

FORWARD INDUSTRIES INC
Form 10-K/A
January 30, 2012

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K/A

(Amendment No. 1)

(Mark One)

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

For the fiscal year ended September 30, 2011

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: 0-6669

FORWARD INDUSTRIES, INC.

(Exact name of registrant as specified in its charter)

New York

(State or other jurisdiction of
incorporation or organization)

13-1950672

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

Edgar Filing: FORWARD INDUSTRIES INC - Form 10-K/A

3110 Main Street, Suite 400, Santa Monica, CA 90405

(Address of principal executive offices, including zip code)

(310) 526-3005

(Registrant's telephone number, including area code)

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

None

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

Common Stock, \$0.01 par value per share

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

Yes No

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 if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this form 10-K.

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 definitions 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 (Do not check if a smaller reporting company) Smaller reporting company

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

The aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold, as of the last business day of the Registrant's most recently completed second fiscal quarter was: \$22,912,322.

As of January 25, 2012, 8,105,185 shares of the Registrant's common stock were outstanding.

Documents Incorporated by Reference

None.

EXPLANATORY NOTE

The purpose of this Amendment No. 1 on Form 10-K/A is to amend and restate Part III, Items 10 through 14, of the previously filed Annual Report on Form 10-K of Forward Industries, Inc. (Forward or the Company) for the fiscal year ended September 30, 2011 (Fiscal 2011), filed with the Securities and Exchange Commission (SEC) on December 15, 2011 (the Original Form 10-K), to include information previously omitted in reliance on General Instruction G to Form 10-K, which provides that registrants may incorporate by reference certain information from a definitive proxy statement prepared in connection with the election of directors. The Company has determined to include such Part III information by amendment of the Original Form 10-K rather than by incorporation by reference to the proxy statement. Accordingly, Part III and Part IV of the Original Form 10-K is hereby amended and restated as set forth below.

There are no other changes to the Original Form 10-K. This Amendment does not reflect events occurring after the filing of the Original Form 10-K, nor does it modify or update disclosures therein in any way other than as required to reflect the amendment set forth below. Among other things, forward-looking statements made in the Original Form 10-K have not been revised to reflect events that occurred or facts that became known to us after the filing of the Original Form 10-K, and such forward-looking statements should be read in their historical context.



FORWARD INDUSTRIES, INC.

Annual Report on Form 10-K/A

For the Fiscal Year Ended September 30, 2011

	PAGE
<u>PART</u>	
<u>III</u>	1
<u>Item 10..... Directors and Executive Officers of the Company</u>	1
<u>Item 11..... Executive Compensation</u>	4
<u>Item 12..... Security Ownership of Certain Beneficial Owners and Management</u>	7
<u>Item 13..... Certain Relationships and Related Transactions, and Director Independence</u> ...	9
<u>Item 14..... Principal Accountant Fees and Services</u>	10
<u>PART</u>	
<u>IV</u>	12
<u>Item 15..... Exhibits and Financial Statement Schedules</u>	13

PART III

Item 10. Directors and Executive Officers of the Company

Set forth below are the names and ages of the directors of the Company and their principal occupations at present and for the past five years. The directors of the Company are elected to serve until the next annual meeting of stockholders and until their respective successors have been duly elected and qualified. Our executive officers are appointed by the Board of Directors of the Company (the Board) and serve until their successors have been duly appointed and qualified. The Board has determined that each of Ms. Burnham and Messrs. Chiste, Key, King, Hamilton and Lipschitz, who together comprise a majority of the Board, is independent in accordance with applicable NASDAQ standards, including without limitation, Marketplace Rule 5605(a)(2).

<u>Name</u>	<u>Age</u>	<u>Principal Occupation</u>
Ciara Burnham	45	Director since May 2011. Ms. Burnham has been the Senior Managing Director of Evercore Partners, a New York-based investment bank, since 1997. Ms. Burnham brings significant financial and operational skills and experience to the Board.
Frank LaGrange (Grange) Johnson	44	Director and Chairman of the Board since August 2010. Mr. Johnson founded LaGrange Capital Partners, L.P. (LaGrange) in May 2000. Mr. Johnson's distinguished career in the financial and consulting industries brings significant financial and operational leadership experience to the Board. Messrs. Grange Johnson and Brett Johnson, the Company's President and Chief Executive Officer, are brothers.
Owen P.J. King	47	Director since August 2010. Mr. King has been the President and CEO of Stonehurst Management LLC, a New York-based registered investment adviser, since December 2002. Mr. King brings significant business management, financial, and operational skills and experience to the Board.
John F. Chiste	55	Director since February 2008. Mr. Chiste has been the Chief Financial Officer of Falcone Group, a privately held diversified portfolio of real estate companies, since 2005. From 1997 to 2005, Mr. Chiste was the Senior Vice President, Chief Financial Officer and Treasurer of Bluegreen Corporation, a publicly held developer and operator of timeshare resorts. With his experience as Chief Financial Officer of two companies, Mr. Chiste brings broad financial expertise to the Board.
Louis Lipschitz	66	Director since June 2005. Mr. Lipschitz serves as a director of Majesco Entertainment, Inc., a publicly held software and digital content provider for

electronic games; a director of New York & Company Inc., a publicly held women's clothing specialty retailer; and a director of the Children's Place Retail Stores, Inc., a publicly held children's clothing specialty retailer. Previously, Mr. Lipschitz was a director of Finlay Enterprises, a publicly-held specialty retailer of fine jewelry. In addition to his intimate knowledge of the operations of our Company, Mr. Lipschitz brings a wealth of knowledge regarding public company management to the Board.

- Fred Hamilton 67 Director since February 2008. Mr. Hamilton has been an independent consultant to the marine/undersea cable industry for Fortune 500 and multinational companies since 2002 and is a Director of United Services Automobile Association (USAA), a Fortune 200 full service Financial Services Insurance, Banking, Brokerage and Real Estate company since 1999. With over 10 years in combined directorship and consulting experience, Mr. Hamilton brings extensive technical and business expertise to the Board.
- Stephen L. Key 68 Director since August 2010. Mr. Key is the sole proprietor of Key Consulting, LLC, a financial consulting firm he founded in 2001. Mr. Key has served as a member of the Board of Directors of Greenhill & Co., Inc., an independent investment bank, since May 2004. Mr. Key is currently a director of 1-800 Contacts, Inc. and was a director of Sitel Corp. until 2007. By virtue of his diverse and extensive service on the Boards of several dynamic enterprises, Mr. Key provides invaluable strategic leadership to the Company.

The Board has an Audit Committee, Compensation Committee and Nominating and Governance Committee. Current committee membership is shown in the table below:

<u>Current Directors:</u>	<u>Audit Committee</u>	<u>Compensation Committee</u>	<u>Nominating and Governance Committee</u>
Ciara Burnham			
Grange Johnson			
Louis Lipschitz	X	X (Chairman)	X
John F. Chiste	X (Chairman)	X	X
Owen P.J. King		X	X (Chairman)
Fred Hamilton	X	X	X
Stephen L. Key	X	X	X

Business Background and Qualifications of Executive Officers

The following table sets forth certain information with respect to each person who is currently an executive officer of Forward and is based on our records and information furnished to us by such persons.

<u>Name</u>	<u>Age</u>	<u>Position with Forward</u>	<u>Held Office Since</u>
Brett M. Johnson.....	41	President and Chief Executive Officer	2010
James O. McKenna.....	38	Chief Financial Officer, Treasurer and Assistant Secretary	2008

BRETT M. JOHNSON has served as President and Chief Executive Officer since August 2010. Mr. Johnson is the founder of Benevolent Capital Partners, LLC (BCP), a diversified investment company whose investments include Yak Pak, Inc. and Terracycle. Prior to founding BCP in October 2005, Mr. Johnson was President of Targus Group International, Inc. (Targus), a global supplier of notebook carrying cases and accessories, from 2001 to 2004, during which time he led a comprehensive restructuring of the business. Prior thereto, Mr. Johnson was managing director of Targus’s Europe, Middle East and Africa region and its Asia-Pacific region. Under Mr. Johnson’s leadership, Targus was a two-time winner of the Queen’s Award for Enterprise and a six-time winner of Gartner Group’s Best Vendor Award at RetailVision and VarVision. In addition, from 1998 to 2009, Mr. Johnson was a member of the Board of Directors of Targus and a member of the Audit Committee of the Board of Directors of Targus from 2006 to 2009. Brett M. Johnson and Grange Johnson, the Chairman of the Board of the Company, are brothers.

JAMES O. MCKENNA has served as Chief Financial Officer, Treasurer, and Assistant Secretary since January 2008. Prior to that time he served as the Company's Controller since December 2003. Prior to joining Forward, Mr. McKenna was employed as Assistant Controller with Medallist Developments Inc., a real estate development company, from January 2002 to December 2003. Mr. McKenna was employed as an auditor with Ernst and Young LLP from September 1996 to December 2001 and is a Certified Public Accountant.

Section 16(A) Beneficial Ownership Reporting Compliance

Under Section 16(a) of the Securities Exchange Act of 1934, as amended (the Exchange Act), our directors and executive officers and persons who beneficially own more than ten percent of each class of our equity securities that is registered under the Exchange Act are required to file the following reports with the Commission: Form 3 initial reports of ownership and status as an officer or director; Form 4 reports of changes in ownership of our common stock, par value \$.01 per share (Common Stock), and other equity securities of the Company; and Form 5 reports with respect to any fiscal year in which other reports may not have been filed. To our knowledge, based solely on review of the copies of Forms 3 and 4 and amendments thereto furnished to us during the fiscal year ended September 30, 2011, and Form 5 reports and amendments thereto furnished to us with respect to that fiscal year, and based on written representations that no Form 5 or other reports were required with respect to the fiscal year ended September 30, 2011, all Section 16(a) filing requirements applicable to our officers and directors and beneficial owners of more than ten percent of our Common Stock were complied with on a timely basis, except the following: Mr. Brett Johnson late-filed one Form 4 (one transaction).

The Board's Leadership Structure

Our governing documents provide the Board with flexibility to determine the appropriate leadership structure for the Board and the Company, including but not limited to whether it is appropriate to separate the roles of Chairman of the Board and Chief Executive Officer. In making these determinations, the Board considers numerous factors, including the specific needs and strategic direction of the Company and the size and membership of the Board at the time.

Grange Johnson has served as non-executive Chairman of the Board since August 2010 and Brett M. Johnson has served as President and Chief Executive Officer since August 2010. At this time, we believe that it is in the best interest of the Company to separate the roles of Chairman of the Board and Chief Executive Officer. This arrangement has allowed our Chairman to lead the Board, while our Chief Executive Officer focuses primarily on managing the daily operations of the Company. The separation of duties provides strong leadership for the Board while allowing the Chief Executive Officer to be the leader of the Company for customers, employees and operations. We do not have a Lead Independent Director. Rather, the Audit, Compensation, and Nominating and Governance Committees are each comprised solely of independent directors, and they provide strong independent leadership that influences the governance of the Company.

The Board's Role in Risk Oversight

Senior management is responsible for assessing and managing the Company's various exposures to risk on a day-to-day basis, including the creation of appropriate risk management programs and policies. The Board is responsible for overseeing management in the execution of its responsibilities and for assessing the Company's approach to risk management. The Board exercises these responsibilities periodically as part of its meetings and also through the Board's three committees, each of which examines various components of enterprise risk as part of its responsibilities. Members of each committee report to the full Board as necessary at Board meetings regarding risks discussed by such committee. In addition, an overall review of risk is inherent in the Board's consideration of the Company's long-term strategies and in the transactions and other matters presented to the Board, including capital expenditures, acquisitions and divestitures, and financial matters.

Code of Ethics

In November 2003, Forward adopted a Code of Business Conduct and Ethics that applies to all officers, directors and employees regarding standards of conduct relating to Company affairs. The Nominating and Governance Committee is charged with assessing the adequacy of and monitoring management and director compliance with the Code of Business Conduct and Ethics. The Code of Ethics is available for viewing at the Company's web site at http://www.forwardindustries.com/corporate_governance.php.

Audit Committee

The Company has a separately standing Audit Committee established in accordance with Section 3(a) (58) (A) of the Exchange Act. Our Audit Committee is governed by a written Charter approved by the Board. A copy of the Charter, as amended, is available for viewing at our web site at:

http://www.forwardindustries.com/corporate_governance.php. The members of the Audit Committee are Messrs. Chiste, Key, Hamilton and Lipschitz. Each of Messrs. Chiste, Key, Hamilton and Lipschitz is an independent director. The Audit Committee held six meetings during the fiscal year ended September 30, 2011.

Audit Committee Financial Expert. The Board has determined that Mr. Chiste, who is currently a member and the chairman of the Audit Committee of the Board, is an audit committee financial expert, as defined in Item 407(d)(5) of Regulation S-K under the Exchange Act.

Item 11. Executive Compensation

Summary Compensation Table

The following table sets forth certain summary information for the fiscal years ended September 30, 2011 and 2010, showing all compensation paid or earned for services rendered in all capacities for those years of service by (i) each person who served as our principal executive officer at any time during those periods, and (ii) our Chief Financial Officer, who was the only other executive officer whose total compensation exceeded \$100,000 during such periods.

SUMMARY COMPENSATION TABLE							
Name and Principal Position	Fiscal Year	Salary (\$)	Bonus (\$)	Stock Awards (\$) (2)	Option Awards (1)	All Other Compensation (\$) (3)	Total (\$)
Brett M. Johnson (1)	2011	250,000	--	--	434,000	23,438	707,438
Chief Executive Officer	2010	34,135	--	--	--	1,540	35,675
James O. McKenna	2011	200,000	175,000	--	221,300	67,838	664,138
Principal Financial Officer	2010	175,000	--	15,150	9,600	21,536	271,286

(1) Mr. Brett Johnson was appointed Chief Executive Officer August 10, 2010.

(2) The amount shown under Stock Awards and Options Awards represents the aggregate grant date fair value of the awards in each year shown in the Table computed in accordance with Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) Topic 718. See Note 7 to the Financial Statements included in

the Original Form 10-K for a description of the assumptions used in valuing awards of stock options and restricted stock grants.

(3) The following table sets forth the components of All Other Compensation.

ALL OTHER COMPENSATION					
Name	Fiscal Year	Auto (\$)	Company Contributions to Retirement & 401(K) Plans (\$)	Housing Allowance (\$)	Total (\$)
Brett M. Johnson	2011	10,067	13,371	--	23,438
	2010	1,540	--	--	1,540
James O. McKenna	2011	7,778	15,060	45,000	67,838
	2010	10,669	10,867	--	21,536

No non-equity incentive compensation was paid to any of the Named Executive Officers in Fiscal 2011 or the fiscal year ended September 30, 2010 because financial targets established by the Compensation Committee in order to earn such compensation were not achieved in any such year.

All items of All Other Compensation in the table in note (2) above for Mr. McKenna were paid in accordance with the terms of the Amended Employment Agreement, dated as of April 1, 2011, between the Company and Mr. McKenna.

Narrative Disclosure to Summary Compensation Table

In December 2010 the Compensation Committee approved performance-based targets that, if achieved, would determine whether non-equity incentive compensation would be earned in respect of Fiscal 2011 by Mr. Brett Johnson and Mr. McKenna. Mr. Johnson was eligible to earn bonus compensation equal to 7.0755% of operating income, if any, up to \$2,120,000 recorded by the Company in Fiscal 2011, with a targeted bonus of \$75,000 and a maximum bonus amount of \$150,000. Mr. McKenna was eligible to earn bonus compensation equal to 3.3019% of operating income, if any, up to \$2,120,000 recorded by the Company in Fiscal 2011 with a targeted bonus of \$35,000 and a maximum bonus of \$70,000. These targets were believed by the Committee to be difficult of achievement, but not unreasonable, because of operating losses and adverse sales trends in Fiscal 2010 and 2009. In addition to the performance bonus described above, the Committee reserved its right to award a discretionary bonus to either or both of Messrs. Johnson and McKenna. In December 2011 the Compensation Committee determined that no performance or discretionary bonus compensation was earned by Messrs. Brett Johnson and McKenna as the Company incurred an operating loss for Fiscal 2011. Mr. McKenna received a retention payment of \$175,000 pursuant to a retention agreement the Company entered into with Mr. McKenna in August 2010 providing for a retention bonus if Mr. McKenna performed his duties under his employment agreement until at least March 1, 2011.

In November 2010 the Compensation Committee determined to award Mr. Brett Johnson 200,000 options to purchase Common Stock pursuant to the 2007 Plan. The grant price was the closing price of Common Stock on the grant date, or \$3.55 per share. This award becomes exercisable on the following dates: (i) 100,000 on November 4, 2013, (ii) 50,000 on November 4, 2014, and (iii) 50,000 on November 4, 2015. In December 2010 the Compensation Committee determined to award Mr. McKenna 7,500 options to purchase Common Stock pursuant to the 2007 Plan. The grant price was the closing price of the Common Stock on the grant date, or \$3.36 per share. This award becomes exercisable in equal amounts over five years commencing on the first anniversary of the grant date. In March 2011 the Compensation Committee also determined to award Mr. McKenna 100,000 options to purchase Common Stock pursuant to the 2011 Plan. The grant price was the closing price of Common Stock on the grant date, or \$3.73 per share. This award reflected the Committee's belief that the award of equity-based compensation serves as a significant incentive to a high level of performance as well as a retention incentive. These options reflect the Committee's assessment of the anticipated contributions by Mr. McKenna. This award becomes exercisable on the following dates: (i) 50,000 on March 8, 2014, (ii) 25,000 on March 8, 2015, and (iii) 25,000 on March 8, 2016.

Employment Agreements

Mr. Brett Johnson serves as the Company's President and Chief Executive Officer, on an at-will basis, with an annual base salary of \$250,000.

5

Mr. McKenna serves as the Company's Chief Financial Officer, Treasurer and Assistant Secretary pursuant to an Amended Employment Agreement, dated as of April 1, 2011 (the "Employment Agreement"), between the Company and Mr. McKenna. The Employment Agreement provides for an annual salary of \$225,000 and Mr. McKenna will be eligible to earn bonus compensation based on achievement of targets set by the Board's Compensation Committee in respect of each fiscal year during the term. Under the Employment Agreement, Mr. McKenna is entitled to reimbursement of reasonable out-of-pocket costs incurred in relocation to the Los Angeles area, and payment of a housing allowance of \$7,500 per month, to be phased out over time. The term of the Employment Agreement expires on December 31, 2012, with automatic renewal for successive terms of one year each.

Mr. McKenna has agreed to be bound by certain covenants that restrict his ability to compete with the Company or solicit the employment of Company employees after the term of his employment, prohibits disclosure of Company confidential information, and restricts him, subject to certain customary exceptions, from making investments in entities that compete with the Company.

See "Potential Payments upon Termination or Change in Control" for further discussion on termination, retirement and change-in-control provisions of the employment agreements.

Outstanding Equity Awards at Fiscal Year-End

The following table shows the amount and value of equity-based awards granted to the Named Executive Officers that were outstanding at the end of Fiscal 2011.

OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END						
Name	Number of Securities Underlying Unexercised Options (#)	Option Awards			Stock Awards	
		Number of Securities Underlying Unexercised Options (#)	Option Exercise Price (\$)	Option Expiration Date	Number of Shares or Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock That Have Not Vested (\$)
Brett M. Johnson		200,000	3.55	11/01/2020	--	--
James O. McKenna		100,000	3.73	3/08/2021	7,000	14,240
		7,500	3.36	12/21/2020		