachusetts, styled as Fresenius Medical Care Holdings, Inc. v United States. On June 24, 2010, the court denied FMCH's motion for summary judgment and the litigation is proceeding towards trial.

The IRS tax audits of FMCH for the years 2002 through 2006 have been completed. The IRS has disallowed all deductions taken during these audit periods related to intercompany mandatorily redeemable preferred shares. The Company has protested the disallowed deductions and will avail itself of all remedies. An adverse determination with respect to the disallowed deductions related to intercompany mandatorily redeemable preferred shares could have a material adverse effect on the Company's results of operations and liquidity. In addition, the IRS proposed other adjustments which have been recognized in the consolidated financial statements.

From time to time, the Company is a party to or may be threatened with other litigation or arbitration, claims or assessments arising in the ordinary course of its business. Management regularly analyzes current information including, as applicable, the Company's defenses and insurance coverage and, as necessary, provides accruals for probable liabilities for the eventual disposition of these matters.

The Company, like other health care providers, conducts its operations under intense government regulation and scrutiny. It must comply with regulations which relate to or govern the safety and efficacy of medical products and supplies, the operation of manufacturing facilities, laboratories and dialysis clinics, and environmental and occupational health and safety. The Company must also comply with the Anti-Kickback Statute, the False Claims Act, the Stark Law, and other federal and state fraud and abuse laws. Applicable laws or regulations may be amended, or enforcement agencies or courts may make interpretations that differ from the Company's interpretations or the manner in which it conducts its business. Enforcement has become a high priority for the federal government and some states.

In addition, the provisions of the False Claims Act authorizing payment of a portion of any recovery to the party bringing the suit encourage private plaintiffs to commence "whistle blower" actions. In May 2009, the scope of the False Claims Act was expanded and additional protections for whistle blowers and procedural provisions to aid whistle blowers' ability to proceed in a False Claims Act case were added. By virtue of this regulatory environment, the Company's business activities and practices are subject to extensive review by regulatory authorities and private parties, and continuing audits, investigative demands, subpoenas, other inquiries, claims and litigation relating to the Company's compliance with applicable laws and regulations. The Company may not always be aware that an inquiry or action has begun, particularly in the case of "whistle blower" actions, which are initially filed under court seal.

The Company operates many facilities throughout the United States. In such a decentralized system, it is often difficult to maintain the desired level of oversight and control over the thousands of individuals employed by many affiliated companies. The Company relies upon its management structure, regulatory and legal resources, and the effective operation of its compliance program to direct, manage and monitor the activities of these employees. On occasion, the Company may identify instances where employees, deliberately or inadvertently, have submitted inadequate or false billings. The actions of such persons may subject the Company and its subsidiaries to liability under the Anti-Kickback Statute, the Stark Law and the False Claims Act, among other laws.

Physicians, hospitals and other participants in the health care industry are also subject to a large number of lawsuits alleging professional negligence, malpractice, product liability, worker's compensation or related claims, many of which involve large claims and significant defense costs. The Company has been and is currently subject to these suits due to the nature of its business and expects that those types of lawsuits may continue. Although the Company maintains insurance at a level which it believes to be prudent, it cannot assure that the coverage limits will be adequate or that insurance will cover all asserted claims. A successful claim against the Company or any of its subsidiaries in excess of insurance coverage could have a material adverse effect upon it and the results of its operations. Any claims, regardless of their merit or eventual outcome, could have a material adverse effect on the Company's reputation and business.

The Company has also had claims asserted against it and has had lawsuits filed against it relating to alleged patent infringements or businesses that it has acquired or divested. These claims and suits relate both to operation of the businesses and to the acquisition and divestiture transactions. The Company has, when appropriate, asserted its own claims, and claims for indemnification. A successful claim against the Company or any of its subsidiaries could have a material adverse effect upon its business, financial condition, and the results of its operations. Any claims, regardless of their merit or eventual outcome, could have a material adverse effect on the Company's reputation and business.

### (c) *Accrued Special Charge for Legal Matters*

At December 31, 2001, the Company recorded a pre-tax special charge of $258,159 to reflect anticipated expenses associated with the defense and resolution of pre-Merger tax claims, Merger-related claims, and commercial insurer claims. The costs associated with the Settlement Agreement and settlements with insurers have been charged against this accrual. With the exception of the proposed $115,000 payment under the Settlement Agreement, all other matters included in the special charge have been resolved. While the Company believes that its remaining accrual reasonably estimates its currently anticipated costs related to the continued defense and resolution of this matter, no assurances can be given that its actual costs incurred will not exceed the amount of this accrual (see note 8).

## (19) Significant Concentrations

For the periods presented, approximately 53% in 2010 and 2009 and 57% in 2008, respectively, of the Company's healthcare services net revenues are paid by and subject to regulations under governmental programs, primarily Medicare and Medicaid. The Company maintains reserves for losses related to these programs, including uncollectible accounts receivable, and such losses have been within management's expectations.

Revenues from EPO accounted for approximately 20%, 21% and 20% of the Dialysis Services division's net revenues for the years ended December 31, 2010, 2009, and 2008, respectively, and materially contribute to Dialysis Services operating earnings. EPO is produced by a single source manufacturer, Amgen, Inc. In October 2006, the Company entered into a five-year exclusive sourcing and supply agreement with Amgen. Any interruption of supply could materially adversely affect the Company's business and results of operations.

## (20) Industry Segments and Information about Foreign Operations

The Company has identified two reportable segments, Fresenius Medical Services and Renal Therapy Group. Fresenius Medical Services segment primarily reflects the activity of providing dialysis treatment to patients with end stage renal disease. The Renal Therapy Group segment primarily reflects the activities of manufacturing and distributing products and equipment for the treatment of end stage renal disease. In addition it also performs clinical labatory testing. All prior years' financial information reflects reporting under the present segment reporting structure.

The table below provides information for the years ended December 31, 2010, 2009 and 2008 pertaining to the Company's reportable segments by geographic area:

| | | North America | Asia/Pacific | Total |
|---|---|---|---|---|
| Net revenues for years ended: | | | | |
| 2010 | $ | 8,023,586 | — | 8,023,586 |
| 2009 | | 7,515,711 | — | 7,515,711 |
| 2008 | | 6,910,628 | — | 6,910,628 |
| Operating earnings (loss) for years ended: | | | | |
| 2010 | $ | 1,524,898 | 338 | 1,525,236 |
| 2009 | | 1,354,313 | (90) | 1,354,223 |
| 2008 | | 1,249,842 | 226 | 1,250,068 |
| Total assets at December 31: | | | | |
| 2010 | $ | 5,990,686 | 1,285 | 5,991,971 |
| 2009 | | 5,731,316 | 1,218 | 5,732,534 |
| 2008 | | 5,477,983 | 1,520 | 5,479,503 |

The table below provides information for the years ended December 31, 2010, 2009 and 2008 pertaining to the Company's two industry segments:

| | | Fresenius Medical Services | Renal Therapy Group | Less intersegment sales | Total |
|---|---|---|---|---|---|
| Net revenues for years ended: | | | | | |
| 2010 | $ | 6,930,336 | 1,885,695 | 792,445 | 8,023,586 |
| 2009 | | 6,439,572 | 1,782,887 | 706,748 | 7,515,711 |
| 2008 | | 5,940,349 | 1,560,944 | 590,665 | 6,910,628 |
| Operating earnings for years ended: | | | | | |
| 2010 | $ | 1,208,721 | 316,515 | — | 1,525,236 |
| 2009 | | 1,031,766 | 322,457 | — | 1,354,223 |
| 2008 | | 931,213 | 318,855 | — | 1,250,068 |
| Total assets at December 31: | | | | | |
| 2010 | $ | 4,146,695 | 1,845,276 | — | 5,991,971 |
| 2009 | | 3,919,827 | 1,812,707 | — | 5,732,534 |
| 2008 | | 3,792,106 | 1,687,397 | — | 5,479,503 |
| Capital expenditures for years ended: | | | | | |
| 2010 | $ | 178,624 | 88,316 | — | 266,940 |
| 2009 | | 176,772 | 103,998 | — | 280,770 |
| 2008 | | 209,989 | 106,540 | — | 316,529 |
| Depreciation and amortization of properties and equipment and intangibles for years ended: | | | | | |
| 2010 | $ | 204,905 | 64,656 | — | 269,561 |
| 2009 | | 189,685 | 58,043 | — | 247,728 |
| 2008 | | 168,407 | 49,015 | — | 217,422 |



(Continued)

**FRESENIUS MEDICAL CARE HOLDINGS, INC.**
**AND SUBSIDIARIES**

Notes to Consolidated Financial Statements

December 31, 2010 and 2009

The table below provides the reconciliations of reportable segment operating earnings, assets, capital expenditures, and depreciation and amortization to the Company's consolidated totals:

| Segment reconciliation | | Years ended December 31 2010 | 2009 | 2008 |
|---|---|---|---|---|
| Income (loss) before income taxes: | | | | |
| Total operating earnings for reportable segments | $ | 1,525,236 | 1,354,223 | 1,250,068 |
| Corporate G&A (including foreign exchange) | | (177,341) | (128,755) | (108,772) |
| Corporate depreciation and amortization | | (15,920) | (16,255) | (19,990) |
| Research and development expense | | (31,272) | (22,330) | (19,033) |
| Net interest expense | | (210,871) | (239,943) | (214,343) |
| Income before income taxes | $ | 1,089,832 | 946,940 | 887,930 |
| Assets: | | | | |
| Total assets for reportable segments | $ | 5,991,971 | 5,732,534 | 5,479,503 |
| Intangible assets not allocated to segments | | 4,643,511 | 4,643,561 | 4,639,803 |
| Corporate assets and other | | 1,382,136 | 1,464,317 | 1,324,289 |
| Total assets | $ | 12,017,618 | 11,840,412 | 11,443,595 |
| Capital expenditures: | | | | |
| Total capital expenditures for reportable segments | $ | 266,940 | 280,770 | 316,529 |
| Corporate capital expenditures | | 12,555 | 12,665 | 55,051 |
| Total capital expenditures | $ | 279,495 | 293,435 | 371,580 |
| Depreciation and amortization: | | | | |
| Total depreciation and amortization for reportable segments | $ | 269,561 | 247,728 | 217,422 |
| Corporate depreciation and amortization | | 15,920 | 16,255 | 19,989 |
| Total depreciation and amortization | $ | 285,481 | 263,983 | 237,411 |