

LUBYS INC
Form 10-K/A
March 02, 2009

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 10-K/A

Amendment No. 1

(Mark One)

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

For the Fiscal Year Ended August 27, 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 001-08308

Luby s, Inc.

(Exact name of registrant as specified in its charter)

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Delaware
(State of incorporation)

74-1335253
(IRS Employer Identification Number)

13111 Northwest Freeway, Suite 600

Houston, Texas 77040
(Address of principal executive offices, including zip code)

(713) 329-6800
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Name of Each Exchange on Which Registered
Common Stock (\$0.32 par value per share)	New York Stock Exchange
Common Stock Purchase Rights	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

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 and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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

Large accelerated filer Accelerated filer

Non-accelerated filer (Do not check if a smaller reporting company) Smaller reporting company

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

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The aggregate market value of the shares of common stock of the registrant held by non-affiliates of the registrant as of February 13, 2008, was approximately \$204,911,504 (based upon the assumption that directors and executive officers are the only affiliates).

As of November 3, 2008, there were 27,946,443 shares of the registrant's common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the following document are incorporated by reference into the designated parts of this Form 10-K:

Definitive Proxy Statement relating to 2009 annual meeting of shareholders (in Part III)

EXPLANATORY NOTE

Luby s, Inc. (Luby s or the Company) hereby amends Item 11 of Part III of its Annual Report on Form 10-K for the fiscal year ended August 27, 2008, filed with the Securities and Exchange Commission on November 7, 2008 (the Original Form 10-K), to revise amounts disclosed in the Stock Awards, Option Awards and Total columns of the Summary Compensation Table and to correct an arithmetical error in the Total column for Mr. Emerson in the table under Director Compensation. The information in Item 11 of Part III of the Original Form 10-K had been incorporated by reference from the Company s Proxy Statement for the 2009 Annual Meeting of Shareholders (the Proxy) pursuant to Instruction G(3) to Form 10-K.

The changes to the Summary Compensation Table reflect the inclusion of the dollar amounts that were expensed in the Company s financial statements for the fiscal year ended August 27, 2008 for stock awards made to Messrs. Gray and Tropoli and option awards made to all of the named executive officers, pursuant to Statement of Financial Accounting Standards No. 123R, but were inadvertently omitted from the Table in the Proxy. Certain minor, downward revisions of amounts expensed for the fiscal year ended August 29, 2007 for stock awards made to Messrs. Gray and Tropoli and option awards made to Mr. Gray are also reflected in the revised Summary Compensation Table in this Form 10-K/A.

For purposes of this Form 10-K/A, and in accordance with Rule 12b-15 under the Securities Exchange Act of 1934, as amended, Item 11 of the Original Form 10-K has been amended and restated in its entirety. Other than the revisions to Item 11 noted above, there are no other changes to the Original Form 10-K. No amendments have been made to this Form 10-K/A to reflect events occurring after the filing of the Original Form 10-K or to modify or update those disclosures affected by subsequent events. Accordingly, this Form 10-K/A should be read in conjunction with the Company s SEC filings made subsequent to the filing of the Original Form 10-K, including any amendments of those filings. In addition, this Form 10-K/A includes updated certifications from the Company s CEO and CFO as Exhibits 31.1, 31.2, 32.1 and 32.2.

PART III

Item 11. Executive Compensation

COMPENSATION DISCUSSION AND ANALYSIS

EXECUTIVE COMPENSATION

Compensation Objectives

The Company's executive compensation program is designed to enable the Company to execute its business objectives by attracting, retaining, and motivating the highest quality of management talent. The program serves to incent and reward executive performance, with the objective of enhancing shareholder value over the long term and encouraging long-term retention of executives. As such, each element of compensation is an integral part of achieving this purpose. In addition, the Company strives to remain competitive by balancing all elements of compensation. The Executive Compensation Committee (the Committee) annually evaluates the effectiveness of the Company's executive compensation program in meeting its objectives. The Committee annually advises the Board on the compensation to be paid to the Company's executive officers and approves the compensation for executive officers. The Committee evaluates compensation with reference to the Company's performance for the prior fiscal year, competitive compensation data, evaluation of each executive's contribution to the Company's performance, each executive's experience, responsibilities, and management abilities. The Company's executive compensation program currently consists of the elements summarized below.

The Company's executive compensation program does not include any pension benefits. None of the Named Executive Officers participates in any retirement or defined benefit plan maintained by the Company.

The Company currently has no salary continuation agreement, or change in control agreements having similar effect, in place with any employee of the Company other than employment agreements with Messrs. Pappas as described under Employment Agreements below.

Base Salaries

The Company seeks to compensate executives for their performance throughout the year with annual base salaries that are fair and competitive while being consistent with the Company's position in the foodservice industry. Base salaries are reviewed annually or biannually by the Committee to ensure continuing consistency with the industry and the Company's level of performance during the previous fiscal year. A third-party consultant provided benchmark information, through the use of peer and general industry data, which was used as a reference to assist the Committee. See Benchmarking and Use of Third-Party Compensation Consultant. Future adjustments to base salaries and salary ranges will reflect average movement in the competitive market and peers as well as individual performance. Any base salary increase awarded to an executive reflects the Company's financial performance, individual performance, and/or potential changes in the officer's duties and responsibilities.

Salaries of the Chief Executive Officer and Chief Operating Officer are fixed according to each officer's employment agreement, leaving only the incentive and equity compensation for these officers within the discretion of the Committee. See Employment Agreements and Compensation of Chief Executive Officer and Chief Operating Officer. Members of the Committee, along with members of the Finance and Audit Committee, were involved in advising the Board on the appropriateness and reasonableness of the compensation packages for these executive officers.

Non-Equity Incentive Compensation and Bonus

The Company's annual incentive compensation is designed to be a balanced set of measures which blend Company-wide financial measures, process-improvement measures, and Company and individual business objectives. Corporate and individual performance objectives are established near the beginning of each fiscal year and monitored throughout the fiscal year. If earned, the annual incentive compensation paid to each executive in the form of a cash payment will vary according to the Company's overall performance. A third-party consultant provided benchmark information through the use of peer and general industry data, which was used as a reference to assist the Committee. See

Benchmarking and Use of Third-Party Compensation Consultant. The Executive Compensation Committee has the ultimate discretion with regard to annual incentive compensation. The Executive Compensation Committee retains full discretion to grant an additional cash bonus at fiscal year-end and may decide to award or

withhold an incentive compensation award for an individual based upon overall Company performance or upon each participant's personal performance during the year. The Executive Compensation Committee believes that same-store sales and earnings before interest, taxes, depreciation and amortization are important financial measures of executive performance. Accordingly, annual incentive compensation for the Chief Executive Officer and the Chief Operating Officer is determined by the Company's performance relative to pre-determined goals that are based on same-store sales (50%) and earnings before interest, taxes, depreciation and amortization (50%), and the annual incentive compensation for all other Named Executive Officers is determined by the Company's performance relative to pre-determined goals that are based on same-store sales (25%), earnings before interest, taxes, depreciation and amortization (25%) and by the executive's performance relative to the attainment of individual business objectives for the fiscal year (50%).

Long-Term Incentive Compensation

Long-term incentive compensation in the form of equity grants of the Company's common stock, such as incentive stock option grants and grants of restricted stock, are used to (1) incent performance that leads to enhanced shareholder value, (2) encourage retention, and (3) closely align the executive's interests with shareholders' long term interests. The expected present value of these incentives is calculated using the binomial pricing method. The size of stock option and restricted stock grants is determined relative to the Company's size and its market, scope and responsibility of the individual, individual performance, share usage under the plan, employee qualifications and position, as well as peer and general industry data. A third-party consultant provided benchmark information through the use of peer and general industry data, which was used as a reference to assist the Committee. See [Benchmarking and Use of Third-Party Compensation Consultant](#).

The Committee administers the Company's stock option, ownership, and any other equity-based compensation plans to the Named Executive Officers (as defined in [Summary Compensation Table](#)). The Executive Compensation Committee typically considers the grants of incentive stock options to eligible executive officers and other officers on an annual basis. The options, which typically vest in installments over six to ten years, typically have an exercise price equal to the market price of the Company's stock on the date of grant and provide compensation to the optionee only to the extent the market price of the stock increases between the date of grant and the date the option is exercised. Options are intended to provide long-term compensation tied specifically to increases in the price of the Company's common stock. The number of option shares granted each year is typically determined by a formula using a dollar amount divided by the option's exercise price.

All grants require Board approval and are typically presented at the first regularly scheduled Board meeting following the disclosure of year-end results. Neither the Company nor the Committee has a program, plan, or practice to time option grants to its executives in coordination with the release of material nonpublic information. Any stock options grants made to non-executive employees typically will occur concurrently with grants to Named Executive Officers.

Benchmarking and Use of Third-Party Compensation Consultant

In fiscal year 2008, as in prior years, the Company engaged a third-party compensation consultant, Towers Perrin, to provide an assessment of the Company's compensation structure for all of its officer positions and to evaluate their compensation relative to the marketplace.

Towers Perrin relied on its own annual incentive plan design surveys, its experience with general industry companies with annual revenues similar to that of the Company, and research from the proxy statements of companies considered peers of the Company. Towers Perrin also developed marketplace base salary, target annual incentive opportunity, target total annual compensation, actual total annual compensation, long term incentive award level, target total direct compensation, and actual total direct compensation rates at the 25th, 50th, and 75th percentiles which were used as a reference to assist the Committee.

Role of Executive Officers

Of the Named Executive Officers, only the Chief Executive Officer has a role in determining executive compensation policies and programs. Within the parameters of the compensation policies established by the Executive Compensation Committee, the Chief Executive Officer makes preliminary recommendations for base salary adjustments and short term and long term incentive levels for the other Named Executive Officers. The Chief Executive Officer may base his recommendation on a variety of factors such as his appraisal of the officer's performance and contribution to the Company and on market data. The Chief Executive Officer does not make any recommendations regarding his own compensation or that of the Chief Operating Officer.

Stock Ownership Guidelines

The Board of Directors has adopted guidelines for ownership of the Company's common stock by executives and directors to help demonstrate the alignment of the interests of the Company's executives and directors with the interests of its shareholders. The amount of stock in which a particular executive is required to hold is determined relative to the executive's position with the Company. The guidelines provide that executives and directors are expected to attain the following levels of stock ownership within five years of their election to the specified director or officer position:

Position	Share Ownership
Chief Executive Officer, President and Chief Operating Officer	4 times annual base salary
Senior Vice President	2 times annual base salary
Vice President	Equal to annual base salary
Nonemployee Director	Shares with a market value of at least \$100,000

Phantom stock and stock equivalents in the nonemployee director deferred compensation plan are considered common stock for purposes of the guidelines, as they are essentially awarded in lieu of cash compensation for Board services.

Employment Agreements

The Company is a party to employment agreements with Christopher J. Pappas, the Company's President and Chief Executive Officer, and Harris J. Pappas, the Company's Chief Operating Officer. These agreements have been filed with the Securities and Exchange Commission as exhibits to the Company's Annual Report on Form 10-K filed November 14, 2005. Each agreement, which expires in August 2010, provides for a fixed base annual salary of \$400,000, plus bonus compensation at the discretion of the Board or appropriate Board Committee. Please read

Compensation of Chief Executive Officer and Chief Operating Officer for more information regarding Messrs. Pappas' employment agreements.

Each employment agreement, as amended, provides that the employee will be entitled to receive all of his compensation and benefits under the contract until August 31, 2010, if either (1) the Company terminates his employment without cause, as defined in the agreements, or (2) he terminates his employment for good reason, as defined in the agreements. For more information regarding potential payments under these employment agreements, please read Potential Payments upon Termination or Change in Control. The Company does not have any agreements with any other of its officers, directors or employees containing provisions governing the compensation and benefits that may be paid to any such person upon termination of employment or a change in control of the Company.

Compensation of Chief Executive Officer and Chief Operating Officer

Christopher J. Pappas and Harris J. Pappas have base salaries fixed according to their respective employment agreements with the Company. Under their current employment agreements, which expire in August 2010, the annual base salaries in each of fiscal years 2009 and 2010 for Messrs. Pappas are \$400,000. Messrs. Pappas are eligible to receive annual cash bonuses under their employment agreements at the discretion of the Executive Compensation Committee. Messrs. Pappas did not receive a cash bonus in fiscal year 2008. Each of their previous employment agreements, which were replaced by their current employment agreements in November 2005, had fixed each of their base salaries for fiscal 2006 at \$300,000, with potential cash bonuses of up to \$200,000. In connection with entering into the current employment agreements, on November 8, 2005 the Company granted Messrs. Pappas each options to purchase 65,500 shares of the Company's common stock at an exercise price of \$12.92 per share. In determining the size of the stock option grant, the Committee considered the Company's size and its market, Messrs. Pappas' respective individual performance and experience, peer group data and the size of grants previously made to Messrs. Pappas.

Section 162(m) of the Internal Revenue Code

Section 162(m) of the Internal Revenue Code generally disallows a public company's tax deduction for compensation to the chief executive officer and the four other most highly compensated executive officers in excess of \$1 million in any calendar year. Compensation that qualifies as performance based compensation (as defined for purposes of Section 162(m)) is excluded from the \$1 million limitation, and therefore remains fully deductible by the company that pays it. Options granted under the Company's long-term incentive plan have been structured to qualify as performance-based and thus would not be subject to this deduction limitation. While the Executive Compensation Committee will seek to utilize deductible forms of compensation to the extent practicable, it does not believe that compensation decisions should be made solely to maintain the deductibility of compensation for federal income tax purposes. Although none of the Named Executive Officers reached the deduction limitation in fiscal year 2008, the Executive Compensation Committee plans to continue to evaluate the Company's salary, bonus and stock option programs to determine the advisability of future compliance with Section 162(m).

EXECUTIVE COMPENSATION COMMITTEE REPORT

The Executive Compensation Committee reviewed and discussed the Company's Compensation Discussion and Analysis with the Company's management. Based on this review and discussion, the Executive Compensation Committee recommended to the Board of Directors that the Compensation Discussion and Analysis be included in the Company's Proxy Statement and the Company's Annual Report on Form 10-K for the fiscal year ended August 27, 2008.

Executive Compensation Committee

J.S.B. Jenkins (Chair)

Judith B. Craven (Vice-Chair)

Jill Griffin

Jim W. Woliver

Summary Compensation Table

The table below contains information concerning annual and long-term compensation of the current Chief Executive Officer, all persons who served as Chief Executive Officer of the Company during the last fiscal year, the current Chief Financial Officer, all persons who served as Chief Financial Officer of the Company during the last fiscal year, and the next three most highly compensated individuals, as specified in Item 402 of regulation S-K, who made in excess of \$100,000 in total compensation and who served as executive officers during the last fiscal year (the Named Executive Officers), for services rendered in all capacities for the fiscal year ended August 27, 2008.

Name and Principal Position	Fiscal Year	Salary	Bonus	Stock Awards (1)	Option Awards (1)	Non-Equity Incentive Compensation	All Other Compensation (2)	Total
Christopher J. Pappas President and Chief Executive Officer	2008	\$ 400,000	\$ 0	\$ 0	\$ 225,415	\$ 0	\$ 0	\$ 625,415
	2007	400,000			215,859		0	615,859
				0	0		0	
Harris J. Pappas Chief Operating Officer	2008	400,000	0	0	225,415	0	0	625,415
	2007	400,000			215,859		0	615,859
				0	0		0	
K. Scott Gray(3) Senior Vice President and Chief Financial Officer	2008	235,000	43,200	28,104	48,521	9,400	0	364,225
	2007	170,577	0	12,976	31,316	9,400	0	224,269
Peter Tropoli Senior Vice President, Administration, General Counsel and Secretary	2008	250,000	45,000	39,097	78,349	10,000	0	422,446
	2007	236,000	0	19,095	60,568	10,000	0	325,663

(1) The amounts in this column represent the proportionate amount of the total fair value of stock awards (in the case of the column titled "Stock Awards") or option awards (in the case of the column titled "Option Awards") made in fiscal year 2007, fiscal year 2008 or in prior fiscal years, which the Company recognized as an expense in fiscal years 2007 and 2008 for financial accounting purposes. The fair value of these awards and the amounts expensed in fiscal years 2007 and 2008 were determined in accordance with Financial Accounting Standards Board Statement of Financial Accounting Standards No. 123 (revised 2004), "Share-Based Payment" (SFAS 123R). The full SFAS 123R grant date fair value of the stock awards and option awards granted in fiscal year 2008 is included in the final column in the "Grants of Plan-Based Awards" table included below. The assumptions the Company uses in calculating these amounts are discussed in Note 11, "Share-Based Compensation," to the consolidated financial statements in Item 8 of this report. The amounts in this column represent the Company's accounting expense for these awards and not necessarily the actual value that the Named Executive Officer will realize.

(2) Perquisites and other personal benefits that did not exceed \$10,000 in the aggregate for any Named Executive Officer have been excluded.

(3) Mr. Gray became the Company's Senior Vice President and Chief Financial Officer on April 20, 2007. From the beginning of fiscal year 2007 until April 2007, he had served as the Company's Vice President of Finance.

The following table summarizes grants of plan-based awards made to each of the Named Executive Officers during the Company's last fiscal year.

Grants of Plan-Based Awards

Name	Grant Date	Estimated Future Payouts Under Non-Equity Incentive Plan Awards (1)			Estimated Future Payouts Under Equity Incentive Plan Awards (1)			All Other Stock Awards: Number of Shares of Stock or	All Other Stock Awards: Number of Securities Underlying	Exercise or Base Price of Option Awards	Grant Date Fair Value Stock and
		Threshold (\$)	Target (\$)	Maximum (\$)	Threshold (#)	Target (#)	Maximum (#)	Units (#)	Options (#)	(\$/Sh)	Awards (\$)
Christopher J. Pappas		N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Harris J. Pappas		N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
K. Scott Gray	11/14/07	N/A	N/A	N/A	N/A	N/A	N/A	N/A	9,217	11.10	47,707
	11/14/07	N/A	N/A	N/A	N/A	N/A	N/A	4,171	N/A	11.10	46,298
Peter Tropolli	11/14/07	N/A	N/A	N/A	N/A	N/A	N/A	N/A	14,055	11.10	72,749
	11/14/07	N/A	N/A	N/A	N/A	N/A	N/A	6,361	N/A	11.10	70,607

(1) The Plan does not contemplate Threshold, Target or Maximum Payouts. Please see Long-Term Incentive Compensation, above, for further discussion.

The following table provides information regarding outstanding equity awards at fiscal year-end for each of the Named Executive Officers.

Outstanding Equity Awards at Fiscal Year End

Name	Option Awards(1)					Stock Awards			
	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Options (#)	Option Exercise Price (\$)	Option Expiration Date	Number of Shares or Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock That Have Not Vested (\$)	Equity Incentive Plan Awards: Number of Shares, Units or Other Rights That Have Not Vested (#)	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested (\$)
Christopher J. Pappas	32,750	32,750	N/A	12.92	11/7/2011	N/A	N/A	N/A	N/A
	21,523	64,566	N/A	10.18	10/18/2012	N/A	N/A	N/A	N/A
Harris J. Pappas	32,750	32,750	N/A	12.92	11/7/2011	N/A	N/A	N/A	N/A
	21,523	64,566	N/A	10.18	10/18/2012	N/A	N/A	N/A	N/A
K. Scott Gray	4,200	4,200	N/A	12.30	11/14/2011	N/A	N/A	N/A	N/A
	2,760	8,280	N/A	10.18	10/18/2012	N/A	N/A	N/A	N/A
	2,084	6,249	N/A	10.20	4/19/2013	N/A	N/A	N/A	N/A
	0	9,217	N/A	11.10	11/13/2013	N/A	N/A	N/A	N/A
	N/A	N/A	N/A	N/A	N/A	1,500	10,800	N/A	N/A
	N/A	N/A	N/A	N/A	N/A	1,972	14,198	N/A	N/A
	N/A	N/A	N/A	N/A	N/A	920	6,624	N/A	N/A
Peter Tropoli	9,000	9,000	N/A	13.45	10/9/2011	N/A	N/A	N/A	N/A
	5,915	17,743	N/A	10.18	10/18/2012	N/A	N/A	N/A	N/A
	0	14,055	N/A	11.10	11/13/2013	N/A	N/A	N/A	N/A
	N/A	N/A	N/A	N/A	N/A	2,400	17,280	N/A	N/A
	N/A	N/A	N/A	N/A	N/A	3,154	22,709	N/A	N/A
	N/A	N/A	N/A	N/A	N/A	6,361	45,799	N/A	N/A

(1) Except for the stock options granted to Messrs. Pappas, which were granted pursuant to their employment agreements with the Company, the stock options were granted under the Company's Incentive Stock Plans.

The following table summarizes options exercised and stock awards that vested during the Company's last fiscal year.

Option Exercises and Stock Vested

Name	Option Awards		Stock Awards	
	Number of Shares Acquired on Exercise (#)	Value Realized on Exercise (\$)	Number of Shares Acquired on Vesting (#)	Value Realized on Vesting (\$)
Christopher J. Pappas	1,120,000	\$ 5,745,600		
Harris J. Pappas	1,120,000	\$ 5,745,600		
K. Scott Gray				
Peter Tropoli				

Potential Payments upon Termination or Change in Control

Trigger Events

The employment agreements between the Company and Christopher J. Pappas and Harris J. Pappas (each, an Executive) will terminate upon the Executive's death or upon the Executive's disability, which is defined as his becoming incapacitated by accident, sickness or other circumstance that renders him physically or mentally unable to carry out the duties and services required of him under the employment agreement on a full-time basis for more than 120 days in any 180-day period. If a dispute arises between the Executive and the Company concerning the Executive's physical or mental ability to continue or return to the performance of his duties as described above, the Executive is required to submit to an examination by a competent physician mutually agreeable to both parties or, if the parties are unable to agree, by a physician appointed by the president of the Harris County Medical Association, and that physician's opinion will be final and binding.

The Company may terminate at any time an employment agreement with an Executive for cause, which means that the Executive has (1) been convicted of a crime constituting a felony or a misdemeanor involving moral turpitude, (2) committed, or participated in, an illegal act or acts that were intended to defraud the Company, (3) willfully refused to fulfill his duties and responsibilities as required under the employment agreement, (4) breached material provisions of the employment agreement, a Company policy, or the Company's code of conduct, in each case after notice from the Board and an opportunity to correct the breach, (5) engaged in gross negligence or willful misconduct in the performance of his duties and obligations to the Company, or (6) willfully engaged in conduct known, or which should have been known, to be materially injurious to the Company. The Company also may terminate at any time an employment agreement for any other reason, in the sole discretion of the Board.

The Executive may terminate his employment agreement for good reason, which means (1) a material reduction in the nature, scope or duties of the Executive or assignment of duties inconsistent with those of his position as specified in the employment agreement, or a change in the location of the Company's business office in which his services are to be carried out, to a location outside Texas, (2) any breach of a material provision of the employment agreement by the Company after notice from the Executive and an opportunity to correct the breach, (3) within two years after the Company's sale of all or substantially all of its assets or the merger, share exchange or other reorganization of the Company into or with another corporation or entity, with respect to which the Company does not survive, or (4) certain reductions in the employee benefits and perquisites applicable to the Executive. Finally, the Executive may terminate his employment agreement for any other reason, in his sole discretion.

Termination due to Death or Disability. If the Executive's employment is terminated due to his death or disability, all compensation and benefits to the Executive under his employment agreement (other than any equity-based compensation awards granted to the Executive by the Company, which are governed by the terms of the applicable award agreement), will terminate immediately upon the termination of employment and without further obligation to the Executive or his legal representatives under his employment agreement, other than the payment of his base salary for the period through the date of termination. Under the Executive's existing incentive stock option agreements, upon the death of the Executive the stock option may be exercised within one year after his death, by the person or persons to whom his rights under the option have passed by will or the laws of descent and distribution, until the expiration of the option in November 2011. If the Executive is terminated due to disability, the option may be exercised, to the extent the option was exercisable on the date of termination, until the earlier of the first anniversary of the date of termination or the expiration of the option.

Termination for Cause or other than for Good Reason. If the Executive terminates his employment without good reason, or if the Company terminates the Executive's employment for cause, all compensation and benefits to the Executive under his employment agreement (other than any equity-based compensation awards granted to the Executive by the Company, which are governed by the terms of the applicable award agreement), will terminate immediately upon the termination of employment and without further obligation to the Executive or his legal representatives under his employment agreement, other than the payment of his base salary for the period through the date of termination. Under the Executive's existing incentive stock option agreements, the Executive's stock option may be exercised, to the extent the option was exercisable on the date of termination, until the earlier of the first anniversary of the date of termination or the expiration of the option.

Termination Without Cause or For Good Reason. If the Executive is terminated without cause, or if the Executive terminates his employment for good reason, the Company will be obligated to pay Executive his monthly base salary and benefits in effect on the date of termination for the remainder of the term of the employment agreement, which expires on August 31, 2010. If, however, the Executive violates the provisions in his employment agreement regarding confidentiality, non-competition, and standstill in connection with ownership of or other action with respect to the Company's common stock, then the Executive will forfeit his rights to receive any further payments under the employment agreement. Under the Executive's existing incentive stock option agreements, the Executive's stock option may be exercised, to the extent the option was exercisable on the date of termination, until the earlier of the first anniversary of the date of termination or the expiration of the option.

Non-renewal of Agreement. If the Executive's employment is terminated because the employment agreement is not renewed, then all compensation for periods subsequent to termination and all benefits to the Executive under the employment agreement will terminate immediately upon termination of employment. Under the Executive's existing incentive stock option agreements, the Executive's stock option may be exercised, to the extent the option was exercisable on the date of termination, until the earlier of the first anniversary of the date of termination or the expiration of the option.

Estimated Payments to Chief Executive Officer and Chief Operating Officer

The following table summarizes estimated benefits that would have been payable to each Executive if the Executives were terminated on August 27, 2008 for the reasons indicated below, giving effect to the amendments to each Executive's employment agreement extending the term of his employment to August 31, 2010.

Christopher J. Pappas

	Base Salary	Value of Accelerated Equity Awards
Without Cause or For Good Reason	\$ 800,000	\$ 390,766
For Cause or other than for Good Reason		390,766
Death		390,766