LIFEWAY FOODS INC
Form 10-Q
November 16, 2009

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended: September 30, 2009

o TRANSITION REPORT UNDER SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from __________ to __________

Commission File Number: 000-17363

LIFEWAY FOODS, INC.
(Exact Name of Registrant as Specified in its Charter)

Illinois	36-3442829
(State or Other Jurisdiction of Incorporation or Organization)	(I.R.S. Employer Identification No.)

6431 West Oakton, Morton Grove, IL 60053
(Address of Principal Executive Offices, Zip Code)

(847-967-1010)
(Registrant's Telephone Number, Including Area Code)

Indicate by check mark whether the registrant (1) filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the past 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes o No x

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data file required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required
to submit and post such files). Yes o No o

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

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

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

As of September 30, 2009, the issuer had 16,775,930 shares of common stock, no par value, outstanding.

LIFEWAY FOODS, INC.

CONTENTS TO FORM 10-Q

PART I —	FINANCIAL INFORMATION	Page(s)
ITEM 1.	FINANCIAL STATEMENTS.	4
	NOTES TO CONSOLIDATED FINANCIAL STATEMENTS	8
ITEM 2.	MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS.	24
ITEM 3.	QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.	25
ITEM 4T.	CONTROLS AND PROCEDURES.	25
PART II —	OTHER INFORMATION	26
ITEM 1.	LEGAL PROCEEDINGS.	26
ITEM 1A.	RISK FACTORS.	26
ITEM 2.	UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS.	26
ITEM 3.	DEFAULTS UPON SENIOR SECURITIES.	26
ITEM 4.	SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS.	26
ITEM 5.	OTHER INFORMATION.	26
ITEM 6.	EXHIBITS.	27
SIGNATURES		28
EXHIBIT INDEX		29

LIFEWAY FOODS, INC. AND SUBSIDIARIES

CONSOLIDATED FINANCIAL STATEMENTS

SEPTEMBER 30, 2009 and 2008

AND DECEMBER 31, 2008

PART I — FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS.

LIFEWAY FOODS, INC. AND SUBSIDIARIES
Consolidated Statements of Financial Condition
September 30, 2009 and 2008 (Unaudited) and December 31, 2008

	(Unaudited) September 30 2009	2008	December 31, 2008
ASSETS			
Current assets			
Cash and cash equivalents	$ 804,387	$ 530,866	$ 277,248
Marketable securities	4,950,457	5,668,940	5,262,168
Inventories	4,106,631	4,207,094	3,097,542
Accounts receivable, net of allowance for doubtful accounts of $35,011 at September 30, 2009 and 2008 and $110,011 at December 31, 2008	7,311,856	5,161,414	4,765,865
Prepaid expenses and other current assets	45,565	20,864	23,226
Other receivables	37,715	28,918	40,314
Deferred income taxes	338,070	909,479	919,649
Refundable income taxes	26,276	---	356,416
Total current assets	17,620,957	16,527,575	14,742,428
Property and equipment, net	13,812,039	10,989,500	11,062,714
Intangible assets			
Goodwill and other non amortizable brand asset	12,154,091	5,414,858	5,414,858
Other intangible assets, net of accumulated amortization of $1,429,509 and $841,561 at September 30, 2009 and 2008 and $921,422 at December 31, 2008	6,428,129	3,016,077	2,936,216
Total intangible assets	18,582,220	8,430,935	8,351,074
Other assets	500,000	500,000	500,000
Total assets	$ 50,515,216	$ 36,448,010	$ 34,656,216
LIABILITIES AND STOCKHOLDERS' EQUITY			
Current liabilities			
Current maturities of notes payable	$ 6,231,204	$ 1,125,608	$ 928,444
Accounts payable	2,180,297	2,361,318	2,260,272
Accrued expenses	683,685	532,662	458,282
Margin payable	—	428,951	—
Accrued income taxes	—	308,260	—
Total current liabilities	9,095,186	4,756,799	3,646,998
Notes payable	7,400,573	3,219,338	3,108,014

Deferred income taxes	2,010,273	1,615,421	1,607,155
Stockholders' equity			
Common stock, no par value; 20,000,000 shares authorized; 17,273,776 shares issued; 16,775,930 shares outstanding at September 30, 2009; 17,273,776 shares issued; 16,730,226 shares outstanding at September 30, 2008; and 17,273,776 shares issues; 16,724,467 shares outstanding at December 31, 2008	6,509,267	6,509,267	6,509,267
Paid-in-capital	1,939,316	1,175,539	1,202,009
Treasury stock, at cost	(3,851,462)	(3,207,213)	(3,302,025)
Retained earnings	27,833,816	23,126,672	22,383,707
Accumulated other comprehensive loss, net of taxes	(421,753)	(747,813)	(498,909)
Total stockholders' equity	32,009,184	26,856,452	26,294,049
Total liabilities and stockholders' equity	$ 50,515,216	$ 36,448,010	$ 34,656,216

See accompanying notes to financial statements

LIFEWAY FOODS, INC. AND SUBSIDIARIES
Consolidated Statements of Income and Comprehensive Income
For the Three and Nine Months Ended September 30, 2009 and 2008 (Unaudited)
and the Year Ended December 31, 2008

	(Unaudited) Three Months Ended September 30, 2009	2008	(Unaudited) Nine Months Ended September 30, 2009	2008	Year Ended December 31, 2008
Sales	15,433,876	$ 11,240,282	$ 43,649,383	$ 33,885,912	44,461,455
Cost of goods sold	8,892,088	7,505,794	24,994,778	22,403,574	30,926,114
Depreciation expense	288,613	197,366	859,044	581,920	777,715
Total cost of goods sold	9,180,701	7,703,160	25,853,822	22,985,494	31,703,829
Gross profit	6,253,175	3,537,122	17,795,561	10,900,418	12,757,626
Selling Expenses	1,231,216	957,978	3,176,162	3,171,269	4,098,176
General and Administrative	1,613,828	1,032,043	5,173,724	3,109,506	4,149,010
Amortization expense	168,699	79,862	508,086	239,585	319,446
Total Operating Expenses	3,013,743	2,069,883	8,857,972	6,520,360	8,566,632
Income from operations	3,239,432	1,467,239	8,937,589	4,380,058	4,190,994
Other income (expense):					
Interest and dividend income	34,180	95,042	144,899	261,037	343,329
Rental Income	12,047	13,647	33,340	36,940	48,886
Interest expense	(99,864)	(71,928)	(364,337)	(226,851)	(298,619)
Impairment of marketable securities	—	(270,908)	—	(270,908)	(958,879)
Loss on Disposition of Equipment	—	—	(2,825)		—
Gain (loss) on sale of marketable securities, net	(178,143)	(110,259)	(274,296)	(146,404)	(733,647)
Total other income (Expense)	(231,780)	(344,406)	(463,219)	(346,186)	(1,598,930)
Income before provision for income taxes	3,007,652	1,122,833	8,474,370	4,033,872	2,592,064
Provision for income taxes	1,636,911	267,917	3,024,261	1,378,632	679,789

Net income	$ 1,370,741	$ 854,916	$ 5,450,109	$ 2,655,240	$ 1,912,275
Basic and diluted earnings per common share	0.08	0.05	0.32	0.16	0.11
Weighted average number of shares outstanding	16,798,623	16,730,650	16,799,134	16,867,890	16,765,080
COMPREHENSIVE INCOME					
Net income	$ 1,370,741	$ 854,916	$ 5,450,109	$ 2,655,240	$ 1,912,275
Other comprehensive income (loss), net of tax:					
Unrealized gains (losses) on marketable securities (net of tax benefits)	114,628	(480,045)	326,060	(895,641)	(720,517)
Less reclassification adjustment for (gains) losses included in net income (net of taxes)	104,609	64,746	161,071	85,963	430,651
Comprehensive income	$ 1,589,978	$ 439,617	$ 5,937,240	$ 1,845,562	$ 1,622,409

See accompanying notes to financial statements

LIFEWAY FOODS, INC. AND SUBSIDIARIES
Consolidated Statements of Changes in Stockholders' Equity
For the Nine Months Ended September 30, 2009 (Unaudited)
and the Year Ended December 31, 2008

	Common Stock, No Par Value 20,000,000 Shares Authorized		# of Shares of					Accumulated Other Comprehensive	
	# of Shares Issued	# of Shares Outstanding	Treasury Stock	Common Stock	Paid In Capital	Treasury Stock	Retained Earnings	Income (Loss), Net of Tax	Total
lances at cember 31, 07	17,273,776	16,827,726	446,050	6,509,267	1,120,669	(2,078,165)	20,471,432	(209,043)	25,814,16
demption of ck	—	(112,009)	112,009	—	—	(1,239,488)	—	—	(1,239,48
uance of asury stock mpensation	—	8,750	(8,750)	—	81,340	15,628	—	—	96,96
her mprehensive ome (loss): realized ses on curities, net taxes and lassification ustment	—	—	—	—	—	—	—	(289,866)	(289,86
t income for year ended cember 31, 08	—	—	—	—	—	—	1,912,275	—	1,912,27
lances at cember 31, 08	17,273,776	16,724,467	549,309	6,509,267	1,202,009	(3,302,025)	22,383,707	(498,909)	26,294,04
demption of ck	—	(87,991)	87,991	—	—	(905,607)	—	—	(905,60
	—	10,507	(10,507)	—	92,569	20,908	—	—	113,47

uance of asury stock mpensation									
uance of asury stock Fresh Made quisition	—	128,947	(128,947)	—	644,738	335,262	—	—	980,00
her mprehensive come (loss): realized ns on curities, net taxes and classification ustment	—	—	—	—	—	—	—	77,156	77,15
t income for nine months ded ptember 30, 09	—	—	—	—	—	—	5,450,109	—	5,450,10
lances at ptember 30, 09	17,273,776	16,775,930	497,846	$ 6,509,267	$ 1,939,316	$ (3,851,462)	$ 27,833,816	$ (421,753)	$ 32,009,18

See accompanying notes to financial statements

– 6 –

LIFEWAY FOODS, INC. AND SUBSIDIARIES
Consolidated Statements of Cash Flows
For the Nine Months Ended September 30, 2009 and 2008 (Unaudited)
and the Year Ended December 31, 2008

	(Unaudited) Nine Months Ended		
	September 30, 2009	September 30, 2008	December 31, 2008
Cash flows from operating activities:			
Net income	$ 5,450,109	$ 2,655,240	$ 1,912,275
Adjustments to reconcile net income to net cash flows from operating activities, net of acquisition:			
Depreciation and amortization	1,367,130	821,505	1,092,995
(Gain)Loss on sale of marketable securities, net	274,296	146,404	733,647
Loss on disposition of assets	2,825	—	—
Impairment of marketable securities	—	270,908	958,879
Deferred income taxes	236,063	(125,221)	(509,386)
Treasury stock issued for compensation	113,476	65,809	96,968
Increase (decrease) in allowance for doubtful accounts	—	(4,449)	70,551
(Increase) decrease in operating assets:			
Accounts receivable	(2,000,033)	(947,303)	(626,754)
Other receivables	2,599	14,193	2,797
Inventories	(636,236)	(700,540)	409,012
Refundable income taxes	807,067	240,880	(115,536)
Prepaid expenses and other current assets	4,661	665	(1,973)
Increase (decrease) in operating liabilities:			
Accounts payable	(284,927)	766,988	665,942
Accrued expenses	167,114	118,650	44,243
Accrued income taxes	—	308,260	—
Net cash provided by operating activities	5,504,144	3,631,989	4,733,660
Cash flows from investing activities:			
Purchases of marketable securities	(6,050,202)	(4,864,873)	(5,782,452)
Sale of marketable securities	6,792,962	4,659,350	5,323,423
Increase in margin	—	428,951	—
Purchases of property and equipment	(1,020,776)	(1,892,472)	(2,157,315)
Acquisition of Fresh Made, net of cash acquired	(3,442,546)	—	—
Net cash used in investing activities	(3,720,562)	(1,669,044)	(2,616,344)
Cash flows from financing activities:			
Proceeds of note payable	1,753,504	—	—
Purchases of treasury stock, net	(905,607)	(1,139,987)	(1,239,488)
Repayment of notes payable	(2,104,340)	(887,977)	(1,196,465)
Net cash provided (used) in financing activities	(1,256,443)	(2,027,964)	(2,435,953)
Net increase (decrease) in cash and cash equivalents	527,139	(65,019)	(318,637)

Cash and cash equivalents at the beginning of the period		277,248		595,885		595,885
Cash and cash equivalents at the end of the period	$	804,387	$	530,866	$	277,248

See accompanying notes to financial statements

LIFEWAY FOODS, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements
September 30, 2009 and 2008
and December 31, 2008

Note 1 – NATURE OF BUSINESS

Lifeway Foods, Inc. (The "Company") commenced operations in February 1986 and incorporated under the laws of the state of Illinois on May 19, 1986. The Company's principal business activity is the production of dairy products. Specifically, the Company produces Kefir, a drinkable product which is similar to but distinct from yogurt, in several flavors sold under the name "Lifeway's Kefir;" a plain farmer's cheese sold under the name "Lifeway's Farmer's Cheese;" a fruit sugar-flavored product similar in consistency to cream cheese sold under the name of "Sweet Kiss;" and a dairy beverage, similar to Kefir, with increased protein and calcium, sold under the name "Basics Plus." The Company also produces several soy-based products under the name "Soy Treat" and a vegetable-based seasoning under the name "Golden Zesta." The Company currently distributes its products throughout the Chicago Metropolitan area and various cities in the East Coast through local food stores. In addition, the products are sold throughout the United States and Ontario, Canada by distributors. The Company also distributes some of its products to Eastern Europe.

Note 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

A summary of the significant accounting policies applied in the preparation of the accompanying financial statements follows:

Principles of consolidation

The consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries, LFI Enterprises, Inc., Helios Nutrition, Ltd., Pride of Main Street, L.L.C., Starfruit, L.L.C., Fresh Made, Inc and Starfruit Franchise, L.L.C. All significant intercompany accounts and transactions have been eliminated.

Use of estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America 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 financial statements and reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Significant estimates made in preparing the consolidated financial statements include the allowance for doubtful accounts, the valuation of investment securities, the valuation of goodwill, intangible assets and deferred taxes.

Revenue Recognition

Sales represent sales of Company produced dairy products that are recorded at the time of shipment and the following four criteria have been met: (i) The product has been shipped and the Company has no significant remaining obligations; (ii) Persuasive evidence of an agreement exists; (iii) The price to the buyer is fixed or determinable and (iv) Collection is probable. In addition, shipping costs invoiced to the customers are included in net sales and the related cost in cost of sales.

Cash and cash equivalents

All highly liquid investments purchased with an original maturity of three months or less are considered to be cash equivalents.

The Company maintains cash deposits at several institutions located in the greater Chicago, Illinois and Philadelphia, Pennsylvania metropolitan areas.

LIFEWAY FOODS, INC. AND SUBSIDIARIES
Notes to Consolidated Financial Statements
September 30, 2009 and 2008
and December 31, 2008

Note 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES - Continued

Bank balances of amounts reported by financial institutions are categorized as follows:

	September 30, 2009	September 30, 2008	December 31, 2008
Amounts insured	$ 1,787,108	$ 138,913	$ 847,711
Uninsured and uncollateralized amounts	—	846,239	—
Total bank balances	$ 1,787,108	$ 985,152	$ 847,711

Marketable securities

All investment securities are classified as available-for-sale, are carried at fair value or quoted market prices. Unrealized gains and losses on available-for-sale securities are reported as a separate component of stockholders' equity. Amortization, accretion, interest and dividends, realized gains and losses, and declines in value judged to be other-than-temporary on available-for-sale securities are recorded in other income. All of the Company's securities are subject to a periodic impairment evaluation. This evaluation depends on the specific facts and circumstances. Factors that we consider in determining whether an other-than-temporary decline in value has occurred include: the market value of the security in relation to its cost basis; the financial condition of the investee; and the intent and ability to retain the investment for a sufficient period of time to allow for possible recovery in the market value of the investment.

Accounts receivable

Credit terms are extended to customers in the normal course of business. The Company performs ongoing credit evaluations of its customers' financial condition and generally requires no collateral.

Accounts receivable are recorded at invoice amounts, and reduced to their estimated net realizable value by recognition of an allowance for doubtful accounts. The Company's estimate of the allowance for doubtful accounts is based upon historical experience, its evaluation of the current status of specific receivables, and unusual circumstances, if any. Accounts are considered past due if payment is not made on a timely basis in accordance with the Company's credit terms. Accounts considered uncollectible are charged against the allowance.

Inventories
Inventories are stated at the lower of cost or market, cost being determined by the first-in, first-out method.

Property and equipment
Property and equipment are stated at depreciated cost or fair value where depreciated cost is not recoverable. Depreciation is computed using the straight-line method. When assets are retired or otherwise disposed of, the cost and related accumulated depreciation are removed from the accounts, and any resulting gain or loss is recognized in income for the period. The cost of maintenance and repairs is charged to income as incurred; significant renewals and betterments are capitalized.

LIFEWAY FOODS, INC. AND SUBSIDIARIES
Notes to Consolidated Financial Statements
September 30, 2009 and 2008
and December 31, 2008

Note 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES – Continued

Property and equipment are being depreciated over the following useful lives:

Category	Years
Buildings and improvements	31 and 39
Machinery and equipment	5 – 12
Office equipment	5 – 7
Vehicles	5

Intangible assets
The Company accounts for intangible assets at historical cost. Intangible assets acquired in a business combination are recorded under the purchase method of accounting at their estimated fair values at the date of acquisition. Goodwill represents the excess purchase price over the fair value of the net tangible and other intangible assets acquired. Goodwill is not amortized and is reviewed for impairment at least annually. Brand assets represent the fair value of brands acquired. Brand assets have an indefinite life, therefore are not amortized, rather are reviewed periodically for impairment. The Company amortizes other intangible assets over their estimated useful lives, as disclosed in the table below.

The Company reviews intangible assets and their related useful lives at least once a year to determine if any adverse conditions exist that would indicate the carrying value of these assets may not be recoverable. The Company conducts more frequent impairment assessments if certain conditions exist, including: a change in the competitive landscape, any internal decisions to pursue new or different strategies, a loss of a significant customer, or a significant change in the market place including changes in the prices paid for the Company's products or changes in the size of the market for the Company's products.

If the estimate of an intangible asset's remaining useful life is changed, the remaining carrying amount of the intangible asset is amortized prospectively over the revised remaining useful life.

Intangible assets are being amortized over the following useful lives:

Category	Years
Recipes	4
Customer lists and other customer related intangibles	7-10
Lease agreement	7

Trade names	15
Formula	10
Customer relationships	12

LIFEWAY FOODS, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements
September 30, 2009 and 2008
and December 31, 2008

Note 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES – Continued

Income taxes

Deferred income taxes arise from temporary differences resulting from income and expense items reported for financial accounting and tax purposes in different periods. Deferred taxes are classified as current or non-current, depending on the classification of the assets and liabilities to which they relate. Deferred taxes arising from temporary differences that are not related to an asset or liability are classified as current or non-current depending on the periods in which the temporary differences are expected to reverse.

The principal sources of temporary differences are different depreciation and amortization methods for financial statement and tax purposes, unrealized gains or losses related to marketable securities, capitalization of indirect costs for tax purposes, and the recognition of an allowance for doubtful accounts for financial statement purposes.

As of January 1, 2007, the Company adopted “Accounting for Uncertainty in Income Taxes — an interpretation of FASB Statement No. 109,” which clarifies the accounting and disclosure for uncertainty in tax positions, as defined. Pursuant to the adoption the Company has analyzed filing positions in all of the federal and state jurisdictions where it is required to file income tax returns, as well as all open tax years in these jurisdictions. The only periods subject to examination for the Company’s federal return are the 2004 through 2007 tax years. The Company believes that its income tax filing positions and deductions would be sustained on audit and does not anticipate any adjustments that would result in a material change to its financial position. Therefore, no reserves for uncertain income tax positions have been recorded pursuant to the adoption. In addition, the Company did not record a cumulative effect adjustment related to the adoption of the standard.

The Company’s policy for recording interest and penalties associated with audits is to record such items as a component of income before taxes. There were no such items during the periods covered in this report.

Treasury stock

Treasury stock is recorded using the cost method.

Advertising costs

The Company expenses advertising costs as incurred. During the year ended December 31, 2008 and for the nine months ended September 30, 2009 and 2008, approximately $1,530,207, $1,288,844 and $1,241,442 of such costs respectively, were expensed.

Earning per common share

Earnings per common share were computed by dividing net income available to common stockholders by the weighted average number of common shares outstanding during the period. For the nine months ended September 30, 2009 and 2008 and the year ended December 31, 2008, diluted and basic earnings per share were the same, as the effect of dilutive securities options outstanding was not significant.

Note 3 – ACQUISITION

On February 6, 2009, Lifeway Foods, Inc., a Illinois corporation ("Lifeway") completed a Stock Purchase Agreement (the "Stock Agreement") by and among Lifeway, Ilya Mandel, an individual and Michael Edelson, an individual (each a "Seller" and collectively "Sellers").

Lifeway purchased from Sellers all of the issued and outstanding stock (the "Shares") of Fresh Made, Inc., a Pennsylvania corporation ("Fresh"). The consideration for the Shares was an aggregate of $8,048,000, less certain offsets for any selling expenses in excess of certain limits set forth in the Stock Agreement and other payments and funded debt all as set forth in the Stock Agreement, a note in the principal amount of $2,735,000, due on February 6, 2011, 128,948 shares of common stock of Lifeway valued at a total of $980,000 ("Lifeway's Common Stock"), the cancellation of a loan in the principal amount of $265,000 and not more than $98,000 in funds held in Fresh's two accounts with Vist Financial Corp. The issuance of Lifeway's Common Stock was exempted from registration pursuant to Section 4(2) of the Securities Act of 1933, as amended.

Also on February 6, 2009, Lifeway entered into and consummated a Real Property Purchase Agreement (the "Real Property Agreement") by and among Sellers and Lifeway. Pursuant to the Real Property Agreement, Lifeway acquired 1.1355 acres of land in Philadelphia, PA (the "Property") from Sellers. The consideration for the Property was approximately $2,089,000.

The acquisition was accounted for using the purchase accounting method of accounting, and accordingly, the purchase price was allocated to assets acquired and the liabilities assumed based on the fair value as of the merger date. Acquisition costs for legal and professional fees have been included in General and Administrative costs.

The estimated fair value of assets acquired, including the real property, and liabilities assumed consisted of the following:

Cash and cash equivalents	$	226,000
Accounts receivable (contractual amounts totaling $545,958)		546,000
Other current assets		361,000
Building and other fixed assets		2,617,000
Customer list		4,000,000
Non amortizable goodwill and brand asset		6,739,000
Current liabilities		(461,000)
Total fair value of assets acquired and liabilities assumed	$	14,028,000

LIFEWAY FOODS, INC. AND SUBSIDIARIES
Notes to Consolidated Financial Statements
September 30, 2009 and 2008
and December 31, 2008

Note 4 – INTANGIBLE ASSETS

Intangible assets, and the related accumulated amortization, consist of the following:

	September 30, 2009		September 30, 2008		December 31, 2008	
	Cost	Accumulated Amortization	Cost	Accumulated Amortization	Cost	Accumulated Amortization
Recipes	$ 43,600	$ 43,600	$ 43,600	$ 42,009	$ 43,600	$ 43,600
Customer lists and other customer related intangibles	4,305,200	486,280	305,200	172,583	305,200	182,938
Lease acquisition	87,200	64,359	87,200	51,904	87,200	55,019
Other	6,638	6,638	6,638	4,317	6,638	4,647
Customer relationship	985,000	259,932	985,000	177,848	985,000	198,368
Contractual backlog	12,000	12,000	12,000	12,000	12,000	12,000
Trade names	1,980,000	418,000	1,980,000	286,000	1,980,000	319,000
Formula	438,000	138,700	438,000	94,900	438,000	105,850
	$ 7,857,638	$ 1,429,509	$ 3,857,638	$ 841,561	$ 3,857,638	$ 921,422

Amortization expense is expected to be as follows for the 12 months ending September 30:

2010	$ 667,716
2011	667,631
2012	651,800
2013	624,550
2014	624,550
Thereafter	3,191,882
	$ 6,428,129

Amortization expense during the nine months ended September 30, 2009 and 2008 and for the year ended December 31, 2008 was $508,086, $239,585 and $319,446, respectively.

Goodwill and brand assets increased during the period ending September 30, 2009 due to the acquisition of Fresh Made (See Note 3).

Note 5 – MARKETABLE SECURITIES

The cost and fair value of marketable securities classified as available for sale are as follows:

September 30, 2009	Cost	Unrealized Gains	Unrealized Losses	Fair Value

Equities	$ 1,383,083	$ 127,024	(137,790)	$ 1,372,317
Mutual Funds	178,166	2,018	(25,885)	154,299
Preferred Securities	388,705	7,080	(135,301)	260,484
Corporate Bonds	1,559,094	48,181	(9,246)	1,598,029
Government Agency Obligations	933,760	9,212	(6,764)	936,208
Certificate of Deposits	652,005	—	(22,885)	629,120
Total	$ 5,094,813	$ 193,515	$ (337,871)	$ 4,950,457

LIFEWAY FOODS, INC. AND SUBSIDIARIES
Notes to Consolidated Financial Statements
September 30, 2009 and 2008
and December 31, 2008

Note 5 – MARKETABLE SECURITIES - Continued

September 30, 2008		Cost		Unrealized Gains		Unrealized Losses		Fair Value
Equities	$	3,077,340	$	55,002	$	(639,374)	$	2,492,968
Mutual Funds		940,322		—		(287,919)		652,403
Preferred Securities		1,714,758		—		(509,150)		1,205,608
Corporate Bonds		917,990		—		(75,144)		842,846
Municipal Bonds		4,586		374		—		4,960
Government agency Obligations		478,507		—		(8,352)		470,155
Total	$	7,133,503	$	55,376	$	(1,519,939)	$	5,668,940

December 31, 2008		Cost		Unrealized Gains		Unrealized Losses		Fair Value
Equities	$	2,116,004	$	75,333	$	(279,487)	$	1,911,850
Mutual Funds		888,182		202		(339,970)		548,414
Preferred Securities		1,541,423		13,075		(308,963)		1,245,535
Corporate Bonds		783,761		1,559		(19,289)		766,031
Municipal Bonds		4,586						