

MAXICARE HEALTH PLANS INC

Form 10-Q

August 16, 2004

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**SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

Form 10-Q

þ Quarterly report pursuant to Section 13 or 15(d) of the Securities Act of 1934 for the quarterly period ended June 30, 2004

or

**o Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
Commission file number: 0-12024**

MAXICARE HEALTH PLANS, INC.

(Exact name of registrant as specified in its charter)

**Delaware
(State or other jurisdiction of
incorporation or organization)**

**95-9615709
(I.R.S. Employer
Identification No.)**

**14241 East Firestone Boulevard, La Mirada,
California
(Address of principal executive offices)**

**90638
(Zip Code)**

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 þ No o

Indicate by check mark whether the registrant has filed all documents and reports required to be filed by Sections 12, 13, or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court.

Yes þ No o

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Securities Exchange Act of 1934).

o Yes þ No

Common Stock, \$.01 par value 9,991,926 shares outstanding as of August 16, 2004.

MAXICARE HEALTH PLANS, INC.

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MAXICARE HEALTH PLANS, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(Amounts in thousands except par value)

| | June 30, 2004 | December 31, 2003 |
|--|--------------------------|------------------------------|
| | (Unaudited) | |
| Current Assets | | |
| Cash and cash equivalents | \$ 3,968 | \$ 5,361 |
| Other current assets | 22 | 25 |
| | <hr/> | <hr/> |
| Total Assets | \$ 3,990 | \$ 5,386 |
| | <hr/> | <hr/> |
| Current Liabilities | | |
| Accrued salary expense | \$ 85 | \$ 91 |
| Other current liabilities | 6,125 | 6,814 |
| | <hr/> | <hr/> |
| Total Current Liabilities | 6,210 | 6,905 |
| Long-Term Liabilities | 1,814 | 1,938 |
| | <hr/> | <hr/> |
| Total Liabilities | 8,024 | 8,843 |
| | <hr/> | <hr/> |
| Shareholders' Equity (Deficit) | | |
| Common stock, \$.01 par value - 80,000 shares authorized, 9,992 shares issued and outstanding | 98 | 98 |
| Additional paid-in capital | 283,466 | 283,466 |
| Accumulated deficit | (287,598) | (287,021) |
| | <hr/> | <hr/> |
| Total Shareholders' Equity (Deficit) | (4,034) | (3,457) |
| | <hr/> | <hr/> |
| Total Liabilities and Shareholders' Equity (Deficit) | \$ 3,990 | \$ 5,386 |
| | <hr/> | <hr/> |

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MAXICARE HEALTH PLANS, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(Amounts in thousands except per share data)
(Unaudited)

| | For the three months ended June 30, | | For the six months Ended June 30, | |
|---|---|-----------------|---|-----------------|
| | 2004 | 2003 | 2004 | 2003 |
| Revenues | | | | |
| Investment income | \$ 7 | \$ 9 | \$ 15 | \$ 14 |
| Other income | — | 3,400 | — | 3,400 |
| Total Revenues | 7 | 3,409 | 15 | 3,414 |
| Expenses | | | | |
| Health care expenses | | (1,146) | | (1,146) |
| Salary, general and administrative expenses | 263 | 242 | 592 | 796 |
| Litigation and contract settlement charges | — | 250 | — | 250 |
| Total Expenses | 263 | (654) | 592 | (100) |
| Income (loss) before income taxes | (256) | 4,063 | (577) | 3,514 |
| Income tax provision | — | — | — | — |
| Net income (loss) | <u>\$ (256)</u> | <u>\$ 4,063</u> | <u>\$ (577)</u> | <u>\$ 3,514</u> |
| Net income (loss) per common share: | | | | |
| Basic income (loss) per common share: | | | | |
| Basic income (loss) per common share | <u>\$ (.03)</u> | <u>\$.42</u> | <u>\$ (.06)</u> | <u>\$.36</u> |
| Weighted average number of common shares outstanding | <u>9,992</u> | <u>9,742</u> | <u>9,992</u> | <u>9,742</u> |
| Diluted income (loss) per common share: | | | | |
| Diluted income (loss) per common share | \$ (.03) | \$.42 | \$ (.06) | \$.36 |

| | <u> </u> | <u> </u> | <u> </u> | <u> </u> |
|---|-------------------|-------------------|-------------------|-------------------|
| Weighted average number of common and common dilutive potential shares outstanding | 9,992 | 9,742 | 9,992 | 9,742 |
| | <u> </u> | <u> </u> | <u> </u> | <u> </u> |

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**MAXICARE HEALTH PLANS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY
(DEFICIT)**

(Amounts in thousands)

| | Number of Common Shares | Common Stock | Additional Paid-in Capital | Accumulated Deficit | Total |
|--|----------------------------------|-----------------|----------------------------------|------------------------|-----------|
| Balances at December 31, 2003 | 9,992 | \$ 98 | \$283,466 | \$(287,021) | \$(3,457) |
| Net loss (unaudited) | — | — | — | (577) | (577) |
| Balances at June 30, 2004 (unaudited) | 9,992 | \$ 98 | \$283,466 | \$(287,598) | \$(4,034) |

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MAXICARE HEALTH PLANS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(Amounts in thousands)
(Unaudited)

| | For the six months ended June 30, | |
|--|---|----------|
| | 2004 | 2003 |
| Cash Flows from Operating Activities: | | |
| Net income (loss) | \$ (577) | \$ 3,514 |
| Adjustments to reconcile net loss to net cash used for operating activities: | | |
| Changes in assets and liabilities: | | |
| Increase in receivables | | (3,810) |
| Decrease in estimated claims and other health care costs payable | | (736) |
| Changes in other miscellaneous assets and liabilities | (816) | (2,548) |
| Net cash used for operating activities | (1,393) | (3,580) |
| Cash Flows from Investing Activities: | | |
| Collection of note receivable from shareholder | | 3,408 |
| Net cash provided by investing activities | | 3,408 |
| Net decrease in cash and cash equivalents | (1,393) | (172) |
| Cash and cash equivalents at beginning of period | 5,361 | 2,636 |
| Cash and cash equivalents at end of period | \$ 3,968 | \$ 2,464 |

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**MAXICARE HEALTH PLANS, INC. AND SUBSIDIARIES
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

Note 1 Business Description

Maxicare Health Plans, Inc., a Delaware corporation (MHP or the Company), is a holding company that formerly operated health maintenance organizations and other subsidiaries, primarily in the field of managed healthcare. As of March 15, 2002 all operations of MHP and its subsidiaries were terminated. MHP and its subsidiaries have not engaged in any business activities since that date. At June 30, 2004 we had negative net worth of \$4.0 million and a working capital deficiency of \$2.2 million. See Note 2 below.

All significant subsidiaries formally operated by MHP (the California and Indiana HMOs and Maxicare Life and Health Insurance Company, Inc.) were placed into bankruptcy, rehabilitation and administrative supervision, respectively, in May of 2001 and are currently in liquidation. Accordingly, these former subsidiaries were no longer included in our consolidated financial statements after May 2001. We will receive no distribution of assets from the California HMO, are very unlikely to receive any distribution of assets from the Indiana HMO, and cannot determine whether or not we will receive a distribution of assets from Maxicare Life and Health Insurance Company, Inc. Any distribution from Maxicare Life and Health Insurance Company, Inc., if assets ultimately are available for distribution, will require regulatory approval.

We own Health Care Assurance Company, Ltd. (HCAC), a captive insurer that provided certain insurance coverage to MHP and its subsidiaries. Effective January 31, 2002, all policies underwritten by Health Care Assurance Company, Ltd., have terminated or expired.

Note 2 Liquidity and Going Concern Issues

At June 30, 2004 MHP and subsidiaries (collectively we or the Company) had a consolidated working capital deficiency of approximately \$2.2 million, and a deficiency in shareholders' equity of approximately \$4.0 million. Furthermore, of our total cash and cash equivalents of \$4.0 million at June 30, 2004, \$2.5 million was held at HCAC. The transfer of cash to MHP from HCAC requires the approval of regulatory authorities.

As noted above, we had no continuing business activities after March 15, 2002. We have no access to cash that is held at HCAC except to the extent regulatory authorities approve the transfer of cash to MHP. As set forth below in Note 4, substantial claims have been or may be asserted against us. Such claims, when resolved, may be far in excess of liabilities reported in the Consolidated Balance Sheets.

These conditions raise substantial doubt about our ability to continue as a going concern. The financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classifications of liabilities that may result from the outcome of these uncertainties.

Management is exploring possible strategies to realize any possible value remaining in the Company; however, given our financial condition, our stock price and the claims against us, it is very possible that management will not be successful in these efforts, and we may seek protection under the Bankruptcy Code.

Note 3 Significant Accounting Policies

The accompanying unaudited consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles for interim financial information. In the opinion of management, all adjustments considered necessary for a fair presentation, which consist solely of normal recurring adjustments, have

been included. All significant intercompany balances and transactions have been eliminated.

Basis of Consolidation

The accompanying unaudited consolidated financial statements include the accounts of the Company and its subsidiaries. The accounts of the California HMO, the Indiana HMO and Maxicare Life and Health Insurance Company, Inc. are not consolidated. All significant intercompany balances and transactions have been eliminated.

Accounting Policies

For further information on MHP and subsidiaries (collectively we or the Company) and our accounting policies refer to the consolidated financial statements and accompanying footnotes included in our annual report on Form 10-K for the year ended December 31, 2003.

Earnings per Share

The denominator used in calculating both basic and diluted earnings per share in the Consolidated Statements of Operations is the weighted average number of shares outstanding for each period indicated. All potentially dilutive securities, consisting solely of employee stock options, were antidilutive for each of the periods presented in the Consolidated Statements of Operations.

Stock-Based Compensation

We account for stock-based compensation under the recognition and measurement principles (the intrinsic-value method) prescribed in Accounting Principles Board (APB) Opinion No. 25, *Accounting for Stock Issued to Employees*, and related interpretations. Compensation cost for stock options is reflected in net income and is measured as the excess of the market price of the Company's stock at the date of grant over the amount an employee must pay to acquire the stock.

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We have adopted the disclosure provisions required by Statement of Financial Accounting Standards (SFAS) No. 148, *Accounting for Stock-Based Compensation Transition and Disclosure*.

No compensation expense was recorded under the intrinsic value method for the three and six months ended June 30, 2004 and 2003. Additionally, no material expense would have been recognized under the fair value method for the three and six months ended June 30, 2004 and 2003.

Note 4 Commitments and Contingencies

Litigation and Contract Terminations

On or about June 25, 2001, the Commissioner of the Indiana Department of Insurance (the Commissioner), as the rehabilitator of Maxicare Indiana, Inc., our Indiana HMO, filed a complaint (the Complaint) in the Marion County Circuit Court of Indiana against us and the five directors of the Indiana HMO, one of whom was a director of the Company. The Commissioner amended the Complaint on February 1, 2002. The Complaint, as amended, alleges, in substance, that: (1) the directors of the Indiana HMO breached their fiduciary duty by failing to maintain a plan providing for continuation of care benefits in the event that the Indiana HMO was placed in receivership, and that the Company is also liable for such failure; (2) the Company fraudulently concealed the financial condition of the Indiana HMO; (3) the Company manipulated the finances of the Indiana HMO for the Company's own benefit; and (4) the Company received preferential and/or fraudulent transfers of money from the Indiana HMO. While the amended Complaint requests money damages in largely unspecified amounts, we understand the Commissioner's claims against us to be in excess of \$48.0 million. All defendants answered the amended Complaint on April 5, 2002. Pre-trial discovery has not been completed. We believe that the claims against us are without merit and intend to vigorously defend the suit. The amounts sought by the Commissioner are significantly in excess of liabilities recorded on our Consolidated Balance Sheets. The ultimate resolution of this matter, if unfavorable, could materially affect our consolidated financial position, results of operations and cash flows.

Effective January 1, 2001, we entered into a Pharmacy Benefits Management Agreement (the PBM Agreement) with Medimpact Healthcare Systems, Inc. (Medimpact). The PBM Agreement called for Medimpact to process and fill within its network of contracting pharmacies prescriptions for members of Maxicare Life and Health Insurance Company, Inc., the California HMO and the Indiana HMO. The PBM Agreement called for us to reimburse Medimpact for the cost of drugs dispensed and to pay per transaction administrative fees on a bi-weekly basis. As a result of the Indiana HMO being placed in rehabilitation and the California HMO's bankruptcy, Medimpact allegedly has not received reimbursement for certain prescriptions filled on behalf of the members of those subsidiaries. Although it has yet to do so, Medimpact may seek reimbursement from us for such costs in an amount not presently known. We, in turn, believe that we have claims against Medimpact for rebates due to us.

By order dated March 9, 2001, the Missouri Department of Insurance approved the transfer of all of the outstanding shares of Maxicare Life and Health Insurance Company, Inc. from us to Maxicare Indiana, Inc., on the condition that control of Maxicare Life and Health Insurance Company, Inc. remain with us. We believe that this condition has not been complied with and that, accordingly,

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the transfer of the Maxicare Life and Health Insurance Company, Inc. shares by us to Maxicare Indiana, Inc. is null and void. We intend to present our position to the Missouri Department of Insurance at the appropriate time.

The landlord under the terms of a lease that expired in May 2004 for 79,000 square feet of industrial space in Los Angeles claims that we are obligated to surrender that space in its original condition. We previously made extensive modifications to the leased premises. The landlord claims that the restoration of the space may cost \$1.5 million. We believe that the landlord's claim is without merit.

Six former employees of the Indiana HMO have made demand on us for the payment of approximately \$400,000 in severance payments. We believe these claims are without merit.

Other than those noted above, no claims have been filed against us by the creditors of Maxicare Life and Health Insurance Company, Inc., the California HMO or the Indiana HMO. However, such creditors may file claims against us in the future.

Note 5 Other Income

In the second quarter of 2003 MHP recognized \$3.4 million of other income pursuant to the settlement of an action brought by the Company that sought recovery in connection with the underpayment of amounts due for health care coverage provided to employees of the United States Office of Personnel Management. The funds were received in August 2003.

Note 6 Health Care Expenses

From February 1, 1997 through May 4, 2001, HCAC provided certain reinsurance coverage to Transamerica, a nonaffiliated company, in connection with excess of loss health care claims and continuation of care / insolvency coverage for Medicaid HMO claims arising under coverage provided by Transamerica to Maxicare Indiana, Inc. This coverage terminated on May 4, 2001, when the Indiana Department of Insurance placed Maxicare Indiana, Inc. into rehabilitation. As a result of the termination of the claim notice period in regards to its contract with Maxicare Indiana, Inc., Transamerica informed HCAC in July, 2003 that it would be returning to HCAC approximately \$410,000 held for the payment of claims under that agreement. Transamerica forwarded the payment to HCAC in August 2003.

As a result of these events, the Company reduced its claims reserves under this coverage to zero, and recorded a receivable from Transamerica in the amount of \$410,000 at June 30, 2003. The Consolidated Statements of Operations for the three and six months ended June 30, 2003 accordingly reflect negative health care expenses of \$1,146,000.

Note 7 Litigation and Contract Settlement Charges

The Consolidated Statements of Operations for the three and six months ended June 30, 2003 reflect a litigation and contract settlement charge of \$250,000 in connection with the settlement of certain litigation with the Trizetto Group, Inc. (Trizetto). The charge represents the amount by which the cash settlement paid to Trizetto during the second quarter of 2003 exceeded amounts previously accrued. Pursuant to the settlement agreement, the Company paid \$1.25 million to TriZetto, issued 250,000 shares of the Company's common stock to TriZetto and returned to TriZetto certain warrants that TriZetto had issued to it. No cost was recorded in the Consolidated Statements of Operations for the shares issued to Trizetto since the fair value of the shares was immaterial.

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**Item 2: Management's Discussion and Analysis of Financial Condition and Results of Operations.
Results of Operations, Rehabilitation and Bankruptcy**

Current Status

We have had no active business since March 15, 2002 and have no reasonable prospects of obtaining or generating any active business. We have no means of generating additional cash.

We are exploring possible strategies to realize any possible value remaining in the Company. Any such strategy may include the ultimate liquidation of Health Care Assurance Company, Ltd.; however, because of our financial condition and the claims of our creditors, we may seek protection under the Bankruptcy Code.

Liquidity and Working Capital Deficiency

As noted above, we have terminated all operations. At June 30, 2004, we had a consolidated working capital deficiency of approximately \$2.2 million and a deficiency in shareholders' equity of approximately \$4.0 million. Furthermore, of our total cash and cash equivalents of \$4.0 million at June 30, 2004, \$2.5 million was held at Health Care Assurance Company, Ltd. The transfer of cash to MHP from Health Care Assurance Company, Ltd. requires the approval of regulatory authorities.

In February 2004, we entered into a Settlement Agreement and Mutual Release with a former executive under the terms of which we paid that executive \$550,000 in addition to amounts already attached by the executive under a lien, for a total payment of \$1,317,000.

We have certain contractual undertakings for which we may be liable and there are various alleged claims that may be asserted against us, including, among others, undertakings to and/or purported claims against us by vendors and former employees of our subsidiaries who have provided goods or services to those subsidiaries.

We are involved in various legal actions brought against us in the normal course of business, some of which seek damages in amounts that exceed those accrued in our Consolidated Balance Sheets. The ultimate liability for these legal actions cannot be determined and could materially affect our consolidated financial position, results of operations or cash flows, if resolved unfavorably. See Note 4 Commitments and Contingencies to our Unaudited Condensed Consolidated Financial Statements.

Disposition of Subsidiaries

The California and Indiana HMOs and Maxicare Life and Health Insurance Company, Inc. are currently in liquidation. We will receive no distribution of assets from the California HMO, are very unlikely to receive any distribution from the Indiana HMO, and may or may not receive a distribution from Maxicare Life and Health Insurance Company, Inc. Any distribution from Maxicare Life and Health Insurance Company, Inc. if assets ultimately are available for distribution, will require regulatory approval.

Results of Operations

The Quarter Ended June 30, 2004 Compared to the Quarter Ended June 30, 2003

We reported a loss of approximately \$.3 million for the quarter ended June 30, 2004 compared to net income of approximately \$4.1 million for the quarter ended June 30, 2003. We had no revenue other than insignificant amounts of interest income in the quarter ended June 30, 2004. All expenses in the quarter ended June 30, 2004 were salary, general and administrative expenses. During the second quarter ended June 30, 2003 we recognized other income of approximately \$3.4 million in connection with a settlement recovering the underpayment of amounts due to us for health care coverage provided to employees of the United States Office of Personnel Management. Also during the second quarter of 2003 we recognized approximately \$1.1 million of income, reflected as negative health care expense, in connection with the expiration of certain notice periods in connection with certain insurance provided by our Health Care Assurance Company, Ltd. subsidiary. In the second quarter of 2003 we also recorded expense of \$250,000 in regards to the settlement of litigation with the Trizetto Group, Inc.

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The Six Months Ended June 30, 2004 Compared to the Six Months Ended June 30, 2003

We reported a loss of approximately \$.6 million for the six months ended June 30, 2004 compared to net income of approximately \$3.5 million for the six months ended June 30, 2003. We had no revenue other than insignificant amounts of interest income in the six months ended June 30, 2004. All expenses in the six months ended June 30, 2004 were salary, general and administrative expenses. Net income for the six months ended June 30, 2003 reflects the events discussed above for the quarter ended June 30, 2003; specifically the settlement with the Federal government; the expiration of notice periods in connection with certain insurance coverage provided by our Health Care Assurance Company, Ltd. subsidiary; and the recording of certain litigation settlement expenses.

Contractual Obligations

In our annual report on Form 10-K for the year ended December 31, 2003, we reported on our contractual obligations as of that date. Through June 30, 2004 there were no material changes to that information.

Forward Looking Statements

The statements in this Form 10-Q may be forward-looking statements that are subject to risks and uncertainties. In particular, statements in this Form 10-Q that state our intentions, beliefs, expectations, strategies, predictions or any other statements relating to our future activities or other future events or conditions are forward-looking statements. Forward-looking statements are subject to risks, uncertainties and other factors, many of which are beyond our control, including, but not limited to, those identified under Risk Factors and Management's Discussion and Analysis of Financial Conditions and Results of Operations in our Form 10-K for the year ended December 31, 2003 and Management's Discussion and Analysis of Financial Conditions and Results of Operations in this Form 10-Q, as well as those described in any other filings by us with the Securities and Exchange Commission, as well as general economic conditions, any one or more of which could cause actual results to differ materially from those stated in such statements.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

As of June 30, 2004, we had approximately \$4.0 million in cash, no marketable securities and no restricted investments. Our investment policies emphasize return of principal and liquidity and are focused on fixed returns that limit volatility and risk of principal. Because of our investment policies, the primary market risk associated with our portfolio is interest rate risk. As of June 30, 2004, we did not have any outstanding bank borrowings or debt obligations.

Item 4. Controls and Procedures

Our chief executive officer and chief financial officer have supervised and participated in an evaluation of the effectiveness of our disclosure controls and procedures as of a date within 90 days of the date of this report, and, based on their evaluations, they believe that our disclosure controls and procedures (as defined in Rule 13a-14(c) of the Securities Exchange Act of 1934, as amended) are designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms. As a result of the evaluation, there were no significant changes in our internal controls or in other factors that could significantly affect these controls subsequent to the date of their evaluation.

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PART II OTHER INFORMATION

Item 6. Exhibits and Reports on Form 8-K

(a) Exhibits

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.

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SIGNATURES

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

| | |
|----------------------|---|
| Date August 16, 2004 | MAXICARE HEALTH PLANS, INC (Registrant) /s/ PAUL R. DUPEE, JR <hr/> Paul R. Dupee, Jr., Chief Executive Officer |
| Date August 16, 2004 | /s/ JOSEPH W. WHITE <hr/> Joseph W. White Chief Financial Officer |