

Chap. 05.1–8 CONSOLIDATED
FINANCIAL STATEMENTS



Employee TOBY JONES
Job Title DIRECTOR OF MARKETING ASIA-PACIFIC
Age 50 YEARS
Nationality AUSTRALIAN
Joined IN JULY 2003

WHY DOES QUALITY MAKE BUSINESS SENSE?

"Quality ensures that we deliver the best products and services to our customers. They can rely on Fresenius Medical Care to fulfil this promise every day. And that is why we are the leading provider in the field of dialysis – with all the economic benefits that this market position entails." *living* CONFIDENCE

<u>Chap. 05.1</u>	<u>CONSOLIDATED STATEMENTS OF INCOME</u>	<u>p. 43</u>
<u>Chap. 05.2</u>	<u>CONSOLIDATED BALANCE SHEETS</u>	<u>p. 44</u>
<u>Chap. 05.3</u>	<u>CONSOLIDATED STATEMENTS OF CASH FLOWS</u>	<u>p. 46</u>
<u>Chap. 05.4</u>	<u>CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY</u>	<u>p. 48</u>
<u>Chap. 05.5</u>	<u>NOTES TO CONSOLIDATED FINANCIAL STATEMENTS</u>	<u>p. 50</u>
	1. The Company, Basis of Presentation and Summary of Significant Accounting Policies	50
	2. Acquisitions	58
	3. Related Party Transactions	59
	4. Inventories	61
	5. Property, Plant and Equipment	62
	6. Intangible Assets and Goodwill	64
	7. Accrued Expenses and Other Current Liabilities	68
	8. Short-term Borrowings, Other Financial Liabilities and Short-term Borrowings from Related Parties	69
	9. Long-term Debt and Capital Lease Obligations	70
	10. Employee Benefit Plans	75
	11. Mandatorily Redeemable Trust Preferred Securities	80
	12. Minority Interests	82
	13. Shareholders' Equity	82
	14. Earnings Per Share	85
	15. Stock Options	85
	16. Income Taxes	90
	17. Operating Leases	95
	18. Legal Proceedings	95
	19. Fair Value Measures	102
	20. Market Risk	104
	21. Other Comprehensive Income (Loss)	107
	22. Business Segment Information	107
	23. Supplementary Cash Flow Information	109
<u>Chap. 05.6</u>	<u>MANAGEMENT'S ANNUAL REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING</u>	<u>p. 110</u>
<u>Chap. 05.7</u>	<u>REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM</u>	<u>p. 112</u>
<u>Chap. 05.8</u>	<u>AUDITORS' REPORT: REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM</u>	<u>p. 114</u>

05.1 CONSOLIDATED STATEMENTS OF INCOME

Table 05.1.1 CONSOLIDATED STATEMENTS OF INCOME

\$ in thousands, except share data

	Note	2008	2007
Net revenue			
Dialysis care	11	7,737,498	7,213,000
Dialysis products		2,874,825	2,507,314
TOTAL	22	10,612,323	9,720,314
Costs of revenue			
Dialysis care		5,547,615	5,130,287
Dialysis products		1,435,860	1,234,232
TOTAL		6,983,475	6,364,519
Gross profit		3,628,848	3,355,795
Operating expenses			
Selling, general and administrative		1,876,177	1,709,150
Research and development	11	80,239	66,523
OPERATING INCOME		1,672,432	1,580,122
Other (income) expense			
Interest income		(24,811)	(28,588)
Interest expense		361,553	399,635
Income before income taxes and minority interest		1,335,690	1,209,075
Income tax expense	1K, 16	489,142	465,652
Minority interest		28,941	26,293
NET INCOME		817,607	717,130
BASIC INCOME PER ORDINARY SHARE			
		2.75	2.43
FULLY DILUTED INCOME PER ORDINARY SHARE			
		2.75	2.42

See accompanying notes to consolidated financial statements.

05.2 CONSOLIDATED BALANCE SHEETS

Table 05.2.1 CONSOLIDATED BALANCE SHEETS

\$ in thousands, except share data, at December 31

	Note	2008	2007
Assets			
Current assets			
Cash and cash equivalents	1B	221,584	244,690
Trade accounts receivable, less allowance for doubtful accounts of \$262,836 in 2008 and \$247,800 in 2007		2,176,316	2,026,865
Accounts receivable from related parties		175,525	99,626
Inventories	4	707,050	636,234
Prepaid expenses and other current assets		607,399	495,630
Deferred taxes	1K, 16	324,123	356,427
TOTAL CURRENT ASSETS		4,211,997	3,859,472
Property, plant and equipment, net	1E, 5	2,236,078	2,053,793
Intangible assets	1F, 6	846,496	689,956
Goodwill	1F, 6	7,309,910	7,245,589
Deferred taxes	1K, 16	92,805	83,615
Other assets		222,390	237,840
TOTAL ASSETS		14,919,676	14,170,265

See accompanying notes to consolidated financial statements.

Table 05.2.2 | CONSOLIDATED BALANCE SHEETS

\$ in thousands, except share data, at December 31

	Note	2008	2007
Liabilities and shareholders' equity			
Current liabilities			
Accounts payable		366,017	329,919
Accounts payable to related parties		239,243	201,049
Accrued expenses and other current liabilities	7	1,288,433	1,352,013
Short-term borrowings and other financial liabilities	8	683,155	217,497
Short-term borrowings from related parties	8	1,330	2,287
Current portion of long-term debt and capital lease obligations	9	455,114	84,816
Company-obligated mandatorily redeemable preferred securities of subsidiary Fresenius Medical Care Capital Trusts holding solely			
Company-guaranteed debentures of subsidiaries – current portion	11	–	669,787
Income tax payable	1K, 16	82,468	146,536
Deferred taxes	1K, 16	28,652	22,589
TOTAL CURRENT LIABILITIES		3,144,412	3,026,493
Long-term debt and capital lease obligations, less current portion	9	3,957,379	4,004,013
Other liabilities		319,602	193,604
Pension liabilities	10	136,755	111,352
Income tax payable	1K, 16	171,747	111,280
Deferred taxes	1K, 16	426,299	378,497
Company-obligated mandatorily redeemable preferred securities of subsidiary Fresenius Medical Care Capital Trusts holding solely			
Company-guaranteed debentures of subsidiaries	11	640,696	663,995
Minority interest		160,504	105,814
TOTAL LIABILITIES		8,957,394	8,595,048
Shareholders' equity			
Preference shares, no par value, € 1.00 nominal value, 12,356,880 shares authorized, 3,810,540 issued and outstanding		4,240	4,191
Ordinary shares, no par value, € 1.00 nominal value 373,436,220 shares authorized, 293,932,036 issued and outstanding		363,076	361,384
Additional paid-in capital		3,293,918	3,221,644
Retained earnings		2,452,332	1,887,120
Accumulated other comprehensive (loss) income	21	(151,284)	100,878
TOTAL SHAREHOLDERS' EQUITY	13	5,962,282	5,575,217
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY		14,919,676	14,170,265

See accompanying notes to consolidated financial statements.

05.3 CONSOLIDATED STATEMENTS OF CASH FLOWS

Table 05.3.1 CONSOLIDATED STATEMENTS OF CASH FLOWS

\$ in thousands

	Note	2008	2007
Operating activities			
Net income		817,607	717,130
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	22	415,671	363,330
Change in minority interest		59,555	43,237
Change in deferred taxes, net		133,047	1,177
(Gain) Loss on sale of fixed assets and investments		(21,064)	3,616
Compensation expense related to stock options	17, 15	31,879	24,208
Changes in assets and liabilities, net of amounts from businesses acquired:			
Trade accounts receivable, net		(241,967)	(62,735)
Inventories	4	(94,112)	(72,825)
Prepaid expenses, other current and non-current assets		(101,263)	(11,680)
Accounts receivable from/payable to related parties		32,252	(22,265)
Accounts payable, accrued expenses and other current and non-current liabilities		(17,040)	113,960
Income tax payable	1K, 16	1,833	102,421
NET CASH PROVIDED BY OPERATING ACTIVITIES		1,016,398	1,199,574

See accompanying notes to consolidated financial statements.

Table 05.3.2 CONSOLIDATED STATEMENTS OF CASH FLOWS

\$ in thousands

	Note	2008	2007
Investing activities			
Purchases of property, plant and equipment	1E, 5, 22	(687,356)	(572,721)
Proceeds from sale of property, plant and equipment	1E, 5, 22	13,846	29,668
Acquisitions and investments, net of cash acquired, and net purchases of intangible assets	22, 23	(276,473)	(263,395)
Proceeds from divestitures		58,582	29,495
NET CASH USED IN INVESTING ACTIVITIES		(891,401)	(776,953)
Financing activities			
Proceeds from short-term borrowings and other financial liabilities	8	176,104	96,995
Repayments of short-term borrowings and other financial liabilities	8	(183,210)	(107,793)
Proceeds from short-term borrowings from related parties	8	168,641	43,554
Repayments of short-term borrowings from related parties	8	(169,573)	(46,071)
Proceeds from long-term debt and capital lease obligations (net of debt issuance costs of \$ 16,703 in 2007)	9	458,951	516,762
Repayments of long-term debt and capital lease obligations		(135,492)	(486,513)
Redemption of trust preferred securities		(678,379)	-
Increase of accounts receivable securitization program		454,000	(181,000)
Proceeds from exercise of stock options	15	43,887	46,934
Repurchase of preferred stock		-	(7,660)
Dividends paid	13	(252,395)	(188,407)
Distributions to minority interest		(38,592)	(27,469)
NET CASH USED IN FINANCING ACTIVITIES		(156,058)	(340,668)
EFFECT OF EXCHANGE RATE CHANGES ON CASH AND CASH EQUIVALENTS		7,955	3,727
Cash and cash equivalents			
Net (decrease) increase in cash and cash equivalents		(23,106)	85,680
Cash and cash equivalents at beginning of period		244,690	159,010
CASH AND CASH EQUIVALENTS AT END OF PERIOD		221,584	244,690

See accompanying notes to consolidated financial statements.

05.4 CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY

Table 05.4.1 CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY

\$ in thousands

	Note	Preference shares		Ordinary shares	
		Number of shares	No par value	Number of shares	No par value
BALANCE AT DECEMBER 31, 2006		3,711,435	4,098	291,449,673	359,527
Proceeds from exercise of options and related tax effects	15	66,652	93	1,336,910	1,857
Compensation expense related to stock options	15	–	–	–	–
Dividends paid	13	–	–	–	–
Comprehensive income (loss)					
Net income		–	–	–	–
Other comprehensive income (loss) related to:					
Cash flow hedges, net of related tax effects	21	–	–	–	–
Foreign currency translation	21	–	–	–	–
Adjustments relating to pension obligations, net of related tax effects	10, 21	–	–	–	–
Comprehensive Income		–	–	–	–
BALANCE AT DECEMBER 31, 2007		3,778,087	4,191	292,786,583	361,384
Proceeds from exercise of options and related tax effects	15	32,453	49	1,145,453	1,692
Compensation expense related to stock options	15	–	–	–	–
Dividends paid	13	–	–	–	–
Comprehensive income (loss)					
Net income		–	–	–	–
Other comprehensive income (loss) related to:					
Cash flow hedges, net of related tax effects	21	–	–	–	–
Foreign currency translation	21	–	–	–	–
Adjustments relating to pension obligations, net of related tax effects	10, 21	–	–	–	–
Comprehensive Income		–	–	–	–
BALANCE AT DECEMBER 31, 2008		3,810,540	4,240	293,932,036	363,076

See accompanying notes to consolidated financial statements.

Table 05.4.2 CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY

	Note	Additional paid in capital	Retained earnings	Accumulated other comprehensive income (loss)			Total
				Foreign currency translation	Cash flow hedges	Pensions	
BALANCE AT DECEMBER 31, 2006		3,153,556	1,358,397	8,309	37,187	(50,912)	4,870,162
Proceeds from exercise of options and related tax effects	15	43,880	—	—	—	—	45,830
Compensation expense related to stock options	15	24,208	—	—	—	—	24,208
Dividends paid	13	—	(188,407)	—	—	—	(188,407)
Comprehensive income (loss)							
Net income		—	717,130	—	—	—	717,130
Other comprehensive income (loss) related to:							
Cash flow hedges, net of related tax effects	21	—	—	—	(54,053)	—	(54,053)
Foreign currency translation	21	—	—	137,048	—	—	137,048
Adjustments relating to pension obligations, net of related tax effects	10, 21	—	—	—	—	23,299	23,299
Comprehensive Income		—	—	—	—	—	823,424
BALANCE AT DECEMBER 31, 2007		3,221,644	1,887,120	145,357	(16,866)	(27,613)	5,575,217
Proceeds from exercise of options and related tax effects	15	40,395	—	—	—	—	42,136
Compensation expense related to stock options	15	31,879	—	—	—	—	31,879
Dividends paid	13	—	(252,395)	—	—	—	(252,395)
Comprehensive income (loss)							
Net income		—	817,607	—	—	—	817,607
Other comprehensive income (loss) related to:							
Cash flow hedges, net of related tax effects	21	—	—	—	(65,180)	—	(65,180)
Foreign currency translation	21	—	—	(171,063)	—	—	(171,063)
Adjustments relating to pension obligations, net of related tax effects	10, 21	—	—	—	—	(15,919)	(15,919)
Comprehensive Income		—	—	—	—	—	565,445
BALANCE AT DECEMBER 31, 2008		3,293,918	2,452,332	(25,706)	(82,046)	(43,532)	5,962,282

See accompanying notes to consolidated financial statements.

05.5 NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

In thousands, except share data

1. THE COMPANY, BASIS OF PRESENTATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

THE COMPANY

Fresenius Medical Care AG & Co. KGaA ("FMC-AG & Co. KGaA" or the "Company", "we", "us" or "our" and together with its subsidiaries on a consolidated basis, as the context requires), a German partnership limited by shares (Kommanditgesellschaft auf Aktien), is the world's largest kidney dialysis company, operating in both the field of dialysis services and the field of dialysis products for the treatment of end-stage renal disease ("ESRD"). The Company's dialysis business is vertically integrated, providing dialysis treatment at dialysis clinics it owns or operates and supplying these clinics with a broad range of products. In addition, the Company sells dialysis products to other dialysis service providers. In the United States, the Company also performs clinical laboratory testing and provides inpatient dialysis services and other services under contract to hospitals.

BASIS OF PRESENTATION

The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP").

SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

A) PRINCIPLES OF CONSOLIDATION. The consolidated financial statements include all companies in which the Company has legal or effective control. In addition, the Company consolidates variable interest entities ("VIEs") for which it is deemed the primary beneficiary. The equity method of accounting is used for investments in associated companies (20% to 50% owned). Minority interest represents the proportionate equity interests of owners in the Company's consolidated entities that are not wholly owned. All significant intercompany transactions and balances have been eliminated.

The Company entered into various arrangements with certain dialysis clinics to provide management services, financing and product supply. A group of these clinics has negative equity and are unable to provide their own funding, therefore the Company has agreed to fund their operations for at least a six year period. The funding carries no interest but the Company is entitled to a pro rata share of profits, if any, and has a right of first refusal in the event the owners sell the business or assets. These clinics are VIEs in which the Company has been determined to be the primary beneficiary and which therefore have been fully consolidated. They generated approximately \$88,508 and \$79,164 in revenue in 2008 and 2007, respectively. The following table shows the carrying amounts of the assets and liabilities of these VIEs:

Table 05.5.1 CARRYING AMOUNTS VIE

\$ in thousands

Trade accounts receivable, net	22,207
Other current assets	7,308
Property, plant and equipment, intangible assets & other non-current assets	6,466
Goodwill	13,992
Accounts payable, accrued expenses and other liabilities	(19,306)
Non-current loans to related parties	(10,086)
Equity	(20,581)

B) CASH AND CASH EQUIVALENTS. Cash and cash equivalents comprise cash funds and all short-term, liquid investments with original maturities of up to three months.

C) ALLOWANCE FOR DOUBTFUL ACCOUNTS. Estimates for the allowances for accounts receivable from the dialysis care business are based mainly on past collection history. Specifically, the allowances for the North American services division are based on an analysis of collection experience, recognizing the differences between payors and aging of accounts receivable. From time to time, accounts receivable are reviewed for changes from the historic collection experience to ensure the appropriateness of the allowances. The allowances in the International Segment and the products business are based on estimates and consider various factors, including aging, debtor and past collection history.

D) INVENTORIES. Inventories are stated at the lower of cost (determined by using the average or first-in, first-out method) or market value (*see Note 4*). Costs included in inventories are based on invoiced costs and/or production costs as applicable. Included in production costs are material, direct labor and production overhead, including depreciation charges.

E) PROPERTY, PLANT AND EQUIPMENT. Property, plant, and equipment are stated at cost less accumulated depreciation (*see Note 5*). Significant improvements are capitalized; repairs and maintenance costs that do not extend the useful lives of the assets are charged to expense as incurred. Property and equipment under capital leases are stated at the present value of future minimum lease payments at the inception of the lease, less accumulated depreciation. Depreciation on property, plant and equipment is calculated using the straight-line method over the estimated useful lives of the assets ranging from 5 to 50 years for buildings and improvements with a weighted average life of 12 years and 3 to 15 years for machinery and equipment with a weighted average life of 10 years. Equipment held under capital leases and leasehold improvements are amortized using the straight-line method over the shorter of the lease term or the estimated useful life of the asset. Internal use platform software that is integral to the computer equipment it supports is included in property, plant and equipment. The Company capitalizes interest on borrowed funds during construction periods. Interest capitalized during 2008 and 2007 was \$8,723 and \$5,323, respectively.

F) **INTANGIBLE ASSETS AND GOODWILL.** Intangible assets such as non-compete agreements, technology, distribution rights, patents, licenses to treat, licenses to manufacture, distribute and sell pharmaceutical drugs, trade names, management contracts, application software, acute care agreements, lease agreements, and licenses acquired in a purchase method business combination are recognized and reported apart from goodwill (*see Note 6*).

Goodwill and identifiable intangibles with indefinite useful lives are not amortized but tested for impairment annually or when an event becomes known that could trigger an impairment. The Company identified trade names and certain qualified management contracts as intangible assets with indefinite useful lives. Intangible assets with finite useful lives are amortized over their respective useful lives to their residual values. The Company amortizes non-compete agreements over their average useful life of 8 years. Technology is amortized over its useful life of 15 years. Licenses to manufacture, distribute and sell pharmaceutical drugs are amortized over their average useful life of 10 years. The u.s. intravenous iron products distribution and manufacturing agreement is amortized over its 10 year contractual license period based upon the annual estimated units of sale of the licensed product. All other intangible assets are amortized over their weighted average useful lives of 6 years. The average useful life of all amortizable intangible assets is 8 years. Intangible assets with finite useful lives are evaluated for impairment when events have occurred that may give rise to an impairment.

To perform the annual impairment test of goodwill, the Company identified its reporting units and determined their carrying value by assigning the assets and liabilities, including the existing goodwill and intangible assets, to those reporting units. In a first step, the Company compares the fair value of each reporting unit to the reporting unit's carrying amount. Fair value is determined using a discounted cash flow approach based upon the cash flow expected to be generated by the reporting unit.

In the case that the fair value of the reporting unit is less than its book value, a second step is performed which compares the fair value of the reporting unit's goodwill to the carrying value of its goodwill. If the fair value of the goodwill is less than the book value, the difference is recorded as an impairment.

To evaluate the recoverability of intangible assets with indefinite useful lives, the Company compares the fair values of intangible assets with their carrying values. An intangible asset's fair value is determined using a discounted cash flow approach or other methods, if appropriate.

G) DERIVATIVE FINANCIAL INSTRUMENTS. Derivative financial instruments which primarily include foreign currency forward contracts and interest rate swaps are recognized as assets or liabilities at fair value in the balance sheet (*see Note 19*). Changes in the fair value of derivative financial instruments classified as fair value hedges and in the corresponding underlyings are recognized periodically in earnings. The effective portion of changes in fair value of cash flow hedges is recognized in accumulated other comprehensive income (loss) in shareholders' equity. The ineffective portion of cash flow hedges is recognized in earnings immediately.

H) FOREIGN CURRENCY TRANSLATION. For purposes of these consolidated financial statements, the u.s. dollar is the reporting currency. Substantially all assets and liabilities of the parent company and all non-u.s. subsidiaries are translated at year-end exchange rates, while revenues and expenses are translated at average exchange rates. Adjustments for foreign currency translation fluctuations are excluded from net earnings and are reported in accumulated other comprehensive income (loss). In addition, the translation adjustments of certain intercompany borrowings, which are considered foreign equity investments, are reported in accumulated other comprehensive income (loss).

I) REVENUE RECOGNITION POLICY. Dialysis care revenues are recognized on the date services and related products are provided and the payor is obligated to pay at amounts estimated to be received under reimbursement arrangements with third party payors. Medicare and Medicaid in North America and programs involving other government payors in the International Segment are billed at pre-determined rates per treatment that are established by statute or regulation. Most non-governmental payors are billed at our standard rates for services net of contractual allowances to reflect the estimated amounts to be received under reimbursement arrangements with these payors.

Dialysis product revenues are recognized when title to the product passes to the customers either at the time of shipment, upon receipt by the customer or upon any other terms that clearly define passage of title. As product returns are not typical, no return allowances are established. In the event a return is required, the appropriate reductions to sales, accounts receivables and cost of sales are made. Sales are stated net of discounts and rebates.

A minor portion of International Segment product revenues is generated from arrangements which give the customer, typically a health care provider, the right to use dialysis machines. In the same contract the customer agrees to purchase the related treatment disposables at a price marked up from the standard price list. FMC-AG & Co. KGaA does not recognize revenue upon delivery of the dialysis machine but recognizes revenue, including the mark-up, on the sale of disposables.

Any tax assessed by a governmental authority that is incurred as a result of a revenue transaction (e.g. sales tax) is excluded from revenues and reported on a net basis.

J) RESEARCH AND DEVELOPMENT EXPENSES. Research and development expenses are expensed as incurred.

K) INCOME TAXES. The Company adopted FASB Interpretation No. 48 ("FIN 48"), Accounting for Uncertainty in Income Taxes – an interpretation of FASB Statement No. 109 Accounting for Income Taxes ("FAS 109") as of January 1, 2007. Deferred tax assets and liabilities are recognized for the future consequences attributable to temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis as well as on consolidation procedures affecting net income and tax loss carryforwards which are more likely than not to be utilized. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. A valuation allowance is recorded to reduce the carrying amount of the deferred tax assets unless it is more likely than not that such assets will be realized (*see Note 16*).

It is the Company's policy to recognize interest and penalties related to its tax positions as income tax expense.

L) IMPAIRMENT. The Company reviews the carrying value of its long-lived assets or asset groups with definite useful lives to be held and used for impairment whenever events or changes in circumstances indicate that the carrying value of these assets may not be recoverable. Recoverability of these assets is measured by a comparison of the carrying value of an asset to the future net cash flows directly associated with the asset. If assets are considered to be impaired, the impairment recognized is the amount by which the carrying value exceeds the fair value of the asset. The Company uses a discounted cash flow approach or other methods, if appropriate, to assess fair value.

Long-lived assets to be disposed of by sale are reported at the lower of carrying value or fair value less cost to sell and depreciation is ceased. Long-lived assets to be disposed of other than by sale are considered to be held and used until disposal.

M) DEBT ISSUANCE COSTS. Costs related to the issuance of debt are amortized over the term of the related obligation (*see Note 9*).

N) SELF-INSURANCE PROGRAMS. Under the insurance programs for professional, product and general liability, auto liability and worker's compensation claims, the Company's largest subsidiary is partially self-insured for professional liability claims. For all other coverages, the Company assumes responsibility for incurred claims up to predetermined amounts above which third party insurance applies. Reported liabilities for the year represent estimated future payments of the anticipated expense for claims incurred (both reported and incurred but not reported) based on historical experience and existing claim activity. This experience includes both the rate of claims incidence (number) and claim severity (cost) and is combined with individual claim expectations to estimate the reported amounts.

O) USE OF ESTIMATES. The preparation of consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

P) CONCENTRATION OF RISK. The Company is engaged in the manufacture and sale of products for all forms of kidney dialysis, principally to health care providers throughout the world, and in providing kidney dialysis treatment, clinical laboratory testing, and other medical ancillary services. The Company performs ongoing evaluations of its customers' financial condition and, generally, requires no collateral.

Approximately 35% and 36% of the Company's worldwide revenues were earned and subject to regulations under governmental health care programs, Medicare and Medicaid, administered by the United States government in 2008 and 2007, respectively. (*See Note 4* for concentration of supplier risks.)

Q) LEGAL CONTINGENCIES. From time to time, during the ordinary course of the Company's operations, the Company is party to litigation and arbitration and is subject to investigations relating to various aspects of its business (*see Note 17*). The Company regularly analyzes current information about such claims for probable losses and provides accruals for such matters, including the estimated legal expenses and consulting services in connection with these matters, as appropriate. The Company utilizes its internal legal department as well as external resources for these assessments. In making the decision regarding the need for loss accrual, the Company considers the degree of probability of an unfavorable outcome and its ability to make a reasonable estimate of the amount of loss.

The filing of a suit or formal assertion of a claim or assessment, or the disclosure of any such suit or assertion, does not necessarily indicate that accrual of a loss is appropriate.

R) EARNINGS PER ORDINARY SHARE AND PREFERENCE SHARE. Basic earnings per ordinary share and basic earnings per preference share for all years presented have been calculated using the two-class method required under U.S. GAAP based upon the weighted average number of ordinary and preference shares outstanding. Basic earnings per share is computed by dividing net income less preference amounts by the weighted average number of ordinary shares and preference shares outstanding during the year. Basic earnings per preference share is derived by adding the preference per preference share to the basic earnings per share. Diluted earnings per share include the effect of all potentially dilutive instruments on ordinary shares and preference shares that would have been outstanding during the year.

The awards granted under the Company's stock incentive plans (*see Note 15*), are potentially dilutive equity instruments.

S) EMPLOYEE BENEFIT PLANS. As of December 31, 2006, the Company adopted the recognition provisions of FASB Statement No. 158, Employer's Accounting for Defined Benefit Pension and Other Postretirement Plans – an amendment of FASB Statements No. 87, 88, 106, and 132(R) ("FAS 158"). The Company recognized the underfunded status of its defined benefit plans, measured as the difference between plan assets at fair value and the benefit obligation, as a liability. Changes in the funded status of a plan, net of tax, resulting from actuarial gains or losses and prior service costs or credits that are not recognized as components of the net periodic benefit cost will be recognized through accumulated other comprehensive income in the year in which they occur. Actuarial gains or losses and prior service costs are subsequently recognized as components of net periodic benefit cost pursuant to the recognition and amortization provisions of those standards. The Company uses December 31 as the measurement date when measuring the funded status of all plans.

T) STOCK OPTION PLANS. Effective January 1, 2006, the Company adopted the provisions of FASB Statement No. 123R (revised 2004), Share-Based Payment ("FAS 123(R)") using the modified prospective transition method (*see Note 14*). Under this transition method, compensation cost recognized in 2006 and subsequent years includes applicable amounts of: (a) compensation cost of all stock-based payments granted prior to, but not yet vested as of, January 1, 2006, and (b) compensation cost for all stock-based payments subsequent to January 1, 2006 (based on the grant-date fair value estimated in accordance with the new provisions of FAS 123(R)).

U) RECENT PRONOUNCEMENTS. On December 30, 2008, the Financial Accounting Standards Board ("FASB") issued final staff position FSP FAS 132R-1: Employers' Disclosures about Postretirement Benefit Plan Assets. The FSP requires more disclosure about pension plan assets mainly regarding the following areas:

- └ How investment allocation decisions are made, including the factors that are pertinent to an understanding of investment policies and strategies,
- └ The major categories of plan assets,
- └ The inputs and valuation techniques used to measure the fair value of plan assets,
- └ The effect of fair value measurements using significant unobservable inputs (Level 3) on changes in plan assets for the period, and
- └ Significant concentrations of risk within plan assets.

The disclosures about plan assets required by this FSP shall be provided for fiscal years ending after December 15, 2009. Upon initial application, the provisions of this FSP are not required for earlier periods that are presented for comparative purposes. Earlier application of the provisions of this FSP is permitted. The Company will comply with the disclosure requirements of this standard in its report on its consolidated financial statements beginning for the fiscal year ended December 31, 2009.

In March 2008, the FASB issued Statement of Financial Accounting Standards No. 161 Disclosures about Derivative Instruments and Hedging Activities an amendment of FASB Statement No. 133 ("FAS 161"). This Statement changes the disclosure requirements for derivative instruments and hedging activities. Entities are required to provide enhanced disclosures about (a) how and why an entity uses derivative instruments, (b) how derivative instruments and related hedged items are accounted for under Statement 133 and its related interpretations, and (c) how derivative instruments and related hedged items affect an entity's financial position, financial performance, and cash flows. The requirements of this Statement are effective for financial statements issued for fiscal years and interim periods beginning after November 15, 2008, with early application encouraged. This Statement encourages, but does not require, comparative disclosures for earlier periods at initial adoption. The Company will adopt this standard as of January 1, 2009 and will implement its disclosure requirements in 2009.

In December 2007, the FASB issued FASB Statement No. 160, Noncontrolling Interests in Consolidated Financial Statements – an amendment of ARB No. 51 ("FAS 160"), which establishes a framework for reporting of noncontrolling or minority interests, the portion of equity in a subsidiary not attributable, directly or indirectly, to a parent. FAS 160 is effective for financial statements issued for fiscal years beginning on or after December 15, 2008. Earlier adoption is prohibited. The Company will adopt this standard as of January 1, 2009, and does not anticipate any material impact of this standard on its Consolidated Financial Statements.

In December 2007, FASB issued FASB Statement No. 141 (revised), Business Combinations. This Statement replaces FASB Statement No. 141, Business Combinations and retains the fundamental requirements in Statement 141 that the acquisition method of accounting (which Statement 141 called the purchase method) be used for all business combinations and for an acquirer to be identified for each business combination. This Statement defines the acquirer as the entity that obtains control of one or more businesses in the business combination and establishes the acquisition date as the date that the acquirer achieves control.

In general, the main points of this Statement are that the assets acquired, liabilities assumed and non-controlling interests in the acquired company are stated at fair value as of the date of acquisition, that assets acquired and liabilities assumed arising from contractual contingencies are recognized as of the acquisition date, measured at their acquisition-date fair values and that contingent consideration is recognized at the acquisition date, measured at its fair value at that date.

This Statement applies 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. An entity may not apply it before that date. The effective date of this Statement is the same as that of the related FASB Statement No. 160, Non-controlling Interests in Consolidated Financial Statements. The Company will adopt this standard as of January 1, 2009.

In September 2006, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards No. 157, Fair Value Measurements ("FAS 157"), which establishes a framework for reporting fair value and expands disclosures about fair value measurements. FAS 157 is effective for financial statements issued for fiscal years beginning after November 15, 2007, and interim periods within those fiscal years. FASB Staff Position No. 157-2 ("FSP 157-2") issued February 12, 2008 delayed application of this Statement for nonfinancial assets and nonfinancial liabilities, except for items that are recognized or disclosed at fair value in the consolidated financial statements on a recurring basis (at least annually), until fiscal years beginning after November 15, 2008, and interim periods within those fiscal years.

The Company adopted this standard, except for those sections affected by FSP 157-2, as of January 1, 2008.

2. ACQUISITIONS

RSI ACQUISITION

On November 26, 2007, the Company completed the acquisition of all the common stock of Renal Solutions, Inc. ("RSI"), an Indiana corporation with principal offices in Warrendale, PA. The RSI acquisition agreement provided for total consideration of up to \$203,666, consisting of \$20,000 previously advanced to RSI in the form of a loan, \$99,854 paid at closing, \$60,000 paid in November, 2008, \$3,572 receivable related to a working capital adjustment which was received in 2008, and up to \$30,000 in milestone payments over a three year period contingent upon the achievement of certain performance criteria, none of which were due or paid in 2008. In 2007, the Company recorded a liability of \$27,384 representing the net present value of the \$30,000 milestone payments as it was deemed beyond reasonable doubt that the future performance criteria would be achieved. The purchase price was allocated to goodwill (\$159,385), intangible assets (\$34,480) and other net assets (\$9,800). RSI holds key patents and other intellectual property worldwide related to sorbent-based technology ("SORB").

SORB technology purifies potable water to dialysate quality and allows dialysis for up to 8 hours with only 6 liters of potable water through a process of dialysate regeneration and toxin adsorption. This regeneration capability significantly reduces the water volume requirement for a typical hemodialysis treatment and is an important step in advancing home hemodialysis and helping to create a potential platform for eventual development of a wearable kidney.

The assets and liabilities of all acquisitions were recorded at their estimated fair values at the dates of the acquisitions and are included in the Company's Consolidated Financial Statements and operating results from the effective date of acquisition.

3. RELATED PARTY TRANSACTIONS

A) SERVICE AGREEMENTS AND LEASES

The Company is party to service agreements with Fresenius SE, the sole stockholder of its General Partner and its largest shareholder with approximately 36.3 % ownership of the Company's voting shares, and certain affiliates of Fresenius SE that are not also subsidiaries of the Company to receive services, including, but not limited to: administrative services, management information services, employee benefit administration, insurance, IT services, tax services and treasury management services. For the years 2008, and 2007, amounts charged by Fresenius SE to the Company under the terms of these agreements are \$59,038 and \$44,143, respectively. The Company also provides certain services to Fresenius SE and certain affiliates of Fresenius SE, including research and development, central purchasing, patent administration and warehousing. The Company charged \$9,798 and \$9,784 for services rendered to Fresenius SE in 2008 and 2007, respectively.

Under operating lease agreements for real estate entered into with Fresenius SE, the Company paid Fresenius SE \$23,485 and \$19,211 during 2008 and 2007, respectively. The majority of the leases expire in 2016 and contain renewal options.

The Company's Articles of Association provide that the General Partner shall be reimbursed for any and all expenses in connection with management of the Company's business, including remuneration of the members of the General Partner's supervisory board and the General Partner's management board. The aggregate amount reimbursed to Management AG for 2008 and 2007 was \$9,230 and \$10,348 for its management services during those years and included \$88 and \$82 as compensation for their exposure to risk as General Partner for 2008 and 2007, respectively. The Company's Articles of Association set the annual compensation for assuming unlimited liability at 4% of the amount of the General Partner's invested capital (€1,500).

B) PRODUCTS

During the years ended December 31, 2008 and 2007, the Company sold products to Fresenius SE for \$36,704 and \$34,133, respectively. During 2008 and 2007, the Company made purchases from Fresenius SE in the amount of \$45,084 and \$52,280, respectively.

As a result of product recalls and production suspension by other suppliers in 2008, APP Pharmaceuticals, Inc. ("APP Inc."), is the only remaining U.S. supplier of FDA-approved heparin used in dialysis. APP Inc. has substantially increased prices for this product. On September 10, 2008, Fresenius Kabi AG, a wholly-owned subsidiary of Fresenius SE, acquired APP Inc. The acquisition has had no impact on the Company's purchase price of heparin. The Company currently purchases heparin supplied by APP Inc. through a group purchasing organization ("GPO").

The Company has no direct supply agreement with APP Inc. and does not submit purchase orders directly to APP Inc. During 2008, FMCH acquired approximately \$19,500 of heparin from APP Inc. through the GPO contract, which was negotiated at arm's length.

C) FINANCING PROVIDED BY AND TO FRESENIUS SE

The Company receives short-term financing from and provides short-term financing to Fresenius SE. There was \$1,330 and \$2,287 owed to Fresenius SE at December 31, 2008 and 2007, respectively (*see Note 8*).

On November 7, 2008, the Company entered into a loan agreement with Fresenius SE whereby it advanced Fresenius SE \$50,000 at 6.45 % interest which is due on April 30, 2009.

D) OTHER

The Company was party to a German consolidated trade tax return with Fresenius SE and certain of its German subsidiaries for the fiscal years 1998–2001. For this period Fresenius SE made advance tax payments of which \$118,100 (€77,700) including interest is recorded as a liability due to Fresenius SE at December 31, 2008. During 2008 the final tax assessment for those years was received and on this basis the tax and interest allocation will be finally determined.

In 2007, the company acquired a production line at our Schweinfurt facility from Fresenius SE for \$5,646.

The Chairman of the Company's Supervisory Board is also the Chairman of the Supervisory Board of Fresenius SE. He is also a member of the Supervisory Board of the Company's General Partner.

The Vice Chairman of the Company's Supervisory Board is a member of the Supervisory Board of Fresenius SE and Vice Chairman of the Supervisory Board of the Company's General Partner. He is also a partner in a law firm which provided services to the Company. The Company paid the law firm approximately \$1,098 and \$969 in 2008 and 2007, respectively. Five of the six members of the Company's Supervisory Board are also members of the Supervisory Board of the Company's General Partner.

4. INVENTORIES

As of December 31, 2008 and 2007, inventories consisted of the following:

<i>\$ in thousands</i>	2008	2007
Raw materials and purchased components	145,756	136,013
Work in process	60,960	51,829
Finished goods	385,607	350,478
Health care supplies	114,727	97,914
TOTAL	707,050	636,234

Under the terms of certain unconditional purchase agreements, the Company is obligated to purchase approximately \$2,556,603 of materials, of which \$358,283 is committed at December 31, 2008 for 2009. The terms of these agreements run 1 to 10 years.

Inventories as of December 31, 2008 and 2007 include \$35,143 and \$30,999 respectively, of Erythropoietin ("EPO"), which is supplied by a single source supplier in the United States. In October 2006, the Company entered into a five-year exclusive sourcing and supply agreement with its EPO supplier. Revenues from EPO accounted for approximately 20% and 21% of total dialysis care revenue in the North America segment for 2008 and 2007, respectively. Delays, stoppages, or interruptions in the supply of EPO could adversely affect the operating results of the Company.

5. PROPERTY, PLANT AND EQUIPMENT

As of December 31, 2008 and 2007, property, plant and equipment consisted of the following:

Table 05.5.3 ACQUISITION AND MANUFACTURING COSTS

<i>\$ in thousands</i>	Balance at Jan. 1, 2008	Currency change	Changes in consolidation group	Additions	Reclassi- fications	Disposals	Balance at Dec. 31, 2008
Land and improvements	39,791	(110)	–	1,182	(608)	(99)	40,156
Buildings and improvements	1,348,727	(33,881)	1,370	205,125	25,939	(12,263)	1,535,017
Machinery and equipment	2,191,418	(95,028)	8,504	316,526	44,019	(113,095)	2,352,344
Machinery, equipment and rental equipment under capitalized leases	21,533	353	85	2,160	(570)	(843)	22,718
Construction in progress	235,144	(7,163)	–	191,012	(129,126)	(51,284)	238,583
TOTAL	3,836,613	(135,829)	9,959	716,005	(60,346)	(177,584)	4,188,818

Table 05.5.4 DEPRECIATION / AMORTIZATION

<i>\$ in thousands</i>	Balance at Jan. 1, 2008	Currency change	Changes in consolidation group	Additions	Reclassi- fications	Disposals	Balance at Dec. 31, 2008
Land and improvements	–	–	–	–	–	–	–
Buildings and improvements	566,455	(13,689)	242	120,956	727	(23,918)	650,773
Machinery and equipment	1,208,321	(53,853)	1,142	243,969	(4,711)	(103,885)	1,290,983
Machinery, equipment and rental equipment under capitalized leases	8,044	(480)	–	3,375	539	(494)	10,984
Construction in progress	–	–	–	–	–	–	–
TOTAL	1,782,820	(68,022)	1,384	368,300	(3,445)	(128,297)	1,952,740

Table 05.5.5 | NET BOOK VALUE

\$ in thousands

	Dec. 31, 2008	Dec. 31, 2007
Land and improvements	40,156	39,791
Buildings and improvements	884,244	782,272
Machinery and equipment	1,061,361	983,097
Machinery, equipment and rental equipment under capitalized leases	11,734	13,489
Construction in progress	238,583	235,144
TOTAL	2,236,078	2,053,793

Depreciation expense for property, plant and equipment amounted to \$368,300 and \$328,595 for the years ended December 31, 2008 and 2007, respectively.

Included in property, plant and equipment as of December 31, 2008 and 2007 were \$299,778 and \$275,537, respectively, of peritoneal dialysis cyclers which the Company leases to customers with end-stage renal disease on a month-to-month basis and hemodialysis machines which the Company leases to physicians under operating leases. Accumulated depreciation related to machinery, equipment and rental equipment under capital leases was \$10,984 and \$8,044 at December 31, 2008 and 2007, respectively.

6. INTANGIBLE ASSETS AND GOODWILL

As of December 31, 2008 and 2007, the carrying value and accumulated amortization of intangible assets consisted of the following:

<i>Table 05.5.6</i> ACQUISITION COSTS							
<i>\$ in thousands</i>	<i>Balance at Jan. 1, 2008</i>	<i>Currency change</i>	<i>Changes in consolidation group</i>	<i>Additions</i>	<i>Reclassifications</i>	<i>Disposals</i>	<i>Balance at Dec. 31, 2008</i>
Amortizable intangible assets							
Non-compete agreements	212,105	(1,451)	7,782	142	–	(333)	218,245
Technology	100,016	–	–	–	–	–	100,016
License and distribution agreements	52,422	(6,963)	–	128,962	–	(1,177)	173,244
Construction in progress	–	(26)	–	173	49,739	–	49,886
Other	257,886	(9,272)	7,377	24,295	10,301	(20,115)	270,472
TOTAL	622,429	(17,712)	15,159	153,572	60,040	(21,625)	811,863
Non-amortizable intangible assets							
Tradenname	256,850	(372)	–	874	(15,878)	–	241,474
Management contracts	241,391	(17)	–	–	–	–	241,374
TOTAL	498,241	(389)	–	874	(15,878)	–	482,848
TOTAL INTANGIBLE ASSETS	1,120,670	(18,101)	15,159	154,446	44,162	(21,625)	1,294,711
GOODWILL	7,691,763	(44,693)	95,818	341	14,997	(1,572)	7,756,654

Table 05.5.7 DEPRECIATION / AMORTIZATION

<i>\$ in thousands</i>	Balance at Jan. 1, 2008	Currency change	Changes in consolidation group	Additions	Reclassi- fications	Disposals	Balance at Dec. 31, 2008
Amortizable intangible assets							
Non-compete agreements	129,559	(1,163)	–	14,594	–	(16)	142,974
Technology	4,872	–	–	6,618	–	–	11,490
License and distribution agreements	35,809	(2,298)	–	7,825	–	–	41,336
Construction in progress	–	–	–	–	–	–	–
Other	205,066	(5,158)	9	18,347	2,067	(21,142)	199,189
TOTAL	375,306	(8,619)	9	47,384	2,067	(21,158)	394,989
Non-amortizable intangible assets							
Tradenname	33,500	(42)	–	–	(2,140)	–	31,318
Management contracts	21,908	–	–	–	–	–	21,908
TOTAL	55,408	(42)	–	–	(2,140)	–	53,226
TOTAL INTANGIBLE ASSETS	430,714	(8,661)	9	47,384	(73)	(21,158)	448,215
GOODWILL	446,174	(1,654)	–	–	2,224	–	446,744

Table 05.5.8 NET BOOK VALUE

<i>\$ in thousands</i>	Dec. 31, 2008	Dec. 31, 2007
Amortizable intangible assets		
Non-compete agreements	75,271	82,546
Technology	88,526	95,144
License and distribution agreements	131,908	16,613
Construction in progress	49,886	–
Other	71,283	52,820
TOTAL	416,874	247,123
Non-amortizable intangible assets		
Tradenname	210,156	223,350
Management contracts	219,466	219,483
TOTAL	429,622	442,833
TOTAL INTANGIBLE ASSETS	846,496	689,956
GOODWILL	7,309,910	7,245,589

Amortization on intangible assets amounted to \$47,384 and \$34,003 for the years 2008 and 2007, respectively.

Table 05.5.9 ESTIMATED AMORTIZATION EXPENSES

<i>\$ in thousands</i>	2009	2010	2011	2012	2013
Estimated Amortization Expenses	46,420	44,479	40,219	37,923	36,747

INTANGIBLE ASSETS: LICENSE AND DISTRIBUTION AGREEMENTS

In July 2008, Fresenius Medical Care entered into two separate distribution agreements, one for the u.s. (with Galenica Ltd. and Luitpold Pharmaceuticals Inc.), the “u.s. Agreement”, and one for certain countries in Europe and the Middle East (with Galenica AG and Vifor (International) AG), the “International Agreement”, to market and distribute Galenica Ltd’s and Luitpold Pharmaceuticals Inc.’s intravenous iron products, such as Venofer and Ferinject for dialysis treatment. In North America, the license agreement among our subsidiary, FUSA Manufacturing Inc. (“FMI”), Luitpold Pharmaceuticals Inc, American Regent, Inc. and Vifor (International), Inc. provides FMI with exclusive rights to manufacture and distribute Venofer to freestanding (non-hospital based) u.s. dialysis facilities. In addition, it grants FMI similar rights for Injectafer (ferric carboxymaltose), a proposed new intravenous iron medication currently under clinical study in the u.s. The u.s. license agreement has a term of ten years, includes FMI extension options, and requires payment by FMI over the ten year term of approximately \$2,000,000, which the Company will expense as incurred (based upon the annual estimated units of sale of the licensed product), subject to certain early termination provisions. In addition to these payments, the Company will pay a total of approximately \$47,000 over a four year period for the u.s. Agreement of which \$22,000 was paid in 2008. The Company recorded a liability for the balance. The cost of the u.s. Agreement and related transaction costs of \$5,843 will be amortized over their 10-year expected useful life (based upon the annual estimated units of sale of the licensed product). The Company paid \$14,566 upon signing of the International Agreement in 2008 and could pay up to €40,000 more upon certain milestones being met. The International Agreement costs will be amortized over their expected 20-year useful life. Milestone payments will be capitalized and amortized over their useful lives at the time the milestone payments are made.

GOODWILL

Changes in the carrying amount of goodwill are mainly a result of acquisitions and the impact of foreign currency translations. During 2008, the Company's acquisitions consisted primarily of clinics in the normal course of operations. During 2007, the Company's acquisitions consisted primarily of RSI and clinics in the normal course of operations (see Note 2). The segment detail is as follows:

Table 05.5.10 | **GOODWILL**

\$ in thousands

	North America	International	Corporate	Total
BALANCE AS OF JANUARY 1, 2007	6,437,995	454,166	–	6,892,161
Goodwill acquired	52,674	59,491	159,385	271,550
Reclassifications	17,952	8,195	–	26,147
Foreign currency translation adjustment	(146)	55,877	–	55,731
BALANCE AS OF DECEMBER 31, 2007	6,508,475	577,729	159,385	7,245,589
Goodwill acquired	64,809	30,577	432	95,818
Reclassifications	(1,231)	12,773	–	11,542
Foreign currency translation adjustment	(642)	(42,397)	–	(43,039)
BALANCE AS OF DECEMBER 31, 2008	6,571,411	578,682	159,817	7,309,910

7. ACCRUED EXPENSES AND OTHER CURRENT LIABILITIES

As at December 31, 2008 and 2007 accrued expenses and other current liabilities consisted of the following:

	2008	2007
<i>\$ in thousands</i>		
Accrued salaries and wages	301,923	331,931
Unapplied cash and receivable credits	205,187	173,424
Accrued insurance	125,713	146,377
Special charge for legal matters	115,000	115,000
Other	540,610	585,281
TOTAL	1,288,433	1,352,013

In 2001, the Company recorded a \$258,159 special charge to address legal matters relating to transactions pursuant to the Agreement and Plan of Reorganization dated as of February 4, 1996 by and between w.R. Grace & Co. and Fresenius SE (the "Merger"), estimated liabilities and legal expenses arising in connection with the w.R. Grace & Co. Chapter 11 proceedings (the "Grace Chapter 11 Proceedings") and the cost of resolving pending litigation and other disputes with certain commercial insurers. During the second quarter of 2003, the court supervising the Grace Chapter 11 Proceedings approved a definitive settlement agreement entered into among the Company, the committees representing the asbestos creditors and w.R. Grace & Co. Under the settlement agreement, the Company will pay \$115,000, without interest, upon plan confirmation (*see Note 18*). With the exception of the proposed \$115,000 payment under the Settlement Agreement, all other matters included in the special charge have been resolved.

The other item in the table above includes accruals for interest, withholding tax, value added tax, legal and compliance costs, physician compensation, commissions, short-term portion of pension liabilities, bonuses and rebates, and accrued rents.

8. SHORT-TERM BORROWINGS, OTHER FINANCIAL LIABILITIES AND SHORT-TERM BORROWINGS FROM RELATED PARTIES

As of December 31, 2008 and 2007, short-term borrowings, other financial liabilities and short-term borrowings from related parties consisted of the following:

Table 05.5.12 **SHORT-TERM BORROWINGS**

<i>\$ in thousands</i>	2008	2007
Borrowings under lines of credit	121,476	71,908
Accounts receivable facility	539,000	85,000
Other financial liabilities	22,679	60,589
SHORT-TERM BORROWINGS AND OTHER FINANCIAL LIABILITIES	683,155	217,497
Short-term borrowings from related parties	1,330	2,287
SHORT-TERM BORROWINGS, OTHER FINANCIAL LIABILITIES AND SHORT-TERM BORROWINGS FROM RELATED PARTIES	684,485	219,784

SHORT-TERM BORROWINGS AND OTHER FINANCIAL LIABILITIES

LINES OF CREDIT. Short-term borrowings of \$121,476 and \$71,908 at December 31, 2008 and 2007, respectively, represent amounts borrowed by the Company and certain of its subsidiaries under lines of credit with commercial banks. The average interest rates on these borrowings at December 31, 2008 and 2007 were 5.30 % and 4.50 %, respectively.

Excluding amounts available under the 2006 Senior Credit Agreement (*see Note 9*), at December 31, 2008, the Company had \$226,221 available under such commercial bank agreements. In some instances, lines of credit are secured by assets of the Company's subsidiary that is party to the agreement or may require the Company's guarantee. In certain circumstances, the subsidiary may be required to meet certain covenants.

ACCOUNTS RECEIVABLE FACILITY. The Company has an asset securitization facility (the "A/R Facility") which is typically renewed in October of each year and was most recently renewed in October 2008. Under the A/R Facility, certain receivables are sold to NMC Funding Corporation ("NMC Funding"), a wholly-owned subsidiary. NMC Funding then assigns percentage ownership interests in the accounts receivable to certain bank investors. Under the terms of the A/R Facility, NMC Funding retains the right to recall all transferred interests in the accounts receivable assigned to the banks under the facility. As the Company has the right at any time to recall the then outstanding interests, the receivables remain on the Consolidated Balance Sheet and the proceeds from the transfer of percentage ownership interests are recorded as short-term borrowings.

At December 31, 2008 there are outstanding short-term borrowings under the A/R Facility of \$539,000. NMC Funding pays interest to the bank investors, calculated based on the commercial paper rates for the particular tranches selected. The average interest rate at December 31, 2008 was 3.89%. Annual refinancing fees, which include legal costs and bank fees (if any), are amortized over the term of the facility.

OTHER FINANCIAL LIABILITIES. At December 31, 2008, the Company also had \$22,679 of other financial liabilities which was related to the Venofer transaction in the year 2008 (see Note 6). At December 31, 2007, the Company also had \$60,589 of other financial liabilities of which \$56,427 was related to the 2007 RSI acquisition and was paid in November 2008.

SHORT-TERM BORROWINGS FROM RELATED PARTIES

From time to time during each of the years presented, the Company received advances under the existing loan agreements with Fresenius SE for those years. During the year ended December 31, 2008, the Company received advances ranging from €13,200 to €153,400 with interest rates ranging from 4.02% to 5.11%. At December 31, 2008 and 2007, there were no advances outstanding with Fresenius SE. On December 31, 2008, the Company had advances outstanding with a Fresenius SE subsidiary in the amount of \$1,330 with an interest rate of 7.25%. On December 31, 2007, the Company had advances outstanding with a Fresenius SE subsidiary in the amount of \$2,287 (€1,554) with an interest rate of 4.1% which was repaid in 2008. Annual interest expense on the borrowings during the years presented was \$81 and \$506 for the years 2008 and 2007, respectively.

9. LONG-TERM DEBT AND CAPITAL LEASE OBLIGATIONS

At December 31, 2008 and 2007, long-term debt and capital lease obligations consisted of the following:

Table 05.5.13 LONG-TERM DEBT AND CAPITAL LEASE OBLIGATIONS

<i>\$ in thousands</i>	2008	2007
2006 Senior Credit Agreement	3,366,079	3,166,114
Senior Notes	492,456	491,569
Euro Notes	278,340	294,420
ELB agreements	174,059	48,806
Capital lease obligations	13,394	14,027
Other	88,165	73,893
	4,412,493	4,088,829
Less current maturities	(455,114)	(84,816)
TOTAL	3,957,379	4,004,013

SENIOR DEBT

The Company's senior debt consists mainly of borrowings related to its 2006 Senior Credit Agreement, its Senior Notes, its Euro Notes and borrowings under its European Investment Bank Agreements as follows:

2006 SENIOR CREDIT AGREEMENT

The Company entered into a \$4,600,000 syndicated credit agreement (the "2006 Senior Credit Agreement") with Bank of America, N.A. ("BoFA"); Deutsche Bank AG New York Branch; The Bank of Nova Scotia; Credit Suisse, Cayman Islands Branch; JPMorgan Chase Bank, National Association; and certain other lenders (collectively, the "Lenders") on March 31, 2006 which replaced its prior credit agreement.

The 2006 Senior Credit Agreement consists of:

- └ a 5-year \$1,000,000 revolving credit facility (of which up to \$250,000 is available for letters of credit, up to \$300,000 is available for borrowings in certain non-u.s. currencies, up to \$150,000 is available as "swing line" loans in u.s. dollars, up to \$250,000 is available as a competitive loan facility and up to \$50,000 is available as "swing line" loans in certain non-u.s. currencies, the total of which cannot exceed \$1,000,000) which will be due and payable on March 31, 2011.
- └ a 5-year term loan facility ("Term Loan A") of \$1,850,000, also scheduled to mature on March 31, 2011. The 2006 Senior Credit Agreement requires 19 quarterly payments on Term Loan A of \$30,000 each that permanently reduce the term loan facility which began June 30, 2006 and continue through December 31, 2010. The remaining amount outstanding is due on March 31, 2011. As a result of the voluntary repayment made in July 2007 from the proceeds of the issuance of senior notes (see "Senior Notes") which reduced the principal balance outstanding, the quarterly payments were reduced to \$29,430 beginning with the payment for September 30, 2008.
- └ a 7-year term loan facility ("Term Loan B") of \$1,750,000 scheduled to mature on March 31, 2013. The terms of the 2006 Senior Credit Agreement require 28 quarterly payments on Term Loan B that permanently reduce the term loan facility. The repayment began June 30, 2006. The first 24 quarterly payments are \$4,375 and payments 25 through 28 are \$411,250 with the final payment of the remaining balance due on March 31, 2013, subject to an early repayment requirement on March 1, 2011 if the Trust Preferred Securities due June 15, 2011 are not repaid or refinanced or their maturity is not extended prior to that date. As a result of the voluntary repayment made in July 2007 from the proceeds of the issuance of senior notes (see "Senior Notes") the balance of the remaining payments of \$4,375 were reduced to \$4,036 beginning with the September 30, 2008 payment, and payments 25 through 28 were reduced to \$379,396.

Interest on these facilities will be, at the Company's option, depending on the interest periods chosen, at a rate equal to either (i) LIBOR plus an applicable margin or (ii) the higher of (a) BoFA's prime rate or (b) the Federal Funds rate plus 0.5%, plus an applicable margin.

The applicable margin is variable and depends on the Company's Consolidated Leverage Ratio which is a ratio of its Consolidated Funded Debt less up to \$30,000 cash and cash equivalents to Consolidated EBITDA (as these terms are defined in the 2006 Senior Credit Agreement).

In addition to scheduled principal payments, indebtedness outstanding under the 2006 Senior Credit Agreement will be reduced by mandatory prepayments utilizing portions of the net cash proceeds from certain sales of assets, securitization transactions other than the Company's existing A/R Facility, the issuance of subordinated debt other than certain intercompany transactions, certain issuances of equity and excess cash flow.

Obligations under the 2006 Senior Credit Agreement are secured by pledges of capital stock of certain material subsidiaries in favor of the lenders. The 2006 Senior Credit Agreement contains affirmative and negative covenants with respect to the Company and its subsidiaries and other payment restrictions. Certain of the covenants limit indebtedness of the Company and investments by the Company, and require the Company to maintain certain financial ratios defined in the agreement. Additionally, the 2006 Senior Credit Agreement provides for a limitation on dividends and other restricted payments which is \$280,000 for dividends in 2009, and increases in subsequent years. The Company paid dividends of \$252,395 in May of 2008 which was in compliance with the restrictions set forth in the 2006 Senior Credit Agreement. In default, the outstanding balance under the 2006 Senior Credit Agreement becomes immediately due and payable at the option of the Lenders. As of December 31, 2008, the Company is in compliance with all covenants under the 2006 Senior Credit Agreement.

The following table shows the available and outstanding amounts under the 2006 Senior Credit Agreement at December 31, 2008 and 2007, respectively:

Table 05.5.14 AVAILABLE AND OUTSTANDING CREDITS

\$ in thousands, December 31

	2008	2007
Maximum amount available		
Revolving credit	1,000,000	1,000,000
Term Loan A	1,491,139	1,550,000
Term Loan B	1,570,053	1,578,125
TOTAL	4,061,192	4,128,125
Balance outstanding		
Revolving credit	304,887	37,989
Term Loan A	1,491,139	1,550,000
Term Loan B	1,570,053	1,578,125
TOTAL	3,366,079	3,166,114

In addition, at December 31, 2008, \$111,994 and at December 31, 2007, \$87,140 were utilized as letters of credit which are not included as part of the balances outstanding at those dates.

In June 2007, the 2006 Senior Credit Agreement was amended in order to enable the Company to issue \$500,000 in Senior Notes (see "Senior Notes" below). Furthermore, on January 31, 2008, it was amended to increase certain types of permitted borrowings and to remove all limitations on capital expenditures.

In July 2007, the Company voluntarily repaid portions of the term loans outstanding utilizing a portion of the proceeds from the issuance of senior notes (see "Senior Notes" below). Under the terms of the 2006 Senior Credit Agreement, advance payments on the term loans are applied first against the next four quarterly payments due with any amounts in excess of the four quarterly payments applied on a pro-rata basis against any remaining payments. As a result of the advance payments on the Term Loans, no payments were made or were due for either Term Loan A or B until the third quarter of 2008 at which time quarterly payments were resumed.

SENIOR NOTES

In July 2007, FMC Finance III S.A. ("Finance III"), a wholly-owned subsidiary of the Company, issued \$500,000 aggregate principal amount of 6 7/8 % senior notes due 2017 (the "Senior Notes") at a discount resulting in an effective interest rate of 7 1/8 %. The Senior Notes are guaranteed on a senior basis jointly and severally by the Company and by its subsidiaries Fresenius Medical Care Holdings, Inc. ("FMCH") and Fresenius Medical Care Deutschland GmbH ("D-GmbH"). Finance III may redeem the Senior Notes at any time at 100 % of principal plus accrued interest and a premium calculated pursuant to the terms of the indenture. The holders have a right to request that Finance III repurchase the Senior Notes at 101 % of principal plus accrued interest upon the occurrence of a change of control followed by a decline in the rating of the Senior Notes. The proceeds, net of discounts, investment bank fees and other offering related expenses, were \$484,024, of which \$150,000 was used to reduce Term Loan A and \$150,000 to reduce Term Loan B under the Company's 2006 Senior Credit Agreement (see 2006 Senior Credit Agreement above). The remaining \$184,024 was applied to the then outstanding balance under its short-term A/R Facility. The discount is being amortized over the life of the Senior Notes.

EURO NOTES

In July 2005, FMC Finance IV Luxembourg issued euro denominated notes ("Euro Notes") (Schuldscheindarlehen) totaling \$278,340 (€200,000) with a €126,000 tranche at a fixed interest rate of 4.57 % and a €74,000 tranche with a floating rate at EURIBOR plus applicable margin resulting in an interest rate of 6.87 % at December 31, 2008. The Euro Notes, guaranteed by the Company, mature on July 27, 2009 and are included in the short term portion of long-term debt in our balance sheet at December 31, 2008.

EUROPEAN INVESTMENT BANK AGREEMENTS

The Company entered into various credit agreements with the European Investment Bank ("EIB") in 2005 and 2006 totaling €221,000. The EIB is a not-for-profit long-term lending institution of the European Union and lends funds at favorable rates for the purpose of capital investment and R & D projects, normally for up to half of the funds required for such projects.

The Company uses the funds to refinance certain R & D projects, to make investments in expansion and optimization of existing production facilities in Germany, and for financing and refinancing of certain clinic refurbishing and improvement projects. Currently all agreements with the EIB have variable interest rates that change quarterly, with FMC-AG & Co. KGaA having options to convert the variable rates into fixed rates. All advances under all agreements can be denominated in certain foreign currencies including U.S. dollars.

The Company has three credit facilities available at December 31, 2008 under these agreements as follows:

Table 05.5.15 AVAILABLE AND OUTSTANDING CREDITS

December 31	2008	2007
Maximum amount available € in thousands		
Revolving credit	90,000	90,000
Loan 2005	41,000	41,000
Loan 2006	90,000	90,000
TOTAL	221,000	221,000
Balance outstanding \$ in thousands		
Revolving credit	—	—
Loan 2005	48,806	48,806
Loan 2006	125,253	—
TOTAL	174,059	48,806

At December 31, 2008, the Company had no borrowings outstanding under the revolving credit facility, \$48,806 under the Loan 2005 facility and \$125,253 under the Loan 2006 facility which was drawn down during 2008. The Company's U.S. dollar borrowings under the Loan 2005 agreement had an interest rate of 2.03% and the Euro borrowings under the Loan 2006 agreement had an interest rate of 4.77% at December 31, 2008.

Borrowings under these agreements are secured by bank guarantees, which are in place for Loan 2005 and Loan 2006 and have customary covenants. Borrowings under the Revolving Credit facility are subject to obtaining a bank guarantee at the time of the borrowings.

ANNUAL PAYMENTS

Aggregate annual payments applicable to the 2006 Senior Credit Agreement, Senior Notes, Euro Notes, EIB agreements, capital leases and other borrowings (excluding the Company's trust preferred securities, *see Note 11*) for the five years subsequent to December 31, 2008 are:

Table 05.5.16 ANNUAL PAYMENTS

\$ in thousands

	2009	2010	2011	2012	2013	Thereafter	Total
Annual Payments	455,114	157,037	1,504,105	1,152,256	519,380	632,145	4,420,037

10. EMPLOYEE BENEFIT PLANS

GENERAL

FMC-AG & Co. KGaA recognizes pension costs and related pension liabilities for current and future benefits to qualified current and former employees of the Company. The Company's pension plans are structured differently according to the legal, economic and fiscal circumstances in each country. The Company currently has two types of plans, defined benefit and defined contribution plans. In general plan benefits in defined benefit plans are based on all or a portion of the employees' years of services and final salary. Plan benefits in defined contribution plans are determined by the amount of contribution by the employee and the employer, both of which may be limited by legislation, and the returns earned on the investment of those contributions.

Upon retirement under defined benefit plans, the Company is required to pay defined benefits to former employees when the defined benefits become due. Defined benefit plans may be funded or unfunded. The Company has two major defined benefit plans, one funded plan in North America and an unfunded plan in Germany.

Actuarial assumptions generally determine benefit obligations under defined benefit plans. The actuarial calculations require the use of estimates. The main factors used in the actuarial calculations affecting the level of the benefit obligations are: assumptions on life expectancy, the discount rate, salary and pension level trends. Under the Company's funded plans, assets are set aside to meet future payment obligations. An estimated return on the plan assets is recognized as income in the respective period. Actuarial gains and losses are generated when there are variations in the actuarial assumptions and differences between the actual and the estimated return on plan assets for that year. The Company's pension liability is impacted by these actuarial gains or losses.

In the case of the Company's funded plan, the defined benefit obligation is offset against the fair value of plan assets. A pension liability is recognized in the balance sheet if the defined benefit obligation exceeds the fair value of plan assets. A pension asset is recognized (and reported under other assets in the balance sheet) if the fair value of plan assets exceeds the defined benefit obligation and if the Company has a right of reimbursement against the fund or a right to reduce future payments to the fund.

Under defined contribution plans, the Company pays defined contributions during the employee's service life which satisfies all obligations of the Company to the employee. The Company has a defined contribution plan in North America.

DEFINED BENEFIT PENSION PLANS

During the first quarter of 2002, FMCH, the Company's North America subsidiary, curtailed its defined benefit and supplemental executive retirement plans. Under the curtailment amendment for substantially all employees eligible to participate in the plan, benefits have been frozen as of the curtailment date and no additional defined benefits for future services will be earned. The Company has retained all employee benefit obligations as of the curtailment date. Each year FMCH contributes at least the minimum amount required by the Employee Retirement Income Security Act of 1974, as amended. There was no minimum funding requirement for FMCH for the defined benefit plan in 2008. FMCH voluntarily contributed \$684 during 2008. Expected funding for 2009 is \$827.

The benefit obligation for all defined benefit plans at December 31, 2008, is \$353,961 (2007: \$331,649) which consists of the benefit obligation of \$245,070 (2007: \$218,009) for the North America funded plan and the benefit obligation of \$108,891 (2007: \$113,640) for the German unfunded plan. The benefit obligation includes \$245,070 (2007: \$218,009) which is funded by plan assets and \$108,891 (2007: \$113,640) which is unfunded.

The following table shows the changes in benefit obligations, the changes in plan assets, and the funded status of the pension plans. Benefits paid as shown in the changes in benefit obligations represent payments made from both the funded and unfunded plans while the benefits paid as shown in the changes in plan assets include only benefit payments from the Company's funded benefit plan.

Table 05.5.17 FUNDED STATUS OF EMPLOYEE BENEFIT PLANS

<i>\$ in thousands</i>	2008	2007
Change in benefit obligation		
Benefit obligation at beginning of year	331,649	334,375
Foreign currency translation	(6,288)	12,193
Service cost	8,357	8,835
Interest cost	20,393	18,506
Transfer of plan participants	2,228	670
Actuarial (gain) loss	4,472	(36,637)
Benefits paid	(6,850)	(6,293)
BENEFIT OBLIGATION AT END OF YEAR	353,961	331,649
Change of plan assets		
Fair value of plan assets at beginning of year	228,581	220,367
Actual return on plan assets	(9,092)	12,276
Employer contributions	684	1,173
Benefits paid	(5,557)	(5,235)
FAIR VALUE OF PLAN ASSETS AT END OF YEAR	214,616	228,581
FUNDED STATUS AT YEAR END	139,345	103,068

The Company had a pension liability of \$139,345 at December 31, 2008. The pension liability consists of a current portion of \$2,590 (2007: \$2,288) which is recognized as a current liability in the line item "accrued expenses and other current liabilities" in the balance sheet. The non-current portion of \$136,755 (2007: \$111,352) is recorded as non-current pension liability in the balance sheet. The net amount recognized at December 31, 2007, consisted of Balance Sheet items of a pension liability of \$113,640 and prepaid pension costs of \$10,572. The prepaid pension costs related to the North America plan and were recorded within Other Assets in the balance sheet. Approximately 85 % of the beneficiaries are located in North America with the majority of the remaining 15 % located in Germany.

The accumulated benefit obligation for all defined benefit pension plans was \$334,951 and \$312,459 at December 31, 2008 and 2007, respectively. The accumulated benefit obligation for all defined benefit pension plans with an obligation in excess of plan assets was \$334,951 and \$96,659 at December 31, 2008 and 2007, respectively; the related plan assets had a fair value of \$214,616 at December 31, 2008.

The pre-tax changes in the following table reflect actuarial losses (gains) in other comprehensive income relating to pension liabilities. As of December 31, 2008, there are no cumulative effects of prior service costs included in other comprehensive income.

Table 05.5.18 OTHER COMPREHENSIVE INCOME (LOSS) RELATED TO PENSION LIABILITIES

\$ in thousands

Actuarial losses
(gains)

ADJUSTMENTS RELATED TO PENSIONS AT JANUARY 1, 2007	84,104
Additions	(32,551)
Releases	(5,163)
Foreign currency translation adjustment	1,985
ADJUSTMENTS RELATED TO PENSIONS AT DECEMBER 31, 2007	48,375
Additions	30,494
Releases	(1,944)
Foreign currency translation adjustment	1
ADJUSTMENTS RELATED TO PENSIONS AT DECEMBER 31, 2008	76,926

The actuarial loss expected to be amortized from other comprehensive income into net periodic pension cost over the next year is \$6,412.

The discount rates for all plans are based upon yields of portfolios of equity and highly rated debt instruments with maturities that mirror the plan's benefit obligation. The Company's discount rate is the weighted average of these plans based upon their benefit obligations at December 31, 2008. The following weighted-average assumptions were utilized in determining benefit obligations as of December 31:

Table 05.5.19 WEIGHTED AVERAGE ASSUMPTIONS FOR BENEFIT OBLIGATIONS

	2008	2007
Discount rate	6.15 %	6.16 %
Rate of compensation increase	4.19 %	4.16 %

The defined benefit pension plans' net periodic benefit costs are comprised of the following components for each of the years ended December 31:

Table 05.5.20 COMPONENTS OF NET PERIODIC BENEFIT COSTS

\$ in thousands

	2008	2007
Service cost	8,357	8,835
Interest cost	20,393	18,506
Expected return on plan assets	(16,931)	(16,362)
Amortization of unrealized losses	1,944	5,163
NET PERIODIC BENEFIT COSTS	13,763	16,142

The following weighted-average assumptions were used in determining net periodic benefit cost for the year ended December 31:

Table 05.5.21 | WEIGHTED AVERAGE ASSUMPTIONS FOR NET PERIODIC BENEFIT COSTS

	2008	2007
Discount rate	6.16 %	5.52 %
Expected return of plan assets	7.50 %	7.50 %
Rate of compensation increase	4.16 %	4.18 %

Expected benefit payments for the next five years and in the aggregate for the five years thereafter are as follows:

Table 05.5.22 | EXPECTED BENEFIT PAYMENTS

<i>\$ in thousands</i>	2009	2010	2011	2012	2013	2014 through 2018
Expected benefit payments	9,138	9,994	10,763	12,366	13,172	89,250

PLAN INVESTMENT POLICY AND STRATEGY

For the North America funded plan, the Company periodically reviews the assumption for long-term expected return on pension plan assets. As part of the assumptions review, a range of reasonable expected investment returns for the pension plan as a whole was determined based on an analysis of expected future returns for each asset class weighted by the allocation of the assets. The range of returns developed relies both on forecasts, which include the actuarial firm's expected long-term rates of return for each significant asset class or economic indicator, and on broad-market historical benchmarks for expected return, correlation, and volatility for each asset class. As a result, the Company's expected rate of return on pension plan assets was 7.5 % for 2008.

The investment policy, utilizing a revised target investment allocation of 31 % equity and 69 % long-term u.s. bonds, considers that there will be a time horizon for invested funds of more than 5 years. The total portfolio will be measured against a policy index that reflects the asset class benchmarks and the target asset allocation. The Plan policy does not allow investments in securities of the Company or other related party securities. The performance benchmarks for the separate asset classes include: S & P 500 Index, Russell 2000 Growth Index, MSCI EAFE Index, Barclays Capital Long Term Government Credit Index and Barclays Capital us Strips 20+ Year Index.

The following schedule describes FMCH's allocation for its plans:

Table 05.5.23 CATEGORIES OF PLAN ASSETS

	Allocation 2008	Allocation 2007	Target allocation
Equity securities	33 %	32 %	31 %
Debt securities	67 %	68 %	69 %
TOTAL	100 %	100 %	100 %

DEFINED CONTRIBUTION PLANS

Most FMCH employees are eligible to join a 401(k) savings plan. Employees can deposit up to 75 % of their pay up to a maximum of \$15.5 if under 50 years old (\$20.5 if 50 or over) under this savings plan. The Company will match 50 % of the employee deposit up to a maximum Company contribution of 3 % of the employee's pay. The Company's total expense under this defined contribution plan for the years ended December 31, 2008 and 2007 was \$26,096 and \$23,534, respectively.

11. MANDATORILY REDEEMABLE TRUST PREFERRED SECURITIES

The Company issued Trust Preferred Securities through Fresenius Medical Care Capital Trusts, statutory trusts organized under the laws of the State of Delaware. FMC-AG & Co. KGaA owns all of the common securities of these trusts. The sole asset of each trust is a senior subordinated note of FMC-AG & Co. KGaA or a wholly-owned subsidiary of FMC-AG & Co. KGaA. FMC-AG & Co. KGaA, D-GmbH and FMCH have guaranteed payment and performance of the senior subordinated notes to the respective Fresenius Medical Care Capital Trusts. The Trust Preferred Securities are guaranteed by FMC-AG & Co. KGaA through a series of undertakings by the Company, FMCH and D-GmbH.

The Trust Preferred Securities entitle the holders to distributions at a fixed annual rate of the stated amount and are mandatorily redeemable after 10 years. Earlier redemption at the option of the holders may also occur upon a change of control followed by a rating decline or defined events of default including a failure to pay interest. Upon liquidation of the trusts, the holders of Trust Preferred Securities are entitled to a distribution equal to the stated amount. The Trust Preferred Securities do not hold voting rights in the trust except under limited circumstances.

The indentures governing the notes held by the Fresenius Medical Care Capital Trusts contain affirmative and negative covenants with respect to the Company and its subsidiaries and other payment restrictions. Some of the covenants limit the Company's indebtedness and its investments, and require the Company to maintain certain ratios defined in the indentures. As of December 31, 2008, the Company is in compliance with all financial covenants under all Trust Preferred Securities agreements.

The Trust Preferred Securities outstanding as of December 31, 2008 and 2007 are as follows:

Table 05.5.24 TRUST PREFERRED SECURITIES

<i>in thousands, stated amounts in \$</i>	<i>Year issued</i>	<i>Stated amount</i>	<i>Interest rate</i>	<i>Mandatory redemption date</i>	<i>2008</i>	<i>2007</i>
Fresenius Medical Care Capital Trust II	1998	\$ 450,000	7 7/8 %	Feb. 1, 2008	—	443,985
Fresenius Medical Care Capital Trust III	1998	DM 300.000	7 3/8 %	Feb. 1, 2008	—	225,802
Fresenius Medical Care Capital Trust IV	2001	\$ 225,000	7 7/8 %	Jun. 15, 2011	224,068	223,684
Fresenius Medical Care Capital Trust V	2001	€ 300.000	7 3/8 %	Jun. 15, 2011	416,628	440,311
TOTAL					640,696	1,333,782

The Company redeemed the securities issued by Trust II and Trust III which were due and paid on February 1, 2008, primarily with funds obtained under its existing credit facilities.

12. MINORITY INTERESTS

The Company has obligations to purchase options held by minority shareholders in certain of its subsidiaries. These obligations result from put options and are exercisable by the minority owners. If these put options were exercised, the Company would be required to purchase the minority owners' interest for cash equal to the then fair value. As of December 31, 2008 the Company's potential obligations under these put options are \$112,000 of which \$53,000 were exercisable and another \$15,000 is exercisable within one year. In the last two fiscal years ending December 31, 2008, one put has been exercised for a total consideration of \$7,000.

13. SHAREHOLDERS' EQUITY

CAPITAL STOCK

The General Partner has no equity interest in the Company and, therefore, does not participate in either the assets or the profits and losses of the Company. However, the General Partner is compensated for all outlays in connection with conducting the Company's business, including the remuneration of members of the management board and the supervisory board (*see Note 3*).

The general meeting of a partnership limited by shares may approve Authorized Capital (*genehmigtes Kapital*). The resolution creating Authorized Capital requires the affirmative vote of a majority of three quarters of the capital represented at the vote and may authorize the management board to issue shares up to a stated amount for a period of up to five years. The nominal value of the Authorized Capital may not exceed half of the capital stock at the time of the authorization.

In addition, the general meeting of a partnership limited by shares may create Conditional Capital (*bedingtes Kapital*) for the purpose of issuing (i) shares to holders of convertible bonds or other securities which grant a right to shares, (ii) shares as the consideration in a merger with another company, or (iii) shares offered to management or employees. In each case, the authorizing resolution requires the affirmative vote of a majority of three quarters of the capital represented at the vote. The nominal value of the Conditional Capital may not exceed half or, in the case of Conditional Capital created for the purpose of issuing shares to management and employees, 10% of the company's capital at the time of the resolution.

All resolutions increasing the capital of a partnership limited by shares also require the consent of the General Partner for their effectiveness.

AUTHORIZED CAPITAL

By resolution of the Extraordinary General Meeting ("EGM") of shareholders on August 30, 2005, Management AG was authorized, with the approval of the supervisory board, to increase, on one or more occasions, the Company's share capital until August 29, 2010 by a maximum amount of €35,000 through issue of new ordinary shares against cash contributions, Authorized Capital I. The General Partner is entitled, subject to the approval of the supervisory board, to decide on the exclusion of statutory pre-emption rights of the shareholders. However, such an exclusion of pre-emption rights will be permissible for fractional amounts. Additionally, the newly issued shares may be taken up by certain credit institutions determined by the General Partner if such credit institutions are obliged to offer the shares to the shareholders (indirect pre-emption rights).

In addition, by resolution of the EGM of shareholders on August 30, 2005, the General Partner was authorized, with the approval of the supervisory board, to increase, on one or more occasions, the share capital of the Company until August 29, 2010 by a maximum amount of €25,000 through the issue of new ordinary shares against cash contributions or contributions in kind, Authorized Capital II. The General Partner is entitled, subject to the approval of the supervisory board, to decide on an exclusion of statutory pre-emption rights of the shareholders. However, such exclusion of pre-emption rights will be permissible only if (i) in case of a capital increase against cash contributions, the nominal value of the issued shares does not exceed 10% of the nominal share value of the Company's share capital and the issue price for the new shares is at the time of the determination by the General Partner not significantly lower than the stock price in Germany of the existing listed shares of the same type and with the same rights or, (ii) in case of a capital increase against contributions in kind, the purpose of such increase is to acquire an enterprise, parts of an enterprise or an interest in an enterprise.

The Company's Authorized Capital I and Authorized Capital II became effective upon registration with the commercial register of the local court in Hof an der Saale on February 10, 2006.

CONDITIONAL CAPITAL

By resolution of the Company's Annual General Meeting of shareholders ("AGM") on May 9, 2006, as amended by the AGM on May 15, 2007, resolving a three-for-one share split, the Company's share capital was conditionally increased by up to €15,000 corresponding to 15 million ordinary shares with no par value and a nominal value of €1.00. This Conditional Capital increase can only be effected by the exercise of stock options under the Company's Stock Option Plan 2006 with each stock option awarded exercisable for one ordinary share (*see Note 15*). The Company has the right to deliver ordinary shares that it owns or purchases in the market in place of increasing capital by issuing new shares.

Through the Company's other employee participation programs, the Company has issued convertible bonds and stock option/subscription rights (Bezugsrechte) to employees and the members of the Management Board of the General Partner and employees and members of management of affiliated companies that entitle these persons to receive preference shares or, following the conversion offer in 2005, ordinary shares. At December 31, 2008, 241,776 convertible bonds or options for preference shares remained outstanding with a remaining average term of 3.57 years and 11,279,843 convertible bonds or options for ordinary shares remained outstanding with a remaining average term of 5.33 years under these programs. For the year ending December 31, 2008, 32,453 options for preference shares and 1,145,453 options for ordinary shares had been exercised under these employee participation plans and \$36,755 (€24,886) remitted to the Company.

As the result of the Company's three-for-one stock split for both preference and ordinary shares on June 15, 2007, and with the approval of the shareholders as the AGM on May 15, 2007, the Company's Conditional Capital was increased by €4,454 (\$6,557). Conditional Capital available for all programs at December 31, 2008 is €28,051 (\$39,038) which includes €15,000 (\$20,876) for the 2006 Plan and €13,051 (\$18,162) for all other plans.

DIVIDENDS

Under German law, the amount of dividends available for distribution to shareholders is based upon the unconsolidated retained earnings of Fresenius Medical Care AG & Co. KGaA as reported in its balance sheet determined in accordance with the German Commercial Code (Handelsgesetzbuch).

If no dividends on the Company's preference shares are declared for two consecutive years after the year for which the preference shares are entitled to dividends, then the holders of such preference shares would be entitled to the same voting rights as holders of ordinary shares until all arrearages are paid. In addition, the payment of dividends by FMC-AG & Co. KGaA is subject to limitations under the 2006 Senior Credit Agreement (*see Note 9*).

Cash dividends of \$252,395 for 2007 in the amount of €0.56 per preference share and €0.54 per ordinary share were paid on May 21, 2008.

Cash dividends of \$188,407 for 2006 in the amount of €0.49 per preference share and €0.47 per ordinary share were paid on May 16, 2007.

14. EARNINGS PER SHARE

The following table is a reconciliation of the numerators and denominators of the basic and diluted earnings per share computations and shows the basic and fully diluted income per ordinary and preference share for the years ending December 31:

Table 05.5.25 RECONCILIATION OF BASIC AND DILUTED EARNINGS PER SHARE

\$ in thousands, except per share data

	2008	2007
Numerators		
Net income	817,607	717,130
Less dividend preference on preference shares	112	103
INCOME AVAILABLE TO ALL CLASS OF SHARES	817,495	717,027
Denominators		
Weighted average number of		
Ordinary shares outstanding	293,233,477	291,929,141
Preference shares outstanding	3,795,248	3,739,470
Total weighted average shares outstanding	297,028,725	295,668,611
Potentially dilutive Ordinary shares	497,714	1,079,683
Potentially dilutive Preference shares	97,929	127,324
Total weighted average ordinary shares outstanding assuming dilution	293,731,191	293,008,824
Total weighted average preference shares outstanding assuming dilution	3,893,177	3,866,794
Basic income per ordinary share	2.75	2.43
Plus preference per preference share	0.03	0.02
Basic income per preference share	2.78	2.45
Fully diluted income per ordinary share	2.75	2.42
Plus preference per preference share	0.03	0.02
Fully diluted income per preference share	2.78	2.44

15. STOCK OPTIONS

In connection with its stock option program, the Company incurred compensation expense of \$31,879 and \$24,208 for the years ending December 31, 2008 and 2007, respectively. There were no capitalized compensation costs in any of the two years presented. The Company also recorded a related deferred income tax of \$9,158 and \$6,880 for the years ending December 31, 2008 and 2007, respectively.

STOCK OPTIONS AND OTHER SHARE-BASED PLANS

At December 31, 2008, the Company has awards outstanding under various stock-based compensation plans.

INCENTIVE PLAN

In 2006, Fresenius Medical Care Management AG adopted a three-year performance related compensation plan for fiscal years 2008, 2007 and 2006, for the members of its management board in the form of a variable bonus. A special bonus component (award) for some of the management board members consists in equal parts of cash payments and a share-based compensation based on development of the share price of Fresenius Medical Care AG & Co. KGaA's ordinary shares. The amount of the award in each case depends on the achievement of certain performance targets. The targets are measured by reference to revenue growth, operating income, consolidated net income, and cash flow development. Once the annual targets are achieved, the cash portion of the award is paid after the end of the respective fiscal year. The share-based compensation portion of the award is granted but subject to a three-year vesting period beginning after the respective fiscal year in which the target has been met and is amortized over the same three-year vesting period. The payment of the share-based compensation portion corresponds to the share price of Fresenius Medical Care AG & Co. KGaA's ordinary shares on exercise, i.e. at the end of the vesting period, and is also made in cash. The share-based compensation is revalued each reporting period during the vesting period to reflect the market value of the stock as of the reporting date with any changes in value recorded in the reporting period. The share-based compensation incurred under this plan for target years 2008 and 2007 was \$2,189 and \$4,595, respectively.

FRESENIUS MEDICAL CARE AG & CO. KGAA STOCK OPTION PLAN 2006

On May 9, 2006, as amended on May 15, 2007, the Fresenius Medical Care AG & Co. KGaA Stock Option Plan 2006 (the "Amended 2006 Plan") was established by resolution of the Company's AGM with a conditional capital increase up to €15,000 subject to the issue of up to fifteen million no par value bearer ordinary shares with a nominal value of €1.00 each. Under the 2006 Plan, up to fifteen million options can be issued, each of which can be exercised to obtain one ordinary share, with up to three million options designated for members of the Management Board of the General Partner, up to three million options designated for members of management boards of direct or indirect subsidiaries of the Company and up to nine million options designated for managerial staff members of the Company and such subsidiaries. With respect to participants who are members of the General Partner's Management Board, its Supervisory Board has sole authority to grant stock options and exercise other decision making powers under the Amended 2006 Plan (including decisions regarding certain adjustments and forfeitures). The General Partner has such authority with respect to all other participants in the Amended 2006 Plan.

Options under the Amended 2006 Plan can be granted the last Monday in July and/or the first Monday in December. The exercise price of options granted under the Amended 2006 Plan shall be the average closing price on the Frankfurt Stock Exchange of the Company's ordinary shares during the 30 calendar days immediately prior to each grant date. Options granted under the Amended 2006 Plan have a seven-year term but can be exercised only after a three-year vesting period. The vesting of options granted is subject to achievement of performance targets measured over a three-year period from the grant date. For each such year, the performance target is achieved if the Company's adjusted basic income per ordinary share ("EPS"), as calculated in accordance with the Amended 2006 Plan, increases by at

least 8 % year over year during the vesting period, beginning with EPS for the year of grant as compared to EPS for the year preceding such grant. Calculation of EPS under the Amended 2006 Plan excluded, among other items, the costs of the transformation of the Company's legal form and the conversion of preference shares into ordinary shares. For each grant, one-third of the options granted are forfeited for each year in which EPS does not meet or exceed the 8 % target. The performance targets for 2008 and 2007 were met. Vesting of the portion or portions of a grant for a year or years in which the performance target is met does not occur until completion of the entire three-year vesting period. Upon exercise of vested options, the Company has the right to reissue treasury shares or issue new shares.

During 2008, the Company awarded 2,523,729 options, including 398,400 options granted to members of the Management Board of the General Partner, at a weighted average exercise price of \$49.38 (€35.48), a weighted average fair value of \$15.37 each and a total fair value of \$38,788, which will be amortized on a straight line basis over the three-year vesting period.

During 2007, the Company awarded 2,395,962 options, including 398,400 options granted to members of the Management Board of the General Partner, at a weighted average exercise price of \$46.22 (€33.91), a weighted average fair value of \$13.23 (€9.71) each and a total fair value of \$31,709, which will be amortized on a straight line basis over the three-year vesting period.

Options granted under the 2006 Plan to us participants are non-qualified stock options under the United States Internal Revenue Code of 1986, as amended. Options under the 2006 Plan are not transferable by a participant or a participant's heirs, and may not be pledged, assigned, or otherwise disposed of.

FRESENIUS MEDICAL CARE 2001 INTERNATIONAL STOCK OPTION PLAN

Under the Fresenius Medical Care 2001 International Stock Incentive Plan (the "2001 Plan"), options in the form of convertible bonds with a principal of up to €10,240 were issued to the members of the Management Board and other employees of the Company representing grants for up to 4 million non-voting preference shares. The convertible bonds originally had a par value of €2.56 and bear interest at a rate of 5.5 %. In connection with the share split effected in 2007, the principal amount was adjusted in the same proportion as the share capital out of the capital increase and the par value of the convertible bonds was adjusted to €0.85 without affecting the interest rate. Except for the members of the Management Board, eligible employees may purchase the bonds by issuing a non-recourse note with terms corresponding to the terms of and secured by the bond. The Company has the right to offset its obligation on a bond against the employee's obligation on the related note; therefore, the convertible bond obligations and employee note receivables represent stock options issued by the Company and are not reflected in the Consolidated Financial Statements. The options expire ten years from issuance and can be exercised beginning two, three or four years after issuance. Compensation costs related to awards granted under this plan are amortized on a straight-line basis over the vesting period for each separately vesting portion of the awards. Bonds issued to Management Board members who did not issue a note to the Company are recognized as a liability on the Company's balance sheet.

Upon issuance of the option, the employees had the right to choose options with or without a stock price target. The conversion price of options subject to a stock price target corresponds to the stock exchange quoted price of the preference shares upon the first time the stock exchange quoted price exceeds the initial value by at least 25%. The initial value ("Initial Value") is the average price of the preference shares during the last 30 trading days prior to the date of grant. In the case of options not subject to a stock price target, the number of convertible bonds awarded to the eligible employee would be 15% less than if the employee elected options subject to the stock price target. The conversion price of the options without a stock price target is the Initial Value. Each option entitles the holder thereof, upon payment of the respective conversion price, to acquire one preference share. Effective May 2006, no further grants can be issued under the 2001 Plan and no options were granted under the 2001 Plan after 2005.

At December 31, 2008, the Management Board members of the General Partner, held 2,159,720 stock options for ordinary shares and employees of the Company held 9,120,123 stock options for ordinary shares and 241,776 stock options for preference shares, under the various stock-based compensation plans of the Company. The Table below provides reconciliations for options outstanding at December 31, 2008, as compared to December 31, 2007.

Table 05.5.26 RECONCILIATION OF OPTIONS OUTSTANDING

	Options in thousands	Weighted average exercise price	
		in €	in \$
Ordinary shares			
BALANCE AT DECEMBER 31, 2007	9,973	26.64	37.07
Granted	2,524	35.48	49.38
Exercised	1,145	21.27	29.60
Forfeited	72	29.82	41.51
BALANCE AT DECEMBER 31, 2008	11,280	29.15	40.56
Preference shares			
BALANCE AT DECEMBER 31, 2007	275	16.16	22.50
Exercised	32	16.01	22.29
Forfeited	1	16.42	22.85
BALANCE AT DECEMBER 31, 2008	242	16.18	22.52

The following table provides a summary of fully vested options outstanding and exercisable for both preference and ordinary shares at December 31, 2008:

Table 05.5.27 FULLY VESTED OUTSTANDING AND EXERCISABLE OPTIONS

Options	Options in thousands	Weighted average remaining contractual life in years	Weighted average exercise price		Aggregate intrinsic value	
			in €	in \$	in €	in \$
Options for preference shares	217	3.21	15.49	21.55	3,918	5,452
Options for ordinary shares	3,470	4.50	21.24	29.56	41,876	58,278

At December 31, 2008, there were \$53,628 of total unrecognized compensation costs related to non-vested options granted under all plans. These costs are expected to be recognized over a weighted-average period of 1.6 years.

During the years ended December 31, 2008 and 2007 the company received cash of \$36,755 and \$38,757, respectively, from the exercise of stock options. The intrinsic value of options exercised for the twelve-month periods ending December 31, 2008 and 2007 were \$27,135 and \$27,591, respectively. The Company recorded a related tax benefit of \$7,132 and \$8,177 for the years ending December 31, 2008 and 2007, respectively.

FAIR VALUE INFORMATION

The Company used a binomial option-pricing model in determining the fair value of the awards under the 2006 Plan. Option valuation models require the input of highly subjective assumptions including expected stock price volatility. The Company's assumptions are based upon its past experiences, market trends and the experiences of other entities of the same size and in similar industries. Expected volatility is based on historical volatility of the Company's shares. To incorporate the effects of expected early exercise in the model, an early exercise of vested options was assumed as soon as the share price exceeds 155 % of the exercise price. The Company's stock options have characteristics that vary significantly from traded options and changes in subjective assumptions can materially affect the fair value of the option. The assumptions used to determine the fair value of the 2008 and 2007 grants are as follows:

Table 05.5.28 ASSUMPTIONS

	2008	2007
Expected dividend yield	1.85 %	1.93 %
Risk-free interest rate	4.38 %	4.19 %
Expected volatility	25.58 %	27.13 %
Expected life of options	7 years	7 years
Exercise price in €	35.48	33.91
Exercise price in \$	49.38	46.22

16. INCOME TAXES

Income before income taxes and minority interest is attributable to the following geographic locations:

Table 05.5.29 INCOME BEFORE INCOME TAXES

	2008	2007
<i>\$ in thousands</i>		
Germany	372,174	281,633
United States	773,089	724,839
Other	190,427	202,603
TOTAL	1,335,690	1,209,075

Income tax expense (benefit) for the years ended December 31, 2008 and 2007 consisted of the following:

Table 05.5.30 EXPENSE (BENEFIT) FOR INCOME TAXES

	2008	2007
<i>\$ in thousands</i>		
Current		
Germany	62,609	124,598
United States	211,889	283,350
Other	77,134	75,534
TOTAL CURRENT	351,632	483,482
Deferred		
Germany	43,593	(11,377)
United States	105,466	4,052
Other	(11,549)	(10,505)
TOTAL DEFERRED	137,510	(17,830)
TOTAL	489,142	465,652

As a result of the German Business Tax Reform Act 2008 (Unternehmensteuerreformgesetz 2008), the corporate income tax rate was reduced from 25 % to 15 % for German companies. This reduction, together with technical changes to trade tax rules, generally reduces the Company's German entities' combined corporate income tax rate effective as of January 1, 2008. Deferred tax assets and liabilities for German entities expected to be realized in 2008 and beyond, were revalued in 2007 to reflect the changes in the enacted tax rate.

In 2007 the Company was subject to German federal corporation income tax at a base rate of 25 % plus a solidarity surcharge of 5.5 % on federal corporation taxes payable.

A reconciliation between the expected and actual income tax expense is shown below. The expected corporate income tax expense is computed by applying the German corporation tax rate (including the solidarity surcharge) and the effective trade tax rate on income before income taxes and minority interest. The respective combined tax rates are 29.58 % and 38.47 % for the fiscal years ended December 31, 2008 and 2007.

Table 05.5.31 RECONCILIATION OF INCOME TAXES

<i>5 in thousands</i>	2008	2007
Expected corporate income tax expense	395,097	465,131
Tax free income	(49,309)	(50,131)
Foreign tax rate differential	93,877	(5,434)
Non-deductible expenses	5,494	5,081
Taxes for prior years	21,371	41,868
Change in valuation allowance	4,168	3,627
Change of German tax rate	-	(4,257)
Other	18,444	9,767
ACTUAL INCOME TAX EXPENSE	489,142	465,652
EFFECTIVE TAX RATE	36.6%	38.5%

The tax effects of the temporary differences that give rise to deferred tax assets and liabilities at December 31, 2008 and 2007, are presented below:

Table 05.5.32 DEFERRED INCOME TAX ASSETS AND LIABILITIES

<i>\$ in thousands</i>	2008	2007
Deferred tax assets		
Accounts receivable, primarily due to allowance for doubtful accounts	37,431	37,572
Inventory, primarily due to additional costs capitalized for tax purposes, and inventory reserve accounts	35,029	42,301
Plant, equipment, intangible assets and other non current assets, principally due to differences in depreciation and amortization	41,103	50,829
Accrued expenses and other liabilities for financial accounting purposes, not currently tax deductible	305,898	320,518
Net operating loss carryforwards, tax credit carryforwards and interest carryforwards	79,389	64,792
Derivatives	67,800	22,260
Stock-based compensation expense	17,405	11,213
Other	10,679	11,497
TOTAL DEFERRED TAX ASSETS	594,734	560,983
Less valuation allowance	(56,169)	(51,326)
NET DEFERRED TAX ASSETS	538,565	509,657
Deferred tax liabilities		
Accounts receivable	11,015	13,630
Inventory, primarily due to inventory reserve accounts for tax purposes	4,615	6,306
Accrued expenses and other liabilities deductible for tax prior to financial accounting recognition	50,229	15,134
Plant, equipment and intangible assets, principally due to differences in depreciation and amortization	432,367	400,408
Derivatives	11,830	14,636
Other	66,532	20,587
TOTAL DEFERRED TAX LIABILITIES	576,588	470,701
NET DEFERRED TAX ASSETS (LIABILITIES)	(38,023)	38,956

The valuation allowance increased by \$4,843 in 2008 and by \$10,095 in 2007.

The expiration of net operating losses is as follows:

Table 05.5.33 NET OPERATING LOSS CARRYFORWARDS *\$ in thousands*

2009	2010	2011	2012	2013	2014	2015	2016	2017	2018 and thereafter	Without expiration date	Total
27,304	4,604	9,155	19,503	17,879	9,640	13,485	13,632	12,158	30,477	95,984	253,821

In assessing the realizability of deferred tax assets, management considers whether it is more-likely-than-not that some portion or all of the deferred tax assets will be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. Management considers the scheduled reversal of deferred tax liabilities and projected future taxable income in making this assessment. Based upon the level of historical taxable income and projections for future taxable income over the periods in which the deferred tax assets are deductible, management believes it is more-likely-than-not the Company will realize the benefits of these deductible differences, net of the existing valuation allowances at December 31, 2008.

The Company provides for income taxes on the cumulative earnings of foreign subsidiaries that will not be reinvested. During the year 2008, the Company provided for \$8,600 of deferred tax liabilities associated with earnings that are likely to be distributed in 2009 and the following years. Provision has not been made for additional taxes on \$1,643,429 undistributed earnings of foreign subsidiaries as these earnings are considered permanently reinvested. The earnings could become subject to additional tax if remitted or deemed remitted as dividends; however calculation of such additional tax is not practical. These taxes would predominantly comprise foreign withholding tax on dividends of foreign subsidiaries, and German income tax of approx 1.5 percent on all dividends and capital gains.

FMC-AG & Co. KGaA companies are subject to tax audits in Germany and the U.S. on a regular basis and on-going tax audits in other jurisdictions. In Germany, the tax audit for the years 1998 until 2001 has been finalized. The Company recognized and recorded the results of the audit in 2006 and thereafter paid all amounts due to the tax authorities. Fiscal years 2002 through 2005 are currently under audit and fiscal years 2006, 2007 and 2008 are open to audit.

For the tax year 1997, the Company recognized an impairment of one of its subsidiaries which the German tax authorities have disallowed in the audit for the years 1996 and 1997. The Company disagrees with such conclusion and filed a complaint with the appropriate German court to challenge the tax authority's decision. An adverse determination in this litigation could have a material adverse effect on the results of operations in the relevant reporting period. The Company has included the related unrecognized tax benefit in the total unrecognized tax benefit noted below.

In the U.S., the Company filed claims for refunds contesting the IRS's disallowance of FMCH's deductions of civil settlement payments in prior year tax returns. As a result of a settlement agreement with the IRS to resolve the appeal of the IRS's disallowance of deductions for the civil settlement payments made to qui tam relators in connection with the resolution of the 2000 investigation, the Company received a refund in September 2008 of \$37,000, inclusive of interest. The settlement agreement preserves the right to continue to pursue claims in the U.S. Federal courts for refund of all other disallowed deductions. The unrecognized tax benefit relating to these deductions is included in the total unrecognized tax benefit noted below.

The Federal tax audit for the years 2002 through 2004 has been completed and the IRS has issued its report. The audit report includes disallowance of a material amount of deductions taken during the audit period for interest expense related to intercompany mandatorily redeemable preferred securities. The Company has filed a protest over the disallowed deductions and will avail itself of all remedies. An adverse determination with respect to any of the disputed disallowances could have a material adverse effect on our cash flows, tax expenses, net income and earnings per share.

Fiscal years 2005 and 2006 are currently under audit, 2007 and 2008 are open to audit. There are a number of state audits in progress and various years are open to audit in various states. All expected results have been recognized in the financial statements.

Subsidiaries of FMC-AG & Co. KGaA in a number of countries outside of Germany and the U.S. are also subject to tax audits. The Company estimates that the effects of such tax audits are not material to these consolidated financial statements.

The following table shows the reconciliation of the beginning and ending amounts of unrecognized tax benefits:

Table 5.5.34 UNRECOGNIZED TAX BENEFITS (NET OF INTEREST)

\$ in thousands

	2008	2007
BALANCE AT JANUARY 1	354,050	302,552
Increases in unrecognized tax benefits prior periods	24,074	29,236
Decreases in unrecognized tax benefits prior periods	(36,334)	(9,965)
Increases in unrecognized tax benefits current period	20,180	14,893
Changes related to settlements with tax authorities	(2,042)	(2,960)
Foreign currency translation	19,399	20,294
BALANCE AT DECEMBER 31	379,327	354,050

Included in the balance at December 31, 2008 are \$363,188 of unrecognized tax benefits which would affect the effective tax rate if recognized. The Company is currently not in a position to forecast the timing and magnitude of changes in the unrecognized tax benefits.

During the year ended December 31, 2008 the Company recognized \$17,982 in interest and penalties. The Company had a total accrual of \$101,178 of tax related interest and penalties at December 31, 2008.

17. OPERATING LEASES

The Company leases buildings and machinery and equipment under various lease agreements expiring on dates through 2045. Rental expense recorded for operating leases for the years ended December 31, 2008 and 2007 was \$497,875 and \$461,490, respectively.

Future minimum rental payments under noncancelable operating leases for the five years succeeding December 31, 2008 and thereafter are:

<i>\$ in thousands</i>	2009	2010	2011	2012	2013	There- after	Total
Future minimum rental payments	387,996	348,208	300,387	246,607	198,460	638,944	2,120,602

18. LEGAL PROCEEDINGS

The Company is routinely involved in numerous claims, lawsuits, regulatory and tax audits, investigations and other legal matters arising, for the most part, in the ordinary course of its business of providing healthcare services and products. The outcome of litigation and other legal matters is always difficult to accurately predict and outcomes that are not consistent with the Company's view of the merits can occur. The Company believes that it has valid defenses to the legal matters pending against it and is defending itself vigorously. Nevertheless, it is possible that the resolution of one or more of the legal matters currently pending or threatened could have a material adverse effect on its business, results of operations and financial condition.

COMMERCIAL LITIGATION

The Company was originally formed as a result of a series of transactions it completed pursuant to the Agreement and Plan of Reorganization dated as of February 4, 1996, by and between w.R. Grace & Co. and Fresenius SE (the "Merger"). At the time of the Merger, a w.R. Grace & Co. subsidiary known as w.R. Grace & Co.-Conn. had, and continues to have, significant liabilities arising out of product-liability related litigation (including asbestos-related actions), pre-Merger tax claims and other claims unrelated to National Medical Care, Inc. ("NMC"), which was w.R. Grace & Co.'s dialysis business prior to the Merger. In connection with the Merger, w.R. Grace & Co.-Conn. agreed to indemnify the Company, FMCH, and NMC against all liabilities of w.R. Grace & Co., whether relating to events occurring before or after the Merger, other than liabilities arising from or relating to NMC's operations. w.R. Grace & Co. and certain of its subsidiaries filed for reorganization under Chapter 11 of the U.S. Bankruptcy Code (the "Grace Chapter 11 Proceedings") on April 2, 2001.

Prior to and after the commencement of the Grace Chapter 11 Proceedings, class action complaints were filed against w.R. Grace & Co. and FMCH by plaintiffs claiming to be creditors of w.R. Grace & Co.-Conn., and by the asbestos creditors' committees on behalf of the w.R. Grace & Co. bankruptcy estate in the Grace Chapter 11 Proceedings, alleging among other things that the Merger was a fraudulent conveyance, violated the uniform fraudulent transfer act and constituted a conspiracy. All such cases have been stayed and transferred to or are pending before the u.s. District Court as part of the Grace Chapter 11 Proceedings.

In 2003, the Company reached agreement with the asbestos creditors' committees on behalf of the w.R. Grace & Co. bankruptcy estate and w.R. Grace & Co. in the matters pending in the Grace Chapter 11 Proceedings for the settlement of all fraudulent conveyance and tax claims against it and other claims related to the Company that arise out of the bankruptcy of w.R. Grace & Co. Under the terms of the settlement agreement as amended (the "Settlement Agreement"), fraudulent conveyance and other claims raised on behalf of asbestos claimants will be dismissed with prejudice and the Company will receive protection against existing and potential future w.R. Grace & Co. related claims, including fraudulent conveyance and asbestos claims, and indemnification against income tax claims related to the non-NMC members of the w.R. Grace & Co. consolidated tax group upon confirmation of a w.R. Grace & Co. bankruptcy reorganization plan that contains such provisions. Under the Settlement Agreement, the Company will pay a total of \$115,000 without interest to the w.R. Grace & Co. bankruptcy estate, or as otherwise directed by the Court, upon plan confirmation. No admission of liability has been or will be made. The Settlement Agreement has been approved by the u.s. District Court. Subsequent to the Merger, w.R. Grace & Co. was involved in a multi-step transaction involving Sealed Air Corporation ("Sealed Air", formerly known as Grace Holding, Inc.). The Company is engaged in litigation with Sealed Air to confirm its entitlement to indemnification from Sealed Air for all losses and expenses incurred by the Company relating to pre-Merger tax liabilities and Merger-related claims. Under the Settlement Agreement, upon confirmation of a plan that satisfies the conditions of the Company's payment obligation, this litigation will be dismissed with prejudice.

On April 4, 2003, FMCH filed a suit in the u.s. District Court for the Northern District of California, styled Fresenius USA, Inc., et al., v. Baxter International Inc., et al., Case No. C 03-1431, seeking a declaratory judgment that FMCH does not infringe patents held by Baxter International Inc. and its subsidiaries and affiliates ("Baxter"), that the patents are invalid, and that Baxter is without right or authority to threaten or maintain suit against FMCH for alleged infringement of Baxter's patents. In general, the alleged patents concern the use of touch screen interfaces for hemodialysis machines. Baxter filed counterclaims against FMCH seeking more than \$140,000 in monetary damages and injunctive relief, and alleging that FMCH willfully infringed on Baxter's patents. On July 17, 2006, the court entered judgment on a jury verdict in favor of FMCH finding that all the asserted claims of the Baxter patents are invalid as obvious and/or anticipated in light of prior art. On February 13, 2007, the court granted Baxter's motion to set aside the jury's verdict in favor of FMCH and reinstated the patents and entered judgment of infringement. Following a trial on damages, the court entered judgment on November 6, 2007 in favor of Baxter on a jury award of \$14,300. On April 4, 2008, the court denied Baxter's motion for a new trial, established a royalty payable to Baxter of 10% of the sales price for continuing sales of FMCH's 2008K hemodialysis machines and 7% of the sales price of related disposables, parts and service beginning November 7, 2007, and enjoined sales of the 2008K machine effective January 1, 2009. We appealed the court's rulings to the Court of Appeals for the Federal Circuit. We are confident that we will prevail on appeal or as a result of the pending u.s. Patent and Trademark Office re-examinations of the underlying Baxter

patents and have made no provision in our financial statements for any potential liability in this matter. If we are unsuccessful on all appeals, including any appeal of the royalty, the royalties payable to Baxter on the machines and disposable supplies that are subject to the court's order will be approximately \$56,000 for sales through December 31, 2008 and are estimated to be in the range of \$2,000 to \$3,000 per month thereafter. In the interim period until our appeal is decided, we are funding a court-approved escrow account at the royalty rates noted above. If we win the appeal, the escrowed funds will be returned to us with interest. In October 2008, we completed design modifications to the 2008K machine that we expect will eliminate any incremental hemodialysis machine royalty payment exposure under the court order and permit the continued sale of the modified machine in compliance with the injunction, irrespective of the outcome of our appeal.

On April 28, 2008, Baxter filed suit in the u.s. District Court for the Northern District of Illinois, Eastern Division (Chicago), styled Baxter International, Inc. and Baxter Healthcare Corporation v. Fresenius Medical Care Holdings, Inc. and Fresenius USA, Inc., Case No. cv 2389, asserting that FMCH's hemodialysis machines infringe four recently issued patents (late 2007-2008), all of which are based on one of the patents at issue in the April 2003 Baxter case described above. The new patents expire in April 2011 and relate to trend charts shown on touch screen interfaces and the entry of ultrafiltration profiles (ultrafiltration is the removing of liquid from a patient's body using pressure). The court has stayed the case pending the outcome of the appeal in the April 2003 Baxter case. The Company believes that its hemodialysis machines do not infringe any valid claims of the Baxter patents at issue.

On October 17, 2006, Baxter and Deka Products Ltd. (DEKA) filed suit in the u.s. District Court for the Eastern District of Texas which was subsequently transferred to the Northern District of California, styled Baxter Healthcare Corporation and DEKA Products Limited Partnership v. Fresenius Medical Care Holdings, Inc. d/b/a Fresenius Medical Care North America and Fresenius USA, Inc., Case No. cv 438 TJW. The complaint alleges that FMCH's Liberty peritoneal cyclers infringe certain patents owned by or licensed to Baxter. Sales of the Liberty cyclers commenced in July 2008. The Company believes that the Liberty peritoneal cycler does not infringe any valid claims of the Baxter/DEKA patents.

Two patent infringement actions have been pending in Germany between Gambro Industries (“Gambro”) on the one side and D-GmbH and FMC-AG & Co. KGaA on the other side (hereinafter collectively “Fresenius Medical Care”). Gambro herein alleged patent infringements by Fresenius Medical Care concerning a patent on a device for the preparation of medical solutions. The first case was dismissed as being unfounded. Such decision has already become final. In the second case, the District Court of Mannheim rendered a judgment on June 27, 2008 deciding in favor of Gambro and declaring that Fresenius Medical Care has infringed a patent. Accordingly, the court ordered Fresenius Medical Care to pay compensation (to be determined in a separate court proceeding) for alleged infringement and to stop offering the alleged patent infringing technology in its original form in Germany. D-GmbH brought an invalidity action in the Federal German Patent Court (“BPatG”) against Gambro’s patent. This case is currently pending with the Federal Court of Justice as the court of appeal. Fresenius Medical Care has also filed an appeal against the District Court’s verdict. On January 5, 2009, Gambro enforced such verdict provisionally by way of security to be deposited by Gambro. However, preceding such enforcement Fresenius Medical Care had already developed design modifications, being an alternative technical solution, and replaced the alleged patent infringing technology in nearly all of the affected devices. In view of the pending appeal against BPatG’s verdict and Fresenius Medical Care’s appeal against the District Court’s verdict, Fresenius Medical Care continues to believe that the alleged patent infringing technology does not infringe any valid patent claims of Gambro. Therefore, the Company has made no provision in the financial statements for any potential liability in this matter.

OTHER LITIGATION AND POTENTIAL EXPOSURES

Renal Care Group, Inc. (“RCG”) was named as a nominal defendant in a second amended complaint filed September 13, 2006 in the Chancery Court for the State of Tennessee Twentieth Judicial District at Nashville against former officers and directors of RCG which purports to constitute a class action and derivative action relating to alleged unlawful actions and breaches of fiduciary duty in connection with the Company’s acquisition of RCG (the “RCG Acquisition”) and in connection with alleged improper backdating and/or timing of stock option grants. The amended complaint was styled Indiana State District Council of Laborers and Hod Carriers Pension Fund, on behalf of itself and all others similarly situated and derivatively on behalf of RCG, Plaintiff, vs. RCG, Gary Brukardt, William P. Johnston, Harry R. Jacobson, Joseph C. Hutts, William V. Lapham, Thomas A. Lowery, Stephen D. McMurray, Peter J. Grua, C. Thomas Smith, Ronald Hinds, Raymond Hakim and R. Dirk Allison, Defendants. The complaint sought damages against former officers and directors and did not state a claim for money damages directly against RCG. On August 30, 2007, this suit was dismissed by the trial court without leave to amend. Plaintiff subsequently appealed and the matter remains pending in the appellate court of Tennessee.

FMCH and its subsidiaries, including RCG (prior to the RCG Acquisition), received subpoenas from the U.S. Department of Justice, Eastern District of Missouri, in connection with a joint civil and criminal investigation. FMCH received its subpoena in April 2005. RCG received its subpoena in August 2005. The subpoenas require production of a broad range of documents relating to FMCH's and RCG's operations, with specific attention to documents related to clinical quality programs, business development activities, medical director compensation and physician relationships, joint ventures, and anemia management programs, RCG's supply company, pharmaceutical and other services that RCG provides to patients, RCG's relationships to pharmaceutical companies, and RCG's purchase of dialysis equipment from FMCH. The Office of the Inspector General of the U.S. Department of Health and Human Services and the U.S. Attorney's office for the Eastern District of Texas have also confirmed that they are participating in the review of the anemia management program issues raised by the U.S. Attorney's office for the Eastern District of Missouri. On July 17, 2007, the U.S. Attorney's office filed a civil complaint against RCG and FMCH in its capacity as RCG's current corporate parent in United States District Court, Eastern District of Missouri. The complaint seeks monetary damages and penalties with respect to issues arising out of the operation of RCG's Method II supply company through 2005, prior to the date of FMCH's acquisition of RCG. The complaint is styled United States of America ex rel. Julie Williams et al. vs. Renal Care Group, Renal Care Group Supply Company and FMCH. The Company believes that RCG's operation of its Method II supply company was in compliance with applicable law and will defend this litigation vigorously. We will continue to cooperate in the ongoing investigation.

On November 27, 2007, the United States District Court for the Western District of Texas (El Paso) unsealed and permitted service of two complaints previously filed under seal by a qui tam relator, a former FMCH local clinic employee (Qui tam is a legal provision under the United States False Claims Act, which allows for private individuals to bring suit on behalf of the U.S. federal government, as far as such individuals believe to have knowledge of presumable fraud committed by third parties). The first complaint alleges that a nephrologist unlawfully employed in his practice an assistant to perform patient care tasks that the assistant was not licensed to perform and that Medicare billings by the nephrologist and FMCH therefore violated the False Claims Act. The second complaint alleges that FMCH unlawfully retaliated against the relator by discharging her from employment constructively. The United States Attorney for the Western District of Texas declined to intervene and to prosecute on behalf of the United States. Counsel for the nephrologist asserted that a criminal investigation of the relator's allegations was in process and therefore moved the Court to stay all activity in the qui tam until the alleged criminal investigation concluded. The Court denied the nephrologist's motion to stay and the litigation is progressing.

From time to time, the Company is a party to or may be threatened with other litigation or arbitration, claims or assessments arising in the ordinary course of its business. Management regularly analyzes current information including, as applicable, the Company's defenses and insurance coverage and, as necessary, provides accruals for probable liabilities for the eventual disposition of these matters.

The Company, like other health care providers, conducts its operations under intense government regulation and scrutiny. It must comply with regulations which relate to or govern the safety and efficacy of medical products and supplies, the operation of manufacturing facilities, laboratories and dialysis clinics, and environmental and occupational health and safety. The Company must also comply with the Anti-Kickback Statute, the False Claims Act, the Stark Statute, and other federal and state fraud and abuse laws. Applicable laws or regulations may be amended, or enforcement agencies or courts may make interpretations that differ from the Company's interpretations or the manner in which it conducts its business. Enforcement has become a high priority for the federal government and some states.

In addition, the provisions of the False Claims Act authorizing payment of a portion of any recovery to the party bringing the suit encourage private plaintiffs to commence "whistle blower" actions. By virtue of this regulatory environment, as well as the Company's corporate integrity agreement with the U.S. federal government, the Company's business activities and practices are subject to extensive review by regulatory authorities and private parties, and continuing audits, investigative demands, subpoenas, other inquiries, claims and litigation relating to the Company's compliance with applicable laws and regulations. The Company may not always be aware that an inquiry or action has begun, particularly in the case of "whistle blower" actions, which are initially filed under court seal.

The Company operates many facilities throughout the United States. In such a decentralized system, it is often difficult to maintain the desired level of oversight and control over the thousands of individuals employed by many affiliated companies. The Company relies upon its management structure, regulatory and legal resources, and the effective operation of its compliance program to direct, manage and monitor the activities of these employees. On occasion, the Company may identify instances where employees, deliberately or inadvertently, have submitted inadequate or false billings. The actions of such persons may subject the Company and its subsidiaries to liability under the Anti-Kickback Statute, the Stark Statute and the False Claims Act, among other laws.

Physicians, hospitals and other participants in the health care industry are also subject to a large number of lawsuits alleging professional negligence, malpractice, product liability, worker's compensation or related claims, many of which involve large claims and significant defense costs. The Company has been and is currently subject to these suits due to the nature of its business and expects that those types of lawsuits may continue. Although the Company maintains insurance at a level which it believes to be prudent, it cannot assure that the coverage limits will be adequate or that insurance will cover all asserted claims. A successful claim against the Company or any of its subsidiaries in excess of insurance coverage could have a material adverse effect upon it and the results of its operations. Any claims, regardless of their merit or eventual outcome, could have a material adverse effect on the Company's reputation and business.

The Company has also had claims asserted against it and has had lawsuits filed against it relating to alleged patent infringements or businesses that it has acquired or divested. These claims and suits relate both to operation of the businesses and to the acquisition and divestiture transactions. The Company has, when appropriate, asserted its own claims, and claims for indemnification. A successful claim against the Company or any of its subsidiaries could have a material adverse effect upon its business, financial condition, and the results of its operations. Any claims, regardless of their merit or eventual outcome, could have a material adverse effect on the Company's reputation and business.

ACCRUED SPECIAL CHARGE FOR LEGAL MATTERS

At December 31, 2001, the Company recorded a pre-tax special charge of \$258,159 to reflect anticipated expenses associated with the defense and resolution of pre-Merger tax claims, Merger-related claims, and commercial insurer claims. The costs associated with the Settlement Agreement and settlements with insurers have been charged against this accrual. With the exception of the proposed \$115,000 payment under the Settlement Agreement, all other matters included in the special charge have been resolved. While the Company believes that its remaining accrual reasonably estimates its currently anticipated costs related to the continued defense and resolution of this matter, no assurances can be given that its actual costs incurred will not exceed the amount of this accrual.

19. FAIR VALUE MEASURES

In September 2006, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards No. 157, Fair Value Measurements ("FAS 157"), which establishes a framework for reporting fair value and expands disclosures about fair value measurements. FAS 157 is effective for financial statements issued for fiscal years beginning after November 15, 2007, and interim periods within those fiscal years. FASB Staff Position No. 157-2 ("FSP 157-2") issued February 12, 2008 delayed application of this Statement for nonfinancial assets and nonfinancial liabilities, except for items that are recognized or disclosed at fair value in the consolidated financial statements on a recurring basis (at least annually), until fiscal years beginning after November 15, 2008, and interim periods within those fiscal years.

FAS 157 establishes a three-tier value hierarchy, which prioritizes the inputs used in estimating fair value: (i) Level 1 is defined as observable inputs, such as quoted prices in active markets, (ii) Level 2 is defined as inputs other than quoted prices in active markets, that are directly or indirectly observable, and (iii) Level 3 is defined as unobservable inputs for which little or no market data exists, therefore requiring the Company to develop its own assumptions.

The Company adopted this standard, except for those sections affected by FSP 157-2, as of January 1, 2008.

The following table presents the carrying amounts and fair values of the Company's financial instruments at December 31, 2008 and 2007.

Table 05.5.36 CARRYING AMOUNT AND FAIR VALUE OF FINANCIAL INSTRUMENTS

<i>\$ in thousands</i>	2008		2007	
	<i>Carrying amount</i>	<i>Fair value</i>	<i>Carrying amount</i>	<i>Fair value</i>
Non-Derivatives				
Assets				
Cash and cash-equivalents	221,584	221,584	244,690	244,690
Receivables	2,176,316	2,176,316	2,026,865	2,026,865
Liabilities				
Accounts payable	605,260	605,260	530,968	530,968
Long-term debt, excluding Euro and Senior Notes	3,641,697	3,641,697	3,302,840	3,302,840
Trust Preferred Securities	640,696	626,241	1,333,782	1,364,188
Euro Notes	278,340	276,154	294,420	292,466
Senior Notes	492,456	465,625	491,569	496,035
Derivatives¹				
Assets				
Foreign exchange contracts	53,631	53,631	19,485	19,485
Dollar interest rate hedges	-	-	62	62
Liabilities				
Foreign exchange contracts	(39,595)	(39,595)	(5,849)	(5,849)
Dollar interest rate hedges	(148,946)	(148,946)	(40,797)	(40,797)
Yen interest rate hedges	(9)	(9)	(32)	(32)

¹ As of December 31, 2008, the valuation of the Company's derivatives was determined using Significant Other Observable Inputs (Level 2) in accordance with the fair value hierarchy levels established in FAS 157.

The carrying amounts in the table are included in the consolidated balance sheet under the indicated captions, except for derivatives, which are included in other assets or other liabilities.

The significant methods and assumptions used in estimating the fair values of financial instruments are as follows:

Cash and cash equivalents are stated at nominal value which equals the fair value.

Short-term financial instruments like accounts receivable and payable and short-term borrowings are valued at their carrying amounts, which are reasonable estimates of the fair value due to the relatively short period to maturity of these instruments.

The fair value of Senior Notes and trust preferred securities are based on market prices and quotes as of the balance sheet date. The fair values of other fixed-rate financial liabilities, for which market quotes are not available, are calculated as present value of the respective future cash flows. To determine these present values, the prevailing interest rates and credit spreads for the Company as of the balance sheet date are used.

The fair values of financial liabilities with floating interest rates approximate their carrying amounts as the interest rates for these liabilities are predominantly updated every three months with interest rates reflecting actual market conditions at the time of update.

The Company enters into interest rate swaps and foreign exchange forward contracts which are carried at fair value initially and on a recurring basis. The fair value of interest rate swaps is calculated by discounting the future cash flows on the basis of the market interest rates applicable for the remaining term of the contract as of the balance sheet date. To determine the fair value of foreign exchange forward contracts, the contracted forward rate is compared to the current forward rate for the remaining term of the contract as of the balance sheet date. The result is then discounted on the basis of the market interest rates prevailing at the balance sheet date for the respective currency.

Under FAS 157, the Company is required to take into account credit risks when measuring the fair value of derivative financial instruments. In accordance with these requirements, the Company's own credit risk is incorporated in the fair value estimation of interest rate derivatives that are liabilities. However, for foreign exchange forward derivatives that are liabilities, due to the relatively short term of the contracts, the Company did not take into account its own credit risk in the fair value estimation. Counterparty credit-risk adjustments are not material at this time due to the ratings of the counterparty banks which generally have ratings in the "A" Category or better and are therefore not factored into the valuation of derivatives that are assets.

20. MARKET RISK

The Company is exposed to market risk from changes in interest rates and foreign exchange rates. In order to manage the risk of interest rate and currency exchange rate fluctuations, the Company enters into various hedging transactions with highly rated financial institutions as authorized by the Company's General Partner. The Company does not use financial instruments for trading purposes.

The Company established guidelines for risk assessment procedures and controls for the use of financial instruments. They include a clear segregation of duties with regard to execution on one side and administration, accounting and controlling on the other.

FOREIGN EXCHANGE RISK MANAGEMENT

The Company conducts business on a global basis in various currencies, though its operations are mainly in Germany and the United States. For financial reporting purposes, the Company has chosen the u.s. dollar as its reporting currency. Therefore, changes in the rate of exchange between the u.s. dollar and the local currencies in which the financial statements of the Company's international operations are maintained affect its results of operations and financial position as reported in its consolidated financial statements.

The Company's exposure to market risk for changes in foreign exchange rates relates to transactions such as sales and purchases. The Company has significant amounts of sales of products invoiced in euro from its European manufacturing facilities to its other international operations and, to a lesser extent, sales of products invoiced in other non functional currencies. This exposes the subsidiaries to fluctuations in the rate of exchange between the euro and the currency in which their local operations are conducted. For the purpose of hedging existing and foreseeable foreign exchange transaction exposures the Company enters into foreign exchange forward contracts and, on a small scale, foreign exchange options. The Company's policy, which has been consistently followed, is that financial derivatives be used only for the purpose of hedging foreign currency exposure. As of December 31, 2008 the Company had no foreign exchange options.

In connection with intercompany loans in foreign currency the Company normally uses foreign exchange swaps thus assuring that no foreign exchange risks arise from those loans.

Changes in the fair value of foreign exchange forward contracts designated and qualifying as cash flow hedges of forecasted product purchases and sales are reported in accumulated other comprehensive income (loss). These amounts are subsequently reclassified into earnings as a component of cost of revenues, in the same period in which the hedged transaction affects earnings. After tax gains of \$9,534 (\$12,491 pretax) for the year ended December 31, 2008 are deferred in accumulated other comprehensive income and will mainly be reclassified into earnings during 2009. During 2008, the Company reclassified after tax gains of \$2,452 (\$3,296 pretax) from accumulated other comprehensive income (loss) into the statement of operations.

The notional amounts of foreign exchange forward contracts in place to hedge exposures from operations totaled \$543,911 with a fair value of \$21,227 as of December 31, 2008.

In connection with foreign currency denominated intercompany loans, the Company also entered into foreign exchange swaps with a notional amount of \$285,932 having a fair value of \$-7,191 as of December 31, 2008. No hedge accounting is applied to these foreign exchange contracts. Accordingly, the respective foreign exchange swaps are recognized as assets or liabilities and changes in their fair values are recognized against earnings thus offsetting the changes in fair values of the underlying intercompany loans denominated in foreign currency.

As of December 31, 2008, the Company had foreign exchange derivatives with maturities of up to 25 months.

The Company is exposed to potential losses in the event of nonperformance by counterparties to financial instruments but does not expect any counterparty to fail to meet its obligations as the counterparties are banks which generally have ratings in the "A" Category or better. The current credit exposure of foreign exchange derivatives is represented by the fair value of those contracts with a positive fair value at the reporting date amounting to \$53,631.

INTEREST RATE RISK MANAGEMENT

The Company enters into derivatives, particularly interest rate swaps and to a certain extent, interest options, to protect interest rate exposures arising from long-term debt at floating rates by effectively swapping them into fixed rates.

The Company may be exposed to potential losses in the event of nonperformance by counterparties to financial instruments but does not expect any counterparty to fail to meet its obligations as the counterparties are banks which generally have ratings in the "A" Category or better. The Company had no current credit exposure from interest rate derivatives as none of those contracts had a positive fair value at December 31, 2008.

CASH FLOW HEDGES OF VARIABLE RATE DEBT

The Company enters into interest rate swap agreements that are designated as cash flow hedges effectively converting the major part of variable interest rate payments due on the Company's 2006 Senior Credit Agreement denominated in u.s. dollars into fixed interest rate payments. Those swap agreements, all of which expire at various dates between 2009 and 2012, in the notional amount of \$2,850,000, effectively fix the Company's variable interest rate exposure on the majority of its u.s. dollar-denominated revolving loans at an average interest rate of 4.37% plus an applicable margin. After tax losses of \$91,573 (\$148,913 pretax) for the year ended December 31, 2008, were deferred in accumulated other comprehensive income. Interest payable and interest receivable under the swap agreements are accrued and recorded as an adjustment to interest expense.

FAIR VALUE HEDGES OF FIXED RATE DEBT

The Company entered into interest rate swap agreements that were designated as fair value hedges to hedge the risk of changes in the fair value of fixed interest rate borrowings effectively converting the fixed interest payments on Fresenius Medical Care Capital Trust II trust preferred securities (*see Note 11*) denominated in u.s. dollars into variable interest rate payments. Since the critical terms of the interest rate swap agreements were identical to the terms of Fresenius Medical Capital Trust II trust preferred securities, the hedging relationship was highly effective and no ineffectiveness was recognized in earnings. The interest rate swap agreements were reported at fair value in the balance sheet. The reported amount of the hedged portion of the fixed rate trust preferred securities included an adjustment representing the fair value attributable to the interest rate risk being hedged. Changes in the fair value of interest rate swap contracts and trust preferred securities offset each other in the income statement. On February 1, 2008, the Fresenius Medical Care Capital Trust II trust preferred securities were repaid and the interest rate swap agreements expired.

21. OTHER COMPREHENSIVE INCOME (LOSS)

The changes in the components of other comprehensive income (loss) for the years ended December 31, 2008 and 2007 are as follows:

Table 05.5.37 **OTHER COMPREHENSIVE INCOME (LOSS)**
\$ in thousands

	2008			2007		
	Pretax	Tax effect	Net	Pretax	Tax effect	Net
Other comprehensive (loss) income relating to cash flow hedges						
Changes in fair value of cash flow hedges during the period	(107,316)	42,764	(64,552)	(83,919)	32,961	(50,958)
Reclassification adjustments	(924)	296	(628)	(4,455)	1,360	(3,095)
TOTAL OTHER COMPREHENSIVE (LOSS) INCOME RELATING TO CASH FLOW HEDGES	(108,240)	43,060	(65,180)	(88,374)	34,321	(54,053)
Foreign-currency translation adjustment	(171,063)	-	(171,063)	137,048	-	137,048
Adjustments related to pension obligations	(28,551)	12,632	(15,919)	35,729	(12,430)	23,299
OTHER COMPREHENSIVE INCOME (LOSS)	(307,854)	55,692	(252,162)	84,403	21,891	106,294

22. BUSINESS SEGMENT INFORMATION

The Company has identified three business segments, North America, International, and Asia Pacific, which were determined based upon how the Company manages its businesses. All segments are primarily engaged in providing dialysis services and manufacturing and distributing products and equipment for the treatment of end-stage renal disease. In the U.S., the Company also engages in performing clinical laboratory testing and providing inpatient dialysis services, and other services under contract to hospitals. The Company has aggregated the International and Asia Pacific operating segments as "International". The segments are aggregated due to their similar economic characteristics. These characteristics include the same services provided and the same products sold, the same type patient population, similar methods of distribution of products and services and similar economic environments.

Management evaluates each segment using a measure that reflects all of the segment's controllable revenues and expenses. Management believes that the most appropriate measure in this regard is operating income which measures the Company's source of earnings. Financing is a corporate function, which the Company's segments do not control. Therefore, the Company does not include interest expense relating to financing as a segment measure. Similarly, the Company does not allocate "corporate costs" which relate primarily to certain headquarters overhead charges, including accounting and finance, professional services, etc., because the Company believes that these costs are also not within the control of the individual segments. The Company also regards income taxes to be outside the segment's control. In addition, certain acquisitions and intangible assets are not allocated to a segment but are accounted for as "corporate".

Table 05.5.38 BUSINESS SEGMENT INFORMATION

	North America	International	Segment total	Corporate	Total
<i>\$ in thousands</i>					
2008					
Net revenue	7,005,401	3,606,270	10,611,671	652	10,612,323
Inter-segment revenue	2,100	82,283	84,383	(84,383)	–
TOTAL NET REVENUE	7,007,501	3,688,553	10,696,054	(83,731)	10,612,323
Depreciation and amortization	(238,300)	(169,999)	(408,299)	(7,372)	(415,671)
OPERATING INCOME	1,168,173	616,034	1,784,207	(111,775)	1,672,432
Segment assets	10,960,264	3,557,247	14,517,511	402,165	14,919,676
Capital expenditures, acquisitions and investments ¹	497,612	358,930	856,542	107,287	963,829
2007					
Net revenue	6,663,221	3,057,030	9,720,251	63	9,720,314
Inter-segment revenue	516	77,492	78,008	(78,008)	–
TOTAL NET REVENUE	6,663,737	3,134,522	9,798,259	(77,945)	9,720,314
Depreciation and amortization	(220,210)	(140,968)	(361,178)	(2,151)	(363,329)
OPERATING INCOME	1,129,801	544,214	1,674,015	(93,894)	1,580,121
Segment assets	10,586,316	3,330,955	13,917,271	252,994	14,170,265
Capital expenditures, acquisitions and investments ²	396,705	319,105	715,810	120,306	836,116

¹ North America and International acquisitions exclude \$22,542 and \$24,710, respectively, of non-cash acquisitions for 2008.

² International and Corporate acquisitions exclude \$9,964 and \$83,812, respectively, of non-cash acquisitions for 2007.

For the geographic presentation, revenues are attributed to specific countries based on the end user's location for products and the country in which the service is provided. Information with respect to the Company's geographic operations is set forth in the table below:

Table 05.5.39 GEOGRAPHIC DIVISION

	2008		2007	
	Net revenue	Long-lived assets	Net revenue	Long-lived assets
Germany	350,995	306,963	308,603	195,846
North America	7,005,401	8,706,790	6,663,221	8,471,870
Rest of the world	3,255,927	1,597,576	2,748,490	1,558,364
TOTAL	10,612,323	10,611,329	9,720,314	10,226,080

23. SUPPLEMENTARY CASH FLOW INFORMATION

The following additional information is provided with respect to the consolidated statements of cashflows:

Table 05.5.40 | SUPPLEMENTARY CASH FLOW INFORMATION

\$ in thousands

	2008	2007
Supplementary cash flow information		
Cash paid for interest	357,295	407,882
Cash paid for income taxes ¹	343,224	349,058
Cash inflow for income taxes from stock option exercises	7,132	8,177
Supplemental disclosures of cash flow information		
Details for acquisitions		
Assets acquired	(129,711)	(431,289)
Liabilities assumed	9,858	47,779
Minorities	(3,706)	13,040
Notes assumed in connection with acquisition	2,490	99,775
Cash paid	(121,069)	(276,695)
Less cash acquired	714	18,818
NET CASH PAID FOR ACQUISITIONS	(120,355)	(257,877)

¹ Net of tax refund

05.6 MANAGEMENT'S ANNUAL REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING

Management of the Company is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rule 13a-15(f). The Company's internal control over financial reporting is a process designed by or under the supervision of the Company's Chief Executive Officer and Chief Financial Officer to provide reasonable assurance regarding the reliability of financial reporting and the preparation of the Company's financial statements for external reporting purposes in accordance with u.s. generally accepted accounting principles.

As of December 31, 2008, management conducted an assessment of the effectiveness of the Company's internal control over financial reporting based on the criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Management's assessment follows the guidance for management of the evaluation of internal controls over financial reporting released by the Securities and Exchange Commission on May 23, 2007. Based on this assessment, management has determined that the Company's internal control over financial reporting is effective as of December 31, 2008.

The Company's internal control over financial reporting includes policies and procedures that (1) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect transactions and dispositions of assets; (2) provide reasonable assurance that the Company's transactions are recorded as necessary to permit preparation of financial statements in accordance with u.s. generally accepted accounting principles, and that the Company's receipts and expenditures are being made only in accordance with authorizations of the Company's management and directors; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on the Company's financial statements.

Because of its inherent limitation, internal control over financial reporting, no matter how well designed, cannot provide absolute assurance of achieving financial reporting objectives and may not prevent or detect misstatements. Therefore, even if the internal control over financial reporting is determined to be effective it can provide only reasonable assurance with respect to financial statement preparation and presentation. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

The effectiveness of the Company's internal control over financial reporting as of December 31, 2008, has been audited by KPMG AG Wirtschaftsprüfungsgesellschaft, an independent registered public accounting firm, as stated in their report included *on page 114*.

February 18, 2009

Fresenius Medical Care AG & Co. KGaA

a partnership limited by shares, represented by:

Fresenius Medical Care Management AG, its general partner

Dr. Ben Lipps
Chief Executive Officer

Lawrence A. Rosen
Chief Financial Officer

05.7 REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

TO THE SUPERVISORY BOARD OF FRESENIUS MEDICAL CARE AG & CO. KGAA

We have audited the internal control over financial reporting of Fresenius Medical Care AG & Co. KGaA and subsidiaries ("Fresenius Medical Care" or the "Company") as of December 31, 2008, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Fresenius Medical Care's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Annual Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the effectiveness of the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with U.S. generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with U.S. generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, Fresenius Medical Care maintained, in all material respects, effective internal control over financial reporting as of December 31, 2008, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Fresenius Medical Care as of December 31, 2008 and 2007, and the related consolidated statements of income, shareholders' equity, and cash flows for each of the years in the two-year period ended December 31, 2008, and our report dated February 18, 2009 expressed an unqualified opinion on those consolidated financial statements.

Frankfurt am Main, Germany
February 18, 2009

KPMG AG
Wirtschaftsprüfungsgesellschaft

05.8 AUDITORS' REPORT: REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

TO THE SUPERVISORY BOARD OF FRESENIUS MEDICAL CARE AG & CO. KGAA

We have audited the accompanying consolidated balance sheets of Fresenius Medical Care AG & Co. KGaA and subsidiaries ("Fresenius Medical Care" or the "Company") as of December 31, 2008 and 2007, and the related consolidated statements of income, shareholders' equity, and cash flows for each of the years in the two-year period ended December 31, 2008. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Fresenius Medical Care as of December 31, 2008 and 2007, and the results of their operations and their cash flows for each of the years in the two-year period ended December 31, 2008, in conformity with u.s. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the effectiveness of Fresenius Medical Care's internal control over financial reporting as of December 31, 2008, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), and our report dated February 18, 2009 expressed an unqualified opinion on the effective operation of internal control over financial reporting.

Frankfurt am Main, Germany
February 18, 2009

KPMG AG
Wirtschaftsprüfungsgesellschaft