WENDYS INTERNATIONAL INC
Form 10-Q
May 08, 2008
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# UNITED STATES

# SECURITIES AND EXCHANGE COMMISSION

**WASHINGTON, D.C. 20549**

# FORM 10-Q

**(Mark One)**

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

**For the quarterly period ended March 30, 2008**

**OR**

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

**For the transition period from ______ to ______**

**Commission File Number 1-8116**

# WENDY S INTERNATIONAL, INC.

**(Exact name of Registrant as specified in its charter)**

| | |
|---|---|
| **Ohio** | **31-0785108** |
| **(State or other jurisdiction of** | **(I.R.S. Employer** |
| **incorporation or organization)** | **Identification Number)** |

**P.O. Box 256, 4288 West Dublin-Granville Road, Dublin, Ohio 43017-0256**

**(Address of principal executive offices) (Zip code)**

**(Registrant s telephone number, including area code) 614-764-3100**

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 x No ¨.

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

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

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

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

| **Class** | **Outstanding at May 5, 2008** |
|---|---|
| Common shares, $.10 stated value | 87,651,000 shares |

Exhibit index on page 26

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WENDY S INTERNATIONAL, INC. AND SUBSIDIARIES

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WENDY S INTERNATIONAL, INC. AND SUBSIDIARIES

PART I: FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

**CONSOLIDATED CONDENSED STATEMENTS OF INCOME**

*(Unaudited)*

| | (In thousands, except per share data) | |
|---|---|---|
| | **Quarter Ended March 30, 2008** | **Quarter Ended April 1, 2007** |
| **Revenues** | | |
| Sales | $ 513,017 | $ 522,944 |
| Franchise revenues | 69,174 | 67,220 |
| | 582,191 | 590,164 |
| **Costs and expenses** | | |
| Cost of sales | 319,830 | 324,061 |
| Company restaurant operating costs | 151,244 | 152,388 |
| Operating costs | 6,844 | 3,935 |
| Depreciation of property and equipment | 28,806 | 28,052 |
| General and administrative expenses | 53,236 | 50,822 |
| Restructuring and Special Committee related charges | 6,863 | 1,031 |
| Other expense, net | 1,454 | 1,318 |
| **Total costs and expenses** | 568,277 | 561,607 |
| **Operating income** | 13,914 | 28,557 |
| Interest expense | (9,107) | (12,207) |
| Interest income | 2,154 | 5,416 |
| **Income from continuing operations before income taxes** | 6,961 | 21,766 |
| **Income tax expense** | 2,818 | 7,285 |
| **Income from continuing operations** | 4,143 | 14,481 |
| **Income from discontinued operations** | 0 | 206 |
| **Net income** | $ 4,143 | $ 14,687 |
| **Basic earnings per common share from continuing operations** | $ .05 | $ .15 |
| **Diluted earnings per common share from continuing operations** | $ .05 | $ .15 |
| **Basic earnings per common share from discontinued operations** | $ .00 | $ .00 |
| **Diluted earnings per common share from discontinued operations** | $ .00 | $ .00 |
| **Basic earnings per common share** | $ .05 | $ .15 |

| | | |
|---|---|---|
| **Diluted earnings per common share** | $ .05 | $ .15 |
| **Dividends declared and paid per common share** | $ 0.125 | $ .085 |
| **Basic shares** | 87,405 | 94,605 |
| **Diluted shares** | 88,284 | 95,706 |

*The accompanying Notes are an integral part of the Consolidated Condensed Financial Statements.*

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WENDY S INTERNATIONAL, INC. AND SUBSIDIARIES

**CONSOLIDATED CONDENSED BALANCE SHEETS**

*(Unaudited)*

| | (Dollars in thousands) | |
|---|---|---|
| | **March 30, 2008** | **December 30, 2007** |
| **ASSETS** | | |
| **Current assets** | | |
| Cash and cash equivalents | $ 210,207 | $ 211,200 |
| Accounts receivable, net | 62,525 | 72,069 |
| Deferred income taxes | 6,701 | 7,304 |
| Inventories and other | 27,123 | 29,590 |
| Advertising fund restricted assets | 41,251 | 42,665 |
| Assets held for disposition | 4,031 | 3,338 |
| | 351,838 | 366,166 |
| **Property and equipment** | 2,122,844 | 2,119,140 |
| Accumulated depreciation | (886,088) | (872,255) |
| | 1,236,756 | 1,246,885 |
| **Goodwill** | 84,479 | 84,001 |
| **Deferred income taxes** | 4,788 | 4,899 |
| **Intangible assets, net** | 2,616 | 2,704 |
| **Other assets** | 81,116 | 84,742 |
| | $ 1,761,593 | $ 1,789,397 |

*The accompanying Notes are an integral part of the Consolidated Condensed Financial Statements.*

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WENDY S INTERNATIONAL, INC. AND SUBSIDIARIES

**CONSOLIDATED CONDENSED BALANCE SHEETS**

*(Unaudited)*

| | (Dollars in thousands) March 30, 2008 | December 30, 2007 |
|---|---|---|
| **LIABILITIES AND SHAREHOLDERS EQUITY** | | |
| **Current liabilities** | | |
| Accounts payable | $ 78,052 | $ 85,662 |
| Accrued expenses: | | |
| Salaries and wages | 24,972 | 39,157 |
| Taxes | 30,758 | 31,033 |
| Insurance | 60,037 | 57,190 |
| Other | 67,032 | 45,612 |
| Advertising fund restricted liabilities | 40,559 | 35,760 |
| Current portion of long-term obligations | 1,687 | 26,591 |
| | 303,097 | 321,005 |
| **Long-term obligations** | | |
| Term debt | 521,385 | 521,343 |
| Capital leases | 21,830 | 21,680 |
| | 543,215 | 543,023 |
| **Deferred income taxes** | 43,047 | 45,351 |
| **Other long-term liabilities** | 75,702 | 75,887 |
| **Commitments and contingencies** | | |
| **Shareholders equity** | | |
| Preferred stock, Authorized: 250,000 shares | | |
| Common stock, $.10 stated value per share, Authorized: 200,000,000 shares, Issued: 130,259,000 and 130,241,000 shares, respectively | 13,026 | 13,024 |
| Capital in excess of stated value | 1,114,095 | 1,110,363 |
| Retained earnings | 1,281,081 | 1,287,963 |
| Accumulated other comprehensive income (loss): | | |
| Cumulative translation adjustments | 24,063 | 28,949 |
| Pension liability | (18,555) | (18,990) |
| | 2,413,710 | 2,421,309 |
| Treasury stock at cost: 42,844,000 shares | (1,617,178) | (1,617,178) |
| | 796,532 | 804,131 |
| | $ 1,761,593 | $ 1,789,397 |

*The accompanying Notes are an integral part of the Consolidated Condensed Financial Statements.*

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WENDY S INTERNATIONAL, INC. AND SUBSIDIARIES

**CONSOLIDATED CONDENSED STATEMENTS OF CASH FLOWS**

*(Unaudited)*

| | (In thousands) | |
|---|---|---|
| | **Quarter Ended March 30, 2008** | **Quarter Ended April 1, 2007** |
| **Net cash provided by operating activities from continuing operations** | $ 56,109 | $ 55,120 |
| **Net cash used in operating activities from discontinued operations** | 0 | (204) |
| **Net cash provided by operating activities** | 56,109 | 54,916 |
| **Cash flows from investing activities** | | |
| Proceeds from property dispositions | 3,790 | 5,228 |
| Proceeds from insurance settlements | 2,995 | 0 |
| Capital expenditures | (30,467) | (23,972) |
| Acquisitions of franchisees | (2,553) | 0 |
| Other investing activities | (349) | (738) |
| Net cash used in investing activities from continuing operations | (26,584) | (19,482) |
| Net cash used in investing activities from discontinued operations | 0 | (55) |
| Net cash used in investing activities | (26,584) | (19,537) |
| **Cash flows from financing activities** | | |
| Excess stock-based compensation tax benefits | 67 | 734 |
| Proceeds from employee stock options exercised | 153 | 2,572 |
| Repurchase of common stock | 0 | (282,524) |
| Principal payments on debt obligations | (18,925) | (8,348) |
| Dividends paid on common shares | (10,924) | (8,136) |
| Net cash used in financing activities | (29,629) | (295,702) |
| Effect of exchange rate changes on cash from continuing operations | (889) | 82 |
| **Net decrease in cash and cash equivalents** | (993) | (260,241) |
| **Cash and cash equivalents at beginning of period** | 211,200 | 457,614 |
| Add: Cash and cash equivalents of discontinued operations at beginning of period | 0 | 2,273 |
| Net decrease in cash and cash equivalents | (993) | (260,241) |
| Less: Cash and cash equivalents of discontinued operations at end of period | 0 | (3,497) |
| **Cash and cash equivalents at end of period** | $ 210,207 | $ 196,149 |
| **Supplemental disclosures:** | | |
| Interest paid from continuing operations | $ 653 | $ 508 |
| Income taxes refunded, net | (4,579) | (10,579) |
| Capitalized lease obligations incurred from continuing operations | 399 | 543 |

*The accompanying Notes are an integral part of the Consolidated Condensed Financial Statements.*

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WENDY S INTERNATIONAL, INC. AND SUBSIDIARIES

**NOTES TO THE CONSOLIDATED CONDENSED FINANCIAL STATEMENTS**

*(Unaudited)*

**NOTE 1 MANAGEMENT S STATEMENT**

In the opinion of management, the accompanying Consolidated Condensed Financial Statements contain all adjustments (all of which are normal and recurring in nature) necessary for a fair statement of the consolidated condensed financial position of Wendy s International, Inc. and subsidiaries (the ***Company*** ) as of March 30, 2008 and December 30, 2007, and the consolidated condensed results of operations and comprehensive income (see Note 7) for the quarters ended March 30, 2008 and April 1, 2007 and consolidated condensed cash flows for the quarters ended March 30, 2008 and April 1, 2007. All of these financial statements are unaudited. These Consolidated Condensed Financial Statements should be read in conjunction with the Consolidated Financial Statements contained in the Company s 2007 Form 10-K. The December 30, 2007 Consolidated Condensed Balance Sheet was derived from the audited Consolidated Financial Statements contained in the Company s 2007 Form 10-K, but does not include all disclosures required by accounting principles generally accepted in the United States of America.

On July 29, 2007, the Company completed the sale of Cafe Express. Accordingly, the results of operations for this business are reflected as discontinued operations for the period ended April 1, 2007 (see Note 6). Cafe Express was previously reported in the Developing Brand segment.

In the second quarter of 2007, the Company added the Restructuring and Special Committee related charges line to the Consolidated Condensed Statements of Income, which required the reclassification of $1.0 million of restructuring costs out of Other expense, net in the first quarter of 2007 for purposes of comparability.

**NOTE 2 NET INCOME PER SHARE**

Basic earnings per common share are computed by dividing net income available to common shareholders by the weighted average number of common shares outstanding. Diluted computations are based on the treasury stock method and include assumed conversions of stock options, restricted stock and restricted stock units, when outstanding and dilutive.

The computation of diluted earnings per common share excludes options to purchase 0.8 million shares for the quarter ended March 30, 2008, because the exercise prices of these options were greater than the average market price of the common shares, and therefore, they were antidilutive. There were no options excluded from the computation of diluted earnings per common share for the quarter ended April 1, 2007 as they were all dilutive.

The computations of basic and diluted earnings per common share are shown below:

| | Quarter Ended | |
|---|---|---|
| **(In thousands, except per share data)** | **March 30, 2008** | **April 1, 2007** |
| Income from continuing operations for computation of basic and diluted earnings per common share | $ 4,143 | $ 14,481 |
| Income from discontinued operations for computation of basic and diluted earnings per common share | 0 | 206 |
| Net income for computation of basic and diluted earnings per common share | $ 4,143 | $ 14,687 |
| Weighted average shares for computation of basic earnings per common share | 87,405 | 94,605 |
| Effect of dilutive stock options and restricted shares | 879 | 1,101 |
| Weighted average shares for computation of diluted earnings per common share | 88,284 | 95,706 |
| Basic earnings per common share from continuing operations | $ 0.05 | $ 0.15 |
| Basic earnings per common share from discontinued operations | $ 0.00 | $ 0.00 |

| | | | | |
|---|---|---|---|---|
| Total basic earnings per common share | $ | 0.05 | $ | 0.15 |
| Diluted earnings per common share from continuing operations | $ | 0.05 | $ | 0.15 |
| Diluted earnings per common share from discontinued operations | $ | 0.00 | $ | 0.00 |
| Total diluted earnings per common share | $ | 0.05 | $ | 0.15 |

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**NOTE 3 STOCK-BASED COMPENSATION**

The Company recorded the following stock compensation expense:

| (In thousands) | Quarter Ended March 30, 2008 | Quarter Ended April 1, 2007 |
|---|---|---|
| Continuing operations: | | |
| Before-tax | $ 3,476 | $ 2,720 |
| After-tax | $ 2,205 | $ 1,692 |
| Discontinued operations: | | |
| Before-tax | $ 0 | $ 40 |
| After-tax | $ 0 | $ 25 |
| Total: | | |
| Before-tax | $ 3,476 | $ 2,760 |
| After-tax | $ 2,205 | $ 1,717 |

The increase in stock compensation recognized in continuing operations in the quarter ended March 30, 2008 compared to the quarter ended April 1, 2007 is primarily attributed to additional awards granted after the first quarter of 2007. The decrease in stock compensation expense recognized in discontinued operations in the quarter ended March 30, 2008 compared to the quarter ended April 1, 2007 is due to the absence of expense related to Cafe Express, which was disposed of in 2007.

**NOTE 4 OTHER EXPENSE, NET**

The following represents the components of other expense, net on the Consolidated Condensed Statements of Income for each of the periods presented:

| (In thousands) | Quarter Ended March 30, 2008 | Quarter Ended April 1, 2007 |
|---|---|---|
| Store closure costs | $ 3,321 | $ 3,821 |
| Equity investment income | (2,164) | (2,308) |
| Net gain from the sale of property | (584) | (1,078) |
| Other, net | 881 | 883 |
| Other expense, net | $ 1,454 | $ 1,318 |

Store closure costs include asset impairments,asset write-offs and lease termination costs. Equity investment income primarily represents Wendy s share of a 50/50 Canadian restaurant real estate joint venture between Wendy s and Tim Hortons.

**NOTE 5 INCOME TAXES**

The effective income tax rate for the quarter ended March 30, 2008 was 40.5%, compared to 33.5% for the comparable period ended April 1, 2007 which benefited from non-recurring tax refund claims.

The Company has deducted cumulatively to date approximately $31.3 million in fees to certain advisors to the Special Committee of the Board of Directors. In the event a transaction takes place (see Note 19), a portion of these fees may be deemed as non-deductible resulting in up to approximately $11.0 million in additional tax expense for the period in which the transaction would occur.

**NOTE 6 DISCONTINUED OPERATIONS**

On July 29, 2007, the Company completed the sale of Cafe Express. Accordingly, the results of operations of Cafe Express are reflected as discontinued operations for the quarter ended April 1, 2007. According to the terms of the sale agreements, the disposition of Cafe Express was subject to certain working capital and other adjustments which have not been finalized. The impact of any such adjustments is not expected to have a material impact on the results of operations of the Company.

The table below presents the significant components of Cafe Express operating results included in income from discontinued operations for the quarter ended April 1, 2007.

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| (In thousands) | Quarter Ended April 1, 2007 |
|---|---|
| Revenues | $ 8,350 |
| Income before income taxes | 331 |
| Income tax expense | 125 |
| Income from discontinued operations, net of tax | $ 206 |

**NOTE 7 CONSOLIDATED CONDENSED STATEMENTS OF COMPREHENSIVE (LOSS) INCOME**

The components of other comprehensive (loss) income and total comprehensive (loss) income are shown below:

| | Quarter Ended | |
|---|---|---|
| (In thousands) | March 30, 2008 | April 1, 2007 |
| Net income | $ 4,143 | $ 14,687 |
| Other comprehensive (loss) income: | | |
| Translation adjustments | (4,886) | 1,046 |
| Pension liability (net of tax of $264 for the quarter ended March 30, 2008 and $467 for the quarter ended April 1, 2007) | 435 | 770 |
| Total other comprehensive (loss) income | (4,451) | 1,816 |
| Total comprehensive (loss) income | $ (308) | $ 16,503 |

Other comprehensive income is comprised of translation adjustments related to fluctuations in the Canadian dollar and changes in the Company s pension liability. There was a slight weakening in the Canadian dollar from the beginning of the first quarter of 2008 to the end of the first quarter of 2008 and a slight strengthening in the Canadian dollar from the beginning of the first quarter of 2007 to the end of the first quarter of 2007. At the end of the first quarter 2008, the Canadian exchange rate was $1.02 versus $0.98 at December 30, 2007. At the end of the first quarter 2007, the Canadian exchange rate was $1.15 versus $1.17 at December 31, 2006.

**NOTE 8 DEBT**

On February 29, 2008, the Company negotiated an amendment of its $200 million revolving credit facility which expires in September 2008. This amended revolving credit facility contains various covenants which, among other things: require the maintenance of certain ratios, including indebtedness to total capitalization and a fixed charge coverage ratio; limit the amounts of assets that can be sold, shares that can be repurchased, liens that can be placed on the Company s assets, indebtedness of subsidiaries to third parties (excluding indebtedness of The Wendy s National Advertising Program, Inc.) and contingent and off-balance sheet liabilities that can exist; eliminate the Company s ability to perform asset securitizations and sale and leaseback transactions; and establish the maintenance of minimum on-hand balances of cash and cash equivalents of $50.0 million. The Company was in compliance with these covenants as of March 30, 2008. If the Merger Agreement (see Note 19) is consummated, the amended $200 million revolving credit facility would not be available to the Company. The Company is charged interest on advances that varies based on the type of advance utilized by the Company, which is either an alternate base rate (greater of prime or Federal funds plus 0.5%) or a rate based on LIBOR plus a margin that varies based on the Company s debt rating at the time of the advance. The Company is also charged a facility fee based on the total credit facility. This fee varies from 0.15% to 0.40% based on the Company s debt rating. As of March 30, 2008, no amounts under this revolving credit facility were drawn.

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**NOTE 9 GOODWILL AND OTHER INTANGIBLE ASSETS**

The table below presents amortizable intangible assets as of March 30, 2008 and December 30, 2007:

| (In thousands) | March 30, 2008 Gross Carrying Amount | March 30, 2008 Accumulated Amortization | March 30, 2008 Net Carrying Amount | December 30, 2007 Gross Carrying Amount | December 30, 2007 Accumulated Amortization | December 30, 2007 Net Carrying Amount |
|---|---|---|---|---|---|---|
| Amortizable intangible assets: | | | | | | |
| Patents and trademarks | $ 452 | $ (452) | $ 0 | $ 452 | $ (452) | $ 0 |
| Other | 4,977 | (2,361) | 2,616 | 4,985 | (2,281) | 2,704 |
| | $ 5,429 | $ (2,813) | $ 2,616 | $ 5,437 | $ (2,733) | $ 2,704 |

Included in other above is $2.5 million and $2.6 million as of March 30, 2008 and December 30, 2007, respectively, net of accumulated amortization of $2.3 million and $2.2 million, respectively, related to the use of the name and likeness of Dave Thomas, the late founder of Wendy s.

Total intangibles amortization expense was $0.1 million and $0.4 million for the quarters ended March 30, 2008 and April 1, 2007 respectively. The estimated annual intangibles amortization expense for the years 2009 through 2013 is approximately $0.3 million.

The changes in the carrying amount of goodwill for the quarter ended March 30, 2008 are as follows:

| (In thousands) | Total |
|---|---|
| Balance at December 30, 2007 | $ 84,001 |
| Goodwill recorded in connection with acquisitions | 825 |
| Goodwill related to dispositions | (283) |
| Translations adjustments | (64) |
| Balance at March 30, 2008 | $ 84,479 |

**NOTE 10 ACQUISITIONS**

During the quarter ended March 30, 2008, the Company acquired three restaurants from a franchisee for $2.6 million including $0.8 million of goodwill. No acquisitions occurred during the quarter ended April 1, 2007.

**NOTE 11 FIXED ASSET DISPOSITIONS AND IMPAIRMENTS**

In accordance with SFAS No. 144, Accounting for the Impairment or Disposal of Long-Lived Assets , the Company has classified assets with a net book value of $4.0 million and $3.3 million as Assets held for disposition in the Consolidated Condensed Balance Sheets as of March 30, 2008 and December 30, 2007, respectively. Assets classified as held for disposition are no longer depreciated and are classified as held for disposition based on the Company s intention to sell these assets within 12 months.

The following is a progression of Assets held for disposition.

| (In thousands, except number of sites) | Number of Sites | Net Book Value | Gain on Sale |
|---|---|---|---|
| Balance at December 30, 2007 | 7 | $ 3,338 | |
| Sold | (2) | (1,194) | $ 584 |

| | | | |
|---|---|---|---|
| Transferred to property and equipment | (2) | | (775) |
| Transferred from property and equipment | 3 | | 2,785 |
| Impairments recorded | | | (123) |
| Balance at March 30, 2008 | 6 | $ | 4,031 |

The 2008 net gain of $0.6 million is classified as Other expense, net. During the quarter ended April 1, 2007, the Company sold nine sites classified as held for disposition at December 31, 2006, with a net book value of $3.8 million, for a net gain of $1.4 million, of which $1.1 million is classified as Other expense, net and $0.3 million is classified in Franchise revenues on the Consolidated Condensed Statements of Income.

As shown above, in 2008, two sites which were previously classified as held for disposition were reclassified to Property and equipment, net because these sites are no longer being actively marketed for sale. The effect on the Consolidated Statements of

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Income related to the reclassification of these sites from Assets held for disposition was limited to depreciation expense and was not material. At March 30 2008, the net book value of Assets held for disposition included $2.4 million of land and $1.6 million of buildings and leasehold improvements.

Also during the quarter ended March 30, 2008, the Company sold 11 sites not classified as held for disposition with a net book value of $1.6 million. The Company recognized a gain of $0.1 million from the sale of these sites which is classified as Franchise revenues on the Consolidated Condensed Statements of Income. No sites not classified as held for disposition were sold by the Company during the quarter ended April 1, 2007.

During the first quarter of 2008 and 2007, the Company incurred $3.3 million and $3.8 million, respectively, of store closing charges, which are included in Other expense, net on the Consolidated Condensed Statements of Income. Total store closing costs included asset impairments and write-offs and lease termination costs.

**NOTE 12 RESTRUCTURING RESERVES**

The table below presents a reconciliation of the beginning and ending restructuring liabilities (included in Accrued expenses other) at December 30, 2007 and March 30, 2008, respectively, related to the Company s cost reduction plan initiated in 2006.

| (In thousands) | Reduction in Force | Professional Fees | Total |
|---|---|---|---|
| Balance at December 30, 2007 | $ 701 | $ 10 | $ 711 |
| Expensed during the period | 212 | 0 | 212 |
| Paid during the period | (866) | 0 | (866) |
| Adjustments | 4 | (10) | (6) |
| Balance at March 30, 2008 | $ 51 | $ 0 | $ 51 |

In the first quarter ended March 30, 2008, the Company recognized severance and related benefit costs. As of December 30, 2007 and March 30, 2008, all amounts associated with the cost reduction plan are classified as current liabilities.

The Company expects to pay all remaining restructuring liabilities in 2008. All of the above restructuring costs are included in the Restructuring and Special Committee related charges line on the Consolidated Condensed Statements of Income.

The Restructuring and Special Committee related charges line on the Consolidated Condensed Statements of Income for the first quarter ended March 30, 2008 also includes $6.7 million of primarily financial, legal advisory and due diligence fees related to the activities of the Special Committee formed in April 2007 by the Company s Board of Directors. The Special Committee was formed to investigate strategic options including, among other things, revisions to the Company s strategic plan, changes to its capital structure, or a possible sale, merger or other business combination (see Note 19).

**NOTE 13 GUARANTEES AND INDEMNIFICATIONS**

The Company has guaranteed certain lease and debt payments, primarily related to franchisees, amounting to $164.1 million. In the event of default by a franchise owner, the Company generally retains the right to acquire possession of the related restaurants. The Company is contingently liable for certain leases amounting to $18.7 million. These leases have been assigned to unrelated third parties, who have agreed to indemnify the Company against future liabilities arising under the leases. These leases expire on various dates through 2022. The Company is also the guarantor on $1.5 million in letters of credit with various parties; however, management does not expect any material loss to result from these instruments because it does not believe performance will be required. The length of the lease, loan and other arrangements guaranteed by the Company or for which the Company is contingently liable varies, but generally does not exceed 20 years.

In addition to the guarantees described above, the Company is party to many agreements executed in the ordinary course of business that provide for indemnification of third parties under specified circumstances, such as lessors of real property leased by the Company, distributors, service providers for various types of services (including commercial banking, investment banking, tax, actuarial and other services), software licensors, marketing and advertising firms, securities underwriters and others. Generally, these agreements obligate the Company to indemnify the third parties only if certain events occur or claims are made, as these contingent events or claims are defined in each of these agreements. The Company believes that the resolution of any claims that might arise in the future, either individually or in the aggregate, would not materially affect the earnings or financial condition of the Company.

**NOTE 14 RETIREMENT PLANS**

The Company has two domestic defined benefit plans, the account balance defined benefit pension plan (the ***ABP Plan*** ) and the Crew defined benefit plan (the ***Crew Plan*** ), together referred to as the ***Plans*** , covering all eligible employees of the Company.

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The Crew Plan discontinued employee participation and accruing additional employee benefits in 2001. In February 2006, the Company announced that it would freeze the ABP Plan as of December 31, 2006. Beginning January 1, 2007, no new participants entered the ABP Plan, although participant account balances continue to receive interest credits of approximately 6% on existing account balances. Beginning January 1, 2007, Company benefits credited to ABP Plan participant accounts which were historically made based on a percentage of participant salary and years of service are no longer made. In the fourth quarter of 2006, the Company decided to terminate the Plans. The Company has requested termination determination letters on the Plans from the IRS and has received approval of the termination by the Pension Benefit Guaranty Corporation. Once approved by the IRS, the Company intends to distribute individual account balances or purchase annuities to settle the account balances. The Company expects to recognize future pretax settlement charges up to $40 million, including up to $20 million in cash contributions to fund the Plans obligations when the Plans are terminated.

Net periodic pension cost for the Plans for the quarters ended March 30, 2008 and April 1, 2007 consisted of the following:

| | Quarter Ended | |
|---|---|---|
| **(In thousands)** | **March 30, 2008** | **April 1, 2007** |
| Interest cost | $ 966 | $ 1,301 |
| Expected return on plan assets | (913) | (1,244) |
| Amortization of net loss | 598 | 713 |
| Net periodic pension cost | $ 651 | $ 770 |

**NOTE 15 REVENUES**

Revenues consisted of the following:

| | Quarter Ended | |
|---|---|---|
| **(In thousands)** | **March 30, 2008** | **April 1, 2007** |
| Retail sales: | | |
| Sales from company operated restaurants | $ 490,449 | $ 500,339 |
| Product sales to franchises | 22,568 | 22,605 |
| | 513,017 | 522,944 |
| Franchise revenues: | | |
| Rents and royalties | 68,542 | 66,534 |
| Franchise fees | 498 | 369 |
| Net gains on sales of properties to franchisees | 134 | 317 |
| | 69,174 | 67,220 |
| Total revenues | $ 582,191 | $ 590,164 |

**NOTE 16 SUMMARIZED FINANCIAL INFORMATION**

Summarized financial information for the Company s 50/50 Canadian restaurant real estate joint venture between Wendy s and Tim Hortons Inc. is shown below (see Note 4).

| | Quarter Ended | |
|---|---|---|
| **(In thousands)** | **March 30, 2008** | **April 1, 2007** |
| Sales | $ 8,304 | $ 7,072 |

| | | |
|---|---|---|
| Gross profit | $ 5,462 | $ 4,512 |
| Net income | $ 5,319 | $ 4,531 |

**NOTE 17 FAIR VALUE**

At March 30, 2008 and December 30, 2007, cash and cash equivalents included $156.7 million and $156.5 million, respectively, of institutional money market fund investments. These investments are measured at fair value using quoted market prices for identical assets (the highest Level 1 fair value measure identified by Statement of Financial Accounting Standards ( ***SFAS*** ) No. 157, Fair Value Measurements ).

**NOTE 18 RECENTLY ISSUED ACCOUNTING STANDARDS**

In September 2006, the Financial Accounting Standards Board ( ***FASB*** ) issued SFAS No. 157. This statement defines fair value, establishes a framework for measuring fair value in generally accepted accounting principles and expands disclosures about fair value measurements. SFAS No. 157 creates consistency and comparability in fair value measurements among the many accounting pronouncements that require fair value measurements, but does not require any new fair value measurements. The Company adopted SFAS No. 157 in 2008 for financial assets and liabilities and the adoption did not have a material impact on the Company. The effective date of this statement for nonfinancial assets and nonfinancial liabilities was deferred by FASB Staff Position FAS 157, Effective date of FASB Statement No. 157 , and is now effective for fiscal years beginning after November 15, 2008. The adoption of SFAS No. 157 for nonfinancial assets and liabilities is not expected to have a material impact on the Company s financial statements.

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In December 2007, the FASB issued SFAS No. 141(R), Business Combinations . This Statement requires an acquirer to recognize the assets acquired, the liabilities assumed and any noncontrolling interest in the acquiree at the acquisition date measured at fair values as of that date. This Statement changes the accounting for acquisition-related costs and restructuring costs, now requiring those costs to be recognized separately from the acquisition. This Statement also makes various other amendments to the authoritative literature intended to provide additional guidance or to conform the guidance in that literature to that provided in this Statement. SFAS No. 141(R) shall be applied prospectively to business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008 and early adoption is prohibited. The Company is currently evaluating the impact of the adoption of SFAS No. 141(R).

In December 2007, the FASB issued SFAS No. 160, Noncontrolling Interests in Consolidated Financial Statements, an amendment of ARB No. 51 . This Statement establishes accounting and reporting standards for the noncontrolling interest in a subsidiary (previously referred to as minority interest) and for the deconsolidation of a subsidiary. This Statement shall be applied prospectively as of the beginning of the fiscal year in which this Statement is initially applied, except for the presentation and disclosure requirements, which shall be applied retrospectively for all periods presented. This Statement is effective for fiscal years, and interim periods within those fiscal years, beginning on or after December 15, 2008, with early adoption prohibited. The Company is currently evaluating the impact of the adoption of SFAS No. 160.

In March 2008, the FASB issued SFAS No. 161, Disclosures about Derivative Instruments and Hedging Activities an amendment of FASB Statement No. 133 . This Statement requires enhanced disclosures about an entity s derivative and hedging activities in order to provide adequate information about how those activities affect the entity s financial position, financial performance and cash flows. This Statement is effective for fiscal years and interim periods beginning after November 15, 2008, with early application encouraged. The Company is currently evaluating the impact of the adoption of SFAS No. 161.

**NOTE 19 SUBSEQUENT EVENT**

In April 2007, the Company announced that its Board of Directors, acting unanimously, had formed a Special Committee of independent directors to investigate strategic options for the Company. These options, among other things, included revisions to the Company s strategic plan, changes to its capital structure, or a possible sale, merger or other business combination. On April 23, 2008, the Company entered into an Agreement and Plan of Merger (the ***Merger Agreement*** ) with Triarc Companies, Inc., a Delaware corporation ( ***Triarc*** ), and Green Merger Sub, Inc., an Ohio corporation and a wholly-owned subsidiary of Triarc ( ***Merger Sub*** ). The Merger Agreement provides that, upon the terms and subject to the conditions set forth in the Merger Agreement, Merger Sub will merge with and into the Company with the Company continuing as the surviving corporation and as a wholly-owned subsidiary of Triarc (the ***Merger*** ). The Merger has been approved by the board of directors of both the Company and Triarc.

Pursuant to the terms of the Merger Agreement, each common share of the Company will be converted into the right to receive 4.25 (the ***Exchange Ratio*** ) shares of Class A Common Stock, par value $0.10 per share, of Triarc (the ***Triarc Class A Common Stock*** ). The Company s employee stock options and other equity awards will generally convert upon consummation of the Merger and without any action on the part of the holder into stock options and equity awards with respect to the Triarc Class A Common Stock, after giving effect to the Exchange Ratio. Cash will be paid to the Company s shareholders in lieu of fractional shares of Triarc s Class A Common Stock.

Each party s obligation to consummate the Merger is subject to customary conditions, including shareholder approval of both companies and the expiration or termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

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WENDY S INTERNATIONAL, INC. AND SUBSIDIARIES

ITEM 2. MANAGEMENT S DISCUSSION AND ANALYSIS OF FINANCIAL

CONDITION AND RESULTS OF OPERATIONS

**EXECUTIVE OVERVIEW**

Wendy s International, Inc. and subsidiaries (the ***Company***) completed the sale of Cafe Express on July 29, 2007. Accordingly, the after-tax operating results of Cafe Express now appear in the income from discontinued operations line on the Consolidated Condensed Statements of Income for all periods presented.

The Company s reported net income was $4.1 million for first quarter 2008 compared to $14.7 million for first quarter 2007. Income from continuing operations decreased 71.4% in the first quarter 2008, from $14.5 million in 2007 to $4.1 million in 2008. The year over year decline was driven by lower operating income, which decreased 51.3% in the first quarter 2008 over the first quarter 2007. Both 2008 and 2007 first quarter results were impacted by restructuring charges and 2008 first quarter results were also impacted by costs associated with the Board of Director s Special Committee which was formed to investigate strategic options for the Company (see Management s Outlook section below). Without the Restructuring and Special Committee related charges as shown on the Consolidated Condensed Statements of Income, first quarter 2008 adjusted operating income was lower than 2007 by $8.8 million, or 29.8%. The Company uses adjusted operating income as an internal measure of operating performance. Management believes adjusted operating income provides a meaningful perspective of the underlying operating performance of the business.

The operating income results from continuing operations for the first quarter 2008 were driven by lower company operated restaurant margins (see below), increased general and administrative expenses of $2.4 million, higher franchisee incentives of $1.3 million and higher franchisee breakfast advertising support of $1.0 million. Company operated restaurant margins in the first quarter 2008 declined by 100 basis points over the first quarter 2007, primarily reflecting higher breakfast losses, lower sales and higher commodity costs, partially offset by labor efficiencies and menu price increases. First quarter 2008 U.S. company operated restaurant margins declined by 110 basis points over first quarter 2007 due primarily to the factors described above. The increase in general and administration expenses resulted primarily from higher professional and legal fees of $1.8 million, higher salaries and benefits of $1.2 million, 2008 convention expenses of $0.6 million as well as other higher expenses, all partially offset by lower bonus expense of $3.8 million.

Other factors that impacted the comparability of results included 2008 gains on the sale of properties totaling $0.6 million, compared to 2007 gains on the sale of properties of $1.1 million. Also, the 2008 results included $3.3 million in store closure charges, compared to 2007 store closure charges of $3.8 million. Average same-store sales results for U.S. company and franchised restaurants as a percentage change for the first quarter 2008 versus prior year are listed in the table below. One of the key indicators in the restaurant industry that management monitors to assess the health of the Company is average same-store sales. Franchisee operations are not included in the Company s financial statements; however, franchisee sales result in royalties and rental income, which are included in the Company s franchise revenues.

| | **Quarter Ended** | |
|---|---|---|
| | **March 30, 2008** | **April 1, 2007** |
| U.S. company | (1.6)% | 3.8% |
| U.S. franchise | (0.1)% | 3.7% |

A summary of systemwide restaurants is included below.

**Company Operated Restaurant Margins**

The Company s restaurant margins are computed as sales from company operated restaurants less cost of sales from company operated restaurants and company restaurant operating costs, divided by sales from company operated restaurants. Depreciation is not included in the calculation of company operated restaurant margins. Company operated restaurant margins declined to 7.6% in the first quarter of 2008, from 8.6% in the first quarter of 2007, primarily reflecting higher breakfast losses, lower sales and higher commodity costs, partially offset by labor efficiencies and menu price increases.

**Sales**

The Company s sales are comprised of sales from company operated restaurants, sales of kids meal toys to franchisees and sales of sandwich buns from the Company s bun baking facilities to franchisees. Franchisee sales are not included in reported sales. Of total sales, sales from U.S. company operated restaurants comprised approximately 85% in each period presented, while the remainder primarily represented sales from Canadian company operated restaurants.

The $9.9 million decrease in sales in 2008 versus 2007 for the quarter is attributable to a decline in U.S. average same-store sales of 1.6% in the first quarter of 2008 versus a 3.8% increase in the first quarter of 2007 and a decline in the number of company operated

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restaurants, partially offset by higher sales in Canada and a stronger Canadian dollar. Total company operated restaurants open at March 30, 2008 were 1,407 versus 1,455 at April 1, 2007. The decline in company operated stores is due primarily to the sale of stores to franchisees.

The following table presents information for U.S. company operated restaurants for the quarters ended March 30, 2008 and April 1, 2007, and includes additional sales derived from the Company s new breakfast program.

| | Quarter Ended | |
|---|---|---|
| | March 30, 2008 | April 1, 2007 |
| U.S. average same-store sales (decrease) increase | (1.6)% | 3.8% |
| U.S. company operated restaurants open | 1,267 | 1,308 |

**Franchise Revenues**

The Company s franchise revenues include royalty income from franchisees, rental income from properties leased to franchisees, gains from the sales of properties to franchisees and franchise fees. Franchise fees cover various costs and expenses related to establishing a franchisee s business.

The $2.0 million increase in franchise revenues versus 2007 was primarily driven by higher royalties of $1.1 million, reflecting a greater number of franchise stores open, a 14% stronger Canadian dollar and a Canadian franchise same-store sales increase of 4%. In addition to the increase in royalties, 2008 rents were also higher than 2007 by $0.9 million, driven primarily by an increase in franchise leased properties. Total franchise restaurants open at March 30, 2008 were 5,215 versus 5,203 at April 1, 2007.

The following table presents information for U.S. franchised restaurants for the quarters ended March 30, 2008 and April 1, 2007, respectively:

| | Quarter Ended | |
|---|---|---|
| | March 30, 2008 | April 1, 2007 |
| U.S. average same-store sales (decrease) increase | (0.1)% | 3.7% |
| U.S. franchise restaurants open | 4,650 | 4,641 |

**Cost of Sales**

Cost of sales includes food, paper and labor costs for company operated restaurants, and the cost of goods sold to franchisees related to kids meal toys and from the Company s bun baking facilities. Of the total cost of sales, U.S. company operated restaurant cost of sales comprised approximately 85% in each period presented, while the remainder primarily represented Canadian company operated restaurants. Overall, cost of sales as a percent of sales increased 30 basis points in the first quarter 2008, from 62.0% in 2007 to 62.3% in 2008, respectively.

In the first quarter of 2008, U.S. company operated restaurant cost of sales as a percent of U.S. company operated restaurant sales were 61.0%, compared with 60.4% in 2007. U.S. food and paper costs in 2008 were 32.7% of U.S. company operated restaurant sales, compared with 32.4% in 2007. The increase in 2008 versus 2007 primarily reflects increased commodity costs, partially offset by menu price increases. Rising commodity prices negatively impacted U.S. company operated store margins 200 basis points in the first quarter 2008 compared to the first quarter 2007.

U.S. 2008 labor costs were 28.3% of U.S. company operated restaurant sales, compared with 28.0% in 2007. The increase in 2008 versus 2007 primarily reflects an average wage increase of approximately 3%, lower sales and incremental breakfast labor, substantially offset by menu price increases and labor cost-saving initiatives.

**Company Restaurant Operating Costs**

Company restaurant operating costs include costs necessary to manage and operate company restaurants, except cost of sales and depreciation. Of the total company restaurant operating costs, U.S. company stores comprised approximately 90% in each period presented, while the remainder primarily represented Canadian company stores. As a percent of sales, company restaurant operating costs increased to 29.5% in 2008, from 29.1% in 2007. The 2008 increase primarily reflects lower sales.

**Operating Costs**

Operating