

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934**

Date of Report (date of earliest event reported): **May 14, 2009**

BERRY PETROLEUM COMPANY

(Exact name of registrant as specified in its charter)

Delaware
(State or Other Jurisdiction of Incorporation or
Organization)

1-9735
(Commission File
Number)

77-0079387
(I.R.S. Employer Identification No.)

1999 Broadway, Suite 3700, Denver, Colorado
(Address of Principal Executive Offices)

80202
(Zip Code)

Registrant's telephone number, including area code: **(303) 999-4400**

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

ITEM 5.02. DEPARTURE OF DIRECTORS OR CERTAIN OFFICERS; ELECTION OF DIRECTORS; APPOINTMENT OF CERTAIN OFFICERS; COMPENSATORY ARRANGEMENTS OF CERTAIN OFFICERS.

On May 14, 2009, in connection with the implementation of various organizational changes of its personnel, Berry Petroleum Company (the "Company") has promoted George T. Crawford, formerly the Company's Vice President of California Production, to Senior Vice President of California Production and an Assistant Secretary.

Additionally, on May 14, 2009, in connection with the same organizational changes, Bruce S. Kelso was assigned as Chief Geoscientist to support and report to the Company's corporate development department. Mr. Kelso previously was the Company's Vice President of Rocky Mountains and Mid-Continent Exploration and one of the "named executive officers" in its 2009 annual meeting proxy statement.

ITEM 5.03. AMENDMENTS TO ARTICLES OF INCORPORATION OR BY-LAWS; CHANGE IN FISCAL YEAR.

On May 14, 2009, the Board of Directors of the Company, upon the recommendation of the Corporate Governance and Nominating Committee, adopted amended and restated By-Laws of the Company.

The principal changes effected by the amendment and restatement of the By-Laws are (i) revisions to the advance notice stockholder nomination of director provisions and the advance notice stockholder proposal provisions, including the addition of disclosure requirements relating to economic interest and hedging activity by a stockholder proposing director nominations or other business to be transacted at a stockholder meeting; (ii) revisions to the advance notice stockholder nomination of director provisions including the addition of disclosure requirements relating to economic interest and hedging activity of the proposed director; and (iii) non-substantive revisions to numerous By-Law provisions to conform to the changes set forth above.

The By-Laws, as amended and restated, took effect upon adoption by the Board of Directors of the Company on May 14, 2009.

This description of the amendment and restatement of the By-Laws is qualified in its entirety by reference to the By-Laws, as amended and restated through May 14, 2009, a copy of which is filed as Exhibit 3.1 to this Form 8-K and incorporated herein by reference.

ITEM 8.01 OTHER EVENTS.

(A) UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL STATEMENT

The following unaudited pro forma condensed combined financial statement for the year ended December 31, 2008 and related notes give effect to the acquisition by the Company of certain oil and gas producing properties

from O'Brien Resources, LLC, SEPCO II, LLC, Liberty Energy, LLC, Crow Horizons Company, and O'Brien II, LP (collectively referred to as "O'Brien") on July 15, 2008.

The unaudited pro forma condensed combined statement of income is derived from the individual statement of operations of the Company and the statement of combined revenues and direct operating expenses of O'Brien, and combines the results of operations of the Company for the year ended December 31, 2008 and O'Brien for the period from January 1, 2008 to the acquisition date of July 15, 2008 as if the acquisition occurred on January 1, 2008. The unaudited pro forma condensed combined statement of income set forth below also gives effect to (1) the presentation as discontinued operations of its DJ Basin assets, which were sold on April 1, 2009, in accordance with Statement of Financial Accounting Standards (SFAS) No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets," and (2) the Company's implementation of FASB Staff Position No. EITF 03-06-1, *Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities*, which requires the revision of prior period basic and diluted earnings per share data. The unaudited pro forma condensed combined financial statements, including any notes thereto, are qualified in their entirety to, and should be read in conjunction with the notes thereto, the Company's Annual Report on Form 10-K for the year ended December 31, 2008 filed with the Securities and Exchange Commission (the "SEC") and the Statement of Combined Revenues and Direct Operating Expenses for the Oil and Gas Properties Purchased by the Company from a Consortium of Private Sellers filed as part of the Company's Current Report on Form 8-K/A filed on September 29, 2008. The revisions will be reflected in our audited financial statements included in the Company's Annual Report on Form 10-K for the year ended December 31, 2009 and any registration statements that the Company files with the SEC prior to filing such Annual Report.

Pro forma data is based on assumptions and includes adjustments as explained in the notes to the unaudited pro forma condensed combined financial statements. As adjustments are based on currently available information, actual adjustments may differ from the pro forma adjustments; therefore, the pro forma data is not necessarily indicative of the financial results that would have been attained had the O'Brien transaction occurred on the dates referenced above, and should not be viewed as indicative of operations in future periods.

**BERRY PETROLEUM COMPANY UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENT OF INCOME
FOR THE YEAR ENDED DECEMBER 31, 2008
(In thousands, except per share amounts)**

	<u>BERRY PETROLEUM HISTORICAL</u>	<u>O'BRIEN PROPERTIES HISTORICAL</u>	<u>PRO FORMA ADJUSTMENTS (SEE NOTE 2)</u>	<u>PRO FORMA COMBINED</u>	<u>DISPOSITION ADJUSTMENTS (SEE NOTE 2)</u>	<u>PRO FORMA COMBINED</u>
REVENUES AND OTHER INCOME ITEMS						
Sales of oil and gas	\$ 697,977	\$ 46,530	\$ —	744,507	(48,728)(g)	695,779
Sales of electricity	63,525	—	—	63,525	—	63,525
Gas marketing	35,750	—	—	35,750	—	35,750
Loss on sale of assets	(1,297)	—	—	(1,297)	—	(1,297)
Interest and other income (loss), net	5,576	—	—	5,576	(2,072)(g)	3,504
	<u>801,531</u>	<u>46,530</u>	<u>—</u>	<u>848,061</u>	<u>(50,800)(g)</u>	<u>797,261</u>
EXPENSES						
Operating costs - oil and gas production	200,098	1,114	—	201,212	(11,340)(g)	189,872
Operating costs - electricity generation	54,891	—	—	54,891	—	54,891
Production taxes	29,898	3,724	—	33,622	(3,023)(g)	30,599
Depreciation, depletion & amortization - oil and gas production	138,237	—	9,451	147,688(a),(d)	(12,642)(g)	135,046
Depreciation, depletion & amortization - electricity generation	2,812	—	—	2,812	—	2,812
Gas marketing	32,072	—	—	32,072	—	32,072
General and administrative	55,353	—	2,675	58,028(b)	(1,073)(g)	56,955
Interest	26,209	—	24,455	50,664(c)	(2,267)(g)	48,397
Commodity derivatives	358	—	—	358	(145)(g)	213
Dry hole, abandonment, impairment and exploration	12,316	—	—	12,316	(1,773)(g)	10,543
Bad debt expense	38,665	—	—	38,665	—	38,665
	<u>590,909</u>	<u>4,838</u>	<u>36,581</u>	<u>632,328</u>	<u>(32,263)</u>	<u>600,065</u>
Income (loss) before	210,622	41,692	(36,581)	215,733	(18,537)	197,196

income taxes						
Provision for income taxes	<u>77,093</u>	<u>—</u>	<u>970</u>	<u>78,063(e)</u>	<u>(6,784)(g)</u>	<u>71,279</u>
Income (loss) from continuing operations (f)	<u>\$ 133,529</u>	<u>41,692</u>	<u>(37,551)</u>	<u>137,670</u>	<u>(11,753)</u>	<u>125,917</u>
Basic income from continuing operations per share	<u>\$ 2.96</u>					<u>\$ 2.79</u>
Diluted income from continuing operations per share	<u>\$ 2.92</u>					<u>\$ 2.75</u>
Dividends per share	<u>\$ 0.30</u>					<u>\$ 0.30</u>
Weighted average shares outstanding used to calculate basic income per share	<u>44,485</u>					<u>44,485</u>
Weighted average shares of capital stock used to calculate diluted net income per share	<u>45,062</u>					<u>45,062</u>

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BERRY PETROLEUM COMPANY
NOTES TO UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL STATEMENT

NOTE 1 — BASIS OF PRESENTATION

The unaudited pro forma statement of income for the year ended December 31, 2008 is based on the audited financial statements of the Company for the year ended December 31, 2008, the unaudited statement of combined revenues and direct operating expenses of the O'Brien properties for the period from January 1, 2008 to the acquisition date of July 15, 2008 and the adjustments and assumptions described below.

The financial statements presented are not indicative of the results of operations of the acquired properties going forward due to changes in the business and the need to include certain operating expenses on a prospective basis.

NOTE 2 — ADJUSTMENTS TO PRO FORMA STATEMENT OF INCOME

The unaudited pro forma statement of income gives effect to the following pro forma adjustments necessary to reflect the acquisition:

- a. Record incremental pro forma depreciation, depletion and amortization expense recorded in accordance with the successful efforts method of accounting for oil and gas activities based on the purchase price allocation to depreciable and depletable assets.
- b. Record assumed increase in general and administrative expenses as a result of the purchase of the O'Brien properties primarily relating to an increase of 14 additional employees and other costs incurred to support increased operating activities.
- c. Record interest expense for the additional debt of approximately \$668 million incurred in conjunction with the purchase of O'Brien properties at a rate of 7.715% per annum based on the terms of the Company's credit agreement. A one-tenth of one percent change in interest rate would have an approximately \$897 thousand annual impact on interest expense.
- d. Record pro forma accretion of asset retirement obligation on properties acquired in accordance Statement of Financial Accounting Standards No. 143, "Accounting for Asset Retirement Obligations," computed using an inflation rate of 2.85% and a discount rate of 8.05%.
- e. Record a pro forma income tax provision on the incremental pre-tax income at a net statutory rate approximating 39% and certain other tax adjustments.
- f. The historical and pro forma statement of income reflects operations through income from continuing operations. On April 1, 2008, the Company sold the DJ basin assets to an unaffiliated party.
- g. On April 1, 2009, Berry Petroleum Company sold the DJ basin assets to an unaffiliated party for \$140 million. A pre-tax impairment loss of \$9.6 million from the sale was recognized during the second quarter of 2009. The pro forma condensed combined statement of income eliminates the results of operations of the DJ basin assets from January 1, 2008 through December 31, 2008.

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NOTE 3 — FINAL PURCHASE PRICE ALLOCATION

Record the allocation of the purchase price of the acquisition of the O'Brien properties using the purchase method of accounting. The following is a calculation and allocation of purchase price to the O'Brien properties and liabilities based on their relative fair values, pending completion of the Company's valuation analysis in accordance with FAS 141 :

Purchase price (in thousands):	
Original purchase price	\$ 622,356
Closing adjustments for property costs, and operating expenses in excess of revenues between the effective date and closing date funded by borrowings from senior secured revolving credit facility	
	45,506
Total purchase price allocation	\$ 667,862
Final allocation of purchase price (in thousands):	
Gas properties	\$ 651,659(i)
Pipeline	17,277
Tax receivable	1,476
Total asset acquired	670,412
Current liabilities	1,195(ii)
Asset retirement obligation	1,355
Net assets acquired	\$ 667,862

(i) Determined by reserve analysis.

(ii) Record accrual for royalties payable and transaction costs, which are primarily legal and accounting fees.

NOTE 4 — NET INCOME PER SHARE

Basic net income per share is computed by dividing income available to common shareholders (the numerator) by the weighted average number of shares of capital stock outstanding (the denominator). The Company's Class B stock is included in the denominator of basic and diluted net income. The computation of diluted net income per share is similar to the computation of basic net income per share except that the denominator is increased to include the dilutive effect of the additional common shares that would have been outstanding if all convertible securities had been converted to common shares during the period.

(B) RATIO OF EARNINGS TO FIXED CHARGES

Attached hereto as Exhibit 12.1 is the computation of the Ratio of Earnings to Fixed Charges of the Company, updated to reflect the revisions described above and to provide computations for the three months ended March 31, 2009.

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ITEM 9.01 FINANCIAL STATEMENTS AND EXHIBITS.

(d) Exhibits.

<u>EXHIBIT NUMBER</u>	<u>DESCRIPTION</u>
3.1	— By-Laws, as amended and restated through May 14, 2009.
12.1	— Computation of Ratio of Earnings to Fixed Charges.

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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 hereunto duly authorized.

BERRY PETROLEUM COMPANY

Date: May 15, 2009

By: /s/ Kenneth A. Olson
Kenneth A. Olson
Corporate Secretary

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INDEX TO EXHIBITS

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3.1	— By-Laws, as amended and restated through May 14, 2009.
12.1	— Computation of Ratio of Earnings to Fixed Charges.

**RESTATED BYLAWS
OF
BERRY PETROLEUM COMPANY
REFLECTING ALL AMENDMENTS
AS OF May 14, 2009**

ARTICLE I - STOCKHOLDERS

Section 1. Annual Meeting.

An annual meeting of the stockholders, for the election of directors to succeed those whose terms expire and for the transaction of such other business as may properly come before the meeting, shall be held at such place, on such date, and at such time as the Board of Directors shall each year fix, which date shall be within thirteen months subsequent to the later of the date of incorporation or the last annual meeting of stockholders. At an annual meeting of the stockholders, only business shall be conducted as shall have been brought before the meeting (a) by or at the direction of the Board of Directors or (b) by any stockholder of the Corporation who complies with the notice procedures set forth in this Section 1. For business to be properly brought before an annual meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a stockholder's notice must be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 120th day nor earlier than the close of business on the 210th day prior to the first anniversary of the release of the previous year's proxy materials; provided, however, that in the event that the date of the annual meeting is more than 30 days before or more than 90 days after such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or the 10th day following the day on which public announcement of the date of such meeting is first made. In no event shall the public announcement of an adjournment of an annual meeting commence a new time period for the giving of a stockholder's notice as described above. A stockholder's notice to the Secretary shall set forth as to each matter the stockholder proposes to bring before the annual meeting (a) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (b) the name and address, as they appear on the Corporation's books, of the stockholder proposing such business, (c) the class and number of shares of the Corporation which are beneficially owned by the stockholder and (d) any material interest of the Stockholder in such business. Notwithstanding anything in the Bylaws to the contrary, no business shall be conducted at an annual meeting except in accordance with the procedures set forth in this Section 1. The Chairman of an annual meeting shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting and in accordance with the provisions of the Bylaws, and if he should so determine, he shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted. Notwithstanding the foregoing provisions of this Section 1, a stockholder seeking to have a proposal included in the Corporation's proxy statement shall comply with the requirements of Regulation 14A under the Securities Exchange Act of 1934, as amended (including, but not limited to, Rule 14a-8 or its successor provision).

Nominations of persons for election as directors at a meeting of the stockholders at which directors are to be elected may be made only (a) by or at the direction of the Board of Directors or (b) by any stockholder of the Corporation entitled to vote in the election of directors who shall have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a stockholder's notice must (i) be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 120th day nor earlier than the close of business on the 210th day prior to the first anniversary of the release of the previous year's proxy materials; provided, however, that in the event that the date of the annual meeting is more than 30 days before or more than 90 days after such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or the 10th day following the day

on which public announcement of the date of such meeting is first made and (ii) comply with the provisions of Section 3 of Article 1 of these bylaws. No person shall be eligible for election as a director, unless nominated in accordance with the provisions of this Section 1. The officer of the Corporation or other person presiding over the meeting shall, if the facts so warrant, determine and declare to the meeting that a nomination was not made in accordance with such provisions, and, if he or she should so determine, he or she shall so declare to the meeting and the defective nomination shall be disregarded.

Section 2. Special Meetings.

Special meetings of the stockholders, for any purpose or purposes set forth in the notice of the meeting, may be called by the Board of Directors, the chief executive officer, or may be called by the President or the Secretary of the Corporation at the request in proper form of the holders of not less than ten percent of the combined voting power of the outstanding stock of the Corporation entitled to vote in the election of directors and shall be held at such place, on such date, and at such time as shall be fixed in the notice of the meeting. No business other than that described in the notice of the meeting may be transacted at a special stockholders meeting. To be in proper form, a request by the holders of not less than ten percent of the combined voting power of the outstanding stock of the Corporation entitled to vote in the election of directors, must be in writing to the Secretary of the Corporation, and shall (i) state the purpose or purposes of the proposed meeting and (ii) include all information that is required to be delivered pursuant to Section 3 of these bylaws.]

Section 3. Stockholder's Notice

To be in proper form, a stockholder's notice (whether given pursuant to Section 1 or 2 of Article 1 of these bylaws) to the Secretary must include the following, as applicable:

(1) As to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made, a stockholder's notice must set forth: (i) the name and address of such stockholder, as they appear on the Corporation's books, of such beneficial owner, if any, and of their respective affiliates or associates or others acting in concert therewith, (ii) (A) the class or series and number of shares of the Corporation which are, directly or indirectly, owned beneficially and of record by such stockholder, such beneficial owner and their respective affiliates or associates or others acting in concert therewith, (B) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, any derivative or synthetic arrangement having the characteristics of a long position in any class or series of shares of the Corporation, or any contract, derivative, swap or other transaction or series of transactions designed to produce economic benefits and

risks that correspond substantially to the ownership of any class or series of shares of the Corporation, including due to the fact that the value of such contract, derivative, swap or other transaction or series of transactions is determined by reference to the price, value or volatility of any class or series of shares of the Corporation, whether or not such instrument, contract or right shall be subject to settlement in the underlying class or series of shares of the Corporation, through the delivery of cash or other property, or otherwise, and without regard of whether the stockholder of record, the beneficial owner, if any, or any affiliates or associates or others acting in concert therewith, may have entered into transactions that hedge or mitigate the economic effect of such instrument, contract or right (a "Derivative Instrument") directly or indirectly owned beneficially by such stockholder, the beneficial owner, if any, or any affiliates or associates or others acting in concert therewith and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation, (C) any proxy, contract, arrangement, understanding, or relationship pursuant to which such stockholder has a right to vote any class or series of shares of the Corporation, (D) any agreement, arrangement, understanding, relationship or otherwise, including any repurchase or similar so-called "stock borrowing" agreement or arrangement, engaged in, directly or indirectly, by such stockholder, the purpose or effect of which is to mitigate loss to, reduce the economic risk (of ownership or otherwise) of any class or series of the shares of the Corporation by, manage the risk of share price changes for, or increase or decrease the voting power of, such

stockholder with respect to any class or series of the shares of the Corporation, or which provides, directly or indirectly, the opportunity to profit or share in any profit derived from any decrease in the price or value of any class or series of the shares of the Corporation ("Short Interests"), (E) any rights to dividends on the shares of the Corporation owned beneficially by such stockholder that are separated or separable from the underlying shares of the Corporation, (F) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership or limited liability company in which such stockholder is a general partner or manager or member or, directly or indirectly, beneficially owns an interest in a general partner or manager or member of such general or limited partnership or limited liability company, (G) any performance-related fees (other than an asset-based fee) that such stockholder is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, including without limitation any such interests held by members of such stockholder's immediate family sharing the same household, (H) any significant equity interests or any Derivative Instruments or Short Interests in any principal competitor of the Corporation held by such stockholder, and (I) any direct or indirect interest of such stockholder in any contract with the Corporation, any affiliate of the Corporation or any principal competitor of the Corporation (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement), and (iii) any other information relating to such stockholder and beneficial owner, if any, that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder;

(2) If the notice relates to any business other than a nomination of a director or directors that the stockholder proposes to bring before the meeting, a stockholder's notice must, in addition to the matters set forth in paragraph (a) above, also set forth: (i) a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest of such stockholder and beneficial owner, if any, in such business, (ii) the text of the proposal or business (including the text of any resolutions proposed for consideration), and (iii) a description of all agreements, arrangements and understandings between such stockholder and beneficial owner, if any, and any other person or persons (including their names) in connection with the proposal of such business by such stockholder;

(3) As to each person, if any, whom the stockholder proposes to nominate for election or reelection to the Board of Directors, a stockholder's notice must, in addition to the matters set forth in paragraph (a) above, also set forth: (i) all information relating to such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected) and (ii) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among such stockholder and beneficial owner, if any, and their respective affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand, including, without limitation all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K if the stockholder making the nomination and any beneficial owner on whose behalf the nomination is made, if any, or any affiliate or associate thereof or person acting in concert therewith, were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant; and

(4) The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee.

Section 4. Notice of Meetings.

Written notice of the place, date, and time of all meetings of the stockholders shall be given, not less than ten or more than sixty days before the date on which the meeting is to be held, to each stockholder entitled to vote at such meeting, except as otherwise provided herein or required by law (meaning, here and hereinafter, as required from time to time by the Delaware General Corporation Law or the Certificate of Incorporation of the Corporation).

When a meeting is adjourned to another place, date or time, written notice need not be given of the adjourned meeting if the place, date and time thereof are announced at the meeting at which the adjournment is taken; provided, however, that if the date of any adjourned meeting is more than thirty days after the date for which the meeting was originally noticed, or if a new record date is fixed for the adjourned meeting, written notice of the place, date, and time of the adjourned meeting shall be given in conformity herewith. At any adjourned meeting, any business may be transacted which might have been transacted at the original meeting.

Section 5. Quorum.

At any meeting of the stockholders, the holders of a majority of the combined voting power of all of the shares of the stock entitled to vote at the meeting, present in person or by proxy, shall constitute a quorum for all purposes, unless or except to the extent that the presence of a larger number may be required by law.

If a quorum shall fail to attend any meeting, the chairman of the meeting or the holders of a majority of the shares of stock entitled to vote who are present, in person or by proxy, may adjourn the meeting to another place, date, or time.

If a notice of any adjourned special meeting of stockholders is sent to all stockholders entitled to vote thereat, stating that it will be held with those present constituting a quorum, then except as otherwise required by law, those present at such adjourned meeting shall constitute a quorum, and all matters shall be determined by a majority of the votes cast at such meeting.

Section 6. Organization.

Such person as the Board of Directors may have designated or, in the absence of such a person, the chief executive officer of the Corporation or, in his or her absence, such person as may be chosen by the holders of a majority of the combined voting power of the shares entitled to vote who are present, in person or by proxy, shall call to order any meeting of the stockholders and act as chairman of the meeting. In the absence of the Secretary of the Corporation, the secretary of the meeting shall be such person as the chairman appoints.

Section 7. Conduct of Business.

The chairman of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seem to the chairman to be in order.

Section 8. Proxies and Voting.

At any meeting of the stockholders, every stockholder entitled to vote may vote in person or by proxy authorized by an instrument in writing filed in accordance with the procedure established for the meeting.

Each stockholder shall have one vote for every share of stock entitled to vote which is registered in his or her name on the record date for the meeting, except as otherwise provided in the Corporation's Certificate of Incorporation, these bylaws, or as required by law.

All voting, including on the election of directors but excepting where otherwise required by law, may be by a voice vote; provided, however, that upon demand therefore by a stockholder entitled to vote or his or her proxy, a stock vote shall be taken. Every stock vote shall be taken by ballots, each of which shall state the name of the stockholder or proxy voting and such other information as may be required under the procedure established for the meeting. Every vote taken by ballots shall be counted by an inspector of elections appointed by the chairman of the meeting.

All elections shall be determined by a plurality of the votes cast, and except as otherwise required by law, all other matters shall be determined by a majority of the votes cast.

Section 9. Stock List.

A complete list of stockholders entitled to vote at any meeting of stockholders, arranged in alphabetical order for each class of stock and showing the address of each such stockholder and the number of shares registered in his or her name, shall be open to the examination of any such stockholder, for any purpose germane to the meeting, during ordinary business hours for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or if not so specified, at the place where the meeting is to be held.

The stock list shall also be kept at the place of the meeting during the whole time thereof and shall be open to the examination of any such stockholder who is present. This list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them.

ARTICLE II - BOARD OF DIRECTORS.

Section 1. Number and Term of Office.

The number of directors who shall constitute the whole board shall be such number as the Board of Directors shall at the time have designated, but in no event shall the designated number of directors be less than the minimum number of directors nor more than maximum number of directors specified in the Corporation's Certificate of Incorporation.

Whenever the authorized number of directors is increased between annual meetings of the stockholders, a majority of the directors then in office shall have the power to elect such new directors for the balance of a term and until their successors are elected and qualified. Any decrease in the authorized number of directors shall not become effective until the expiration of the term of the director's then in office unless, at the time of such decrease, there shall be vacancies on the board which are being eliminated by the decrease.

Section 2. Vacancies.

Except as otherwise fixed pursuant to the provisions of the Certificate of Incorporation relating to the rights of the holders of any class or series of stock having a preference over the Corporation's Class A Stock and Class B Stock as to dividends or upon liquidation to elect directors under specified circumstances newly created directorships resulting from any increase in the number of directors and any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other cause shall be filled solely by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum of the Board of Directors. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the class of directors in which the new directorship was created or the vacancy occurred and until such directors successor shall, have been elected and qualified. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

Section 3. Regular Meetings.

Regular meetings of the Board of Directors shall be held at such place or places, on such date or dates, and at such time or times as shall have been established by the Board of Directors and publicized among all directors. A notice of each regular meeting shall not be required.

Section 4. Special Meetings.

Special meetings of the Board of Directors may be called by one-third of the directors then in office (rounded up to the nearest whole number) or by the chief executive officer and shall be held at such place, on such date, and at such time as they or he or she shall fix. Notice of the place, date, and time of each such special meeting shall be given each director by whom it is not waived by mailing written notice not less than five days before the meeting or by telegraphing the same not less than twenty-four hours before the meeting. Unless otherwise indicated in the notice thereof, any and all business may be transacted at a special meeting.

Section 5. Quorum.

At any meeting of the Board of Directors, a majority of the total number of the board then in office shall constitute a quorum for all purposes. If a quorum shall fail to attend any meeting, a majority of those present may adjourn the meeting to another place, date, or time, without further notice or waiver thereof.

Section 6. Participation in Meetings By Conference Telephone.

Members of the Board of Directors, or of any committee thereof, may participate in a meeting of such board or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other and such participation shall constitute presence in person at such meeting.

Section 7. Conduct of Business.

At any meeting of the Board of Directors, business shall be transacted in such order and manner as the board may from time to time determine, and all matters shall be determined by the vote of a majority of the directors present, except as otherwise provided herein or required by law. Action may be taken by the Board of Directors without a meeting if all members thereof consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Directors.

Section 8. Powers.

The Board of Directors may, except as otherwise provided in the Corporation's Certificate of Incorporation, these bylaws, or as required by law, exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, including, without limiting the generality of the foregoing, the unqualified power:

- (1) To declare dividends from time to time in accordance with law;
 - (2) To purchase or otherwise acquire any property, rights or privileges on such terms as it shall determine;
 - (3) To authorize the creation, making and issuance, in such form as it may determine, of written obligations of every kind, negotiable or non-negotiable, secured or unsecured, and to do all things necessary in connection therewith;
 - (4) To remove any officer of the Corporation with or without cause, and from time to time to devolve the powers and duties of any officer upon any other person from the time being;
-
- (5) To confer upon any officer of the Corporation the power to appoint, remove and suspend subordinate officers, employees and agents;
 - (6) To adopt from time to time such stock, option, stock purchase, bonus or other compensation plans for directors, officers, employees and agents of the Corporation and its subsidiaries as it may determine;
 - (7) To adopt from time to time such insurance, retirement, and other benefit plans for directors, officers, employees and agents of the Corporation and its subsidiaries as it may determine; and,
 - (8) To adopt from time to time regulations, not inconsistent with the Certificate of Incorporation, these bylaws, or applicable law, for the management of the Corporation's business and affairs.

Section 9. Compensation of Directors.

Directors, as such, may receive, pursuant to resolution of the Board of Directors, fixed fees and other compensation for their services as directors, including, without limitation, their services as members of committees of the Board of Directors.

ARTICLE III - COMMITTEES

Section 1. Committees of the Board of Directors.

The Board of Directors, by a vote of a majority of the whole board, may from time to time designate committees of the board, with such lawfully delegable powers and duties as it thereby confers, to serve at the pleasure of the board and shall, for those committees and any others provided for herein, elect a director or directors to serve as the member or members, designating, if it desires, other directors as alternate members who may replace any absent or disqualified member at any meeting of the committee. Any committee so designated may exercise the power and authority of the Board of Directors to declare a dividend or to authorize the issuance of stock if the resolution which designates the committee or a supplemental resolution of the Board of Directors shall so provide. In the absence or disqualification of any member of any committee and any alternate member in his or her place, the member or

members of the committee present at the meeting and not disqualified from voting, whether or not he or she or they constitute a quorum, may by unanimous vote appoint another member of the Board of Directors to act at the meeting in the place of the absent or disqualified member.

Section 2. Conduct of Business.

Each committee may determine the procedural rules for meeting and conducting its business and shall act in accordance therewith, except as otherwise provided herein or required by law. Adequate provision shall be made for notice to members of all meetings; the greater of (i) one-third of the members of the committee or (ii) two of the members shall constitute a quorum, unless the committee shall consist of one member, in which event one member shall constitute a quorum; and all matters shall be determined by a majority vote of the members present. Action may be taken by any committee without a meeting if all members thereof consent thereto in writing, and the writing or writings are filed with the minutes of the proceedings of such committee.

ARTICLE IV - OFFICERS.

Section 1. Generally.

The officers of the Corporation shall consist of a President, one or more Vice Presidents, a Secretary, a Chief Financial Officer and such other officers as may from time to time be appointed by the Board of Directors. Officers shall be elected by the Board of Directors, which shall consider that subject at its first meeting after every annual meeting of stockholders. Each officer shall hold office until his or her successor is

elected and qualified or until his or her earlier resignation or removal. The President shall be a member of the Board of Directors. Any number of offices may be held by the same person.

Section 2. President.

The President shall be the chief executive officer of the Corporation. Subject to the provisions of these bylaws and to the direction of the Board of Directors, he or she shall have the responsibility for the general management and control of the business and affairs of the Corporation and shall perform all duties and have all powers which are commonly incident to the office of chief executive or which are delegated to him or her by the Board of Directors. He or she shall have power to sign all stock certificates, contracts and other instruments of the Corporation which are authorized and shall have general supervision and direction of all of the other officers, employees and agents of the Corporation.

Section 3. Vice President.

Each Vice President shall have such powers and duties as may be delegated to him or her by the Board of Directors. One Vice President shall be designated by the board to perform the duties and exercise the powers of the President in the event of the President's absence or disability.

Section 4. Chief Financial Officer.

The Chief Financial Officer shall have the responsibility for maintaining the financial records of the Corporation and shall have custody of all monies and securities of the Corporation. He or she shall make such disbursements of the funds of the Corporation as are authorized and shall render from time to time an account of all such transactions and of the financial condition of the Corporation. The Chief Financial Officer shall also perform such other duties as the Board of Directors may from time to time prescribe.

Section 5. Secretary.

The Secretary shall issue all authorized notices for, and shall keep minutes of, all meetings of the stockholders and the Board of Directors. He or she shall have charge of the corporate books and shall perform such other duties as the Board of Directors may from time to time prescribe.

Section 6. Delegation of Authority.

The Board of Directors may from time to time delegate the powers or duties of any officer to any other officers or agents, notwithstanding any provision hereof.

Section 7. Removal.

Any officer of the Corporation may be removed at any time, with or without cause, by the Board of Directors.

Section 8. Action with Respect to Securities of other Corporations.

Unless otherwise directed by the Board of Directors, the President or any officer of the Corporation authorized by the President shall have power to vote and otherwise act on behalf of the Corporation, in person or by proxy, at any meeting of stockholders of or with respect to any action of stockholders of any other corporation in which this Corporation may hold securities and otherwise to exercise any and all rights and powers which this Corporation may possess by reason of its ownership of securities in such other corporation.

ARTICLE V - STOCK

Section 1. Certificates of Stock.

Each stockholder shall be entitled to a certificate signed by, or in the name of the Corporation by, the President or a Vice President, and by the Secretary or an Assistant Secretary, or the treasurer or an assistant treasurer, certifying the number of shares owned by him or her. Any of or all the signatures

on the certificate may be facsimile.

Section 2. Transfers of Stock.

Transfers of stock shall be made only upon the transfer books of the Corporation kept at an office of the Corporation or by transfer agents designated to transfer shares of the stock of the Corporation. Except where a certificate is issued in accordance with Section 4 of Article V of these bylaws, an outstanding certificate for the number of shares involved shall be surrendered for cancellation before a new certificate is issued therefor.

Section 3. Record Date.

The Board of Directors may fix a record date, which shall not be more than sixty nor less than ten days before the date of any meeting of stockholders, nor more than sixty days prior to the time for the other action hereinafter described, as of which there shall be determined the stockholders who are entitled: to notice of or to vote at any meeting of stockholders or any adjournment thereof; to express consent to corporate action in writing without a meeting; to receive payment of any dividend or other distribution or allotment of any rights; or to exercise any rights with respect to any change, conversion or exchange of stock or with respect to any other lawful action.

Section 4. Lost, Stolen or Destroyed Certificates.

In the event of the loss, theft or destruction of any certificate of stock, another may be issued in its place pursuant to such regulations as the Board of Directors may establish concerning proof of such loss, theft or destruction and concerning the giving of a satisfactory bond or bonds of indemnity.

Section 5. Regulations.

The issue, transfer, conversion and registration of certificates of stock shall be governed by such other regulations as the Board of Directors may establish.

ARTICLE VI - NOTICES.

Section 1. Notices.

Except as otherwise specifically provided in the Certificate of Incorporation, these bylaws, or required by law, all notices required to be given to any stockholder, director, officer, employee or agent shall be in writing and may in every instance be effectively given by hand delivery to the recipient thereof, by depositing such notice in the mails, postage paid, or by sending such notice by prepaid telegram or mailgram. Any such notice shall be addressed to such stockholder, director, officer, employee or agent at his or her last known address as the same appears on the books of the Corporation. The time when such notice is received, if hand delivered, or dispatched, if delivered through the mails or by telegram or mailgram, shall be the time of the giving of the notice.

Section 2. Waivers.

A written waiver of any notice, signed by a stockholder, director, officer, employee or agent, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such stockholder, director, officer, employee or agent. Neither the business nor the purpose of any meeting need be specified in such a waiver.

ARTICLE VII - MISCELLANEOUS

Section 1. Facsimile Signatures.

In addition to the provisions for use of facsimile signatures elsewhere specifically authorized in these bylaws, facsimile signatures of any officer or officers of the Corporation may be used whenever and as authorized by the Board of Directors or a committee thereof.

Section 2. Corporate Seal.

The Board of Directors may provide a suitable seal, containing the name of the Corporation, which seal shall be in the charge of the Secretary. If and when so directed by the Board of Directors or a committee thereof, duplicates of the seal may be kept and used by the Chief Financial Officer or by an Assistant Secretary or the treasurer.

Section 3. Reliance upon Books, Reports and Records.

Each director, each member of any committee designated by the Board of Directors, and each officer of the Corporation shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation, including reports made to the Corporation by any of its officers, by an independent certified public accountant, or by an appraiser selected with reasonable care.

Section 4. Fiscal Year.

The fiscal year of the Corporation shall be as fixed by the Board of Directors.

Section 5. Time Periods.

In applying any provision of these bylaws which require that an act be done or not done a specified number of days prior to an event or that an act be done during a period of a specified number of days prior to an event, calendar days shall be used, the day of the doing of the act shall be excluded, and the day of the event shall be included.

ARTICLE VIII - INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 1. Scope of Indemnification.

The Corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that such person is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding to the fullest extent permitted by Delaware law.

Section 2. Advance of Expenses.

Expenses (including attorneys' fees) incurred by a director, officer, employee or agent in defending any civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such matter, if such director, officer, employee or agent shall undertake in writing to repay any such advances in the event that it is ultimately determined that he is not entitled to indemnification.

Section 3. Other Rights and Remedies.

The indemnification and advancement of expenses provided by, or granted pursuant to, the other subsections of this Article shall not be deemed exclusive of any other rights to which those seeking

indemnification or advancement of expenses may be entitled under any Bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office.

Section 4. Continuation of Indemnification and Advancement of Expenses.

The indemnification and advancement of expenses provided by, or granted pursuant to, this Article shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 5. Insurance.

Upon resolution passed by the Board, the Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any capacity, or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of this Article.

ARTICLE IX - AMENDMENTS

These bylaws may be amended or repealed only by the affirmative vote of a majority of the Board of Directors at any meeting thereof or by the affirmative vote of the holders of at least 66 2/3% of the combined voting power of the outstanding shares of the Corporation entitled to vote thereon at any meeting.

COMPUTATION OF RATIO OF EARNINGS TO FIXED CHARGES
(in thousands, except ratios)

	Three months ended March 31, 2009	Year ended,				
		12/31/08	12/31/07	12/31/06	12/31/05	12/31/04
Pre-tax income from continuing operations	\$ 63,241	\$ 192,084	\$ 206,344	\$ 159,906	\$ 150,289	\$ 89,518
Interest expense	10,865	26,209	17,287	10,247	6,048	2,067
Capitalized interest	5,312	23,209	18,104	9,339	—	—
Earnings	\$ 74,106	\$ 218,293	\$ 233,631	\$ 170,153	\$ 156,337	\$ 91,585
Ratio of earnings to fixed charges	4.6	4.4	6.3	8.7	25.8	44.3

For purposes of this table, "earnings" consists of income before income from continuing operations taxes plus fixed charges and less capitalized interest. "Fixed charges" consists of interest expense and capitalized interest (for both continuing and discontinued operations).