

SUPREME INDUSTRIES INC
Form 10-K/A
March 26, 2012

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

WASHINGTON D.C. 20549

FORM 10-K/A

Amendment No. 1

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

For the fiscal year ended: December 25, 2010

OR

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

COMMISSION FILE NUMBER: 1-8183

SUPREME INDUSTRIES, INC.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation)

**P.O. Box 237, 2581 E. Kercher Road
Goshen, Indiana**

75-1670945
(I.R.S. Employer Identification Number)

46528

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(Address of principal executive office)

(Zip Code)

Registrant's telephone number, including area code: **(574) 642-3070**

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

Title of each class:	Name of each exchange on which registered:
Class A Common Stock (\$.10 Par Value)	NYSE Amex

Securities registered pursuant to Section 12(g) of the Exchange 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 whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T 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

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

The aggregate market value of the voting and non-voting common stock held by non-affiliates of the registrant as of the last business day of the registrant's most recently completed second fiscal quarter, based on the last closing sale price of \$2.30 per share for the common stock on the NYSE Amex (formerly American Stock Exchange) on such date, was approximately \$24,590,765.

Indicate the number of shares outstanding of each of the registrant's classes of common stock as of the latest practicable date.

Class	Outstanding at March 14 , 2011
Class A Common Stock (\$.10 Par Value)	12,662,983 shares
Class B Common Stock (\$.10 Par Value)	1,716,937 shares

Documents incorporated by reference

NONE

EXPLANATORY NOTE

Supreme Industries, Inc. (together with its direct and indirect subsidiaries, Supreme, we, us, its or the Company) is filing this Amendment No. 1 on Form 10-K/A (this Amendment) to its Annual Report on Form 10-K for the fiscal year ended December 25, 2010, originally filed on March 25, 2011, for the purpose of amending the information required by Part III, Item 13 of Form 10-K. In addition, we are also including as exhibits to this Amendment the certifications required under Section 302 of the Sarbanes-Oxley Act of 2002. Because no financial statements are contained within this Amendment, we are not including certifications pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. Except as set forth herein, no other changes are made to our Annual Report on Form 10-K for the fiscal year ended December 25, 2010.

PART III

Item 13. *Certain Relationships and Related Transactions, and Director Independence.*

Independence

The Board of Directors has determined that the following four directors have no material relationship with the Company that would interfere with the exercise of independent judgment and are independent within the meaning of the NYSE Amex director independence standards: Robert J. Campbell, Edward L. Flynn, Mark C. Neilson, and Wayne A. Whitener.

Certain Relationships and Related Party Transactions

As part of its original acquisition on January 19, 1984, of the specialized vehicle manufacturing business now being operated by it, Supreme Indiana acquired an option to purchase certain real estate and improvements at its Goshen, Indiana, and Griffin, Georgia, facilities, leased to it by lessors controlled by the sellers of such business. The option agreement provided that the option would expire on January 8, 1989, and that, prior to that time, it could be assigned to either or both of William J. Barrett and Herbert M. Gardner, members of the Company's Board of Directors.

On July 25, 1988, Supreme Indiana assigned the option (with the consent of the grantors of the option) to a limited partnership (the Partnership). The general partner of the Partnership is Supreme Indiana, owning a one percent interest, and the limited partnership interests therein are owned (directly or indirectly) by individuals including Mr. Barrett, Mr. Gardner, and Mr. Campbell, all of whom are members of the Company's Board of Directors, and each of whom owns a 12.375% limited partnership interest in the Partnership.

In a transaction consummated on July 25, 1988, the Partnership exercised the option and purchased all of the subject real estate and improvements. Also on July 25, 1988, the Partnership and Supreme Indiana entered into new leases covering Supreme facilities in Goshen, Indiana, and Griffin, Georgia at initial rental rates equivalent to those paid pursuant to the lease agreements with the prior lessors. The actual amount paid to the Partnership in 2010 was \$683,320. The leases contain options to purchase the properties for an aggregate initial price of \$2,765,000 (subject to increases after the first year based upon increases in the Consumer Price Index). Both of the above leases were extended for additional five-year terms ending on July 25, 2015 under lease extension agreements which were dated to be effective July 25, 2010. The total rental payments for the first year of the five-year extended terms amounted to \$683,004 with the rent for each year thereafter to be adjusted upward or downward by the amount of the increase or decrease in the Consumer Price Index using July, 2010, as the base period and June of each succeeding year thereafter as the comparative period. In the event Supreme Indiana had exercised its options to purchase these two leased properties during 2010, the total purchase price (calculated in accordance with the formulas contained in the underlying lease agreements) would have been \$5,300,000 (based upon appraisals obtained from independent third parties selected by a Special Committee of the Board of Directors directed to determine fair purchase prices and fair lease rental payments).

An Option Agreement was entered into effective as of March 24, 2011 under the terms of which Supreme Indiana will sell its California manufacturing facility to Barrett Gardner Associates, Inc. which is owned by Messrs. William J. Barrett and Herbert M. Gardner, both of whom are directors of the Company. It is contemplated that the rights of Barrett Gardner Associates, Inc. under the Option Agreement will be assigned

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by it to a newly-formed limited liability company (Newco) which will be owned (one-third each) by Messrs. Barrett and Gardner and Mr. Edward L. Flynn (who is also a director of the Company). The purchase price for the property is \$4,100,000 which is fully supported by a recent independent appraisal of that property at that amount. The purchase price will be payable \$3,100,000 in cash with the balance being an equity interest owned by Supreme Indiana in Newco. In consideration of the purchase transaction, Newco has made a wire transfer of a \$100,000 option fee to the Company's primary lender which, when the real estate purchase closes, will be applied to the cash portion of the purchase price for the California manufacturing facility. Simultaneously with the closing of such purchase transaction, Supreme Indiana will enter into a twenty-year lease with Newco, such lease containing terms which the Board of Directors believes would result from arms-length negotiations with a third party. Both the purchase price for the manufacturing facility and the terms of the leaseback will be supported by a fairness opinion issued by a

third-party consultant. The purpose of this sale\leaseback transaction is to generate a cash sum of \$3,000,000 which must be paid by the Company to its primary lender in order for the primary lender to continue the Company's currently existing line of credit to not be in default.

Kim Korth, President and Chief Executive Officer, is President of IRN, Inc., a consulting firm that provides integrated market data, intelligence, and insight regarding suppliers in transportation equipment markets. The Company utilized the services of IRN, Inc. at a total cost of approximately \$304,000 during 2010 and through March 25, 2011.

PART IV

Item 15. Exhibits and Financial Statement Schedules.

(a)(3) The exhibits required to be filed by this Item 15 are set forth in the Index to Exhibits accompanying this report.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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.

SUPREME INDUSTRIES, INC.

Date: March 26, 2012

By:

/s/ Kim Korth
Kim Korth
President and Chief Executive Officer

INDEX TO EXHIBITS

Exhibit	Description
3.1	Certificate of Incorporation of the Company, filed as Exhibit 3(a) to the Company's Registration Statement on Form 8-A, filed with the Commission on September 18, 1989, and incorporated herein by reference.
3.2	Certificate of Amendment of Certificate of Incorporation of the Company filed with the Secretary of State of Delaware on June 10, 1993 filed as Exhibit 3.2 to the Company's annual report on Form 10-K for the fiscal year ended December 31, 1993, and incorporated herein by reference.
3.3	Certificate of Amendment of Certificate of Incorporation of the Company filed with the Secretary of State of Delaware on May 29, 1996 filed as Exhibit 3.3 to the Company's annual report on Form 10-K for the fiscal year ended December 31, 1996, and incorporated herein by reference.
3.4	Second Amended and Restated Bylaws, filed as Exhibit 3.1 to the Company's current report on Form 8-K, filed on February 22, 2011, and incorporated herein by reference.
10.1	1998 Stock Option Plan, filed as Exhibit 10.3 to the Company's annual report on Form 10-K for the fiscal year ended December 31, 1998, and incorporated herein by reference.
10.2	Amendment No. 1 to the Company's 1998 Stock Option Plan, filed as Exhibit 10.4 to the Company's annual report on Form 10-K for the fiscal year ended December 31, 1999, and incorporated herein by reference.
10.3	Amendment No. 2 to the Company's 1998 Stock Option Plan, filed as Exhibit 10.5 to the Company's annual report on Form 10-K for the fiscal year ended December 31, 2000, and incorporated herein by reference.
10.4	2001 Stock Option Plan, filed as Exhibit 10.6 to the Company's annual report on Form 10-K for the fiscal year ended December 31, 2001, and incorporated herein by reference.
10.5	Amendment No. 1 to the Company's 2001 Stock Option Plan, filed as Exhibit 10.7 to the Company's annual report on Form 10-K for the fiscal year ended December 31, 2001, and incorporated herein by reference.
10.6	2004 Stock Option Plan, filed as Exhibit 4.1 to the Company's Registration Statement on Form S-8 effective on August 26, 2004, and incorporated herein by reference.
10.7	Amended and Restated 2004 Stock Option Plan filed as Exhibit A to the Company's Revised Definitive Proxy Statement filed on April 5, 2006, and incorporated herein by reference.
10.8	Amendment Number One to the Company's Amended and Restated 2004 Stock Option Plan dated October 25, 2006, included in the Company's Definitive Proxy Statement filed on April 2, 2007, and incorporated herein by reference.
10.9	Amendment No. Two to the Company's Amended and Restated 2004 Stock Option Plan dated March 28, 2007, included in the Company's Definitive Proxy Statement filed on April 2, 2007, and incorporated herein by reference.
10.10	Amendment No. 3 to the Company's Amended and Restated 2004 Stock Option Plan dated March 25, 2008, included in the Company's Definitive Proxy Statement filed on April 3, 2008, and incorporated herein by reference.
10.11	Amendment No. Four to the Company's Amended and Restated 2004 Stock Option Plan dated

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August 25, 2009, filed as Exhibit 10.3 to the Company's quarterly report on Form 10-Q for the quarterly period ended September 26, 2009, and incorporated herein by reference.

- 10.12 Form of Supreme Industries, Inc. Director and Officer Indemnification Agreement, filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed on October 6, 2008, and incorporated herein by reference.
- 10.13 Indemnification Agreement by and among Supreme Industries, Inc. and Kim Korth dated February 16, 2011, filed as Exhibit 10.2 to the Company's Current Report on Form 8-K filed on February 22, 2011, and incorporated herein by reference.
- 10.14 Special Vehicle Manufacturer Converters Agreement with General Motors Corporation, effective February 29, 2008, between General Motors Corporation and Supreme Corporation, filed as Exhibit 10.11 to the Company's annual report on Form 10-K for the fiscal year ended December 27, 2008, and incorporated herein by reference.
- 10.15 Ford Authorized Converter Pool Agreement, effective May 1, 2008, among Ford Motor Company, Supreme Corporation and certain subsidiaries, filed as Exhibit 10.12 to the Company's annual report on Form 10-K for the fiscal year ended December 27, 2008, and incorporated herein by reference.
- 10.16 Amended and Restated Credit Agreement dated December 23, 2008, by and between Supreme Corporation and JPMorgan Chase Bank, N.A., filed as Exhibit 10.13 to the Company's annual report on Form 10-K for the fiscal year ended December 27, 2008, and incorporated herein by reference.
- 10.17 Amendment to Credit Agreement dated May 12, 2009, by and between Supreme Corporation and JPMorgan Chase Bank, N.A., filed as Exhibit 10.2 to the Company's quarterly report on Form 10-Q for the quarterly period ended March 28, 2009, and incorporated herein by reference.
- 10.18 Note Modification Agreement dated May 12, 2009, by and between Supreme Corporation and JPMorgan Chase Bank, N.A., filed as Exhibit 10.3 to the Company's quarterly report on Form 10-Q for the quarterly period ended March 28, 2009, and incorporated herein by reference.
- 10.19 Amendment to Credit Agreement dated September 9, 2009, by and between Supreme Corporation and JPMorgan Chase Bank, N.A., filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed on September 15, 2009, and incorporated herein by reference.
- 10.20 Note Modification Agreement dated September 9, 2009, by and between Supreme Corporation and JPMorgan Chase Bank, N.A., filed as Exhibit 10.2 to the Company's Current Report on Form 8-K filed on September 15, 2009, and incorporated herein by reference.
- 10.21 Amendment to Credit Agreement dated November 6, 2009, by and between Supreme Corporation and JPMorgan Chase Bank, N.A., filed as Exhibit 10.4 to the Company's quarterly report on Form 10-Q for the quarterly period ended September 26, 2009, and incorporated herein by reference.
- 10.22 Note Modification Agreement dated November 6, 2009, by and between Supreme Corporation and JPMorgan Chase Bank, N.A., filed as Exhibit 10.5 to the Company's quarterly report on Form 10-Q for the quarterly period ended September 26, 2009, and incorporated herein by reference.
- 10.23 Amended and Restated Credit Agreement dated to be effective as of September 30, 2010, by and among Supreme Industries, Inc., Supreme Indiana Operations, Inc., Supreme Mid-Atlantic Corporation, Supreme Truck Bodies of California, Inc., Supreme Corporation of Texas, Supreme Northwest, L.L.C., the Other Loan Parties and JPMorgan Chase Bank, N.A., filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed on October 21, 2010, and incorporated herein by reference.
- 10.24 Pledge and Security Agreement dated as of September 30, 2010, by and between Supreme Industries, Inc. and JPMorgan Chase Bank, N.A., filed as Exhibit 10.2 to the Company's Current Report on Form 8-K filed on October 21, 2010, and incorporated herein by reference.

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- 10.25 Lease dated July 25, 1988, between Supreme Corporation and G-2, Ltd., a Texas limited partnership, relating to Supreme Corporation's Goshen, Indiana facilities, filed as Exhibit 10.22 to the Company's annual report on Form 10-K for the fiscal year ended December 31, 1988, and incorporated herein by reference.
- 10.26 Lease dated July 25, 1988, between Supreme Corporation and G-2, Ltd., a Texas limited partnership, relating to Supreme Corporation's Griffin, Georgia facilities, filed as Exhibit 10.23 to the Company's annual report on Form 10-K for the fiscal year ended December 31, 1988, and incorporated herein by reference.
- 10.27 Amended and Restated Employment Contract by and among Supreme Industries, Inc. and Herbert M. Gardner dated to be effective January 1, 2005, filed as Exhibit 10.2 to the Company's Current Report on Form 8-K dated February 10, 2006, and incorporated herein by reference.
- 10.28 Amended and Restated Employment Contract by and among Supreme Industries, Inc. and William J. Barrett dated to be effective January 1, 2005, filed as Exhibit 10.3 to the Company's Current Report on Form 8-K dated February 10, 2006, and incorporated herein by reference.
- 10.29 Amended and Restated Employment Contract by and among Supreme Industries, Inc. and Robert W. Wilson dated to be effective May 1, 2008, filed as exhibit 10.1 to the Company's Current Report on Form 8-K dated May 12, 2008, and incorporated herein by reference.
- 10.30 Employment Agreement by and among Supreme Industries, Inc., Supreme Indiana Operations, Inc., and Kim Korth dated to be effective February 1, 2011, filed as Exhibit 10.1 to the Company's Current Report on Form 8-K, and incorporated herein by reference.
- * 21.1 Subsidiaries of the Registrant.
- * 23.1 Consent of Crowe Horwath LLP, Independent Registered Public Accounting Firm.
- ** 31.1 Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- ** 31.2 Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- * 32.1 Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- * 32.2 Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

* Previously filed on March 25, 2011 as an exhibit to our original Annual Report on Form 10-K.

** Filed herewith.