

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

(Mark One)

Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the quarterly period ended October 3, 2009

or

Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Commission File No. 1-9973

THE MIDDLEBY CORPORATION

(Exact Name of Registrant as Specified in its Charter)

Delaware

(State or Other Jurisdiction of
Incorporation or Organization)

36-3352497

(I.R.S. Employer Identification No.)

1400 Toastmaster Drive, Elgin, Illinois

(Address of Principal Executive Offices)

60120

(Zip Code)

Registrant's Telephone No., including Area Code

(847) 741-3300

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes No

Indicate by check mark whether the Registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of "accelerated filer, large accelerated filer and smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company

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

As of November 6, 2009, there were 18,556,037 shares of the registrant's common stock outstanding.

THE MIDDLEBY CORPORATION AND SUBSIDIARIES

QUARTER ENDED OCTOBER 3, 2009

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PART I. FINANCIAL INFORMATION**Item 1. Condensed Consolidated Financial Statements****THE MIDDLEBY CORPORATION AND SUBSIDIARIES**
CONDENSED CONSOLIDATED BALANCE SHEETS
(Amounts In Thousands, Except Share Data)
(Unaudited)

	<u>Oct 3, 2009</u>	<u>Jan 3, 2009</u>
<u>ASSETS</u>		
Current assets:		
Cash and cash equivalents	\$ 10,991	\$ 6,144
Accounts receivable, net of reserve for doubtful accounts of \$7,625 and \$6,598	79,033	85,969
Inventories, net	93,879	91,551
Prepaid expenses and other	8,334	7,646
Current deferred taxes	33,047	18,387
Total current assets	225,284	209,697
Property, plant and equipment, net of accumulated depreciation of \$44,785 and \$40,370	46,184	44,757
Goodwill	361,515	266,663
Other intangibles	186,795	125,501
Other assets	3,403	3,314
Total assets	<u>\$ 823,181</u>	<u>\$ 649,932</u>
<u>LIABILITIES AND STOCKHOLDERS' EQUITY</u>		
Current liabilities:		
Current maturities of long-term debt	\$ 6,890	\$ 6,377
Accounts payable	39,879	32,543
Accrued expenses	126,232	102,579
Total current liabilities	173,001	141,499
Long-term debt	288,118	228,323
Long-term deferred tax liability	12,450	33,687
Other non-current liabilities	30,452	23,029
Stockholders' equity:		
Preferred stock, \$0.01 par value; nonvoting; 2,000,000 shares authorized; none issued	—	—
Common stock, \$0.01 par value; 47,500,000 shares authorized; 22,625,950 and 21,068,556 shares issued in 2009 and 2008, respectively	136	120
Paid-in capital	157,399	107,305
Treasury stock at cost; 4,069,913 and 4,074,713 shares in 2009 and 2008, respectively	(102,000)	(102,000)
Retained earnings	269,513	226,231
Accumulated other comprehensive income	(5,888)	(8,262)
Total stockholders' equity	319,160	223,394
Total liabilities and stockholders' equity	<u>\$ 823,181</u>	<u>\$ 649,932</u>

See accompanying notes

THE MIDDLEBY CORPORATION AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF EARNINGS
(In Thousands, Except Per Share Data)
(Unaudited)

	Three Months Ended		Nine Months Ended	
	Oct 3, 2009	Sep27, 2008	Oct 3, 2009	Sep 27, 2008
Net sales	\$ 153,989	\$ 166,472	\$ 494,136	\$ 500,868
Cost of sales	91,952	101,735	301,989	310,221
Gross profit	62,037	64,737	192,147	190,647
Selling expenses	16,361	16,822	49,335	49,743
General and administrative expenses	17,602	16,962	59,702	51,443
Income from operations	28,074	30,953	83,110	89,461
Net interest expense and deferred financing amortization	2,797	3,168	8,800	9,910
Other expense, net	(137)	850	607	1,798
Earnings before income taxes	25,414	26,935	73,703	77,753
Provision for income taxes	9,913	10,645	30,421	31,165
Net earnings	<u>\$ 15,501</u>	<u>\$ 16,290</u>	<u>\$ 43,282</u>	<u>\$ 46,588</u>
Net earnings per share:				
Basic	<u>\$ 0.88</u>	<u>\$ 1.02</u>	<u>\$ 2.46</u>	<u>\$ 2.91</u>
Diluted	<u>\$ 0.83</u>	<u>\$ 0.96</u>	<u>\$ 2.34</u>	<u>\$ 2.72</u>
Weighted average number of shares				
Basic	17,600	15,911	17,589	15,985
Dilutive stock option ¹	1,154	1,106	931	1,158
Diluted	<u>18,754</u>	<u>17,017</u>	<u>18,520</u>	<u>17,143</u>

¹ There were no anti-dilutive stock options excluded from common stock equivalents for any period presented.

See accompanying notes

THE MIDDLEBY CORPORATION AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(In Thousands)
(Unaudited)

	Nine Months Ended	
	<u>Oct 3, 2009</u>	<u>Sep 27, 2008</u>
Cash flows from operating activities-		
Net earnings	\$ 43,282	\$ 46,588
Adjustments to reconcile net earnings to cash provided by operating activities:		
Depreciation and amortization	11,873	10,256
Deferred taxes	(2,850)	2,593
Non-cash share-based compensation	8,184	8,421
Unrealized loss on derivative financial instruments	14	169
Changes in assets and liabilities, net of acquisitions	22,065	100
Accounts receivable, net		
Inventories, net	11,718	(7,022)
Prepaid expenses and other assets	(850)	13,243
Accounts payable	(2,636)	(2,108)
Accrued expenses and other liabilities	(13,638)	(8,248)
Net cash provided by operating activities	<u>77,162</u>	<u>63,992</u>
Cash flows from investing activities-		
Net additions to property and equipment	(4,941)	(3,408)
Acquisition of Carter Hoffman	-	(167)
Acquisition of MP	-	(3,000)
Acquisition of Wells Bloomfield	-	(317)
Acquisition of Star	-	(188,241)
Acquisition of Giga	-	(9,918)
Acquisition of Frifri	-	(3,050)
Acquisition of TurboChef	(116,129)	-
Acquisition of CookTek	(8,000)	-
Acquisition of Anets	(3,359)	-
Net cash (used in) investing activities	<u>(132,429)</u>	<u>(208,101)</u>
Cash flows from financing activities-		
Net proceeds under revolving credit facilities	59,650	156,450
Net payments under foreign bank loan	221	525
Debt issuance costs	-	(1,002)
Repurchase of treasury stock	-	(12,359)
Net proceeds from stock issuances	384	270
Net cash provided by financing activities	<u>60,255</u>	<u>143,884</u>
Effect of exchange rates on cash and cash equivalents	(141)	(211)
Changes in cash and cash equivalents-		
Net increase (decrease) in cash and cash equivalents	4,847	(436)
Cash and cash equivalents at beginning of year	6,144	7,463
Cash and cash equivalents at end of quarter	<u>\$ 10,991</u>	<u>\$ 7,027</u>
Supplemental disclosure of cash flow information:		
Interest paid	<u>\$ 8,170</u>	<u>\$ 8,524</u>
Income tax payments	<u>\$ 24,509</u>	<u>\$ 19,582</u>
Non-cash investing and financing activities:		
Stock issuance related to the acquisition of TurboChef	<u>\$ 44,048</u>	<u>\$ —</u>
Contingent consideration related to the acquisition of CookTek	<u>\$ 7,360</u>	<u>\$ —</u>

See accompanying notes

THE MIDDLEBY CORPORATION AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

October 3, 2009

(Unaudited)

1) Summary of Significant Accounting Policies

A) Basis of Presentation

The condensed consolidated financial statements have been prepared by The Middleby Corporation (the "company"), pursuant to the rules and regulations of the Securities and Exchange Commission. The financial statements are unaudited and certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America have been condensed or omitted pursuant to such rules and regulations, although the company believes that the disclosures are adequate to make the information not misleading. These financial statements should be read in conjunction with the financial statements and related notes contained in the company's 2008 Form 10-K.

In the opinion of management, the financial statements contain all adjustments necessary to present fairly the financial position of the company as of October 3, 2009 and January 3, 2009, and the results of operations for the nine months ended October 3, 2009 and September 27, 2008 and cash flows for the nine months ended October 3, 2009 and September 27, 2008.

Events that occurred after October 3, 2009, up until the filing of this Form 10-Q on November 12, 2009 were considered in the preparation of these condensed consolidated financial statements.

B) Non- Cash Share-Based Compensation

The company estimates the fair value of market-based stock awards and stock options at the time of grant and recognizes compensation cost over the vesting period of the awards and options. Non-cash share-based compensation expense was \$2.7 million and \$2.8 million for the three months ended October 3, 2009 and September 27, 2008 respectively. Non-cash share-based compensation was \$8.2 million and \$8.4 million for the nine month periods ended October 3, 2009 and September 27, 2008, respectively.

C) Income Tax Contingencies

On December 31, 2006, the company adopted the provisions of Accounting Standards Codification ("ASC") 740 "Income Taxes". This interpretation prescribes a comprehensive model for how a company should recognize, measure, present and disclose in its financial statements uncertain tax positions that the company has taken or expects to take on a tax return. ASC 740 states that a tax benefit from an uncertain tax position may be recognized only if it is "more likely than not" that the position is sustainable, based on its technical merits. The tax benefit of a qualifying position is the largest amount of tax benefit that is greater than 50% likely of being realized upon settlement with a taxing authority having full knowledge of all relevant information.

As of January 3, 2009, the total amount of liability for unrecognized tax benefits was approximately \$10.4 million (of which the entire amount would impact the effective tax rate if recognized) plus approximately \$1.4 million of accrued interest and \$1.8 million of penalties. It is reasonably possible that the amounts of unrecognized tax benefits associated with state, federal and foreign tax positions may decrease over the next twelve months due to expiration of a statute or completion of an audit. While a reasonable range of the amount cannot be determined, the company believes such decrease would not be material.

The company operates in multiple taxing jurisdictions; both within the United States and outside of the United States, and faces audits from various tax authorities. The company remains subject to examination until the statute of limitations expires for the respective tax jurisdiction. Within specific countries, the company and its operating subsidiaries may be subject to audit by various tax authorities and may be subject to different statute of limitations expiration dates. A summary of the tax years that remain subject to examination in the company's major tax jurisdictions are:

United States – federal	2007 - 2008
United States – states	2002 - 2008
China	2002 - 2008
Denmark	2006 - 2008
Mexico	2005 - 2008
Philippines	2006 - 2008
South Korea	2005 - 2008
Spain	2007 - 2008
Taiwan	2007 - 2008
United Kingdom	2007 - 2008

D) Fair Value Measures

On December 30, 2007 (first day of fiscal year 2008), the company adopted the provisions of ASC 820 "Fair Value Measurements and Disclosures". This statement defines fair value, establishes a framework for measuring fair value in generally accepted accounting principles and expands disclosure about fair value measurements.

ASC 825 "Financial Instruments" delayed the effective date of the application of ASC 820 to fiscal years beginning after November 15, 2008 for all nonfinancial assets and nonfinancial liabilities that are recognized or disclosed at fair value in the financial statements on a non-recurring basis. The adoption of ASC 825 did not have a material impact on the company's financial position, results of operations or cash flows.

ASC 820 defines fair value as the price that would be received for an asset or paid to transfer a liability (an exit price) in the principal most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. ASC 820 establishes a fair value hierarchy, which prioritizes the inputs used in measuring fair value into the following levels:

Level 1 – Quoted prices in active markets for identical assets or liabilities

Level 2 – Inputs, other than quoted prices in active markets, that are observable either directly or indirectly.

Level 3 – Unobservable inputs based on our own assumptions.

The company’s financial assets and liabilities that are measured at fair value are categorized using the fair value hierarchy at October 3, 2009 are as follows (in thousands):

	<u>Fair Value</u> Level 1	<u>Fair Value</u> Level 2	<u>Fair Value</u> Level 3	<u>Total</u>
Financial Assets:				
None	—	—	—	—
Financial Liabilities:				
Interest rate swaps	—	\$ 4,008	—	\$ 4,008
Contingent consideration	—	—	\$ 7,360	\$ 7,360

The contingent consideration relates to an earnout provision recorded in conjunction with the acquisition of CookTek LLC. See Note 2 for more information.

ASC 825 “Financial Instruments” also permits entities to choose to measure many financial instruments and certain other items at fair value. As the company did not elect the fair value option, the adoption of ASC 825 did not have a material impact on the company’s financial position, results of operations and cash flows for the nine months ended October 3, 2009.

As of October 3, 2009, certain fixed assets were measured at fair value on a nonrecurring basis as the result of a plant consolidation initiative. The fixed assets were valued using the measurements classified as Level 2. The company recorded a non-cash impairment charge of \$1.6 million in the third quarter of 2009 to write-down fixed assets to their fair value.

2) **Acquisitions and Purchase Accounting**

The company operates in a highly fragmented industry and has completed numerous acquisitions over the past several years as a component of its growth strategy. The company has acquired industry leading brands and technologies to position itself as a leader in the commercial foodservice equipment and food processing equipment industries.

The company has accounted for all business combinations using the purchase method to record a new cost basis for the assets acquired and liabilities assumed. The difference between the purchase price and the fair value of the assets acquired and liabilities assumed has been recorded as goodwill in the financial statements. The results of operations of each acquisition are reflected in the consolidated financial statements of the company from the date of acquisition.

Star

On December 31, 2007, the company acquired the stock of New Star International Holdings, Inc. and subsidiaries (“Star”), a leading manufacturer of commercial cooking equipment for an aggregate purchase price of \$188.4 million in cash plus transaction costs.

The final allocation of cash paid for the Star acquisition is summarized as follows (in thousands):

	<u>Dec 31, 2007</u>
Cash	\$ 376
Current assets	28,959
Property, plant and equipment	8,225
Goodwill	118,772
Other intangibles	75,150
Other assets	71
Current liabilities	(12,041)
Deferred tax liabilities	(25,863)
Other non-current liabilities	<u>(3,797)</u>
Total cash paid	<u>\$ 189,852</u>

The goodwill and \$47.0 million of other intangibles associated with the trade name are subject to the non-amortization provisions of ASC 350 “Intangibles - Goodwill and Other”. Other intangibles also includes \$0.4 million allocated to backlog, \$3.8 million allocated to developed technology and \$24.0 million allocated to customer relationships which are to be amortized over periods of 1 month, 7 years and 7 years, respectively. Goodwill and other intangibles of Star are allocated to the Commercial Foodservice Equipment Group for segment reporting purposes. These assets generally are not expected to be deductible for tax purposes.

Pro forma Financial Information

The following unaudited pro forma results of operations for the year ended December 29, 2007, assumes the Star acquisition was completed on December 31, 2006. The pro forma results include adjustments to reflect additional interest expense to fund the acquisition, amortization of intangibles associated with the acquisition, and the effects of adjustments made to the carrying value of certain assets.

	<u>December 29, 2007</u>
Net sales	\$ 592,513
Net earnings	\$ 51,769
Net earnings per share:	
Basic	\$ 3.30
Diluted	\$ 3.06

The pro forma financial information presented above is not necessarily indicative of either the results of operations that would have occurred had the acquisition of Star, been effective on December 31, 2006 or of future operations of the company. Also, the pro forma financial information does not reflect the costs which the company incurred to integrate Star.

Giga

On April 22, 2008, the company acquired the stock of Giga Grandi Cucine S.r.l. ("Giga"), a leading European manufacturer of ranges, ovens and steam cooking equipment for a purchase price of \$9.7 million in cash plus transaction costs. The company also assumed \$5.1 million of debt included as part of the net assets of Giga. An additional deferred payment of \$3.3 million is also due to the seller ratably over a three year period.

The final allocation of cash paid for the Giga acquisition is summarized as follows (in thousands):

	<u>April 22, 2008</u>
Cash	\$ 217
Current assets	12,442
Property, plant and equipment	628
Goodwill	10,474
Other intangibles	5,242
Other assets	473
Current maturities of long-term debt	(5,105)
Current liabilities	(6,874)
Other non-current liabilities	<u>(7,347)</u>
Total cash paid	<u>\$ 10,150</u>

The goodwill and \$3.7 million of other intangibles associated with the trade name are subject to the non-amortization provisions of ASC 350. Other intangibles also includes \$0.2 million allocated to backlog and \$1.3 million allocated to customer relationships, which are to be amortized over periods of 3 months and 4 to 10 years, respectively. Goodwill and other intangibles of Giga are allocated to the Commercial Foodservice Equipment Group for segment reporting purposes.

Frifri

On April 23, 2008, the company acquired the assets of FriFri aro SA ("FriFri"), a leading European supplier of frying systems for an aggregate purchase price of \$3.4 million plus transaction costs.

The final allocation of cash paid for the Frifri acquisition is summarized as follows (in thousands):

	<u>April 23, 2008</u>
Cash	\$ 663
Current assets	5,076
Property, plant and equipment	398
Goodwill	3,573
Current liabilities	<u>(6,182)</u>
Total cash paid	<u>\$ 3,528</u>

The goodwill is subject to the non-amortization provisions of ASC 350. Goodwill of Frifri is allocated to the Commercial Foodservice Equipment Group for segment reporting purposes.

TurboChef

On January 5, 2009, the company acquired the stock of TurboChef Technologies, Inc. (“TurboChef”), a leading manufacturer of speed-cook ovens for an aggregate purchase price of \$160.3 million including \$116.1 million in cash and 1,539,668 shares of Middleby common stock valued at \$44.0 million.

The following estimated fair values of assets acquired and liabilities assumed are provisional and are based on the information that was available as of the acquisition date to estimate the fair value of assets acquired and liabilities assumed. Measurement period adjustments reflect new information obtained about facts and circumstances that existed as of the acquisition date (in thousands):

	Jan 5, 2009 (as initially reported)	Measurement Period Adjustments	Jan 5, 2009 (as adjusted)
Cash	\$ 10,146	\$ —	\$ 10,146
Current assets	23,979	(524)	23,455
Current deferred tax asset	11,449	(373)	11,076
Property, plant and equipment	4,155	(2,835)	1,320
Goodwill	66,821	9,999	76,820
Other intangibles	72,516	(9,466)	63,050
Deferred tax asset	18,588	3,383	21,971
Current liabilities	(36,615)	(132)	(36,747)
Other non-current liabilities	(768)	—	(768)
Total cash paid	\$ 170,271	\$ 52	\$ 170,323

The current and long term deferred tax assets amounted to \$11.1 million and \$22.0 million, respectively. These net assets are comprised of \$42.3 million related to federal and state net operating loss carry forwards, \$12.6 million of assets arising from the difference between the book and tax basis of tangible asset and liability accounts, net of \$21.8 million of deferred tax liabilities related to the difference between the book and tax basis of identifiable intangible assets. Federal and state net operating loss carryforwards are subject to carryforward limitations for income tax purposes.

The goodwill and \$49.8 million of other intangibles associated with the trade name are subject to the non-amortization provisions of ASC 350. Other intangibles also includes \$0.4 million allocated to backlog, \$3.9 million allocated to developed technology and \$8.9 million allocated to customer relationships which are to be amortized over periods of 3 months, 5 years and 5 years, respectively. Goodwill and other intangibles of TurboChef are allocated to the Commercial Foodservice Equipment Group for segment reporting purposes. These assets generally are not expected to be deductible for tax purposes.

During the first quarter ended April 4, 2009, the company recorded a preliminary estimate of the intangible assets acquired in conjunction with the TurboChef acquisition. The company also recorded intangible amortization expense related to those assets in its results of operations for the quarter ended April 4, 2009. The final valuation of intangible assets acquired was completed during the second quarter ended July 4, 2009. Therefore, the company adjusted the intangible amortization expense in its second quarter results of operations on a year to date basis. This adjustment did not have a material impact on the company's results of operations.

The company believes that information gathered to date provides a reasonable basis for estimating the fair values of assets acquired and liabilities assumed but the company is waiting for additional information necessary to finalize those fair values. Thus, the provisional measurements of fair value set forth above are subject to change. Such changes are not expected to be significant. The company expects to complete the purchase price allocation as soon as practicable but no later than one year from the acquisition date.

Results of Operations

The following unaudited results of operations for the three and nine months ended October 3, 2009, reflect the operations of TurboChef on a stand-alone basis (in thousands):

	Three Months Ended Oct 3, 2009	Nine Months Ended Oct 3, 2009
Net sales	\$ 16,750	\$ 59,080
Income from operations	\$ 2,903	\$ 10,199

Pro forma Financial Information

The following unaudited pro forma results of operations for the three and nine months ended September 27, 2008 assumes the TurboChef acquisition was completed on December 30, 2007. The pro forma results include adjustments to reflect additional interest expense to fund the acquisition, amortization of intangibles associated with the acquisition, and the effects of adjustments made to the carrying value of certain assets.

	Three Months Ended Sep 27, 2008	Nine Months Ended Sep 27, 2008
Net sales	\$ 186,696	\$ 566,585
Net earnings	11,411	31,308
Net earnings per share:		
Basic	0.66	1.78
Diluted	0.61	1.67

The supplemental pro forma financial information presented above has been prepared for comparative purposes and is not necessarily indicative of either the results of operations that would have occurred had the acquisition of TurboChef been effective on December 30, 2007 nor are they indicative of any future results. Also, the pro forma financial information does not reflect the costs which the company has incurred or may incur to integrate TurboChef.

CookTek

On April 26, 2009, the company completed its acquisition of substantially all of the assets and operations of CookTek LLC (“CookTek”), the leading manufacturer of induction cooking and warming systems for a purchase price of \$8.0 million in cash. An additional deferred payment of \$1.0 million is also due to the seller on the first anniversary of the acquisition. Additional contingent payments are also payable over the course of four years upon the achievement of certain sales targets.

The following estimated fair values of assets acquired and liabilities assumed are provisional and are based on the information that was available as of the acquisition date to estimate the fair value of assets acquired and liabilities assumed. Measurement period adjustments reflect new information obtained about facts and circumstances that existed as of the acquisition date (in thousands):

	<u>Apr 26, 2009</u>	<u>Measurement Period</u>	<u>Apr 26, 2009</u>
	<u>(as initially reported)</u>	<u>Adjustments</u>	<u>(as adjusted)</u>
Current assets	\$ 2,595	\$ (12)	\$ 2,583
Property, plant and equipment	152	—	152
Goodwill	11,544	12	11,556
Other intangibles	3,622	—	3,622
Current liabilities	(3,428)	—	(3,428)
Other non-current liabilities	(6,485)	—	(6,485)
Total cash paid	\$ 8,000	\$ —	\$ 8,000
Deferred cash payment	1,000	—	1,000
Contingent consideration	7,360	—	7,360
Net assets acquired and liabilities assumed	<u>\$ 16,360</u>	<u>\$ —</u>	<u>\$ 16,360</u>

The CookTek purchase agreement included an earnout provision providing for contingent payments due to the sellers to the extent certain financial targets are exceeded. The earnout amounts are payable in the four consecutive years subsequent to the acquisition date if CookTek is to exceed certain sales targets for each of those years. The earnout payment will amount to 10% of the sales in excess of the target for each of the respective years. There is no cap on the potential earnout payment, however, the company’s estimated probable range of the contingent consideration is between \$0 and \$15 million. The fair value of the contractual obligation associated with the contingent earnout provision recognized on the acquisition date is \$7.4 million. This amount was determined based on an income approach. The fair value measurement is based upon significant inputs not observable in the market and thus represents a Level 3 measurement as defined in ASC 820

The goodwill and \$2.3 million of other intangibles associated with the trade name are subject to the non-amortization provisions of ASC 350. Other intangibles also includes less than \$0.1 million allocated to backlog, \$0.9 million allocated to developed technology and \$0.5 million allocated to customer relationships which are to be amortized over periods of 3 months, 6 years and 5 years, respectively. Goodwill and other intangibles of CookTek are allocated to the Commercial Foodservice Equipment Group for segment reporting purposes. These assets are expected to be deductible for tax purposes.

The company believes that information gathered to date provides a reasonable basis for estimating the fair values of assets acquired and liabilities assumed but the company is waiting for additional information necessary to finalize those fair values. Thus, the provisional measurements of fair value set forth above are subject to change. Such changes are not expected to be significant. The company expects to finalize the valuation of intangible assets and complete the purchase price allocation as soon as practicable but no later than one year from the acquisition date.

Anets

On April 30, 2009, the company completed its acquisition of substantially all of the assets and operations of Anetsberger Brothers, Inc. (“Anets”), a leading manufacturer of griddles, fryers and dough rollers, for a purchase price of \$3.5 million. An additional deferred payment of \$0.5 million is due to the seller upon the achievement of certain transition objectives.

The following estimated fair values of assets acquired and liabilities assumed are provisional and are based on the information that was available as of the acquisition date to estimate the fair value of assets acquired and liabilities assumed. Measurement period adjustments reflect new information obtained about facts and circumstances that existed as of the acquisition date (in thousands):

	<u>Apr 30, 2009</u>
Current assets	\$ 2,210
Goodwill	3,320
Other intangibles	1,085
Current liabilities	(3,107)
Other non-current liabilities	<u>(150)</u>
Total cash paid	\$ 3,358
Deferred cash payment	<u>500</u>
Net assets acquired and liabilities assumed	<u>\$ 3,858</u>

The goodwill and \$0.9 million of other intangibles associated with the trade name are subject to the non-amortization provisions of ASC 350. Other intangibles also includes less than \$0.1 million allocated to developed technology and \$0.2 million allocated to customer relationships which are to be amortized over periods of 3 years and 3 years, respectively. Goodwill and other intangibles of Anets are allocated to the Commercial Foodservice Equipment Group for segment reporting purposes. These assets are expected to be deductible for tax purposes.

The company believes that information gathered to date provides a reasonable basis for estimating the fair values of assets acquired and liabilities assumed but the company is waiting for additional information necessary to finalize those fair values. Thus, the provisional measurements of fair value set forth above are subject to change. Such changes are not expected to be significant. The company expects to complete the purchase price allocation as soon as practicable but no later than one year from the acquisition date.

3) **Litigation Matters**

From time to time, the company is subject to proceedings, lawsuits and other claims related to products, suppliers, employees, customers and competitors. The company maintains insurance to partially cover product liability, workers compensation, property and casualty, and general liability matters. The company is required to assess the likelihood of any adverse judgments or outcomes to these matters as well as potential ranges of probable losses. A determination of the amount of accrual required, if any, for these contingencies is made after assessment of each matter and the related insurance coverage. The reserve requirement may change in the future due to new developments or changes in approach such as a change in settlement strategy in dealing with these matters. The company does not believe that any pending litigation will have a material adverse effect on its financial condition, results of operations or cash flows of the company.

4) **Recently Issued Accounting Standards**

In December 2007, the Financial Accounting Standards Board (“FASB”) issued ASC 805, “Business Combinations”. This statement provides companies with principles and requirements on how an acquirer recognizes and measures in its financial statements the identifiable assets acquired, liabilities assumed, and any noncontrolling interest in the acquiree as well as the recognition and measurement of goodwill acquired in a business combination. This statement also requires certain disclosures to enable users of the financial statements to evaluate the nature and financial effects of the business combination. Acquisition costs associated with the business combination will generally be expensed as incurred. This statement is effective for business combinations occurring in fiscal years beginning after December 15, 2008. Early adoption of ASC 805 was not permitted. The company adopted this statement on January 5, 2009, including the acquisition of TurboChef. Accordingly, the company has applied the principles of ASC 805 in valuing this acquisition. Middleby shares of common stock which were issued in conjunction with this transaction were valued using the share price at the time of closing to determine the value of the purchase price. Additionally, the company incurred approximately \$4.6 million in transaction related expenses which were recorded as a deferred acquisition cost reported as an asset on the balance sheet on January 3, 2009. In accordance with ASC 805, the company has applied a retrospective application and appropriately reflected the expense incurred in 2008 as a reduction in retained earnings in accordance with ASC 250-10-45, “Change in Accounting Principles,” on reporting a change in accounting principle.

In December 2007, the FASB issued ASC 810-10, “Consolidation”. This statement establishes accounting and reporting standards for the noncontrolling interest (minority interest) in a subsidiary and for the deconsolidation of a subsidiary. Upon its adoption, effective as of the beginning of the company’s 2009 fiscal year, noncontrolling interests will be classified as equity in the company’s financial statements and income and comprehensive income attributed to the noncontrolling interest will be included in the company’s income and comprehensive income. The provisions of this standard must be applied retrospectively upon adoption. The adoption of ASC 810-10 “Consolidation” did not have a material impact on the company’s financial position, results of operations or cash flows.

In December 2008, the FASB issued ASC 715-20 "Compensation-Retirement Benefits." This statement requires disclosures about assets held in an employer's defined benefit pension or other postretirement plan. This statement requires the disclosure of the percentage of the fair value of total plan assets for each major category of plan assets, such as equity securities, debt securities, real estate and all other assets, with the fair value of each major asset category as of each annual reporting date for which a financial statement is presented. It also requires disclosure of the level within the fair value hierarchy in which each major category of plan assets falls, using the guidance in ASC 820, "Fair Value Measurements and Disclosures." This statement is applicable to employers that are subject to the disclosure requirements and is generally effective for fiscal years ending after December 15, 2009. The company will comply with the disclosure provisions of this statement after its effective date.

In May 2009, the FASB issued ASC 855, "Subsequent Events." The objective of this statement is to establish general standards of accounting for and disclosures of events that occur after the balance sheet date but before financial statements are issued or are available to be issued. This statement defines the period after the balance sheet date during which management of a reporting entity should evaluate events or transactions that may occur for potential recognition or disclosure in the financial statements, the circumstances under which an entity should recognize events occurring after the balance sheet date in its financial statements and required disclosures. This statement is effective for interim or annual financial periods ending after June 15, 2009. The company has complied with the disclosure requirements of ASC 855. The adoption of ASC 855 did not have a material impact on the company's financial position, results of operations or cash flows.

In June 2009, the FASB issued ASC 105 "Generally Accepted Accounting Principles." This statement sets forth a new authoritative guidance for U.S. generally accepted accounting principles "GAAP" applicable to nongovernmental entities. ASC 105 establishes the GAAP hierarchy to include only two levels of GAAP: authoritative and nonauthoritative. This statement is effective for financial statements issued for interim and annual periods ending after September 15, 2009. The company has complied with the reporting requirements of ASC 105. The adoption of ASC 105 did not have a material impact on the company's financial position, results of operations or cash flows.

5) Other Comprehensive Income

The company reports changes in equity during a period, except those resulting from investments by owners and distributions to owners, in accordance with ASC 220, "Comprehensive Income."

Components of other comprehensive income were as follows (in thousands):

	Three Months Ended		Nine Months Ended	
	<u>Oct 3, 2009</u>	<u>Sept 27, 2008</u>	<u>Oct 3, 2009</u>	<u>Sept 27, 2008</u>
Net earnings	\$ 15,501	\$ 16,290	\$ 43,282	\$ 46,588
Currency translation adjustment	365	(2,556)	1,333	(1,571)
Unrealized gain/(loss) on interest rate swaps, net of tax	<u>466</u>	<u>20</u>	<u>1,041</u>	<u>240</u>
Comprehensive income	<u>\$ 16,332</u>	<u>\$ 13,754</u>	<u>\$ 45,656</u>	<u>\$ 45,257</u>

Accumulated other comprehensive income is comprised of unrecognized pension benefit costs of \$2.5 million net of taxes of \$1.1 million as of October 3, 2009 and January 3, 2009, foreign currency translation adjustments of \$1.2 million as of October 3, 2009 and \$2.5 million as of January 3, 2009 and an unrealized loss on interest rate swaps of \$2.1 million, net of taxes of \$1.4 million and \$3.2 million, net of taxes of \$2.1 million, as of October 3, 2009 and January 3, 2009 respectively.

6) Inventories

Inventories are composed of material, labor and overhead and are stated at the lower of cost or market. Costs for inventory at two of the company's manufacturing facilities have been determined using the last-in, first-out ("LIFO") method. These inventories under the LIFO method amounted to \$16.1 million at October 3, 2009 and \$22.5 million at January 3, 2009 and represented approximately 17% and 25% of the total inventory in each respective period. Costs for all other inventory have been determined using the first-in, first-out ("FIFO") method. The company estimates reserves for inventory obsolescence and shrinkage based on its judgment of future realization. Inventories at October 3, 2009 and January 3, 2009 are as follows:

	<u>Oct 3, 2009</u>	<u>Jan 3, 2009</u>
	(in thousands)	
Raw materials and parts	\$ 53,349	\$ 36,375
Work-in-process	13,682	21,075
Finished goods	27,415	34,668
	94,446	92,118
LIFO adjustment	(567)	(567)
	<u>\$ 93,879</u>	<u>\$ 91,551</u>

7) Goodwill

Changes in the carrying amount of goodwill for the nine months ended October 3, 2009 are as follows (in thousands):

	<u>Commercial Foodservice</u>	<u>Food Processing</u>	<u>International Distribution</u>	<u>Total</u>
Balance as of January 3, 2009	\$ 235,137	\$ 31,526	\$ —	\$ 266,663
Goodwill acquired during the year	91,695	—	—	91,695
Adjustments to prior year acquisitions	2,264	—	—	2,264
Exchange effect	893	—	—	893
Balance as of October 3, 2009	<u>\$ 329,989</u>	<u>\$ 31,526</u>	<u>\$ —</u>	<u>\$ 361,515</u>

8) Accrued Expenses

Accrued expenses consist of the following:

	<u>Oct 3, 2009</u>	<u>Jan 3, 2009</u>
	(in thousands)	
Accrued payroll and related expenses	\$ 21,974	\$ 23,294
Accrued warranty	14,028	12,595
Advance customer deposits	11,803	4,449
Accrued customer rebates	11,552	13,960
Accrued product liability and workers comp	9,929	8,577
Accrued agent commissions	5,721	4,493
Accrued professional services	5,543	5,283
Other accrued expenses	<u>45,682</u>	<u>29,928</u>
	<u>\$ 126,232</u>	<u>\$ 102,579</u>

9) Warranty Costs

In the normal course of business the company issues product warranties for specific product lines and provides for the estimated future warranty cost in the period in which the sale is recorded. The estimate of warranty cost is based on contract terms and historical warranty loss experience that is periodically adjusted for recent actual experience. Because warranty estimates are forecasts that are based on the best available information, claims costs may differ from amounts provided. Adjustments to initial obligations for warranties are made as changes in the obligations become reasonably estimable.

A rollforward of the warranty reserve is as follows:

	Nine Months Ended
	<u>Oct 3, 2009</u>
	(in thousands)
Beginning balance	\$ 12,595
Warranty reserve related to acquisitions	2,414
Warranty expense	18,084
Warranty claims	<u>(19,065)</u>
Ending balance	<u>\$ 14,028</u>

10) Financing Arrangements

	<u>Oct 3, 2009</u>	<u>Jan 3, 2009</u>
	(in thousands)	
Senior secured revolving credit line	\$ 286,000	\$ 226,350
Foreign loan	9,008	8,350
Total debt	<u>\$ 295,008</u>	<u>\$ 234,700</u>
Less: Current maturities of long-term debt	<u>6,890</u>	<u>6,377</u>
Long-term debt	<u>\$ 288,118</u>	<u>\$ 228,323</u>

During the fourth quarter of 2007 the company entered into a new senior secured credit facility that matures in December 2012. This agreement was later amended in August 2008 to provide for the acquisition of TurboChef. Terms of the senior credit agreement provide for \$497.5 million of availability under a revolving credit line. As of October 3, 2009, the company had \$286.0 million of borrowings outstanding under this facility. The company also has \$6.1 million in outstanding letters of credit, which reduces the borrowing availability under the revolving credit line. Remaining borrowing availability under this facility, which is also reduced by the company's foreign borrowings, was \$196.4 million at October 3, 2009.

Borrowings under the senior secured credit facility are assessed at an interest rate of 1.25% above LIBOR for long-term borrowings or at the higher of the Prime rate and the Federal Funds Rate. At October 3, 2009 the average interest rate on the senior debt amounted to 1.51%. The interest rates on borrowings under the senior bank facility may be adjusted quarterly based on the company's defined indebtedness ratio on a rolling four-quarter basis. Additionally, a commitment fee based upon the indebtedness ratio is charged on the unused portion of the revolving credit line. This variable commitment fee amounted to 0.25% as of October 3, 2009.

In August 2006, the company completed its acquisition of Houno A/S in Denmark. This acquisition was funded in part with locally established debt facilities with borrowings in Danish Krone. On October 3, 2009 these facilities amounted to \$4.1 million in U.S. dollars, including \$2.1 million outstanding under a revolving credit facility and \$2.0 million of a term loan. The interest rate on the revolving credit facility is assessed at 1.25% above Euro LIBOR, which amounted to 4.65% on October 3, 2009. The term loan matures in 2013 and the interest rate is assessed at 6.14%.

In April 2008, the company completed its acquisition of Giga Grandi Cucine S.r.l in Italy. This acquisition was funded in part with locally established debt facilities with borrowings denominated in Euro. On October 3, 2009 these facilities amounted to \$4.9 million in U.S. dollars. The borrowings under these facilities are collateralized by the receivables of the company. The interest rate on these credit facilities is tied to six-month Euro LIBOR. At October 3, 2009, the average interest rate on these facilities amounted to 3.5%. The facilities mature in April of 2015.

In April 2009, the FASB issued ASC 825 “Financial Instruments” and ASC 270 “Interim Reporting”, which requires disclosures of fair value for any financial instruments not currently reflected at fair value on the balance sheet for all interim periods. This statement is effective for interim financial periods ending after June 15, 2009. The company has complied with the disclosure requirements of these statements after its effective date. As ASC 270 relates to disclosure requirements, the adoption of this statement did not have a material impact on the company’s financial position, results of operations or cash flows.

The company’s debt is reflected on the balance sheet at cost. Based on current market conditions, the company believes its interest rate margins on its existing debt are below the rate available in the market, which causes the fair value of debt to fall below the carrying value. The company believes the current interest rate margin is approximately 1.0% below current market rates. However, as the interest rate margin is based upon numerous factors, including but not limited to the credit rating of the borrower, the duration of the loan, the structure and restrictions under the debt agreement, current lending policies of the counterparty, and the company’s relationships with its lenders, there is no readily available market data to ascertain the current market rate for an equivalent debt instrument. As a result, the current interest rate margin is based upon the company’s best estimate based upon discussions with its lenders.

The company estimated the fair value of its loans by calculating the upfront cash payment a market participant would require to assume the company’s obligations. The upfront cash payment is the amount that a market participant would be able to lend at October 3, 2009 to achieve sufficient cash inflows to cover the cash outflows under the company’s senior revolving credit facility assuming the facility was outstanding in its entirety until maturity. Since the company maintains its borrowings under a revolving credit facility and there is no predetermined borrowing or repayment schedule, for purposes of this calculation the company calculated the fair value of its obligations assuming the current amount of debt at the end of the period was outstanding until the maturity of the company’s senior revolving credit facility in December 2012. Although borrowings could be materially greater or less than the current amount of borrowings outstanding at the end of the period, it is not practical to estimate the amounts that may be outstanding during future periods. The fair value of the company’s senior debt obligations as estimated by the company based upon its assumptions is approximately \$285.7 million at October 3, 2009, as compared to the carrying value of \$295.0 million.

The carrying value and estimated aggregate fair value, based primarily on market prices, of debt is as follows (dollars in thousands):

	October 3, 2009		January 3, 2009	
	Carrying Value	Fair Value	Carrying Value	Fair Value
Total debt	\$ 295,008	\$ 285,745	\$ 234,700	\$ 226,486

The company believes that its current capital resources, including cash and cash equivalents, cash generated from operations, funds available from its revolving credit facility and access to the credit and capital markets will be sufficient to finance its operations, debt service obligations, capital expenditures, product development and integration expenditures for the foreseeable future.

The company has historically entered into interest rate swap agreements to effectively fix the interest rate on its outstanding debt. The agreements swap one-month LIBOR for fixed rates. As of October 3, 2009 the company had the following interest rate swaps in effect:

	Notional Amount	Fixed Interest Rate	Effective Date	Maturity Date
\$	25,000,000	3.67%	9/26/2008	9/01/2011
\$	25,000,000	3.35%	1/14/2008	1/14/2010
\$	20,000,000	3.35%	6/10/2008	6/10/2010
\$	15,000,000	3.13%	9/08/2008	9/06/2010
\$	10,000,000	2.78%	2/06/2008	2/06/2010
\$	10,000,000	3.03%	2/06/2008	2/06/2011
\$	10,000,000	3.46%	9/08/2008	9/06/2011
\$	10,000,000	5.03%	3/03/2006	12/21/2009
\$	10,000,000	2.92%	2/01/2008	2/01/2010
\$	10,000,000	3.59%	6/10/2008	6/10/2011

The terms of the senior secured credit facility limit the paying of dividends, capital expenditures and leases, and require, among other things, ratios of indebtedness of 3.5 debt to earnings before interest, taxes, depreciation and amortization (“EBITDA”) and fixed charge coverage of 1.25 EBITDA to fixed charges. The credit agreement also provides that if a material adverse change in the company’s business operations or conditions occurs, the lender could declare an event of default. Under terms of the agreement a material adverse effect is defined as (a) a material adverse change in, or a material adverse effect upon, the operations, business properties, condition (financial and otherwise) or prospects of the company and its subsidiaries taken as a whole; (b) a material impairment of the ability of the company to perform under the loan agreements and to avoid any event of default; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against the company of any loan document. A material adverse effect is determined on a subjective basis by the company’s creditors. The credit facility is secured by the capital stock of the company’s domestic subsidiaries, 65% of the capital stock of the company’s foreign subsidiaries and substantially all other assets of the company. At October 3, 2009, the company was in compliance with all covenants pursuant to its borrowing agreements.

11) **Financial Instruments**

ASC 815 “Derivatives and Hedging” requires an entity to recognize all derivatives as either assets or liabilities and measure those instruments at fair value. Derivatives that do not qualify as a hedge must be adjusted to fair value in earnings. If the derivative does qualify as a hedge under ASC 815, changes in the fair value will either be offset against the change in fair value of the hedged assets, liabilities or firm commitments or recognized in other accumulated comprehensive income until the hedged item is recognized in earnings. The ineffective portion of a hedge’s change in fair value will be immediately recognized in earnings.

Foreign Exchange: Throughout the year the company has entered into derivative instruments, principally forward contracts to reduce exposures pertaining to fluctuations in foreign exchange rates. As of October 3, 2009, the company had no forward contracts outstanding.

Interest Rate: The company has entered into interest rate swaps to fix the interest rate applicable to certain of its variable-rate debt. The agreements swap one-month LIBOR for fixed rates. The company has designated these swaps as cash flow hedges and all changes in fair value of the swaps are recognized in accumulated other comprehensive income. As of October 3, 2009, the fair value of these instruments was a loss of \$4.0 million. The change in fair value of these swap agreements in the first nine months of 2009 was a gain of \$ 1.0 million, net of taxes.

A summary of the company's interest rate swaps is as follows:

	Location	Nine Months Ended	
		Oct 3, 2009	Sep 27, 2008
(amounts in thousands)			
Fair value	Other liabilities	\$ (4,008)	\$ (12)
Amount of gain/(loss) recognized in other comprehensive income	Other comprehensive income	\$ 1,041	\$ (240)
Gain/(loss) reclassified from accumulated other comprehensive income (effective portion)	Other comprehensive income	\$ —	\$ —
Gain/(loss) recognized in income (ineffective portion)	Other expense	\$ (14)	\$ (169)

Interest rate swaps are subject to default risk to the extent the counterparty were unable to satisfy its settlement obligations under the interest rate swap agreements. The company reviews the credit profile of the financial institutions that are counterparties to such swap agreements and assesses their creditworthiness prior to entering into the interest rate swap agreements and throughout the term. The interest rate swap agreements typically contain provisions that allow the counterparty to require early settlement in the event that the company becomes insolvent or is unable to maintain compliance with its covenants under its existing debt agreement.

12) Segment Information

The company operates in three reportable operating segments defined by management reporting structure and operating activities.

The Commercial Foodservice Equipment Group manufactures cooking equipment for the restaurant and institutional kitchen industry. This business segment has manufacturing facilities in California, Illinois, Michigan, Missouri, New Hampshire, North Carolina, Tennessee, Texas, Vermont, Denmark, Italy, and the Philippines. Principal product lines of this segment include baking ovens, broilers, catering equipment, charbroilers, combi-ovens, coffee and beverage systems, convection ovens, conveyor ovens, countertop cooking equipment, foodwarming equipment, fryers, griddles, hot food servers, induction cooking and warming systems, ranges, speed cook ovens, steamers and steam equipment, toasters and ventless cooking systems. These products are sold and marketed under the brand names: Anets, Blodgett, Blodgett Combi, Blodgett Range, Bloomfield, CTX, Carter-Hoffmann, CookTek, Frifri, Giga, Holman, Houno, Jade, Lang, MagiKitch'n, Middleby Marshall, Nu-Vu, Pitco, Southbend, Star, Toastmaster, TurboChef and Wells.

The Food Processing Equipment Group manufactures preparation cooking, packaging and food safety equipment for the food processing industry. This business segment has manufacturing facilities in Georgia and Wisconsin. Its principal products include batch ovens sold under the Alkar brand, conveyORIZED ovens and continuous process ovens, breading, battering, mixing, forming, and slicing equipment sold under the MP Equipment brand and packaging and food safety equipment sold under the RapidPak brand.

The International Distribution Division provides integrated sales, design, export management, distribution and installation services through its operations in China, India, Lebanon, Mexico, the Philippines, Russia, South Korea, Spain, Sweden, Taiwan and the United Kingdom. The division sells the company's product lines and certain non-competing complementary product lines throughout the world. For a local country distributor or dealer, the company is able to provide a centralized source of foodservice equipment with complete export management and product support services.

The accounting policies of the segments are the same as those described in the summary of significant accounting policies. The chief decision maker evaluates individual segment performance based on operating income. Management believes that intersegment sales are made at established arms-length transfer prices.

Net Sales Summary
(dollars in thousands)

	Three Months Ended				Nine Months Ended			
	Oct 3, 2009		Sep 27, 2008		Oct 3, 2009		Sep 27, 2008	
	Sales	Percent	Sales	Percent	Sales	Percent	Sales	Percent
<u>Business Divisions:</u>								
Commercial Foodservice	\$ 131,367	85.3	\$ 138,327	83.1	\$ 432,160	87.5	\$ 419,212	83.7
Food Processing	17,346	11.3	21,079	12.7	45,884	9.3	61,435	12.3
International Distribution(1)	13,765	8.9	16,162	9.7	38,286	7.7	47,380	9.4
Intercompany sales (2)	(8,489)	(5.5)	(9,096)	(5.5)	(22,194)	(4.5)	(27,159)	(5.4)
Total	\$ 153,989	100.0%	\$ 166,472	100.0%	\$ 494,136	100.0%	\$ 500,868	100.0%

(1) Consists of sales of products manufactured by Middleby and products manufactured by third parties.

(2) Represents the elimination of sales from the Commercial Foodservice Equipment Group to the International Distribution Division

The following table summarizes the results of operations for the company's business segments⁽¹⁾(in thousands):

	Commercial Foodservice	Food Processing	International Distribution	Corporate and Other ⁽²⁾	Eliminations ⁽³⁾	Total
Three months ended Oct 3, 2009						
Net sales	\$ 131,367	\$ 17,346	\$ 13,765	\$ —	\$ (8,489)	\$ 153,989
Operating income	29,806	3,815	849	(6,396)	—	28,074
Depreciation and amortization expense	3,243	319	45	191	—	3,798
Net capital expenditures	887	50	(8)	42	—	971
Nine months ended Oct 3, 2009						
Net sales	\$ 432,160	\$ 45,884	\$ 38,286	\$ —	\$ (22,194)	\$ 494,136
Operating income	97,718	7,658	2,099	(24,620)	255	83,110
Depreciation and amortization expense	10,253	980	128	512	—	11,873
Net capital expenditures	4,322	74	145	400	—	4,941
Total assets	696,779	68,177	25,265	39,267	(6,307)	823,181
Long-lived assets	542,180	43,347	454	11,916	—	597,897
Three months ended Sep 27, 2008						
Net sales	\$ 138,327	\$ 21,079	\$ 16,162	\$ —	\$ (9,096)	\$ 166,472
Operating income	34,068	4,189	1,341	(9,102)	457	30,953
Depreciation and amortization expense	2,628	411	52	236	—	3,327
Net capital expenditures	678	12	(40)	15	—	665
Nine months ended Sep 27, 2008						
Net sales	\$ 419,212	\$ 61,435	\$ 47,380	\$ —	\$ (27,159)	\$ 500,868
Operating income	102,272	10,275	3,507	(27,251)	658	89,461
Depreciation and amortization expense	8,205	1,242	152	394	—	9,993
Net capital expenditures	3,122	88	161	37	—	3,408
Total assets	527,204	71,495	27,780	30,774	(9,218)	648,035
Long-lived assets	367,426	43,656	649	11,172	—	422,903

(1) *Non-operating expenses are not allocated to the operating segments. Non-operating expenses consist of interest expense and deferred financing amortization, foreign exchange gains and losses and other income and expense items outside of income from operations.*

(2) *Includes corporate and other general company assets and operations.*

(3) *Includes elimination of intercompany sales, profit in inventory and intercompany receivables. Intercompany sale transactions are predominantly from the Commercial Foodservice Equipment Group to the International Distribution Division.*

Long-lived assets by major geographic region are as follows (in thousands):

	Oct 3, 2009	Sep 27, 2008
United States and Canada	\$ 568,891	\$ 401,727
Asia	1,917	2,263
Europe and Middle East	26,895	18,608
Latin America	194	305
Total international	<u>29,006</u>	<u>21,176</u>
	<u>\$ 597,897</u>	<u>\$ 422,903</u>

Net sales by major geographic region, including those sales from the Commercial Foodservice Equipment Group direct to international customers, were as follows (in thousands):

	Three Months Ended		Nine Months Ended	
	Oct 3, 2009	Sep 27, 2008	Oct 3, 2009	Sep 27, 2008
United States and Canada	\$ 125,071	\$ 133,923	\$ 417,703	\$ 405,495
Asia	8,111	9,242	18,757	25,752
Europe and Middle East	17,039	18,672	46,392	55,532
Latin America	3,768	4,635	11,284	14,089
Net sales	<u>\$ 153,989</u>	<u>\$ 166,472</u>	<u>\$ 494,136</u>	<u>\$ 500,868</u>

13) Employee Retirement Plans

(a) Pension Plans

The company maintains a non-contributory defined benefit plan for its employees at Smithville, Tennessee facility, which was acquired as part of the Star acquisition. Benefits are determined based upon retirement age and years of service with the company. This defined benefit plan was frozen on April 1, 2008 and no further benefits accrue to the participants beyond this date. Plan participants will receive or continue to receive payments for benefits earned on or prior to April 1, 2008 upon reaching retirement age.

The company maintains a non-contributory defined benefit plan for its union employees at the Elgin, Illinois facility. Benefits are determined based upon retirement age and years of service with the company. This defined benefit plan was frozen on April 30, 2002 and no further benefits accrue to the participants beyond this date. Plan participants will receive or continue to receive payments for benefits earned on or prior to April 30, 2002 upon reaching retirement age. The employees participating in the defined benefit plan were enrolled in a newly established 401K savings plan on July 1, 2002, further described below.

The company also maintains a retirement benefit agreement with its Chairman. The retirement benefits are based upon a percentage of the Chairman's final base salary. Additionally, the company maintains a retirement plan for non-employee directors participating on the Board of Directors prior to 2004. This plan is not available to any new non-employee directors. The plan provides for an annual benefit upon a change in control of the company or retirement from the Board of Directors at age 70, equal to 100% of the director's last annual retainer, payable for a number of years equal to the director's years of service up to a maximum of 10 years.

(b) *401K Savings Plans*

The company maintains two separate defined contribution 401K savings plans covering all employees in the United States. These two plans separately cover the union employees at the Elgin, Illinois facility and all other remaining union and non-union employees in the United States. The company makes profit sharing contributions to the various plans in accordance with the requirements of the plan. Profit sharing contributions for the Elgin Union 401K savings plans are made in accordance with the agreement.

14) Restructuring

During the first quarter the company made the decision and took action to close one of its manufacturing facilities and transfer production to another of the company's manufacturing facilities. This initiative was substantially completed by the end of 2009 third quarter. The company recorded expense included within general and administrative expenses in the condensed consolidated statements of earnings in the first nine months of 2009 for severance obligations and facility closure and lease obligations associated with this initiative. These costs are summarized as follows (in thousands):

Severance obligations	\$ 2,300
Facility closure and lease obligations	919
Payments	<u>(748)</u>
Balance October 3, 2009	<u>\$ 2,471</u>

The company anticipates that all severance obligations will be satisfied by the end of the second quarter of 2010. The lease obligation extends through June 2012. As of October 3, 2009, the company believes the remaining lease reserve balance is adequate to cover the remaining costs identified.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

Informational Notes

This report contains forward-looking statements subject to the safe harbor created by the Private Securities Litigation Reform Act of 1995. The company cautions readers that these projections are based upon future results or events and are highly dependent upon a variety of important factors which could cause such results or events to differ materially from any forward-looking statements which may be deemed to have been made in this report, or which are otherwise made by or on behalf of the company. Such factors include, but are not limited to, volatility in earnings resulting from goodwill impairment losses which may occur irregularly and in varying amounts; variability in financing costs; quarterly variations in operating results; dependence on key customers; international exposure; foreign exchange and political risks affecting international sales; ability to protect trademarks, copyrights and other intellectual property; changing market conditions; the impact of competitive products and pricing; the timely development and market acceptance of the company's products; the availability and cost of raw materials; and other risks detailed herein and from time-to-time in the company's Securities and Exchange Commission filings, including the company's 2008 Annual Report on Form 10-K and Item 1A of this Form 10-Q.

The economic outlook is highly uncertain at this time, with challenging financial markets and economic conditions. As a global business, the company's operating results are impacted by the health of the North American, European, Asian and Latin American economies. The depth and duration of economic decline and the timing and strength of the recovery are very uncertain.

Net Sales Summary
(dollars in thousands)

	Three Months Ended				Nine Months Ended			
	Oct 3, 2009		Sep 27, 2008		Oct 3, 2009		Sep 27, 2008	
	Sales	Percent	Sales	Percent	Sales	Percent	Sales	Percent
Business Divisions:								
Commercial Foodservice	\$ 131,367	85.3	\$ 138,327	83.1	\$ 432,160	87.5	\$ 419,212	83.7
Food Processing	17,346	11.3	21,079	12.7	45,884	9.3	61,435	12.3
International Distribution(1)	13,765	8.9	16,162	9.7	38,286	7.7	47,380	9.4
Intercompany sales (2)	(8,489)	(5.5)	(9,096)	(5.5)	(22,194)	(4.5)	(27,159)	(5.4)
Total	\$ 153,989	100.0%	\$ 166,472	100.0%	\$ 494,136	100.0%	\$ 500,868	100.0%

(1) Consists of sales of products manufactured by Middleby and products manufactured by third parties.

(2) Represents the elimination of sales from the Commercial Foodservice Equipment Group to the International Distribution Division.

Results of Operations

The following table sets forth certain consolidated statements of earnings items as a percentage of net sales for the periods.

	Three Months Ended		Nine Months Ended	
	Oct 3, 2009	Sep 27, 2008	Oct 3, 2009	Sep 27, 2008
Net sales	100.0%	100.0%	100.0%	100.0%
Cost of sales	59.7	61.1	61.1	61.9
Gross profit	40.3	38.9	38.9	38.1
Selling, general and administrative expenses	22.1	20.3	22.1	20.2
Income from operations	18.2	18.6	16.8	17.9
Net interest expense and deferred financing amortization	1.8	1.9	1.8	2.0
Other expense, net	(0.1)	0.5	0.1	0.4
Earnings before income taxes	16.5	16.2	14.9	15.5
Provision for income taxes	6.4	6.4	6.1	6.2
Net earnings	10.1%	9.8%	8.8%	9.3%

Three Months Ended October 3, 2009 Compared to Three Months Ended September 27, 2008

NET SALES. Net sales for the third quarter of fiscal 2009 were \$154.0 million as compared to \$166.5 million in the third quarter of 2008.

- Net sales at the Commercial Foodservice Equipment Group amounted to \$131.4 million in the third quarter of 2009 as compared to \$138.3 million in the prior year quarter. Net sales from the acquisitions of TurboChef, which was acquired on January 5, 2009, CookTek, which was acquired on April 26, 2009, and Anets, which was acquired on April 30, 2009, accounted for an increase of \$20.5 million during the third quarter of 2009. Excluding the impact of acquisitions, net sales of commercial foodservice equipment decreased \$27.4 million.
- Net sales for the Food Processing Equipment Group amounted to \$17.3 million in the third quarter of 2009 as compared to \$21.1 million in the prior year quarter.
- Net sales at the International Distribution Division amounted to \$13.8 million in the third quarter of 2009 as compared to \$16.2 million in the prior year reflecting lower sales in Asia, Europe and Latin America.

Sales at all three business segments continued to be impacted by the global recession. Chain restaurant customers continue to have lower restaurant openings. Additionally, restaurant operators and food processing customers have deferred the replacement and upgrade of equipment given the current economic conditions.

GROSS PROFIT. Gross profit decreased to \$62.0 million in the third quarter of 2009 from \$64.7 million in the prior year period, reflecting the impact of lower sales volumes. The gross margin rate was 40.3% in the third quarter of 2009 as compared to 38.9% in the prior year quarter. The net change in the gross margin rate reflects:

- Improved margins at certain of the newly acquired operating companies which have improved due to acquisition integration initiatives including cost savings from plant consolidations.
- Reduced material costs associated with steel prices and other supply chain initiatives.
- The adverse impact of lower sales volumes.

SELLING, GENERAL AND ADMINISTRATIVE EXPENSES. Combined selling, general, and administrative expenses increased from \$33.8 million in the third quarter of 2008 to \$34.0 million in the third quarter of 2009. As a percentage of net sales, operating expenses increased from 20.3% in the third quarter of 2008 to 22.1% in the third quarter of 2009. Selling expenses decreased slightly from \$16.8 million in the third quarter of 2008 to \$16.4 million in the third quarter of 2009. Selling expenses reflect increased costs of \$2.4 million associated with the acquisitions of TurboChef, CookTek and Anets offset by reduced costs of \$2.0 million associated with commission expense due to lower sales and lower commission rates. General and administrative expenses increased from \$17.0 million in the third quarter of 2008 to \$17.6 million in the third quarter of 2009. General and administrative expenses reflect a \$2.5 million non-recurring expense associated with the write-down of fixed assets and the establishment of reserves for lease obligations associated with plant consolidation initiatives and \$1.9 million of costs associated with the acquired operations of TurboChef, CookTek and Anets. These increases in expenses were offset by lower incentive based compensation and other expense reduction measures.

NON-OPERATING EXPENSES. Interest and deferred financing amortization costs decreased to \$2.8 million in the third quarter of 2009 as compared to \$3.2 million in the third quarter of 2008, due to lower interest rates on increased borrowings resulting from recent acquisitions. Other income was \$0.1 million in the third quarter of 2009 as compared to other expense of \$0.9 million in the prior year third quarter. Other expense and other income consisted primarily of foreign exchange losses and gains.

INCOME TAXES. A tax provision of \$9.9 million, at an effective rate of 39%, was recorded during the third quarter of 2009, as compared to a \$10.6 million provision at a 40% effective rate in the prior year quarter.

Nine Months Ended October 3, 2009 Compared to Nine Months Ended September 27, 2008

NET SALES. Net sales for the nine-month period ended October 3, 2009 were \$494.1 million as compared to \$500.9 million in the nine-month period ended September 27, 2008.

- Net sales at the Commercial Foodservice Equipment Group for the nine-month period ended October 3, 2009 amounted to \$432.1 million as compared to \$419.2 million for the nine-month period ended September 27, 2008. Net sales from the acquisitions of TurboChef, which was acquired on January 5, 2009, CookTek, which was acquired on April 26, 2009 and Anets, which was acquired on April 30, 2009 accounted for an increase of \$65.3 million in the nine month period ended October 3, 2009. Excluding the impact of acquisitions, net sales of commercial foodservice equipment for the nine-month period ended October 3, 2009 decreased by \$52.4 million as compared to the nine-month period ended September 27, 2008. Sales of the Commercial Foodservice Equipment Group were impacted by reduced restaurant openings and deferred purchases to replace and upgrade existing equipment. This decline was offset in part by a large equipment rollout with a major chain customer to support a new menu item.
- Net sales for the Food Processing Equipment Group amounted to \$45.9 million in the nine-month period ended October 3, 2009 as compared to \$61.4 million in the prior year period. Net sales of food processing equipment continued to be impacted by the adverse economic conditions.
- Net sales at the International Distribution Division amounted to \$38.3 million in the nine-month period ended October 2, 2009 as compared to \$47.4 million, reflecting lower sales in Asia, Europe and Latin America. Sales continue to be affected by adverse economic conditions internationally and reduced store openings by the U.S. chains in the international markets.

GROSS PROFIT. Gross profit increased to \$192.1 million in the nine-month period ended October 3, 2009 from \$190.6 million in the nine-month period ended September 27, 2008, reflecting the impact of higher sales volumes. The gross margin rate was 38.9% in the nine-month period ended October 3, 2009 as compared to 38.1% in the nine-month period ended September 27, 2008. The net increase in the gross margin rate reflects:

- Improved margins at certain of the newly acquired operating companies which have improved due to acquisition integration initiatives.
- Reduced material costs associated with steel prices and other supply chain initiatives.
- The adverse impact of lower sales volumes.

SELLING, GENERAL AND ADMINISTRATIVE EXPENSES. Combined selling, general, and administrative expenses increased from \$101.2 million in the nine-month period ended September 27, 2008 to \$109.0 million in the nine-month period ended October 3, 2009. As a percentage of net sales, operating expenses increased from 20.2% to 22.1% in the nine-month period ended October 3, 2009. Selling expenses decreased slightly from \$49.7 million in the nine-month period ended September 27, 2008 to \$49.3 million in the nine month period ended October 3, 2009. Selling expenses reflect increased costs of \$7.0 million associated the acquisitions of TurboChef, CookTek and Anets offset in part by reduced costs of \$6.1 million associated with commission expense due to lower sales and lower commission rates. General and administrative expenses increased from \$51.4 million in the nine-month period ended September 27, 2008 to \$59.7 million in the nine-month period ended September 27, 2008. General and administrative expenses reflect \$7.5 million of costs associated with the acquired operations of TurboChef, CookTek and Anets and \$4.9 million associated with the write-down of fixed assets, the establishment of reserves for lease obligations and severance and employee benefits costs associated with plant consolidation initiatives.

NON-OPERATING EXPENSES. Interest and deferred financing amortization costs decreased to \$8.8 million in the nine-month period ended October 3, 2009 as compared to \$9.9 million in the nine-month period ended September 27, 2008, due to lower interest rates on increased borrowings resulting from recent acquisitions. Other expense was \$0.6 million in the nine-month period ended October 3, 2009 as compared to \$1.8 million in the nine-month period ended September 27, 2008. Other expense and other income consisted primarily of foreign exchange losses and gains.

INCOME TAXES. A tax provision of \$30.4 million, at an effective rate of 41%, was recorded during the nine-month period ended October 3, 2009, as compared to a \$31.2 million provision at a 40% effective rate in the nine-month period ended September 27, 2008.

Financial Condition and Liquidity

During the nine months ended October 3, 2009, cash and cash equivalents increased by \$4.8 million to \$11.0 million at October 3, 2009 from \$6.1 million at January 3, 2009. Net borrowings increased from \$234.7 million at January 3, 2009 to \$295.0 million at October 3, 2009.

OPERATING ACTIVITIES. Net cash provided by operating activities was \$77.2 million for the nine month period ended October 3, 2009 compared to \$64.0 million for the nine-month period ended September 27, 2008.

During the nine months ended October 3, 2009, changes in working capital included a \$22.1 million decrease in accounts receivable, a \$11.7 million decrease in inventory, and a \$2.6 million decrease in accounts payable. These changes in working capital reflect the completion and collection of payment related to a large chain customer order that was completed during the first half of the year. Prepaid and other assets increased \$0.9 million. Accrued expenses and other non-current liabilities also decreased by \$13.6 million reflecting the payment of transaction costs associated with the TurboChef acquisition and obligations under prior year sales rebate and incentive compensation program.

INVESTING ACTIVITIES. During the nine months ended October 3, 2009, net cash used in investing activities amounted to \$132.4 million. This includes cash utilized to complete the acquisitions of TurboChef of \$116.1 million, CookTek of \$8.0 million, Anets of \$3.4 million and \$4.9 million of capital expenditures associated with additions and upgrades of production equipment and facility enhancements associated with plant consolidation initiatives.

FINANCING ACTIVITIES. Net cash flows provided by financing activities were \$60.3 million during the nine months ended October 3, 2009. The net increase in debt includes \$59.7 million in net borrowings under the company's \$497.5 million revolving credit facility utilized to fund the company's investing activities, \$0.2 million in proceeds under foreign bank loans and \$0.4 million of proceeds from stock issuances.

At October 3, 2009, the company was in compliance with all covenants pursuant to its borrowing agreements. Management believes that future cash flows from operating activities and borrowing availability under the revolving credit facility will provide the company with sufficient financial resources to meet its anticipated requirements for working capital, capital expenditures and debt amortization for the foreseeable future.

Recently Issued Accounting Standards

In December 2007, the Financial Accounting Standards Board (“FASB”) issued ASC 805, “Business Combinations”. This statement provides companies with principles and requirements on how an acquirer recognizes and measures in its financial statements the identifiable assets acquired, liabilities assumed, and any noncontrolling interest in the acquiree as well as the recognition and measurement of goodwill acquired in a business combination. This statement also requires certain disclosures to enable users of the financial statements to evaluate the nature and financial effects of the business combination. Acquisition costs associated with the business combination will generally be expensed as incurred. This statement is effective for business combinations occurring in fiscal years beginning after December 15, 2008. Early adoption of ASC 805 was not permitted. The company adopted this statement on January 5, 2009, including the acquisition of TurboChef. Accordingly, the company has applied the principles of ASC 805 in valuing this acquisition. Middleby shares of common stock which were issued in conjunction with this transaction were valued using the share price at the time of closing to determine the value of the purchase price. Additionally, the company incurred approximately \$4.6 million in transaction related expenses which were recorded as a deferred acquisition cost reported as an asset on the balance sheet on January 3, 2009. In accordance with ASC 805, the company has applied a retrospective application and appropriately reflected the expense incurred in 2008 as a reduction in retained earnings in accordance with ASC 250-10-45, “Changes in Accounting Principles,” on reporting a change in accounting principle.

In December 2007, the FASB issued ASC 810-10, “Consolidation”. This statement establishes accounting and reporting standards for the noncontrolling interest (minority interest) in a subsidiary and for the deconsolidation of a subsidiary. Upon its adoption, effective as of the beginning of the company’s 2009 fiscal year, noncontrolling interests will be classified as equity in the company’s financial statements and income and comprehensive income attributed to the noncontrolling interest will be included in the company’s income and comprehensive income. The provisions of this standard must be applied retrospectively upon adoption. The adoption of ASC 810-10 “Consolidation” did not have a material impact on the company’s financial position, results of operations or cash flows.

In December 2008, the FASB issued ASC 715-20 “Compensation-Retirement Benefits.” This statement requires disclosures about assets held in an employer’s defined benefit pension or other postretirement plan. This statement requires the disclosure of the percentage of the fair value of total plan assets for each major category of plan assets, such as equity securities, debt securities, real estate and all other assets, with the fair value of each major asset category as of each annual reporting date for which a financial statement is presented. It also requires disclosure of the level within the fair value hierarchy in which each major category of plan assets falls, using the guidance in ASC 820, “Fair Value Measurements and Disclosures.” This statement is applicable to employers that are subject to the disclosure requirements and is generally effective for fiscal years ending after December 15, 2009. The company will comply with the disclosure provisions of this statement after its effective date.

In May 2009, the FASB issued ASC 855, "Subsequent Events." The objective of this statement is to establish general standards of accounting for and disclosures of events that occur after the balance sheet date but before financial statements are issued or are available to be issued. This statement defines the period after the balance sheet during which management of a reporting entity should evaluate events or transactions that may occur for potential recognition or disclosure in the financial statements, the circumstances under which an entity should recognize events occurring after the balance sheet date in its financial statements and required disclosures. This statement is effective for interim or annual financial periods ending after June 15, 2009. The company has complied with the disclosure requirements of ASC 855. The adoption of ASC 855 did not have a material impact on the company's financial position, results of operations or cash flows.

In June 2009, the FASB issued ASC 105 "Generally Accepted Accounting Principles." This statement sets forth a new authoritative guidance for U.S. generally accepted accounting principles "GAAP" applicable to nongovernmental entities. ASC 105 establishes the GAAP hierarchy to include only two levels of GAAP: authoritative and nonauthoritative. This statement is effective for financial statements issued for interim and annual periods ending after September 15, 2009. The company has complied with the reporting requirements of ASC 105. The adoption of ASC 105 did not have a material impact on the company's financial position, results of operations or cash flows.

Critical Accounting Policies and Estimates

Management's discussion and analysis of financial condition and results of operations are based upon the company's consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires the company to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses as well as related disclosures. On an ongoing basis, the company evaluates its estimates and judgments based on historical experience and various other factors that are believed to be reasonable under the circumstances. Actual results may differ from these estimates under different assumptions or conditions.

Revenue Recognition: The company recognizes revenue on the sale of its products when risk of loss has passed to the customer, which occurs at the time of shipment, and collectibility is reasonably assured. The sale prices of the products sold are fixed and determinable at the time of shipment. Sales are reported net of sales returns, sales incentives and cash discounts based on prior experience and other quantitative and qualitative factors.

At the Food Processing Equipment Group, the company enters into long-term sales contracts for certain products. Revenue under these long-term sales contracts is recognized using the percentage of completion method prescribed by ASC 605-25-25 "Percentage of Completion Method for Recognizing Revenue under Construction Contracts" due to the length of time to fully manufacture and assemble the equipment. The company measures revenue recognized based on the ratio of actual labor hours incurred in relation to the total estimated labor hours to be incurred related to the contract. Because estimated labor hours to complete a project are based upon forecasts using the best available information, the actual hours may differ from original estimates. The percentage of completion method of accounting for these contracts most accurately reflects the status of these uncompleted contracts in the company's financial statements and most accurately measures the matching of revenues with expenses. At the time a loss on a contract becomes known, the amount of the estimated loss is recognized in the consolidated financial statements.

Property and equipment: Property and equipment are depreciated or amortized on a straight-line basis over their useful lives based on management's estimates of the period over which the assets will be utilized to benefit the operations of the company. The useful lives are estimated based on historical experience with similar assets, taking into account anticipated technological or other changes. The company periodically reviews these lives relative to physical factors, economic factors and industry trends. If there are changes in the planned use of property and equipment or if technological changes were to occur more rapidly than anticipated, the useful lives assigned to these assets may need to be shortened, resulting in the recognition of increased depreciation and amortization expense in future periods.

Long-lived assets: Long-lived assets (including goodwill and other intangibles) are reviewed for impairment annually and whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. In assessing the recoverability of the company's long-lived assets, the company considers changes in economic conditions and makes assumptions regarding estimated future cash flows and other factors. Estimates of future cash flows are judgments based on the company's experience and knowledge of operations. These estimates can be significantly impacted by many factors including changes in global and local business and economic conditions, operating costs, inflation, competition, and consumer and demographic trends. If the company's estimates or the underlying assumptions change in the future, the company may be required to record impairment charges.

Warranty: In the normal course of business the company issues product warranties for specific product lines and provides for the estimated future warranty cost in the period in which the sale is recorded. The estimate of warranty cost is based on contract terms and historical warranty loss experience that is periodically adjusted for recent actual experience. Because warranty estimates are forecasts that are based on the best available information, claims costs may differ from amounts provided. Adjustments to initial obligations for warranties are made as changes in the obligations become reasonably estimable.

Litigation: From time to time, the company is subject to proceedings, lawsuits and other claims related to products, suppliers, employees, customers and competitors. The company maintains insurance to partially cover product liability, workers compensation, property and casualty, and general liability matters. The company is required to assess the likelihood of any adverse judgments or outcomes to these matters as well as potential ranges of probable losses. A determination of the amount of accrual required, if any, for these contingencies is made after assessment of each matter and the related insurance coverage. The reserve requirements may change in the future due to new developments or changes in approach such as a change in settlement strategy in dealing with these matters. The company does not believe that any pending litigation will have a material adverse effect on its financial condition or results of operations.

Income taxes: The company operates in numerous foreign and domestic taxing jurisdictions where it is subject to various types of tax, including sales tax and income tax. The company's tax filings are subject to audits and adjustments. Because of the nature of the company's operations, the nature of the audit items can be complex, and the objectives of the government auditors can result in a tax on the same transaction or income in more than one state or country. The company initially recognizes the financial statement effects of a tax position when it more likely than not, based on the technical merits, that the position will be sustained upon examination. For tax positions that meet the more-likely-than-not recognition threshold, the company initially and subsequently measures its tax positions as the largest amount of tax benefit that is greater than 50 percent likely of being realized upon effective settlement with the taxing authority. As part of the company's calculation of the provision for taxes, the company has recorded liabilities on various tax positions that are currently under audit by the taxing authorities. The liabilities may change in the future upon effective settlement of the tax positions.

Contractual Obligations

The company's contractual cash payment obligations as of October 3, 2009 are set forth below (in thousands):

	Amounts				Total
	Due to Sellers	Long-term	Operating/	Idle	Contractual
	From	Debt	Capital	Facility	Cash
	<u>Acquisitions</u>		<u>Leases</u>	<u>Leases</u>	<u>Obligations</u>
Less than 1 year	\$ 2,522	\$ 6,890	\$ 3,264	\$ 744	\$ 13,420
1-3 years	5,217	447	4,645	1,062	11,371
3-5 years	3,025	286,447	1,073	996	291,541
After 5 years	-	1,224	—	351	1,575
	<u>\$ 10,764</u>	<u>\$ 295,008</u>	<u>\$ 8,982</u>	<u>\$ 3,153</u>	<u>\$ 317,907</u>

The company has an obligation to make \$3.4 million of purchase price payments to the sellers of Giga that were deferred in conjunction with the acquisition. The company has an obligation to make certain contingent consideration payments to the sellers of CookTek. The fair value amount of these payments was \$7.4 million as of October 3, 2009.

The company has \$9.9 million of operating and capital lease obligations. The capital lease obligation of \$1.3 million relates to the purchase of manufacturing equipment. The operating lease obligations of \$8.6 million relate to leases for warehouse space, office and manufacturing facilities and equipment leases.

Idle facility leases consist of obligations for two manufacturing locations that have been exited in conjunction with the company's plant consolidation initiatives. These lease obligations continue through June 2012 and June 2015, respectively. The obligation presented above does not reflect any anticipated sublease income from these facilities.

The company has contractual obligations under its various debt agreements to make interest payments. These amounts are subject to the level of borrowings in future periods and the interest rate for the applicable periods, and therefore the amounts of these payments is not determinable.

The company has \$6.1 million in outstanding letters of credit, which expire on April 4, 2010, to secure potential obligations under insurance programs.

The projected benefit obligation of the company's defined benefit plans exceeded the plans' assets by \$9.5 million at the end of 2008 as compared to \$4.6 million at the end of 2007. The unfunded benefit obligations were comprised of a \$3.4 million under funding of the company's Smithville plan, which was acquired as part of the Star acquisition, a \$1.0 million under funding of the company's union plan and \$5.1 million of under funding of the company's director plans. The company does not expect to contribute to the director plans in 2009. The company expects to continue to make minimum contributions to the Smithville and Elgin plans as required by ERISA, which are expected to be \$0.3 million and \$0.1 million, respectively in 2009.

The company places purchase orders with its suppliers in the ordinary course of business. These purchase orders are generally to fulfill short-term manufacturing requirements of less than 90 days and most are cancelable with a restocking penalty. The company has no long-term purchase contracts or minimum purchase obligations with any supplier.

The company has no activities, obligations or exposures associated with off-balance sheet arrangements.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Interest Rate Risk

The company is exposed to market risk related to changes in interest rates. The following table summarizes the maturity of the company's debt obligations.

<u>Twelve Month Period Ending</u>	<u>Fixed Rate Debt</u>	<u>Variable Rate Debt</u>
	(in thousands)	
October 3, 2010	\$ —	\$ 6,890
October 3, 2011	—	224
October 3, 2012	—	223
October 3, 2013	—	286,223
October 3, 2014 and thereafter	—	1,448
	<u>\$ —</u>	<u>\$ 295,008</u>

During the fourth quarter of 2007 the company entered into a new senior secured credit facility that matures on December 2012. This agreement was later amended in August 2008 to provide for the acquisition of TurboChef. Terms of the senior credit agreement provide for \$497.5 million of availability under a revolving credit line. As of October 3, 2009, the company had \$286.0 million of borrowings outstanding under this facility. The company also has \$6.1 million in outstanding letters of credit, which reduces the borrowing availability under the revolving credit line. Remaining borrowing availability under this facility, which is also reduced by the company's foreign borrowings, was \$196.4 million at October 3, 2009.

Borrowings under the senior secured credit facility are assessed at an interest rate 1.25% above LIBOR for long-term borrowings or at the higher of the Prime rate and the Federal Funds Rate. At October 3, 2009 the average interest rate on the senior debt amounted to 1.51%. The interest rates on borrowings under the senior bank facility may be adjusted quarterly based on the company's defined indebtedness ratio on a rolling four-quarter basis. Additionally, a commitment fee, based upon the indebtedness ratio is charged on the unused portion of the revolving credit line. This variable commitment fee amounted to 0.25% as of October 3, 2009.

In August 2006, the company completed its acquisition of Houno A/S in Denmark. This acquisition was funded in part with locally established debt facilities with borrowings in Danish Krone. On October 3, 2009 these facilities amounted to \$4.1 million in U.S. dollars, including \$2.1 million outstanding under a revolving credit facility and \$2.0 million of a term loan. The interest rate on the revolving credit facility is assessed at 1.25% above Euro LIBOR, which amounted to 4.65% on October 3, 2009. The term loan matures in 2013 and the interest rate is assessed at 6.14%.

In April 2008, the company completed its acquisition of Giga Grandi Cucine S.r.l in Italy. This acquisition was funded in part with locally established debt facilities with borrowings denominated in Euro. On October 3, 2009 these facilities amounted to \$4.9 million in U.S. dollars. The borrowings under these facilities are collateralized by the receivables of the company. The interest rate on these credit facilities is tied to six-month Euro LIBOR. At October 3, 2009, the average interest rate on these facilities amounted to 3.5%. The facilities mature in April of 2015.

The company believes that its current capital resources, including cash and cash equivalents, cash generated from operations, funds available from its revolving credit facility and access to the credit and capital markets will be sufficient to finance its operations, debt service obligations, capital expenditures, product development and integration expenditures for the foreseeable future.

The company has historically entered into interest rate swap agreements to effectively fix the interest rate on its outstanding debt. The agreements swap one-month LIBOR for fixed rates. As of October 3, 2009 the company had the following interest rate swaps in effect:

Notional Amount	Fixed Interest Rate	Effective Date	Maturity Date
\$ 25,000,000	3.67%	9/26/2008	9/01/2011
\$ 25,000,000	3.35%	1/14/2008	1/14/2010
\$ 20,000,000	3.35%	6/10/2008	6/10/2010
\$ 15,000,000	3.13%	9/08/2008	9/06/2010
\$ 10,000,000	2.78%	2/06/2008	2/06/2010
\$ 10,000,000	3.03%	2/06/2008	2/06/2011
\$ 10,000,000	3.46%	9/08/2008	9/06/2011
\$ 10,000,000	5.03%	3/03/2006	12/21/2009
\$ 10,000,000	2.92%	2/01/2008	2/01/2010
\$ 10,000,000	3.59%	6/10/2008	6/10/2011
\$ 25,000,000	3.67%	9/26/2008	9/01/2011

The terms of the senior secured credit facility limit the paying of dividends, capital expenditures and leases, and require, among other things, ratios of indebtedness of 3.5 debt to earnings before interest, taxes, depreciation and amortization (“EBITDA”) and fixed charge coverage of 1.25 EBITDA to fixed charges. The credit agreement also provides that if a material adverse change in the company’s business operations or conditions occurs, the lender could declare an event of default. Under terms of the agreement a material adverse effect is defined as (a) a material adverse change in, or a material adverse effect upon, the operations, business properties, condition (financial and otherwise) or prospects of the company and its subsidiaries taken as a whole; (b) a material impairment of the ability of the company to perform under the loan agreements and to avoid any event of default; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against the company of any loan document. A material adverse effect is determined on a subjective basis by the company’s creditors. The credit facility is secured by the capital stock of the company’s domestic subsidiaries, 65% of the capital stock of the company’s foreign subsidiaries and substantially all other assets of the company. At October 3, 2009, the company was in compliance with all covenants pursuant to its borrowing agreements.

Financing Derivative Instruments

The company has entered into interest rate swaps to fix the interest rate applicable to certain of its variable-rate debt. The agreements swap one-month LIBOR for a fixed rates. The company has designated these swaps as cash flow hedges and all changes in fair value of the swaps are recognized in accumulated other comprehensive income. As of October 3, 2009, the fair value of these instruments was a loss of \$4.0 million. The change in fair value of these swap agreements in the first nine months of 2009 was a gain of \$1.0 million, net of taxes.

Foreign Exchange Derivative Financial Instruments

The company uses foreign currency forward purchase and sale contracts with terms of less than one year to hedge its exposure to changes in foreign currency exchange rates. The company's primary hedging activities are to mitigate its exposure to changes in exchange rates on intercompany and third party trade receivables and payables. The company does not currently enter into derivative financial instruments for speculative purposes. In managing its foreign currency exposures, the company identifies and aggregates naturally occurring offsetting positions and then hedges residual balance sheet exposures. There were no forward contracts outstanding at the end of the quarter ended October 3, 2009.

Item 4. Controls and Procedures

The company maintains disclosure controls and procedures that are designed to ensure that information required to be disclosed in the company's Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to the company's management, including its Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

As of October 3, 2009, the company carried out an evaluation, under the supervision and with the participation of the company's management, including the company's Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of the company's disclosure controls and procedures. Based on the foregoing, the company's Chief Executive Officer and Chief Financial Officer concluded that the company's disclosure controls and procedures were effective as of the end of this period.

During the quarter ended October 3, 2009, there has been no change in the company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting.

PART II. OTHER INFORMATION

The company was not required to report the information pursuant to Items 1 through 6 of Part II of Form 10-Q for the nine months ended October 3, 2009, except as follows:

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

Issuer Purchases of Equity Securities

	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plan or Program	Maximum Number of Shares that May Yet be Purchased Under the Plan or Program
July 5 to August 1, 2009	—	—	—	627,332
August 2, 2009 to August 29, 2009	—	—	—	627,332
August 30, 2009 to September 3, 2009	—	—	—	627,332
Quarter ended October 3, 2009	—	—	—	627,322

In July 1998, the company's Board of Directors adopted a stock repurchase program that authorized the purchase of common shares in open market purchases. As of October 3, 2009, 1,172,668 shares had been purchased under the 1998 stock repurchase program.

Item 6. Exhibits

Exhibits – The following exhibits are filed herewith:

- Exhibit 31.1 – Rule 13a-14(a)/15d -14(a) Certification of the Chief Executive Officer as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- Exhibit 31.2 – Rule 13a-14(a)/15d -14(a) Certification of the Chief Financial Officer as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- Exhibit 32.1 – Certification by the Principal Executive Officer of The Middleby Corporation Pursuant to Rule 13A-14(b) under the Exchange Act and Section 906 of the Sarbanes-Oxley Act of 2002(18 U.S.C. 1350).
- Exhibit 32.2 – Certification by the Principal Financial Officer of The Middleby Corporation Pursuant to Rule 13A-14(b) under the Exchange Act and Section 906 of the Sarbanes-Oxley Act of 2002(18 U.S.C. 1350).

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

THE MIDDLEBY CORPORATION
(Registrant)

Date November 12, 2009

By: /s/ Timothy J. FitzGerald
Timothy J. FitzGerald
Vice President,
Chief Financial Officer

CERTIFICATIONS

I, Selim A. Bassoul, certify that:

1. I have reviewed this report on Form 10-Q of The Middleby Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

Date: November 12, 2009

/s/ Selim A. Bassoul

Selim A. Bassoul

Chairman, President and

Chief Executive Officer of The Middleby Corporation

CERTIFICATIONS

I, Timothy J. Fitzgerald, certify that:

1. I have reviewed this report on Form 10-Q of The Middleby Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

Date: November 12, 2009

/s/ Timothy J. FitzGerald

Timothy J. FitzGerald

Chief Financial Officer of The Middleby Corporation

**CERTIFICATION BY THE PRINCIPAL EXECUTIVE OFFICER OF
THE MIDDLEBY CORPORATION
PURSUANT TO RULE 13A-14(b) UNDER THE EXCHANGE ACT AND
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002 (18 U.S.C. 1350)**

This certification is being furnished pursuant to Rule 13a-14(b) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

I, Selim A. Bassoul, Chairman, President and Chief Executive Officer (principal executive officer) of The Middleby Corporation (the "Registrant"), certify, to the best of my knowledge, based upon a review of the Quarterly Report on Form 10-Q for the period ended October 3, 2009 of the Registrant (the "Report"), that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Exchange Act; and
- (2) The information contained in the Report fairly presents, in all material aspects, the financial condition and results of operations of the Registrant.

Date: November 12, 2009

/s/ Selim A. Bassoul

Selim A. Bassoul

**CERTIFICATION BY THE PRINCIPAL FINANCIAL OFFICER OF
THE MIDDLEBY CORPORATION
PURSUANT TO RULE 13A-14(b) UNDER THE EXCHANGE ACT AND
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002 (18 U.S.C. 1350)**

This certification is being furnished pursuant to Rule 13a-14(b) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

I, Timothy J. FitzGerald, Vice President and Chief Financial Officer (principal financial officer) of The Middleby Corporation (the "Registrant"), certify, to the best of my knowledge, based upon a review of the Quarterly Report on Form 10-Q for the period ended October 3, 2009 of the Registrant (the "Report"), that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Exchange Act; and
- (2) The information contained in the Report fairly presents, in all material aspects, the financial condition and results of operations of the Registrant.

Date: November 12, 2009

/s/ Timothy J. FitzGerald

Timothy J. FitzGerald
