

HESKA CORP
Form 10-K/A
August 19, 2011

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**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 December 31, 2010
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: 0-22427

HESKA CORPORATION

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

77-0192527

(I.R.S. Employer
Identification Number)

3760 Rocky Mountain Avenue

Loveland, Colorado

(Address of principal executive offices)

80538

(Zip Code)

Registrant's telephone number, including area code: **(970) 493-7272**

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

Public Common Stock, \$.01 par value

(Title of Class)

The Nasdaq Stock Market LLC

(Name of Each Exchange on Which Registered)

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 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 (§229.405 of this chapter) 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 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. ☐

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Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company as defined in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐

Accelerated filer ☐

Non-accelerated filer ☐

Smaller Reporting
Company ☐

(Do not check if a small
reporting company)

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

The aggregate market value of voting common stock held by non-affiliates of the Registrant was approximately \$31,299,307 as of June 30, 2010 based upon the closing price on the Nasdaq Capital Market reported for such date. This calculation does not reflect a determination that certain persons are affiliates of the Registrant for any other purpose.

5,234,100 shares of the Registrant's Common Stock, \$.01 par value, were outstanding at March 17, 2011.

DOCUMENTS INCORPORATED BY REFERENCE

Items 10 (as to directors), 11, 12, 13 and 14 of Part III incorporate by reference information from the Registrant's Proxy Statement to be filed with the Securities and Exchange Commission in connection with the solicitation of proxies for the Registrant's 2011 Annual Meeting of Stockholders.

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Exhibit 31.3

Exhibit 31.4

Exhibit 32.1

Table of Contents**EXPLANATORY NOTE**

This Amendment No. 1 to Form 10-K on Form 10-K/A (this Amendment) amends the Annual Report on Form 10-K of Heska Corporation (the Company) for the fiscal year ended December 31, 2010, filed with the Securities and Exchange Commission (the Commission) on March 18, 2011 (the Original Filing). This Amendment is being filed solely to file the revised redacted version of Exhibit 10.32 to the Original Filing, which has been revised in response to comments that the Company received from the staff of the Commission in connection with the Company's request for confidential treatment with respect thereto.

As required by Rule 12b-15 of the Securities Exchange Act of 1934, new certifications by our principal executive officer and principal financial officer are filed herewith as exhibits to this Amendment. Except as described above, no attempt has been made in this Amendment to modify or update other items or disclosures presented in the Original Filing. This Amendment does not reflect events occurring after the date of the Original Filing or modify or update those disclosures that may be affected by subsequent events.

PART IV**Item 15. Exhibits and Financial Statement Schedules.**

(a) The following documents are filed as a part of this Form 10-K.

(1) Financial Statements:

Reference is made to the Index to Consolidated Financial Statements under Item 8 in Part II of this Form 10-K.

(2) Financial Statement Schedules:

Schedule II Valuation and Qualifying Accounts.

SCHEDULE II

**HESKA CORPORATION AND SUBSIDIARIES
VALUATION AND QUALIFYING ACCOUNTS**

(amounts in thousands)

	Balance at Beginning of Year	Additions Charged to Costs and Expenses	Other Additions	Deductions	Balance at End of Year
Allowance for doubtful accounts					
Year ended:					
December 31, 2008	\$ 96	\$ 137		\$ (24)(a)	\$ 209
December 31, 2009	\$ 209	\$ 89		\$ (121)(a)	\$ 177
December 31, 2010	\$ 177	\$ 57		\$ (98)(a)	\$ 136

(a) Write-offs of uncollectible accounts.

Table of Contents**(3) Exhibits:**

The exhibits listed below are required by Item 601 of Regulation S-K. Each management contract or compensatory plan or arrangement required to be filed as an exhibit to this Form 10-K/A (Amendment No. 1) has been identified.

Exhibit Number	Notes	Description of Document
3(i)#		Restated Certificate of Incorporation of the Registrant.
3(ii)#		Certificate of Amendment to Restated Certificate of Incorporation of the Registrant.
3(iii)#		Certificate of Amendment to the Restated Certificate of Incorporation, as amended, of the Registrant.
3(iv)	(15)	Bylaws of the Registrant.
10.1*#		1997 Incentive Stock Plan of Registrant, as amended.
10.2*	(10)	1997 Incentive Stock Plan Employees and Consultants Option Agreement.
10.3*	(10)	1997 Incentive Stock Plan Outside Directors Option Agreement.
10.4*	(13)	2003 Equity Incentive Plan, as amended and restated.
10.5*	(13)	2003 Equity Incentive Plan Option Agreement.
10.6*	(15)	1997 Employee Stock Purchase Plan of Registrant, as amended.
10.7*	(9)	Management Incentive Plan Master Document.
10.8*#		2011 Management Incentive Plan.
10.9*#		Director Compensation Policy.
10.10*	(11)	Form of Indemnification Agreement entered into between Registrant and its directors and certain officers.
10.11*	(8)	Amended and Restated Employment Agreement with Robert B. Grieve, dated March 29, 2006.
10.12*	(11)	Amendment to Employment Agreement between Registrant and Robert B. Grieve, dated effective as of January 1, 2008.
10.13*	(10)	Employment Agreement between Diamond Animal Health, Inc. and Michael McGinley, dated May 1, 2000.
10.14*	(11)	Amendment to Employment Agreement between Diamond Animal Health, Inc. and Michael McGinley, dated effective as of January 1, 2008.
10.15*	(4)	Employment Agreement between Registrant and Jason Napolitano, dated May 6, 2002.
10.16*	(11)	Amendment to Employment Agreement between Registrant and Jason Napolitano, dated effective as of January 1, 2008.
10.17*	(4)	Employment Agreement between Registrant and Michael Bent, dated May 1, 2000.
10.18*	(11)	Amendment to Employment Agreement between Registrant and Michael Bent, dated effective as of January 1, 2008.
10.19*	(10)	Employment Agreement between Registrant and Nancy Wisnewski, dated April 15, 2002.
10.20*	(11)	Amendment to Employment Agreement between Registrant and Nancy Wisnewski, dated effective as of January 1, 2008.
10.21	(6)	Net Lease Agreement between Registrant and CCMRED 40, LLC, dated May 24, 2004.
10.22	(7)	First Amendment to Net Lease Agreement and Development Agreement between Registrant and CCMRED 40, LLC, dated February 11, 2005.
10.23	(7)	Second Amendment to Net Lease Agreement between Registrant and CCMRED 40, LLC, dated July 14, 2005.

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10.24	(14)	Third Amendment to Net Lease Agreement between Registrant and Millbrae Square Company, effective as of January 1, 2010.
10.25+	(10)	Third Amended and Restated Credit and Security Agreement between Registrant, Diamond Animal Health, Inc. and Wells Fargo Business Credit, Inc., dated December 30, 2005.

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Exhibit Number	Notes	Description of Document
10.26+	(11)	First Amendment to Third Amended and Restated Credit and Security Agreement between Registrant, Diamond Animal Health, Inc. and Wells Fargo Bank, National Association, dated December 5, 2006.
10.27+	(11)	Second Amendment to Third Amended and Restated Credit and Security Agreement between Registrant, Diamond Animal Health, Inc. and Wells Fargo Bank, National Association, dated July 20, 2007.
10.28	(11)	Third Amendment to Third Amended and Restated Credit and Security Agreement between Registrant, Diamond Animal Health, Inc. and Wells Fargo Bank, National Association, dated December 21, 2007.
10.29+	(12)	Fourth and Fifth Amendments to Third Amended and Restated Credit and Security Agreement between Registrant, Diamond Animal Health, Inc. and Wells Fargo Bank, National Association, dated October 16, 2008.
10.30+	(13)	Sixth Amendment to Third Amended and Restated Credit and Security Agreement between Registrant, Diamond Animal Health, Inc. and Wells Fargo Bank, National Association, dated December 30, 2008.
10.31+	(14)	Seventh Amendment to Third Amended and Restated Credit and Security Agreement between Registrant, Diamond Animal Health, Inc. and Wells Fargo Bank, National Association, dated November 30, 2009.
10.32+		Eighth Amendment to Third Amended and Restated Credit and Security Agreement between Registrant, Diamond Animal Health, Inc. and Wells Fargo Bank, National Association, dated December 15, 2010.
10.33+	(1)	Product Supply Agreement between Registrant and Quidel Corporation, dated July 3, 1997.
10.34+	(2)	First Amendment to Product Supply Agreement between Registrant and Quidel Corporation, dated March 15, 1999.
10.35	(13)	Letter Amendment to Product Supply Agreement between Registrant and Quidel Corporation dated July 7, 2004.
10.36+	(3)	Amended and Restated Bovine Vaccine Distribution Agreement between Diamond Animal Health, Inc. and Agri Laboratories, Ltd., dated September 30, 2002.
10.37+	(5)	First Amendment to Amended and Restated Bovine Vaccine Distribution Agreement between Diamond Animal Health, Inc. and Agri Laboratories, Ltd., dated September 20, 2004.
10.38+	(10)	Second Amendment to Amended and Restated Bovine Vaccine Distribution Agreement between Diamond Animal Health, Inc. and Agri Laboratories, Ltd., dated December 10, 2004.
10.39+	(10)	Third Amendment to Amended and Restated Bovine Vaccine Distribution Agreement between Diamond Animal Health, Inc. and Agri Laboratories, Ltd., dated May 26, 2006.
10.40+	(11)	Fourth Amendment to Amended and Restated Bovine Vaccine Distribution Agreement between Diamond Animal Health, Inc. and Agri Laboratories, Ltd., dated as of November 16, 2007.
10.41+#		Fifth Amendment to Amended and Restated Bovine Vaccine Distribution Agreement between Diamond Animal Health, Inc. and Agri Laboratories, Ltd., dated as of December 23, 2010.
10.42+	(10)	

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Supply and Distribution Agreement between Registrant and Boule Medical AB, dated June 17, 2003, Letter Amendment to Supply and Distribution Agreement between Registrant and Boule Medical AB, dated June 1, 2004 and Letter Amendment to Supply and Distribution Agreement between Registrant and Boule Medical AB, dated December 31, 2004.

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Exhibit Number	Notes	Description of Document
10.43+	(12)	Letter Amendment to Supply and Distribution Agreement between Registrant and Boule Medical AB, dated July 12, 2005; Letter Amendment to Supply and Distribution Agreement between Registrant and Boule Medical AB, dated March 20, 2007; Letter Amendment to Supply and Distribution Agreement between Registrant and Boule Medical AB, dated January 23, 2008; and Sixth Amendment to Supply and Distribution Agreement between Registrant and Boule Medical AB, dated October 1, 2008.
10.44+	(10)	Supply and License Agreement between Registrant and Schering-Plough Animal Health Corporation, dated as of August 1, 2003.
10.45+	(13)	Amendment No. 1 to Supply and License Agreement between Registrant and Schering-Plough Animal Health Corporation, dated August 31, 2005.
10.46+	(10)	Distribution Agreement between Registrant and Arkray Global Business, Inc. dated November 1, 2004.
10.47+	(11)	Clinical Chemistry Analyzer Agreement between Registrant and FUJIFILM Corporation, dated as of January 30, 2007.
21.1#		Subsidiaries of the Company.
23.1#		Consent of Ehrhardt Keefe Steiner & Hottman PC, Independent Registered Public Accounting Firm.
24.1#		Power of Attorney (Included on Signature Page of Form 10-K).
31.1#		Certification of Chief Executive Officer Pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act, as amended.
31.2#		Certification of Chief Financial Officer Pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act, as amended.
31.3		Certification of Chief Executive Officer Pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act, as amended.
31.4		Certification of Chief Financial Officer Pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act, as amended.
32.1##		Certification of Chief Executive Officer and Chief Financial Officer Pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

Notes

- * Indicates management contract or compensatory plan or arrangement.
- + Confidential portions of this agreement have been omitted pursuant to a request for confidential treatment filed separately with the Securities and Exchange Commission.
- # Previously filed.
- ## Furnished herewith.
- (1) Filed with the Registrant's Form 10-Q for the quarter ended September 30, 1997.
- (2) Filed with the Registrant's Form 10-K for the year ended December 31, 2001.

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- (3) Filed with the Registrant s Form 10-Q for the quarter ended September 30, 2002.
 - (4) Filed with the Registrant s Form 10-K for the year ended December 31, 2002.
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 - (12) Filed with the Registrant s Form 10-Q for the quarter ended September 30, 2008.
 - (13) Filed with the Registrant s Form 10-K for the year ended December 31, 2008.
 - (14) Filed with the Registrant s Form 10-K for the year ended December 31, 2009.
 - (15) Filed with the Registrant s Form 10-Q for the quarter ended March 31, 2010.
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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, on August 19, 2011.

HESKA CORPORATION

By: /s/ ROBERT B. GRIEVE

Robert B. Grieve

Chairman of the Board and Chief Executive
Officer

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