

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 10-Q

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the quarterly period ended December 31, 2012

or

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the transition period from \_\_\_ to \_\_\_

Commission File Number 0-22175



**EMCORE Corporation**

(Exact name of registrant as specified in its charter)

**New Jersey**

(State or other jurisdiction of incorporation or organization)

**22-2746503**

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

**10420 Research Road, SE, Albuquerque, New Mexico, 87123**

(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: **(505) 332-5000**

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

**Common Stock, no par value**

(Title of each class)

**NASDAQ Stock Market**

(Name of each exchange on which registered)

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 (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**  **No**

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

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

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

As of January 30, 2013, the number of shares outstanding of our no par value common stock totaled 26,429,922.

---

**CAUTIONARY STATEMENT  
REGARDING FORWARD-LOOKING STATEMENTS**

This Quarterly Report on Form 10-Q includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Exchange Act of 1934. These forward-looking statements are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. These forward-looking statements are largely based on our current expectations and projections about future events and financial trends affecting the financial condition of our business. Such forward-looking statements include, in particular, projections about our future results included in our Exchange Act reports, statements about our plans, strategies, business prospects, changes and trends in our business and the markets in which we operate. These forward-looking statements may be identified by the use of terms and phrases such as “anticipates”, “believes”, “can”, “could”, “estimates”, “expects”, “forecasts”, “intends”, “may”, “plans”, “projects”, “should”, “targets”, “will”, “would”, and similar expressions or variations of these terms and similar phrases. Additionally, statements concerning future matters such as the development of new products, enhancements or technologies, sales levels, expense levels, and other statements regarding matters that are not historical are forward-looking statements. Management cautions that these forward-looking statements relate to future events or our future financial performance and are subject to business, economic, and other risks and uncertainties, both known and unknown, that may cause actual results, levels of activity, performance, or achievements of our business or our industry to be materially different from those expressed or implied by any forward-looking statements. Factors that could cause or contribute to such differences in results and outcomes include without limitation those discussed under Item 1A - Risk Factors in our Annual Report on Form 10-K for the fiscal year ended September 30, 2012, as updated by our subsequent periodic reports. These cautionary statements apply to all forward-looking statements wherever they appear in this Quarterly Report.

Neither management nor any other person assumes responsibility for the accuracy and completeness of any forward-looking statement. All forward-looking statements in this Quarterly Report are made as of the date hereof, based on information available to us as of the date hereof, and subsequent facts or circumstances may contradict, obviate, undermine, or otherwise fail to support or substantiate such statements. We caution you not to rely on these statements without also considering the risks and uncertainties associated with these statements and our business that are addressed in this Quarterly Report. Certain information included in this Quarterly Report may supersede or supplement forward-looking statements in our other reports filed with the Securities and Exchange Commission. We assume no obligation to update any forward-looking statement to conform such statements to actual results or to changes in our expectations, except as required by applicable law or regulation.

EMCORE Corporation  
FORM 10-Q  
For The Quarterly Period Ended December 31, 2012

TABLE OF CONTENTS

	<b>Page</b>
<b>Part I:</b>	
<b>Financial Information</b>	
Item 1. Financial Statements	4
Condensed Consolidated Statements of Operations and Comprehensive Loss	4
Condensed Consolidated Balance Sheets	5
Condensed Consolidated Statements of Cash Flows	6
Notes to Condensed Consolidated Financial Statements	7
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	29
Item 3. Quantitative and Qualitative Disclosures About Market Risk	40
Item 4. Controls and Procedures	40
<b>Part II:</b>	
<b>Other Information</b>	
Item 1. Legal Proceedings	41
Item 1A. Risk Factors	41
Item 2. Unregistered Sales of Equity Securities and Use of Proceeds	41
Item 3. Defaults Upon Senior Securities	41
Item 4. Mine Safety Disclosures	41
Item 5. Other Information	41
Item 6. Exhibits	42
SIGNATURES	43

[Table of Contents](#)

**PART I. Financial Information**

**ITEM 1. Financial Statements**

**EMCORE CORPORATION**  
**Condensed Consolidated Statements of Operations and Comprehensive Income (Loss)**  
**For the Three Months Ended December 31, 2012 and 2011**  
**(in thousands, except net income (loss) per share)**  
**(unaudited)**

	<b>For the Three Months Ended December 31,</b>	
	<b>2012</b>	<b>2011</b>
Revenue	\$ 49,306	\$ 37,451
Cost of revenue	38,358	33,983
Gross profit	10,948	3,468
Operating expense (income):		
Selling, general, and administrative	6,904	7,480
Research and development	5,390	6,980
Flood-related loss	—	5,698
Flood-related insurance proceeds	(4,192)	(5,000)
Total operating expense	8,102	15,158
Operating income (loss)	2,846	(11,690)
Other income (expense):		
Interest expense, net	(238)	(129)
Foreign exchange gain	101	89
Loss from equity method investment	—	(960)
Change in fair value of financial instruments	237	105
Total other income (expense)	100	(895)
Income (loss) before income tax expense	2,946	(12,585)
Income tax expense	(120)	(1,644)
Net income (loss)	\$ 2,826	\$ (14,229)
Foreign exchange translation adjustment	69	401
Comprehensive income (loss)	\$ 2,895	\$ (13,828)
<b>Per share data:</b>		
Net income (loss) per basic share	\$ 0.11	\$ (0.61)
Net income (loss) per diluted share	\$ 0.11	\$ (0.61)
Weighted-average number of basic shares outstanding	25,977	23,476
Weighted-average number of diluted shares outstanding	26,236	23,476

**The accompanying notes are an integral part of these condensed consolidated financial statements.**

**EMCORE CORPORATION**  
**Condensed Consolidated Balance Sheets**  
**As of December 31, 2012 and September 30, 2012**  
**(in thousands, except per share data)**  
**(unaudited)**

	As of December 31, 2012	As of September 30, 2012
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 11,883	\$ 9,047
Restricted cash	1,027	82
Accounts receivable, net of allowance of \$3,279 at December 31, 2012 and September 30, 2012	36,786	36,939
Inventory	37,001	35,192
Prepaid expenses and other current assets	11,089	14,146
Total current assets	97,786	95,406
Property, plant, and equipment, net	48,374	47,896
Goodwill	20,384	20,384
Other intangible assets, net	3,111	3,428
Equity method investment	—	—
Other non-current assets, net of allowance of \$3,481 and \$3,419, respectively	2,607	2,752
Total assets	\$ 172,262	\$ 169,866
<b>LIABILITIES and SHAREHOLDERS' EQUITY</b>		
Current liabilities:		
Borrowings from credit facility	\$ 19,928	\$ 19,316
Accounts payable	30,213	38,814
Warrant liability	433	670
Accrued expenses and other current liabilities	29,842	32,635
Total current liabilities	80,416	91,435
Asset retirement obligations	5,058	5,004
Deferred gain associated with sale of assets	3,400	3,400
Other long-term liabilities	963	1,004
Total liabilities	89,837	100,843
Commitments and contingencies (Note 11)		
Shareholders' equity:		
Preferred stock, \$0.0001 par value, 5,882 shares authorized; none issued or outstanding	—	—
Common stock, no par value, 50,000 shares authorized; 26,413 shares issued and 26,373 shares outstanding as of December 31, 2012; 24,412 shares issued and 24,372 shares outstanding as of September 30, 2012	732,852	722,345
Treasury stock, at cost; 40 shares	(2,071)	(2,071)
Accumulated other comprehensive income	1,445	1,376
Accumulated deficit	(649,801)	(652,627)
Total shareholders' equity	82,425	69,023
Total liabilities and shareholders' equity	\$ 172,262	\$ 169,866

**The accompanying notes are an integral part of these condensed consolidated financial statements.**

**EMCORE CORPORATION**  
**Condensed Consolidated Statements of Cash Flows**  
**For the Three Months Ended December 31, 2012 and 2011**  
**(in thousands)**  
**(unaudited)**

	<b>For the Three Months Ended December 31,</b>	
	<b>2012</b>	<b>2011</b>
<b>Cash flows from operating activities:</b>		
Net income (loss)	\$ 2,826	\$ (14,229)
Adjustments to reconcile net income (loss) to net cash (used in) provided by operating activities:		
Depreciation, amortization, and accretion expense	2,018	2,775
Stock-based compensation expense	1,082	2,180
Provision adjustments related to doubtful accounts	—	(87)
Provision adjustments related to product warranty	629	172
Provision for losses on inventory purchase commitments	—	908
Loss from equity method investment	—	960
Change in fair value of financial instruments	(237)	(105)
Net loss on disposal of equipment	—	35
Flood-related loss	—	5,698
Non-cash insurance proceeds	(4,192)	—
Total non-cash adjustments	(700)	12,536
Changes in operating assets and liabilities:		
Accounts receivable	180	9,441
Inventory	(2,133)	(584)
Other assets	3,197	(2,549)
Accounts payable	(6,581)	3,693
Accrued expenses and other current liabilities	(1,308)	12,539
Total change in operating assets and liabilities	(6,645)	22,540
Net cash (used in) provided by operating activities	(4,519)	20,847
<b>Cash flows from investing activities:</b>		
Purchase of equipment	(2,030)	(2,280)
Deposits on equipment orders	(3)	(1,133)
Dividend from an unconsolidated affiliate	—	1,644
Increase in restricted cash	(945)	(1,116)
Proceeds from disposal of property, plant and equipment	203	—
Net cash used in investing activities	(2,775)	(2,885)
<b>Cash flows from financing activities:</b>		
Net proceeds from (payments on) borrowings from credit facilities	611	(11,551)
Proceeds from sale of common stock	9,475	—
Proceeds from stock plans	10	29
Net cash provided by (used in) financing activities	10,096	(11,522)
Effect of exchange rate changes on foreign currency	34	101
Net increase in cash and cash equivalents	2,836	6,541
Cash and cash equivalents at beginning of period	9,047	15,598
Cash and cash equivalents at end of period	\$ 11,883	\$ 22,139
<b>SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION</b>		
Cash paid during the period for interest	\$ 196	\$ 89
Cash paid during the period for income taxes	\$ 15	\$ 1,644
<b>NON-CASH INVESTING AND FINANCING ACTIVITIES</b>		
Forgiveness of capital lease and accounts payable	\$ 4,192	\$ —
Acquisition of equipment under capital lease	\$ 257	\$ —

**The accompanying notes are an integral part of these condensed consolidated financial statements.**

[Table of Contents](#)

**EMCORE Corporation**  
**Notes to our Condensed Consolidated Financial Statements**  
**For the three months ended December 31, 2012**  
**(unaudited)**

**NOTE 1. Description of Business**

Business Overview

EMCORE Corporation and its subsidiaries (the “Company”, “we”, “our”, or “EMCORE”) offers a broad portfolio of compound semiconductor-based products for the fiber optics and solar power markets. We were established in 1984 as a New Jersey corporation and we have two reporting segments: Fiber Optics and Photovoltaics. Our Fiber Optics business segment provides optical components, subsystems and systems for high-speed telecommunications, Cable Television (CATV) and Fiber-To-The-Premise (FTTP) networks, as well as products for satellite communications, video transport and specialty photonics technologies for defense and homeland security applications. EMCORE's Solar Photovoltaics business segment provides products for space power applications including high-efficiency multi-junction solar cells, Covered Interconnect Cells (CICs) and complete satellite solar panels, and terrestrial applications, including high-efficiency GaAs solar cells for concentration photovoltaic (CPV) power systems.

Interim Financial Statements

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP) for interim information, and with the instructions to Form 10-Q and Rule 10-01 of Regulation S-X of the Securities and Exchange Commission (SEC). Accordingly, they do not include all of the information and notes required by U.S. GAAP for annual financial statements. In our opinion, the interim financial statements reflect all normal adjustments that are necessary to provide a fair presentation of the financial results for the interim periods presented. Operating results for interim periods are not necessarily indicative of results that may be expected for an entire fiscal year. The condensed consolidated balance sheet as of September 30, 2012 has been derived from the audited consolidated financial statements as of such date. For a more complete understanding of our business, financial position, operating results, cash flows, risk factors and other matters, please refer to our Annual Report on Form 10-K for the fiscal year ended September 30, 2012.

All significant intercompany accounts and transactions have been eliminated in consolidation. We are not the primary beneficiary of, nor do we hold a significant variable interest in, any variable interest entity. Certain prior period amounts have been reclassified to conform to the current period presentation. We have evaluated subsequent events through the date that the financial statements were issued.

Use of Estimates

The preparation of financial statements in conformity with U.S. GAAP requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities, as of the date of the financial statements, and the reported amounts of revenue and expenses during the reported period.

The accounting estimates that require significant, difficult, and/or subjective judgments include:

- the valuation of inventory, goodwill, intangible assets, warrants, and stock-based compensation;
- depreciation, amortization, and assessment of recovery of long-lived assets;
- asset retirement obligations and contingencies including litigation and indemnification-related;
- revenue recognition associated with the percentage of completion method;
- the allowance for doubtful accounts and warranty accruals; and,
- impairment and other losses associated with the Thailand flood.

We develop estimates based on historical experience and on various assumptions about the future that are believed to be reasonable based on the best information available to us. Our reported financial position and/or results of operations may be materially different under changed conditions or when using different estimates and assumptions, particularly with respect to significant accounting policies. In the event that estimates or assumptions prove to differ from actual results, adjustments are made in subsequent periods to reflect more current information.

### Sale of Fiber Optics-related Assets

On March 27, 2012, we entered into a Master Purchase Agreement with a subsidiary of Sumitomo Electric Industries, LTD (SEI), pursuant to which we agreed to sell certain assets and transfer certain obligations associated with our Fiber Optics segment. On May 7, 2012, we completed the sale of these assets to SEI and recorded a gain of approximately \$2.8 million. This transaction was recorded as a sale of assets since it did not meet the criteria to be considered a component of our business. Under the terms of the Master Purchase Agreement, we have agreed to indemnify SEI for up to \$3.4 million of certain potential claims and expenses for the two-year period following the sale and we have recorded this amount as a deferred gain on our balance sheet as of December 31, 2012 as a result of these contingencies. SEI paid \$13.1 million in cash and deposited approximately \$2.6 million into escrow as security for indemnification obligations and any purchase price adjustments. Payment of escrow amounts occurs over a two-year period and is subject to claim adjustments. In total, we have deferred approximately \$4.9 million of the total paid by SEI as a gain on sale until the indemnification obligation of \$3.4 million and purchase price adjustment contingencies are resolved.

In May 2012, we also entered into a separate facility lease and transition services agreement (TSA) with SEI related to financial services, supply chain, facility, and information infrastructure support functions to be provided by us. We believe the values assigned to the facility lease and TSA approximate fair value. During the quarterly period ended December 31, 2012, we recognized \$0.7 million related to TSA fees and facility rental income which was recorded as a benefit against operating expenses incurred for such services.

The TSA included a \$0.5 million credit to be applied against fees incurred over a twelve-month period through May 2013. We also incurred \$0.6 million in expenses directly associated with this transaction. The TSA credit and transaction-related expenses incurred were applied against the proceeds received in determination of the gain recognized during the fiscal year ended September 30, 2012.

### Liquidity and Capital Resources

Historically, we have consumed cash from operations and incurred significant net losses. We have managed our liquidity position through a series of cost reduction initiatives, borrowings from our credit facility, capital markets transactions, and the sale of assets.

As of December 31, 2012, cash and cash equivalents totaled \$11.9 million and working capital totaled approximately \$17.4 million. Working capital, calculated as current assets minus current liabilities, is a financial metric we use which represents available operating liquidity. For the three months ended December 31, 2012, we had net income of \$2.8 million. Net cash used in operating activities for the three months ended December 31, 2012 totaled \$4.5 million.

With respect to measures taken to improve liquidity:

- **Credit Facility:** In November 2010, we entered into a Credit and Security Agreement (credit facility) with Wells Fargo Bank (Wells Fargo). The credit facility provides us with a revolving credit of up to \$35.0 million originally through November 2013 that can be used for working capital requirements, letters of credit, and other general corporate purposes. The credit facility was initially secured by the Company's assets and is subject to a borrowing base formula based on the Company's eligible accounts receivable and inventory accounts.

Our credit facility contains customary representations and warranties, and affirmative and negative covenants, including, among other things, cash balance and excess availability requirements, minimum tangible net worth and EBITDA covenants, and limitations on liens and certain additional indebtedness and guarantees. The covenants are written such that as long as we maintain the minimum cash balance and excess availability requirement, the other covenants are not required to be met. As of December 31, 2012, we were in compliance with the financial covenants contained in the credit facility since cash on deposit and excess availability exceeded the \$3.5 million financial covenant.



## Table of Contents

Our credit facility also contains certain events of default, including a subjective acceleration clause. Under this clause, Wells Fargo may declare an event of default if it believes in good faith that our ability to pay all or any portion of our indebtedness with Wells Fargo or to perform any of our material obligations under the credit facility has been impaired, or if it believes in good faith that there has been a material adverse change in the business or financial condition of the Company. If an event of default is not cured within the grace period (if applicable), then Wells Fargo may, among other things, accelerate repayment of amounts borrowed under the credit facility, cease making advances under the credit facility, or take possession of the Company's assets that secure its obligations under the credit facility. We do not anticipate at this time any change in the business or financial condition of the Company that could be deemed a material adverse change by Wells Fargo. Wells Fargo has confirmed that they do not consider the flooding at our contract manufacturer's facility in Thailand in 2011 to be a material adverse change in the business or financial condition of the Company.

On December 21, 2011, we entered into a First Amendment to the credit facility which increased our eligible borrowing base by up to \$10.0 million by adding to the borrowing base formula 85% of the appraised value of the Company's equipment and 50% of the appraised value of the Company's real estate. In addition, Wells Fargo reduced our restrictions under the excess availability financial covenant requirement from \$7.5 million to \$3.5 million through December 2012. The interest rate on outstanding borrowings was increased to LIBOR rate plus four percent. The credit facility will return to its previous agreement terms on the earlier of (i) December 31, 2012, or (ii) the date that we receive insurance proceeds of not less than \$30.0 million in the aggregate applicable to the flooding of our primary contract manufacturer in Thailand.

On June 14, 2012, we entered into a Second Amendment to the credit facility, which amended among other things, the borrowing base increase under the First Amendment, which was subject to automatic reductions to (i) \$8.1 million on July 1, 2012; and to (ii) \$3.1 million on January 1, 2013. The Second Amendment automatically reduced the \$8.1 million and \$3.1 million thresholds referenced above to \$5.0 million and \$0, respectively, if the sale of certain assets does not occur. The Second Amendment no longer included certain assets in the potential borrowing base including certain machinery and equipment and real estate.

On December 28, 2012, we entered into a Third Amendment to the credit facility, which amended among other things, the maturity date of the facility to November 11, 2015. The Third Amendment also amends the Credit Facility by adjusting the borrowing availability provided by machinery and equipment, which amount is currently set at approximately \$7.6 million and which will be reduced monthly by approximately \$101,000 through March 31, 2013, at which time the borrowing availability will be reduced to \$5.0 million and thereafter will be further reduced monthly by approximately \$91,000. The reduction to \$5.0 million can occur earlier than March 31, 2013 based upon the occurrence of certain events.

The Third Amendment also maintains the Company's minimum cash balance and excess liquidity requirement at \$3.5 million through June 30, 2013, which was scheduled to increase to \$7.5 million on December 31, 2012, below which certain financial covenants are triggered which relate to minimum tangible net worth, minimum EBITDA amounts and limitations on capital expenditures. The amounts of these financial covenants have been amended from those previously introduced in the First Amendment. At June 30, 2013 the liquidity requirement will be increased by \$1.0 million, and will be further increased, quarterly, until such amount reaches \$7.5 million at March 31, 2014.

As of December 31, 2012, we had a \$19.9 million LIBOR rate loan outstanding under our credit facility, with an interest rate of 4.4%. As of January 30, 2013, the outstanding balance under this credit facility totaled approximately \$17.3 million. As of December 31, 2012, the credit facility also had \$2.4 million reserved for eight outstanding stand-by letters of credit, leaving a remaining \$2.4 million borrowing availability balance under this credit facility. We now expect at least 70% of the \$35.0 million credit facility to be available for use over the remaining of fiscal year 2013.

- October 2012 Stock Sale: On October 3, 2012 we sold 1,832,410 shares of common stock for net proceeds of \$9.5 million. [See Note 13 - Equity](#) for additional disclosures related to the stock sale.
- Equity Facility: In August 2011, we entered into a committed equity line financing facility (equity facility) with Commerce Court Small Cap Value Fund, Ltd. (Commerce Court) whereby Commerce Court has committed, upon issuance of a draw-down request by us, to purchase up to \$50 million worth of our common stock over a two-year period, subject to our common stock trading above \$4 per share, as adjusted for the reverse stock split, during the draw down period, unless a waiver is received. As of December 31, 2012, there have been no draw down transactions completed under this equity facility.

## [Table of Contents](#)

- **Impact From Thailand Flood:** In November 2011, we entered into an agreement with our contract manufacturer in Thailand whereby our contract manufacturer agreed to purchase equipment to rebuild certain manufacturing lines damaged by flood waters and we agreed to reimburse our contract manufacturer for the cost of the equipment out of insurance proceeds that we expect to receive. We were not a named beneficiary of our contract manufacturer's insurance policy. As of September 30, 2012, we capitalized the cost of our new manufacturing lines of approximately \$5.2 million and recorded an equipment capital lease obligation of \$4.4 million, net of equipment deposits. In addition, during the three months ended December 31, 2012, we capitalized an additional \$0.3 million of new manufacturing lines and recorded a corresponding amount of capital lease obligation. Additionally, we restructured our outstanding payables owed to our contract manufacturer, which delayed payments to future dates to coincide with expected timing of insurance proceeds. Flood-related insurance proceeds related to inventory and equipment destroyed by the Thailand flood will be recognized when they become realized. In December 2012 we received flood-related insurance proceeds of \$4.2 million in the form of forgiveness of \$2.2 million of outstanding capital lease obligations and \$2.0 million of outstanding payables. We expect to receive additional flood-related insurance proceeds of \$6.0 million in cash proceeds from our contract manufacturer as well as liability offsets of approximately \$8.8 million by March 31, 2013 to cover the direct damages to our assets that were impacted by the flood. See [Note 9 - Impact from Thailand Flood](#) for additional disclosures related to the impact of the Thailand flood on our operations.

We believe that our existing balances of cash and cash equivalents, the agreement with our contract manufacturer to delay payment terms and purchase equipment on our behalf, benefits expected from insurance proceeds, and amounts expected to be available under our credit and equity facilities will provide us with sufficient financial resources to meet our cash requirements for operations, working capital, and capital expenditures for the next twelve months.

However, in the event of unforeseen circumstances, unfavorable market or economic developments, unfavorable results from operations, any failure to receive expected proceeds from insurance, material claims made under the indemnification provisions of our Master Purchase Agreement with SEI, or if Wells Fargo declares an event of default on the credit facility, we may have to raise additional funds or reduce expenditures by any one or a combination of the following: issuing equity, debt or convertible debt, selling certain product lines and/or portions of our business, furloughs, or reduction of discretionary spending. There can be no assurance that we will be able to raise additional funds on terms acceptable to us, or at all. A significant contraction in the capital markets, particularly in the technology sector, may make it difficult for us to raise additional capital if or when it is required, especially if we experience negative operating results. If adequate capital is not available to us as required, or is not available on favorable terms, our business, financial condition, results of operations, and cash flows may be adversely affected.

### **NOTE 2. Recent Accounting Pronouncements**

There have been no recent accounting pronouncements or changes in accounting pronouncements that are of significance, or of potential significance, to us other than those discussed below:

- In December 2011, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) No. 2011-11, Disclosures about Offsetting Assets and Liabilities, which requires us to disclose gross information and net information about instruments and transactions eligible for offset in the statement of financial position. ASU No. 2011-11 will be effective for our fiscal year beginning on October 1, 2013. We are currently evaluating the impact of this accounting standard update on our Consolidated Financial Statements.

### **NOTE 3. Fair Value Accounting**

ASC 820, *Fair Value Measurements and Disclosures*, establishes a valuation hierarchy for disclosure of the inputs to valuation techniques used to measure fair value. This standard describes a fair value hierarchy based on three levels of inputs, of which the first two are considered observable and the last unobservable, that may be used to measure fair value:

- Level 1 inputs are unadjusted quoted prices in active markets for identical assets or liabilities. We classify investments within Level 1 if quoted prices are available in active markets.

[Table of Contents](#)

- Level 2 inputs are quoted prices for similar assets and liabilities in active markets or inputs that are observable for the asset or liability, either directly or indirectly, through market corroboration, for substantially the full term of the financial instrument. We classify items in Level 2 if the investments are valued using observable inputs to quoted market prices, benchmark yields, reported trades, broker/dealer quotes or alternative pricing sources with reasonable levels of price transparency.
- Level 3 inputs are unobservable inputs based on our own assumptions used to measure assets and liabilities at fair value. A financial asset or liability's classification within this hierarchy is determined based on the lowest level input that is significant to the fair value measurement. We do not hold any financial assets or liabilities within Level 3.

Valuation techniques used to measure fair value under ASC 820 must maximize the use of observable inputs and minimize the use of unobservable inputs. The following table lists our financial assets and liabilities that are measured at fair value on a recurring basis:

**Fair Value Measurement**

(in thousands)

	Level 1	Level 2	Level 3	
	Quoted Prices in Active Markets for Identical Assets	Significant Other Observable Remaining Inputs	Significant Unobservable Inputs	Total
<b><u>As of December 31, 2012</u></b>				
<b>Assets:</b>				
Cash and cash equivalents	\$ 11,883	—	—	\$ 11,883
Restricted cash	1,027	—	—	1,027
<b>Liabilities:</b>				
Warrant liability	—	433	—	433
<b><u>As of September 30, 2012</u></b>				
<b>Assets:</b>				
Cash and cash equivalents	\$ 9,047	—	—	\$ 9,047
Restricted cash	82	—	—	82
<b>Liabilities:</b>				
Warrant liability	—	670	—	670

Cash consists primarily of bank deposits or, occasionally, highly liquid short-term investments with a maturity of three months or less at the time of purchase.

Restricted cash represents temporarily restricted deposits held as compensating balances against short-term borrowing arrangements.

As of December 31, 2012 and September 30, 2012, warrants representing 750,011 shares of our common stock were outstanding. All of our warrants meet the classification requirements for liability accounting pursuant to ASC 815, *Derivatives and Hedging*. Each quarter, we expect an impact on our statement of operations and comprehensive income (loss) when we record the change in fair value of our outstanding warrants using the Monte Carlo option valuation model. The Monte Carlo option valuation model is used since it allows the valuation of each warrant to factor in the value associated with our right to effect a mandatory exercise of each warrant. The valuation model requires the input of highly subjective assumptions, including the warrant's expected life and the price volatility of the underlying stock. The change in the fair value of our warrants has been primarily due to the change in the closing price of our common stock.

The carrying amounts of accounts receivable, prepaid expenses and other current assets, borrowings from our credit facility, accounts payable, accrued expenses and other current liabilities approximate fair value because of the short maturity of these instruments.

**NOTE 4. Accounts Receivable**

[Table of Contents](#)

The components of accounts receivable consisted of the following:

<i>(in thousands)</i>	<b>As of December 31, 2012</b>	<b>As of September 30, 2012</b>
Accounts receivable	\$ 32,420	\$ 33,893
Accounts receivable – unbilled	7,645	6,325
Accounts receivable, gross	40,065	40,218
Allowance for doubtful accounts	(3,279)	(3,279)
Accounts receivable, net	<u>\$ 36,786</u>	<u>\$ 36,939</u>

Unbilled accounts receivable represents revenue recognized but not yet billed as of the period ended. Billings on contracts using the percentage-of-completion method usually occur upon completion of predetermined contract milestones or other contract terms, such as customer approval. The allowance for doubtful accounts is based on the age of receivables and a specific identification of receivables considered at risk of collection.

As of December 31, 2012 and September 30, 2012, we had \$8.2 million and \$6.3 million, respectively, of accounts receivable recorded using the percentage of completion method. Of these amounts, \$2.7 million was invoiced and \$5.5 million was unbilled as of December 31, 2012 and \$1.9 million was invoiced and \$4.4 million was unbilled as of September 30, 2012.

Included in accounts receivable, net at December 31, 2012 and September 30, 2012 is \$3.0 million and \$2.3 million, respectively, from sales to Suncore. See [Note 15 - Suncore Joint Venture](#) for additional disclosures related to Suncore.

**NOTE 5. Inventory**

The components of inventory consisted of the following:

<i>(in thousands)</i>	<b>As of December 31, 2012</b>	<b>As of September 30, 2012</b>
Raw materials	\$ 16,224	\$ 14,471
Work in-process	7,348	8,853
Finished goods	13,429	11,868
Inventory	<u>\$ 37,001</u>	<u>\$ 35,192</u>

During the three months ended December 31, 2011, we recorded flood-related losses associated with damaged inventory of approximately \$3.9 million. See [Note 9- Impact from Thailand Flood](#) for additional disclosures related to the impact of the Thailand flood on our operations.

**NOTE 6. Property, Plant, and Equipment, net**

The components of property, plant, and equipment, net consisted of the following:

<i>(in thousands)</i>	<b>As of December 31, 2012</b>	<b>As of September 30, 2012</b>
Land	\$ 1,502	\$ 1,502
Building and improvements	18,929	19,065
Equipment	14,766	15,088
Furniture and fixtures	121	206
Computer hardware and software	974	1,017
Leasehold improvements	3,377	3,598
Construction in progress	8,705	7,420
Property, plant, and equipment, net	<u>\$ 48,374</u>	<u>\$ 47,896</u>

During the three months ended December 31, 2011, we recorded flood-related losses associated with damaged equipment of approximately \$1.8 million. In addition, equipment under capital lease totaling \$1.9 million was also damaged by the Thailand flood and was written off against our outstanding capital lease obligation during the three month period ended December 31, 2011. We have entered into agreements with our contract manufacturer in Thailand whereby our contract manufacturer agreed to purchase equipment to rebuild certain manufacturing lines damaged by flood waters and we agreed to reimburse our contract manufacturer for the cost of the equipment out of insurance proceeds that we expect to receive. As of September 30, 2012, we capitalized the cost of our new manufacturing lines of approximately \$5.2 million and recorded an equipment capital lease obligation of \$4.4 million, net of equipment deposits. In addition, during the three months ended December 31, 2012, we capitalized an additional \$0.3 million of new manufacturing lines and recorded a corresponding amount of capital lease obligation. In December 2012 we received flood-related insurance proceeds of \$4.2 million in the form of forgiveness of \$2.2 million of outstanding capital lease obligations and \$2.0 million of outstanding payables. See [Note 9 - Impact from Thailand Flood](#) for additional disclosures related to the impact of the Thailand flood on our operations.

As of December 31, 2012 and September 30, 2012, accumulated depreciation was approximately \$74.9 million and \$74.5 million, respectively. The increase in accumulated depreciation was primarily due to depreciation and amortization expense for the three months ended December 31, 2012.

**NOTE 7. Intangible Assets**

The following table sets forth the carrying value of intangible assets by reporting segment:

<i>(in thousands)</i>	<b>As of December 31, 2012</b>			<b>As of September 30, 2012</b>		
	<b>Gross Assets</b>	<b>Accumulated Amortization</b>	<b>Net Assets</b>	<b>Gross Assets</b>	<b>Accumulated Amortization</b>	<b>Net Assets</b>
<b>Fiber Optics:</b>						
Core Technology	\$ 12,727	\$ (11,318)	\$ 1,409	\$ 12,727	\$ (11,150)	\$ 1,577
Customer Relations	3,511	(2,431)	1,080	3,511	(2,359)	1,152
Patents	4,697	(4,411)	286	4,697	(4,381)	316
	<u>20,935</u>	<u>(18,160)</u>	<u>2,775</u>	<u>20,935</u>	<u>(17,890)</u>	<u>3,045</u>
<b>Photovoltaics:</b>						
Patents	1,972	(1,636)	336	1,972	(1,589)	383
Total	<u>\$ 22,907</u>	<u>\$ (19,796)</u>	<u>\$ 3,111</u>	<u>\$ 22,907</u>	<u>\$ (19,479)</u>	<u>\$ 3,428</u>

[Table of Contents](#)

Amortization expense related to intangible assets is included in sales, general, and administrative expense on our statement of operations and comprehensive loss. Based on the carrying amount of our intangible assets as of December 31, 2012, the estimated future amortization expense is as follows:

<b>Estimated Future Amortization Expense</b>	
<i>(in thousands)</i>	
Nine months ended September 30, 2013	\$ 952
Fiscal year ended September 30, 2014	1,017
Fiscal year ended September 30, 2015	555
Fiscal year ended September 30, 2016	555
Fiscal year ended September 30, 2017	32
Thereafter	—
<b>Total</b>	<b>\$ 3,111</b>

See Note 9 - Intangible Assets of our September 30, 2012 Form 10-K for disclosures related to recent long-lived asset impairment tests.

**NOTE 8. Accrued Expenses and Other Current Liabilities**

The components of accrued expenses and other current liabilities consisted of the following:

<i>(in thousands)</i>	<b>As of December 31, 2012</b>	<b>As of September 30, 2012</b>
Compensation	\$ 5,264	\$ 3,798
Warranty	4,172	3,692
Termination fee	2,775	2,775
Professional fees	907	938
Royalty	1,358	1,445
Customer deposits	602	2,408
Deferred revenue	5,338	6,670
Self insurance	1,459	1,155
Capital lease obligations	2,476	4,411
Income and other taxes	1,205	1,573
Loss on sale contracts	471	765
Severance and restructuring accruals	1,162	1,521
Loss on inventory purchase commitments	738	723
Other	1,915	761
Accrued expenses and other current liabilities	<b>\$ 29,842</b>	<b>\$ 32,635</b>

**Customer deposits:** We signed agreements with certain customers related to our Fiber Optics segment pursuant to which they have received an allocation of our finished goods inventory that was not damaged by the Thailand flood and have started to receive a percentage of output from our new production lines placed into service. As consideration, we received \$6.8 million as partial prepayments for future product shipments, of which approximately \$0.1 million is outstanding as of December 31, 2012.

**Capital lease obligations:** As of September 30, 2012, we capitalized the cost of our new manufacturing lines of approximately \$5.2 million and recorded an equipment capital lease obligation of \$4.4 million, net of equipment deposits. In addition, during the three months ended December 31, 2012, we capitalized an additional \$0.3 million of new manufacturing lines and recorded a corresponding amount of capital lease obligation. In December 2012 we received flood-related insurance proceeds of \$4.2 million in the form of forgiveness of \$2.2 million of outstanding capital lease obligations and \$2.0 million of outstanding payables.

[Table of Contents](#)

**Severance and restructuring accruals:** In August 2012, Mr. Reuben Richards, Jr. proposed to the Board to step-down from his position as the Company's Executive Chairman and all other positions he held as an officer or employee of the Company and its affiliates, effective as of September 30, 2012. Mr. Richards will remain as Chairman of the Board and a member of the Board.

The Company and Mr. Richards entered into a separation agreement and general release, dated August 6, 2012 (Separation Agreement), which includes mutual releases by Mr. Richards and the Company of all claims related to Mr. Richards' employment and service relationship with, and termination of employment and service from, the Company. Under the terms of the Separation Agreement, Mr. Richards acknowledged and agreed that the restrictive covenants contained in his employment agreement would remain in full force and effect. The separation agreement provides for among other things, the continuation of his base salary for 88 weeks, benefits for 18 months, and immediate vesting of all his outstanding non-vested equity awards. These payments are not contingent upon any future service by Mr. Richards. In fiscal year 2012, we recorded a charge of \$1.1 million related to Mr. Richards' separation agreement.

Our restructuring-related accrual specifically relates to the Separation Agreement and non-cancelable obligations associated with an abandoned leased facility. Expense related to severance and restructuring accruals is included in sales, general, and administrative expense on our statement of operations and comprehensive loss. The following table summarizes the changes in the severance and restructuring-related accrual accounts:

<i>(in thousands)</i>	<b>Severance-related accruals</b>	<b>Restructuring-related accruals</b>	<b>Total</b>
Balance as of September 30, 2012	1,105	416	1,521
Expense - charged to accrual	—	—	—
Payments and accrual adjustments	(214)	(145)	(359)
Balance as of December 31, 2012	<u>\$ 891</u>	<u>\$ 271</u>	<u>\$ 1,162</u>

The following table summarizes the changes in our product warranty accrual accounts:

<b>Product Warranty Accruals</b> <i>(in thousands)</i>	<b>For the Three Months Ended December 31,</b>	
	<b>2012</b>	<b>2011</b>
Balance at beginning of period	\$ 3,692	\$ 4,158
Provision for product warranty - expense	629	172
Adjustments and utilization of warranty accrual	(149)	(52)
Balance at end of period	<u>\$ 4,172</u>	<u>\$ 4,278</u>

**NOTE 9. Impact from Thailand Flood**

In October 2011, we announced that flood waters had severely impacted the inventory and production operations of our primary contract manufacturer in Thailand. The impacted areas included certain product lines for the Telecom and Cable Television (CATV) market segments. This has had a significant impact on our operations and our ability to meet customer demand for certain of our fiber optics products in the near term. Our Photovoltaics segment was not affected by the Thailand floods. Since that announcement, we developed and implemented a plan to rebuild the impacted production lines at other locations, including an alternate facility of our contract manufacturer in Thailand, as well as our own manufacturing facilities in the United States and China.

During the three months ended December 31, 2011, we recorded estimated flood-related losses associated with damaged inventory and equipment of approximately \$3.9 million and \$1.8 million, respectively. Equipment under capital lease totaling \$1.9 million as of September 30, 2011 was also damaged by the Thailand flood and written off against our outstanding capital lease obligation.

Instead of completely rebuilding all flood-damaged manufacturing lines in Thailand, management decided to realign the Company's fiber optics product portfolio and focus on business areas with strong technology differentiation and growth opportunities. Management identified certain inventory on order related to manufacturing product lines that were destroyed by the Thailand flood and will not be replaced. This expense, which totaled \$0.9 million for the three months ended December 31, 2011, was recorded within cost of revenue on our statement of operations and comprehensive loss.

In November 2011, we entered into an agreement with our contract manufacturer in Thailand whereby our contract manufacturer agreed to purchase equipment to rebuild certain manufacturing lines damaged by flood waters and we agreed to reimburse our contract manufacturer for the cost of the equipment out of insurance proceeds that we expect to receive. We were not a named beneficiary of our contract manufacturer's insurance policy. As of September 30, 2012, we capitalized the cost of our new manufacturing lines of approximately \$5.2 million and recorded an equipment capital lease obligation of \$4.4 million, net of equipment deposits. In addition, during the three months ended December 31, 2012, we capitalized an additional \$0.3 million of new manufacturing lines and recorded a corresponding amount to capital lease obligation. Additionally, we restructured our outstanding payables owed to our contract manufacturer, which delayed payments to future dates to coincide with expected timing of insurance proceeds. Flood-related insurance proceeds related to inventory and equipment destroyed by the Thailand flood will be recognized when they become realized. In September 2012 we received cash flood-related insurance proceeds of \$4.0 million. In December 2012 we received flood-related insurance proceeds of \$4.2 million in the form of forgiveness of \$2.2 million of outstanding capital lease obligations and \$2.0 million of outstanding payables. We expect to receive additional flood-related insurance proceeds of \$6.0 million in cash proceeds from our contract manufacturer as well as liability offsets of approximately \$8.8 million by March 31, 2013 to cover the direct damages to our assets that were impacted by the flood. Additionally, we also claimed damages and received proceeds of \$5.0 million under our own comprehensive insurance policy relating to business interruption and we recorded this amount as flood-related insurance proceeds during the fiscal year ended September 30, 2012. No additional business interruption insurance proceeds associated with this event are anticipated.

The flooding has delayed our development and introduction of new fiber optics-related products and technologies. Delays in implementing new technologies and introducing new products may reduce our revenue and adversely affect our consolidated results of operations into the future.

**NOTE 10. Income Taxes**

During the three months ended December 31, 2012, there were no material increases or decreases in unrecognized tax benefits and we do not anticipate any material increases or decreases in the amounts of unrecognized tax benefits for the remaining fiscal year 2013. As of December 31, 2012, we had approximately \$215,000 of interest and penalties accrued as tax liabilities on our balance sheet.

During the three months ended December 31, 2012, we incurred \$0.1 million of income tax expense primarily due to federal alternative minimum tax and state income tax. During the three months ended December 31, 2011, as part of an equity recapitalization at our Suncore joint venture we received a deemed capital distribution of \$14.8 million. The deemed capital distribution was subject to a 10% foreign withholding tax. As a result, we were subject to a \$1.6 million foreign tax expense and Suncore made a cash dividend for an equal amount. The foreign tax expense will be treated as a tax credit for U.S. tax purposes. See [Note 15 - Suncore Joint Venture](#) for additional disclosures related to this foreign income tax expense.



[Table of Contents](#)

We file income tax returns in the U.S. federal, state, and local jurisdictions and, currently, no federal, state, and local income tax returns are under examination. The following tax years remain open to assessment for each of the more significant jurisdictions where we are subject to income taxes: after fiscal year 2008 for U.S. federal, after fiscal year 2007 for the state of California, and after fiscal year 2008 for the state of New Mexico.

**NOTE 11. Commitments and Contingencies**

**Operating Lease Obligations:** We lease certain land, facilities, and equipment under non-cancelable operating leases. Operating lease amounts above exclude renewal option periods, property taxes, insurance, and maintenance expenses on leased properties. Our facility leases typically provide for rental adjustments for increases in base rent (up to specific limits), property taxes, insurance, and general property maintenance that would be recorded as rent expense. Rent expense was approximately \$0.6 million and \$0.7 million for the three months ended December 31, 2012 and 2011, respectively. There are no off-balance sheet arrangements other than our operating leases.

**Capital Lease Obligations:** Equipment under capital lease as of September 30, 2011 was damaged by the Thailand flood and was written off against our outstanding capital lease obligation. During fiscal year 2012 we entered into agreements with our contract manufacturer in Thailand whereby our contract manufacturer agreed to purchase equipment to rebuild certain manufacturing lines damaged by flood waters and we agreed to reimburse our contract manufacturer for the cost of the equipment out of insurance proceeds that we expect to receive. As of September 30, 2012, we capitalized the cost of our new manufacturing lines of approximately \$5.2 million and recorded an equipment capital lease obligation of \$4.4 million, net of equipment deposits. In December 2012 we received flood-related insurance proceeds of \$4.2 million in the form of forgiveness of \$2.2 million of outstanding capital lease obligations and \$2.0 million of outstanding payables. See [Note 9 - Impact from Thailand Flood](#) for additional disclosures related to the impact of the Thailand flood on our operations.

**Asset Retirement Obligations:** We have known conditional asset retirement conditions, such as certain asset decommissioning and restoration of rented facilities to be performed in the future. Our asset retirement obligations include assumptions related to renewal option periods for those facilities where we expect to extend lease terms. In future periods, the asset retirement obligation is accreted for the change in its present value and capitalized costs are depreciated over the useful life of the related assets. If the fair value of the estimated asset retirement obligation changes, an adjustment will be recorded to both the asset retirement obligation and the asset retirement capitalized cost. Revisions in estimated liabilities can result from revisions of estimated inflation rates, escalating retirement costs, and changes in the estimated timing of settling asset retirement obligations. The fair value of our asset retirement obligations were estimated by discounting projected cash flows over the estimated life of the related assets using credit adjusted risk-free rates which ranged from 3.25% to 5.78%. There were no liabilities associated with asset retirements that were settled during the quarter ended December 31, 2012. Accretion expense of \$0.1 million was recorded during the three months ended December 31, 2012 and 2011.

**Warranty:** We generally provide a product and other warranties on our CPV-related solar cells, components, and power systems. Certain parts and labor warranties from our vendors can be assigned to our customers. Due to the absence of long-term historical warranty claim information on these type of products, we have estimated a warranty accrual upon recognition of revenue. Our reported financial position or results of operations may be materially different under changed conditions or when using different estimates and assumptions. In the event that estimates or assumptions prove to differ from actual results, adjustments are made in subsequent periods to reflect more current information.

**Indemnifications:** We have agreed to indemnify certain customers against claims of infringement of the intellectual property rights of others in our sales contracts with these customers. Historically, we have not paid any claims under these indemnification obligations, and we do not have any pending indemnification claims as of December 31, 2012. In March 2012, we entered into a Master Purchase Agreement with SEI, pursuant to which we agreed to sell certain assets and transfer certain obligations associated with our Fiber Optics segment. Under the terms of the Master Purchase Agreement, we have agreed to indemnify SEI for up to \$3.4 million of potential claims and expenses for the two-year period following the sale and we have recorded this amount as a deferred gain on our balance sheet as of December 31, 2012 and September 30, 2012 as a result of these contingencies. See [Note 1 - Description of Business](#) in the notes to the consolidated financial statements for additional disclosures related to this asset sale.

## Table of Contents

**Legal Proceedings:** We are subject to various legal proceedings, claims, and litigation, either asserted or unasserted that arise in the ordinary course of business. While the outcome of these matters is currently not determinable, we do not expect the resolution of these matters will have a material adverse effect on our business, financial position, results of operations, or cash flows. However, the results of these matters cannot be predicted with certainty. Professional legal fees are expensed when incurred. We accrue for contingent losses when such losses are probable and reasonably estimable. In the event that estimates or assumptions prove to differ from actual results, adjustments are made in subsequent periods to reflect more current information. Should we fail to prevail in any legal matter or should several legal matters be resolved against the Company in the same reporting period, then the financial results of that particular reporting period could be materially affected.

### a) Intellectual Property Lawsuits

We protect our proprietary technology by applying for patents where appropriate and, in other cases, by preserving the technology, related know-how and information as trade secrets. The success and competitive position of our product lines are impacted by our ability to obtain intellectual property protection for our research and development efforts. We have, from time to time, exchanged correspondence with third parties regarding the assertion of patent or other intellectual property rights in connection with certain of our products and processes.

### b) Avago-related Litigation

On December 5, 2008, we were served with a complaint by Avago Technologies filed in the United States District Court for the Northern District of California, San Jose Division alleging infringement of two patents by our VCSEL products. (Avago Technologies Singapore et al., EMCORE Corporation, et al., Case No.: C08-5394 EMC) (the "N.D. CA Patent Case"). This case was stayed and recommenced following completion of the ITC case described below. In April 2012, Avago amended its complaint to include additional patents and claims. Avago and the Company agreed to mediate, and as a result of that mediation held on May 10, 2012, the Company and Avago agreed to a confidential settlement agreement for a one-time payment by the Company in exchange for a full release of all claims against the Company relating to the N.D. CA Patent Case, including claims made in the amended complaint.

On March 5, 2009, we were notified that, based on a complaint filed by Avago alleging the same patent infringement that formed the basis of the complaint previously filed in the Northern District of California, the U.S. International Trade Commission (the "ITC") had determined to begin an investigation titled "In the Matter of Certain Optoelectronic Devices, Components Thereof and Products Containing the Same", Inv. No. 337-TA-669. This matter was tried before an administrative law judge of the ITC in November 2009.

On July 12, 2010, the ITC issued its final determination, as well as a limited exclusion order and cease and desist order directed to our infringing products which prohibits importation of those products into the United States. Those remedial orders were reviewed by the President of the United States and his decision to approve those orders was issued on September 10, 2010, thereby prohibiting further importation of the infringing products. We appealed the ITC's decision, and on November 14, 2011, the Court of Appeals affirmed the ITC's determination.

### c) Green and Gold-related litigation

On December 23, 2008, Plaintiffs Maurice Prissert and Claude Prissert filed a purported stockholder class action (the "Prissert Class Action") pursuant to Federal Rule of Civil Procedure 23 allegedly on behalf of a class of Company shareholders against the Company and certain of its present and former directors and officers (the "Individual Defendants") in the United States District Court for the District of New Mexico captioned, *Maurice Prissert and Claude Prissert v. EMCORE Corporation, Adam Gushard, Hong Q. Hou, Reuben F. Richards, Jr., David Danzilio and Thomas Werthan*, Case No. 1:08cv1190 (D.N.M.). The Complaint alleges that the Company and the Individual Defendants violated certain provisions of the federal securities laws, including Section 10(b) of the Securities Exchange Act of 1934, arising out of the Company's disclosure regarding its customer Green and Gold Energy ("GGE") and the associated backlog of GGE orders with the Company's Photovoltaics business segment. The Complaint in the Prissert Class Action seeks, among other things, an unspecified amount of compensatory damages and other costs and expenses associated with the maintenance of the action. On or about February 12, 2009, a second purported stockholder class action (*Mueller v. EMCORE Corporation et al.*, Case No. 1:09cv133 (D.N.M.)) (the "Mueller Class Action"), together with the Prissert Class Action, the "Class Actions") was filed in the United States District Court for the District of New Mexico against the same defendants named in the Prissert Class Action, based on substantially the same facts and circumstances, containing substantially the same allegations and seeking substantially the same relief.

## [Table of Contents](#)

On September 25, 2009, the court issued an order consolidating both the Prissert and Mueller class actions into one consolidated proceeding, but denied plaintiffs motions for appointment of a lead plaintiff or lead plaintiffs counsel. On July 15, 2010, the court appointed IBEW Local Union No. 58 Annuity Fund to serve as lead plaintiff (“IBEW”), but denied, without prejudice, IBEW’s motion to appoint lead counsel. On August 24, 2010, IBEW filed a renewed motion for appointment as lead plaintiff and for approval of its selection of counsel. IBEW filed a renewed motion for appointment of counsel on May 13, 2011 which we did not oppose. By Order dated September 30, 2011, the court appointed counsel to act on behalf of the purported class. On November 14, 2011, the plaintiffs filed a Consolidated Amended Complaint, again alleging violations of the federal securities laws arising out of the Company’s disclosure regarding its customer GGE and the associated backlog of GGE orders with the Company’s Photovoltaics business segment (the “Amended Complaint”). We filed a motion to dismiss the Amended Complaint on January 9, 2012, and on September 28, 2012, the court ruled in our favor. On November 9, 2012, we entered into a stipulation and agreement with the lead class representative, pursuant to which the parties agreed to release each other from all claims related to the matter and not to appeal the dismissal of the Amended Complaint, effectively ending this litigation.

On January 23, 2009, Plaintiff James E. Stearns filed a purported stockholder derivative action (the “Stearns Derivative Action”) on behalf of the Company against the Individual Defendants, as well as the Company as nominal defendant in the Superior Court of New Jersey, Atlantic County, Chancery Division (*James E. Stearns, derivatively on behalf of EMCORE Corporation v. Thomas J. Russell, Robert Bogomolny, Charles Scott, John Gillen, Reuben F. Richards, Jr., Hong Q. Hou, Adam Gushard, David Danzilio and Thomas Werthan, Case No. Atl-C-10-09*). This action is based on essentially the same factual contentions as the Prissert Class Action, and alleges that the Individual Defendants engaged in improprieties and violations of law in connection with the reporting of the GGE backlog. The Stearns Derivative Action seeks several forms of relief, allegedly on behalf of the Company, including, among other things, damages, equitable relief, corporate governance reforms, an accounting of, rescission of, restitution of, and costs and disbursements of the lawsuit.

On March 11, 2009, Plaintiff Gary Thomas filed a second purported shareholder derivative action (the “Thomas Derivative Action”; together with the Stearns Derivative Action, the “Derivative Actions”) in the U.S. District Court for the District of New Mexico against the Company and certain of the Individual Defendants (*Gary Thomas, derivatively on behalf of EMCORE Corporation v. Thomas J. Russell, Robert Bogomolny, Charles Scott, John Gillen, Reuben F. Richards, Jr., Hong Q. Hou, and EMCORE Corporation, Case No. 1:09-cv-00236, (D.N.M.)*). The Thomas Derivative Action makes substantially the same allegations as the Stearns Derivative Action and seeks essentially the same relief.

The Stearns Derivative Action and the Thomas Derivative action were consolidated before a single judge in Somerset County, New Jersey.

Based on the dismissal of the Class Actions, on December 5, 2012, we entered into a stipulation and agreement whereby the plaintiffs in the Derivative Actions agreed to dismiss their claims with prejudice, effectively ending the Derivative Actions and the last remaining Green and Gold-related litigation. No payment was made in connection with the dismissal of the Class Actions or the Derivative Actions.

### **NOTE 12. Credit Facilities**

On November 11, 2010, we entered into a Credit and Security Agreement (credit facility) with Wells Fargo Bank (Wells Fargo). The initial credit facility provided us with a three-year revolving credit of up to \$35 million that can be used for working capital requirements, letters of credit, and other general corporate purposes. The credit facility was initially secured by the Company’s accounts receivables and inventory assets and was subject to a borrowing base formula based on the Company’s eligible accounts receivable and inventory accounts.

The credit facility contains customary representations and warranties, and affirmative and negative covenants, including, among other things, cash balance and excess availability requirements, minimum tangible net worth and EBITDA covenants and limitations on liens and certain additional indebtedness and guarantees. The covenants are written such that as long as we maintain the minimum cash balance and excess availability requirement of \$7.5 million prior to the amendment, and \$3.5 million following the amendments discussed below, the other covenants are not required to be met. As of December 31, 2012, we were in compliance with the financial covenants contained in the credit facility since cash on deposit and excess availability exceeded the \$3.5 million financial covenant requirement.

## Table of Contents

The credit facility also contains certain events of default, including a subjective acceleration clause. Under this clause, Wells Fargo may declare an event of default if it believes in good faith that our ability to pay all or any portion of its indebtedness with Wells Fargo or to perform any of its material obligations under the credit facility has been impaired, or if it believes in good faith that there has been a material adverse change in the business or financial condition of the Company. If an event of default is not cured within the grace period (if applicable), then Wells Fargo may, among other things, accelerate repayment of amounts borrowed under the credit facility, cease making advances under the credit facility or take possession of the Company's assets that secure its obligations under the credit facility. We do not anticipate at this time any change in the business or financial condition of the Company that could be deemed a material adverse change by Wells Fargo. Wells Fargo has confirmed that they do not consider the flooding at our contract manufacturer to be a material adverse change in the business or financial condition of the Company.

On December 21, 2011, we signed an amendment to our credit facility that increased our eligible borrowing base by up to \$10 million by adding to the borrowing base formula 85% of the appraised value of the Company's equipment and 50% of the appraised value of the Company's real estate. In addition, Wells Fargo reduced our restrictions under the excess availability financial covenant requirement from \$7.5 million to \$3.5 million through December 2012. The interest rate on outstanding borrowings was increased to LIBOR rate plus 4%. The credit facility will return to its full previous terms on the earlier of (i) December 31, 2012, or (ii) the date that we receive insurance proceeds of not less than \$30.0 million in the aggregate applicable to the flooding of our primary contract manufacturer in Thailand.

On June 14, 2012, we entered into a Second Amendment to the credit facility, which amended among other things, the borrowing base increase under the First Amendment, which was subject to automatic reductions to (i) \$8.1 million on July 1, 2012; and to (ii) \$3.1 million on January 1, 2013. The Second Amendment automatically reduced the \$8.1 million and \$3.1 million thresholds referenced above to \$5.0 million and \$0, respectively, if the sale of certain assets does not occur. The Second Amendment credit facility no longer included certain assets in the potential borrowing base including certain machinery and equipment and real estate.

On December 28, 2012, we entered into a Third Amendment to the credit facility, which amended among other things, the maturity date of the facility to November 11, 2015. The Third Amendment also amends the credit facility by adjusting the borrowing availability provided by machinery and equipment, which amount is currently set at approximately \$7.6 million and which will be reduced monthly by approximately \$101,000 through March 31, 2013, at which time the borrowing availability will be reduced to \$5.0 million and thereafter will be further reduced monthly by approximately \$91,000. The reduction to \$5.0 million can occur earlier than March 31, 2013 based upon the occurrence of certain events.

The Third Amendment also maintains the Company's minimum cash balance and excess liquidity requirement at \$3.5 million through June 30, 2013, which was scheduled to increase to \$7.5 million on December 31, 2012, below which certain financial covenants are triggered which relate to minimum tangible net worth, minimum EBITDA amounts and limitations on capital expenditures. The amounts of these financial covenants have been amended from those previously introduced in the First Amendment. At June 30, 2013 the liquidity requirement will be increased by \$1.0 million, and will be further increased, quarterly, until such amount reaches \$7.5 million at March 31, 2014.

As of December 31, 2012, we had a \$19.9 million LIBOR rate loan outstanding, with an interest rate of 4.40%, and approximately \$2.4 million reserved for eight outstanding stand-by letters of credit under the credit facility. We expect at least 70% of the total amount of credit under the credit facility to be available for use based on the revised borrowing base formula during fiscal year 2013.

### **NOTE 13. Equity**

#### Stock Sale

During August 2012, we filed a shelf registration statement on Form S-3 with the SEC pursuant to which we may, from time to time, sell up to an aggregate of \$50 million of our common or preferred stock, warrants or debt securities. On August 23, 2012, the registration statement was declared effective by the SEC, which will allow us to access the capital markets for the three year period following this effective date. On September 28, 2012, we entered into an Underwriting Agreement (the "Agreement") with B. Riley & Co., LLC (the "Underwriter") pursuant to which we agreed to sell and the Underwriter agreed to purchase 1,593,400 shares of our common stock at a price per share of \$5.19. We also granted the Underwriter a 30-day option to purchase up to 239,010 additional shares of common stock at the same price per share. On October 3, 2012 we sold 1,832,410 shares of common stock for net proceeds of \$9.5 million.

#### Equity Plans

[Table of Contents](#)

We provide long-term incentives to eligible officers, directors, and employees in the form of equity-based awards. We maintain three equity incentive compensation plans, collectively described below as our Equity Plans:

- the 2000 Stock Option Plan (2000 Plan),
- the 2010 Equity Incentive Plan (2010 Equity Plan),
- the 2012 Equity Incentive Plan (2012 Equity Plan).

We issue new shares of common stock to satisfy awards issued under our Equity Plans.

Stock Options

Most of our stock options vest and become exercisable over a four to five year period and have a contractual life of 10 years. Certain stock options awarded are intended to qualify as incentive stock options pursuant to Section 422A of the Internal Revenue Code.

The following table summarizes stock option activity under the Equity Plans for the three months ended December 31, 2012:

	<b>Number of Shares</b>	<b>Weighted Average Exercise Price</b>	<b>Weighted Average Remaining Contractual Life (in years)</b>	<b>Aggregate Intrinsic Value (*) (in thousands)</b>
Outstanding as of September 30, 2012	2,032,215	\$17.76		
Granted	19,100	\$4.73		
Exercised	(724)	\$4.16		\$ 1
Forfeited	(34,147)	\$7.70		
Expired	(27,673)	\$22.21		
Outstanding as of December 31, 2012	1,988,771	\$17.75	4.66	
Exercisable as of December 31, 2012	1,671,674	\$20.02	4.07	\$ 31
Vested and expected to vest as of December 31, 2012	1,946,582	\$18.02	4.57	\$ 68

(\*) Intrinsic value for stock options represents the “in-the-money” portion or the positive variance between a stock option's exercise price and the underlying stock price.

As of December 31, 2012, there was approximately \$1.0 million of unrecognized stock-based compensation expense, net of estimated forfeitures, related to non-vested stock options granted under the Equity Plans which is expected to be recognized over an estimated weighted average life of 2.3 years.

[Table of Contents](#)

Valuation Assumptions

The fair value of each stock option grant was estimated on the date of grant using the Black-Scholes option valuation model, adhering to the straight-line attribution approach using the following weighted-average assumptions, of which the expected term and stock price volatility rate are highly subjective:

	For the Three Months Ended December 31,	
	2012	2011
<b>Black-Scholes weighted average assumptions:</b>		
Expected dividend rate	—%	—%
Expected stock price volatility rate	97.1%	106.1%
Risk-free interest rate	0.9%	0.9%
Expected term (in years)	6.0	5.0
<b>Weighted average grant date fair value per share of stock options granted:</b>		
	\$ 3.65	\$ 3.08

Restricted Stock

Restricted stock awards (RSAs) and restricted stock units (RSUs) granted under the 2010 Equity Plan and 2012 Equity Plan typically vest over 3 years and are subject to forfeiture if employment terminates prior to the lapse of the restrictions. RSAs are considered issued and outstanding shares on the grant date and have the same dividend and voting rights as other common stock. RSUs are not considered issued or outstanding common stock until they vest.

The following table summarizes the activity related to RSAs and RSUs:

Restricted Stock Activity	Restricted Stock Awards		Restricted Stock Units	
	Number of Shares	Weighted Average Grant Date Fair Value	Number of Shares	Weighted Average Grant Date Fair Value
Non-vested as of September 30, 2012	216,703	\$5.83	700,043	\$4.44
Granted	—	—	11,200	\$4.35
Vested	—	—	(161,985)	\$3.85
Forfeited	(2,368)	\$5.68	(11,937)	\$4.28
Non-vested as of December 31, 2012	214,335	\$5.83	537,321	\$4.62

Restricted stock awards: As of December 31, 2012, there was approximately \$0.5 million of remaining unamortized stock-based compensation expense, net of estimated forfeitures, associated with RSAs, which will be expensed over a weighted average remaining service period of approximately 1.0 years.

Restricted stock units: As of December 31, 2012, there was approximately \$1.7 million of remaining unamortized stock-based compensation expense, net of estimated forfeitures, associated with RSUs, which will be expensed over a weighted average remaining service period of approximately 1.9 years. The 0.5 million outstanding non-vested RSUs have an aggregate intrinsic value of approximately \$2.3 million and a weighted average remaining contractual term of 1.3 years. Of the 0.5 million outstanding non-vested RSUs, approximately 0.5 million RSUs are expected to vest and have an aggregate intrinsic value of approximately \$2.0 million and a weighted average remaining contractual term of 1.3 years.

[Table of Contents](#)

Stock-based compensation

The effect of recording stock-based compensation expense was as follows:

<b>Stock-based Compensation Expense - by award type</b> <i>(in thousands)</i>	<b>For the Three Months Ended December 31,</b>	
	<b>2012</b>	<b>2011</b>
Employee stock options	\$ 258	\$ 1,047
Restricted stock awards and units	406	575
Employee stock purchase plan	131	224
401(k) match in common stock	256	230
Outside director fees in common stock	31	104
Total stock-based compensation expense	<u>\$ 1,082</u>	<u>\$ 2,180</u>

<b>Stock-based Compensation Expense - by expense type</b> <i>(in thousands)</i>	<b>For the Three Months Ended December 31,</b>	
	<b>2012</b>	<b>2011</b>
Cost of revenue	\$ 315	\$ 476
Selling, general, and administrative	382	1,013
Research and development	385	691
Total stock-based compensation expense	<u>\$ 1,082</u>	<u>\$ 2,180</u>

Income (Loss) Per Share. The following table sets forth the computation of basic and diluted net income (loss) per share:

	<b>For the Three Months Ended December 31,</b>	
	<b>2012</b>	<b>2011</b>
	(in thousands, except per share data)	
Numerator - Net income (loss)	\$ 2,826	\$ (14,229)
Less: Undistributed earnings allocated to participating securities	(23)	—
Undistributed earnings allocated to common shareholders for basic net income (loss) per share	<u>\$ 2,803</u>	<u>\$ (14,229)</u>
Undistributed earnings allocated to common shareholders for diluted net income (loss) per share	<u>\$ 2,803</u>	<u>\$ (14,229)</u>
Denominator:		
Denominator for basic net income (loss) per share - weighted average shares outstanding	25,977	23,476
Dilutive options outstanding, unvested stock units and ESPP	259	—
Denominator for diluted net income (loss) per share - adjusted weighted average shares outstanding	<u>26,236</u>	<u>23,476</u>
Basic net income (loss) per share	<u>\$ 0.11</u>	<u>\$ (0.61)</u>
Diluted net income (loss) per share	<u>\$ 0.11</u>	<u>\$ (0.61)</u>
Weighted average antidilutive options, unvested restricted stock units and warrants excluded from the computation	<u>2,913</u>	<u>3,490</u>
Average market price of common stock	<u>\$ 4.68</u>	<u>\$ 3.89</u>

The antidilutive stock options and unvested stock were excluded from the computation of diluted net income (loss) per share due to the assumed proceeds from the award's exercise or vesting being greater than the average market price of the common shares or due to the Company incurring a net loss for the periods presented.

Future Issuances

As of December 31, 2012, we had common stock reserved for the following future issuances:

<b>Future Issuances</b>	<b>Number of Common Stock Shares Available for Future Issuances</b>
Exercise of outstanding stock options	1,988,771
Purchases under the employee stock purchase plan	780,067
Issuance of stock-based awards under the Equity Plans	1,047,984
Exercise of outstanding warrants	750,011
Purchases under the officer and director share purchase plan	94,811
Total reserved	4,661,644



**NOTE 14. Segment Data and Related Information**

We have four operating divisions within the following two reporting segments:

- **Fiber Optics:** EMCORE Digital Fiber Optics Products and EMCORE Broadband Fiber Optics Products are aggregated as a separate reporting segment, Fiber Optics. Our Fiber Optics reporting segment provides optical components, subsystems, and systems for high-speed telecommunications, cable television (CATV), and fiber-to-the-premise (FTTP) networks, as well as products for satellite communications, video transport, and specialty photonics technologies for defense and homeland security applications.
- **Photovoltaics:** EMCORE Photovoltaics and EMCORE Solar Power are aggregated as a separate reporting segment, Photovoltaics. Our Photovoltaics reporting segment provides products for both space and terrestrial solar power applications. For space solar power applications, we offer high-efficiency multi-junction solar cells, covered interconnect cells (CICs), and complete satellite solar panels.

We evaluate our reportable segments pursuant to ASC 280, *Segment Reporting*. The Company's Chief Executive Officer is the chief operating decision maker and he assesses the performance of the operating segments and allocates resources to segments based on their business prospects, competitive factors, net revenue, operating results, and other non-GAAP financial ratios.

**Revenue:** The following tables set forth revenue attributable to each of our reporting segments and by geographic region with revenue assigned to geographic regions based on our customers' billing address.

<b>Segment Revenue</b> <i>(in thousands)</i>	<b>For the Three Months Ended December 31,</b>	
	<b>2012</b>	<b>2011</b>
Fiber Optics revenue	\$ 29,678	\$ 18,303
Photovoltaics revenue	19,628	19,148
Total revenue	<u>\$ 49,306</u>	<u>\$ 37,451</u>

<b>Revenue by Geographic Region</b> <i>(in thousands)</i>	<b>For the Three Months Ended December 31,</b>	
	<b>2012</b>	<b>2011</b>
United States	\$ 34,667	\$ 22,568
Asia	8,900	4,861
Europe	5,213	4,301
Other	526	5,721
Total revenue	<u>\$ 49,306</u>	<u>\$ 37,451</u>

Revenue by geographic location is determined based on the location of our customer.

**Impact from Thailand Flood:** In October 2011, we announced that flood waters had severely impacted the inventory and production operations of our primary contract manufacturer in Thailand. The impacted areas included certain product lines for the Telecom and Cable Television (CATV) market segments. This had a significant impact on our operations and our ability to meet customer demand for certain of our fiber optics products. Our Photovoltaics segment was not affected by the Thailand floods. See [Note 9 - Impact from Thailand Flood](#) for additional disclosures related to the impact of the Thailand flood on our operations.

**Sale of Fiber Optics-related Assets:** On May 7, 2012, we sold certain assets and transferred certain inventory purchase obligations associated with our Fiber Optics segment to SEI. See [Note 1 - Description of Business](#) for additional disclosures related to this asset sale.

[Table of Contents](#)

**Significant Customers:** Revenue from one customer of the Fiber segment represented 11% of our revenue for the three months ended December 31, 2012 and revenue from one customer of the Photovoltaics segment represented 15% of our consolidated revenue for the three months ended December 31, 2011.

**Operating Income (Loss):** The following table sets forth operating income (loss) attributable to each of our reporting segments.

<b>Operating Income (Loss)</b> <i>(in thousands)</i>	<b>For the Three Months Ended December 31,</b>	
	<b>2012</b>	<b>2011</b>
	Fiber Optics operating loss	\$ (395)
Photovoltaics operating income (loss)	3,241	(497)
Total operating income (loss)	\$ 2,846	\$ (11,690)

**Non-Cash Expenses:** The following tables sets forth our significant non-cash expenses attributable to each of our reporting segments.

<b>Depreciation, Amortization, and Accretion Expense</b> <i>(in thousands)</i>	<b>For the Three Months Ended December 31,</b>	
	<b>2012</b>	<b>2011</b>
	Fiber Optics segment	\$ 1,282
Photovoltaics segment	736	1,119
Total depreciation, amortization, and accretion expense	\$ 2,018	\$ 2,775

<b>Stock-based Compensation Expense</b> <i>(in thousands)</i>	<b>For the Three Months Ended December 31,</b>	
	<b>2012</b>	<b>2011</b>
	Fiber Optics segment	\$ 726
Photovoltaics segment	356	784
Total stock-based compensation expense	\$ 1,082	\$ 2,180

**Long-lived Assets:** Long-lived assets consist primarily of property, plant, and equipment and also goodwill and intangible assets. The following table sets forth long-lived assets for each of our reporting segments and our unallocated Corporate division.

<i>(in thousands)</i>	<b>As of</b>	
	<b>December 31, 2012</b>	<b>September 30, 2012</b>
	Fiber Optics segment	\$ 24,546
Photovoltaics segment	38,470	40,252
Unallocated Corporate division	8,853	7,247
Long-lived assets	\$ 71,869	\$ 71,708

As of December 31, 2012 and September 30, 2012, approximately 87% and 86%, respectively, of our long-lived assets were located in the United States.

**NOTE 15. Suncore Joint Venture**

On July 30, 2010, we entered into a joint venture agreement with San'an Optoelectronics Co., Ltd. (San'an), for the purpose of engaging in the development, manufacturing, and distribution of CPV receivers, modules, and systems for terrestrial solar power applications under a technology license from us. The joint venture, Suncore Photovoltaic Technology Co., Ltd. (Suncore), is a limited liability company under the laws of the People's Republic of China.

Initially, the total registered capital of Suncore was \$30.0 million, of which San'an contributed \$18.0 million in cash and EMCORE contributed \$12.0 million in cash. In addition, we entered into a Cooperation Agreement with an affiliate of San'an whereby we received \$8.5 million in consulting fees in exchange for the technology license and related support and strategic consulting services to Suncore, which was recorded as a reduction to our investment in Suncore resulting in a basis difference. We amortize this basis difference in our equity investment over an estimated five-year technology useful life using the straight-line amortization method.

During the three months ended December 31, 2011, Suncore increased its registered capital by recording a deemed capital distribution of \$37.0 million which was distributed and reinvested in proportion to each entity's registered capital, of which San'an was allocated \$22.2 million and EMCORE was allocated \$14.8 million. During this same period, Suncore also recorded a cash dividend of approximately \$4.1 million in proportion to each entity's registered capital of which San'an received \$2.5 million and EMCORE received \$1.6 million. We recorded the cash dividend as a reduction in our investment in Suncore. We incurred foreign income tax of approximately \$1.6 million associated with these capital distributions which is presented under the caption "income tax expense" on our statement of operations and comprehensive loss. EMCORE's cash dividend was equal to the foreign income tax expense incurred on the capital distributions.

In August 2011, we signed a solar rooftop CPV development agreement with Suncore pursuant to which we agreed to collaborate on the development and application of the current 500X and next-generation 1000X rooftop CPV systems. In summary, Suncore agreed to purchase joint ownership rights to rooftop CPV intellectual property and reimburse us 50% of all research and development costs incurred related to rooftop CPV solutions in exchange for joint ownership rights to the newly developed intellectual property. In addition, Suncore agreed to pay us a development fee of 20% on research and development costs billed to Suncore with a maximum development fee payout of approximately \$0.2 million. During the three months ended December 31, 2011, we billed Suncore approximately \$0.3 million for research and development costs and recognized \$0.1 million in development fees. With the agreement in August 2012 to consolidate the Company's terrestrial CPV system engineering and development efforts, for both ground mount and rooftop terrestrial CPV products, into Suncore, the collaboration on research and development costs agreement was terminated between the Company and Suncore.

In November 2011, we agreed to grant Suncore an exclusive license to use certain intellectual property and know-how, both existing and to-be-developed, related to the fabrication process and testing of terrestrial CPV solar cells on terrestrial CPV solar systems solely within the PRC, Hong Kong, Macau, and Taiwan (the licensed territory) and be able to use, market, and sell the terrestrial CPV solar cells worldwide, excluding only the United States. This licensing agreement valued at \$2.5 million does not include intellectual property associated with the development of space qualified or radiation hardened solar cells. Suncore has not fulfilled all the requirements necessary to initiate payment for this license; as a result, we did not record any receivables from Suncore associated with this license agreement as of December 31, 2012.

Pursuant to the joint venture agreement, San'an and EMCORE share the profits, losses, and risks of Suncore in proportion to and, in the event of losses, to the extent of their respective contributions to the registered capital of Suncore. We continue to hold a 40% registered ownership in Suncore. As of December 31, 2012, our cumulative proportionate loss in Suncore has exceeded our net investment in Suncore by approximately \$4.5 million. Pursuant to ASC 323-10, *Investments—Equity Method and Joint Ventures – Overall*, we stopped recording our proportionate share of Suncore's loss after our investment declined to a zero value since we have no obligation or intent to fund the deficit balance. We will resume applying the equity method only after our share of net income in Suncore equals the share of net losses not recognized during the period we suspended using the equity method.

[Table of Contents](#)

On August 5, 2012, we entered into a definitive agreement which consolidated the Company's terrestrial CPV system engineering and development efforts, for both ground mount and rooftop terrestrial CPV products, into Suncore. EMCORE employees who were engaged in terrestrial CPV product and business development, as well as key engineering, sales, and marketing personnel, were transferred to Suncore upon the closing of the agreement on September 21, 2012. Suncore will fund all ongoing R&D, marketing, sales, and business development functions related to terrestrial CPV systems. EMCORE will continue to own all of its intellectual property related to solar cell technology and maintain investment activities to advance CPV solar cell performance to serve a broader customer base within the CPV industry. We sold these assets for \$2.8 million. Included in prepaid expenses and other current assets at September 30, 2012 is the \$2.8 million sale price, which the amount was collected during the three months ended December 31, 2012.

During the three months ended December 31, 2012 and 2011, we recorded revenue from Suncore of \$2.6 million and \$0.2 million, respectively.

## ITEM 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

*You should read the following discussion of our financial condition and results of operations in conjunction with the financial statements and the notes thereto included in [Financial Statements](#) under [Item 1](#) of this Quarterly Report. The following discussion contains forward-looking statements that reflect our plans, estimates, and beliefs. Our actual results could differ materially from those discussed in the forward-looking statements. Factors that could cause or contribute to these differences include those discussed below and elsewhere in this Quarterly Report, particularly in Risk Factors under Part II, Item 1A. These cautionary statements apply to all forward-looking statements wherever they appear in this Quarterly Report.*

### **Business Overview**

EMCORE Corporation and its subsidiaries (the "Company", "we", "our", or "EMCORE") offers a broad portfolio of compound semiconductor-based products for the broadband, fiber optics, satellite, and solar power markets. We were established in 1984 as a New Jersey corporation and we have two reporting segments: Fiber Optics and Photovoltaics. EMCORE's Fiber Optics business segment provides optical components, subsystems and systems for high-speed telecommunications, Cable Television (CATV) and Fiber-To-The-Premise (FTTP) networks, as well as products for satellite communications, video transport and specialty photonics technologies for defense and homeland security applications. Our solar Photovoltaics business segment provides products for space power applications including high-efficiency multi-junction solar cells, Covered Interconnect Cells (CICs) and complete satellite solar panels, and terrestrial applications, including high-efficiency GaAs solar cells for concentrating photovoltaic (CPV) power systems.

Our headquarters and principal executive offices are located at 10420 Research Road, SE, Albuquerque, New Mexico, 87123, and our main telephone number is (505) 332-5000. For specific information about us, our products, or the markets we serve, please visit our website at <http://www.emcore.com>. The information contained in or linked to our website is not a part of, nor incorporated by reference into, this Quarterly Report on Form 10-Q or a part of any other report or filing with the Securities and Exchange Commission (SEC).

See [Note 15 - Suncore Joint Venture](#) in the notes to the condensed consolidated financial statements for disclosures related to the definitive agreement which consolidated the Company's terrestrial CPV system engineering and development efforts into the Company's joint venture.

### **Impact from Thailand Flood**

In October 2011, flood waters severely impacted the inventory and production operations of our primary contract manufacturer in Thailand. The impacted areas included certain product lines for the Telecom and Cable Television (CATV) market segments. This had a significant impact on our operations and our ability to meet customer demand for certain of our fiber optics products. Our Photovoltaics segment was not affected by the Thailand floods.

Since that announcement, we have developed and implemented a plan to rebuild the impacted production lines at other locations, including an alternate facility of our contract manufacturer in Thailand, as well as our own manufacturing facilities in the United States and China. Our production line for ITLAs (Integrable Tunable Laser Assemblies) for 40 and 100 Gb/s (Gigabit per second) coherent telecom applications has been up and running since April 2012 at our contract manufacturer in Thailand. Production line qualification has been completed and most customers have successfully completed full-line audits and started taking shipments in April. As of September 2012, our ITLA line was operating at pre-flood capacity production levels. The CATV laser module and transmitter production lines at our manufacturing facility in China reached pre-flood capacity production levels as of September 2012. See [Note 9 - Impact from Thailand Flood](#) in the notes to the condensed consolidated financial statements for additional disclosures related to the impact of the Thailand flood on our operations.

[Table of Contents](#)

**Sale of Fiber Optics-related Assets**

On March 27, 2012, we entered into a Master Purchase Agreement with a subsidiary of Sumitomo Electric Industries, LTD (SEI), pursuant to which we agreed to sell certain assets and transfer certain obligations associated with our Fiber Optics segment. On May 7, 2012, we completed the sale of these assets to SEI and recorded a gain of approximately \$2.8 million. This transaction was recorded as a sale of assets since it did not meet the criteria to be considered a component of our business. Under the terms of the Master Purchase Agreement, we have agreed to indemnify SEI for up to \$3.4 million of potential claims and expenses for the two-year period following the sale, and we have recorded this amount as a deferred gain on our balance sheet as of December 31, 2012 as a result of these contingencies. SEI paid \$13.1 million in cash and deposited approximately \$2.6 million into escrow as security for indemnification obligations and any purchase price adjustments. Payment of escrow amounts occurs over a two-year period and is subject to claim adjustments. In total, we have deferred approximately \$4.9 million of the total paid by SEI as a gain on sale until the indemnification obligation of \$3.4 million and purchase price adjustment contingencies are resolved. See [Note 1 - Description of Business](#) in the notes to the consolidated financial statements for additional disclosures related to this asset sale.

**Results of Operations**

The following table sets forth our consolidated statements of operations data expressed as a percentage of revenue.

	For the Three Months Ended December 31,	
	2012	2011
Revenue	100.0 %	100.0 %
Cost of revenue	77.8	90.7
Gross profit	22.2	9.3
Operating expense (income):		
Selling, general, and administrative	14.0	20.0
Research and development	10.9	18.6
Flood-related loss	—	15.2
Flood-related insurance proceeds	(8.5)	(13.3)
Total operating expense	16.4	40.5
Operating income (loss)	5.8	(31.2)
Other income (expense):		
Interest expense, net	(0.5)	(0.3)
Foreign exchange gain	0.2	0.2
Loss from equity method investment	(0.1)	(2.6)
Change in fair value of financial instruments	0.5	0.3
Other expense	—	—
Total other income (expense)	0.1	(2.4)
Income (loss) before income tax expense	5.9	(33.6)
Income tax expense	(0.2)	(4.4)
Net income (loss)	5.7 %	(38.0)%

**Comparison of financial results:**

**Revenue:**

<i>(in thousands, except percentages)</i>	<b>For the Three Months Ended December 31,</b>			
	<b>2012</b>	<b>2011</b>	<b>\$ Change</b>	<b>% Change</b>
Fiber Optics revenue	\$ 29,678	\$ 18,303	\$ 11,375	62.1%
Photovoltaics revenue	19,628	19,148	480	2.5%
Total revenue	\$ 49,306	\$ 37,451	\$ 11,855	31.7%

Fiber Optics Revenue

Our Fiber Optics reporting segment provides optical components, subsystems, and systems for high-speed telecommunications, cable television (CATV), and fiber-to-the-premise (FTTP) networks, as well as products for satellite communications, video transport, and specialty photonics technologies for defense and homeland security applications. Our Fiber Optics segment is broken out into two distinct product lines:

- Broadband products, which includes cable television products, fiber-to-the-premises products, satellite communication products, and defense and homeland security products; and,
- Digital products, which include telecom optical products.

For the three months ended December 31, 2012, revenue from broadband products increased 79% from the prior year which was primarily driven by increased unit shipments of our CATV-related products primarily due to the impact of the Thailand flood in 2011. Sales of our CATV products, which include our quadrature amplitude modulation (QAM) transmitters and receivers, represents the largest percentage of our total fiber optics-related revenue.

For the three months ended December 31, 2012, revenue from digital products increased 38% from the prior year which was also primarily due to the impact of the Thailand flood on the telecom product lines. Our telecom optical-related product line, which includes tunable XFP, and integrated tunable laser assemblies (ITLAs), represents the second largest percentage of our total fiber optics-related revenue. Our enterprise digital product lines were sold to SEI in May 2012.

Our Fiber Optics segment accounted for 60% and 49% of our consolidated revenue for the three months ended December 31, 2012 and 2011, respectively.

Photovoltaics Revenue:

Our Photovoltaics reporting segment provides products for both space and terrestrial solar power applications. For space solar power applications, we offer high-efficiency multi-junction solar cells, covered interconnect cells (CICs), and complete satellite solar panels. For terrestrial powers applications, we offer high-efficiency GaAs solar cells for concentrating photovoltaic (CPV) power systems.

For the three months ended December 31, 2012, revenue from photovoltaics increased approximately 3% from the prior year primarily due to higher revenues from our terrestrial products. Sales of our satellite solar cells and CICs products represents the largest percentage of our total photovoltaics-related revenue. Historically, our Photovoltaics revenue has fluctuated significantly due to the timing of program completions and product shipments of major orders. Revenue from our terrestrial-related products was not significant as a percentage of total photovoltaics-related revenue.

Our Photovoltaics segment accounted for 40% and 51% of our consolidated revenue for the three months ended December 31, 2012 and 2011, respectively.

[Table of Contents](#)

**Gross Profit:**

(in thousands, except percentages)

	For the Three Months Ended December 31,			
	2012	2011	\$ Change	% Change
Fiber Optics gross profit (loss)	\$ 4,965	\$ (875)	\$ 5,840	667.4%
Photovoltaics gross profit	5,983	4,343	1,640	37.8%
Total gross profit (loss)	\$ 10,948	\$ 3,468	\$ 7,480	215.7%

Our cost of revenue consists of raw materials, compensation expense including non-cash stock-based compensation expense, depreciation expense and other manufacturing overhead costs, expenses associated with excess and obsolete inventories, and product warranty costs. Historically, our cost of revenue, as a percentage of revenue, has fluctuated largely due to inventory and product warranty charges. Our gross margins are also affected by product mix, manufacturing yields and volumes, and timing related to the completion of long-term contracts.

Consolidated gross margins were 22.2% and 9.3% for the three months ended December 31, 2012 and 2011, respectively.

Stock-based compensation expense within cost of revenue totaled approximately \$0.3 million and \$0.5 million during the three months ended December 31, 2012 and 2011, respectively.

Fiber Optics Gross Profit:

Fiber Optics gross margin was 16.7% and (4.8)% for the three months ended December 31, 2012 and 2011, respectively.

Inventory excess and obsolescence expense totaled approximately \$0.2 million and \$4.0 million during the three months ended December 31, 2012 and 2011, respectively.

For the three months ended December 31, 2012, gross margins increased from both our broadband and digital product lines when compared to the prior year. During the prior year period, lower revenues due to the impact from the Thailand flood resulted in higher manufacturing overhead as a percentage of revenue. Manufacturing of certain fiber optics-related components was moved to Company-owned facilities which involved higher labor and other related costs.

Photovoltaics Gross Profit:

Photovoltaics gross margin was 30.5% and 22.7% for the three months ended December 31, 2012 and 2011, respectively. The increase in gross margin is primarily due to higher revenues and the elimination of lower margin terrestrial system product lines that were sold to Suncore in September 2012.

**Selling, General and Administrative (SG&A):**

(in thousands, except percentages)

	For the Three Months Ended December 31,			
	2012	2011	\$ Change	% Change
SG&A expense	\$ 6,904	\$ 7,480	\$ (576)	(7.7)%

SG&A consists primarily of compensation expense including non-cash stock-based compensation expense related to executive, finance, and human resources personnel, as well as sales and marketing expenses, professional fees, amortization expense on intangible assets, legal and patent-related costs, and other corporate-related expenses.

Stock-based compensation expense within SG&A totaled approximately \$0.4 million and \$1.0 million during the three months ended December 31, 2012 and 2011, respectively.



[Table of Contents](#)

The decrease in SG&A expense for the three months ended December 31, 2012 when compared to the prior year was attributable to cost reduction measures implemented which include a reduction of discretionary spending on staffing and infrastructure and due to the sale of our vertical cavity surface emitting lasers (VCSEL)-based and enterprise-related product lines in May 2012 and the sale of the terrestrial system product lines in September 2012.

As a percentage of revenue, SG&A expenses were 14.0% and 20.0% for the three months ended December 31, 2012 and 2011, respectively.

**Research and Development (R&D):**

(in thousands, except percentages)

	For the Three Months Ended December 31,			
	2012	2011	\$ Change	% Change
R&D expense	\$ 5,390	\$ 6,980	\$ (1,590)	(22.8)%

R&D consists primarily of compensation expense including non-cash stock-based compensation expense, as well as engineering and prototype costs, depreciation expense, and other overhead expenses, as they related to the design, development, and testing of our products. Our R&D costs are expensed as incurred. We believe that in order to remain competitive, we must invest significant financial resources in developing new product features and enhancements and in maintaining customer satisfaction worldwide.

Stock-based compensation expense within R&D totaled \$0.4 million and \$0.7 million during the three months ended December 31, 2012 and 2011, respectively.

The decrease in R&D expense for the three months ended December 31, 2012 when compared to the prior year was due to the sale of our vertical cavity surface emitting lasers (VCSEL)-based and enterprise-related product lines in May 2012 and the sale of the terrestrial system product lines in September 2012. In August 2011, we signed a solar rooftop CPV development agreement with our Suncore joint venture pursuant to which we collaborated on the development and application of the current 500X and next-generation 1000X rooftop CPV systems. With the sale of the product lines to Suncore in September 2012, we will no longer be collaborating on these efforts.

As a percentage of revenue, R&D expenses were 10.9% and 18.6% for the three months ended December 31, 2012 and 2011, respectively.

**Other Operating Expense (Income):**

(in thousands, except percentages)

	For the Three Months Ended December 31,			
	2012	2011	\$ Change	% Change
Flood-related loss	\$ —	\$ 5,698	\$ (5,698)	(100)%
Flood-related insurance proceeds	\$ (4,192)	\$ (5,000)	\$ 808	(16.2)%

**Flood-related Loss:**

During the three months ended December 31, 2011, we recorded estimated flood-related losses associated with damaged inventory and equipment of approximately \$3.9 million and \$1.8 million, respectively. See [Note 9 - Impact from Thailand Flood](#) in the notes to the condensed consolidated financial statements for additional disclosures related to the impact of the Thailand flood on our operations.

[Table of Contents](#)

**Flood-related Insurance Proceeds:**

During the three months ended December 31, 2012, we received flood-related insurance proceeds of \$4.2 million from our contract manufacturer. We expect to receive additional flood-related insurance proceeds in the form of \$6 million in cash proceeds as well as liability offsets of approximately \$8.8 million by March 31, 2013 to cover the direct damages to our assets that were impacted by the flood. Flood-related insurance proceeds related to inventory and equipment destroyed by the Thailand flood are recognized when they become realized. We were not a named beneficiary of our contract manufacturer's insurance policy. We claimed damages and received cash proceeds of \$5.0 million under our own comprehensive insurance policy relating to business interruption and we recorded this amount as flood-related insurance proceeds during the three months ended December 31, 2011. No additional business interruption insurance proceeds associated with this event are anticipated.

**Operating Income (Loss):**

(in thousands, except percentages)

	For the Three Months Ended December 31,			
	2012	2011	\$ Change	% Change
Fiber Optics operating loss	\$ (395)	\$ (11,193)	\$ 10,798	96.5%
Photovoltaics operating income (loss)	3,241	(497)	3,738	752.1%
Total operating income (loss)	\$ 2,846	\$ (11,690)	\$ 14,536	124.3%

Income (loss) from operations represents revenue less the cost of revenue and direct operating expenses incurred within the operating segments as well as allocated expenses such as shared service departments. Income (loss) from operations is a measure of profit and loss that executive management uses to assess performance and make decisions. As a percentage of revenue, our operating income (loss) was 5.8% and (31.2)% for the three months ended December 31, 2012 and 2011, respectively.

**Other Income (Expense):**

(in thousands, except percentages)

	For the Three Months Ended December 31,			
	2012	2011	\$ Change	% Change
Interest expense, net	\$ (238)	\$ (129)	\$ (109)	(84.5)%
Foreign exchange gain	101	89	12	13.5%
Loss from equity method investment	—	(960)	960	100.0%
Change in fair value of financial instruments	237	105	132	125.7%
Total other income (expense)	\$ 100	\$ (895)	\$ 995	111.2%

**Foreign Exchange**

We recognize gains and losses due to the effect of exchange rate changes on foreign currency primarily due to our operations in Spain, the Netherlands, and in China. The assets and liabilities of our foreign operations are translated from their respective functional currencies into U.S. dollars at the rates in effect at the consolidated balance sheet dates, and the revenue and expense amounts are translated at the average rate during the applicable periods reflected on the consolidated statements of operations and comprehensive loss. Foreign currency translation adjustments are recorded as accumulated other comprehensive income. Gains and losses from foreign currency transactions denominated in currencies other than the U.S. dollar, both realized and unrealized, are recorded as foreign exchange gain (loss) on our consolidated statements of operations and comprehensive loss. A majority of the gain or losses recorded relates to the change in value of the euro and yuan renminbi relative to the U.S. dollar.

## [Table of Contents](#)

### Loss from Equity Method Investment

We entered into a joint venture agreement in fiscal 2010 with San'an Optoelectronics Co., Ltd. (San'an) for the purpose of engaging in the development, manufacturing, and distribution of CPV receivers, modules, and systems for terrestrial solar power applications under a technology license from us. The joint venture, Suncore Photovoltaic Technology Co., Ltd. (Suncore) was established in January 2011. We have accounted for our investment in Suncore using the equity method of accounting. Pursuant to the joint venture agreement, San'an and EMCORE share the profits, losses, and risks of Suncore in proportion to and, in the event of losses, to the extent of their respective contributions to the registered capital of Suncore. We continue to hold a 40% registered ownership in Suncore. As of December 31, 2012, our cumulative proportionate loss in Suncore has exceeded our net investment in Suncore by approximately \$4.5 million. Pursuant to ASC 323-10, *Investments—Equity Method and Joint Ventures – Overall*, we stopped recording our proportionate share of Suncore's loss after our investment declined to a zero value since we have no obligation or intent to fund the deficit balance. We will resume applying the equity method only after our share of net income in Suncore equals the share of net losses not recognized during the period we suspended using the equity method. See [Note 15 - Suncore Joint Venture](#) in the notes to the condensed consolidated financial statements for additional information related to our Suncore joint venture.

### Change in Fair Value of Financial Instruments

As of December 31, 2012 and September 30, 2012, warrants representing 750,011 shares of our common stock were outstanding.

All of our warrants meet the classification requirements for liability accounting pursuant to ASC 815, *Derivatives and Hedging*. Each quarter, we expect an impact on our statement of operations and comprehensive loss when we record the change in fair value of our outstanding warrants using the Monte Carlo option valuation model. The Monte Carlo option valuation model is used since it allows the valuation of each warrant to factor in the value associated with our right to affect a mandatory exercise of each warrant. The valuation model requires the input of highly subjective assumptions, including the warrant's expected life and the price volatility of the underlying stock. The change in the fair value of our warrants has been primarily due to the change in the closing price of our common stock. See [Note 3 - Fair Value Accounting](#) in the notes to the condensed consolidated financial statements for additional information related to our valuation of our outstanding warrants.

### Income Tax Expense

During the three months ended December 31, 2012, we recorded income tax expense of \$0.1 million, primarily due to federal alternative minimum income tax and state income taxes.

During the three months ended December 31, 2011, Suncore increased its registered capital by recording a deemed capital distribution of \$37.0 million which was distributed and reinvested in proportion to each entity's registered capital, of which San'an was allocated \$22.2 million and EMCORE was allocated \$14.8 million. During this same period, Suncore also recorded a cash dividend of approximately \$4.1 million in proportion to each entity's registered capital of which San'an received \$2.5 million and EMCORE received \$1.6 million. We recorded the cash dividend as a reduction in our investment in Suncore. We incurred foreign income tax of approximately \$1.6 million associated with these capital distributions which is presented in income tax expense on our statement of operations and comprehensive loss. EMCORE's cash dividend was equal to the foreign income tax expense incurred on these capital distributions. See [Note 15 - Suncore Joint Venture](#) in the notes to the consolidated financial statements for additional information related to our Suncore joint venture.

### **Net Income (Loss):**

	<b>For the Three Months Ended December 31,</b>			
	<b>2012</b>	<b>2011</b>	<b>\$ Change</b>	<b>% Change</b>
<i>(in thousands, except percentages)</i>				
Net income (loss)	\$ 2,826	\$ (14,229)	\$ 17,055	119.9%

Net income (loss) per basic and diluted share was \$0.11 and (0.61) for the three months ended December 31, 2012 and 2011, respectively.

[Table of Contents](#)

**Order Backlog:**

As of December 31, 2012, order backlog for our Photovoltaics segment totaled \$35.3 million, a decrease of 18% from \$43.3 million reported as of September 30, 2012. The backlog as of December 31, 2012 and September 30, 2012 included \$3.4 million and \$1.9 million, respectively, of terrestrial solar cell orders and deferred revenue from our Suncore joint venture. Order backlog is defined as purchase orders or supply agreements accepted by us and deferred revenue with expected product delivery and/or services to be performed within the next twelve months. From time to time, our customers may request that we delay shipment of certain orders and our order backlog could also be adversely affected if our customers unexpectedly cancel purchase orders that we have previously accepted.

Product sales from our Fiber Optics segment are made pursuant to purchase orders, often with short lead times. These orders are subject to revision or cancellation and often are made without deposits. Fiber optics products typically ship within the same quarter in which a purchase order is received; therefore, our order backlog at any particular date is not necessarily indicative of actual revenue or the level of orders for any succeeding period.

**Cash Flow:**

Net Cash Used In Operating Activities

<i>Operating Activities</i> <i>(in thousands, except percentages)</i>	<b>For the Three Months Ended December 31,</b>			
	<b>2012</b>	<b>2011</b>	<b>\$ Change</b>	<b>% Change</b>
Net cash provided by (used in) operating activities	\$ (4,519)	\$ 20,847	\$ (25,366)	(121.7)%

Fiscal 2013:

Our operating activities consumed cash of \$4.5 million for the three months ended December 31, 2012 primarily due to the changes in our current assets and liabilities (or working capital components) of \$6.6 million and non-cash insurance proceeds of \$4.2 million, partially offset by our net income of \$2.8 million, depreciation, amortization and accretion expense of \$2.0 million, stock-based compensation expense of \$1.1 million and inventory loss provision of \$0.6 million. The change in our current assets and liabilities was primarily the result of a decrease in accounts payable of \$6.6 million, a decrease in accrued expenses and other current liabilities of \$1.3 million, and an increase in inventory of \$2.1 million, partially offset by a decrease in other assets of \$3.2 million and accounts receivable of \$0.2 million. The decrease in accounts payable is primarily a result of paying down balances that had increased in prior quarters with the proceeds received in the current period from the issuance of common stock and the collection of other current assets.

Fiscal 2012:

For the three months ended December 31, 2011, our operating activities provided cash of \$20.8 million primarily due to the net change in our current assets and liabilities (or working capital components) of \$22.5 million. Our net loss of \$14.2 million was partially offset by flood-related losses of \$5.7 million, depreciation, amortization, and accretion expense of \$2.8 million, stock-based compensation expense of \$2.2 million. The change in our current assets and liabilities of \$22.5 million was primarily the result of an increase in accrued expenses and other current liabilities of \$12.5 million, a decrease in accounts receivable of \$9.4 million, and an increase in accounts payable of \$3.7 million; partially offset by an increase in other assets of \$2.5 million and an increase in inventory of \$0.6 million.

Working Capital Components:

**Accounts Receivable:** We generally expect the level of accounts receivable at any given quarter to reflect the level of sales in that quarter. Our accounts receivable balances have fluctuated historically due to the timing of account collections, timing of product shipments, and/or change in customer credit terms.

**Inventory:** We generally expect the level of inventory at any given quarter to reflect the change in our expectations of forecasted sales. Our inventory balances have fluctuated historically due to the timing of customer orders and product shipments, changes in our internal forecasts related to customer demand, as well as adjustments related to excess and obsolete inventory.

[Table of Contents](#)

Accounts Payable: The fluctuation of our accounts payable balances is primarily driven by changes in inventory purchases as well as changes related to the timing of actual payments to vendors.

Accrued Expenses: Our largest accrued expense typically relates to compensation. Historically, fluctuations of our accrued expense accounts have primarily related to changes in the timing of actual compensation payments, receipt or application of advanced payments, adjustments to our warranty accrual, and accruals related to professional fees.

Net Cash Used In Investing Activities

<i>Investing Activities</i> <i>(in thousands, except percentages)</i>	<b>For the Three Months Ended December 31,</b>			
	<b>2012</b>	<b>2011</b>	<b>\$ Change</b>	<b>% Change</b>
Net cash used in investing activities	\$ (2,775)	\$ (2,885)	\$ 110	3.8%

Fiscal 2013:

For the three months ended December 31, 2012, our investing activities consumed \$2.8 million of cash primarily due to capital related expenditures of \$2.0 million, and the funding of restricted cash of \$0.9 million.

Fiscal 2012:

Our investing activities consumed \$2.9 million of net cash for the three months ended December 31, 2011 primarily due to \$2.3 million related to capital expenditures and \$1.1 million related to deposits on customer orders partially offset by a net distribution of capital related to our Suncore joint venture of \$1.6 million.

Net Cash Provided By Financing Activities

<i>Financing Activities</i> <i>(in thousands, except percentages)</i>	<b>For the Three Months Ended December 31,</b>			
	<b>2012</b>	<b>2011</b>	<b>\$ Change</b>	<b>% Change</b>
Net cash provided by financing activities	\$ 10,096	\$ (11,522)	\$ 21,618	(187.6)%

Fiscal 2013:

For the three months ended December 31, 2012 our financing activities provided \$10.1 million of net cash primarily from proceeds of \$9.5 million from the sale of common stock and \$0.6 million of proceeds related to borrowings from our bank credit facility. See [Note 1 - Description of Business](#) in the notes to the consolidated financial statements for information related to borrowings from our bank credit facility.

Fiscal 2012:

For the three months ended December 31, 2011, our financing activities consumed \$11.5 million of net cash primarily due to payments on borrowings related to our bank credit facility.

[Table of Contents](#)

**Contractual Obligations and Commitments**

Our contractual obligations and commitments over the next five years are summarized in the table below:

(in thousands)

	As of December 31, 2012				
	Total	2013	2014 to 2015	2016 to 2017	2018 and later
Purchase obligations	\$ 21,897	\$ 21,653	\$ 157	\$ 87	\$ —
Credit facility	19,928	19,928	—	—	—
Asset retirement obligations	5,058	—	409	33	4,616
Operating lease obligations	4,347	877	792	426	2,252
Capital lease obligations	2,476	2,476	—	—	—
Total contractual obligations and commitments	\$ 53,706	\$ 44,934	\$ 1,358	\$ 546	\$ 6,868

Interest payments are not included in the contractual obligations and commitments table above since they are insignificant to our consolidated results of operations.

**Purchase Obligations**

Our purchase obligations represent agreements to purchase goods or services that are enforceable and legally binding, that specify all significant terms, including: fixed or minimum quantities to be purchased; fixed, minimum or variable price provisions; and the approximate timing of the transactions.

In November 2011, we entered into an agreement with our contract manufacturer that was affected by the floods in Thailand whereby our contract manufacturer will purchase equipment to rebuild our affected manufacturing lines. Additionally, we restructured our outstanding payables owed to our contract manufacturer which delayed payments to future dates to coincide with expected timing of insurance proceeds.

**Credit Facility**

As of December 31, 2012, we had a \$19.9 million LIBOR rate loan outstanding, with an interest rate of 4.4%, and approximately \$2.4 million reserved under eight outstanding standby letters of credit under the credit facility.

On December 21, 2011, we signed an amendment to our credit facility that increased our eligible borrowing base by up to \$10 million by adding to the borrowing base formula 85% of the appraised value of the Company's equipment and 50% of the appraised value of the Company's real estate. In addition, Wells Fargo Bank reduced our restrictions under the excess availability financial covenant requirement from \$7.5 million to \$3.5 million through December 2012. The interest rate on outstanding borrowings was increased to LIBOR rate plus four percent.

On June 14, 2012, we entered into a Second Amendment to the credit facility, which amended among other things, the borrowing base increase under the First Amendment, which is subject to automatic reductions to (i) \$8.1 million on July 1, 2012; and to (ii) \$3.1 million on January 1, 2013. The Second Amendment automatically reduces the \$8.1 million and \$3.1 million thresholds referenced above to \$5.0 million and \$0, respectively, if the sale of certain assets does not occur. The amended credit facility no longer includes certain assets in the potential borrowing base including certain machinery and equipment and real estate.

On December 28, 2012, we entered into a Third Amendment to the credit facility, which amended among other things, the maturity date of the facility to November 11, 2015. The Third Amendment also amends the credit facility by adjusting the borrowing availability provided by machinery and equipment, which amount is currently set at approximately \$7.6 million and which will be reduced monthly by approximately \$101,000 through March 31, 2013, at which time the borrowing availability will be reduced to \$5.0 million and thereafter will be further reduced monthly by approximately \$91,000. The reduction to \$5.0 million can occur earlier than March 31, 2013 based upon the occurrence of certain events.

## [Table of Contents](#)

The Third Amendment also maintains the Company's minimum cash balance and excess liquidity requirement at \$3.5 million through June 30, 2013, which was scheduled to increase to \$7.5 million on December 31, 2012, below which certain financial covenants are triggered which relate to minimum tangible net worth, minimum EBITDA amounts and limitations on capital expenditures. The amounts of these financial covenants have been amended from those previously introduced in the First Amendment. At June 30, 2013 the liquidity requirement will be increased by \$1.0 million, and will be further increased, quarterly, until such amount reaches \$7.5 million at March 31, 2014.

As of December 31, 2012, we had a \$19.9 million LIBOR rate loan outstanding, with an interest rate of 4.4%, and approximately \$2.4 million reserved for eight outstanding stand-by letters of credit under the credit facility. We now expect at least 70% of the total amount of credit under the credit facility to be available for use based on the revised borrowing base formula during fiscal year 2013. See [Note 12 - Credit Facilities](#) for additional information related to our bank credit facility.

### Asset Retirement Obligations

We have known conditional asset retirement conditions, such as certain asset decommissioning and restoration of rented facilities to be performed in the future. Our asset retirement obligations include assumptions related to renewal option periods where we expect to extend facility lease terms. Revisions in estimated liabilities can result from revisions of estimated inflation rates, escalating retirement costs, and changes in the estimated timing of settling asset retirement obligations. See [Note 11 - Commitments and Contingencies](#) in the notes to the consolidated financial statements for additional information related to our asset retirement obligations.

### Operating and Capital Leases

Operating leases include non-cancelable terms and exclude renewal option periods, property taxes, insurance and maintenance expenses on leased properties. There are no off-balance sheet arrangements other than our operating leases. Our capital lease obligation listed above includes \$2.5 million of liability on our balance sheet as of December 31, 2012 as well as \$1.1 million in commitments for additional equipment to be acquired under capital lease as of December 31, 2012. See [Note 11 - Commitments and Contingencies](#) in the notes to the condensed consolidated financial statements for additional information related to our operating and capital lease obligations. See [Note 9 - Impact from Thailand Flood](#) for a discussion associated with the impact of the floods in Thailand on our equipment which includes those under capital lease.

### Suncore Joint Venture

The total registered capital of Suncore is \$30 million, of which San'an has contributed \$18 million in cash and EMCORE has contributed \$12 million in cash. We are not required to contribute additional funds in excess of our initial \$12 million investment, and at this time, we do not anticipate contributing any additional funds to Suncore. The joint venture agreement provides for any working capital needs to be provided by San'an. See [Note 15 - Suncore Joint Venture](#) in the notes to the condensed consolidated financial statements for additional information related to this joint venture.

### **Segment Data and Related Information**

See [Note 14 - Segment Data and Related Information](#) in the notes to the condensed consolidated financial statements for disclosures related to business segment revenue, geographic revenue, significant customers, and operating income (loss) by business segment.

### **Recent Accounting Pronouncements**

See [Note 2 - Recent Accounting Pronouncements](#) in the notes to the condensed consolidated financial statements for disclosures related to recent accounting pronouncements.

### **Restructuring Accruals**

See [Note 8 - Accrued Expenses and Other Current Liabilities](#) in the notes to the condensed consolidated financial statements for disclosures related to our severance and restructuring-related accrual accounts.

**ITEM 3. Quantitative and Qualitative Disclosures About Market Risk**

For quantitative and qualitative disclosures about market risk affecting the Company, see Item 7A - Quantitative and Qualitative Disclosures About Market Risk in our Annual Report on Form 10-K for the fiscal year ended September 30, 2012. We do not believe the Company's exposure related to market risk has changed materially since September 30, 2012.

**ITEM 4. Controls and Procedures**

**a. Evaluation of Disclosure Controls and Procedures**

Our management, with the participation of our Chief Executive Officer, our Chief Financial Officer and our principal accounting officer, evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act) as of December 31, 2012. Based on this evaluation, our Chief Executive Officer, Chief Financial Officer and our principal accounting officer concluded that our disclosure controls and procedures were effective as of the end of the period covered by this report.

**b. Changes in Internal Control over Financial Reporting**

There were no changes in the Company's internal control over financial reporting during the quarter ended December 31, 2012 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.



**PART II.**

**ITEM 1. Legal Proceedings**

See [Note 11 - Commitments and Contingencies](#) in the notes to our condensed consolidated financial statements for disclosures related to our legal proceedings.

**ITEM 1A. Risk Factors**

In addition to the other information set forth in this report, you should carefully consider the risk factors discussed in Part I, Item 1A. "Risk Factors" in our Annual Report on Form 10-K for the year ended September 30, 2012, which could materially affect our business, financial condition or future results. We do not believe the Company's risks have changed materially since we filed our Form 10-K on December 13, 2012. The risks described in our Annual Report on Form 10-K are not the only risks facing our Company. Additional risks and uncertainties not currently known to us also may materially adversely affect our business, financial condition and/or operating results.

**ITEM 2. Unregistered Sales of Equity Securities and Use of Proceeds**

Not Applicable.

**ITEM 3. Defaults Upon Senior Securities**

Not Applicable.

**ITEM 4. Mine Safety Disclosures**

Not Applicable.

**ITEM 5. Other Information**

Not Applicable.

[Table of Contents](#)

**ITEM 6. Exhibits**

3.1	Restated Certificate of Incorporation, dated February 15, 2012 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on February 16, 2012).
3.2	Certificate of Amendment of Restated Incorporation, dated February 15, 2012 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on February 16, 2012).
3.3	Amended by-Laws, as amended through August 6, 2012 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on August 7, 2012).
10.1	Third Amendment to Credit and Security Agreement, dated December 28, 2012, between Wells Fargo Bank National Association and the Company (incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K filed on January 4, 2013).
10.2†	Indemnification Agreement (incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K filed on December 14, 2012).
31.1**	Certificate of Chief Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2**	Certificate of Chief Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1**	Certificate of Chief Executive Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2**	Certificate of Chief Financial Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS	XBRL Instance Document.**‡
101.SCH	XBRL Taxonomy Extension Schema Document.**‡
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document.**‡
101.LAB	XBRL Taxonomy Extension Label Linkbase Document.**‡
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document.**‡
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document.**‡

\*\* Filed herewith

† Management contract or compensatory plan

‡ Submitted electronically with this Report.

**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.

**EMCORE CORPORATION**

Date: **February 5, 2013**

By: **/s/ Hong Hou**  
Hong Q. Hou, Ph.D.  
Chief Executive Officer  
(Principal Executive Officer)

Date: **February 5, 2013**

By: **/s/ Mark Weinswig**  
Mark Weinswig  
Chief Financial Officer  
(Principal Financial and Accounting Officer)

**EMCORE CORPORATION  
CERTIFICATION PURSUANT TO SECTION 302  
OF THE SARBANES-OXLEY ACT OF 2002**

I, Hong Q. Hou, Ph.D. certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of EMCORE Corporation ("Report");
2. Based on my knowledge, this Report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this Report;
3. Based on my knowledge, the financial statements, and other financial information included in this Report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this Report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this Report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this Report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this Report based on such evaluation; and
  - d. Disclosed in this Report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: **February 5, 2013**

By: **/s/ Hong Hou**  
Hong Q. Hou, Ph.D.  
Chief Executive Officer  
(Principal Executive Officer)

**EMCORE CORPORATION  
CERTIFICATION PURSUANT TO SECTION 302  
OF THE SARBANES-OXLEY ACT OF 2002**

I, Mark B. Weinswig, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of EMCORE Corporation ("Report");
2. Based on my knowledge, this Report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this Report;
3. Based on my knowledge, the financial statements, and other financial information included in this Report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this Report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this Report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this Report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this Report based on such evaluation; and
  - d. Disclosed in this Report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: **February 5, 2013**

By: **/s/ Mark Weinswig**  
Mark B. Weinswig  
Chief Financial Officer  
(Principal Financial and Accounting Officer)

**STATEMENT REQUIRED BY 18 U.S.C. §1350, AS ADOPTED  
PURSUANT TO §906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of EMCORE Corporation (the "Company") for the quarterly period ended December 31, 2012, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Hong Q. Hou, Ph.D., Chief Executive Officer (Principal Executive Officer) of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- 1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- 2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: **February 5, 2013**

By: **/s/ Hong Hou**  
Hong Q. Hou, Ph.D.  
Chief Executive Officer  
(Principal Executive Officer)

*A signed original of this written statement required by Section 906 has been provided to EMCORE Corporation and will be retained by EMCORE Corporation and furnished to the Securities and Exchange Commission or its staff upon request. This certification has not been, and shall not be deemed to be, filed with the Securities and Exchange Commission.*

**STATEMENT REQUIRED BY 18 U.S.C. §1350, AS ADOPTED  
PURSUANT TO §906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of EMCORE Corporation (the "Company") for the quarterly period ended December 31, 2012, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Mark B. Weinswig, Chief Financial Officer (Principal Financial and Accounting Officer) of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- 1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- 2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: **February 5, 2013**

By: **/s/ Mark Weinswig**

Mark B. Weinswig

Chief Financial Officer

(Principal Financial and Accounting Officer)

*A signed original of this written statement required by Section 906 has been provided to EMCORE Corporation and will be retained by EMCORE Corporation and furnished to the Securities and Exchange Commission or its staff upon request. This certification has not been, and shall not be deemed to be, filed with the Securities and Exchange Commission.*

