

PORTEC RAIL PRODUCTS INC  
Form SC TO-T/A  
March 01, 2010

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549  
SCHEDULE TO  
Tender Offer Statement under Section 14(d)(1) or 13(e)(1)  
of the Securities Exchange Act of 1934  
(Amendment No. 1)  
PORTEC RAIL PRODUCTS, INC.  
(Name of Subject Company (issuer))  
FOSTER THOMAS COMPANY  
(offeror)  
a wholly-owned subsidiary of  
L.B. FOSTER COMPANY  
(parent of offeror)**

*(Names of Filing Persons (identifying status as offeror, issuer or other person))*

**Common Stock, \$1.00 par value per share**

*(Title of Class of Securities)*

**736212101**

*(CUSIP Number of Class of Securities)*

David Voltz

L.B. Foster Company

415 Holiday Drive

Pittsburgh, Pennsylvania 15220

(412)-928-3417

*(Name, address, and telephone numbers of person authorized  
to receive notices and communications on behalf of filing persons)*

with a copy to:

Lewis U. Davis, Jr., Esq.

Buchanan Ingersoll & Rooney PC

One Oxford Centre

301 Grant Street, 20th Floor

Pittsburgh, PA 15219

(412) 562-8800

**Calculation of Filing Fee**

**Transaction valuation\***

\$114,067,450

**Amount of Filing Fee\*\***

\$8,133

\* Estimated for purposes of calculating the amount of the filing fee only, in accordance with Rule 0-11

under the  
Securities  
Exchange Act  
of 1934, as  
amended (the  
Exchange Act ).

The calculation  
of the  
transaction  
valuation  
assumes a  
purchase price  
of \$11.71 per  
share and the  
purchase of  
9,741,029  
shares of Portec  
common stock,  
which

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is represented by (i) 9,602,029 outstanding shares of common stock; and (ii) 139,000 shares of common stock that were issuable with respect to all outstanding options, in each case as provided by Portec as of , the most recent practicable date.

\*\* The amount of the filing fee was calculated in accordance with Section 14(g)(3) of the Exchange Act, and equals \$71.30 per million dollars of the transaction valuation amount.

Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: \$8,133

Filing Party: L.B. Foster Company and Foster Thomas Company

Form or Registration No.: Schedule TO-T

Date Filed: February 26, 2010

Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

third-party tender offer subject to Rule 14d-1.

issuer tender offer subject to Rule 13e-4.

going-private transaction subject to Rule 13e-3.

amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer:

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This Amendment No. 1 (the Amendment) amends and supplements the Tender Offer Statement on Schedule TO (which, together with any amendments and supplements thereto, collectively constitute the Schedule TO) originally filed with the Securities and Exchange Commission on February 26, 2010 by (i) Foster Thomas Company, a West Virginia corporation (the Purchaser) and a wholly-owned subsidiary of L.B. Foster Company, a Pennsylvania corporation (Parent), and (ii) Parent. The Schedule TO relates to the offer by the Purchaser to purchase all of the outstanding shares of common stock, par value \$1.00 per share (the Shares), of Portec Rail Products, Inc., a West Virginia corporation (Portec), at a purchase price of \$11.71 per Share, net to the seller in cash, without interest thereon and less any applicable withholding or stock transfer taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase dated February 26, 2010 (which, together with any amendments and supplements thereto, collectively constitute the Offer to Purchase) and in the related Letter of Transmittal, copies of which are filed with the Schedule TO as Exhibits (a)(1)(A) and (a)(1)(B), respectively. Capitalized terms used and not otherwise defined in this Amendment have the meanings assigned to such terms in the Schedule TO or the Offer to Purchase. This Amendment is being filed on behalf of the Purchaser and Parent. Pursuant to General Instruction F to Schedule TO, the information contained in the Offer to Purchase, including all schedules and annexes thereto, is hereby expressly incorporated by reference in answers to Items 1 through 11 of this Statement and is supplemented by the information specifically provided for herein.

**Item 11. Additional Information.**

Item 11 (a)(5) of the Schedule TO is hereby amended and supplemented by replacing None. with the following paragraph:

On February 24, 2010, a lawsuit related to the Offer and the Merger was filed in the Court of Common Pleas of Allegheny County, Pennsylvania, *Everett Harper v. Marshall T. Reynolds, et al.* The action is brought by Everett Harper, who claims to be a stockholder of Portec, on his own behalf and on behalf of all others similarly situated, and seeks certification as a class action on behalf of all public Portec stockholders, except the defendants and their affiliates. The lawsuit names Portec, each of Portec's directors, L.B. Foster and Purchaser as defendants. The lawsuit alleges, among other things, that Portec's directors breached their fiduciary duties and L.B. Foster and Purchaser aided and abetted such alleged breaches of fiduciary duties. Based on these allegations, the lawsuit seeks, among other relief, injunctive relief enjoining the defendants from consummating the Offer and the Merger. It also purports to seek recovery of the costs of the action, including reasonable attorney's fees. A copy of the Complaint is filed as Exhibit (a)(5)(C) to the Schedule TO and is incorporated herein by reference.

**Item 12. Exhibits.**

<u>Exhibit</u>	<u>Exhibit Name</u>
(a)(5)(C)	Complaint captioned <i>Everett Harper v. Marshall T. Reynolds, et al.</i> , filed in the Court of Common Pleas of Allegheny County, Pennsylvania

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**SIGNATURE**

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

L.B. FOSTER COMPANY

Date: February 26, 2010

By: /s/ Stan L. Hasselbusch

Name: Stan L. Hasselbusch

Title: President and CEO

FOSTER THOMAS COMPANY

Date: February 26, 2010

By: /s/ Stan L. Hasselbusch

Name: Stan L. Hasselbusch

Title: President & CEO

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Exhibit

Exhibit Name

(a)(5)(C)

Complaint captioned *Everett Harper v. Marshall T. Reynolds, et al.*, filed in the Court of Common Pleas of Allegheny County, Pennsylvania