

10-K 1 d71424\_10-k.htm ANNUAL REPORT

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

## FORM 10-K

(Mark One)

☒

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

For the fiscal year ended: December 31, 2006

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: 033-74194-01

**Remington.**

REMINGTON ARMS COMPANY, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

51-0350935

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

870 Remington Drive

P.O. Box 700

Madison, North Carolina 27025-0700

(Address of principal executive offices)

(Zip Code)

(336) 548-8700

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act: None

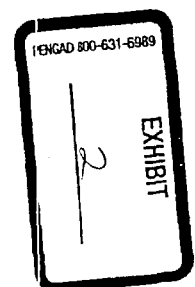
Securities registered pursuant to Section 12(g) of the Act: None

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 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 the 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. ☒



### Item 3. LEGAL PROCEEDINGS

Under the terms of the Purchase Agreement, the Sellers retained liability for, and are required to indemnify us against:

- liability in excess of our limited financial responsibility for environmental claims and disclosed product liability claims relating to pre-closing occurrences;
- liability for product liability litigation related to discontinued products; and
- certain tax liabilities, and employee and retiree compensation and benefit liabilities and intercompany accounts payable which do not represent trade accounts payable.

These indemnification obligations of the Sellers are not subject to any survival period limitation. We have no current information on the extent, if any, to which the Sellers have insured these indemnification obligations. Except for certain cases and claims relating to shotguns as described below, and except for all cases and claims relating to products discontinued prior to the Acquisition, we generally bear financial responsibility for the costs of product liability cases and claims relating to occurrences after the Acquisition and are required to indemnify the Sellers against such cases and claims. See “—Certain Indemnities.”

The main types of legal proceedings include:

- Product liability litigation filed by individuals.
- Product liability litigation filed by municipalities.
- Environmental litigation.

#### Product Liability Litigation

Since December 1, 1993, we have maintained insurance coverage for product liability claims subject to certain self-insured retentions on a per-occurrence basis for personal injury or property damage relating to occurrences arising after the Acquisition. We believe that our current product liability insurance coverage for personal injury and property damage is adequate for our needs. Our current product liability insurance policy runs from December 1, 2006 through November 30, 2007 and provides for certain self-insured retention amounts per occurrence. It also includes a limited batch clause provision. Applicable to our primary Products policy, this allows that a single retention be assessed when the same defects manufactured in a common lot or batch results in multiple injuries or damages to third parties. The policy excludes from coverage any pollution-related liability. Based in part on the nature of our products, there can be no assurance that we will be able to obtain adequate product liability insurance coverage upon the expiration of the current policy. Certain of our current excess insurance coverage expressly excludes actions brought by municipalities as described below.

As a result of contractual arrangements, we manage the joint defense of product liability litigation involving *Remington* brand firearms and our ammunition products for both Remington and the Sellers. As of December 31, 2006, approximately 13 individual bodily injury cases and claims were pending, primarily alleging defective product design, defective manufacture and/or failure to provide adequate warnings; some of these cases seek punitive as well as compensatory damages. We have previously disposed of a number of other cases involving post-Acquisition occurrences by settlement. Of the individual cases and claims pending as of December 31, 2006, one involves matters for which the Sellers retained liability and are required to indemnify us. The remaining 12 pending cases involve post-Acquisition occurrences for which we bear responsibility under the Purchase Agreement.

The relief sought in individual cases includes compensatory and, sometimes, punitive damages. Not all complaints or demand letters expressly state the amount of damages sought. As a general matter, when specific amounts are provided, compensatory damages sought range from less than \$75,000 to more than \$10 million, while demands for punitive damages may range from less than \$500,000, to as much as \$100 million. Of the 12 individual post-Acquisition claims pending as of December 31, 2006, claimants specifying amounts purport to seek approximately \$28.5 million in compensatory and \$10 million of punitive damages. In the Company's

experience, initial demands do not generally bear a reasonable relationship to the facts and circumstances of a particular matter, and in any event, are typically reduced significantly as a case proceeds. The Company believes that its accruals for product liability cases and claims, as described below, are a superior quantitative measure of the cost to it of product liability cases and claims.

At December 31, 2006, our accrual for product liability cases and claims was \$10.5 million. The amount of our accrual for product liability cases and claims is based upon estimates developed as follows. We establish reserves for anticipated defense and disposition costs to us of those pending cases and claims for which we are financially responsible. Based on those estimates and an actuarial analysis of actual defense and disposition costs incurred by us with respect to product liability cases and claims in recent years, we determine the estimated defense and disposition costs for unasserted product liability cases and claims. We combine the estimated defense and disposition costs for both pending and unasserted cases and claims to determine the amount of our accrual for product liability cases and claims. It is reasonably possible additional experience could result in further increases or decreases in the period in which such information is made available. We believe that our accruals for losses relating to such cases and claims are adequate. Our accruals for losses relating to product liability cases and claims include accruals for all probable losses the amount of which can be reasonably estimated. Based on the relevant circumstances (including the current availability of insurance for personal injury and property damage with respect to cases and claims involving occurrences arising after the Acquisition, our accruals for the uninsured costs of such cases and claims and the Sellers' agreement to be responsible for a portion of certain post-Acquisition shotgun-related product liability costs, as well as the type of firearms products that we make), we do not believe with respect to product liability cases and claims that any probable loss exceeding amounts already recognized through our accruals has been incurred.

Because our assumption of financial responsibility for certain product liability cases and claims involving pre-Acquisition occurrences was limited to an amount that has now been fully paid, with the Sellers retaining liability in excess of that amount and indemnifying us in respect of such liabilities, and because of our accruals with respect to such cases and claims, we believe that product liability cases and claims involving occurrences arising prior to the Acquisition are not likely to have a material adverse effect upon our financial condition, results of operations or cash flows. Moreover, although it is difficult to forecast the outcome of litigation, we do not believe, in light of relevant circumstances (including the current availability of insurance for personal injury and property damage with respect to cases and claims involving occurrences arising after the Acquisition, our accruals for the uninsured costs of such cases and claims and the Sellers' agreement to be responsible for a portion of certain post-Acquisition shotgun-related product liability costs, as well as the type of firearms products that we make), that the outcome of all pending post-Acquisition product liability cases and claims will be likely to have a material adverse effect upon our financial condition, results of operations or cash flows. Nonetheless, in part because the nature and extent of liability based on the manufacture and/or sale of allegedly defective products (particularly as to firearms and ammunition) is uncertain, there can be no assurance that our resources will be adequate to cover pending and future product liability occurrences, cases or claims, in the aggregate, or that a material adverse effect upon our financial condition, results of operations or cash flows will not result therefrom. Because of the nature of our products, we anticipate that we will continue to be involved in product liability litigation in the future. Because of the potential nature of injuries relating to firearms and ammunition, certain public perceptions of our products, and recent efforts to expand liability of manufacturers of firearms and ammunition, product liability cases and claims, and insurance costs associated with such cases and claims, may cause us to incur material costs.

### **Municipal Litigation**

In addition to these individual cases, as a manufacturer of shotguns and rifles, Remington was named in only three of the actions brought by approximately 30 municipalities, primarily against manufacturers, distributors and sellers of handguns: (i) *City of Boston, et al. v. Smith & Wesson, et al.*, No. 99-2590 (Suffolk Super Ct.); (ii) *City of St. Louis, Missouri v. Henry Cernicek, et al.*, No. 992-01209 (Cir. Ct. St. Louis) & 00 Civil 1895 (U.S. Dist. Ct. E.D. Missouri); and (iii) *City of New York, et al. v. B.L. Jennings, Inc., et al.*, 00 Civil 3641 (JBW) (U.S. Dist. Ct. E.D.N.Y.). Two of these cases (*City of Boston* and *City of St. Louis*) have been dismissed against all defendants, while the third has been limited to claims against handgun manufacturers (*City of New York*). Remington is therefore not a defendant in any pending municipal litigation.

As a general matter, these lawsuits name several dozens of firearm industry participants as defendants, and claim that the defendants' distribution practices allegedly permitted their products to enter a secondary market, from which guns can be obtained by unauthorized users; that defendants fail to include adequate safety devices in their firearms to prevent unauthorized use and accidental misuse; and that defendants' conduct has created a public nuisance. Plaintiffs generally seek injunctive relief and money damages (consisting of the cost of providing certain city services and lost tax and other revenues), and in some cases, punitive damages, as well.

To date, most municipal lawsuits have been dismissed and are no longer subject to appeal, including that

involving local California governments. The three remaining lawsuits are in various stages of motion practice, discovery, and trial preparation. A majority of states have enacted some limitation on the ability of local

governments to file such lawsuits against firearms manufacturers. In addition, similar legislation limiting such lawsuits on a federal level has been proposed in both houses of Congress, most recently by the House of Representatives on October 20, 2005. President Bush signed the Protection of Lawful Commerce in Arms Act on October 26, 2005. However, the applicability of the law to various types of governmental and private lawsuits has been challenged.

#### **Other**

On March 16, 2007, Remington, Holding, Clayton Dubilier & Rice, Inc. and certain affiliates, Bruckmann, Rosser, Sherrill & Co., LLC and certain affiliates, Thomas Millner (Remington's President, Chief Executive Officer and a director), Leon Hendrix (Remington's Chairman), and Michael Babiarz (a Remington director), as defendants, and Robert Haskin (a former Remington director and employee), as plaintiff, entered into an agreement under which Remington agreed to pay Mr. Haskin \$775,000 in consideration for dismissal of a non-employment related lawsuit and the granting of mutual releases by the parties. The \$775,000 was recorded as an expense in the December 31, 2006, results of operations in accordance with Statement of Financial Accounting Standard No. 5, *Accounting for Contingencies* ("SFAS 5") as the loss contingency became probable and reasonably estimated. In the lawsuit, filed in 2006 in the General Superior Court of Justice, Superior Court Division, Guilford County, North Carolina, Mr. Haskin alleged he was entitled to receive a fee in connection with a transaction completed by the Company. The lawsuit initially sought in excess of \$1.0 million.

#### **Litigation Outlook**

We are involved in lawsuits, claims, investigations and proceedings, including commercial, environmental and employment matters, which arise in the ordinary course of business. We do not expect that the ultimate costs to resolve these matters will have a material adverse effect on our financial position, results of operations or cash flows.

#### **Certain Indemnities**

As of the closing of the Acquisition in December 1993 under the Purchase Agreement, we assumed:

- a number of specified liabilities, including certain trade payables and contractual obligations of the Sellers;
- limited financial responsibility for specified product liability claims relating to disclosed occurrences arising prior to the Acquisition;
- limited financial responsibility for environmental claims relating to the operation of the business prior to the Acquisition; and
- liabilities for product liability claims relating to occurrences after the Acquisition, except for claims involving products discontinued at the time of closing.

All other liabilities relating to or arising out of the operation of the business prior to the Acquisition are excluded liabilities (the "Excluded Liabilities"), which the Sellers retained. The Sellers are required to indemnify Remington and its affiliates in respect of the Excluded Liabilities, which include, among other liabilities:

- liability in excess of our limited financial responsibility for environmental claims and disclosed product liability claims relating to pre-closing occurrences;
- liability for product liability litigation related to discontinued products; and
- certain tax liabilities, and employee and retiree compensation and benefit liabilities and intercompany accounts payable which do not represent trade accounts payable.

The Sellers' overall liability in respect of their representations, covenants and the Excluded Liabilities

under the Purchase Agreement, excluding environmental liabilities and product liability matters relating to events occurring prior to the purchase but not disclosed, or relating to discontinued products, is limited to \$324.8 million. With a few exceptions, the Sellers' representations under the Purchase Agreement have expired. We made claims for indemnification involving product liability issues prior to such expiration. See "—Product Liability Litigation".

In addition, the Sellers agreed in 1996 to indemnify us against a portion of certain product liability costs involving various shotguns manufactured prior to 1995 and arising from occurrences on or prior to November 30, 1999. These indemnification obligations of the Sellers relating to product liability and environmental matters (subject to a limited exception) are not subject to any survival period limitation, deductible or other dollar

threshold or cap. We and the Sellers are also party to separate agreements setting forth agreed procedures for the management and disposition of environmental and product liability claims and proceedings relating to the operation or ownership of the business prior to the Acquisition, and are currently engaged in the joint defense of certain product liability claims and proceedings. See “—Product Liability Litigation”.