

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D. C. 20549

FORM 10-Q

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

FOR THE QUARTERLY PERIOD ENDED JUNE 30, 1999

OR

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

FOR THE TRANSITION PERIOD FROM TO .

COMMISSION FILE #0-4829-03

NABI

-----  
(Exact name of registrant as specified in its charter)

DELAWARE

59-1212264

-----  
(State or other jurisdiction of incorporation or organization)

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

5800 Park of Commerce Boulevard N.W., Boca Raton, FL 33487

-----  
(Address of principal executive offices) (Zip Code)

(Registrant's telephone number, including area code): (561) 989-5800  
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Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months, and (2) has been subject to such filing requirements for the past 90 days.

YES (X) NO ( )

The number of shares outstanding of registrant's common stock at August 10, 1999 was 34,940,366 shares.

QUARTERLY REPORT UNDER SECTION 13 OR 15 (D)

NABI

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INDEX  
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PART I. FINANCIAL INFORMATION	PAGE
ITEM 1. FINANCIAL STATEMENTS.....	3
Consolidated Balance Sheets, June 30, 1999 and December 31, 1998.....	3
Consolidated Statements of Operations for the three-month and six-month periods ended June 30, 1999 and 1998.....	4
Consolidated Statements of Cash Flows for the six-month periods ended June 30, 1999 and 1998.....	5
Notes to Consolidated Financial Statements.....	6
ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS.....	9
PART II. OTHER INFORMATION	
ITEM 1. LEGAL PROCEEDINGS.....	13
ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS.....	14
ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K.....	14

NABI(R)  
 PART I Financial Information  
 Item 1 Financial Statements

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 CONSOLIDATED BALANCE SHEETS  
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DOLLARS IN THOUSANDS	(UNAUDITED)	DECEMBER 31,
	JUNE 30,	1998
	1999	
-----		
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents	\$ 1,112	\$ 1,016
Trade accounts receivable, net	31,911	40,029
Inventories, net	32,969	38,203
Prepaid expenses and other assets	3,757	6,227
	-----	-----
TOTAL CURRENT ASSETS	69,749	85,475
PROPERTY AND EQUIPMENT, NET	102,174	99,018
OTHER ASSETS:		
Excess of acquisition cost over net assets acquired, net	13,600	16,165
Intangible assets, net	6,432	7,032
Other, net	10,250	10,610
	-----	-----
TOTAL ASSETS	\$ 202,205	\$ 218,300
	=====	=====
LIABILITIES AND STOCKHOLDERS' EQUITY		
CURRENT LIABILITIES:		
Trade accounts payable	\$ 12,716	\$ 14,964
Accrued expenses	24,156	28,466
Notes payable	5,279	81
	-----	-----
TOTAL CURRENT LIABILITIES	42,151	43,511
NOTES PAYABLE	103,273	117,963
OTHER	2,287	2,637
	-----	-----
TOTAL LIABILITIES	147,711	164,111
	-----	-----
STOCKHOLDERS' EQUITY:		
Convertible preferred stock, par value \$.10 per share: 5,000 shares authorized; no shares outstanding	--	--
Common stock, par value \$.10 per share: 75,000 shares authorized; 34,938 and 34,903 shares issued and outstanding, respectively	3,494	3,490
Capital in excess of par value	137,971	137,911
Accumulated deficit	(86,196)	(86,734)
Accumulated other comprehensive loss	(775)	(478)
	-----	-----
TOTAL STOCKHOLDERS' EQUITY	54,494	54,189
	-----	-----
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	\$ 202,205	\$ 218,300
	=====	=====

THE ACCOMPANYING NOTES ARE AN INTEGRAL PART OF THESE FINANCIAL STATEMENTS.

NABI(R)

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 CONSOLIDATED STATEMENTS OF OPERATIONS  
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DOLLARS IN THOUSANDS, EXCEPT PER SHARE DATA	(UNAUDITED) THREE MONTHS ENDED JUNE 30,		(UNAUDITED) SIX MONTHS ENDED JUNE 30,	
	1999	1998	1999	1998
SALES	\$ 62,198	\$ 61,178	\$ 120,221	\$ 119,792
COSTS AND EXPENSES:				
Costs of products sold	42,669	43,542	87,898	88,131
Selling, general and administrative expense	8,513	8,178	14,996	16,173
Research and development expense	3,868	5,621	7,061	10,388
Royalty expense	3,914	3,118	6,091	5,863
Other operating expense, principally freight and amortization	487	577	978	1,159
	-----	-----	-----	-----
OPERATING INCOME (LOSS)	2,747	142	3,197	(1,922)
INTEREST INCOME	54	3	60	12
INTEREST EXPENSE	(980)	(1,401)	(2,291)	(3,177)
OTHER, NET	(13)	187	(54)	47
	-----	-----	-----	-----
INCOME (LOSS) BEFORE BENEFIT (PROVISION) FOR INCOME TAXES	1,808	(1,069)	912	(5,040)
BENEFIT (PROVISION) FOR INCOME TAXES	(756)	552	(374)	2,605
	-----	-----	-----	-----
NET INCOME (LOSS)	\$ 1,052	(\$ 517)	\$ 538	(\$ 2,435)
	=====	=====	=====	=====
BASIC AND DILUTED EARNINGS (LOSS) PER SHARE	\$ 0.03	(\$ 0.01)	\$ 0.02	(\$ 0.07)
	=====	=====	=====	=====

THE ACCOMPANYING NOTES ARE AN INTEGRAL PART OF THESE FINANCIAL STATEMENTS.

NABI(R)

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 CONSOLIDATED STATEMENTS OF CASH FLOWS  
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DOLLARS IN THOUSANDS	(UNAUDITED) SIX MONTHS ENDED JUNE 30,	
-----	1999	1998
-----	-----	-----
CASH FLOW FROM OPERATING ACTIVITIES:		
Net income (loss)	\$ 538	(\$ 2,435)
Adjustments to reconcile net income (loss) to net cash provided (used) by operating activities:		
Depreciation and amortization	5,272	5,640
Provision for doubtful accounts	(10)	(75)
Deferred income taxes	374	(2,605)
Other	65	136
Change in assets and liabilities:		
Decrease (increase) in trade accounts receivable	8,128	2,544
Decrease (increase) in inventories	5,234	6,835
Decrease (increase) in prepaid expenses and other assets	341	5,178
Decrease (increase) in other assets	(242)	79
Increase (decrease) in accounts payable and accrued liabilities	(2,846)	(5,194)
Total adjustments	16,316	12,538
NET CASH PROVIDED BY OPERATING ACTIVITIES	16,854	10,103
	-----	-----
CASH FLOW FROM INVESTING ACTIVITIES:		
Proceeds from sale of antibody centers	2,518	--
Capital expenditures	(9,804)	(9,227)
NET CASH USED BY INVESTING ACTIVITIES	(7,286)	(9,227)
	-----	-----
CASH FLOW FROM FINANCING ACTIVITIES:		
Repayments under line of credit, net	(9,690)	(6,646)
Borrowings under term loan	--	5,000
Other debt	198	(938)
Proceeds from the exercise of options	20	113
NET CASH USED BY FINANCING ACTIVITIES	(9,472)	(2,471)
	-----	-----
NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS	96	(1,595)
CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD	1,016	3,397
	-----	-----
CASH AND CASH EQUIVALENTS AT END OF PERIOD	\$ 1,112	\$ 1,802
	=====	=====

THE ACCOMPANYING NOTES ARE AN INTEGRAL PART OF THESE FINANCIAL STATEMENTS.

NABI

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
(UNAUDITED)

## NOTE 1 GENERAL

Nabi(R) (the "Company") is a fully-integrated biopharmaceutical company that develops and commercializes pharmaceutical products used for the prevention and treatment of infectious and autoimmune diseases and supplies specialty and non-specific antibody products to pharmaceutical companies worldwide.

The consolidated financial statements include the accounts of Nabi and its subsidiaries. All significant intercompany accounts and transactions were eliminated during the consolidation. These statements should be read in conjunction with the consolidated financial statements and notes thereto included in Nabi's Annual Report to Stockholders for the year ended December 31, 1998.

In the opinion of management, the unaudited consolidated financial statements include all adjustments necessary to present fairly Nabi's consolidated financial position at June 30, 1999 and the consolidated results of its operations for the three and six month periods ended June 30, 1999 and 1998. The interim results of operations are not necessarily indicative of the results that may occur for the fiscal year.

## NOTE 2 INVENTORIES

The components of inventories, stated at the lower of cost (FIFO) or market, are as follows:

DOLLARS IN THOUSANDS	JUNE 30,	DECEMBER 31,
	1999	1998
Finished goods	\$31,904	\$36,975
Work in process	944	1,964
Raw materials	3,230	3,772
	36,078	42,711
Less: reserves	(3,109)	(4,508)
TOTAL	\$32,969	\$38,203

## NOTE 3 NON-RECURRING CHARGES

During the fourth quarter of 1998, Nabi recorded a non-recurring charge that included \$13.2 million related to a strategic plan to sharpen the Company's focus. The plan commenced during late 1998 and will be substantially completed during 1999.

A summary of the Company's restructuring activity for the first six months of 1999 is presented below:

DOLLARS IN THOUSANDS	
Balance at December 31, 1998	\$ 13,214
Activity during 1999:	
Termination benefit payments	(585)
Non-cash write-downs of fixed and intangible assets	(4,295)
Non-cancelable lease obligation payments and other cash outflows	(145)
BALANCE AT JUNE 30, 1999	\$ 8,189

#### NOTE 4 EARNINGS PER SHARE

The following is a reconciliation between basic and diluted earnings per share for the three and six months ended June 30, 1999 and 1998:

(DOLLARS IN THOUSANDS, EXCEPT PER SHARE DATA)	THREE MONTHS ENDED JUNE 30,			SIX MONTHS ENDED JUNE 30,		
	Basic EPS	Effect of Dilutive Securities: Stock Options	Diluted EPS	Basic EPS	Effect of Dilutive Securities: Stock Options	Diluted EPS
1999						
Net income (loss)	\$1,052	--	\$ 1,052	\$ 538	--	\$ 538
Shares	34,926	316	35,242	34,916	243	35,159
Per share	\$0.03	--	\$ 0.03	\$ 0.02	--	\$ 0.02
1998						
Net income (loss)	(\$517)	--	(\$ 517)	(\$ 2,435)	--	(\$ 2,435)
Shares	34,889	--	34,889	34,870	--	34,870
Per share	(\$0.01)	--	(\$ 0.01)	(\$ 0.07)	--	(\$ 0.07)

#### NOTE 5 COMPREHENSIVE INCOME

The components of comprehensive income for the three and six months ended June 30, 1999 and 1998 are as follows:

DOLLARS IN THOUSANDS	THREE MONTHS ENDED JUNE 30,		SIX MONTHS ENDED JUNE 30,	
	1999	1998	1999	1998
Net income (loss)	\$1,052	(\$517)	\$538	(\$2,435)
Foreign currency translation gain (loss)	(155)	35	(297)	(9)
COMPREHENSIVE INCOME (LOSS)	\$897	(\$482)	\$241	(\$2,444)

## NOTE 6 INDUSTRY SEGMENT INFORMATION

The following table presents information related to Nabi's two operating business segments for the three and six months ended June 30, 1999 and 1998:

DOLLARS IN THOUSANDS	THREE MONTHS ENDED JUNE 30,		SIX MONTHS ENDED JUNE 30,	
	1999	1998	1999	1998
<b>Sales</b>				
Antibody products	\$43,988	\$45,618	\$90,469	\$91,580
Pharmaceutical products	18,210	15,560	29,752	28,212
<b>TOTAL</b>	<b>62,198</b>	<b>61,178</b>	<b>120,221</b>	<b>119,792</b>
<b>Operating income (loss)</b>				
Antibody products	1,504	(230)	2,220	(1,316)
Pharmaceutical products	1,243	372	977	(606)
<b>TOTAL</b>	<b>\$2,747</b>	<b>\$142</b>	<b>\$3,197</b>	<b>(\$1,922)</b>

The following summary reconciles reportable segment operating profit (loss) to income (loss) before benefit (provision) for income taxes:

DOLLARS IN THOUSANDS	THREE MONTHS ENDED JUNE 30,		SIX MONTHS ENDED JUNE 30,	
	1999	1998	1999	1998
<b>INCOME (LOSS) BEFORE BENEFIT (PROVISION) FOR INCOME TAXES:</b>				
Reportable segment operating income (loss)	\$2,747	\$142	\$3,197	(\$1,922)
Unallocated interest expense	(980)	(1,401)	(2,291)	(3,177)
Unallocated other income and expense, net	41	190	6	59
<b>Consolidated income (loss) before benefit (provision) for income taxes</b>	<b>\$1,808</b>	<b>(\$1,069)</b>	<b>\$912</b>	<b>(\$5,040)</b>

## NOTE 7 RECLASSIFICATIONS

Certain items in the consolidated financial statements for the 1998 period have been reclassified for comparative purposes.



## ITEM 2

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 MANAGEMENT'S DISCUSSION AND ANALYSIS OF  
 FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following is a discussion and analysis of the major factors contributing to Nabi's financial condition and results of operations for the three and six month periods ended June 30, 1999 and 1998. The discussion and analysis should be read in conjunction with the condensed consolidated financial statements and notes thereto. All dollar amounts are expressed in thousands, except per share amounts.

## RESULTS OF OPERATIONS

The following table sets forth Nabi's results of operations expressed as a percentage of sales:

	THREE MONTHS ENDED JUNE 30,		SIX MONTHS ENDED JUNE 30,	
	1999	1998	1999	1998
SALES	100.0 %	100.0 %	100.0 %	100.0 %
Costs of products sold	68.6 %	71.2 %	73.1 %	73.6 %
<b>GROSS PROFIT MARGIN</b>	<b>31.4 %</b>	<b>28.8 %</b>	<b>26.9 %</b>	<b>26.4 %</b>
Selling, general and administrative expense	13.7 %	13.4 %	12.5 %	13.5 %
Research and development expense	6.2 %	9.2 %	5.9 %	8.7 %
Royalty expense	6.3 %	5.1 %	5.1 %	4.9 %
Other operating expense, principally freight and amortization	0.8 %	0.9 %	0.7 %	0.9 %
<b>OPERATING INCOME (LOSS)</b>	<b>4.4 %</b>	<b>0.2 %</b>	<b>2.7 %</b>	<b>(1.6)%</b>
Interest income	0.1 %	0.0 %	0.0 %	0.0 %
Interest expense	(1.6)%	(2.2)%	(1.9)%	(2.6)%
Other, net	(0.0)%	0.3 %	(0.0)%	0.0 %
Income (loss) before benefit (provision) for income taxes	2.9 %	(1.7)%	0.8 %	(4.2)%
Benefit (provision) for income taxes	(1.2)%	0.9 %	(0.3)%	2.2 %
<b>NET INCOME (LOSS)</b>	<b>1.7 %</b>	<b>(0.8)%</b>	<b>0.5 %</b>	<b>(2.0)%</b>

Information concerning Nabi's sales by operating segments for the respective periods, is set forth in the following table:

SEGMENT	THREE MONTHS ENDED JUNE 30,			
	1999		1998	
Antibody products:				
- Non-specific antibodies	\$29,868	48.0%	\$32,686	53.4%
- Specialty antibodies	14,120	22.7%	12,932	21.1%
Pharmaceutical products	43,988	70.7%	45,618	74.6%
	18,210	29.3%	15,560	25.4%
<b>TOTAL</b>	<b>\$62,198</b>	<b>100.0%</b>	<b>\$61,178</b>	<b>100.0%</b>

## SIX MONTHS ENDED JUNE 30,

SEGMENT	1999		1998	
Antibody products:				
- Non-specific antibodies	\$61,962	51.5%	\$66,694	55.7%
- Specialty antibodies	28,507	23.7%	24,886	20.8%
	90,469	75.2%	91,580	76.5%
Pharmaceutical products	29,752	24.8%	28,212	23.5%
TOTAL	\$120,221	100.0%	\$119,792	100.0%

## THREE MONTHS ENDED JUNE 30, 1999 AND 1998

**SALES.** Sales for the second quarter of 1999 increased by \$1 million to \$62.2 million, compared to \$61.2 million for the second quarter of 1998. Pharmaceutical sales increased 17% from the 1998 second quarter. This increase reflected increased sales of existing products, WinRho SDF(TM) and Autoplex(R)T, and sales of ALOPRIM(TM), a new pharmaceutical product that Nabi in-licensed and launched at the end of the second quarter in 1999. Total antibody sales decreased by \$1.6 million from the 1998 second quarter. Consistent with the Company's objectives for 1999 to shift revenues toward specialty products and improve antibody margins, specialty antibody product sales increased almost 10%, reflecting higher volumes for most products, including tetanus, anti-CMV and rabies products, which more than offset the cessation of anti-RSV product sales. Non-specific antibody sales decreased 9% from the comparable 1998 period due to lower production, reflecting in part the effect of the sale of six antibody collection centers in April 1999.

**GROSS PROFIT MARGIN.** Gross profit and related margin for the second quarter of 1999 was \$ 19.5 million, a record level of 31.4% of sales, compared to \$17.6 million, or 28.8% of sales, in the second quarter of 1998. The gains in gross profit and related margin reflects the Company's success in improving sales mix toward higher-margin specialty antibody products and pharmaceutical products. In addition, the 1999 results reflect management's efforts to manage costs and optimize production in the antibody business.

**SELLING, GENERAL AND ADMINISTRATIVE EXPENSE.** Selling, general and administrative expense was \$8.5 million, or 13.7% of sales, for the second quarter of 1999 compared to \$8.2 million, or 13.4% of sales, in the second quarter of 1998. This increase resulted from higher sales and marketing expenses associated with increasing pharmaceutical product sales, the launch of Nabi-HB(TM), and increased system costs related to Year 2000 readiness. This increase was partially offset by a reduction in other general and administrative expenses for the 1999 quarter.

**RESEARCH AND DEVELOPMENT EXPENSE.** Research and development expense was \$3.9 million, or 6.2% of sales, for the second quarter of 1999 compared to \$5.6 million, or 9.2% of sales, in the second quarter of 1998. Nabi incurred significant expenditures during 1998 related to the advancement of clinical trials for Nabi-HB(TM) which was approved by the FDA in March 1999. In 1999, Nabi has reduced pre-clinical product development activities and has focused its ongoing research and development efforts to support currently marketed products and those in later stages of development. At the same time, the Company is actively seeking corporate and government partners to fund the significant cost of further development for the products in its research and development pipeline.

**ROYALTY EXPENSE.** Royalty expense was \$3.9 million, or 6.3% of sales, in the second quarter of 1999, compared to \$3.1 million, or 5.0% of sales, in the second quarter of 1998. The increase is attributable to higher sales of pharmaceutical products and Nabi-HB(TM) royalties payable to the New York Blood Center based on the reformulated product.

**INTEREST EXPENSE.** Interest expense for the second quarter of 1999 was \$1 million, or 1.6% of sales, compared to \$1.4 million, or 2.2% of sales, in the second quarter of 1998. The decrease is primarily

attributable to higher amounts of interest capitalized during the 1999 second quarter. Capitalized interest relating primarily to construction of Nabi's biopharmaceutical manufacturing facility in Boca Raton, Florida was approximately \$1.2 million in the 1999 second quarter as compared to \$0.8 million during the 1998 period.

OTHER FACTORS. Provision for income taxes was \$0.8 million, recorded at an effective rate of 41.8%, in the second quarter of 1999 compared to a \$0.6 million benefit, or an effective rate of 52%, in the second quarter of 1998. The 41.8% effective tax rate for the second quarter of 1999 differs from the statutory rate of 35% primarily due to foreign income, non-deductible goodwill and state income taxes.

#### SIX MONTHS ENDED JUNE 30, 1999 AND 1998

SALES. Sales for the first half of 1999 increased by \$0.4 million to \$120.2 million compared to \$119.8 million for the first half of 1998. The increase resulted primarily from a 15% increase in sales of specialty antibody products, reflecting higher volumes for most products, including hepatitis B, tetanus, anti-CMV, rabies and anti-D products, partially offset by the cessation of anti-RSV product sales. Non-specific antibody sales decreased by \$4.7 million due to lower production in 1999. This is in part due to the impact of the sale of six centers in April 1999 and, the Company believes, low unemployment levels which has made it difficult to attract potential donors. Pharmaceutical product sales increased by \$1.5 million primarily due to increased sales of Autoplex(R)T and sales of ALOPRIM(TM), a new pharmaceutical product that Nabi in-licensed and launched at the end of the second quarter in 1999.

GROSS PROFIT MARGIN. Gross profit and related margin for the first half of 1999 was \$32.3 million, or 26.9% of sales, compared to \$31.7 million, or 26.4% of sales, in the first half of 1998. The \$0.7 million increase in gross profit and related margin resulted from an improved sales mix of higher-margin specialty antibody products and pharmaceutical products. In addition, the 1999 results reflect management's efforts to manage costs and optimize production in the antibody business.

SELLING, GENERAL AND ADMINISTRATIVE EXPENSE. Selling, general and administrative expense was \$15 million, or 12.5% of sales, for the first half of 1999 compared to \$16.2 million, or 13.5% of sales, in the first half of 1998. This \$1.2 million decrease reflects the impact of higher general and administrative expense in 1998 due to costs associated with reorganizational measures initiated in the first half of 1998. This reduction was partially offset by increased sales and marketing expenses in 1999 associated with increased pharmaceutical product sales, the launch of Nabi-HB(TM), and increased system costs related to Year 2000 readiness.

RESEARCH AND DEVELOPMENT EXPENSE. Research and development expense was \$7.1 million, or 5.9% of sales, for the first half of 1999, compared to \$10.4 million, or 8.7% of sales, in the first half of 1998. Nabi incurred significant expenditures during 1998 related to the advancement of clinical trials for Nabi-HB(TM) which was approved by the FDA in March 1999. In 1999, Nabi has reduced pre-clinical product development activities and has focused its ongoing research and development efforts to support currently marketed products and those in later stages of development. At the same time, the Company is actively seeking corporate and government partners to fund the significant cost of further development for the products in its research and development pipeline.

ROYALTY EXPENSE. Royalty expense for the first half of 1999 was \$6.1 million, or 5.1% of sales, compared to \$5.9 million, or 4.9% of sales, in the first half of 1998. The increase is attributable to higher sales of pharmaceutical products and Nabi-HB(TM) royalties payable to the New York Blood Center based on the reformulated product.

INTEREST EXPENSE. Interest expense for the first half of 1999 was \$2.3 million, or 1.9% of sales, compared to \$3.2 million, or 2.6% of sales, in the first half of 1998. The decrease is primarily attributable to higher

amounts of interest capitalized during the first half of 1999. Capitalized interest relating primarily to construction of Nabi's biopharmaceutical manufacturing facility in Boca Raton, Florida was approximately \$2.3 million during the first six months of 1999 as compared to \$1.6 million during the 1998 period.

OTHER FACTORS. Provision for income taxes was \$0.4 million or an effective rate of 41%, in the first half of 1999 compared to a \$2.6 million benefit, or an effective rate of 52%, in the first half of 1998. The 41% effective tax rate for 1999 differs from the statutory rate of 35% primarily due to foreign income, non-deductible goodwill and state income taxes.

#### LIQUIDITY AND CAPITAL RESOURCES

At June 30, 1999, Nabi's credit agreement provided for a \$45 million revolving credit facility subject to certain borrowing base restrictions as defined in the agreement which matures in September 2002, and a \$5.0 million term loan due in March 2000. Borrowings under the agreement totaled \$27.8 million and additional availability was approximately \$8 million at June 30, 1999. The credit agreement is secured by substantially all of Nabi's assets, requires the maintenance of certain financial covenants and prohibits the payment of dividends.

As of June 30, 1999, Nabi's current assets exceeded current liabilities by \$27.6 million as compared to a net working capital position of \$42 million at December 31, 1998. Cash and cash equivalents at June 30, 1999 were \$1.1 million compared to \$1 million at December 31, 1998. The primary source of cash during 1999 was operations, including a reduction of trade receivables and inventories. Net cash provided by operating activities was \$16.9 million representing an improvement of \$6.8 million from the comparable 1998 six months. The primary uses of cash during the first half of 1999 were capital expenditures, principally associated with the Company's manufacturing facility in Boca Raton, Florida, and a \$9.7 million reduction of borrowings under the revolving credit agreement.

Projected capital expenditures for the remainder of 1999 include costs associated with the Boca Raton manufacturing facility, including capitalized interest, development of information systems and related expenditures, and antibody collection center renovations. Nabi believes that cash flow from operations and its available bank credit facilities will be sufficient to meet its anticipated cash requirements for 1999. The Company is also in the process of seeking additional cash to fund the development of its pharmaceutical product pipeline from strategic alliances and additional funding from new or existing credit facilities.

#### YEAR 2000

Nabi continues to assess the potential impact of the Year 2000 computer processing issue on its management and information systems. Key financial and operational systems have been evaluated for Year 2000 compliance. During 1998, a cross-functional team was established to identify and address Year 2000 issues for other information systems, equipment, other business systems and external supplier and customer relationships.

The Company's program to address Year 2000 readiness has four overlapping phases. Phase I, the identification and assessment of systems, equipment and business relationships associated with Nabi's business critical processes, has been completed. For these business critical processes, the Company is focusing its efforts on Phase II, the testing of Year 2000 readiness for the associated internal systems and equipment and the inquiry/audit of Year 2000 readiness for external suppliers and customers, Phase III, the renovation or replacement of the associated systems, equipment or business relationships that will not be Year 2000 ready, including re-testing as required, and Phase IV, contingency planning to mitigate the potential effect of issues which may be so deeply embedded in the identified business critical processes that they are beyond the Company's ability to identify and control.

As indicated above, Nabi has completed its initial assessment phase of addressing Year 2000 issues. For its business critical processes, the Company is currently testing systems and equipment, and is concurrently renovating or replacing any systems or equipment as needed. In addition, Nabi has initiated communications with any associated key external suppliers and customers and is assessing the responses received. Nabi's goal is to complete all significant required testing of changes to systems, equipment or processes and contingency planning by the end of the third quarter of 1999.

The Company will utilize both internal and external resources in its Year 2000 efforts. The additional cost to achieve Year 2000 readiness is currently estimated at \$3 to \$5 million dollars, including expense and capital expenditures, not all of which are incremental to the Company's operations. These expenditures will primarily be incurred during 1999 and will be funded by a combination of operating cash flows, bank credit facilities, and operating and capital lease agreements. Approximately 25% of Nabi's 1999 information technology planned expenditures will be directly attributable to Year 2000 remediation efforts. Year 2000 related expenditures were approximately \$620,000 in the second quarter of 1999.

The Company's efforts in these areas are ongoing. As of June 1999, based on the work completed to date, Nabi believes that the software, equipment and other systems related to its business critical processes are Year 2000 ready or that it will be able to renovate or replace, in a timely manner, any element, which if not Year 2000 ready could be expected to have a significant, adverse effect on Nabi's ability to deliver products or services. However, there can be no assurance that the Company's efforts will be successful. If they are not, the Company's operations or financial condition may be materially and adversely affected.

#### FACTORS TO BE CONSIDERED

The parts of this Quarterly Report on Form 10-Q captioned "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Legal Proceedings" contain certain forward-looking statements which involve risks and uncertainties. Readers should refer to a discussion under "Factors to be Considered" contained in Nabi's Annual Report on Form 10-K for the year ended December 31, 1998 concerning certain factors that could cause Nabi's actual results to differ materially from the results anticipated in such forward-looking statements. Said discussion is hereby incorporated by reference into this Quarterly Report.

#### PART II OTHER INFORMATION

##### ITEM 1. LEGAL PROCEEDINGS

Nabi is a party to litigation in the ordinary course of business. In addition, Nabi is a co-defendant with various other parties in several suits filed in the U.S. by, or on behalf of, individuals who claim to have been infected with HIV as a result of either using HIV-contaminated products made by the defendants other than Nabi or having familial relations with those so infected. Nabi does not believe that any such litigation will have a material adverse effect on its business, financial position or results of operations.

## ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

The following matters were approved at Nabi's annual stockholders' meeting, which was held on May 28, 1999:

a) Election of the following to the Board of Directors:

	VOTES	
	FOR	WITHHELD
David L. Castaldi	31,441,424	358,444
Joseph C. Cook, Jr.	31,463,924	335,944
George W. Ebright	31,433,799	366,069
David J. Gury	31,405,880	393,988
Richard A. Harvey, Jr.	31,454,319	345,549
Linda Jenckes	31,457,077	342,791
David A. Thompson	31,438,974	360,894

b) Approval of the Stock Plan for Non-Employee Directors, as amended:

VOTES		
For	Against	Abstain
30,700,809	908,195	190,864

## ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

a. Exhibit

- 10.23 Amended and Restated By-Laws of Nabi dated May 28, 1999
- 27 Financial Data Schedule (for S.E.C. use only)

b. Reports on Form 8-K:

None

NABI(R)

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

NABI(R)

Date: August 11, 1999

By: /s/ Thomas H. McLain

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THOMAS H. MCLAIN  
Senior Vice President, Corporate Services and  
Chief Financial Officer

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AMENDED AND RESTATED  
BY-LAWS OF NABI  
AS AMENDED THROUGH  
MAY 28, 1999



NABI(R)

-----  
5800 PARK OF COMMERCE BOULEVARD, N.W.  
BOCA RATON, FL 33487

AMENDED AND RESTATED  
BY-LAWS OF  
NABI

AS AMENDED THROUGH  
MAY 28, 1999

ARTICLE I

OFFICES

The registered office shall be in the City of Dover, County of Kent, State of Delaware, and the name of the resident agent in charge thereof is The United States Corporation Company.

The corporation may also have offices at such other places within or without the State of Delaware as the Board of Directors may from time to time appoint or the business of the corporation may require.

ARTICLE II

MEETINGS OF STOCKHOLDERS

SECTION 1. PLACE OF MEETINGS. All meetings of stockholders for any purpose shall be held at such place, within or without the State of Delaware, as shall be designated by the Board of Directors or the Chairman of the Board and stated in the notice of the meeting.

SECTION 2. ANNUAL MEETING. An annual meeting of the stockholders of the corporation, for the election of Directors to succeed those whose terms expire and for the transaction of such other business as may properly come before the meeting, shall be held on such date and at such time as shall be fixed from time to time by the Board of Directors and stated in the notice of the meeting.

SECTION 3. SPECIAL MEETINGS. Special meetings of the stockholders may be called by the Chairman of the Board or by order of the Board of Directors, and, subject to the procedures set forth in this Section 3, shall be called by the Chairman of the Board or by the Secretary at the request in writing of stockholders owning shares of the capital stock of the corporation which represent a majority of the votes entitled to be cast at such meeting. Upon request in writing sent by registered mail to the Chairman of the Board by any stockholder or stockholders entitled to call a special meeting of stockholders pursuant to this Section 3 (which request shall state the purpose or purposes of the proposed meeting), the Board of Directors shall determine a place and time for such meeting, which time shall be not less than ninety (90) nor more than one hundred (100) days after the receipt and determination of the validity of such request, and a record date for the determination of stockholders entitled to vote at such meeting in the manner set forth in Section 8 of this Article II. Business transacted at any special meeting shall be confined to the purpose or purposes stated in the notice of such meeting.

SECTION 4. NOTICE OF MEETING. Notice of the time and place of holding each annual meeting and each special meeting of stockholders shall be given by the Secretary, not less than ten nor more than

sixty days before the meeting, to each stockholder of record entitled to vote at such meeting. Notices of all meetings of stockholders shall state the purposes for which the meetings are held.

SECTION 5. LIST OF STOCKHOLDERS. At least ten days before every meeting of stockholders a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder, shall be prepared by the Secretary, who shall have charge of the stock ledger. Such list shall be open for said ten days to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, either at a place specified in the notice of the meeting (which place shall be within the city where the meeting is to be held) or, if no such other place has been so specified, at the place where the meeting is to be held. Such list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder present at the meeting.

SECTION 6. QUORUM. At any meeting of stockholders, the holders of issued and outstanding shares of capital stock which represent a majority of the votes entitled to be cast thereat, present in person or represented by proxy, shall constitute a quorum for the transaction of business. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person or represented by proxy, shall have the power to adjourn the meeting from time to time until a quorum shall be present or represented. Unless the adjournment is for more than thirty days or a new record date is fixed for the adjourned meeting, notice of the adjourned meeting need not be given if the time and place thereof are announced at the meeting at which the adjournment is taken. At such adjourned meeting at which a quorum shall be present or represented any business may be transacted which might have been transacted at the meeting as originally called.

SECTION 7. VOTING. At any meeting of the stockholders, every stockholder having the right to vote shall be entitled to vote in person, or by proxy appointed by an instrument in writing subscribed by such stockholder and bearing a date not more than eleven months prior to said meeting. When a quorum is present at any meeting, the holders of shares of stock present in person or represented by proxy, which shares represent a majority of votes cast on any question before the meeting, shall decide the question unless the question is one upon which by express provision of law or of the certificate of incorporation or of these by-laws a different vote is required, in which case such express provision shall govern and control the decision of such question.

SECTION 8. FIXING OF RECORD DATE. (a) In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action other than stockholder action by written consent, the Board of Directors may fix a record date, which shall not precede the date such record date is fixed and shall not be more than sixty nor less than ten days before the date of such meeting, nor more than sixty days prior to any such other action. If no record date is fixed, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given. The record date for any other purpose other than stockholder action by written consent shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. Any stockholder of record seeking to have the stockholders authorize or take corporate action by written consent shall, by written notice to the Secretary, request the Board of Directors to fix a record date. The Board of Directors shall promptly, but in all events within 10 days after the date on which such a request is received, adopt a resolution fixing the record date. If no

record date has been fixed by the Board of Directors within 10 days of the date on which such a request is received, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by applicable law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business, or any officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by applicable law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the date on which the Board of Directors adopts the resolution taking such prior action.

SECTION 9. NOMINATION OF DIRECTORS. Only persons who are nominated in accordance with the procedures set forth in the By-laws shall be eligible to serve as Directors. Nominations of persons for election to the Board of Directors of the corporation may be made at a meeting of stockholders (a) by or at the direction of the Board of Directors or (b) by any stockholder of the corporation who is a stockholder of record at the time of giving of notice provided for in this Section 9, who shall be entitled to vote for the election of directors at the meeting and who complies with the notice procedures set forth in this Section 9. Such nominations, other than those made by or at the direction of the Board of Directors, shall be made pursuant to timely notice in writing to the Secretary of the corporation. To be timely, a stockholder's notice shall be delivered to or mailed and received at the principal executive offices of the corporation not less than 90 days; provided, however, that in the event that less than 100 days' notice or prior public disclosure of the date of the meeting is given or made to stockholders, notice by the stockholder to be timely must be so received not later than the close of business on the 10th day following the day on which such notice of the date of the meeting or such public disclosure was made. Such stockholder's notice shall set forth (a) as to each person whom the stockholder proposes to nominate for election or reelection as a Director all information relating to such person that is required to be disclosed in solicitations of proxies for election of Directors, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (including such person's written consent to being named in the proxy statement as a nominee and to serving as a Director if elected); and (b) as to the stockholder giving the notice (i) the name and address, as they appear on the corporation's books, of such stockholder and (ii) the class and number of shares of the corporation which are beneficially owned by such stockholder. At the request of the Board of Directors, any person nominated by the Board of Directors for election as a Director shall furnish to the Secretary of the corporation that information required to be set forth in a stockholder's notice of nomination which pertains to the nominee. No person shall be eligible to serve as a Director of the corporation unless nominated in accordance with the procedures set forth in this By-law. The Chairman of the meeting shall, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the procedures prescribed by the By-laws, and if he should so determine, he shall so declare to the meeting and the defective nomination shall be disregarded. Notwithstanding the foregoing provisions of this Section 9, a stockholder shall also comply with all applicable requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder with respect to the matters set forth in this Section.

SECTION 10. NOTICE OF BUSINESS. At any meeting of the stockholders, only such business shall be conducted as shall have been brought before the meeting (a) by or at the direction of the Board of Directors or (b) by any stockholder of the corporation who is a stockholder of record at the time of giving of the notice provided for in this Section 10, who shall be entitled to vote at such meeting and who complies with the notice procedures set forth in this Section 10. For business to be properly brought before a stockholder meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the Secretary of the corporation. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the corporation not less than 90 days prior to the meeting; provided, however, that in the event that less than 100 days' notice or prior public disclosure of the date of the meeting is given or made to stockholders, notice by the stockholder, to be timely must be received no later than the close of business on the 10th day following the day on which such notice of the date of the meeting was mailed or such public disclosure was made. A stockholder's notice to the Secretary shall set forth as to each matter the stockholder proposes to bring before the meeting (a) a brief

description of the business desired to be brought before the meeting and the reasons for conducting such business at the meeting, (b) the name and address, as they appear on the Corporation's books, of the stockholder proposing such business, (c) the class and number of shares of the corporation which are beneficially owned by the stockholder and (d) any material interest in the stockholder in such business. Notwithstanding anything in the By-laws to the contrary, no business shall be conducted at a stockholder meeting except in accordance with the procedures set forth in this Section 10. The Chairman of the meeting shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting and in accordance with the provisions of the By-laws, and if he should so determine, he shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted. Notwithstanding the foregoing provisions of this Section 10, a stockholder shall also comply with all applicable requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder with respect to the matters set forth in this Section.

### ARTICLE III

#### DIRECTORS

SECTION 1. DIRECTORS AND THEIR TERMS OF OFFICE. There shall be a Board of Directors consisting of not less than three nor more than fifteen persons, the exact number of Directors to be determined from time to time by resolution adopted by affirmative vote of a majority of the number of Directors required at the time to constitute a full board as fixed in or determined pursuant to these by-laws as then in effect. The Directors shall, except as otherwise provided in Section 3 of this Article, be elected at the annual meeting or at any meeting of the stockholders held in lieu of such annual meeting, which meeting, for the purposes of these by-laws, shall be deemed the annual meeting, and each Director so elected shall hold office until his successor is elected and qualified. A Director need not be a stockholder. Within the limits above specified, the number of Directors may at any time be increased or decreased by vote of the Directors at any meeting of the Directors provided that no decrease in the number of Directors shall affect the term of any Director in office.

SECTION 2. POWERS OF DIRECTORS. The affairs, property and business of the corporation shall be managed by the Board of Directors which may exercise all such powers of the corporation and do all such lawful acts and things as are not by law or by the certificate of incorporation or these by-laws directed or required to be exercised or done by the stockholders.

SECTION 3. VACANCIES. If any vacancies occur in the Board of Directors caused by death, resignation, retirement, disqualification or removal from office of any Directors or otherwise, or any new Directorship is created by any increase in the authorized number of Directors, Directors to fill the vacancy or vacancies or to fill the newly created Directorship may be elected solely by a majority vote of the Directors then in office, whether or not a quorum, at any meeting of the Board and the Directors so chosen shall hold office until their successors, if any, are duly elected and qualified.

SECTION 4. ANNUAL MEETING OF DIRECTORS. The first meeting of each newly elected board may be held without notice immediately after an annual meeting of stockholders (or a special meeting of stockholders held in lieu of an annual meeting) at the same place as that at which such meeting of stockholders was held; or such first meeting may be held at such place (within or without the State of Delaware) and time as shall be fixed by the consent in writing of all the Directors, or may be called in the manner hereinafter provided with respect to the call of special meetings.

SECTION 5. REGULAR MEETINGS OF DIRECTORS. Regular meetings of the Board of Directors may be held at such times and at such place or places (within or without the State of Delaware) as the Board of Directors may from time to time prescribe. No notice need be given of any regular meeting and a notice, if given, need not specify the purposes thereof.

SECTION 6. SPECIAL MEETINGS OF DIRECTORS. Special meetings of the Board of Directors may be called at any time by or under the authority of the Chairman of the Board and shall be called by him or by the Secretary on written request of any two Directors or, if they fail to do so, by two Directors in the name

of the Secretary, to be held in each instance at such place (within or without the State of Delaware) as the person calling the meeting may designate in the call thereof. Notice of each special meeting of the Board of Directors, stating the time and place thereof, shall be given to each Director by the Secretary, not less than twenty-four hours before the meeting. Such notice need not specify the purposes of the meeting.

SECTION 7. QUORUM; VOTING. At any meeting of the Board of Directors a majority of the number of Directors required to constitute a full Board, as fixed in or determined pursuant to these by-laws as then in effect, shall constitute a quorum for the transaction of business, but if a quorum shall not be present at any meeting of Directors, the Directors present thereat may adjourn the meeting from time to time without notice other than announcement at the meeting, until a quorum shall be present. Except as otherwise provided by law or by the certificate of incorporation or by the by-laws, the affirmative vote of at least a majority of the Directors present at a meeting at which there is a quorum shall be the act of the Board of Directors.

SECTION 8. MEETINGS BY TELEPHONE. Members of the Board of Directors or of any committee thereof may participate in meetings of the Board of Directors or of such committee by means of conference telephone or similar communications equipment by means of which all person participating in the meeting can hear each other, and such participation shall constitute presence in person at such meeting.

SECTION 9. ACTION WITHOUT MEETING. Unless otherwise restricted by the certificate of incorporation, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if all members of the Board of Directors or of such committee, as the case may be, consent thereto in writing and the writing or writings are filed with the minutes of proceedings of the Board of Directors or of such committee.

SECTION 10. COMPENSATION. By resolution of the Board of Directors, the Directors, as such, may receive stated salaries for their services, and may be allowed a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board. Members of committees may also be allowed a fixed sum and expenses of attendance, if any, for attending committee meetings. Nothing herein contained shall preclude any Director from serving the corporation in any other capacity and receiving compensation for such services.

#### ARTICLE IV

##### EXECUTIVE AND OTHER COMMITTEES

The Board of Directors, by the affirmative vote of a majority of the number of Directors required at the time to constitute a full board as fixed in or determined pursuant to these by-laws as then in effect, may designate two or more of its members to constitute an Executive Committee, which committee shall, when the Board of Directors is not in session, have and may exercise, to the extent provided by resolution of the Board of Directors, from time to time, all the powers of the Board of Directors (including all action which may be taken by the Board of Directors as by law, by the certificate of incorporation or by the by-laws provided) insofar as such powers may be lawfully delegated, and may have power to authorize the seal of the corporation to be affixed to all papers which may require it.

The Board of Directors, by the affirmative vote of a majority of the number of Directors required at the time to constitute a full board as fixed in or determined pursuant to these by-laws as then in effect, may also appoint other committees, the members of which may, but need not, be Directors, the number composing such committees, not less than two, and the powers (to be advisory only if all the members are not Directors) conferred upon them to be determined by resolution of the Board of Directors.

No committee shall have power or authority in reference to amending the certificate of incorporation, adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, recommending

to the stockholders a dissolution of the corporation or a revocation of a dissolution, or amending the by-laws; and unless the resolution shall expressly so provide, no committee shall have the power or authority to declare a dividend or to authorize the issuance of stock.

Vacancies in the membership of committees shall be filled by the Board of Directors at a regular meeting or at a special meeting.

At any meeting of any committee a majority of the whole committee shall constitute a quorum and except as otherwise provided by statute or by the certificate of incorporation or by the by-laws the affirmative vote of at least a majority of the members present at a meeting at which there is a quorum shall be the act of the committee.

The Secretary of the corporation, or in his absence, an Assistant Secretary, or other person designated by a committee, shall act as secretary of such committee.

The Executive Committee and each of the other committees, except as otherwise provided by resolution of the Board of Directors, shall fix the time and place of its meetings within or without the State of Delaware, shall adopt its own rules and procedure, and shall keep a record of its acts and proceedings and report the same from time to time to the Board of Directors.

## ARTICLE V

### OFFICERS

#### SECTION 1. OFFICERS AND THEIR ELECTION, TERM OF OFFICE AND VACANCIES.

The officers of the corporation shall be a Chairman of the Board, a President, a Secretary, a Treasurer and such Vice Presidents, Assistant Secretaries, Assistant Treasurers and other officers as the Board of Directors may from time to time determine and elect or appoint. All officers shall be elected annually by the Board of Directors at their first meeting following the annual meeting of stockholders or any special meeting held in lieu thereof and shall hold office until their successors are duly elected and qualified. The Chairman of the Board must be a Director. All other officers may, but need not be, members of the Board of Directors. Two or more offices may be held by the same person. Any officer elected by the Board of Directors may be removed at any time by the Board of Directors. If any vacancy shall occur among the officers, it shall be filled by the Board of Directors.

**SECTION 2. CHAIRMAN OF THE BOARD.** The Chairman of the Board shall be the chief executive officer of the corporation with full control and responsibility for management decisions, subject to the supervision and control of the Board of Directors and such limitations as the Board of Directors may from time to time impose. The Chairman of the Board when present shall preside at all meetings of the stockholders and of the Directors. It shall be his duty and he shall have the power to see that all orders and resolutions of the Board are carried into effect. The Chairman of the Board shall perform such additional duties and have such additional powers as the Directors shall designate. In the absence or disability of the Chairman of the Board, his powers and duties shall be performed by such officer of the corporation as the Board shall designate.

**SECTION 3. PRESIDENT.** The President shall be the chief operating officer of the corporation with full control and responsibility for the operations of the corporation. The President, as soon as reasonably possible after the close of each fiscal year, shall submit to the Board a report of the operations of the corporation for such year and a statement of its affairs and shall from time to time report to the Board all matters within his knowledge which the interests of the corporation may require to be brought to its notice. The President shall perform such duties and have such powers additional to the foregoing as the Board shall designate.

**SECTION 4. VICE PRESIDENTS.** In the absence or disability of the President, his powers and duties shall be performed by the Vice President, if only one, or, if more than one, by the one designated for the

purpose by the Board. Each Vice President shall have such other powers and perform such other duties as the Board shall from time to time designate.

SECTION 5. TREASURER. The Treasurer shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the corporation in such depositories as shall be designated by the Board or in the absence of such designation in such depositories as he shall from time to time deem proper. He shall disburse the funds of the corporation as shall be ordered by the Board, taking proper vouchers for such disbursements. He shall promptly render to the President and to the Board such statements of his transactions and accounts as the President and Board respectively may from time to time require. The Treasurer shall perform such duties and have such powers additional to the foregoing as the Board may designate.

SECTION 6. ASSISTANT TREASURERS. In the absence or disability of the Treasurer, his powers and duties shall be performed by the Assistant Treasurer, if only one, or if more than one, by the one designated for the purpose by the Board. Each Assistant Treasurer shall have such other powers and perform such other duties as the Board shall from time to time designate.

SECTION 7. THE SECRETARY. The Secretary shall issue notices of all meetings of stockholders and Directors and of the executive and other committees where notices of such meetings are required by law or these by-laws. He shall keep the minutes of meetings of stockholders and of the Board of Directors and of the executive and other committees, respectively, unless such committees appoint their own respective secretaries and be responsible for the custody thereof. Unless the Board shall appoint a transfer agent and/or registrar, the Secretary shall be charged with the duty of keeping, or causing to be kept, accurate records of all stock outstanding, stock certificates issued and stock transfers. He shall sign such instruments as require his signature and shall perform such other duties and shall have such powers as the Board of Directors shall designate from time to time, in all cases subject to the control of the Board of Directors. The Secretary shall have custody of the corporate seal, shall affix and attest such seal on all documents whose execution under seal is duly authorized. In his absence at any meeting, an Assistant Secretary or the Secretary pro tempore shall perform his duties thereat.

SECTION 8. ASSISTANT SECRETARIES. In the absence or disability of the Secretary, his powers and duties shall be performed by the Assistant Secretary, if only one, or, if more than one, by the one designated for the purpose by the Board. Each Assistant Secretary shall have such powers and perform such other duties as the Board shall from time to time designate.

SECTION 9. Salaries. The salaries of officers, agents and employees shall be fixed from time to time by or under authority from the Board of Directors.

## ARTICLE VI

### RESIGNATIONS AND REMOVALS

SECTION 1. OFFICERS, AGENTS, EMPLOYEES AND MEMBERS OF COMMITTEES. Any officer, agent or employee of the corporation may resign at any time by giving written notice to the Board of Directors or to the Chairman of the Board or to the Secretary of the corporation; and any member of any committee may resign by giving written notice either as aforesaid or to the committee of which he is a member or to the chairman thereof. Any such resignation shall take effect at the time specified therein, or if the time be not specified, upon receipt thereof, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The Board of Directors may at any time, with or without cause, remove from office or discharge or terminate the employment of any officer, agent, employee or member of any committee.

SECTION 2. DIRECTORS. Any Director of the corporation may resign at any time by giving written notice to the Board of Directors or to the Chairman of the Board or to the Secretary of the corporation. Any such resignation shall take effect at the time specified therein, or if the time be not specified, upon

receipt thereof; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. When one or more Directors shall resign from the Board of Directors, effective at a future date, a majority of the Directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective and each Director so chosen shall hold office as provided in these by-laws in the filling of other vacancies. The stockholders of the corporation entitled to vote upon the election of Directors may, at any time, remove from office any one or more Directors only with cause, and his successor or their successors shall be elected by the remaining Directors as provided in these By-laws in the filling of other vacancies. A Director may be removed for cause only after reasonable notice and opportunity to be heard before the body proposing to remove him.

#### ARTICLE VII

##### INDEMNIFICATION OF DIRECTORS, OFFICERS AND OTHERS

SECTION 1. The corporation shall indemnify, to the fullest extent permitted by the General Corporation Law of the State of Delaware as presently in effect or as hereafter amended:

(a) Subject to the provisions of Section 10, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether external or internal to the corporation (other than by action by or in the right of the corporation) by reason of the fact that he is or was a Director or officer of the corporation, or is or was serving at the request of the corporation as a Director or officer of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such suit, action or proceeding if he acted in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of NOLLO CONTENDERE or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was lawful.

(b) Any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a Director or officer of the corporation, or is or was serving at the request of the corporation as a Director or officer of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) and amounts paid in settlement actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

SECTION 2. The Board of Directors, in its discretion, may authorize the corporation to indemnify to the fullest extent permitted by the General Corporation Law of the State of Delaware (as presently in effect or as hereafter amended):

(a) Subject to the provisions of Section 10, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was an employee or agent of the corporation, or is or was serving at the



request of the corporation as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such suit, action or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(b) Any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was an employee or agent of the corporation, or is or was serving at the request of the corporation as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) and amounts paid in settlement actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

SECTION 3. Any indemnification under this Article VII (unless required by law or ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the Director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Sections 1 and 2 of this Article VII. Such determination shall be made (i) by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding, or (ii) if such a quorum is not obtainable, or even if obtainable a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion, or (iii) by the stockholders of the corporation.

SECTION 4. Expenses incurred by a Director or officer in defending a civil or criminal action, suit or proceeding shall be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Director or officer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the corporation as authorized in this Article VII. Any advance under this Section 4 shall be made promptly, and in any event within ninety days, upon the written request of the person seeking the advance.

SECTION 5. The indemnification and advancement of expenses provided by, or granted pursuant to, the other Sections of this Article VII shall not be deemed exclusive of any other rights to which any person, whether or not entitled to be indemnified under this Article VII, may be entitled under any statute, by-law, agreement, vote of stockholders or disinterested Directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. Each person who is or becomes a Director or officer as described in Section 1 shall be deemed to have served or to have continued to serve in such capacity in reliance upon the indemnity provided for in this Article VII. All rights to indemnification under this Article VII shall be deemed to be provided by a contract between the corporation and the person who serves as a Director or officer of the corporation at any time while these by-laws and other relevant provisions of the General Corporation Law of the State of Delaware and other applicable law, if any, are in effect. Any repeal or modification thereof shall not affect any rights or obligations then existing.

SECTION 6. The Board of Directors may at any time and from time to time cause the corporation to purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a Director, officer,

employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of the General Corporation Law of the State of Delaware (as presently in effect or hereafter amended), the Certificate of Incorporation of the corporation or these By-laws.

SECTION 7. The corporation's indemnification under Sections 1 and 2 of this Article VII of any person who is or was a Director, officer, employee or agent of the corporation, or is or was serving, at the request of the corporation as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall be reduced by any amounts such person receives as indemnification (i) under any policy of insurance purchased and maintained on his behalf by the corporation, (ii) from such other corporation, partnership, joint venture, trust or other enterprise, or (iii) under any other applicable indemnification provision.

SECTION 8. In the discretion of the Board of Directors of the corporation, for the purposes of this Article VII, references to "the corporation" may also include any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its Directors or officers, so that any person who is or was a Director or officer of such constituent corporation, or is or was serving at the request of such constituent corporation as a Director or officer of another corporation, partnership, joint venture, trust or other enterprise, would stand in the same position under the provisions of this Article VII with respect to the resulting or surviving corporation as he would have with respect to such other constituent corporation if its separate existence had continued.

SECTION 9. In addition to and without limiting the foregoing provisions of this Article VII and except to the extent otherwise required by law, any person seeking indemnification under or pursuant to Section 1 of this Article VII shall be deemed and presumed to have met the applicable standard of conduct set forth in Section 1 unless the contrary shall be established.

SECTION 10. (a) In addition to and without limiting the foregoing provisions of this Article VII and except to the extent otherwise required by law, (a) it shall be a condition of the corporation's obligation to indemnify under Sections 1(a) and 2(a) of this Article VII (in addition to any other condition in these By-laws or by law provided or imposed) that the person asserting, or proposing to assert, the right to be indemnified, promptly after receipt of notice of commencement of any action, suit or proceeding in respect of which a claim for indemnification is or is to be made against the corporation, notify the corporation of the commencement of such action, suit or proceeding, including therewith a copy of all papers served and the name of counsel retained or to be retained by such person in connection with such action, suit or proceeding, and thereafter to keep the corporation timely and fully apprised of all developments and proceedings in connection with such action, suit or proceeding or as the corporation shall request, and (b) the fees and expenses of any counsel retained by a person asserting, or proposing to assert, the right to be indemnified under Section 1(a) or 2(a) of this Article VII shall be at the expense of such person unless the counsel retained shall have been approved by the corporation in writing.

(b) If a claim for indemnification or advancement of expenses under this Article VII is not paid in full by the corporation within 90 days after a written claim therefor has been received by the corporation, the claimant may at any time thereafter bring suit against the corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expenses of prosecuting such claim.

SECTION 11. For purposes of this Article VII, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to "serving at the request of the corporation" shall include any service by a Director or officer of the corporation which imposes duties on, or involves services by, such person with respect to any employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the

participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this Article VII.

SECTION 12. To the extent that a Director, officer, agent or employee of the corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 1 or in Section 2, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

SECTION 13. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VII shall continue as to a person who has ceased to be a Director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

SECTION 14. If any term or provision of this Article VII or the application thereof to any person, property or circumstance shall to any extent be invalid or unenforceable, the remainder of this Article VII or the application of such term or provision to persons, property or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this Article VII shall be valid and enforced to the fullest extent permitted by law.

## ARTICLE VIII

### CAPITAL STOCK

SECTION 1. STOCK CERTIFICATES. Each stockholder shall be entitled to a certificate or certificates representing in the aggregate the share owned by him and certifying the number and class thereof, which shall be in such form as this Board shall adopt. Each certificate of stock shall be signed by the Chairman of the Board or the President or a Vice President, and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary. Any of or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before the certificate is issued, such certificate may nevertheless be issued by the corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

SECTION 2. TRANSFER OF STOCK. Shares of stock shall be transferable on the books of the corporation pursuant to applicable law and such rules and regulations as the Board of Directors shall from time to time prescribe.

SECTION 3. HOLDERS OF RECORD. Prior to due presentment for registration of transfer the corporation may treat the holder of record of a share of its stock as the complete owner thereof exclusively entitled to vote, to receive notifications and otherwise entitled to all the rights and powers of a complete owner thereof, notwithstanding notice to the contrary.

SECTION 4. TRANSFER AGENT AND REGISTRAR. The Board of Directors may at any time appoint a transfer agent or agents and/or registrar or registrars for the transfer and/or registration of shares of stock.

SECTION 5. LOST, STOLEN, DESTROYED OR MUTILATED STOCK CERTIFICATES. The Board of Directors may direct a new stock certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen, destroyed or mutilated, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, destroyed or mutilated. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen, destroyed or mutilated certificate or certificates, or his legal representative, to (a) advertise the same in such manner as it shall require and/or (b) give the corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen, destroyed or mutilated and/or (c) comply with any other reasonable requirements prescribed by the Board.

## ARTICLE IX

## SECURITIES OF OTHER CORPORATIONS

Subject to any limitations that may be imposed by the Board of Directors, the Chairman of the Board, the President or any person or persons authorized by the Board may in the name and on behalf of the corporation (i) act, or appoint any other person or persons (with or without powers of substitution) to act in the name and on behalf of the corporation (as proxy or otherwise), at any meeting of the holders of stock or other securities of any corporation or other organization, securities of which shall be held by this corporation, or (ii) express consent or dissent, as a holder of such securities, to corporate or other action by such other corporation or organization.

## ARTICLE X

## CHECKS, NOTES, DRAFTS AND OTHER INSTRUMENTS

Checks, notes, drafts and other instruments for the payment of money drawn or endorsed in the name of the corporation may be signed by any officer or officers or person or persons authorized by the Board of Directors to sign the same. No officer or person shall sign any such instrument as aforesaid unless authorized by the Board to do so.

## ARTICLE XI

## DIVIDENDS AND RESERVES

SECTION 1. DIVIDENDS. Dividends upon the capital stock of the corporation may, subject to any provisions of the certificate of incorporation, be declared pursuant to law by the Board of Directors. Dividends may be paid in cash, in property or in shares of the capital stock.

SECTION 2. RESERVES. Before payment of any dividend there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, thinks proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Directors shall think conducive to the interest of the corporation, and the Directors may modify or abolish any such reserve in the manner in which it was created.

## ARTICLE XII

## CORPORATE SEAL

The corporate seal shall be in such form as the Board of Directors may from time to time prescribe and the same may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

## ARTICLE XIII

## FISCAL YEAR

The fiscal year of the corporation shall end on the 31st day of December of each year.

## ARTICLE XIV

## BOOKS AND RECORDS

The books, accounts and records of the corporation, except as may be otherwise required by the laws of the State of Delaware, may be kept outside of the State of Delaware, at such place or places as the Board of Directors may from time to time appoint. Except as may otherwise be provided by law, the Board of Directors shall determine whether and to what extent the books, accounts, records and documents of the corporation, or any of them, shall be open to the inspection of the stockholders, and no stockholder shall have any right to inspect any book, account, record or document of the corporation, except as conferred by law or by resolution of the stockholders or Board of Directors.

## ARTICLE XV

## NOTICES

SECTION 1. MANNER OF GIVING OF NOTICE. Whenever the provisions of a law, the certificate of incorporation, the by-laws or rules of a committee require notice to be given to any Director, officer, stockholder or member of a committee, they shall not be construed to mean personal notice; such notice may be given by telegram or by depositing such notice in a post office or letter box, in a postpaid, sealed wrapper, addressed to such Director, officer, stockholder or member of a committee at his address as the same appears in the books or records of the corporation (unless he shall have filed with the Secretary a written request that notice intended for him be sent to some other address, in which case it shall be sent to the address designated in the most recent such request); and the time when such telegram shall be transmitted or notice deposited shall be deemed to be the time of the giving of such notice.

SECTION 2. WAIVER OF NOTICE. Whenever notice is required by law, the certificate of incorporation, the by-laws, or as otherwise provided by law, a written waiver thereof, signed by the person entitled to notice, shall be deemed equivalent to notice, whether signed before or after the time required for such notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, Directors or members of a committee of directors need be specified in any written waiver of notice.

## ARTICLE XVI

## SEPARABILITY

If any term or provision of the by-laws, or the application thereof to any person or circumstance or period of time, shall to any extent be invalid or unenforceable, the remainder of the by-laws, or the application of such term or provision to persons or circumstances or periods of time other than those as to which it is invalid or unenforceable, shall not be affected thereby and each term and provision of the by-laws shall be valid and enforced to the fullest extent permitted by law.

## ARTICLE XVII

## AMENDMENTS

The by-laws may be made, altered or repealed by the stockholders or, if such power is conferred by the certificate of incorporation, by the Board of Directors except that any by-law made by the stockholders may be altered or repealed only by the stockholders if such by-law expressly so provides.

THIS SCHEDULE CONTAINS SUMMARY FINANCIAL INFORMATION EXTRACTED FROM THE CONSOLIDATED BALANCE SHEET AT JUNE 30, 1999 (UNAUDITED) AND THE CONSOLIDATED STATEMENT OF OPERATIONS FOR THE SIX MONTHS ENDED JUNE 30, 1999 (UNAUDITED) AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO SUCH FINANCIAL STATEMENTS.

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6-MOS	DEC-31-1999	JAN-01-1999	JUN-30-1999
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			1,112
		0	
	31,911		
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	32,969		
	69,749		
		102,174	
		0	
	202,205		
42,151		103,273	
	0		
		0	
		3,494	
54,494		137,196	
		120,221	
	120,221		
		87,898	
	87,898		
	29,126		
		0	
	2,291		
		912	
	538	374	
		0	
		0	
			0
		538	
		0.02	
		0.02	

RECEIVABLES, INVENTORY & PP&E REPRESENT NET AMOUNTS.  
LOSS PROVISION INCLUDED IN OTHER EXPENSES.