

FIRST BANCSHARES INC /MS/
Form 10-Q/A
October 11, 2016

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q/A

AMENDMENT NO. 1

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15 (d) OF THE SECURITIES
EXCHANGE ACT OF 1934

FOR THE QUARTERLY PERIOD ENDED JUNE 30, 2016

Commission file number: 000-22507

THE FIRST BANCSHARES, INC.

(Exact name of Registrant as specified in its charter)

Mississippi 64-0862173
(State of Incorporation) (IRS Employer Identification No)

6480 U.S. Highway 98 West, Suite A Hattiesburg, Mississippi 39402
(Address of principal executive offices) (Zip Code)

(601) 268-8998

(Registrant's telephone number, including area code)

Not Applicable

Edgar Filing: FIRST BANCSHARES INC /MS/ - Form 10-Q/A

(Former name, former address and former fiscal year, if changed since last report)

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.

Large accelerated filer Accelerated filer
Non-accelerated filer Smaller Reporting Company
(Do not check if a 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

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

Common stock, \$1.00 par value, 5,458,508 shares outstanding as of June 30, 2016

EXPLANATORY NOTE

We are filing this Amendment No. 1 on Form 10-Q/A to amend our Quarterly Report on Form 10-Q for the quarter ended June 30, 2016 as originally filed with the Securities and Exchange Commission on August 15, 2016 (the “Original Form 10-Q”). The original Form 10-Q was prepared and filed in accordance with disclosure requirements applicable to “smaller reporting companies” as defined in Rule 12b-2 of the Exchange Act of 1934 (“Exchange Act”). During the 3rd quarter of 2016, after consultation with outside counsel, the Company determined that the Company had become, as of January 1, 2016, an “accelerated filer” as defined in Exchange Act Rule 12b-2 due to a re-evaluation of the affiliate status of certain shareholders, which were initially misinterpreted to be affiliates of the Company, which in turn increased the Company’s public float to more than \$75 million as of June 30, 2015. Accordingly, we are amending the Original Form 10-Q so that it complies with all applicable requirements for an “accelerated filer.” Specifically, this amendment is being filed to augment Part I, Items 2 and 4, Part II, Items 1A and 6, and to add Part I, Item 3 which was previously inapplicable. We are restating the entire 10-Q in this filing as multiple items are being amended. The Company intends to file all future Exchange Act reports in accordance with accelerated filer Exchange Act rules, as applicable.

PART I - FINANCIAL INFORMATION**ITEM NO. 1- FINANCIAL STATEMENTS****THE FIRST BANCSHARES, INC.****CONSOLIDATED BALANCE SHEETS**

(\$ In Thousands)

	(Unaudited) June 30, 2016	(audited) December 31, 2015
ASSETS		
Cash and due from banks	\$ 33,402	\$ 23,635
Interest-bearing deposits with banks	21,065	17,303
Federal funds sold	310	321
Total cash and cash equivalents	54,777	41,259
Securities held-to-maturity, at amortized cost	6,025	7,092
Securities available-for-sale, at fair value	242,855	239,732
Other securities	9,578	8,135
Total securities	258,458	254,959
Loans held for sale	8,937	3,974
Loans	824,083	772,515
Allowance for loan losses	(7,259)	(6,747)
Loans, net	825,761	769,742
Premises and equipment	33,502	33,623
Interest receivable	4,103	3,953
Cash surrender value of life insurance	20,963	14,872
Goodwill	13,776	13,776
Other real estate owned	4,716	3,083
Other assets	8,844	9,864
TOTAL ASSETS	\$ 1,224,900	\$ 1,145,131

LIABILITIES AND STOCKHOLDERS' EQUITY

LIABILITIES:

Deposits:

Noninterest-bearing	\$ 194,950	\$ 189,445
Interest-bearing	837,413	727,250

TOTAL DEPOSITS	1,032,363	916,695
----------------	-----------	---------

Interest payable	244	246
Borrowed funds	68,000	110,321
Subordinated debentures	10,310	10,310
Other liabilities	3,685	4,123

TOTAL LIABILITIES	1,114,602	1,041,695
-------------------	-----------	-----------

STOCKHOLDERS' EQUITY:

Preferred stock, no par value, \$1,000 per share liquidation, 10,000,000 shares authorized; 17,123 issued and outstanding at June 30, 2016 and December 31, 2015, respectively	17,123	17,123
--	--------	--------

Common stock, par value \$1 per share, 20,000,000 shares authorized and 5,458,508 shares issued at June 30, 2016; and 5,403,159 shares issued at December 31, 2015, respectively	5,459	5,403
--	-------	-------

Additional paid-in capital	44,865	44,650
----------------------------	--------	--------

Retained earnings	40,299	35,625
-------------------	--------	--------

Accumulated other comprehensive income	3,016	1,099
--	-------	-------

Treasury stock, at cost, 26,494 shares at June 30, 2016 and at December 31, 2015	(464)	(464)
--	--------	--------

TOTAL STOCKHOLDERS' EQUITY	110,298	103,436
----------------------------	---------	---------

TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	\$ 1,224,900	\$ 1,145,131
--	--------------	--------------

See Notes to Consolidated Financial Statements

THE FIRST BANCSHARES, INC.**CONSOLIDATED STATEMENTS OF INCOME**

(\$ In Thousands, except earnings and dividends per share)

	(Unaudited) Three Months Ended June 30,		(Unaudited) Six Months Ended June 30,	
	2016	2015	2016	2015
INTEREST INCOME:				
Interest and fees on loans	\$ 9,313	\$ 8,532	\$ 18,349	\$ 16,680
Interest and dividends on securities:				
Taxable interest and dividends	1,058	1,010	2,129	2,021
Tax exempt interest	473	464	933	965
Interest on federal funds sold	27	16	56	39
TOTAL INTEREST INCOME	10,871	10,022	21,467	19,705
INTEREST EXPENSE:				
Interest on deposits	813	658	1,514	1,290
Interest on borrowed funds	203	148	424	320
TOTAL INTEREST EXPENSE	1,016	806	1,938	1,610
NET INTEREST INCOME	9,855	9,216	19,529	18,095
PROVISION FOR LOAN LOSSES	204	-	394	150
NET INTEREST INCOME AFTER PROVISION FOR LOAN LOSSES	9,651	9,216	19,135	17,945
OTHER INCOME:				
Service charges on deposit accounts	1,284	1,097	2,566	2,148
Other service charges and fees	1,677	757	2,878	1,556
TOTAL OTHER INCOME	2,961	1,854	5,444	3,704
OTHER EXPENSES:				
Salaries and employee benefits	5,400	4,613	10,549	9,239
Occupancy and equipment	1,110	1,137	2,183	2,246
Other	2,411	2,342	4,582	4,425
TOTAL OTHER EXPENSES	8,921	8,092	17,314	15,910
INCOME BEFORE INCOME TAXES	3,691	2,978	7,265	5,739

INCOME TAXES	1,042	793	2,012	1,525
NET INCOME	2,649	2,185	5,253	4,214
PREFERRED STOCK ACCRETION AND DIVIDENDS	86	86	171	171
NET INCOME APPLICABLE TO COMMON STOCKHOLDERS	\$ 2,563	\$ 2,099	\$ 5,082	\$ 4,043
NET INCOME APPLICABLE TO COMMON STOCKHOLDERS:				
BASIC	\$ 0.47	\$ 0.39	\$ 0.94	\$ 0.75
DILUTED	0.47	0.39	0.93	0.75
DIVIDENDS PER SHARE – COMMON	0.0375	0.0375	0.075	0.075

See Notes to Consolidated Financial Statements

THE FIRST BANCSHARES, INC.**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME**

(\$ In Thousands)

	(Unaudited) Three Months Ended June 30,		(Unaudited) Six Months Ended June 30,	
	2016	2015	2016	2015
Net income per consolidated statements of income	\$ 2,649	\$ 2,185	\$ 5,253	\$ 4,214
Other Comprehensive Income:				
Unrealized holding gains (losses) arising during period on available-for-sale securities	756	(3,135)	2,827	(2,011)
Unrealized holding gains (losses) on loans held for sale	74	(56)	86	(39)
Income tax benefit(expense)	(286)	1,088	(996)	699
Other comprehensive income (loss)	544	(2,103)	1,917	(1,351)
Comprehensive Income	\$ 3,193	\$ 82	\$ 7,170	\$ 2,863

See Notes to Consolidated Financial Statements

THE FIRST BANCSHARES, INC.**CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY**

(\$ In Thousands, unaudited)

	Common Stock	Preferred Stock	Stock Warrants	Additional Paid-in Capital	Accumulated			Total
					Retained Earnings	Other Comprehensive Income(Loss)	Treasury Stock	
Balance, January 1, 2015	\$ 5,343	\$ 17,123	\$ 284	\$ 44,137	\$ 27,975	\$ 1,818	\$ (464)	\$ 96,216
Net income	-	-	-	-	4,214	-	-	4,214
Other comprehensive loss	-	-	-	-	-	(1,351)	-	(1,351)
Dividends on preferred stock	-	-	-	-	(171)	-	-	(171)
Dividends on common stock, \$0.0375 per share	-	-	-	-	(405)	-	-	(405)
Repurchase of restricted stock for payment of taxes	(6)	-	-	(86)	-	-	-	(92)
Restricted stock grant	67	-	-	(67)	-	-	-	-
Compensation expense	-	-	-	362	-	-	-	362
Reversal of 2,514 common shares for BCB Holdings	(3)	-	-	(33)	-	-	-	(36)
Repurchase warrants	-	-	(284)	(19)	-	-	-	(303)
Balance, June 30, 2015	\$ 5,401	\$ 17,123	\$ -	\$ 44,294	\$ 31,613	\$ 467	\$ (464)	\$ 98,434
Balance, January 1, 2016	\$ 5,403	\$ 17,123	\$ -	\$ 44,650	\$ 35,625	\$ 1,099	\$ (464)	\$ 103,436
Net income	-	-	-	-	5,253	-	-	5,253
Other comprehensive income	-	-	-	-	-	1,917	-	1,917
Dividends on preferred stock	-	-	-	-	(171)	-	-	(171)
Dividends on common stock, \$0.0375 per share	-	-	-	-	(408)	-	-	(408)
Repurchase of restricted stock for payment of taxes	(5)	-	-	(100)	-	-	-	(105)
Restricted stock grant	61	-	-	(61)	-	-	-	-
Compensation expense	-	-	-	376	-	-	-	376
Balance, June 30, 2016	\$ 5,459	\$ 17,123	\$ -	\$ 44,865	\$)			
Decrease (increase) in prepaid expenses and other assets	1,930	(582)						

Edgar Filing: FIRST BANCSHARES INC /MS/ - Form 10-Q/A

Decrease in accounts payable, accrued expenses and other liabilities	1,239	5,796
Net cash provided by operating activities	6,586	8,803
CASH FLOWS FROM INVESTING ACTIVITIES:		
Proceeds from disposal of assets and property held for sale	510	465
Purchases of property and equipment	(4,874)	(4,519)
Decrease (increase) in note receivable	10	(136)
Net cash used in investing activities	(4,354)	(4,190)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Credit facility borrowings	12,600	9,800
Credit facility repayments	(14,100)	(13,800)
Debt issuance costs		(1)
Net cash used in financing activities	(1,500)	(4,001)
Net increase in cash and cash equivalents	732	612
Cash and cash equivalents at beginning of period	1,223	1,252
Cash and cash equivalents at end of period	\$ 1,955	\$ 1,864
Cash paid for:		
Income taxes	\$	\$
Interest	146	228

The accompanying notes are an integral part of these consolidated financial statements.

Table of Contents

Luby's, Inc.

Notes to Consolidated Financial Statements (unaudited)

November 21, 2012

Note 1. Basis of Presentation

The accompanying unaudited consolidated financial statements of Luby's, Inc. (the Company or Luby's) have been prepared in accordance with U.S. generally accepted accounting principles (GAAP) for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by GAAP for complete financial statements that are prepared for the Company's Annual Report on Form 10-K. In the opinion of management, all adjustments (consisting of normal recurring adjustments) considered necessary for a fair presentation have been included. Operating results for the period ended November 21, 2012 are not necessarily indicative of the results that may be expected for the fiscal year ending August 28, 2013.

The consolidated balance sheet dated August 29, 2012, included in this Form 10-Q, has been derived from the audited consolidated financial statements at that date. However, this Form 10-Q does not include all of the information and footnotes required by GAAP for an annual filing of complete financial statements. Therefore, these financial statements should be read in conjunction with the audited consolidated financial statements and footnotes included in the Company's Annual Report on Form 10-K for the fiscal year ended August 29, 2012.

The results of operations, assets and liabilities for all units included in the cash flow improvement and capital redeployment plan discussed in Note 7 have been reclassified to discontinued operations in the statements of operations and balance sheets for all periods presented.

Note 2. Accounting Periods

The Company's fiscal year ends on the last Wednesday in August. Accordingly, each fiscal year normally consists of 13 four-week periods, or accounting periods, accounting for 364 days in the aggregate. Each of the first three quarters of each fiscal year consists of three four-week periods, while the fourth quarter normally consists of four four-week periods. Fiscal years 2012 and 2013 contain 52 weeks. Comparability between quarters may be affected by the varying lengths of the quarters, as well as the seasonality associated with the restaurant business. Seasonality factors affecting a quarter include timing of holidays, weather and school years. Interim results may not be indicative of full year results.

Note 3. Reportable Segments

The Company has three reportable segments: Company-owned restaurants, franchise operations and Culinary Contract Services (CCS).

Company-owned restaurants

Company-owned restaurants consists of several brands which are aggregated into one reportable segment because the nature of the products and services, the production processes, the customers, the methods used to distribute the products and services, the nature of the regulatory environment and store level profit margin are similar. The chief operating decision maker analyzes Company-owned restaurants at store level profit which is revenue less cost of food, payroll and related costs and other operating expenses. The primary brands are Luby's Cafeteria and Fuddrucker's with a couple of non-core restaurant locations under other brand names (i.e., Koo Koo Roo California Bistro and Bob Luby's Seafood). Both Luby's and Fuddrucker's are casual dining, counter service restaurants. Each restaurant is an operating segment because operating results and cash flow can be determined for each restaurant.

The total number of Company-owned restaurants was 158 at November 21, 2012 and 154 at August 29, 2012.

Culinary Contract Services

CCS branded as Luby's Culinary Contract Services, consists of a business line servicing healthcare, higher education and corporate dining clients. The healthcare accounts are full service and typically include in-room delivery, catering, vending, coffee service and retail dining. CCS had contracts with long-term acute care hospitals, acute care medical centers, ambulatory surgical centers, behavioral hospitals, business and industry clients, and higher education institutions. CCS has the unique ability to deliver quality services that include facility design and procurement as well as nutrition and branded food services to our clients. The costs of culinary contract services on the Consolidated Statements

of Operations includes all food, payroll and related costs and other operating expenses related to CCS sales.

The total number of CCS contracts was 18 at November 21, 2012 and August 29, 2012.

Table of Contents

Franchising

We offer franchises for only the Fuddruckers brand. Franchises are sold in markets where expansion is deemed advantageous to the development of the Fuddruckers concept and system of restaurants. Initial franchise agreements have a term of 20 years. Franchise agreements typically grant franchisees an exclusive territorial license to operate a single restaurant within a specified area, usually a four-mile radius surrounding the franchised restaurant.

Franchisees bear all direct costs involved in the development, construction and operation of their restaurants. In exchange for a franchise fee, the Company provides franchise assistance in the following areas: site selection, prototypical architectural plans, interior and exterior design and layout, training, marketing and sales techniques, assistance by a Fuddruckers opening team at the time a franchised restaurant opens, and operations and accounting guidelines set forth in various policies and procedures manuals.

All franchisees are required to operate their restaurants in accordance with Fuddruckers standards and specifications, including controls over menu items, food quality and preparation. The Company requires the successful completion of its training program by a minimum of three managers for each franchised restaurant. In addition, franchised restaurants are evaluated regularly by the Company for compliance with franchise agreements, including standards and specifications through the use of periodic, unannounced, on-site inspections and standards evaluation reports.

The number of franchised restaurants was 121 at November 21, 2012 and 125 at August 29, 2012.

Table of Contents

The table below shows financial information as required by ASC 280 for segment reporting. ASC 280 requires depreciation and amortization be disclosed for each reportable segment, even if not used by the chief operating decision maker. The table also lists total assets for each reportable segment. Corporate assets include cash and cash equivalents, tax refunds receivable, property and equipment, assets related to discontinued operations, property held for sale, deferred tax assets, prepaid expenses, intangible assets and goodwill.

	Quarter Ended	
	November 21, 2012 (12 weeks) (In Thousands)	November 23, 2011 (12 weeks)
Sales:		
Company-owned restaurants	\$ 74,090	\$ 73,307
Culinary contract services	3,841	4,536
Franchising	1,522	1,482
Total	79,453	79,325
Segment level profit:		
Company-owned restaurants	\$ 9,877	\$ 10,200
Culinary contract services	375	430
Franchising	1,522	1,482
Total	11,774	12,112
Depreciation and amortization:		
Company-owned restaurants	\$ 3,675	\$ 3,648
Culinary contract services	108	114
Franchising	177	177
Corporate	176	175
Total	4,136	4,114
Capital expenditures:		
Company-owned restaurants	\$ (4,820)	\$ (4,445)
Culinary contract services	(1)	(32)
Franchising	0	0
Corporate	(53)	(42)
Total	(4,874)	(4,519)
Income before income taxes and discontinued operations:		
Segment level profit	\$ 11,774	\$ 12,112
Opening costs	(206)	(35)
Depreciation and amortization	(4,136)	(4,114)
General and administrative expenses	(7,378)	(6,810)
Provision for asset impairments, net	(90)	(175)
Net gain (loss) on disposition of property and equipment	242	(9)
Interest income	2	1
Interest expense	(175)	(279)
Other income, net	234	217
Total	\$ 267	\$ 908

Edgar Filing: FIRST BANCSHARES INC /MS/ - Form 10-Q/A

	November 21, 2012	August 29, 2012
Total assets:		
Company-owned restaurants	\$ 182,874	\$ 182,290
Culinary contract services	3,577	3,774
Franchising	14,954	15,352
Corporate	28,851	29,601
Total	230,256	231,017

Table of Contents**Note 4. Fair Value Measurements**

GAAP establishes a framework for using fair value to measure assets and liabilities, and expands disclosure about fair value measurements. Fair value measurements guidance applies whenever other statements require or permit asset or liabilities to be measured at fair value.

GAAP establishes a three-tier fair value hierarchy, which prioritizes the inputs used to measure fair value. These tiers include:

- = Level 1: Defined as observable inputs such as quoted prices in active markets for identical assets or liabilities as of the reporting date. Active markets are those in which transactions for the asset or liability occur in sufficient frequency and volume to provide pricing information on an ongoing basis.
- = Level 2: Defined as pricing inputs other than quoted prices in active markets included in Level 1, which are either directly or indirectly observable as of the reporting date. Level 2 includes those financial instruments that are valued using models or other valuation methodologies. These models are primarily industry-standard models that consider various assumptions, including quoted forward prices for commodities, time value, volatility factors, and current market and contractual prices for the underlying instruments, as well as other relevant economic measures.
- = Level 3: Defined as pricing inputs that are unobservable from objective sources. These inputs may be used with internally developed methodologies that result in management's best estimate of fair value.

Non-recurring fair value measurements related to impaired property and equipment consisted of the following:

	Quarter Ended November 21, 2012	Fair Value Measurement Using			Total Impairments
		Quoted Prices in Active Markets for Identical Assets (Level 1) (In thousands)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	
Continuing Operations					
Property and equipment related to company-owned assets	\$ 20	\$	\$	\$ 20	\$ (90)

Table of Contents

	Quarter Ended November 23, 2011	Quoted Prices in Active Markets for Identical Assets (Level 1) (In thousands)	Fair Value Measurement Using Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total Impairments
Continuing Operations					
Property and equipment related to Culinary Contract Services	\$ 57	\$	\$	\$ 57	\$ (175)
Discontinued Operations					
Property and equipment related to corporate assets	\$ 802	\$	\$	\$ 802	\$ (373)

Note 5. Income Taxes

No cash payments of estimated federal income taxes were made during the quarter ended November 21, 2012.

Deferred tax assets and liabilities are recorded based on differences between the financial reporting basis and the tax basis of assets and liabilities using currently enacted rates and laws that will be in effect when the differences are expected to reverse. Deferred tax assets are recognized to the extent future taxable income is expected to be sufficient to utilize those assets prior to their expiration.

Management believes that adequate provisions for income taxes have been reflected in the financial statements and is not aware of any significant exposure items that have not been reflected in the financial statements. Amounts considered probable of settlement within one year have been included in the accrued expenses and other liabilities in the accompanying consolidated balance sheet.

Note 6. Property and Equipment, Intangible Assets and Goodwill

The cost, net of impairment, and accumulated depreciation of property and equipment at November 21, 2012 and August 29, 2012, together with the related estimated useful lives used in computing depreciation and amortization, were as follows:

	November 21, 2012	August 29, 2012	Estimated Useful Lives
	<i>(In thousands)</i>		
Land	\$ 59,432	\$ 59,159	
Restaurant equipment and furnishings	110,491	109,059	1 to 15 years
Buildings	172,689	167,346	20 to 33 years
Leasehold and leasehold improvements	33,450	32,913	Lesser of lease term or estimated useful life
Office furniture and equipment	7,071	7,030	3 to 10 years
Construction in progress	413	3,890	
	383,546	379,397	
Less accumulated depreciation and amortization	(209,186)	(205,744)	
Property and equipment, net	\$ 174,360	\$ 173,653	

Edgar Filing: FIRST BANCSHARES INC /MS/ - Form 10-Q/A

Intangible assets, net	\$ 26,351	\$ 26,679	21 years
Goodwill	\$ 195	\$ 195	

Table of Contents

Intangible assets, net consist of the Fuddruckers trade name and franchise agreements and will be amortized. The Company believes the Fuddruckers brand name has an expected accounting life of 21 years from the date of acquisition based on the expected use of its assets and the restaurant environment in which it is being used. The trade name represents a respected brand with customer loyalty and the Company intends to cultivate and protect the use of the trade name. The franchise agreements, after considering renewal periods, have an estimated accounting life of 21 years from the date of acquisition and will be amortized over this period of time. The Company recorded \$3.3 million of accumulated amortization expense for the quarter ended November 21, 2012 and \$2.9 million of accumulated amortization expense as of August 29, 2012.

The Company recorded an intangible asset for goodwill in the amount of \$0.2 million related to the acquisition of substantially all of the assets of Fuddruckers. Goodwill is considered to have an indefinite useful life and is not amortized. Goodwill was \$0.2 million as of November 21, 2012 and August 29, 2012.

Note 7. Impairment of Long-Lived Assets, Discontinued Operations and Property Held for Sale*Impairment of Long-Lived Assets and Store Closings*

The Company periodically evaluates long-lived assets held for use and held for sale whenever events or changes in circumstances indicate that the carrying amount of those assets may not be recoverable. The Company analyzes historical cash flows of operating locations and compares results of poorer performing locations to more profitable locations. The Company also analyzes lease terms, condition of the assets and related need for capital expenditures or repairs, as well as construction activity and the economic and market conditions in the surrounding area.

For assets held for use, the Company estimates future cash flows using assumptions based on possible outcomes of the areas analyzed. If the undiscounted future cash flows are less than the carrying value of the location's assets, the Company records an impairment loss based on an estimate of discounted cash flows. The estimates of future cash flows, based on reasonable and supportable assumptions and projections, require management's subjective judgments. Assumptions and estimates used include operating results, changes in working capital, discount rate, growth rate, anticipated net proceeds from disposition of the property and if applicable, lease terms. The span of time for which future cash flows are estimated is often lengthy, increasing the sensitivity to assumptions made. The time span could be 20 to 25 years for newer properties, but only 5 to 10 years for older properties. Depending on the assumptions and estimates used, the estimated future cash flows projected in the evaluation of long-lived assets can vary within a wide range of outcomes. The Company considers the likelihood of possible outcomes in determining the best estimate of future cash flows. The measurement for such an impairment loss is then based on the fair value of the asset as determined by discounted cash flows.

The Company recognized the following impairment charges to income from operations:

	Quarter Ended	
	November 21, 2012 (12 weeks) (In thousands, except per share data)	November 23, 2011 (12 weeks)
Provision for asset impairments	\$ 90	\$ 175
Net (gain) loss on disposition of property and equipment	(242)	9
	\$ 152	\$ 184
Effect on EPS:		
Basic	\$ 0.01	\$ 0.01
Assuming dilution	\$ 0.01	\$ 0.01

The impairment charge for the quarter ended November 21, 2012 is related to an operating Fuddruckers restaurant at a leased location.

The net gain for the quarter includes the gain on disposal of assets at a Koo Koo Roo leased location net of asset retirements.

The impairment charge for the quarter ended November 23, 2011 is related to a culinary contract services agreement. The net loss for the quarter ended November 23, 2011 includes the results of asset retirements.

Discontinued Operations

Of the 24 locations classified as discontinued operations in the first quarter of fiscal year 2010, 15 locations have been sold, leases on 2 locations were terminated and 2 locations were reclassified as for use in continuing operations. Of the 5 remaining locations, 3 locations are owned and we anticipate selling the locations within 18 months. The remaining 2 locations are leased with terms expiring in January 2013 and May 2018. The results of operations, assets and liabilities for all units included in the Plan have been reclassified to discontinued operations in the statement of operations and balance sheets for all periods presented.

Table of Contents

The following table sets forth the assets and liabilities for all discontinued operations:

	November 21, 2012	August 29, 2012
	<i>(in thousands)</i>	
Prepaid expenses	\$ 6	\$ 40
Assets related to discontinued operations - current	\$ 6	\$ 40
Property and equipment	\$ 4,812	\$ 4,812
Other assets	8	12
Assets related to discontinued operations - non-current	\$ 4,820	\$ 4,824
Deferred income taxes	\$ 298	\$ 298
Accrued expenses and other liabilities	167	113
Liabilities related to discontinued operations - current	\$ 465	\$ 411
Other liabilities	\$ 108	\$ 134
Deferred income taxes	218	999
Liabilities related to discontinued operations - non-current	\$ 326	\$ 1,133

As of August 29, 2012, the Company had 7 properties classified as discontinued operations assets. The carrying value of the owned properties was \$4.8 million. The carrying values of the ground leases were previously impaired to zero.

As of November 21, 2012, the Company had 7 properties classified as discontinued operations assets. The carrying value of the owned properties was \$4.8 million. The carrying values of the ground leases were previously impaired to zero.

The Company is actively marketing all but one of these properties for lease or sale and the Company's results of discontinued operations will be affected by the disposal of properties related to discontinued operations to the extent proceeds from the sales exceed or are less than net book value.

The following table sets forth the sales and pretax income (losses) reported for discontinued operations:

	Quarter Ended	
	November 21, 2012	November 23, 2011
	<i>(12 weeks)</i>	
	<i>(In thousands, except discontinued locations)</i>	
Pretax loss	\$ (99)	\$ (594)
Income tax benefit on discontinued operations	39	215
Loss on discontinued operations	(60)	(379)
Discontinued locations closed during the period		

The following table summarizes discontinued operations for the first quarters of fiscal years 2013 and 2012:

Quarter Ended

Edgar Filing: FIRST BANCSHARES INC /MS/ - Form 10-Q/A

	November 21, 2012 (12 weeks) <i>(In thousands, except per share data)</i>	November 23, 2011 (12 weeks)
Impairments	\$	\$ (373)
Gains		6
Net (loss) gain		(367)
Other	(60)	(12)
Loss from discontinued operations	\$ (60)	\$ (379)
Effect on EPS from discontinued operations - basic	\$	\$ (0.01)

Table of Contents

Within discontinued operations, the Company offsets gains from applicable property disposals against total impairments. The amounts in the table described as *Other* include employment termination and shut-down costs, as well as operating losses through each restaurant's closing date and carrying costs until the locations are finally disposed of.

The impairment charges included above relate to properties closed and designated for immediate disposal. The assets of these individual operating units have been written down to their net realizable values. In turn, the related properties have either been sold or are being actively marketed for sale. All dispositions are expected to be completed within one to three years. Within discontinued operations, the Company also recorded the related fiscal year-to-date net operating results, employee terminations and carrying costs of the closed units.

Property Held for Sale

The Company periodically reviews long-lived assets against its plans to retain or ultimately dispose of properties. If the Company decides to dispose of a property, it will be moved to property held for sale and actively marketed. The Company analyzes market conditions each reporting period and records additional impairments due to declines in market values of like assets. The fair value of the property is determined by observable inputs such as appraisals and prices of comparable properties in active markets for assets like the Company's. Gains are not recognized until the properties are sold.

Property held for sale includes unimproved land, closed restaurant properties and related equipment for locations not classified as discontinued operations. The specific assets are valued at the lower of net depreciable value or net realizable value.

At November 21, 2012 and August 29, 2012, the Company had one owned property recorded at approximately \$0.6 million in property held for sale. The Company is actively marketing the location currently classified as property held for sale.

The Company's results of continuing operations will be affected to the extent proceeds from sales exceed or are less than net book value.

Note 8. Commitments and Contingencies

Off-Balance Sheet Arrangements

The Company has no off-balance sheet arrangements, except for operating leases.

Pending Claims

From time to time, the Company is subject to various private lawsuits, administrative proceedings and claims that arise in the ordinary course of its business. A number of these lawsuits, proceedings and claims may exist at any given time. These matters typically involve claims from guests, employees and others related to issues common to the restaurant industry. The Company currently believes that the final disposition of these types of lawsuits, proceedings and claims will not have a material adverse effect on the Company's financial position, results of operations or liquidity. It is possible, however, that the Company's future results of operations for a particular quarter or fiscal year could be impacted by changes in circumstances relating to lawsuits, proceedings or claims.

Construction Activity

From time to time, the Company enters into non-cancelable contracts for the construction of its new restaurants. This construction activity exposes the Company to the risks inherent in new construction, including but not limited to rising material prices, labor shortages, delays in getting required permits and inspections, adverse weather conditions, and injuries sustained by workers. The Company had no non-cancelable contracts as of November 21, 2012.

Note 9. Related Parties

Affiliate Services

Christopher J. Pappas, the Company's Chief Executive Officer, and Harris J. Pappas, director and former Chief Operating Officer of the Company, own two restaurant entities (the *Pappas entities*) that from time to time may provide services to the Company and its subsidiaries, as detailed in the Amended and Restated Master Sales Agreement effective November 16, 2011 among the Company and the Pappas entities.

Edgar Filing: FIRST BANCSHARES INC /MS/ - Form 10-Q/A

Under the terms of the Amended and Restated Master Sales Agreement, the Pappas entities may provide specialized (customized) equipment fabrication and basic equipment maintenance, including stainless steel stoves, shelving, rolling carts, and chef tables. The total costs under the Amended and Restated Master Sales Agreement of custom-fabricated and refurbished equipment in the quarters ended November 21, 2012 and November 23, 2011 were zero and \$63,000, respectively. Services provided under this agreement are subject to review and approval by the Finance and Audit Committee of the Company's Board of Directors.

Table of Contents**Operating Leases**

In the third quarter of fiscal year 2004, Messrs. Pappas became partners in a limited partnership which purchased a retail strip center in Houston, Texas. Messrs. Pappas collectively own a 50% limited partnership interest and a 50% general partnership interest in the limited partnership. A third party company manages the center. One of the Company's restaurants has rented and occupied space in that center since July 1969.

On November 22, 2006, the Company executed a new lease agreement in connection with the replacement and relocation of the existing restaurant with a new prototype restaurant in the retail strip center described above. The new restaurant opened in July 2008 and the new lease agreement provides for a primary term of approximately twelve years with two subsequent five-year options. The new lease also gives the landlord an option to buy out the agreement on or after the calendar year 2015 by paying the unamortized cost of the Company's improvements. The Company is currently obligated to pay rent of \$20.00 per square foot (\$22.00 per square foot beginning January 2014) plus maintenance, taxes, and insurance during the primary term of the lease. Thereafter, the lease provides for increases in rent at set intervals. The new lease agreement was approved by the Finance and Audit Committee and full Board of Directors. The Company made payments of \$56,000 and \$77,000 in the quarters ended November 21, 2012 and November 23, 2011, respectively.

On November 14, 2012, the Company executed an additional lease agreement in connection with a proposed future restaurant concept in the retail strip center described above. This lease agreement provides for a primary term of approximately eight years with no renewal options. The Company is currently obligated to pay rent of \$35.00 per square foot plus maintenance, taxes, and insurance during the primary term of the lease. Thereafter, the lease provides for an increase in rent at a set interval. This lease agreement was approved by the Finance and Audit Committee of the Board of Directors. The Company has not made rental payments on this space in the in the quarter ended November 21, 2012.

Affiliated rents paid for this restaurant property lease represented 1.9% and 2.6% of total rents for continuing operations for the quarters ended November 21, 2012 and November 23, 2011, respectively.

	Quarter Ended	
	November 21, 2012 (12 weeks) (In thousands, except percentages)	November 23, 2011 (12 weeks)
AFFILIATED COSTS INCURRED:		
General and administrative expenses professional and other costs	\$ 13	\$ 13
Capital expenditures custom-fabricated and refurbished equipment and furnishings		63
Other operating expenses and opening costs, including property leases	106	67
Total	\$ 119	\$ 143
RELATIVE TOTAL COMPANY COSTS:		
General and administrative expenses	\$ 7,378	\$ 6,810
Capital expenditures	4,874	4,519
Other operating expenses and opening costs	18,048	17,551
Total	\$ 30,300	\$ 28,880
AFFILIATED COSTS INCURRED AS A PERCENTAGE OF RELATIVE TOTAL COMPANY COSTS	0.39%	0.50%

Board of Directors

Pursuant to the terms of a Purchase Agreement dated March 9, 2001, entered into by and among the Company, Christopher J. Pappas and Harris J. Pappas, the Company agreed to submit three persons designated by Christopher J. Pappas and Harris J. Pappas as nominees for election at the 2002 Annual Meeting of Shareholders. Messrs. Pappas designated themselves and Frank Markantonis as their nominees for directors, all of

Edgar Filing: FIRST BANCSHARES INC /MS/ - Form 10-Q/A

whom were subsequently elected. Christopher J. Pappas and Harris J. Pappas are brothers and Frank Markantonis is an attorney whose principal client is Pappas Restaurants, Inc., an entity owned by Harris J. Pappas and Christopher J. Pappas.

Christopher J. Pappas is a member of the Advisory Board of Amegy Bank, National Association, which is a lender and syndication agent under the Company's 2009 Revolving Credit Facility.

Table of Contents

Key Management Personnel

On August 28, 2012, the Company entered into a seventh amendment to the Employment Agreement dated November 9, 2005 and as amended on October 29, 2007, November 19, 2008, November 19, 2009, April 15, 2010, September 2, 2010 and April 20, 2011 between the Company and Christopher J. Pappas to extend the termination date thereof to December 31, 2013. Mr. Pappas continues to devote his primary time and business efforts to the Company while maintaining his role at Pappas Restaurants, Inc.

On December 20, 2011, the Board of Directors of the Company approved the renewal of a consultant agreement with Ernest Pekmezaris, the Company's former Chief Financial Officer. Under the agreement, Mr. Pekmezaris will continue to furnish to the Company advisory and consulting services related to finance and accounting matters and other related consulting services. The agreement expires on January 31, 2013. Mr. Pekmezaris is also the Treasurer of Pappas Restaurants, Inc. Compensation for the services provided by Mr. Pekmezaris to Pappas Restaurants, Inc. is paid entirely by that entity.

Peter Tropoli, the Company's Chief Operating Officer, and formerly the Company's Senior Vice President, Administration, General Counsel and Secretary, is an attorney and stepson of Frank Markantonis, who is a director of the Company.

Paulette Gerukos, Vice President of Human Resources of the Company, is the sister-in-law of Harris J. Pappas, who is a director of the Company.

Note 10. Share-Based Compensation

We have two active share based stock plans, the Employee Stock Plan and Non-employee Director Stock Plan. Both plans authorize the granting of stock options, restricted stock and other types of awards consistent with the purpose of the plans.

Of the original 0.4 million shares approved for issuance under the Non-employee Director Stock Plan, 0.5 million options, restricted stock units and restricted stock awards were granted, 0.1 million options were cancelled or expired and added back into the plan. Approximately 2,000 shares remain available for future issuance as of November 21, 2012. Compensation cost for share-based payment arrangements under the Non-employee Director Stock Plan, recognized in general and administrative expenses for the quarters ended November 21, 2012 and November 23, 2011 was approximately \$27,000 and \$72,000, respectively.

Of the original 2.6 million shares approved for issuance under the Employee Stock Plan, 4.6 million options and restricted stock units were granted, 2.9 million options and restricted stock units were cancelled or expired and added back into the plan. Approximately 0.9 million shares remain available for future issuance as of November 21, 2012. Compensation cost for share-based payment arrangements under the Employee Stock Plan, recognized in general and administrative expenses for the quarters ended November 21, 2012 and November 23, 2011 was approximately \$0.1 million and \$0.1 million, respectively.

Stock Options

Stock options granted under either the Employee Stock Plan or the Non-employee Director Stock Plan have exercise prices equal to the market price of the Company's common stock at the date of the grant.

Option awards under the Non-employee Director Stock Plan generally vest 100% on the first anniversary of the grant date and expire ten years from the grant date. No options were granted under the Non-employee Director Stock Plan in the first quarter of fiscal year 2013. However, options to purchase 38,000 shares at option prices from \$1.98 to \$6.45 per share remain outstanding as of November 21, 2012.

Options granted under the Employee Stock Plan generally vest 25% on the anniversary date of each grant and expire six years from the date of the grant. However, options granted to executive officers under the Employee Stock Plan vest 50% on the first anniversary date of the grant date, 25% on the second anniversary of the grant date and the remaining 25% vest on the third anniversary of the grant date and expire ten years from the grant date. All options granted in the first quarter of fiscal year 2013 were granted under the Employee Stock Plan. Option to purchase 964,994 shares at option prices of \$3.44 to \$11.10 per share remain outstanding as of November 21, 2012.

Table of Contents

A summary of the Company's stock option activity for the quarter ended November 21, 2012 is presented in the following table:

	Shares Under Fixed Options	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value (In thousands)
Outstanding at August 29, 2012	1,175,224	\$ 6.31	3.8	\$ 1,456
Granted	109,335	5.95	0	0
Exercised	0	0	0	0
Forfeited/Expired	(281,565)	0	0	0
Outstanding at November 21, 2012	1,002,994	\$ 5.17	5.1	\$ 1,527
Exercisable at November 21, 2012	642,895	\$ 5.25	4.4	\$ 1,055

The intrinsic value for stock options is defined as the difference between the current market value, or closing price on November 21, 2012, and the grant price.

Restricted Stock Units

Grants of restricted stock units consist of the Company's common stock and generally vest after three years. All restricted stock units are cliff-vested. Restricted stock units are valued at the closing market price of the Company's common stock at the date of grant.

A summary of the Company's restricted stock unit activity during the first quarter of fiscal year 2013 is presented in the following table:

	Restricted Stock Units	Weighted Average Fair Value (Per share)	Weighted-Average Remaining Contractual Term (In years)
Unvested at August 29, 2012	163,946	\$ 4.83	1.8
Granted	214,290	5.95	
Vested	(14,000)	3.46	
Unvested at November 21, 2012	364,236	\$ 5.54	2.4

At November 21, 2012, there was approximately \$1.6 million of total unrecognized compensation cost related to unvested restricted stock units that is expected to be recognized over a weighted-average period of 2.7 years.

Restricted Stock Awards

Under the Non-Employee Director Stock Plan, directors are granted restricted stock in lieu of cash payments, for all or a portion of their compensation as directors. Directors may opt to receive 20% more shares of restricted stock awards by accepting more than the minimum required stock instead of cash. The number of shares granted is valued at the closing market price of the Company's stock at the date of the grant. Restricted stock awards vest when granted because they are granted in lieu of a cash payment. However, directors are restricted from selling their shares until after the third anniversary of the date of the grant.

Note 11. Earnings Per Share

Edgar Filing: FIRST BANCSHARES INC /MS/ - Form 10-Q/A

Basic net income per share is computed by dividing net income available to common shareholders by the weighted average number of common shares outstanding and unvested restricted stock for the reporting period. Diluted net income per share reflects the potential dilution that could occur if securities or other contracts to issue common stock were exercised or converted into common stock. For the calculation of diluted net income per share, the basic weighted average number of shares is increased by the dilutive effect of stock options determined using the treasury stock method. Stock options excluded from the computation of net income per share for the quarter ended November 21, 2012 include approximately 89,000 shares with exercise prices exceeding market prices and approximately 5,000 shares whose inclusion would also be antidilutive.

Table of Contents

The components of basic and diluted net income per share are as follows:

	Quarter Ended	
	November 21, 2012 (12 weeks) <i>(In thousands except per share data)</i>	November 23, 2011 (12 weeks)
Numerator:		
Income (loss) from continuing operations	\$ 189	\$ 583
Loss from discontinued operations	(60)	(379)
Net income (loss)	\$ 129	\$ 204
Denominator:		
Denominator for basic earnings per share weighted-average shares	28,386	28,262
Effect of potentially dilutive securities:		
Employee and non-employee stock options	181	42
Denominator for earnings per share assuming dilution	28,567	28,304
Income (loss) per share from continuing operations:		
Basic	\$ 0.01	\$ 0.02
Assuming dilution	0.01	0.02
Loss per share from discontinued operations:		
Basic	\$	\$ (0.01)
Assuming dilution		(0.01)
Net income (loss) per share:		
Basic	\$ 0.01	\$ 0.01
Assuming dilution	0.01	0.01

Note 12. Subsequent Event

Luby's Inc., via a wholly owned subsidiary, purchased all the Membership Units of Paradise Restaurants Group, LLC, and certain of their affiliates, collectively known as Cheeseburger In Paradise, for approximately \$11.0 million in cash plus reimbursements for cash on hand, inventory and accounts receivable offset by liabilities assumed at closing on December 5, 2012 and took over operations on December 6, 2012. Luby's Fuddrucker's Restaurants, LLC will operate 23 Cheeseburger in Paradise restaurants, located in 14 states.

Table of Contents

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

Management's discussion and analysis of financial condition and results of operations should be read in conjunction with the unaudited consolidated financial statements and footnotes for the period ended November 21, 2012 included in Item 1 of Part I of this Quarterly Report on Form 10-Q, and the audited consolidated financial statements included in our Annual Report on Form 10-K for the fiscal year ended August 29, 2012.

The following presents an analysis of the results and financial condition of our continuing operations. Except where indicated otherwise, the results of discontinued operations are excluded from this discussion.

Overview

Luby's, Inc. is a multi-branded company operating in the restaurant industry and the contract food services industry. Our primary brands include Luby's Cafeterias, Luby's Culinary Contract Services, Fuddruckers, and Cheeseburger in Paradise. Also included in our brands are Luby's, Etc. and Koo Koo Roo Chicken Bistro. We purchased substantially all of the assets of Fuddruckers, Inc., Magic Brands, LLC and certain of their affiliates (collectively, Fuddruckers) in July 2010. We purchased all of the Membership Units of Paradise Restaurant Group, LLC and certain of their affiliates (collectively known as, Cheeseburger in Paradise) effective December 6, 2012. Accordingly, we were not the operator of the Cheeseburger in Paradise restaurants until after the end of the quarter ended November 21, 2012 and therefore none of the results of operations from the Cheeseburger in Paradise restaurants are included in this discussion.

As of November 21, 2012, we owned and operated 158 restaurants, of which 93 are traditional cafeterias, 62 are gourmet hamburger restaurants, two are upscale fast serve chicken restaurants, and one primarily serves seafood. These establishments are located in close proximity to retail centers, business developments and residential areas mostly throughout the United States. On December 6, 2012 we took over operations of 23 Cheeseburger in Paradise restaurant and bar locations located across 14 states.

Also as of November 21, 2012, we operated 18 Culinary Contract Service facilities. These facilities are located within healthcare and education settings in Texas and Louisiana. These facilities provide food service options to varied populations including in-hospital-room patient meal service, retail food-court style restaurant dining, and coffee/snack kiosks.

Also as of November 21, 2012, we are a franchisor for a network of 121 Fuddruckers restaurants. The owners of these franchise units pay royalty revenue to us as a franchisor.

Accounting Periods

Our fiscal year ends on the last Wednesday in August. As such, each fiscal year normally consists of 13 four-week periods, or accounting periods, accounting for 364 days in the aggregate. Each of the first three quarters of each fiscal year consists of three four-week periods, while the fourth quarter normally consists of four four-week periods. Comparability between quarters may be affected by varying lengths of the quarters, as well as the seasonality associated with the restaurant business.

Same-Store Sales

The restaurant business is highly competitive with respect to food quality, concept, location, price, and service, all of which may have an effect on same-store sales. Our same-store sales calculation measures the relative performance of a certain group of restaurants. To qualify for inclusion in this group, a store must have been in operation for 18 consecutive accounting periods. Our Fuddruckers units were included in this measurement beginning with the third fiscal quarter ended May 9, 2012. Stores that close on a permanent basis are removed from the group in the fiscal quarter when operations cease at the restaurant, but remain in the same-store group for previously reported fiscal quarters. Although management believes this approach leads to more effective year-over-year comparisons, neither the time frame nor the exact practice may be similar to those used by other restaurant companies.

Table of Contents

RESULTS OF OPERATIONS

For the First Quarter Fiscal Year 2013 versus the First Quarter Fiscal Year 2012

Sales

Total company sales increased approximately \$0.1 million, or 0.2%, in the quarter ended November 21, 2012 compared to quarter ended November 23, 2011, consisting primarily of a \$0.8 million increase in restaurant sales, offset by a \$0.7 million decrease in Culinary Contract Sales. The other components of total sales are franchise revenue and vending income.

The company operates with three reportable operating segments: Company owned restaurants, franchise operations, and Culinary Contract Services.

Company Owned Restaurants

Restaurant Sales

Restaurant sales increased \$0.8 million in the quarter ended November 21, 2012 compared to the quarter ended November 23, 2011. The increase in restaurant sales included a \$0.4 million increase in sales at Luby's cafeteria-branded restaurants and a \$0.4 million increase in sales from Fuddrucker's-branded restaurants. On a same store-store basis, restaurant sales increased 0.2%. The increase in same store sales was achieved primarily by increases in the per person average spend offset by declines in guest traffic. The increase in per person average spend was a result of altering the mix of menu items offered and selected by our customers and by motivating the purchase of additional items on the customer ticket.

Cost of Food

Food costs increased approximately \$0.3 million, or 1.6%, in the quarter ended November 21, 2012 compared to the quarter ended November 23, 2011 due primarily to total food and beverage rebates of approximately \$0.3 million recorded in the quarter ended November 21, 2012 compared to \$0.6 million in rebates recorded in the quarter ended November 23, 2011. Removing the impact of food and beverage rebates, food costs were comparable in the quarter ended November 21, 2012 to the quarter ended November 23, 2011. Food commodity prices for our basket of food commodity purchases were mostly stable; however, we were affected by the higher costs of turkey which is a key component of our Thanksgiving offerings. As a percentage of sales, food cost increased 0.2% to 28.2% in the quarter ended November 21, 2012 compared to the quarter ended November 23, 2011. Removing the impact of food and beverage rebates, food costs as a percentage of restaurant sales decreased 0.3% in the quarter ended November 21, 2012 compared to the quarter ended November 23, 2011. Careful food cost management and menu mix management was partially offset by the impact of a re-introduction of discounted limited time offers at certain locations in the latter part of the quarter ended November 21, 2012.

Payroll and Related Costs

Payroll and related costs increased approximately \$0.4 million in the quarter ended November 21, 2012 compared to the quarter ended November 23, 2011. Hourly labor costs increased in part due to the addition of new restaurants and a greater number of hours deployed during their first 60 days of operations. Crew labor training costs also increased in the quarter ended November 21, 2012 compared to the quarter ended November 23, 2011 as additional focus was placed on developing all restaurant employees to most effectively serve our customers and properly execute restaurant operational processes. Restaurant management labor costs were comparable in the quarter ended November 21, 2012 to the quarter ended November 23, 2011. As a percentage of restaurant sales, payroll and related costs increased 0.2%, to 34.5%, in the quarter ended November 21, 2012 compared to 34.3% in the quarter ended November 23, 2011, due in part to higher crew training costs offset by leveraging management costs on higher sales volumes.

Other Operating Expenses

Other operating expenses primarily include restaurant-related expenses for utilities, repairs and maintenance, advertising, insurance, services, supplies and occupancy costs. Other operating expenses increased by approximately \$0.3 million, or 1.8%, in the quarter ended November 21, 2012 compared to the quarter ended November 23, 2011, primarily due to (1) an approximate \$0.3 million increase in marketing and advertising costs; (2) an approximate \$0.3 million increase in restaurant supply and services expense; partially offset by (3) an approximate \$0.3 million reduction in repairs and maintenance expenses and insurance expenses. As a percentage of restaurant sales, other operating expenses increased 0.2%, to 24.1%, in the quarter ended November 21, 2012 compared to 23.9% in the quarter ended November 23, 2011, due the cost increases,

partially offset by the costs decreases, enumerated above and the ability to leverage the fixed cost components of certain operating costs over an increased sales volume.

Table of Contents

Franchise Operations

We offer franchises for the Fuddruckers brand. Franchises are sold in markets where expansion is deemed advantageous to the development of the Fuddruckers concept and system of restaurants. Franchise revenue includes (1) royalties paid to us as the franchisor for the Fuddruckers brand; (2) franchise fees paid to us when franchise development agreements are executed and when franchise units are opened for business or transferred to new owners. Franchise revenue increased \$40 thousand in the quarter ended November 21, 2012 compared to the quarter ended November 23, 2011. The \$40 thousand increase in franchise revenue includes \$20 thousand increase in franchise royalties and \$20 thousand increase in franchise fees. At the quarter ended November 23, 2011, there were 121 Fuddruckers franchise units in the system. Over the prior one year ended November 21, 2012, our franchisees have opened six units, including one in Mexico where we are a joint venture partner. Over the prior one year ended November 21, 2012 there were also six franchise units that closed on a permanent basis. As such, at the quarter ended November 21, 2012, there were 121 Fuddruckers franchise units in the system.

Culinary Contract Services

Culinary Contract Services is a business line servicing healthcare, higher education, and corporate dining clients. The healthcare accounts are full service and typically include in-room delivery, catering, vending, coffee service and retail dining. This business line operated 18 client locations during the quarter ended November 21, 2012 compared to 21 client locations during the quarter ended November 23, 2011. In fiscal year 2012, we refined our operating model by concentrating on clients able to enter into agreements where all operating costs are reimbursed to us and we generally charge a fixed fee. These agreements typically present lower financial risk to the company.

Culinary Contract Services Revenue

Culinary Contract Services revenue decreased \$0.7 million, or 15.3% in the quarter ended November 21, 2012 compared to the quarter ended November 23, 2011. The decrease in revenue was primarily due to the reduction in the number of locations where we operate and the sales volume at those locations. While the number of locations has declined, we believe we now operate with a stronger mix of clients.

Cost of Culinary Contract Services

Cost of Culinary Contract Services includes the food, payroll and related, and other direct operating expenses associated with generating culinary contract sales. Cost of Culinary Contract Services decreased approximately \$0.6 million, or 15.6%, in the quarter ended November 21, 2012 compared to the quarter ended November 23, 2011, due to a commensurate decrease in culinary contract sales volume.

Opening Costs

Opening costs include labor, supplies, occupancy, and other costs necessary to support the restaurant through its opening period. Opening costs were approximately \$0.2 million in the quarter ended November 21, 2012 compared to approximately \$35 thousand in the quarter ended November 23, 2011. The quarter ended November 21, 2012 and the quarter ended November 23, 2011 included carrying costs of locations to be developed for future restaurant openings. The quarter ended November 21, 2012 also included the labor, supplies, and other costs necessary to support the opening of one cafeteria and three Fuddruckers restaurants.

Depreciation and Amortization

Depreciation and amortization expense increased by approximately \$22 thousand, or 0.5% in the quarter ended November 21, 2012 compared to the quarter ended November 23, 2011 due to depreciation related to new capital expenditures for new construction and remodel activity partially offset by certain assets reaching the end of their depreciable lives.

General and Administrative Expenses

General and administrative expenses include corporate salaries and benefits-related costs, including restaurant area leaders, share-based compensation, professional fees, travel and recruiting expenses and other office expenses. General and administrative expenses increased by approximately \$0.6 million, or 8.3%, in the quarter ended November 21, 2012 compared to the quarter ended November 23, 2011. The increase was primarily due to higher salary and benefits expenses and an approximate \$0.3 million settlement in our favor from a class action suit related to credit card interchange fees that was recorded in the quarter ended November 23, 2011. As a percentage of total sales, general and administrative expenses increased to 9.3% in the quarter ended November 21, 2012 compared to 8.6% in the quarter ended November 23, 2011.

Provision for asset impairments, net

The asset impairment of \$90 thousand in the quarter ended November 21, 2012 reflects the impairment of one leased location where the projected future cash flows through the end of the lease term are now not expected to support the value of the assets at the location. The impairment charge of \$175 thousand in the quarter ended November 23, 2011 was related to a culinary contract services agreement.

Table of Contents

Net (Gain) Loss on Disposition of Property and Equipment

The loss or gain on disposition of property and equipment was a gain of approximately \$0.2 million in the quarter ended November 21, 2012 and related to the sale of our leasehold interest in one restaurant location offset by normal asset retirement activity in our restaurant units. The loss or gain on disposition of property and equipment was a loss of nine thousand dollars in the quarter ended November 23, 2011.

Interest Income

Interest income increased by approximately \$1 thousand in the quarter ended November 21, 2012 compared to the quarter ended November 23, 2011.

Interest Expense

Interest expense in the quarter ended November 21, 2012 decreased approximately \$0.1 million compared to the interest expense in the quarter ended November 23, 2011, due to lower outstanding debt balances resulting from the application of cash from operations and property sales to our debt balance.

Other Income, Net

Other income, net consisted primarily of the following components: net rental property income and expenses relating to property for which we are the landlord; prepaid sales tax discounts earned through our participation in state tax prepayment programs; and oil and gas royalty income. Other income, net in the quarter ended November 21, 2012 increased approximately \$17 thousand compared to the quarter ended November 23, 2011. The increase was primarily due to (1) net rental income on properties that we lease to third parties; (2) oil and gas royalty income; and (3) higher prepaid sales tax discounts earned on a higher sales volumes.

Taxes

For the quarter ended November 21, 2012, the income taxes related to continuing operations resulted in a tax provision of \$0.1 million compared to a tax provision of \$0.3 million for the quarter ended November 23, 2011.

Discontinued Operations

The loss from discontinued operations was \$0.1 million in the quarter ended November 21, 2012 compared to a loss of \$0.4 million in the quarter ended November 23, 2011. The loss for the quarter ended November 21, 2012 reflects the carrying costs associated with assets that are related to discontinued operation, offset by the income tax benefit related to discontinued operations.

The loss from discontinued operations of \$0.4 million in the quarter ended November 23, 2011 included (1) \$0.2 million in carrying costs associated with assets related to discontinued operations, (2) an asset impairment of \$0.4 million; partially offset by (3) a \$0.2 million income tax benefit related to discontinued operations.

LIQUIDITY AND CAPITAL RESOURCES

Cash and Cash Equivalents

General. Our primary sources of short-term and long-term liquidity are cash flows from operations and our revolving credit facility. Cash provided by operating activities was \$6.6 million offset by cash used in investing activities of \$4.4 million and financing activities of \$1.5 million. Cash and cash equivalents increased \$0.7 million in the first quarter of fiscal year 2013 and \$0.6 million in the first quarter of fiscal year 2012. Cash provided by operating activities was \$8.8 million offset by cash used in investing activities or \$4.2 million and financing activities of \$4.0 million in the first quarter of fiscal year 2012. We plan to continue the level of capital and repair and maintenance expenditures necessary to keep our restaurants attractive and operating efficiently.

Our cash requirements consist principally of:

payments to reduce our debt;

capital expenditures for construction, restaurant renovations, purchase of property for development of our restaurant brands and for use as rental property and upgrades and information technology; and

working capital primarily from our Company-owned restaurants and CCS agreements.

Table of Contents

As is common in the restaurant industry, we maintain relatively low levels of accounts receivable and inventories and our vendors grant trade credit for purchases such as food and supplies. However, higher levels of accounts receivable are typical for culinary contract services and franchises. We also continually invest in our business through the addition of new units and refurbishment of existing units, which are reflected as long-term assets.

The following table summarizes our cash flows from operating, investing and financing activities:

	Quarter Ended	
	November 21, 2012 (12 weeks)	November 23, 2011 (12 weeks)
(In thousands)		
Total cash provided by (used in):		
Operating activities	\$ 6,586	\$ 8,803
Investing activities	(4,354)	(4,190)
Financing activities	(1,500)	(4,001)
Increase in cash and cash equivalents	\$ 732	\$ 612

Operating Activities. Cash flow from operating activities was \$6.6 million in the first quarter of fiscal year 2013, a \$2.2 million decrease from the first quarter of fiscal year 2012. The \$2.2 million decrease in cash is due to a \$0.9 million decrease in cash from operations before changes in operating assets and liabilities and a \$1.3 million decrease in cash from operating assets and liabilities.

Cash generated by operating activities before changes in operating assets and liabilities was \$4.2 million in the first quarter of fiscal year 2013, a \$0.9 million decrease compared to the first quarter of fiscal year 2012. Cash generated by the company-owned restaurant segment was \$0.2 million less in the first quarter of fiscal year 2013 compared to fiscal year 2012 and cash used for opening costs was \$0.2 million higher in the first quarter of fiscal year 2013 than fiscal year 2012. Cash used in discontinued operations was \$0.1 million in the first quarter of fiscal year 2013, a \$0.3 million decrease in cash flow from the first quarter of fiscal year 2012.

Cash generated by changes in operating assets and liabilities was \$2.4 million in the first quarter of fiscal year 2013, a \$1.3 million decrease in cash compared to the first quarter of fiscal year 2012. The change in accounts payable, accrued expenses and other liabilities was a \$1.2 million source of cash in the first quarter of fiscal year 2013, a \$4.6 million decrease from the first quarter of fiscal year 2012 offset by a \$3.3 million increase in operating assets.

The \$4.6 million decrease in cash from current operating liabilities in the first quarter of fiscal year 2013 compared to the first quarter of fiscal year 2012 was primarily due to timing differences in payments and accruals of salary and related costs of \$3.3 million. The increase in accounts payable was \$0.9 million less in the first quarter of fiscal year 2013 compared to the first quarter of fiscal year 2012.

The \$3.3 million increase in cash flow from current operating assets in the first quarter of fiscal year 2013 compared to the first quarter of fiscal year 2012 was primarily due to changes in prepaid expenses. The decrease in cash due to changes in prepaid rent expenses in the first quarter of fiscal year 2013 compared to fiscal year 2012 was primarily due to timing differences between the two quarters for insurance of \$1.1 million and rent of \$1.0 million. Other increases in cash flow due to changes in current operating assets include the decrease in trade accounts and other receivables of \$0.4 million more in the first quarter of fiscal year 2013, than the first quarter of fiscal year 2012 and the increase in food and supply inventories of \$0.3 million less in the first quarter of fiscal year 2013 than the first quarter of fiscal year 2012.

Investing Activities. We generally reinvest available cash flows from operations to develop new restaurants, enhance existing restaurants and to support culinary contract services. Cash used by investing activities was \$4.4 million in the first quarter of fiscal year 2013 and \$4.2 million in the first quarter of fiscal year 2012. Capital expenditures were \$4.9 million in the first quarter of fiscal year 2013, a \$0.4 million increase compared to the first quarter of fiscal year 2012. Proceeds from the disposal of assets was \$0.5 million in the first quarter of fiscal years 2013 and 2012.

Financing Activities. Cash used by financing activities was \$1.5 million in the first quarter of fiscal year 2013, a \$2.5 million decrease compared to the first quarter of fiscal year 2012.

Table of Contents***Status of Long-Term Investments and Liquidity***

At November 21, 2012, we did not hold any long-term investments.

Status of Trade Accounts and Other Receivables, Net

We monitor the aging of our receivables, including Fuddruckers franchising related receivables, and record provisions for uncollectable accounts, as appropriate. Credit terms of accounts receivable associated with our CCS business vary from 30 to 45 days based on contract terms.

Working Capital

Current assets decreased \$0.4 million in the first quarter of fiscal year 2013 compared to an increase of \$2.8 million in the first quarter of fiscal year 2012. In the first quarter of fiscal year 2013, prepaid expenses and trade accounts and other receivables decreased \$1.8 million and \$0.6 million, partially offset by increases in inventory and cash of \$1.4 million and \$0.7 million, respectively. In the first quarter of fiscal year 2012, food inventories increased \$1.7 million, cash increased \$0.6 million and prepaid expenses increased \$0.6 million while trade accounts and other receivable decreased \$0.2 million. The change in prepaid expenses and other assets was a \$1.9 million source of cash in fiscal year 2013, an increase of \$2.5 million from the first quarter of fiscal year 2012. The \$2.5 million increase was primarily due to timing differences in payments and accruals for insurance, rent and advertising.

Current liabilities increased \$1.4 million in the first quarter of fiscal year 2013 compared to a \$4.6 million increase in the first quarter of fiscal year 2012. In the first quarter of fiscal year 2013, accounts payables increased \$1.8 million and accrued expenses and other liabilities decreased \$0.4 million. In the first quarter of fiscal year 2012 accounts payables increased \$2.7 million and accrued expenses and other liabilities increased \$1.8 million. The change in accounts payables, accrued expenses and other liabilities was a \$1.2 million use of cash in the first quarter of fiscal year 2013, which was \$4.6 million less than the first quarter of fiscal year 2012. The \$4.6 million difference in the quarters was primarily due to timing differences in the accrual and payment of salary related costs.

Capital Expenditures

Capital expenditures consist of purchases of real estate for future restaurant sites, culinary contract services investments, new unit construction, purchases of new and replacement restaurant furniture and equipment, and ongoing remodeling programs. Capital expenditures for the first quarter of fiscal year 2013 were approximately \$4.9 million and related to recurring maintenance of our existing units to improvement of our culinary contract services business and the development of future restaurant sites. We expect to be able to fund all capital expenditures in fiscal year 2013 using proceeds from the sale of assets, cash flows from operations and our available credit. We expect to spend approximately \$24.0 million to \$29.0 million on capital expenditures in fiscal year 2013.

DEBT***Revolving Credit Facility***

In November 2009, we entered into a revolving credit facility with Wells Fargo Bank, National Association, as Administrative Agent, and Amegy Bank, National Association, as Syndication Agent. The following description summarizes the material terms of the revolving credit facility, as subsequently amended as of January 31, 2010, July 26, 2010, September 30, 2010, October 31, 2010, August 25, 2011, and October 20, 2011 (the revolving credit facility, together with all amendments thereto, is referred to as the 2009 Credit Facility). The 2009 Credit Facility is governed by the Credit Agreement dated as of November 9, 2009 (as amended to date, the Credit Agreement) among us, the lenders from time to time party thereto, Wells Fargo Bank, National Association, as Administrative Agent, and Amegy Bank, National Association, as Syndication Agent. The maturity date of the 2009 Credit Facility is September 1, 2014.

The aggregate amount of the lenders commitments under the 2009 Credit Facility was \$50.0 million as of November 21, 2012. The 2009 Credit Facility also provides for the issuance of letters of credit in a maximum aggregate amount of \$15.0 million outstanding at any one time. At November 21, 2012, \$37.5 million was available under the 2009 Credit Facility.

The 2009 Credit Facility is guaranteed by all of our present or future subsidiaries. In addition, in connection with the expansion of the 2009 Credit Facility that accompanied our acquisition of substantially all of the assets of Fuddruckers in July 2010, Christopher J. Pappas, our President and Chief Executive Officer, and Harris J. Pappas, a member of our Board of Directors, guaranteed the payment of up to \$13.0 million of our indebtedness under the 2009 Credit Facility. The maximum amount of this guaranty was reduced to \$9.5 million on February 28, 2011, further reduced to \$6.0 million on May 31, 2011 and reduced to zero as of August 25, 2011.

Edgar Filing: FIRST BANCSHARES INC /MS/ - Form 10-Q/A

At any time throughout the term of the 2009 Credit Facility, we have the option to elect one of two bases of interest rates. One interest rate option is the greater of (a) the Federal Funds Effective Rate plus 0.50%, or (b) prime, plus, in either case, an applicable spread that ranges from 1.00% to 2.00% per annum. The other interest rate option is the London InterBank Offered Rate plus a spread that ranges from 2.75% to 3.75% per annum. The applicable spread under each option is dependent upon the ratio of our debt to EBITDA at the most recent determination date.

Table of Contents

We are obligated to pay to the Administrative Agent for the account of each lender a quarterly commitment fee based on the average daily unused amount of the commitment of such lender, ranging from 0.30% to 0.40% per annum depending on our Total Leverage Ratio (as defined in the Credit Agreement) at the most recent determination date.

The proceeds of the 2009 Credit Facility are available for our general corporate purposes and general working capital purposes.

Borrowings under the 2009 Credit Facility are subject to mandatory repayment with the proceeds of sales of certain of our real property, subject to certain exceptions.

The 2009 Credit Facility is secured by a perfected first priority lien on certain of our real property and all of the material personal property owned by us or any of our subsidiaries, other than certain excluded assets (as defined in the Credit Agreement). At November 21, 2012, the carrying value of the collateral securing the 2009 Credit Facility was \$87.7 million.

The Credit Agreement contains the following covenants, among others:

maintenance of a ratio of (a) EBITDA for the four fiscal quarters ending on the last day of any fiscal quarter to (b) the sum of (x) interest expense (as defined in the Credit Agreement) for such four fiscal-quarter-period plus (y) the outstanding principal balance of the loans as of the last day of such fiscal quarter divided by seven (the Debt Service Coverage Ratio), of not less than (1) 2.00 to 1.00, beginning with the end of the fourth quarter of fiscal 2011 and ending with the first quarter of fiscal 2012, (2) 2.25 to 1.00 beginning with the end of the second quarter of fiscal 2012 and ending with the first quarter of fiscal 2013, and (3) 2.50 to 1.00 beginning with the end of second quarter of fiscal 2013 and thereafter,

maintenance of minimum Tangible Net Worth (as defined in the Credit Amendment) of not less than (1) \$126.7 million as of the last day of the third fiscal quarter of fiscal 2011 and (2) increasing incrementally thereafter, as of the last day of each subsequent fiscal quarter, by an amount equal to 60% of our consolidated net income (if positive) for the fiscal quarter ending on such date,

maintenance of minimum net profit of \$1.00 (1) for at least one of the first three fiscal quarters of our 2012 fiscal year, (2) for at least one of any two consecutive fiscal quarters beginning with the fourth fiscal quarter of our 2012 fiscal year, and (3) for any period of four consecutive fiscal quarters beginning with the four consecutive fiscal quarters ending with the fourth quarter of our 2011 fiscal year,

restrictions on incurring indebtedness, including certain guarantees and capital lease obligations,

restrictions on incurring liens on certain of our property and the property of our subsidiaries,

restrictions on transactions with affiliates and materially changing our business,

restrictions on making certain investments, loans, advances and guarantees,

restrictions on selling assets outside the ordinary course of business,

prohibitions on entering into sale and leaseback transactions,

Edgar Filing: FIRST BANCSHARES INC /MS/ - Form 10-Q/A

limiting Capital Expenditures (as defined in the Credit Agreement) to \$15.0 million for the fiscal year ended August 31, 2011, to \$34.9 million for the fiscal year ended August 29, 2012, and for any subsequent fiscal year, to the sum of (1) the lesser of (a) \$38.0 million or (b) an amount equal to 130% of EBITDA for the immediately preceding fiscal year plus (2) any unused availability for capital expenditures from the immediately preceding fiscal year, and

restrictions on certain acquisitions of all or a substantial portion of the assets, property and/or equity interests of any person. We were in compliance with the covenants contained in the Credit Agreement as of November 21, 2012.

The Credit Agreement also includes customary events of default. If a default occurs and is continuing, the lenders' commitments under the Credit Facility may be immediately terminated and/or we may be required to repay all amounts outstanding under the Credit Facility.

As of November 21, 2012, we had \$11.5 million in outstanding loans and \$1.0 million committed under letters of credit, which were issued as security for the payment of insurance obligations.

Table of Contents

CRITICAL ACCOUNTING POLICIES AND ESTIMATES

The Consolidated Financial Statements included in Item 1 of Part 1 of this report were prepared in conformity with U.S. generally accepted accounting principles. Preparation of the financial statements requires us to make judgments, estimates and assumptions that affect the amounts of assets and liabilities in the financial statements and revenues and expenses during the reporting periods. Due to the significant, subjective and complex judgments and estimates used when preparing our consolidated financial statements, management regularly reviews these assumptions and estimates with the Finance and Audit Committee of our Board of Directors. Management believes the following are critical accounting policies used in the preparation of these financial statements.

Income Taxes

The estimated future tax effects of temporary differences between the tax bases of assets and liabilities and amounts reported in the accompanying consolidated balance sheets, as well as operating loss and tax credit carrybacks and carryforwards are recorded. Deferred tax assets and liabilities are determined based on differences between financial reporting and tax bases of assets and liabilities (temporary differences) and are measured using the enacted tax rates and laws that will be in effect when the differences are expected to reverse. We periodically review the recoverability of tax assets recorded on the balance sheet and provide valuation allowances as management deems necessary.

If the future consequences of differences between financial reporting bases and tax bases of our assets and liabilities result in a net deferred tax asset, management will evaluate the probability of our ability to realize the future benefits of such asset. A valuation allowance related to a deferred tax asset is recorded when it is more likely than not that all or some portion of the deferred tax asset will not be realized. The realization of such net deferred tax will generally depend on whether we will have sufficient taxable income of an appropriate character within the carry forward period permitted by the tax law.

Management evaluates both positive and negative evidence, including its forecasts of our future taxable income adjusted by varying probability factors, in making a determination as to whether it is more likely than not that all or some portion of the deferred tax asset will be realized. Based on its analysis, management concluded that a valuation allowance was not necessary.

Management makes judgments regarding the interpretation of tax laws that might be challenged upon an audit and cause changes to previous estimates of tax liability. We operate within multiple taxing jurisdictions and are subject to audit in these jurisdictions as well as by the Internal Revenue Service. In management's opinion, adequate provisions for income taxes have been made for all open tax years. The potential outcomes of examinations are regularly assessed in determining the adequacy of the provision for income taxes and income tax liabilities. Management believes that adequate provisions have been made for reasonable and foreseeable outcomes related to uncertain tax matters. The Company is currently being audited by the State of Texas for franchise taxes and the State of Louisiana for income taxes and franchise taxes for report years 2008 through 2011 based on accounting years 2007 through 2010. There are no other audits or reviews at this time.

Impairment of Long-Lived Assets

We periodically evaluate long-lived assets held for use and held for sale, whenever events or changes in circumstances indicate that the carrying amount of those assets may not be recoverable. We analyze historical cash flows of operating locations and compare results of poorer performing locations to more profitable locations. We also analyze lease terms, condition of the assets and related need for capital expenditures or repairs, construction activity in the surrounding area as well as the economic and market conditions in the surrounding area.

For assets held for use, we estimate future cash flows using assumptions based on possible outcomes of the areas analyzed. If the undiscounted future cash flows are less than the carrying value of our location's assets, we record an impairment based on an estimate of discounted cash flows. The estimates of future cash flows, based on reasonable and supportable assumptions and projections, require management's subjective judgments. Assumptions and estimates used include operating results, changes in working capital, discount rate, growth rate, anticipated net proceeds from disposition of the property and if applicable, lease terms. The span of time for which future cash flows are estimated is often lengthy, increasing the sensitivity to assumptions made. The time span is longer and could be 20 to 25 years for newer properties, but only 5 to 10 years for older properties. Depending on the assumptions and estimates used, the estimated future cash flows projected in the evaluation of long-lived assets can vary within a wide range of outcomes. We consider the likelihood of possible outcomes in determining the best estimate of future cash flows. The measurement for such an impairment loss is then based on the fair value of the asset as determined by discounted cash flows. We operated 154 restaurants as of November 21, 2012 and periodically experience unanticipated changes in our assumptions and estimates. Those changes could have a significant impact on discounted cash flow models with a corresponding significant impact on the measurement of an impairment. We believe we have two locations, with an aggregate net carrying value of assets held for use of \$315,000, with respect to which it is possible that an impairment charge could be taken over the next 12 months.

Table of Contents

We evaluate the useful lives of our intangible assets, primarily the Fuddrucker's trade name and franchise agreements, to determine if they are definite or indefinite-lived. Reaching a determination of useful life requires significant judgments and assumptions regarding the future effects of obsolescence, contract term, demand, competition, other economic factors (such as the stability of the industry, legislative action that results in an uncertain or changing regulatory environment, and expected changes in distribution channels), the level of required maintenance expenditures, and the expected lives of other related groups of assets.

Property Held for Sale

We periodically review long-lived assets against our plans to retain or ultimately dispose of properties. If we decide to dispose of a property, it will be moved to property held for sale and actively marketed. Property held for sale is recorded at amounts not in excess of what management currently expects to receive upon sale, less costs of disposal. We analyze market conditions each reporting period and record additional impairments due to declines in market values of like assets. The fair value of the property is determined by observable inputs such as appraisals and prices of comparable properties in active markets for assets like ours. Gains are not recognized until the properties are sold.

Insurance and Claims

We self-insure a significant portion of risks and associated liabilities under our employee injury, workers' compensation and general liability programs. We maintain insurance coverage with third party carriers to limit our per-occurrence claim exposure. We have recorded accrued liabilities for self-insurance based upon analysis of historical data and actuarial estimates, and we review these amounts on a quarterly basis to ensure that the liability is appropriate.

The significant assumptions made by the actuary to estimate self-insurance reserves, including incurred but not reported claims, are as follows: (1) historical patterns of loss development will continue in the future as they have in the past (Loss Development Method), (2) historical trend patterns and loss cost levels will continue in the future as they have in the past (Bornhuetter-Ferguson Method), and (3) historical claim counts and exposures are used to calculate historical frequency rates and average claim costs are analyzed to get a projected severity (Frequency and Severity Method). The results of these methods are blended by the actuary to provide the reserves estimates.

Actual workers' compensation and employee injury claims expense may differ from estimated loss provisions. The ultimate level of claims under the in-house safety program are not known, and declines in incidence of claims as well as claims costs experiences or reductions in reserve requirements under the program may not continue in future periods.

Share-Based Compensation

Share-based compensation is recognized as compensation expense in the income statement utilizing the fair value on the date of the grant. The fair value of restricted stock units is valued at the closing market price of the Company's common stock at the date of grant. The fair value of each option award is estimated on the date of grant using the Black-Scholes option pricing model. Assumptions for volatility, expected option life, risk free interest rate and dividend yield are used in the model.

NEW ACCOUNTING PRONOUNCEMENTS

In July 2012, the FASB issued ASU No. 2012-02, Testing Indefinite-Lived Intangible Assets for Impairment. This pronouncement was issued to simplify how entities test for impairment of indefinite-lived intangible assets. Under this pronouncement, an entity has the option first to assess qualitative factors to determine whether it is more likely than not that an indefinite-lived intangible asset is impaired. In conclusion of this assessment, if an entity finds that it is not more likely than not that an indefinite-lived intangible asset is impaired, then the entity is not required to take further action. However, if an entity concludes otherwise, then it is required to determine the fair value of the indefinite-lived intangible asset and perform the quantitative impairment test by comparing the fair value with the carrying amount in accordance with ASC Topic 350, Intangibles—Goodwill and Other. This pronouncement is effective for annual and interim impairment tests performed for fiscal years beginning after September 15, 2012 with early adoption permitted. The adoption of this pronouncement is not expected to have a material impact on the Company's consolidated financial statements.

INFLATION

It is generally our policy is to maintain stable menu prices without regard to seasonal variations in food costs. Certain increases in costs of food, wages, supplies, transportation and services may require us to increase our menu prices from time to time. To the extent prevailing market conditions allow, we intend to adjust menu prices to maintain profit margins.

Table of Contents

FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains statements that are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. All statements contained in this Form 10-Q, other than statements of historical facts, are forward-looking statements for purposes of these provisions, including any statements regarding:

future operating results,

future capital expenditures and expected sources of funds for capital expenditures,

future debt, including liquidity and the sources and availability of funds related to debt, and expected repayment of debt, as well as our ability to refinance the existing credit facility or enter into a new credit facility on a timely basis,

expected sources of funds for working capital requirements,

plans for our new prototype restaurants,

plans for expansion of our business,

scheduled openings of new units,

closing existing units,

effectiveness of management's Cash Flow Improvement and Capital Redeployment Plan,

future sales of assets and the gains or losses that may be recognized as a result of any such sales, and

continued compliance with the terms of our 2009 Credit Facility.

In some cases, investors can identify these statements by forward-looking words such as anticipate, believe, could, estimate, expect, intend, outlook, may, should, will, and would or similar words. Forward-looking statements are based on certain assumptions and analyses made by management in light of their experience and perception of historical trends, current conditions, expected future developments and other factors we believe are relevant. Although management believes that our assumptions are reasonable based on information currently available, those assumptions are subject to significant risks and uncertainties, many of which are outside of our control. The following factors, as well as the factors set forth in Item 1A of our Annual Report on Form 10-K for the fiscal year ended August 29, 2012 and any other cautionary language in this Form 10-Q, provide examples of risks, uncertainties, and events that may cause our financial and operational results to differ materially from the expectations described in our forward-looking statements:

general business and economic conditions,

the impact of competition,

our operating initiatives, changes in promotional, couponing and advertising strategies and the success of management's business plans,

fluctuations in the costs of commodities, including beef, poultry, seafood, dairy, cheese, oils and produce,

ability to raise menu prices and customer acceptance of changes in menu items,

increases in utility costs, including the costs of natural gas and other energy supplies,

changes in the availability and cost of labor, including the ability to attract qualified managers and team members,

the seasonality of the business,

collectability of accounts receivable,

changes in governmental regulations, including changes in minimum wages and health care benefit regulation,

the effects of inflation and changes in our customers' disposable income, spending trends and habits,

the ability to realize property values,

the availability and cost of credit,

weather conditions in the regions in which our restaurants operate,

costs relating to legal proceedings,

impact of adoption of new accounting standards,

effects of actual or threatened future terrorist attacks in the United States,

unfavorable publicity relating to operations, including publicity concerning food quality, illness or other health concerns or labor relations, and

the continued service of key management personnel.

Table of Contents

Each forward-looking statement speaks only as of the date of this Form 10-Q, and we undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. Investors should be aware that the occurrence of the events described above and elsewhere in this Form 10-Q could have material adverse effect on our business, results of operations, cash flows and financial condition.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

We are exposed to market risk from changes in interest rates affecting our variable-rate debt. As of November 21, 2012, the total amount of debt subject to interest rate fluctuations outstanding under our 2009 Credit Facility was \$10.5 million. Assuming an average debt balance of \$10.5 million, a 1.0% increase in prevailing interest rates would increase our annual interest expense by \$0.1 million.

Although we are not currently using interest rate swaps, we have previously used and may in the future use these instruments to manage cash flow risk on a portion of our variable-rate debt.

Many ingredients in the products sold in our restaurants are commodities, subject to unpredictable price fluctuations. We attempt to minimize price volatility by negotiating fixed price contracts for the supply of key ingredients and in some cases by passing increased commodity costs through to the customer by adjusting menu prices or menu offerings. Our ingredients are available from multiple suppliers so we are not dependent on a single vendor for our ingredients.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Management, under the supervision and with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the Securities Exchange Act of 1934, as amended (the Exchange Act)), as of November 21, 2012. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that, as of November 21, 2012, our disclosure controls and procedures were effective in providing reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting during the quarter ended November 21, 2012 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Table of Contents**Part II OTHER INFORMATION****Item 1. Legal Proceedings**

There have been no material changes to our legal proceedings as disclosed in Legal Proceedings in Item 3 of Part I of our Annual Report on Form 10-K for the fiscal year ended August 29, 2012.

Item 1A. Risk Factors

There have been no material changes during the quarter ended November 21, 2012 to the Risk Factors discussed in Item 1A of Part I of our Annual Report on Form 10-K for the fiscal year ended August 29, 2012.

If we do not successfully integrate Luby's and Cheeseburger in Paradise operations, the anticipated benefits of the acquisition of all the Membership Units of Paradise Restaurant Group, LLC and certain of their affiliates may not be fully realized.

On December 5, 2012, we completed the acquisition of all of the membership units of Paradise Restaurant Group, LLC and certain of their affiliates, collectively known as Cheeseburger In Paradise. Although we believe that the integration of Cheeseburger in Paradise into our operations will not present significant difficulties, this integration may not result in the realization of the full benefits of synergies, cost savings and operational efficiencies that we expect or the achievement of these benefits within a reasonable period of time. The diversion of the attention of management to the integration effort and any difficulties encountered in combining our operations could adversely affect our business and results of operations. In addition, we may not have discovered all known and unknown factors regarding the Cheeseburger in Paradise operation that could produce unintended and unexpected consequences for us. Undiscovered factors could result in us incurring financial liabilities, which could be material, and in us not achieving the expected benefits from the acquisition within our desired time frames, if at all.

Item 6. Exhibits

2.1*	Membership Unit(s) Sale And Purchase Agreement, dated as of November 21, 2012, by and among High Tides, LLC, Ticket to Paradise, LLC, Open Water Holdings, LLC, Paradise Restaurants Group LLC, and Paradise Cheeseburgers, LLC.
31.1	Rule 13a-14(a)/15d-14(a) certification of the Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Rule 13a-14(a)/15d-14(a) certification of the Principal Financial and Accounting Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Section 1350 certification of the Principal Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2	Section 1350 certification of the Principal Financial and Accounting Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	XBRL Instance Document
101.SCH	XBRL Schema Document
101.CAL	XBRL Calculation Linkbase Document
101.DEF	XBRL Definition Linkbase Document
101.LAB	XBRL Label Linkbase Document
101.PRE	XBRL Presentation Linkbase Document

* The registrant has omitted the schedules to this exhibit pursuant to the provisions of Regulation S-K, Item 601(b)(2). The registrant shall supplementary furnish a copy of the omitted schedules to the Securities and Exchange Commission upon request.

Table of Contents

SIGNATURES

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.

LUBY S, INC.

(Registrant)

Date: December 26, 2012

By: /s/ Christopher J. Pappas
Christopher J. Pappas
President and Chief Executive Officer
(Principal Executive Officer)

Date: December 26, 2012

By: /s/ K. Scott Gray
K. Scott Gray
Senior Vice President and Chief Financial Officer
(Principal Financial and Accounting Officer)

Table of Contents

EXHIBIT INDEX

2.1*	Membership Unit(s) Sale And Purchase Agreement, dated as of November 21, 2012, by and among High Tides, LLC, Ticket to Paradise, LLC, Open Water Holdings, LLC, Paradise Restaurants Group LLC, and Paradise Cheeseburgers, LLC.
31.1	Rule 13a-14(a)/15d-14(a) certification of the Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Rule 13a-14(a)/15d-14(a) certification of the Principal Financial and Accounting Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Section 1350 certification of the Principal Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2	Section 1350 certification of the Principal Financial and Accounting Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	XBRL Instance Document
101.SCH	XBRL Schema Document
101.CAL	XBRL Calculation Linkbase Document
101.DEF	XBRL Definition Linkbase Document
101.LAB	XBRL Label Linkbase Document
101.PRE	XBRL Presentation Linkbase Document

* The registrant has omitted the schedules to this exhibit pursuant to the provisions of Regulation S-K, Item 601(b)(2). The registrant shall supplementary furnish a copy of the omitted schedules to the Securities and Exchange Commission upon request.